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

% <u>Date of Decision: 10.09.2015</u>

\+ CS(OS) 1596/2011

M/S AJANTA OFFSET & PACKAGING LTD ..... Plaintiff

Through: Mr. Sudhir K. Makkar with Ms. Meenakshi Singh, Advs.

versus

M/S SIRROCCO PARKINSTONE INTERNATIONAL LTD ..... Defendant

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J.</u> (Open Court)

1. The defendant was proceeded *ex parte* on 19.4.2012. The plaintiff has led *ex parte* evidence. It is the plaintiff's case that the defendant placed an order for printing and supply of a collection of three books. The first book was titled 'Mega Square' printed in different languages including French, German, Turkish, Spanish, Hungarian and Lithuanian. The second was called 'Art of Century', printed in English, French and German languages and a third book titled 'De Boree' printed in French.

2. The defendant had placed on the plaintiff three purchase orders bearing No.09509/05 dated 11.06.2009, 02.06.2009 and 11.06.2009. It is submitted that the books were duly supplied to the defendant within the specified period of 90 days after which bills were raised for

payment. The goods were dispatched between July, 2009 and October, 2009 and were duly received by the defendant. However, no monies have been paid against the said amount. The total value of the unpaid invoices amounts to USD 190,689.04, on which an interest @ 18% has been claimed; hence the suit has been instituted to recover USD 235,120.08 along with interest *pendente lite* and future interest till the date of realization. The plaintiff has led the evidence through Sh. K.K. Aggarwal, its Financial Controller, who deposed through affidavit along the lines of the averments made in the plaint.

3. Mr. Sudhir Mittal, the learned counsel for the plaintiff fairly submits that the original bills of lading and other banking documents are not readily available with the plaintiff because they had already been submitted to the bank for realization of monies from the defendant's bank through the normal banking transaction. On 30.09.2014, PW-2, an officer of Canara Bank was examined and he deposed as under:-

> *"It is correct that the export consignment bearing bank forwarding reference no.1098D-253412-09 dated 04.11.2009 was processed through our bank. It is correct that when a consignment is processed through our bank, all documents pertaining to the consignment including commercial packing list, shipping bill, commercial invoice, certificate of insurance, E.C.G.C. Cover etc. are submitted to the bank. It is correct that the documents in respect of invoice no.196/2009-10 dated 10.10.2009 were submitted to us in original. The said originals documents are forwarded by us to the bankers of the buyers/importer. Even in this case, the original documents were sent to the bankers of the buyers. We also received a swift acknowledgment from*

the bankers of the buyers which is Ex.PW3/1 (OSR)."

4. The Court would note that value of invoice No.196/2009-10 dated 10.10.2009 is USD 22,298.67. Likewise PW-3, Mr. Rishikesh Kumar, officer of Corporation Bank, Corporate Banking Branch, Hindustan Times House, K.G. Marg, New Delhi-110001 was examined and he deposed as under:-

> *"It is correct that the export consignment bearing bank forwarding reference no. 1/2009/10/582053 dated 07.09.2009 was processed through our bank. It is correct that when a consignment is processed through our bank, all documents pertaining to the consignment including commercial packing list, shipping bill, commercial invoice, certificate of insurance, E.C.G.C. Cover etc. are submitted to the bank, it is correct that the documents in respect of invoice nos. 144/09-10, 145/09- 10 and 146/09-10 all dated 21.08.2009 were submitted to us in original. The said originals documents are forwarded by us to the bankers of the buyers / importer. Even in this case, the original documents were sent to the bankers of the buyers. We also received a swift acknowledgment from the bankers of the buyers which is Ex.PW3/l (OSR)."*

5. The value of the said invoices totals USD 63,489.16. The said invoices have been marked as Ex.PW-1/28, Ex.PW-1/29, and Ex.PW-1/30 respectively.

6. On 17.11.2014, Mr. Anoop Kumar, PW-4, Officer of the State Bank of India, Industrial Finance Branch, Tolstoy Marg, New Delhi was examined and he deposed as under:

"It is correct that the export consignments bearing bank

forwarding reference nos. (i) 0960109RD0785456 dated 18.08.2009, (ii) 0960109NC776119 dated 07.09.2009, (iii) 0960109NC0776128 dated 08.09.2009 and (iv) 0960109RD0785544 dated 10.11.2009, were processed through our bank. It is correct that when a consignment is processed through our bank, all documents pertaining to the consignment including commercial packing list, shipping bill, commercial invoice, certificate of insurance, E.C.G.C. Cover etc. are submitted to the bank. It is correct that the documents in respect of invoice nos. 110/2009-10 dated 22.07.2009, 113/2009-10 dated 23.07.2009, 147/2009-10 dated 21.08.2009, 194/2009-10 dated 10.10.2009 and 195/2009-10 dated 10.10.2009 were submitted to us in original. The said originals documents are forwarded by us to the bankers of the buyers/importer. Even in this case, the original documents were sent to the bankers of the buyers"

7. The invoices referred in the said deposition have been marked as Ex.PW-1/7, Ex.PW-1/18, Ex.PW-1/43, Ex.PW-1/53 and Ex.PW-1/55 respectively.

8. It is the plaintiff's case that despite the said originals having been forwarded to the corresponding bank of the defendant/importer, no monies have been released. It is the plaintiff's case that each consignment is accompanied with an invoice, the shipping bill, bill of lading and insurance cover through E.C.G.C. The goods were duly despatched and were delivered to the defendant. Yet the defendant defaulted in making the payments, hence, the plaintiff has a right to recover the said amount. The aforesaid documents annexed to the plaint have been marked as Ex.PW-1/3 to 1/73.

9. From the above unrebutted position it is evident that the goods were despatched and delivered to the defendant through the banking

process. The documents supporting the claim of the plaintiff and the averments that the goods were duly delivered are unrebutted. The plaintiff's bankers have also deposed that the original documents in respect of the goods despatched were sent by them to the defendant's/importer's bank. Since the monies for the goods have not been paid for, the plaintiff is entitled to recovery of the same.

10. In view of the above, the suit is decreed in favour of the plaintiff for an amount of USD 235,120.08 along with *pendente lite* and future interest @ 11% p.a till the date of payment. Furthermore, Rs. 50,000/- shall be paid by the defendant towards costs of this litigation.

11. Decree sheet be drawn up accordingly.

12. The suit is disposed off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 10, 2015/ak