

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 22.02.2011

+ **CS(OS) No. 695/2001**

NATIONAL SMALL INDUSTRIES CORP. LTD.

.....Plaintiff

- versus -

SIDDHARTHA PHARMACHEM AND ANR.

.....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. Mohit Chaudhary & Mr. Dheeraj Gupta

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? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

V.K. JAIN, J. (ORAL)

1. This is a suit for recovery of 89,04,274.95. The plaintiff is a government company registered under Companies Act, 1956. Defendant No.1 which is also a company incorporated under Companies Act, 1956, through defendant No.2, who is its director, approached the plaintiff company on 7th May 1997, seeking financial assistance

under plaintiff's Integrated Marketing Support Programme. Pursuant to negotiations between the parties, they entered into an agreement dated 29th August 1997, whereby plaintiff agreed to finance/discount the bills drawn by various small scale industrial units on defendant No.1, to the extent of Rs.60 Lacs. Defendant No.1 pledged its 30 Lacs shares in favour of the plaintiff. Defendant No.2 executed a Deed of Guarantee in favour of the plaintiff company and also gave an undertaking not to sell, mortgage or alienate or part with possession of properties comprising in Khasra No. 225, 292, 297, 299 and 300, Lawn Road, Ghaziabad and Flat No. 109H-1817, Sector-7, Rohini till the discharge of its liabilities. Defendant No.3 also executed a Deed of Guarantee in favour of the plaintiff company and also pledged the shares which it held in defendant No.1 company. The plaintiff claims to have discounted four bills and the financial assistance extended by it under the aforesaid scheme was to the tune of Rs.50,76,240/-. As per the agreement between the parties, the plaintiff was entitled to interest at the rate of 19% per annum along with 3% interest tax. Defendant No.1 was also liable to pay service charges to the plaintiff at the rate of 0.5% per month. The

bills discounted by the plaintiff were to mature on 90th day from the date of issue. It is alleged that defendant No.1 failed to discharge its liability which as on 12th October 2000 accumulated to Rs.89,04,274.95. The plaintiff has claimed the aforesaid amount from the defendant along with interest thereon at the rate of 26% per annum.

The defendants were proceeded ex parte vide order dated 8th May 2006.

2. The plaintiff has filed affidavit of its Deputy General Manager, Mr. K.L. Shah by way of ex parte evidence. In his affidavit, Mr. Shah has supported on oath the case setup in the plaint and has proved the documents relied upon by the plaintiff. He has stated that defendant No.1, through defendant No.2 who is its Director, approached the plaintiff company on 7th May 1997, seeking financial assistance under Integrated Marketing Support Programme scheme of the plaintiff vide application Ex.PW-1/3 and also submitted a request letter dated 7th May 1997 seeking financial assistance which is Ex.PW-1/3A. The plaintiff sanctioned a limit of Rs.60 Lacs to defendant No.1 vide letter dated 26th August 1997 (Ex.PW-1/4). An agreement dated 29th August 1997 was accordingly

executed. In terms of the agreement defendant No.1 pledged 30 lacs shares in favour of the plaintiff company. On the same day a Deed of Guarantee Ex.PW-1/7 was executed by late Sh. P.K. Jain, who was impleaded as defendant No.2 in this suit and who died during the pendency of this suit. Another Deed of Guarantee was executed in favour of the plaintiff by defendant No.3, which is Ex.PW-1/8. An agreement to pledge shares was also executed by defendant No.3 in favour of the plaintiff and the same is Ex.PW-1/9.

3. Mr. K.L. Shah has stated that four bills Ex.PW-1/10 to Ex.PW-1/13 were discounted by the plaintiff, the first bill on 16th July 1997, the second bill on 18th July 1997 and the third and fourth bill on 1st November 1997 and the bills were to mature on 14th October 1997, 16th October 1997 and 28th January 1998, respectively. Defendant No.1, however, failed to discharge its liability which according to the witness, stood at Rs.89,04,274.95 on 12th October 2000. He further stated that cheques Ex.PW-1/16A to Ex.PW-16/C were issued by defendant No.1, which when presented to the bank, were dishonoured.

4. A perusal of the letter Ex.PW-1/3 would show that

the plaintiff company through its Director late Sh. P.K. Jain sought to avail the benefit of Raw Material Assistance Scheme, Bills Financing Scheme and Working Capital Assistance/Export Development Assistance from the plaintiff company and submitted the requisite papers in this regard. This was followed by a letter dated 7th May 1997 (Ex.PW-1/3A) stating therein that the plaintiff belonged to Siddhartha Group which had a group turnover exceeding Rs.100 Crore and was pharmaceutical manufacturer. Defendant No.1 submitted an application for seeking financial assistance under NSIC Financial Services and submitted requisite documents for the purpose. A perusal of the sanction letter dated 26th August 1997, which is Ex.PW-1/4 would show that a limit of Rs.6 Lacs was sanctioned to defendant No.1 under Bills Financing Scheme of the plaintiff against security of 30 Lacs fully paid shares of Rs.10/- each, subject to furnishing of documents including personal guarantee of Managing Director. A perusal of the agreement Ex.PW-1/6 executed by defendant No.1 Siddhartha Pharachem Ltd. in favour of the plaintiff company would show that the defendant accepted financial/discounted bill facility to the extent of Rs.60 Lacs

from the plaintiff company. The amount was to be paid by discounting/financing bills and overdue payment was to carry interest at the rate of 19% per annum with monthly rests. This document also shows that 30Lac shares of defendant No.1 company were pledged with the plaintiff company. Ex.PW-1/7 is the Deed of Guarantee executed by late Sh.P.K. Jain in favour of the plaintiff company on 29th August 1997. Ex.PW-1/10 to Ex.PW-1/13 are the Bills of Exchange which were submitted by defendant No.1 to the plaintiff and were discounted. Ex.PW-1/14 is the letter from Saran Agencies Pvt. Ltd to the plaintiff acknowledging receipt of Rs.17,52,897/- towards supplies made by that company to defendant No.1 company against its bill No.32 dated 16th July 1997. Ex.PW-1/15 dated 26th August 1997 was written by Ploy Pack India to the plaintiff company certifying that they had sold goods worth Rs.22,46,4000/- to defendant No.1 and had drawn/endorsed the bill in favour of NSIC and had further authorized defendant No.1 to pledge the aforesaid bill to the plaintiff for discounting. Ex.PW-1/16A, Ex.PW-1/16B and Ex.PW-1/16C are the copies of three cheques which defendant No.1 had issued to the plaintiff company. The cheques when presented to the

bank were dishonoured with the endorsement “insufficient funds” as is evident from the bank memo annexed to the cheques. Ex.PW-1/20 is the chart showing the amount due to the plaintiff. A perusal of this chart would show that interest has been charged by the plaintiff company at the rate of 19.57% per annum.

The amount claimed by the plaintiff comprises Rs.5,076,240, Rs.2,919,366.15 towards interest and Rs.908,668.80 towards service charges making a total of Rs.8,904,274.95. A perusal of the sanction letter Ex.PW-1/4 would show that the interest was to be charged at the rate of 19% per annum besides interest tax as applicable from time to time. The borrower was also liable to pay service charges at the rate of 0.5% for first 30 days and at the rate of 0.25% for every block of 15 days. The plaintiff has thus fully proved its case against defendants No.1 and 2. Defendant No.1 company is liable to pay a sum of Rs.5,076,240/- as principal sum, Rs.2,919,366.15 towards interest and a sum of Rs.908,668.80 towards service charges. Since the first bill becomes due on 14th October 1997, the suit having been filed on 11th October 2000 is well within limitation.

5. As far as defendant No.2 is concerned he having stood as guarantor for defendant No.1, is also liable to pay the aforesaid amount to the plaintiff company.

However, no document has been filed by the plaintiff company to prove that defendant No.3 also had stood as guarantor for repayment of the loan taken by defendant No.1 by way of bill discounting facility. A perusal of the index filed by the plaintiff company along with the suit would show that though the original Deed of Guarantee of defendant No.3 Vishunpriya Finlease Pvt. Ltd was included in the index, the document was not actually filed. The first document as per index is the original undertaking of Sh. P.K. Jain dated 29th August 1997 which had been given at serial No.2. Third document as per the index was original Deed of Guarantee by Sh. P.K. Jain, which was on pages 2 to 5. The fifth document as per the index was the original of Bill of Exchange, which was given pages No.6 to 9. Other documents were given pages No.10 to 73. Had the plaintiff company filed the original Deed of Guarantee executed by defendant No.3 in its favour, some page number would have to given to that document. The learned counsel for the plaintiff has gone through the file, but has

not been able to locate the document on it. Though the document was shown as Ex.PW-1/8 in the affidavit of Mr. K.L. Shah, no document Ex.PW-1/8 is on record. In the absence of any documentary evidence, I have no option but to hold that the plaintiff has not been able to prove that defendant No.3 had also stood as guarantor for the loan facility availed by defendant No.1.

ORDER

For the reasons given in the preceding paragraphs, a decree for recovery of Rs 8904274.95 with interest and pendente lite and future interest at the rate of 12% per annum is passed in favour of the plaintiff and against defendants No.1 and 2 only. The suit is dismissed against defendant No.3 without any order as to cost.

(V.K. JAIN)
JUDGE

FEBRUARY 22, 2011

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