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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on:- 03.09.2012*  
*Judgment delivered on :- 06.09.2012*

+ CS(OS) No. 671/2005

INDIAN TELEPHONE INDUSTRIES ..... Plaintiff  
Through Mr. R.P.A. Jaiswal, Advocate for  
the plaintiff.  
Versus

BHARAT PHOTOCIRCUITS LTD. & ORS. ... Defendants  
Through Mr. N. K. Kantawala, Adv for D-  
2.  
Mr. I.S. Kohli, Adv. for D-10.  
Mr Kanwal Chaudhary, Adv. for  
the Official Liquidator.

**CORAM:**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.**

1 The present suit has been filed by the plaintiff (Indian Telephone Industries Pvt. Ltd.) against ten defendants of whom Bharat Photo Circuits Ltd. is defendant no.1 and is a company in liquidation. At the time when the suit was filed the company was alive but vide order dated 09.01.1998 the company had been wound up.

2      The Official Liquidator thereafter represented defendant no.1 in the suit proceedings. Defendants no.2 to 9 are the Ex-Directors of the company (in liquidation). Defendant no.10 is the Canara Bank which had issued the bank guarantee in favour of the petitioner which admittedly stood expired before its invocation.

3      Defendant had supplied Printed Circuit Boards (PCBs) to the plaintiff which is a necessary component for the manufacturer of telephone instruments. This was in terms of a Purchase Order dated 19.4.1988. The PCBs were required to be supplied for a value of Rs.160,31,994.11. Defendant no.1 was to dispatch the PCBs through the ARC Transport Corporation of India at the Mankapur destination of the plaintiff. Necessary documents were to be dispatched by defendant no.1 through defendant no.10. Payment was to be made accordingly. Further submission of the plaintiff is that in terms of condition no.4 of the 'General Terms and Conditions' of the Purchase Order the material supplied by the defendant no.1 was to be the subject matter of inspection at Mankapur before the acceptance of the goods and the goods which were not accepted were liable to be rejected and had to be removed by the supplier within a period of 15 days.

4       The goods supplied by defendant no.1 were received in 93 lots at Mankapur and they were inspected by the Inspector of the plaintiff; the “Onward Goods Advice Note” prepared by the Inspector had noted that the total number of the components of the PCB which were rejected were 33899. Defendant was to remove these defective goods but he failed to do so. Defendant no.1 has wrongly and by fraud received excessive payments of Rs.18,97,170.73.

5       On 05.6.1990 the Director of the defendant company had visited the office of the plaintiff and had verbally assured the plaintiff that the defective material would be replaced and that the bank guarantee which was to expire on 30.6.1990 would also be extended; defendant no.2 (Mr.Ajay Kumar) also gave letters in reply on 05.6.1990 and 08.6.1990 to the said effect. However, these commitments have not been honoured.

6       Vide registered letter dated 05.6.1990 the Canara Bank has been asked to honour the bank guarantee in the sum of Rs.8,00,000/- which amount the petitioner is entitled to claim along with interest @ 18%. He is also entitled to recover Rs.18,97,170.73 on account of excess payments made by him to defendant No. 1.

7 Suit has accordingly been filed claiming a sum of Rs.23,52,491.69 (Principal sum of Rs.18,97,170.73 + Rs. 4,55,320.96 as interest) from defendant no.1 to 9; a decree of Rs.9,92,000/- (i.e. Rs.8,00,000/- towards principal plus interest) has also been claimed from defendant no.10 in terms of the bank guarantee which has not been honoured by the Bank.

8 Written statement was filed by the defendant no.1. This written statement was filed by the company at the time when it was not in liquidation. It is dated September 1992 and has been filed through its director defendant no.2. Submission is that the alleged claim of the defective goods is absolutely wrong. Plaintiff has already claimed MODVAT in its excise records; MODVAT can be claimed only on the consumption and utilization of the goods and as such this submission that the goods were defective and were returned back to the defendant is a false statement. Reference has been made to the letter dated 13.10.1988 written by the plaintiff to the defendant which was confirmed in the subsequent meeting held on 16.10.1988; submission being that the goods continued to remain with the plaintiff; further the atmosphere in which the goods were retained in the godown was

uncongenial for them as the goods being of a sensitive quality and not being used for six to eight months had for this reason got spoilt. On no count the plaintiff is entitled to any amount.

9 Written statement was also filed by defendants no.2 to 4, the Ex-Directors of the company; they have supported the stand of defendant no.1.

10 Defendant no.10 Canara Bank has filed separate written statement; his submission was that no letter has been sent by defendant No. 1 seeking extension of the bank guarantee; the letter dated 05.6.1990 has been written by the plaintiff and was received by the defendant only on 25.6.1990. Further submission being that the bank guarantee stood extended lastly only up to 30.6.1990. No communication was ever received to extend the bank guarantee thereafter. On 07.6.1990 the plaintiff had himself intimated to the bank that the agreement of guarantee should be treated as withdrawn and cancelled and this was prior to the expiry of the extended period of the bank guarantee; the plaintiff is himself responsible for the expiration of the bank guarantee. An additional written statement was also filed by defendant No. 10. Submission being that the prayer made by the

plaintiff is liable to be rejected.

11 Separate written statement was also filed by the Official Liquidator. He has adopted the stand set up by defendants no.1 and 2. He had denied that any payment is to be made to the plaintiff.

12 On 18.8.2005, the following issues were framed:

- i. *Whether the suit has been filed under proper authority and by a proper person duly authorized to sign and verify the claim? OPD*
- ii. *Whether the goods delivered by defendant no.1 to the plaintiff were defective and whether there is a proper rejection of those goods by the plaintiff? OPD*
- iii. *Whether the plaintiff has claimed MODVAT in the excise records in respect of the goods supplied by defendant no.1 to the plaintiff? If so, to what effect?*
- iv. *Whether the suit is based on mis-statement and suppression of facts? OPD*
- v. *Whether the suit maintainable against the defendant no.2 to 9?*
- vi. *Whether the defendant no.2 to 9 were proper and necessary parties? If so, to what effect? OPP*
- vii. *Whether the plaintiff is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure? OPD/10*
- viii. *Whether the alleged invocation of the bank guarantee was within the period of guarantee and according to its terms?*
- ix. *Whether the invocation of the bank guarantee was withdrawn and cancelled by the plaintiff vide letter No.ESS/N/K bills 1707 dated 7.6.1990 as mentioned in para 29 of the written statement of defendant no.10.*

- x. Whether the plaintiff has any cause of action against defendant no.10?*
- xi. Whether the suit is liable to be dismissed against defendant no.10?*
- xii. To what amount, if any, is the plaintiff entitled and from which of the defendants?*
- xiii. Relief.*

13 Three witnesses were examined on behalf of the plaintiff. PW-1 is the Assistant Manager (Law) of the plaintiff company. He has reiterated the averments made in the petition. Letter dated 05.6.1990 written by defendant no.2 (Ajay Kumar) agreeing to extend the bank guarantee for further period of six months has been proved as Ex.PW-1/6; second letter issued by defendant no.2 dated 08.6.1990 reiterating this position has been proved as Ex. PW-1/13; proof of dispatch of the aforementioned communication has been proved as Ex. PW-1/8 to Ex.PW-1/10. In his cross-examination PW-1 has stated that Ajay Kumar was intimated of the defects; he was asked to remove them; PW-1 however had no personal knowledge of the matter.

14 PW-2 was the Manager of the ITI Mankapur and being the Quality Control In-charge of the plaintiff company at the Mankapur unit was an important witness. He had deposed that PCBs amounting to

Rs.29,14,538.65 were defective; these were 338995 in number; plaintiff has suffered a loss on this count. In his cross-examination he admitted that he was the Quality Control In-charge of the plaintiff company and if the goods were found to be defective the same would be rejected.

15 PW-3 was the Manager of the ITI Mankapur; he has deposed on the same lines as PW-2. In his cross-examination he has admitted that the inspection of the premises of the defendant was carried out by the Quality Control Department which is a separate department and he has no knowledge of the inspections which had been carried out; final inspection was done at the plaintiff's premises; he admitted that once the goods are rejected it is intimated to the contractor; there were numerous letters vide which the defendant was notified of this rejection.

16 The defendants also produced two witnesses in defence. Defendant no.2 (Ajay Kumar), the Ex-Director of the defendant company had come into witness box. He had admitted that a purchase order was placed upon the defendant company on 19.4.1988 for a value of Rs.1,60,31,994.11 which was later reduced to Rs.1,54,92,420.25; he deposed that pre-inspection was permitted at the premises of defendant no.1 and accordingly Clause No.4 of the Purchaser Order 19.4.1988 was

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amended to the extent that the place for final inspection was shifted from the premises of the plaintiff to the factory of defendant no.1; inspection was being conducted by the Inspector of the plaintiff at the premises of defendant no.1. His further deposition is to the effect that the PCBs are highly sensitive high and they have a limited shelf-life; the delay in inspection by the plaintiff could have led to the deterioration of the PCBs; last consignment was sent to the plaintiff on 19.9.1989 for which an inspection was conducted on 24.02.1990. No replacement IGA had been provided for the period up to 01.9.1989 when the last re-inspection for replacement IGA dated 07.8.1989 was recorded; in mid May 1990 the Finance Department of the plaintiff suddenly wrote to defendant no.1 invoking the two bank guarantees of Rs.8,00,000/- issued by defendants no.1 to 10 in its favour and on being informed of this defendant no.2 visited the premises of the plaintiff and met the Executive Director of the Company on 05.6.1990; the Executive Director of the plaintiff was himself surprised that the bank guarantees were being invoked; they thereafter agreed to withdraw their letter invoking the bank guarantee; the director admitted that it was under a mistaken impression that the bank guarantees were being invoked.

Accordingly the plaintiff withdrew his letter dated 05.6.1990 and also issued a conditional letter of the same dated (Ex.PW-1/D-10) reflecting the understanding of the plaintiff's director that either the bank guarantees would be extended for further six months after their expiry on 30.6.1990 otherwise the plaintiff would invoke the bank guarantee prior to 30.6.1990. Letter dated 08.6.1990 was thus kept in abeyance; plaintiff has never requested defendant no.10 to extend the bank guarantee nor any letter was written subsequent to the letter dated 08.6.1990 invoking the bank guarantees.

17 Defendant no.10 the Canara Bank had filed the affidavit of Pratap Singh, Senior Manager, in evidence in support of his claim. He has also reiterated that two bank guarantees (for Rs. 5 lacs and Rs. 3 lacs) had been issued by the bank on behalf of defendant no.1 initially on 23.3.1989 which was extended up to 30.6.1990; terms of the guarantee that the defendant bank shall stand responsible to the extent of the amount mentioned in the guarantee in case of failure to discharge liabilities of the defendant was only up to 30.6.1990 and no further request was made by the defendant to extend the time period.

18 Issue wise findings are returned as under:-

**Issue No. (i)**

19 The onus to discharge this issue was upon the defendant. The defendant has not addressed any argument on this issue. The plaintiff is a company duly incorporated under the Companies Act and the plaint has been filed through its constituted attorney Mr. Krishan Kumar Upadhyay.

20 Issue No. 1 is accordingly decided in favour of the plaintiff and against the defendant.

**Issue No. (vii)**

21 The onus to discharge this issue was upon the defendant. No evidence has been led by the defendant. He has in fact not pressed this issue which is disposed of accordingly.

**Issues No. (ii) & (iv)**

22 Issues No. (ii) & (iv) are connected and shall be decided by a common discussion.

23 This claim has arisen out of the PCBs which had been supplied by the defendant to the plaintiff; contention being that in terms of clause 4 of the purchase order dated 19.04.1988 (Ex. PW-1/1), inspection was to be carried out of the goods prior to their acceptance. Clause 4 reads

herein as under:-

*“All the stores are subject to inspection at our works before acceptance. If any goods are rejected due to defective or wrong supply, the report of our inspector in this respect shall be final and no correspondence on the subject would be entertained. The rejected goods should be removed from our premises within 15 days after receipt of our inspection report, failing the same shall be returned to you at your risk and expense or disposed off in auction and the proceeds, if any, less our expenses credited to your account.”*

24 The case of the plaintiff is that the goods were to be inspected at the site of the plaintiff and not at the office of the defendant as is the defence sought to be propounded by the defendant. Further case of the plaintiff is that the goods once inspected and rejected (as was so in the instant case), it was the liability of the defendant to pick up the goods from the site of the plaintiff at Mankapur failing which the defendant would be liable for all further expenses incurred.

25 Testimony on this score is relevant. PW-1 was the Assistant Manager (Law) of the plaintiff company posted at Mankapur i.e. the site where the goods had to be dispatched by the defendant to the plaintiff. He was admittedly from the Law Department. In his cross-examination, he has admitted that there are different departments in the plaintiff

company some of whom accepts the goods and some of whom rejects them; he further deposed that Ajay Kumar (defendant No. 2 and Ex-director of the company) used to come on behalf of defendant No. 1 to whom the defective goods were intimated; PW-1 in his cross-examination admitted that he does not have any personal knowledge of the alleged fact that Ajay Kumar used to be informed of the defects noted in the goods; he relies upon the information given to him by the Purchase Department who had informed that they used to tell Ajay Kumar about the defects noted in the goods. This part of the testimony of PW-1 has no relevance. A specific query had been put to PW-1 as to whether there was any inspection report that the PCBs were defective to which there is a categorical answer in the positive; on looking at the documents filed by the plaintiff, PW-1 has admitted that the documents filed by the plaintiff in Court do not show that any such inspection/test report have been placed on record to show that the PCBs supplied by the defendant to the plaintiff were defective. A specific query was again put to the witness as to whether the plaintiff company had ever written to the defendant that PCBs were defective to which again his answer is that he does not have any personal knowledge and cannot say whether any

such letter was written. A specific query was again on this score put to the learned counsel for the plaintiff (as the record shows that in fact no document has been placed on record by the plaintiff to substantiate his claim that the defective goods had been notified to the defendant) to which the frank and candid answer by the learned counsel for the plaintiff is that there is no such document which has been proved in the evidence of the plaintiff. PW-1 has also admitted that there is no document to show that the last consignment supplied by the defendant was defective except the letter dated 08.06.1990 (Ex.PW-1/13) wherein the defendant has admitted that some of the PCBs were defective and the same shall be replaced. Relevant would it be to look at Ex.PW-1/13. This is a communication dated 08.06.1990 written by Ajay Kumar (defendant No. 2 and Ex-managing director of the company) to the plaintiff wherein there is no such admission; this letter only details that the segregation/re-inspection work at Mankapur should be expedited as it is a time consuming process; this document does not in any manner support the deposition of PW-1 that this communication had admitted that PCBs supplied by the defendant to the plaintiff were defective. Ex. PW-1/14 and Ex. PW-1/15 were two other documents which had been

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proved by PW-1 which were inspection reports of the goods supplied by the defendant to the plaintiff. Ex. PW-1/14 is dated 30.05.1989 and Ex. PW-1/15 is dated 03.06.1989 which only state that the report submitted by the Quality Control Department has noted the quantity supplied, quantity passed and quantity rejected. Further these documents (as is evident from the testimony of the witness recorded on 11.10.2004) were given exhibit marks only for the purposes of identification; these documents had been denied by the defendant; these documents have in fact not been proved as per the rules of evidence; writer of these documents or any other person identifying the signatures of the persons writing the documents have not been summoned in the witness box to prove these documents. These documents Ex. PW-1/14 and Ex. PW-1/15 have necessarily to be ignored.

26 Testimony of PW-2, the Quality Control In-charge of the plaintiff company is relevant. He has admitted that the goods used to be inspected at the pre-inspection stage which used to be carried out at the office of defendant No. 1 and if found in order were sealed with tapes; there were guidelines for inspection; once the goods were supplied by defendant No. 1, inspection was again carried out at the premises of the

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plaintiff and if found defective, the same would be rejected; PW-2 has admitted that it normally used to take 15-30 days time to inspect the material at the premises of the plaintiff and defendant No. 1 used to be intimated about the post-inspection in writing. Admittedly there is no communication on record about the intimation by the plaintiff to defendant No. 1 about any post-inspection wherein they had found the goods of defendant No. 1 to be defective.

27 PW-3 was a witness working in Switching Department of the plaintiff which is again a separate department; he having admitted that the inspection was being carried out by the Quality Control Department; in his cross-examination, he has admitted that the goods of the defendant were rejected in lots and defendant No. 1 had sought permission for rectification and part of the goods were rectified; however 33,899 pieces of PCBs were not rectified.

28 DW-2 (Ajay Kumar), the Ex-director of the company has reiterated his stand as depicted in the written statement on oath; he has relied upon clause 4 of the purchase order Ex. PW-1/1. In para 14 of his deposition on oath, he has stated that the plaintiff was under a duty to retire the documents in a period of 7-10 days but in some cases he used

to take more than 3 and 3½ months and details of invoices and the period taken by the plaintiff to retire the document has been detailed in paras 14, 16, 17, & 18.

29. Ex. DW-2/1 to Ex. DW-2/30 are the pre-inspection reports i.e. the inspection carried by the Quality Control staff at the site of the defendant; attention has been drawn to the last part of the aforementioned document where it has been noted that the above noted goods have been accepted. Ex. DW-2/131 to Ex. DW-2/151 are the bills raised by the defendant upon the plaintiff for the goods which have been supplied. DW-2 in his cross-examination has also admitted that the shelf-life of the goods was 1-2 months if they are stored in proper condition. On this score, the defence of the defendant has been that the goods which were supplied to the plaintiff had a limited shelf-life and it was incumbent upon the plaintiff to have retired the documents of the plaintiff in a time bound manner; PW-1 in his cross-examination has admitted that as per their guidelines normally 15-30 days used to be taken by the plaintiff to inspect the material at site; at the same time, he has admitted that some of the goods used to be inspected after 30 days to 90 days; sometime inspection used to be carried out beyond six months; he has admitted

that PCBs requires a proper storage.

30 In the light of the stand of the defendant and the admissions of PW-2 it appears that the defence set up by the defendant that the plaintiff was taking an undue time for retiring the documents which had resulted in the deterioration of the goods supplied by the defendant to the plaintiff (which normally have a shelf-life of 1-2 months) and where the goods were being taken up for inspection even six months later, the said goods i.e. the PCBs also being sensitive in nature and requiring a controlled atmosphere in which they are to be stored; the deterioration in these circumstances due to natural condition of the goods cannot be over-looked.

31 Record thus clearly establishes that the claim of the plaintiff has not been substantiated. He has failed to show that the goods which were (33899 PCB) components supplied by defendant No. 1 were defective and intimation of the same had been given (vide post-inspection reports made by the plaintiff) to defendant No. 1. It has come on record that there is no such communication of these post-inspection reports by the plaintiff to the defendant. Inspection of the goods was being permitted at the site of the plaintiff at Mankapur also pursuant to which post-CS (OS) No.671/2005

inspection reports were prepared and this has come in the categorical deposition of PW-2; no such post-inspection report has been placed on record; there is not a single document on record to show that in fact any such defects were ever pointed out by the plaintiff to the defendant.

32 There is no dispute that the shelf-life of the PCBs is 1-2 months. PW-2 has admitted that sometime inspections used to be conducted by the plaintiff even after six months; PW-1 has also admitted that the PCBs require a proper storage as they are sensitive components; DW-2 has also reiterated this stand; his evidence being categorical to the effect that if the goods are not lifted in time, it might result in oxidation of the PCBs; he has given various instances and details when the inspections were being carried out after 6-8 months; no cross-examination has been effected of DW-2 on this score. The goods having deteriorated/oxidized over a period of time also cannot be ruled out.

33 The plaintiff is supposed to stand on his own legs. Evidence both oral and documentary shows that the suit is based on misrepresentation and suppression of facts. Plaintiff has not been able to establish the claim of excess payment of Rs.23,52,491.69 allegedly made by him to the defendant. Claim qua defendants No. 1 & 2 must fail. He is not

entitled to any relief qua this excess payment made to defendants No. 1 & 2. The suit of the plaintiff qua this amount of Rs.23,52,491.69 fails.

34 These issues are accordingly decided against the plaintiff and in favour of the defendants.

**Issue No. (iii)**

35 The onus to discharge this issue was upon the plaintiff.

36 DW-2 has deposed that the plaintiff has claimed MODVAT on goods which he could not if goods were not being used by him.

37 Rule 57-G of the Central Excise Rules, 1944 provides the procedure to be observed by the manufacturer in the matter of excise.

Rule 57-G (3) & (4) reads herein as under:-

*“57G. Procedure to be observed by the manufacturer:-*

*(1)xxxxxxxxxxxx*

*(2)xxxxxxxxxxxx*

*(3) A manufacturer of the final products shall maintain:-*

*(a) an account in Form R.G. 23A, Parts I & II;*

*(b) in respect of duty payable on final products, an account-current with adequate balance to cover the duty of excise payable on the final products clear at any time.*

*(4) A manufacturer of the final products shall submit a monthly return to the Superintendent of Central Excise including the particulars of the inputs received during the month and the amount of duty taken as credit, along with extracts of Parts I & II of Form R.G. 23A and shall also make available the documents*

*evidencing the payment of duty on the inputs on demand by the proper officer.”*

38 DW-2 in his affidavit has categorically averred that this MODVAT has been claimed by the company for the total value of the goods supplied by the defendant to the plaintiff; the plaintiff has not reversed the entry for the alleged defective goods in its MODVAT/excise record. No cross-examination has been conducted of DW-2 on this count. PW-1 Manager (Law) had in fact been cross-examined by the counsel for the Official Liquidator specifically on this score. A specific query had been put to him as to whether any MODVAT was claimed by the company for the goods supplied by the defendant to which the answer was that he was not aware as to what is MODVAT. PW-1 also could not say whether RG-23 A (parts I & II) or PLA register was filled up with respect to the rejected goods.

39 Thus the defence of the defendant that the MODVAT had been claimed by the plaintiff company to which there has been no denial and in fact the Law Officer of the company being completely ignorant of this specific query put by the learned defence counsel on this score to PW-1 leaves no manner of doubt that if MODVAT had been claimed by the

plaintiff company for the goods which had been supplied by the defendant and if the stand of the plaintiff that the goods were rejected/defective is correct why no reversal entry had been made in the accounts of the plaintiff has neither been explained and nor answered.

40 It is thus clear that the goods have been utilized by the plaintiff; there being no reversal entries in the books of the plaintiff. This defence of the defendant also carries weight.

41 This issue is also decided against the plaintiff and in favour of the defendant.

**Issues No. (v) & (vi)**

42 On a specific query put to the learned counsel for the plaintiff as to how he has roped in defendants No. 2 to 9 who are Ex-directors of the company, his candid stand is that defendant No. 2 is the only person with whom the plaintiff was having talks and the purchase order had been entered into between the plaintiff and the company of which defendant No. 2 was the Managing Director and was representing and acting on behalf of defendant No. 1. Admittedly defendants No. 3 to 9 have no role to play in this transaction.

43 At this stage, learned counsel for the plaintiff seeks permission of

this Court to delete defendants No. 3 to 9 which is ordered accordingly. Defendant No. 2 being the transacting party on behalf of defendant No. 1 is however kept alive.

44 Issues No. (v) & (vi) are decided accordingly.

**Issues No. (viii) to (xi)**

45 A sum of Rs.9,92,000/- (of which Rs. 8 lacs is the principal figure and the balance is the interest quotient) has been claimed from defendant No. 10 i.e. the Canara Bank who had not extended the bank guarantees qua the plaintiff.

46 This amount is predicated on the bank guarantees which had been executed by defendant No. 10 in favour of the plaintiff at the asking of defendant No. 1. These are two bank guarantees (Ex. PW-1/2 & Ex. PW-1/3) in the sum of Rs.5 lacs and Rs. 3 lacs both of which are dated 30.06.1989. These bank guarantees had admittedly last been renewed up to 30.06.1989.

47 The case as set up by the plaintiff is that vide two communications (Ex. PW-1/8 & Ex. PW-1/11) both dated 05.06.1990, the Bank had been notified about the extension of the bank guarantees but defendant No. 10 has deliberately and intentionally not renewed the

bank guarantees causing a loss to the plaintiff which defendant No. 10 is liable to reimburse.

48 Relevant would be to extract both the aforementioned documents:-

**Ex. PW-1/8**

*MPRS/87-C/C/I/S507/DL*

05.06.90

*M/s Bharat Photo Circuit Ltd.*

*C-10, Site –IV*

*Industrial Area,*

*Sahibabad-201010*

*Dear Sir,*

*Please refer out PO under ref. dated 19.4.1988. In this connection we wish to clarify as follows:*

- i) Your B/G No.10/89 & 66A/88 dated 31.12.88 for Rs.3.00 lacs and Rs.5.00 lacs is going to expire on 30.06.1990. Please furnish extension for minimum 6 months from 30.6.1990 at stamp paper and ensure that P.A. No. of the signing authority of bank official should appear on body of B/G extn.*
  - ii) If you are not extending B/G minimum 6 months from 30.06.1990 we will lodge the claim to bank for B/G amount.*
- Thanking you.*

*Yours faithfully*

*For INDIAN TELEPHONE INDUSTRIES LTD.*

*(ARUN JHA)*

*cc to :*

*The Branch Manager,  
Canara Bank,  
Sector 12, R.K.Puram,  
New Delhi*

*(The B/G stated above shall expire on 30.6.90. We  
(lodge claim for the guarantee amount if further  
(extension of B/G for above period is not arranged  
(party.)*

**EX.PW-1/11**

*ESS/M/F/Bills/*

05.06.90

*The Branch Manager,  
Canara Bank*

Sector 12, R.K.Puram

NEW DELHI

*Ref. Our letter ESS:M:F: Bills:125 dated 19.5.90 lodging our claim against Bank Guarantee No.10/89 & 66 1/88 dated 31.12.88 for Rs.3,00,000/0- & Rs.5,00,000/- respectively.*

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*Dear Sir,*

*Please refer to the above mentioned letter invoking the Bank Guarantees.*

*The claim lodged against the Bank Guarantees be treated as withdrawn and cancelled.*

*The Bank Guarantee may be extended for a further period of six months till 31.12.90.*

*Thanking you.*

*Yours faithfully*

*For Indian Telephone Industries Ltd.  
FINANCE OFFICER (BILLS)*

*copy to :-*

*M/s Bharat Photo Circuits  
C-10, Site IV, Industrial Area  
Sahibabad  
Distt-Ghaziabad (UP)  
Copy to :  
Purchase Deptt."*

49 Ex. PW-1/8 dated 05.06.1990 has been written by the plaintiff to the defendant. The plaintiff has notified the defendant that the bank guarantees of Rs.5 lacs and Rs. 3 lacs are to expire on 30.06.1990 and in case they are not extended, he would be lodging his claim to the Bank.

50 The second document Ex. PW-1/11 is also dated 05.06.1990. This is a communication sent by the plaintiff to defendant No. 10 wherein

reference has been made to the aforementioned two bank guarantees; the plaintiff has notified the Bank that the bank guarantees may be treated as withdrawn and cancelled; however, the bank guarantees may be extended for six months further. This communication has been vehemently relied upon by the learned counsel for the plaintiff to substantiate his case that he had in fact written to the bank to extend the bank guarantees.

51 The stand of the bank is clear and categorical. Submission being that it has to take instructions from defendant No. 1 for extension of the bank guarantees; undisputed position at law is that on his invocation of the guarantee, the amount had to be paid to the plaintiff but no condition could have been attached. Submission of the bank on this count being reiterated that there were inter-se disputes and settlement talks were going on between the parties i.e. the plaintiff and the defendant which is evident from the two communications (Ex. PW-1/8 & Ex. PW-1/11). The plaintiff had notified the Bank that the claim which it had made against the bank guarantees be treated as withdrawn and cancelled; simultaneously he had requested for extension of the both guarantees for a further period of six months. Ex. PW-1/6 dated 05.06.1990 and Ex.

PW-13 dated 08.06.1990 written by defendant No. 2 to the plaintiff again make a reference to the letter of the plaintiff dated 05.06.1990 (Ex. PW-1/11) wherein the plaintiff had communicated to the Bank that his claim against the bank guarantee be treated as withdrawn and cancelled. The case of the Bank is in fact categorical. It had received the communication dated 05.06.1990 (Ex. PW-1/11) only on 25.06.1990 which contained a request for renewal of the bank guarantee coupled with a request to treat its claim on the bank guarantee as cancelled. These requests were rightly construed as contrary and conflicting.

52 There is no doubt to the legal proposition that as and when the bank guarantees is invoked, the beneficiary has to be paid.

53 From these communications it is however evident that the plaintiff had himself written to the Bank that the claim which it had been lodged qua the bank guarantees may be treated as withdrawn and cancelled. Further instructions had been given to the Bank to extend the period of six months up to 31.12.1990. Undisputed position at law is that the bank guarantee can be extended only on the asking of the person at whose behest the bank guarantee has been executed which in this case is defendant No. 1 and not the plaintiff. There is no such communication

by defendant No. 1. Defendant No. 10 in these circumstances, had rightly not extended the bank guarantees.

54 The Bank in not renewing the bank guarantees after 30.06.1990 thus did not commit any folly. No claim was lodged by the plaintiff for the invocation of the bank guarantees up to 30.06.1990.

55 In these circumstances, the non-extension of the bank guarantees by the Bank from 30.06.1990 up to 31.12.1990 does not suffer from any infirmity.

56 The claim of the plaintiff against defendant No. 10 is also not established; it must fail.

57 These issues are also decided against the plaintiff and in favour of the defendants.

**Issues No. (xii) & (xiii)**

58 Plaintiff is not entitled to any relief. The suit of the plaintiff on both counts stands dismissed.

**INDERMEET KAUR, J**

**SEPTEMBER 06 , 2012**

**A**