

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 20.01.2011

+ **CS(OS) No. 474/1997**

M/s Bharat Electronics Limited.

.....Plaintiff

- versus -

M/s Shyam Telecom Limited

.....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr.H.L. Raina

For the Defendant: None.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the Reporter or not? | YES |
| 3. Whether the judgment should be reported in Digest? | YES |

V.K. JAIN, J. (ORAL)

1. This is a suit for recovery of Rs.1,78,22,826/-.

The plaintiff is a Government company incorporated under the Companies Act, 1956. The suit has been instituted and plaint signed and verified by its Deputy Manager (Personnel and Administration) Mr. M.S. Khan.

The plaintiff company is engaged in catering to the needs of defence forces and para-military forces, by manufacturing and supplying various professional grade electronic equipments and is also engaged in manufacturing and sale of various equipments such as PCM MUX (VLSI) etc. to the private parties. It is alleged in the plaint that the defendant approached and informed the plaintiff that it had obtained order from the Department of Telecommunications (DOT) for supply of 2 GHZ 30 channel digital micro wave radio equipment and wanted to purchase 200 units of PCM MUX (VLSI) equipment from the plaintiff for supply to the DOT. The quotations for supply of the aforesaid equipment was submitted by the plaintiff at the rate of Rs.74,500/- per unit, FOR kotdwara basis, exclusive of taxes and duties, which were to be charged at the rate prevailing at the time of dispatch of goods. The rate of excise duty, according to the plaintiff, at the relevant time was 20% and CST payable against C/D Forms was 4% whereas the freight was to be charged on actual basis. One of the terms of the quotations submitted by the plaintiff to the defendant provided that interest charged beyond 30 days up to 90 days shall be equally shared by the parties. The equipments were to be

inspected by the Inspectors of the plaintiff, which already had an inspection status issued by CGM (QA) of Department of Telecommunications for PCM I, II, III Order MAX RAX 256 P., SBM RAX & MAX L. products. The equipments could also be inspected by the defendant at the works of the plaintiff before their dispatch. On receipt of quotations, the defendant placed purchase order dated 1st February, 1995 for supply of 200 units of PCM MUX (VLSI). However, while placing the purchase order, the defendant changed the condition stipulated by the plaintiff in the quotation for furnishing of bank guarantee to opening of a Letter of Credit (LOC) for 90 days and it was also stipulated that last 60 days interest was to be shared by the parties. Regarding inspection of the equipment, the defendant while placing the order stipulated that DOT (QA) inspection will be done at the premises of the plaintiff and it will be the responsibility of the plaintiff to get the equipment passed by DOT (QA) and get a certificate for the same. It was further stipulated that if it was not possible to conduct DOT (QA) testing at the premises of the plaintiff then the same will be done at his place and the plaintiff will help in getting it cleared by DOT (QA).

2. It is further alleged that in response to the purchase order, the plaintiff vide fax dated 10th February, 1995 gave delivery schedule, which envisaged completion of delivery of the entire equipments by 31st March, 1995 and also set out the procedure for inspection of the equipments before its dispatch. It was stated by the plaintiff that the equipments would be inspected by the BEL (QA) Inspectors, who had “Approved Inspection Status” conferred by CGM (QA) (DOT) and based on the inspection certificate issued by BEL(QA) Inspector, the defendant could get those equipments cleared by DOT(QA) resident Inspector at defendant’s factory. The plaintiff also confirmed that the Multiplexers to be supplied by it will conform to the Telecom Engineering Centre (TEC) DOT specifications. The defendant was requested to issue LOC for full value of the order, including taxes, up to 90 days, with interest free credit for 30 days and interest for balance 60 days at the rate of 16% per annum to be shared equally between the parties. The defendant was requested to make necessary amendments accordingly in the purchase order issued by it.

3. In pursuance of the fax dated 10th February, 1995 sent by the plaintiff, the defendant vide its fax dated 15th

February, 1995 raised no objection to the amendments suggested by the plaintiff but requested the plaintiff to complete delivery by 25th March, 1995. The defendant also informed the plaintiff that it was in the process of opening LOC.

4. Acting on the assurance of the defendant, the plaintiff started production of the equipments ordered by the defendant. In the meantime, it also arranged DOT (QA) inspection to be carried out by the DOT (QA) resident inspector at the premises of the plaintiff. In order to take up inspection, the DOT (QA) inspector asked for DOT purchase order placed on the defendant. Since the order placed by the order placed by the DOT to the defendant was not in possession of the plaintiff, the defendant was requested to send a copy of the purchase order so that inspection of the equipments by DOT (QA) Resident Inspector Kotdwara could be carried out. Thereafter, defendant vide fax message dated 13th March, 1995 sent a copy of the purchase order dated 20th December, 1993. A perusal of the order dated 20th December, 1993 revealed that the delivery date mentioned therein was 31st December, 1994 which had already expired. As a result, Resident

Inspector of the DOT (QA) refused to inspect the equipments till the delivery date in the purchase order was extended. The plaintiff, therefore, vide fax dated 16th March, 1995 informed the defendant that delivery date mentioned in the purchase order dated 20th December, 1993 needed to be extended and requested the defendant to forward extension of the delivery date to it. The defendant, however, failed to respond to the request made by the plaintiff, which then sent a reminder dated 22nd March, 1995 to the defendant in this regard and again requested it to forward the LC and letter of extension, treating the matter as most urgent. The defendant ultimately vide fax dated 24th March, 1995, sent copy of letter extending the delivery date up to 30th June, 1995. The defendant also informed the plaintiff that due to insufficiency of funds in their L/C limit, they were unable to open the LOC and, therefore, their management had decided to issue post dated cheques for 90 days including interest of the last 30 days in lieu of LOC. The plaintiff was also requested to send proforma invoices in order to enable the defendant to prepare the cheques. The plaintiff sent proforma invoices to the defendant for delivery of 50 units of the equipments on 27th March, 1995, for a sum of

Rs.47,10,784/- inclusive of interest. The defendant vide its fax dated 27th March, 1995 informed the plaintiff that the cheque was ready and sought confirmation of dispatch of the equipments. It was further stated by the defendant that the cheques would be given after receiving the material. A photocopy of the postdated cheque No.753333 dated 27th June, 1995 drawn on State Bank of India, Industrial Finance Branch, New Delhi for Rs.47,10,784/- was also sent to the plaintiff. Acting on the fax dated 27th March, 1995, the plaintiff dispatched 50 units of equipments to the defendant on 27th March, 1995. Those units had been inspected by the DOT(QA) on 11th March, 1995, 15th March, 1995 and 18th March, 1995 and certificates to this effect were issued by DOT (QA) on 27th March, 1995.

5. The defendant vide fax dated 28th March, 1995 informed the plaintiff that there were certain defects in the equipments sent to it and requested that the engineers of the plaintiff be sent to set the equipments in order. A meeting was accordingly held on 29th March, 1995 wherein it was decided that the plaintiff will make the further supplies. The plaintiff further supplied 116 equipments between 28th March, 1995 and 31st March, 1995. All these

equipments had been finally inspected and cleared by the DOT (QA) Resident Inspector on 28th March, 1995, 30th March, 1995 and 31st March, 1995. Thus, in all the plaintiff supplied 166 units of PCM (MUX) (VSLI) equipments to the defendants by 31st March, 1995. The amount payable by the defendant in respect of these 166 units comes to Rs.1,55,28, 252/-, out of which the defendant has paid only Rs.20,00,000/- vide cheque dated 15th July, 1995 leaving a balance of Rs.1,35,28,252/-. Since the defendant has failed to pay the aforesaid amount, the plaintiff has filed this suit claiming a sum of Rs.1,35,28,252/- being the principal amount and a sum of Rs.42,94,574/- towards interest upto 31st December, 1996 thereby making a total of Rs.1,78,22,826/-.

6. The defendant filed the written statement contesting the suit. The defendant denied authority of Mr. M.S. Khan to institute the suit and sign and verify the plaint. On merits, it was alleged that the equipments supplied by the plaintiff were defective and, therefore, the plaintiff was required to stop further shipment. The plaintiff, however, ignored the instructions sent to it in this regard on 28th March, 1995 and shipped the defective goods

to the defendant. It is also alleged that the plaintiff did not adhere to the delivery schedule, which it had offered. It is further alleged that the Government of India had placed an order on the defendant for supply of 420 Terminals of 2 GHz Microwaves system-30 Chl. (1+0) configuration for wireless transmission of telephone signals between two telephone exchanges. The tendered equipment i.e. 2 GHz MW System – 30 Chl. (1+0) configuration comprises two important units, one of them being Digital Microwave Radio System and the other being 30-Channel PCM Multiplexer. Since 30-Channel PCM multiplexer was not being manufactured by the defendant company at that time, it proposed to buy that equipment from the plaintiff. The payment was to be made in full in respect of accepted quantity, including taxes and duties and was to be made against proforma invoices within 30 days. The interest beyond 30 days and up to 90 days was to be equally shared. A bank guarantee for full payment was to be made before dispatch of the goods. The defendant while placing the purchase order stipulated that the entire delivery was to be made by 23rd March, 1995 and 50 pieces per week were to be supplied starting 1st February, 1995. The purchase order also contained various

conditions such as training of engineers of the defendant and free of cost repairs/replacement of the equipments. It is also alleged that the plaintiff being a government company, blank test certificate had been made available to it by the Department of Telecommunications (QA). Since the equipment in question was required to be inspected and tested by DOT(QA), the plaintiff company made the format of a letter offering equipment for inspection, available to the defendant and asked it to provide sufficient number of blank letters duly signed on behalf of the defendant and addressed to the DOT, Camp, Bharat Electronics Limited, Kotdwara, U.P. offering equipment for testing and clearance. The defendant company signed 13 blank offer letters and delivered the same to the plaintiff on 13th March, 1995. The defendant denied that the 50 equipments dispatched on 27th March, 1995 were duly inspected by the concerned department and alleged that the blank DOT (QA) certificates were obtained by the plaintiff company and appeared to have been filled up to suit the convenience of the plaintiff without getting the equipment inspected and tested as per DOT (QA) procedure. It is alleged that during the joint inspection carried out on 29th March, 1995 by Mr.

Diwakaran, DGM (Mktd.) and Mr. Yudhbir Singh of defendant, it was found that there were large number of defects in the 50 equipments which the plaintiff had supplied to the defendant. Those equipments were, thereafter, attempted to be rectified and inspection was carried out jointly on 7th April, 1995 by Mr. Manas Aich, Deputy Manager (Design and Engg.) with Mr. Pankaj Sharma, Engineer of the defendant. A large number of operational defects were still found in the equipments. Thereafter, the engineers from the plaintiff and defendant company jointly sought to improve the equipment and 46 equipments were supplied to DOT as part of the purchase order dated 20th December, 1993. 4 equipments could not be rectified and the plaintiff was asked to take them back. According to the defendant, the time of supply was the essence of the purchase order. Hence, the belated supply of 116 equipments was never accepted by it. It is also alleged that when the equipment when installed in the field did not work and DOT instructed the defendant not to supply any PCMs produced by the plaintiff to them. The equipments supplied after 28th March, 1995, according to the defendant, were left at site at the risk and costs of the plaintiff.

7. The following issues were framed on the pleadings of the parties:-

- (i) Whether the plaint has been signed, verified and instituted by a duly authorized person? OPP.
- (ii) Whether the equipments supplied by the plaintiff to the Defendant under the Contract dated 1st February, 1995 were defective? OPD.
- (iii) Whether the Plaintiff is entitled to recover any amount from the Defendant under the Contract dated 1st February, 1995 and if so what amount? OPP.
- (iv) Whether the Plaintiff is entitled to pendente lite interest, and if so at what rate and for what period?
- (v) Relief.

Issue No.(i)

8. Exh. PW-6/10 is the copy of the resolution passed by the Board of Directors of the plaintiff company in its meeting held on 26th November, 1983 whereby it was resolved that the Heads of Units and Officers of the rank of General Managers, Additional General Managers, Senior Deputy General Managers, Deputy General Managers at the Units and Head Office and Administrative Managers and Chief Administrative Managers were designated as the Principal Officers of the Company and were authorized to sign and execute applications/petitions/documents on

behalf of the plaintiff and/or to depose before Government and Judicial Authorities in relation to activities of their respective Unit/Division/Department. In his affidavit by way of evidence, Mr. M.S. Khan has stated that he was working as Chief Administrative Officer and was designated as Deputy Manager (Personnel and Administration) on 4th March, 1997. I see no reason to disbelieve the deposition of Mr. M.S. Khan with regard to his designation. In view of the Board resolution dated 26th November, 1983, Mr. Khan being the Administrative Officer of the plaintiff company was authorized to sign and verify the plaint on behalf of the plaintiff and was also designated as the Principal Officer of the company. Order 29 Rule 1 of the Code of Civil Procedure provides that in suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other Principal Officer of the corporation who is able to depose to the facts of the case. Mr. M.S. Khan being the Principal Officer of the company in terms of the Board resolution dated 26th November, 1983 and also in view of the specific delegation of power in this regard was competent to institute this suit and sign and verify the pleadings on behalf of the

plaintiff. The issue is decided against the defendant and in favour of the plaintiff.

Issue No.(ii) & (iii)

9. This is not in dispute that the plaintiff company supplied 166 equipments to the defendant company and those equipments were dispatched between 27th March, 1995 and 31st March, 1995. The onus of proving that all the equipments supplied by the plaintiff were defective was on the defendant company. No witness has been examined by the defendant, which was proceeded ex parte on 7th September, 2009. The case set out in the written statement is that during the joint inspection carried on 29th March, 1995 by Diwakaran, DGM (Mktd.) of the plaintiff and Mr. Yudhbir Singh of defendant company, a large number of defects were found in the 50 equipments supplied by the plaintiff to the defendant. A perusal of the minutes of the inspection held on 29th March, 1995, which is Exhibit PW-6/6, does show that there were large number of defects in the 50 equipments supplied by the plaintiff to the defendant company. The minutes also show that the representative of the plaintiff company assured the representative of the defendant company that the defects found during inspection

will not be repeated and that they would take remedial action, which will be informed to the plaintiff before dispatching the next supply.

10. In his affidavit filed on 10th January, 2011, Mr. B.K. Pant, Manager of the plaintiff company has stated that on 28th March, 1995 after dispatch of 57 units of equipments, a fax was received from the defendant company intimating that 50 units, which they received on 27th March, 1995, were defective and they requested that an Engineer be sent for fixation and testing of those units. They also requested them not to dispatch any further units. The fax sent by the defendant is Exhibit PW-6/5. The affidavit of Mr. Pant shows that the defects found during the joint inspection carried on 29th March, 1995 were removed on 21st April, 1995, 22nd April, 1995 and 29th April, 1995 by the engineers of the plaintiff company, in the presence of the engineers of the defendant, at the place of the defendant. It further shows that the equipments, which were supplied by the plaintiff company on 28th March, 1995, 30th March, 1995 and 31st March, 1995, were also inspected and found according to the requirement of DOT. Since no evidence has been produced by the defendant, I see no reason to

disbelieve his deposition of Mr. Pant to the effect that the defects noticed in the 50 units dispatched on 27th March, 1995 were rectified on various dates between 21st April, 1995 to 29th April, 1995 at the premises of defendant company. In the absence of any rebuttal from the defendant, I see no reason to disbelieve his deposition to the effect that equipments that were supplied by the plaintiff company on 28th March, 1995, 30th March, and 31st March, 1995 were found as per the requirement of Department of Telecommunications.

11. Exhibit PW-6/7 is the fax sent by the defendant company to the plaintiff on 18th May, 1995. A perusal of this document would show that the defendant accepted only 44 pieces and declined to accept the remaining pieces on the ground that they were supplied beyond the stipulated date of delivery of the equipments. This was not the case of the defendant in this communication that the remaining equipments supplied by the plaintiff company also were defective or were not in accordance with the specifications prescribed by the Department of Telecommunications and failure of the plaintiff to adhere to the agreed delivery

schedule was the sole ground for declining to accept the remaining equipments.

12. Though the defendant accepted only 44 equipments out of 50 equipments shipped to it on 27th March, 1995, there is no evidence of its having returned the remaining six equipments to the plaintiff company. Though it has come in the written statement that four units supplied by the plaintiff could not be rectified and only 46 units were delivered by the defendant to the Department of Telecommunications, the fax sent by the defendant to the plaintiff on 18th May, 1995 conveyed acceptance of 44 equipments, whereas it should have been for 46 equipments assuming that remaining four equipments out of 50 supplied to it continued to be defected. In fact, acceptance of 44 equipments by the defendants indicates that the plaintiff is right in saying that the equipments, which had dispatched on 27th March, 1995 had been rectified by its Engineers. Had those equipments not been rectified, the defendant would not have accepted even 44 such equipments.

13. This is plaintiff's own case that the equipments were to be supplied by it by 31st March, 1995. The first

batch of the equipments was dispatched on 27th March, 1995 and comprised 50 units. These 50 units were found to be defective during the joint inspection held on 29th March, 1995. The plaintiff company removed the defects found in these 50 units somewhere in the month of April, 1995. The plaintiff company was under obligation to supply equipments free from any defect on or before 31st March, 1995. If the plaintiff company supplied 50 defective units on 27th March, 1995, the defendant was not bound to accept them, could have rejected those equipments and was not bound to pay their price. However, since the defendant accepted 46 equipments out of 50 units supplied on 27th March, 1995 by supplying them to DOT, it is obliged in law to pay to the plaintiff company for those 46 units. However, the defendant is not liable to pay for the remaining four units out of 50 units dispatched on 27th March, 1995 since they were defective when received by the defendant the defects in those units were rectified by the plaintiff company after the last date stipulated for supply of the equipment, and the defendant did not accept them at a later date.

14. Section 43 of the Sale of Goods Act, 1930 provides that unless otherwise agreed, where goods are delivered to

the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept the equipments. Since the defendant was not bound to accept the equipments on removal of defects in the month of April, 1995 and the plaintiff was informed of the defects found in the goods and was also informed that only 44 units were being accepted by it, the defendant complied with the statutory requirement laid down in Section 43 of the Sale of Goods Act, 1930 as far as four units of equipments are concerned.

15. As regards remaining 116 units, the affidavit of Mr. Pant shows that they were also inspected and were found according to the requirement of Department of Telecommunications. There is no evidence on record to prove that any of the units out of 116 units dispatched to the defendant company between 28th March, 1995 and 31st March, 1995 were defective. The defendant could not have refused to accept delivery of those equipments and could not have asked the plaintiff to take them back.

16. The only ground on which supply of the remaining units was rejected by the defendant, as conveyed vide fax

dated 18th May, 1995 was that there was delay in supply and the balance quantity sent by the plaintiff was beyond the delivery dates and, therefore, could not be accepted. Exhibit PW-5/5 is the copy of the order placed by the Government of India on the defendant company for supply of equipment. This document shows that the delivery of 30 terminals of 2GHz., 30 channel (1+0) M/W equipment and associated items was to be completed by 31st March, 1994 whereas the delivery of the balance equipments was to be supplied by 31st December, 1994. The case of the plaintiff is that since the copy of the purchase order placed by the Government of India on the defendant company, supplied to it by the defendant, envisaged delivery by 31st March, 1994 and that date already expired much before the purchase order was placed by the defendant on the plaintiff company, the officials of DOT, who were required to inspect the equipments declined to carry out/certify the inspection and, therefore, it had to write to the defendant company requesting it to get the time for delivery of the equipments by it, to Government of India, extended suitably so that inspection could be carried out by the officials of DOT posted at its premises.

17. Exhibit PW1/1 is the fax dated 16th March, 1995 sent by the plaintiff company to the defendant informing it that as per the purchase order, delivery date was 31st December, 1994 and DOT(QA) needs the extension of delivery date to take up the inspection. The defendant was requested to forward the delivery date extension letter immediately. Exhibit PW-6/3 is the fax sent by the defendant to the plaintiff on 24th March, 2005 thereby forwarding the delivery date extension letter of DOT against purchase order dated 20th December, 1993. Exhibit PW-5/6 is the letter of the Department of Telecommunications to the defendant whereby the delivery schedule for the second lot of the equipments was extended upto 30th June, 1995 without levy of liquidated damages. This letter issued by the Government of India is dated 2nd February, 1995. It is, thus, quite obvious that the inspection of the equipments which the defendant had manufactured could not be carried out by DOT (QA) officials due to the lapse on the part of the defendant company in not sending the letter whereby the last date for delivery of the equipment by it to the Government of India had been extended till 30th June, 1995 though, being dated 2nd February, 1995, this letter issued

by the Government of India must be in possession of the defendant company much prior to the date the inspection was to be taken up the officials of DOT (QA). Since the letter extending date of delivery of equipment by the defendant to DOT was forwarded to the plaintiff company only on 24th March 1995, it was not possible for the plaintiff to dispatch the equipments to the defendant by 25th March 1995, in terms of defendant's letter dated 15th February 1995. Inspection by officials of DOT posted at the premises of the plaintiff was a condition required to be fulfilled before dispatch of goods to the defendant company in terms of agreement between the parties. Since inspection by DOT officials was delayed solely on account of lapse of the defendant in not sending the letter extending date of delivery of equipment by it to the Government, the consequent delay in dispatch of goods to the defendant is also attributable solely to the defendant. The letter extending date of delivery of equipment by the defendant to the Government was sent to the plaintiff Company on 24th March 1995. The inspection at the premises of the plaintiff was completed between 27th March 1995 and 31st March 1995 and the equipments, as soon as they were inspected in

parts, were dispatched to the defendant company. Had the defendant company sent the letter extending date of delivery to the plaintiff company in time along with the order on 15th February 1995, or even soon thereafter, there would have been no delay in inspection by DOT officials posted at the premises of the plaintiff and consequently no delay would have occurred in dispatch of goods to the defendant company.

18. As per the terms and conditions of purchase order, the plaintiff could not have dispatched the equipments to the defendant company without its inspection by DOT(QA). Since the inspection was delayed on account of lapse of the defendant company, it was not entitled in law to take advantage of its own fault and reject the supply on the ground that it had been made after the last day fixed for supply of the equipments. Though vide its fax dated 15.2.1995 which is exhibit PW-6/2, the defendant had fixed the delivery schedule as 30 equipments by 5.3.1995, 30 equipments by 10.3.1995, 40 equipments by 15.3.1995, 50 equipments by 20.3.1995 and 50 equipments by 25.3.1995, vide subsequent fax dated 27.3.1995 Ex.PW-6/4, it had informed the plaintiff that they would not accept any

material after 30.3.1995, meaning thereby that the plaintiff could have supplied 200 equipments on or before 30.3.1995. Irrespective of whether the last date for supply of equipments remained as 25.3.1995 in terms of the fax dated 15.3.1995 or it was changed to 30.3.1995 in terms of fax dated 27.3.1995, the fact remains that the dispatch of the equipments was delayed on account of the lapse of the defendant company in not supplying the letter whereby the last date for supply of equipments by it to Government of India had been extended upto 30.6.1995. The official of DOT(QA) were not expected to inspect the equipment after the last date stipulated for its supply to Government of India had already expired by that time. In any case, the plaintiff-company could not have compelled the officials of DOT(QA) to carry out inspection despite the fact that the delivery order supplied to it envisaged 31.12.1994 as the last date for supply of the equipments to Government of India. Therefore, in my view, the defendant company was not entitled to reject the equipments supplied by the plaintiff company on the ground that the supply was beyond the delivery schedule agreed between the parties. I, therefore, hold that the defendant company is required to pay the

price of 162 equipments to the plaintiff company. The price of 162 equipments comes to Rs.1,52,02,270/- per unit. After deducting Rs.20 lacs which the defendant had admittedly paid to the plaintiff, the principal amount payable by the defendant to the plaintiff for 162 units comes to Rs.1,32,02,270/-. The plaintiff is entitled to recover this amount from the defendant. The onuses are decided accordingly.

Issue No.(iv)

19. The plaintiff has claimed a sum of Rs.4294574/- towards interest on cash credit rate without specifying what the cash credit rate was. There is no agreement between the parties for payment of interest. No custom or usage for term for payment of interest has either been pleaded or proved by the plaintiff. Interest cannot be awarded as damages. However, since this is a suit for price for goods sold and delivered, the Court in view of provisions contained in Section 61 of Sale of Goods Act can award interest to the plaintiff at such rate as it finds fit on the price of the goods, from the date of tender of the goods or from the date on which the price was payable. The quotation given by the plaintiff to the defendant envisaged opening of LOC with the

provision for payment upto 90 days with interest free credit for 30 days and sharing of interest for balance 60 days, calculated at the rate of 16% per annum. Since no LOC was opened by the defendant in favour of the plaintiff company, the provisions regarding interest free period or sharing of interest in equal proportion for 60 days beyond the initial period of 30 days does not come into play. In my view, taking into consideration the nature of transaction between the parties, the plaintiff should be awarded interest at the rate of 12% per annum w.e.f. 1.4.1995. The amount of interest on principal amount of Rs1,32,02,270/- calculated at the rate of 12% per annum for the period upto 4.3.1997 comes to Rs.30,53,557/-.

The issue is decided accordingly.

Issue No.(v)

20. In view of my finding on above issues, the plaintiff is entitled to recovery of Rs.1,62,55,827/- from the defendant.

ORDER

A decree for Rs.1,62,55,827/- with proportionate cost and pendente lite and future interest at the rate of 12%

per annum is passed in favour of the plaintiff and against the defendant. Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

January 20, 2011
vk