

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

% Order delivered on: 2nd December, 2014

+ **CS(OS) No. 631/2011**

GENESIS INDIA Plaintiff
Through Mr. K. Datta, Adv. with
Mr. Rahul Malhotra, Adv.

versus

YOG SPORTS PVT LTD & ORS Defendants
Through Defendants already *ex-parte*

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed present suit for recovery under Order XXXVII CPC of Rs.26,32,093/- along with interest @ 18% per annum against the defendants. However, when the matter was first time listed before court on 15th March, 2011 certain observations were made that the suit amount includes the interest component also, whereas there is no agreed rate of interest, therefore, this suit does not come under the ambit of Order 37 CPC and accordingly, this suit is treated as ordinary suit.

2. Brief facts of the case are that the plaintiff is *inter alia* engaged in the manufacture, sale and distribution of merchandise of Indian Premier League (hereinafter referred to as 'IPL') teams namely Delhi Daredevils, Deccan Chargers, Kolkatta Knight Riders and Royal Challengers Bangalore for IPL Season 3 and has been supplying the team branded merchandise under license from the above teams over

the last two seasons. Defendant No. 1 is a private company limited by shares incorporated on 15th February, 2010.

3. It is stated that the defendants had fraudulently represented themselves to the plaintiff as being the central and sole distributor of IPL merchandise and as being solely entitled to sell/distribute such merchandise at the stadiums, multiplexes, malls etc. during IPL season 3 as per the rights allegedly granted to them by the Board of Control for Cricket in India (BCCI). Defendant Nos. 2 to 4 of the defendant company on several occasions also made fraudulent representations about the financial status of the defendant company. The plaintiff was also made to believe, assured and promised that the value of all the goods supplied shall be paid.

4. Based on the fraudulent representations and false promises of the defendants, the plaintiff agreed to supply merchandise to the defendants. Consequently, a Memorandum of Understanding (MOU) was executed between the petitioner and the defendants on 5th March, 2010 which provided two types of sales namely Outright Sale (OR) and Sale or Return (SOR) basis. Relevant clauses as mentioned in the MOU were as under:-

Clause 3

“For SOR sales Yog will provide Genesis with a Bank Guarantee for the billable value of goods before dispatch”

Clause 5

“For SOR goods Yog will pay Genesis every 15 days or before for sales made for each week. For example, for sales made till 19th of March payment will be made not later than 2nd April so on and so forth”.

Clause 6

“For all goods out of the SOR portion that remain unsold after the end of the IPL 3 goods will be made available for return within 15 days after the end of the tournament. In any case, no returns will be accepted later than 30 days later the tournament and such goods will be considered as sold”.

5. However, the defendants failed to provide the plaintiff with the Bank Guarantees, contrary to their obligations under the Agreement as well as their representations made during the time of entering the MOU. The defendants also failed to make payments in respect of SOR goods or returned any goods to the plaintiff within the stipulated time.

6. It is stated that on 2nd March, 2010 various purchase orders were issued by the defendants. Subsequently, all the goods were supplied by the plaintiff as per the purchase orders and the same were duly acknowledged and admitted by the defendants on the invoices raised by the plaintiff.

7. It is further stated that the defendants vide e-mail dated 12th May, 2010 admitted having received goods from the plaintiff of an outstanding amount of Rs.22,00,781/- towards the SOR sales and of Rs. 58,527/- towards OR sales. On 20th May, 2010 plaintiff sent an e-mail to the representative of the defendants asking him to release the outstanding amount in respect of OR sales as well as the SOR sales. The defendants vide e-mail dated 16th June, 2010 acknowledged the fact that the plaintiff's merchandise had sold decently.

8. It is stated that the plaintiff by way of legal notice dated 14th August, 2010 called upon the defendants to repay the defendant's unambiguous liquidated, admitted and legally due liability amounting

to Rs.22,59,308/- being the principal amount along with an interest @ 18% per annum within 21 days of the receipt of the notice. On 28th August, 2010 the defendants sent a vague and ambiguous reply to the legal notice of the plaintiff whereby the defendants have nowhere denied its obligations under the said agreement and its failure to perform the same and expressly and/or impliedly admitted its liability to pay the outstanding amount to the plaintiff. However, the defendants have raised a frivolous and erroneous plea that the goods supplied by the plaintiff were of sub-standard quality and hence they could not be sold, which was clearly an afterthought and contrary to the e-mails dated 16th June, 2010.

9. The defendant No.3 vide an e-mail dated 29th September, 2010 asked the plaintiff to collect the SOR goods from the warehouse of the defendant No.1 as the warehouse had to be vacated. It is stated by the plaintiff that this action of the defendants is evidently nothing but an afterthought to attempt to wriggle out of its liability. On the same day the plaintiff vide e-mail replied to the aforementioned e-mail of the defendant wherein it was stated that the time period as mentioned in the agreement between the parties had expired far back and that the defendants have failed to return the same within the stipulated period and hence, the plaintiff was under no obligation to collect the same.

10. Thus, the plaintiff has filed a suit for recovery for an amount of Rs. 22,59,308/- (Rs.22,00,781 towards SOR and Rs.58,527/- towards OR) plus interest of amount of Rs.3,05,006/- till the date of filing of suit and further interest at the rate of 18% per annum.

11. The defendants were duly served with summons on 7th July, 2011. Time was granted to them to file their written statement, however, the defendants failed to file their written statement and consequently, the right of the defendants to file their written statement was closed vide order dated 8th March, 2013. The matter was listed for plaintiff's evidence.

12. The plaintiff filed its affidavit of evidence as dated 30th May, 2013 and proved the facts as stated in the plaint by evidence by way of affidavit of Mr. Vicky Suri, sole proprietor of the proprietorship firm of the plaintiff as Ex. PW-1/A and also exhibited certain documents exhibited as Ex. PW1/A to Ex. PW 1/CP in support of its case. PW-1 also relied upon the certificate under Section 65B of the Indian Evidence Act exhibited as Ex.P/CQ. The documents exhibited are as follows:

- Original Memorandum of Understanding dated 5th March, 2010 exhibited as Ex. PW-1/A.
- Certificate of Incorporation of the defendant company exhibited as Ex. PW-1/B.
- Memorandum and Articles of Association of the defendant company exhibited as Ex. PW-1/C.
- E-mail dated 11th March, 2010 sent by the plaintiff exhibited as Ex. PW-1/D.
- E-mail dated 13th March, 2010 sent by the plaintiff exhibited as Ex. PW-1/E.
- E-mail dated 24th March, 2010 sent by the plaintiff exhibited as Ex. PW-1/F.

- E-mail dated 26th March, 2010 sent by the plaintiff exhibited as Ex. PW-1/G.
- E-mail dated 13th April, 2010 sent by the plaintiff exhibited as Ex. PW-1/H.
- Order No. PO/1/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/I.
- Order No. PO/2/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/J.
- Order No. PO/3/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/K.
- Order No. PO/4/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/L.
- Order No. PO/5/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/M.
- Order No. PO/6/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/N.
- Order No. PO/7/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/O.
- Order No. PO/8/10-10 dated 2nd March, 2010 exhibited as Ex.PW-1/P.
- E-mail dated 5th March, 2010 with purchase orders as attachments exhibited as Ex.PW-1/Q.
- Original Invoice No. 000327/10 dated 5th March, 2010 exhibited as Ex.PW-1/R.
- Original Invoice No. 000331/10 dated 6th March, 2010 exhibited as Ex.PW-1/S.

- Original Invoice No. 000333/10 dated 6th March, 2010 exhibited as Ex.PW-1/T.
- Original Invoice No. 000344/10 dated 6th March, 2010 exhibited as Ex.PW-1/U.
- Original Invoice No. 000345/10 dated 6th March, 2010 exhibited as Ex.PW-1/V.
- Original Invoice No. 000346/10 dated 6th March, 2010 exhibited as Ex.PW-1/W.
- Original Invoice No. 000347/10 dated 6th March, 2010 exhibited as Ex.PW-1/X.
- Original Invoice No. 000354/10 dated 8th March, 2010 exhibited as Ex.PW-1/Y.
- Original Invoice No. 000356/10 dated 8th March, 2010 exhibited as Ex.PW-1/Z.
- Original Invoice No. 000358/10 dated 8th March, 2010 exhibited as Ex.PW-1/AA.
- Original Invoice No. 000359/10 dated 8th March, 2010 exhibited as Ex.PW-1/AB.
- Original Invoice No. 000361/10 dated 8th March, 2010 exhibited as Ex.PW-1/AC.
- Original Invoice No. 000362/10 dated 8th March, 2010 exhibited as Ex.PW-1/AD.
- Original Invoice No. 000363/10 dated 8th March, 2010 exhibited as Ex.PW-1/AE.
- Original Invoice No. 000365/10 dated 8th March, 2010 exhibited as Ex.PW-1/AF.

- Original Invoice No. 000368/10 dated 8th March, 2010 exhibited as Ex.PW-1/AG.
- Original Invoice No. 000373/10 dated 10th March, 2010 exhibited as Ex.PW-1/AH.
- Original Invoice No. 000374/10 dated 10th March, 2010 exhibited as Ex.PW-1/AI.
- Original Invoice No. 000377/10 dated 10th March, 2010 exhibited as Ex.PW-1/AJ.
- Original Invoice No. 000382/10 dated 13th March, 2010 exhibited as Ex.PW-1/AK.
- Original Invoice No. 000394/10 dated 12th March, 2010 exhibited as Ex.PW-1/AL.
- Original Invoice No. 000399/10 dated 13th March, 2010 exhibited as Ex.PW-1/AM.
- Original Invoice No. 000400/10 dated 13th March, 2010 exhibited as Ex.PW-1/AN.
- Original Invoice No. 000426/10 dated 15th March, 2010 exhibited as Ex.PW-1/AO.
- Original Invoice No. 000427/10 dated 15th March, 2010 exhibited as Ex.PW-1/AP.
- Original Invoice No. 000429/10 dated 15th March, 2010 exhibited as Ex.PW-1/AQ.
- Original Invoice No. 000433/10 dated 17th March, 2010 exhibited as Ex.PW-1/AR.
- Original Invoice No. 000451/10 dated 17th March, 2010 exhibited as Ex.PW-1/AS.

- Original Invoice No. 000458/10 dated 18th March, 2010 exhibited as Ex.PW-1/AT.
- Original Invoice No. CN001/10 dated 2nd April, 2010 exhibited as Ex.PW-1/AU.
- Original Invoice No. CN002/10 dated 10th April, 2010 exhibited as Ex.PW-1/AV.
- Original Invoice No. CN003/10 dated 10th April, 2010 exhibited as Ex.PW-1/AW.
- Original Invoice No. CN004/10 dated 12th April, 2010 exhibited as Ex.PW-1/AX.
- Original Invoice No. CN005/10 dated 12th April, 2010 exhibited as Ex.PW-1/AY.
- Original Invoice No. CN006/10 dated 19th April, 2010 exhibited as Ex.PW-1/AZ.
- Original Invoice No. 000326/10 dated 5th March, 2010 exhibited as Ex.PW-1/BA.
- Original Invoice No. 000328/10 dated 5th March, 2010 exhibited as Ex.PW-1/BB.
- Original Invoice No. 000329/10 dated 5th March, 2010 exhibited as Ex.PW-1/BC.
- Original Invoice No. 000332/10 dated 5th March, 2010 exhibited as Ex.PW-1/BD.
- Original Invoice No. 000353/10 dated 8th March, 2010 exhibited as Ex.PW-1/BE.
- Original Invoice No. 000360/10 dated 8th March, 2010 exhibited as Ex.PW-1/BF.

- Original Invoice No. 000364/10 dated 8th March, 2010 exhibited as Ex.PW-1/BG.
- Original Invoice No. 000371/10 dated 10th March, 2010 exhibited as Ex.PW-1/BH.
- Original Invoice No. 000372/10 dated 10th March, 2010 exhibited as Ex.PW-1/BI.
- Original Invoice No. 000381/10 dated 13th March, 2010 exhibited as Ex.PW-1/BJ.
- Original Invoice No. 000393/10 dated 12th March, 2010 exhibited as Ex.PW-1/BK.
- Original Invoice No. 000395/10 dated 13th March, 2010 exhibited as Ex.PW-1/BL.
- Original Invoice No. 000396/10 dated 10th March, 2010 exhibited as Ex.PW-1/BM.
- Original Invoice No. 000397/10 dated 13th March, 2010 exhibited as Ex.PW-1/BN.
- Original Invoice No. 000428/10 dated 15th March, 2010 exhibited as Ex.PW-1/BO.
- Original Invoice No. 000430/10 dated 17th March, 2010 exhibited as Ex.PW-1/BP.
- Original Invoice No. 000431/10 dated 17th March, 2010 exhibited as Ex.PW-1/BQ.
- Original Invoice No. 000432/10 dated 17th March, 2010 exhibited as Ex.PW-1/BR.
- Original Invoice No. 000434/10 dated 17th March, 2010 exhibited as Ex.PW-1/BS.

- Original Invoice No. 000455/10 dated 19th March, 2010 exhibited as Ex.PW-1/BT.
- Original Invoice No. 000469/10 dated 25th March, 2010 exhibited as Ex.PW-1/BU.
- Original Invoice No. 000472/10 dated 26th March, 2010 exhibited as Ex.PW-1/BV.
- Original Invoice No. 000473/10 dated 26th March, 2010 exhibited as Ex.PW-1/BW.
- Original Invoice No. 000474/10 dated 26th March, 2010 exhibited as Ex.PW-1/BX.
- Original Invoice No. 000475/10 dated 27th March, 2010 exhibited as Ex.PW-1/BY.
- Original Invoice No. 000478/10 dated 27th March, 2010 exhibited as Ex.PW-1/BZ.
- Original Invoice No. 000479/10 dated 27th March, 2010 exhibited as Ex.PW-1/CA.
- Original Invoice No. 000508/10 dated 10th April, 2010 exhibited as Ex.PW-1/CB.
- Original Invoice No. 000512/10 dated 16th April, 2010 exhibited as Ex.PW-1/CC.
- E-mail dated 9th April, 2010 sent by defendant exhibited as Exhibit PW-1/CD-CE.
- E-mail dated 10th April, 2010 sent by plaintiff exhibited as Exhibit PW-1/CF.
- E-mail dated 10th April, 2010 sent by defendant exhibited as Exhibit PW-1/CG.

- E-mail dated 12th April, 2010 along with the attached excel sheet exhibited as Exhibit PW-1/CH.
- E-mail dated 20th May, 2010 exhibited as Exhibit PW-1/CI.
- E-mail dated 16th June, 2010 exhibited as Exhibit PW-1/CJ.
- Office copy of the notice dated 18th December, 2010 exhibited as Exhibit PW-1/CK.
- Office copy of the notice dated 14th August, 2010 exhibited as Exhibit PW-1/CL.
- Original reply to the legal notice dated 28th August, 2010 exhibited as Exhibit PW-1/CM.
- E-mail dated 29th September, 2010 sent by the defendant exhibited as Exhibit PW-1/CN.
- E-mail dated 20th May, 2010 sent by the plaintiff exhibited as Exhibit PW-1/CO.
- Certified copy of the order dated 1st February, 2011 passed in Company Petition No. 50/2011 passed by this Court exhibited as Exhibit PW-1/CP.
- Certificate under Section 65 B of the Indian Evidence Act, 1872 exhibited as Exhibit PW-1/CQ.

13. The ex-parte evidence was closed vide order dated 23rd May, 2014. The evidence filed by the plaintiff has gone unrebutted as no cross-examination of the plaintiff's witness was carried out, therefore, the statements made by the plaintiff are accepted as correct deposition. Under these facts and circumstances, the plaintiff is entitled for a decree for recovery of amount of Rs 26,32,093/- along with interest @ 9% per annum instead of 18% as claimed in terms of

the prayer clause of the plaint from the date of filing the suit till the date of payment. The plaintiff is also entitled for costs.

14. The decree be drawn accordingly. The suit is disposed of.

(MANMOHAN SINGH)
JUDGE

DECEMBER 2, 2014