

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGMENT NO. 5 OF 2015
IN
SUMMARY SUIT NO. 885 OF 2014**

Rishab Apparel Pvt. Ltd.

.. Applicant

In the matter between :

Rishab Apparel Pvt. Ltd.

.. Plaintiff

Vs.

Mondelez India Foods Ltd.

(earlier known as Cadbury India Ltd.)

.. Defendant

Mr. S.L. Shah i/b Shah Legal for plaintiff.

Mr. H. Toor i/b M/s. Crawford Bayley & Co. for defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 21ST JULY, 2015

P.C.

1 It is the case of the plaintiff that the defendant had issued a purchase order on the plaintiff to supply 1200 pieces of visicooler named as Delaware Cooler. The total value of the purchase order was Rs.1,22,36,500/-. It is the case of the plaintiff that the defendant was to advance 30% of the purchase order value which 30% was to be paid by the plaintiff to the manufacturer of these coolers in China. The counsel for the plaintiff states that 30% of the value which is about US\$ 41,760 has been paid by the plaintiff to the manufacturer in China through the plaintiff's agent in Dubai viz. M/s.

Shubham Trading Company (LLC). The counsel for the plaintiff also states that the defendant had agreed to pay this 30% even after the contract was terminated subject to the plaintiff providing proof of payment.

2 At the outset, in the plaint, it is not even averred as to which is the written agreement between the plaintiff and the defendant based on which the suit is being filed. Moreover, in the email at Exh.'B' to the plaint wherein the plaintiff has given a break-up of quotation, it is mentioned "*Pls. confirm your understanding & would request you to pls help us with Purchase order asap which would enable us to send 30% deposit to the supplier to execute the order*". The purchase order is dated 12.07.2011 in which the '*Terms of payment*' is mentioned as '*100% to be paid within 15 days after receipt of material at site*'.

3 It is the case of the plaintiff that the materials were not supplied because the defendant had wrongfully purported to cancel the purchase order on 19.10.2011. The amount claimed in the suit also is not for reimbursement of 30% but the entire invoice value of Rs.1,12,36,500/-. Therefore, at the most, the plaintiff's claim in the suit can be termed as a claim for damages for wrongful termination.

4 The defendant has also raised a defence of maintainability. It is also stated in the affidavit in reply that it has come to light after the defendant appointed an independent third party investigative agency to conduct an inquiry into the irregularities in the arrangement with the plaintiff and the said investigative agency, after conducting an inquiry concluded that there were irregularities committed by the plaintiff in procuring of the Coolers for the defendant and payment of kick backs in such procurement as bribe to the staff of the defendant. The report of the Investigative Agency, viz. Delloitte, a firm of Chartered Accountants also show that the plaintiff had bagged and/or obtained the aforesaid purchase order dated 12.07.2011 by bribing two material employees of the defendant.

5 In view of the above and in view of the fact that the claim in the suit is for damages, no pecuniary liability arises till the Court determines that the party complaining of the breach is entitled to damages. The Court in the first place must decide that the defendant is liable and then it would reach to assess what that liability is. Consequently, till the determination, there is no liability at all from the defendant. It is also trite that the claim for unliquidated damages does not give rise to a debt until the liability is checked and damages assessed by a decree or order of a Court or other adjudicative authorities.

6 In the circumstances, the unconditional leave to defend the suit has to be granted to the defendant. The summons for judgment is rejected and the suit is transferred to the list of commercial causes.

7 The defendant to file their written statement within a period of three weeks. The suit be placed for framing of issues on 1.09.2015. In the meanwhile, the parties to also file their respective affidavit of documents and also complete discovery and inspection.

(K.R. SHRIRAM, J.)