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

+ CS(OS) 518/2012

M/S SAKATA INX(INDIA) LTD ..... Plaintiff  
Through: Mr. Arun Arora, Advocate with  
Ms. Preeti, Advocate

versus

M/S REXOR INDIA LIMITED & ORS ..... Defendants  
Through: None

**CORAM:**  
**HON'BLE MS. JUSTICE HIMA KOHLI**

**% ORDER**  
**04.11.2015**

1. The plaintiff has instituted the present suit under Order XXXVII CPC against the defendants for recovery of a sum of Rs.2,31,45,314/- alongwith the *pendente lite* and future interest.
2. Summons in the prescribed proforma were issued to the defendants on 29.02.2012, returnable on 07.08.2012. The defendants had entered appearance on 09.07.2012 and filed a memo of appearance through counsel. Thereafter, the plaintiff had moved an application for issuance of summons for judgment to the defendants on which notice was issued on 21.05.2012 and the leave to defend application was moved by the defendants (I.A. 14231/2012) within the stipulated time. A reply in opposition to the said application was also filed by the plaintiff, followed by a supplementary reply filed on 13.12.2014.

3. The records reveal that the defendants were represented through counsel till 17.07.2014, but thereafter, their counsel had stopped appearing. As a result, vide order dated 01.05.2015, the leave to defend application filed by the defendants was dismissed for non-prosecution and the case was adjourned to 27.08.2015. In all this duration, no steps have been taken by the defendants to approach the Court for setting aside the order dated 01.05.2015, nor has any counsel appeared for the defendants today. The case was passed over on the first call to await the defendants' presence but even on the second call, none is present on their behalf.

4. Learned counsel for the plaintiff states that in the above facts and circumstances, the plaintiff is entitled to a judgment in terms of Order XXXVII Rule 3(6)(a) CPC.

5. The brief facts of the case as culled out from the plaint are that the plaintiff, which is a company incorporated under the Companies Act having its registered office at Rajasthan, is in the business of manufacturing printing ink. When the defendants had approached the plaintiff to place orders for supply of printing ink, the plaintiff had its head office at Nehru Place, New Delhi. The orders for supply of ink were placed by the defendants on the plaintiff at Delhi and the goods were supplied from the plaintiff's Delhi office to the defendants at their

unit situated in Faridabad, Haryana. The terms of the invoice raised by the plaintiff on the defendants for supplying the goods, stipulated that the defendants were to make the payment within 90 days from the date of supply of goods and in case of default, they were liable to pay interest @24% per annum.

6. Counsel for the plaintiff states that on receiving orders from the defendants, the plaintiff had supplied printing ink to them from time to time, commencing from the year 2003 till the year 2009. It is stated that an open and running account was maintained by the plaintiff in respect of the goods supplied to the defendants, as would be reflected from the extract of the ledger file, enclosed at Sr.No.4 of the list of documents filed with the plaint.

7. It is submitted that as on 05.07.2009, the defendants were liable to pay a sum of Rs.1,45,93,360/- to the plaintiff. At the end of the financial year 2009, the plaintiff had written a letter dated 06.03.2009 to the defendants calling upon them to confirm that as per their accounts, a sum of Rs.1,47,11,118/- was due and payable to the plaintiff as on 28.02.2009. Learned counsel submits that the defendants had duly executed a confirmation note and confirmed inter alia that their books of account reflected an outstanding balance amount of Rs.1,47,11,118/- payable to the plaintiff on 28.2.2009.

Thereafter, the plaintiff had kept on pursuing the defendants for release of the payments and finally, in the month of December, 2009, they had issued the following two cheques in favour of the plaintiff:-

| <b>Sr. No.</b> | <b>Cheque No.</b> | <b>Date</b> | <b>Bank</b>                                                  | <b>Amount</b> |
|----------------|-------------------|-------------|--------------------------------------------------------------|---------------|
| 1.             | 705352            | 21.12.2009  | State Bank of Patiala, Faridabad (Main), Faridabad, Haryana. | 55,42,694/-   |
| 2.             | 705354            | 28.12.2009  | -do-                                                         | 55,09,796/-   |
|                |                   |             | Total                                                        | 1,09,52,490/- |

8. The aforesaid cheques when presented by the plaintiff for encashment to its banker, namely, Bank of Tokyo Mitsubishi UFJ Ltd., New Delhi, were dishonoured by the defendants' banker and the plaintiff's bank had in turn issued a Cheque Return Advice dated 09.02.2010, stating *inter alia* that the said cheques were returned due to "insufficient funds" in the account of the defendants.

9. Counsel for the plaintiff states that on receiving the information with regard to the dishonour of the two cheques, the plaintiff had served a legal notice dated 24.02.2010 on the defendants, duly dispatched by registered post and UPC, calling upon them to make the payment in respect of the two cheques but they had failed to give a reply or take any remedial measures. Finally, the plaintiff was constrained to lodge a complaint against the defendants under Section 138 of the Negotiable Instruments Act, which is stated to be pending

adjudication before the learned Judicial Magistrate, Faridabad, Haryana. Subsequently, the plaintiff had instituted the present summary suit, which is based on the acknowledgement of debit invoices raised by the plaintiff and dishonour of cheques issued by the defendants in discharge of their liability.

10. As noted above, the defendants had entered appearance in the suit and filed a leave to defend application, which they failed to pursue and finally, the same came to be dismissed for non-prosecution on 01.05.2015. Counsel for the plaintiff states that the defendants had deliberately stopped appearing in the case after the plaintiff had filed a supplementary reply to the leave to defend application and alongwith the said reply, filed a copy of the letter dated 07.01.2013, issued by M/s A.T. Enterprises, a courier agency who had denied the fact that it had any business relationship with the defendants and refuted their claim that it had allegedly couriered any article to the plaintiff. He states that the defendants had contested the claim of the plaintiff and enclosed debit notes to the tune of Rs.1,54,52,957/- with the leave to defend application alongwith proof of service through courier (Annexure A-1) and had asserted that the said debits notes had been dispatched through the captioned courier agency, which were in fact never dispatched. When confronted with the contents of the letter dated

07.01.2013 issued by the courier agency stating *inter alia* that they had no business relationship with the defendants and somebody had misused the proof of delivery formats of the agency, the defendants and their counsel had abruptly stopped appearing in the case and elected to stay away.

11. Counsel for the plaintiff goes on to state that this is not the only suit that has been filed against the defendants who are regular defaulters. He submits that apart from the plaintiff herein, an entity named M/s Coim India Pvt. Ltd. had also filed a summary suit against the defendants in this Court, registered as CS(OS) 287/2011, which was decreed in their favour for a sum of Rs.72,14,950/- alongwith *pendente lite* and future interest @8% per annum. A copy of the order dated 30.1.2014 passed in the captioned suit is handed over by learned counsel for the plaintiff and taken on record. He adds that in the complaint case filed by the plaintiff against the defendant under Section 138 of the Negotiable Instruments Act, Shri M.C. Somani, Managing Director of the defendants had stopped appearing before the Judicial Magistrate, Faridabad who had declared him as a absconder vide order dated 31.05.2014. He thus states that the defendants have made every effort under the sun to stall the suit proceedings and thereby delay making the payment which the plaintiff is lawfully entitled to receive.

12. This Court has perused the plaint and the documents filed therewith. The document reflecting the balance confirmation by the defendants reveals that they have unambiguously confirmed that a sum of Rs.1,47,11,118/- was payable to the plaintiff as on 28.02.2009. Further, in acknowledgement of their debts, the defendants had issued two cheques totalling to a sum of Rs.1,09,52,490/- in favour of the plaintiff, which when presented, were dishonoured for insufficient funds.

13. It has to be held that the suit filed by the plaintiff under Order 37 CPC has been instituted not only on the basis of the defendant's written confirmation of amounts due and payable to the plaintiff, which would constitute a "written contract" under Order XXXVII Rule 1 CPC, but also on the basis of the Negotiable Instrument Act. In the case of Daya Chand Uttam Prakash Jain and Anr. Vs. Santosh Devi Sharma reported as **67 (1997) DLT 13** where the maintainability of a suit on the basis of an acknowledgment was being examined, on a conspectus of the case law on the subject, the Single Judge of this Court had held that a suit under Order XXXVII CPC can be filed on the basis of an acknowledgement and had observed as below:

"Para : 14 .....It appears to me that suit on the basis of written acknowledgment of a pre-existing debt being a written contract could form a basis for recovery of an existing debt based on the said written contract in the shape

of written acknowledgment. In view of the observations in Food Corporation of India v. Bal Kishan Garg, reported as **(1982) 21 DLT 167**, the amount of the debt had been ascertained between the parties and the interest is also readily calculable amount in view of the past conduct of the parties. **The acknowledgement was of a pre-existing debt. The purpose of giving this written acknowledgment implies in it an absolute unqualified present liability with an obligation to repay it in future on the understanding that the creditor need not file a suit immediately. Consequently, the written acknowledgment surely falls under the term "written contract" and the parties had consensus of mind when this written acknowledgement was signed by one of the partners of the petitioner firm. There was a promise. There was consideration. There was acceptance. All the elements essential for the formation of written contract were present. Nothing more is required in this acknowledgement to make it a written contract.** Accordingly, I am of the definite opinion that the present suit has been filed on the basis of a "written contract" for the recovery of the existing debt on the basis of this "account stated" and the case on the basis written contract in the shape of written acknowledgment, is certainly maintainable under Order 37, CPC." (emphasis added)

14. The pleas taken by the plaintiff in the present suit have gone un rebutted. The leave to defend application filed by the defendant was dismissed for non-prosecution on 01.5.2015 and thereafter, they have not taken any steps to set aside the said order. As a result, the un rebutted averments made in the plaint have to be accepted as correct. In view of the fact that the defendants have acknowledged having received the goods from the plaintiff and confirmed in writing that they owed a sum of Rs.1,47,11,118/- to the plaintiff as on

28.02.2009 and further, having regard to the fact that the defendants had issued two cheques in favour of the plaintiff for the goods supplied which were dishonoured on presentation, there is no impediment in passing a judgment in favour of the plaintiff.

15. Accordingly, the present suit is decreed in favour of the plaintiff for a sum of Rs.1,47,11,118/-. The plaintiff is also held entitled to *pendente lite* and future interest payable @ 12% per annum. If the defendants pay the decretal amount to the plaintiff within three months from today, then the interest payable on the principal amount will be maintained @ 12% p.a., failing which the interest payable shall be raised to 18% per annum, till realization. In view of the fact that the defendants have deliberately stayed away from the suit proceedings after the dismissal of their leave to defend application, the plaintiff is awarded costs of the suit and the legal fee is quantified as Rs.50,000/-. Decree sheet be drawn accordingly.

16. The suit is disposed of.

**HIMA KOHLI, J**

**NOVEMBER 04, 2015**

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