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

Date of decision: 08.04.2015

\+ CS(OS) 1017/2001

MODI ALKALIES CHEMICALS LTD ..... Plaintiff

Through Ms.Geeta Sharma, Adv.

versus

SHIVA PAPER MILLS LTD. EC+ ..... Defendant

Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. It is urged that the name of the plaintiff has been changed to Lord Chlora Alkali Limited. Amendment is allowed and the amended memo of parties is taken on record.

2. Arguments have been heard in the suit. The defendant is proceeded ex parte vide Order dated 25.04.2014.

3. The present suit is filed for recovery of Rs.1,89,46,726/- in favour of

the plaintiff and against the defendant in respect to goods and material supplied by the plaintiff company to the defendant company against invoices and receipts acknowledging the delivery of goods executed by the defendant company.

4. It is the contention of the plaintiff that it is a company duly registered and incorporated under the Indian Companies Act, 1956. It is contended that the plaintiff company is also registered with the Board for Industrial & Financial Reconstruction (BIFR).

5. It is the contention of the plaintiff that the plaintiff company had supplied caustic soda LYE, liquid chlorine and Hydrochloric Acid to the defendant company. It is contended that the goods in question had been supplied by the plaintiff to the defendant during the period 01.04.1998 upto 24.10.1998 when the last supply was made. It is the contention of the plaintiff that the plaintiff company maintained a running account in its books and the amount of goods supplied by the plaintiff and the payments in account thereof received were duly debited and credited in the said running account. It is further contended that the defendant company had made its last payment to the plaintiff company on 31.08.1999 vide cheque bearing no.790436 of Rs.1,10,636/-. It is stated that said payment amounts to acknowledgment of debt.

6. It is the contention of the plaintiff that as per the statement of account as maintained by the plaintiff company, the plaintiff company is entitled to recover against the defendant company an amount of

Rs.1,09,87,856.67p towards the principle amount and an additional amount of Rs.79,58,870/- towards interest calculated on the delay in payment and interest accrued @27% p.a. upto 30.04.2001. Thus, the total amount of the suit is Rs.1,89,46,726.67 p. It is further stated that interest @27% is claimed as it was duly agreed between the parties and also on account of the fact that the defendant company was allowed a credit period of 90 days and thereafter if the payment was delayed then interest would be charged at 27%.

7. It is the contention of the plaintiff that the plaintiff company also issued debit notes in the name of the defendant company being dated 31.12.1998, 31.03.1999, 31.10.1999 and 28.01.1999. It is contended that the defendant company also sent its reply dated 28.01.1999 to the debit notes issued by the plaintiff dated 31.12.1998. It is contended that the said reply of the defendant to the debit notes also amounts to admission of liability of its part.

8. It is the contention of the plaintiff that a statement of reconciliation was also prepared as on 31.03.1998 showing a debt balance and amount due as Rs.1,52,22,306/-. It is contended that the said statement of reconciliation is signed by Defendant Company through its authorised officer.

9. It is the contention of the plaintiff that the plaintiff company also sent legal notices dated 26.11.1999. A reply was also sent by the defendant vide its reply dated 29.02.1999. It is the contention of the plaintiff that the

contents of the reply by the defendant company to the above legal notice amount to acknowledgment and admission of liability on the part of the defendant company. It is the contention of the plaintiff that the plaintiff company sent another legal notice dated 18.01.2000 and the reply to the same was sent by the defendant on 12.02.2000. It is contended that the said reply contains wrong facts with an object to avoid the payment due to the plaintiff company by the defendant.

10. The written statement of the Defendant is on record. It is contended by the Defendant that the Plaintiff abruptly stopped the supplies of caustic soda, liquid chlorine, and hydrochloric acid as agreed between them and due to the abrupt stoppage of supplies without any prior notice the defendant incurred losses. It is stated that the Plaintiff made last supplies to the Defendant in October 1998. The Defendant denies the statement of account placed on record by the Plaintiff and also denied that the Plaintiff is entitled to recover a sum of Rs.1,09,87,856.67 p. Moreover, a counter claim has been filed by the Defendant for a sum of Rs.2,66,91,465/- for losses suffered by them due to stoppage of supply by the Plaintiff.

11. The defendant in the counter claim submits that it is engaged in the business of manufacture and sale of paper from which it is required to source some chemicals namely caustic soda LYE, liquid chlorine and Hydrochloric Acid. It is submitted that the region in which the counter claimant has its factory had about six suppliers of the said chemicals including the plaintiff. It is further submitted that a substantial part of the

requirement of these inputs were being sourced from the plaintiff for a number of years. It is stated that the every supplier of such materials has scheduled commitments and every manufacturer has fixed sources for obtaining these supplies. Also, the nature of materials is such that it cannot be stored for long and are required to be dispatched almost immediately after production. It is submitted by the counter claimant that the plaintiff in the suit made supplies of these inputs as per the requirement of the defendant till about June, 1998-99, thereafter, defaults were made in the supply of the material. Further, in October, 1998 the plaintiff abruptly stopped supplies of all the inputs without assigning any reason on account of which the manufacture of paper by the counter claimant came to a halt due to non-availability of the said materials. It is further stated that the production output of the defendant experienced a drastic fall in the months of October, 1998 to December, 1998. In para 11 of the counter claim it is stated that the loss suffered due to production loss of 1576 MT is calculated by the defendant as Rs.1,44,40,075/-. It is further stated that the counter claimant is entitled to interest @24% p.a. w.e.f 01.01.1999 which amounts to Rs.1,21,51,589/-. Thus, the counter claimant is entitled to a total sum of Rs.2,66,91,465/-.

12. Thereafter, the Defendant stopped appearing and was proceeded ex parte vide Order dated 25.04.2014. The Counter claim of the defendant was dismissed in default.

13. Mr.Rajeev Nayyar, Manager of the Plaintiff Company has led

evidence on behalf of the plaintiff as PW1/A. He states that the present suit has been filed in respect of goods and material supplied by the plaintiff company to the defendant company against invoices and receipts acknowledging the delivery of goods executed by the defendant company. It is stated that the goods in question had been supplied to the defendant during the period of 01.04.1998 to 24.10.1998. It is stated that the defendant had made its last payment to the plaintiff on 31.08.1998. He states that the amount of goods supplied by the plaintiff to the defendant and the payments in account thereof received by the plaintiff from the defendant were duly debited and credited in the open running accounts maintained by the plaintiff in its book and in the name of Defendant Company. Original carbon copies of the invoice of the goods supplied to the defendant are placed on record as Ex.PW-1/4 (colly). He states that the complete statement of account is maintained by the plaintiff according to which plaintiff company is entitled to recover an amount of Rs.1,09,87,856/- towards the principal amount and an additional amount of Rs.79,58,870/- towards interest calculated towards delay in payment upto 30.04.2001. Thus, the total amount being Rs.1,89,46,726/-. Statement of account is placed on record as Ex.PW-1/7. It is stated that the goods in question were supplied to the defendant against invoices bearing specific numbers and dates and the goods used to be delivered to the defendant company through public carrier and the receipt of delivery were duly acknowledged by the defendant on the goods receipt drawn by the concerned transporter and carrier. It is further stated that the plaintiff also issued debit notes in the name of the defendant .True copies of the delivery reports duly acknowledged by the defendant and the debit notes issued by the plaintiff are placed on record as Ex.PW-1/5 (colly) and Ex.PW-1/6 (colly) respectively. He states that there was also prepared statement of reconciliation of accounts as on 31.03.1998 showing a debit balance and amount due against the defendant company at Rs.1,52,22,306/-. The said statement of reconciliation is signed by the defendant. The statement of account upto the date of filing of the plaint is placed on record as Ex.PW-1/8. It is stated that plaintiff company also sent legal notice to the defendant company dated 26.11.1999 and is placed on record as Ex.PW-1/9. The defendant company also replied to the said legal notice which is placed on record as Ex.PW-1/10. The plaintiff company has also sent another legal notice dated 18.01.2000 to the defendant company which is placed on record as Ex.PW-1/11. He states that the reply to the said legal notice dated 12.02.2000 contains wrong and incorrect facts with the object to avoid payment which is placed on record as Ex.PW-1/12.

14. As per the running accounts maintained in the usual course of business by the plaintiff the defendant company is liable to pay a sum of Rs.1,09,87,856.67 paise as principal. The goods have been sent alongwith an invoice through the concerned transport agency. It is stated that the defendant has acknowledged receipt of the goods. The carbon copies of invoices have been filed collectively as Ex.PW1/5 which starts from page

17 of the documents and goes up to page 254. The transport receipts alongwith original acknowledgements of goods by the defendant have been filed as Ex.PW1/6 collectively which starts from page 255 and goes up to page 318. Though the defendant in the written statement had denied having received the goods and having executed the acknowledgement, the acknowledgements of receipt of goods are on the letter head of the defendant. The reconciliation of account of the defendant as on 31.3.1998 Ex.PW1/7 is placed on record. In the light of this unrebutted document on record, the plaintiff has succeeded to prove that the defendant is liable to pay to the defendant a sum of Rs.1,09,87,856.67 paisa.

15. The plaintiff has also sought interest @27% per annum upto 30.4.2001. It is averred that the concerned bankers of the plaintiff used to charge 18% interest per annum against bill discounting facility and for any delay beyond 90 days the concerned bankers used to charge interest @ 24% per annum. Accordingly, the plaintiff has claimed interest @27% per annum against the defendant company. This submission is also reiterated in the evidence by way of affidavit of Shri Rajeev Nayyar PW-1. In view of the unrebutted evidence, I accept the said claim of interest made by the plaintiff upto the said date i.e. 30.4.2001.

16. In view of the averments made in the plaint and the accompanying documents, the plaintiffs have succeeded to show that the defendant is due and liable to pay Rs.1,89,46,726/- to the plaintiffs and the said amount remains unpaid. The suit is decreed for the said sum of Rs.1,89,46,726/-.

The plaintiff is also entitled to costs. The plaintiff shall also be entitled to pendent lite interest from the date of filing of the suit till recovery @ 10% per annum Simple Interest.

17. The present suit is disposed of.

JAYANT NATH, J

APRIL 08, 2015
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