

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

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Date of decision: 1st February, 2013

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CS(OS) 1480/2009 & CC No.27/2010.

**CHEMICAL SYSTEMS TECHNOLOGIES (INDIA)
PVT. LTD.**

..... Plaintiff

Through: Mr. Jayant Nath, Sr. Adv. with Mr.
Udit Gupta, Adv.

Versus

SIMBHAOLI SUGAR MILLS LTD.

..... Defendant

Through: Mr. Nalin Tripathi, Mr. Anurag
Sharma & Mr. Gautam Talukdar,
Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

IA No.4234/2012 (u/O 12 R-6 CPC).

1. The plaintiff has sued for recovery of Rs.1,28,16,407/- being the balance of the price of the new technology for Cane Juice Purification sold, supplied, erected and commissioned by the plaintiff to/for the defendant, together with interest and cost. The defendant, besides contesting the said claim of the plaintiff, has also filed a counter claim for refund of the

advance price of Rs.1 crore paid to the plaintiff. After the pleadings have been completed and admission/denial of documents done, the plaintiff has applied for a decree under Order 12 Rule 6 of the CPC on admissions. The defendant has filed a reply contesting the said application. The counsels have been heard.

2. The transaction between the parties is pursuant to a Purchase Order dated 11th February, 2006 placed by the defendant on the plaintiff, detailing the scope of supply, the technical services to be provided by the plaintiff to the defendant, etc. The said document filed by the plaintiff has been admitted by the defendant and Exhibit P-1 put thereon. The price, as per the said document, payable by the defendant to the plaintiff was Rs.1,97,50,000/- inclusive of customs duty, packing, forwarding and insurance but exclusive of Sales Tax @ 4% against Form 'C' and freight, and payable by the defendant to the plaintiff as under:-

Advance	-	Rs.100.00 lacs
Against delivery at site, pro-rata	-	80.00 lacs
Completion of erection at site	-	10.00 lacs
On commissioning	-	<u>7.50 lacs</u>
		<u>Rs.197.50 lacs</u>

3. It is also the admitted position that the equipment under the aforesaid Purchase Order was delivered by the plaintiff to the defendant and erected at the Mill of the defendant and Minutes of Meeting dated 20th January, 2007 drawn. The said document filed by the plaintiff has been admitted by the defendant and Exhibit P-2 put thereon. The said document, against as many as 19 items, under the head '**Erection & Trials**', records satisfaction of the defendant.

4. The plaintiff, between 25th October, 2006 & 17th January, 2007 raised invoices on the defendant, of the total value of Rs.2,28,16,407/-, also containing the particulars of the successive dispatches made by the plaintiff to the defendant and copies thereof filed by the plaintiff, have been admitted by the defendant and Exhibit P-3 to Exhibit P-17 put thereon.

5. The defendant issued Form 'C' dated 17th March, 2007 and 5th June, 2007 to the plaintiff for purchases of the value of Rs.2,19,86,967/- and Rs.1,53,078/- respectively from the plaintiff. Copies thereof filed by the plaintiff have been admitted by the defendant and Exhibit P-18 & P-19 put thereon.

6. The defendant, vide letter dated 17th May, 2008 to the plaintiff stated as under:-

“Sub: Shifting of membrane filtration system from our site

Dear Sir,

This has reference to our earlier communication for the above, in which we had ruled out the possibility for making crystal sugar separately from filtered juice received out of membrane filtration with existing equipment and machinery in our factory and had requested you to take the system back, but till date no one has approached us for taking the system back. You are once again requested to give instructions to the concerned persons to take the above system back.”

The original letter filed by the plaintiff has been admitted by the defendant and Exhibit P-20 put thereon.

7. The defence of the defendant to the claim of the plaintiff is:-

- (a). that the plaintiff had represented to the Technology Information, Forecasting and Assessment Council (TIFAC) that it had requisite expertise and experience in designing, supplying and erecting plant and machinery for production of refined quality sugar through Cane Juice Clarification using ‘Membrane Separation Technology’ and the defendant on the assurance of TIFAC, placed an order for erection of one such

plant at its site, on the plaintiff, after entering into an Agreement dated 10th February, 2006 with TIFAC;

- (b). that the advance of Rs.1 crore to the plaintiff was paid by TIFAC and the balance amount was also to be paid by TIFAC after successful operation of the plant;
- (c). that TIFAC is a necessary party to the suit;
- (d). that trials on the equipment/technology supplied by the plaintiff to the defendant started on 20th January, 2007 but no production was possible;
- (e). that though the plaintiff repeatedly attempted to rectify the system but failed;
- (f). that the 'C' Forms were issued assuming that the plant will function properly;
- (g). that on 17th May, 2008 the defendant, after waiting for one and a half years, asked the plaintiff to take back the plant;
- (h). though the plaintiff agreed to take back, but without refunding the advance money of Rs.1 crore received or obtaining NOC from TIFAC.

On the same pleas, the defendant has made a counter claim for refund of the advance price of Rs.1 crore paid to the plaintiff.

8. The senior counsel for the plaintiff has contended that the terms & conditions of supply stand admitted and the only parameter prescribed therein to be achieved by the equipment supplied by the plaintiff is of “20 m³ / hour of raw cane juice”. He has, to show the admission of the defendant of the said parameter having been met, invited attention to the FIR dated 23rd July, 2010 lodged by the defendant against the plaintiff relating to the same transaction and in which it is stated:-

“Thereafter, the above- named persons tried to operate the Plant on clear juice but the plant, on clear juice also, could not go above the flow of 50 cube meter per hour, which was very less than the flow rate required in the system of the applicants”

The senior counsel for the plaintiff has argued that the aforesaid is an admission of the defendant of more than prescribed parameter having been achieved.

9. The counsel for the defendant has however on a reading of the entire FIR showed that the grievance of the defendant therein also is of the plant not working and of attempt made to run the plant on ‘clear juice’ as distinct from ‘raw cane juice’ having also failed. It is argued that the flow of 50 cube

meter per hour mentioned in the FIR, is of 'clear juice' and not 'raw cane juice' which the equipment was to purify.

10. Merit is found in the aforesaid contention of the counsel for the defendant and the part of the FIR on which reliance is placed to show admission of the prescribed capacity having been met, is not found to be an unambiguous admission of the same.

11. The senior counsel for the plaintiff has then pegged his case on the 'C' Forms and has argued that the issuance thereof is an admission of the balance price being due from the defendant to the plaintiff. It is argued that the 'C' Forms would not have been issued had the plaintiff not completed its part of the contract contained in the Purchase Order aforesaid.

12. The senior counsel for the plaintiff has also contended that the defendant has not written a single letter of rejection of the goods/equipment supplied by the plaintiff; the letter dated 17th May, 2008 supra relied upon is not of rejection on the ground of the equipment being not as per the order but of return on the ground of the defendant ruling out the possibility for making crystal sugar separately from filtered juice received out of membrane filtration, owing to the same not matching with the existing equipment and machinery of the plaintiff. It is yet further argued that the

defendant however did not allow the plaintiff to take back the equipment also by putting unreasonable conditions on the plaintiff of obtaining no objection from TIFAC and refunding the advance amount of Rs.1 crore. It is yet further argued that the FIR was got registered by the defendant, after the institution of present suit and taking advantage of the local clout yielded by the defendant. The senior counsel informs that there is stay of FIR from Allahabad High Court.

13. Per contra the counsel for the defendant has invited attention to the photocopy of the Agreement dated 10th February, 2006 between TIFAC and the defendant and argued that the Purchase Order dated 11th February, 2006 placed by the defendant on the plaintiff is of the very next date and it is evident that TIFAC is a necessary party to the suit. He has further informed that in fact TIFAC also has filed a suit for recovery of Rs.1 crore with interest from the defendant and which is also pending adjudication in this Court. He has further argued that issuance of 'C' Forms cannot be an admission of liability.

14. The senior counsel for the plaintiff in rejoinder has clarified that the advance price of Rs.1 crore was paid to the plaintiff by the defendant, though had been funded by TIFAC. He has also contended that there is no

reference to TIFAC in the Purchase Order and the liability for payment of the balance price to the plaintiff as per the Purchase Order is of the defendant only. Attention is also invited to yet another document being the letter dated 21st September, 2008 of the defendant to the plaintiff seeking confirmation from the plaintiff of the sum of Rs.1,21,37,542/- being due from the defendant to the plaintiff. It is argued that the denial by the defendant in admission/denial, of the said document is *mala fide*. Attention is also invited to para 11 of the plaint containing reference to the said document and to the corresponding para of the written statement of the defendant to contend that the denial is not specific as required by law.

15. I have considered the rival submissions. The transaction subject matter of suit is a commercial and documented one, between two corporate entities. Such transactions cannot be viewed applying the principles of construction of pleadings laid down in judgments/precedents of a bye-gone era, relating to transactions of a different nature. Abraham Lincoln famously said, “the dogmas of the quiet past, are inadequate to the stormy present - the occasion is piled high with difficulty, and we must rise with the occasion - as our case is new, so we must think anew and act anew”. The plaintiff and the defendant are located far away, in different States and in the present day of

availability of modes of communication through internet, the officers of corporate entities, as the parties hereto, are known to prefer communicating through email rather than telephonically. No law is forever and the forces of progress often enough demand a change in the processes of law. Judgments which are law have to keep pace with social demands and expectations from Courts.

16. Though undoubtedly there is no document of successful commissioning of the equipment and plant supplied by the plaintiff to the defendant or of the same having achieved the capacity/parameters assured but the satisfactory completion of erection of the said equipment and water trials done, on 20th January, 2007 stands admitted. The plea of the defendant in its written statement being that the plant and equipment supplied by the plaintiff did not work, it has been enquired from the counsel for the defendant whether any communication was sent by the defendant to the plaintiff to this effect after 20th January, 2007. The counsel for the defendant has candidly stated that save for the letter dated 17th May, 2008 *supra*, there is no other communication.

17. It is not the case of the defendant in its written statement even that any telephonic calls or personal calls in this regard were made to the plaintiff. The position which thus can be taken as admitted is that the defendant, after the delivery of the equipment having been completed on 17th January, 2007 and satisfactory erection and water trials having been done on 20th January, 2007, neither complained that the plant equipment was not performing as assured nor rejected the said goods supplied by the plaintiff nor sought refund of the advance price. Attention of the counsels is invited to Sections 41 & 42 of the Sales of Goods Act, 1930 whereunder a buyer is deemed to have accepted the goods when he retains the goods for a reasonable time without intimating to the seller that he has rejected them. This Court in *Lohmann Rausher GmbH vs Medisphere Marketing Pvt. Ltd.* 117 (2005) DLT 95 held that the long gap after which goods were ostensibly rejected on the premise that they were defective/sub-standard, is clearly fatal in the context of Sections 41 & 42 of Sale of Goods Act.

18. If, inspite of satisfactory erection and water trials, the plant and equipment had failed on raw can juice or had not achieved the desired capacity, it is inconceivable that the paid employees of the defendant which is a corporate entity, would not have sent a single communication to the

plaintiff and would sit quietly. The FIR, as has been lodged after the institution of the suit, would have then been lodged immediately. Similarly, if during this time, repeated efforts were being made to commission the plant/equipment or for it to achieve the agreed targets, it is inconceivable that there would be no correspondence in this regard. The technical persons of the plaintiff would then have been visiting the Mill of the defendant and there would have been communications fixing the dates of visits and Minutes of such meetings would have been drawn. Experience of life shows that during such visits to Sugar Mill Towns, the visiting teams stay in the guesthouse of the Sugar Mills only and of which there would have been documentary records. Not only have no such records been produced but no dates of the so called efforts made by the plaintiff to commission been given and no names of any visiting technical personnel of the plaintiff pleaded. The only inference is that there were none.

19. I have weighed, whether it can be argued that all the aforesaid is evidence and not to be pleaded but have concluded, no. As aforesaid, these are commercial disputes between corporates represented by professionals and experts and the standards of pleadings to be applied in such disputes cannot be the same as applied to family disputes or transactions between lay

persons. A defendant, who admits delivery of goods, successful erection, issuance of 'C' Forms of the value of price of goods and does not reject the goods but still denies liability pleading failure of commissioning inspite of efforts has to make precise unequivocal pleadings of the efforts so made with particulars of date, time, names, results and if fails to do so, incurs the risk of deemed admission of liability. Unless the Courts construe the pleadings so in commercial disputes, taking note of the modern prevalent business practices, they will not only be doing disservice to the procedural law of pleadings, filing of documents, admission denial but also failing in its duty towards trade and commerce, flourishing whereof depends on expeditious disposal of disputes. The Courts cannot be unmindful of the fact that realizing the need for expeditious adjudication of commercial disputes, a move is underway to establish a commercial division in the High Courts for expeditious time bound disposal of commercial disputes. Though the Commercial Division of High Courts Bill, 2009 being Bill No. 139 of 2009 has for time being been withdrawn, perhaps to amend, from the Parliament, but I see no reason for the Courts not taking steps on their own in this regard and in deciding commercial disputes by applying the prevalent commercial practices and commercial sense and by treating commercial disputes as a

class unto themselves. The Courts cannot thus, even in the face of bald pleas, put the suits to trail, which owing to the heavy load of work in the Courts, takes several years and thereby blocking the dues of a rightful claimant and which may be the death knell for a small business. Pleas, unsupported by document, relating to a transaction otherwise through documents, have to be specific and if found to be lacking in particulars, which in the ordinary course would have been available, run the risk of being considered as not raising any issue, within the meaning of Order XV of the CPC.

20. The date of issuance of 'C' Forms becomes significant in this regard. The first 'C' Form dated 17th March, 2007 is issued after two months of the admitted delivery and satisfactory erection on 17th and 20th January, 2007 respectively of the plant and equipment and the second 'C' Form dated 5th June, 2007, after another three months. The defendant in the said long time of 2/5 months, if the plea in the written statement of the system having failed inspite of efforts of the plaintiff is to be treated as a material one, raising an issue, would have definitely known that the goods were defective; the defendant had it not considered itself liable to pay the balance price of the goods, would not have issued the 'C' Forms with respect thereto.

21. The issuance of the 'C' Forms is an acknowledgment of the defendant having informed its taxation authorities of having purchased goods of the value thereof, on payment of concessional rate of tax. The defendant cannot be permitted to have conflicting stands before its taxation authorities and vis-à-vis plaintiff.

22. The Supreme Court in *Phool Chand Gupta Vs. State of A.P.* (1997) 2 SCC 591 and *Shree Digvijay Cement Co. Ltd. and Another Vs. State of Rajasthan* (2000) 1 SCC 688 has held that issuance of 'C' Form is a proof of the sale of the goods having being effected and the goods having been accepted without any demur. The Company Judge of this Court in *M/s Gulati Agencies (P) Ltd. Vs. M/s Hallex Applied Power Pvt. Ltd.* MANU/DE/5118/2012 and in *M/s Shyam Dri Power Ltd. Vs. Bhav Shakti Steel Mines Private Limited* MANU/DE/4106/2012 and Company Appeals No. 84/2012 titled *M/s Hallex Applied Power Pvt. Ltd. Vs. M/s Gulati Agencies (P) Ltd.* and No. 81/2012 titled *Bhav Shakti Steel Mines Pvt. Ltd. Vs. Shyam Dri Power Ltd.* whereagainst were dismissed on 12.10.2012 and 19.09.2012 respectively, has been relying on such 'C' Forms coupled with other circumstances to arrive at a conclusion as to whether the defence to a petition for winding up, is a sham or moonshine or not. Mention

may though be made of *Elite Vessels Vs. Flex Engineering Ltd.* MANU/DE/1169/2004 where a Single Judge of this Court merely on the basis of 'C' Forms and in the absence of anything else, held the dispute to be a *bona fide* one. Similarly, a Single Judge of the Bombay High Court in *In Re: Reunion Electrical Mfrs. (P.) Ltd.* MANU/MH/0627/2006 also held 'C' Form to be not an acknowledgement of liability.

23. Thus, though 'C' Form may not be an acknowledgement of liability but along with other facts, can certainly be relied on to take a view on whether there is an implied admission or not.

24. Notice may also be taken of *M/s Paharpur Cooling Towers Limited Vs. Dalmia Consumer Care Private Limited* MANU/DE/0910/2008 where the defence that the goods are defective, without any written communication of the defect having been sent to the seller was held to be a moonshine and a sham defence set up only to defeat the winding-up petition.

25. The Supreme Court in *Charanjit Lal Mehra Vs. Smt. Kamal Saroj Mahajan* (2005) 11 SCC 279 has held that an admission under Order 12 Rule 6 can be inferred from the facts and circumstances of the case and that Order 12 Rule 6 is enacted in order to expedite trial and

where the courts find that the suit can be disposed of on such admissions, the court should not hesitate from doing so. Reference may also be made to ***Shri Vimal Khanna Vs. Sh. Kishan Chand Khanna*** MANU/DE/0812/2010 where a Division Bench of this Court reiterated that the plaintiff, if otherwise found entitled to a decree on admissions, cannot be deprived thereof by astute drafting of the written statement or by taking pleas therein which have no legs to stand upon. Another Division Bench of this Court in ***P.P.A. Impex Pvt. Ltd Vs. Mangal Sain Mittal*** 166 (2010) DLT 84 extended the principle laid down in ***T. Arivandandam Vs. T.V. Satyapal*** (1977) 4 SCC 467 in relation to a plaint, to the written statement also and held that a defence which is implausible and on a meaningful, not formal reading, is manifestly vexatious and meritless, clever drafting should not be allowed to create an illusion and such defences should not be needlessly permitted to go to trial.

26. Merit is also found in the contention of the plaintiff that even the letter dated 17th May, 2008 supra of the defendant is not of rejection of the goods. Rather the same is in continuation of some earlier communication which has

not been produced about “shifting of membrane filtration system” from the mill of the defendant owing to the defendant having ruled out the possibility of use thereof along with the existing equipment and machinery in its factory. The defendant even then did not make any complaint of the goods being not as per the Purchase Order. Rather the willingness of the plaintiff to take back the goods and which was obstructed by the defendant shows that the goods even then had value.

27. It is unfortunate that even in the face of the documents which have subsequently been admitted by the defendant, the defendant in its written statement denied that any invoices were received by the defendant from the plaintiff. The same shows that the defendant does not hesitate in verifying false pleadings. The pleadings in the context of the account confirmation letter dated 21st September, 2008 have to be viewed in this context. The plaintiff in para 11 of the plaint stated as under:-

“11. That it is noteworthy that vide communication dated 21st September, 2008 the defendant unequivocally and unconditionally accepted that as per their books of account a balance of Rs.1,21,37,542/- was payable to the plaintiff as on 31.8.2008. They requested the plaintiff to write a communication to the said effect to their Chartered Accountant. The plaintiff duly wrote to the said Chartered Accountant that the outstanding dues of the defendant is Rs.1,28,16,407/-. Hence defendant has unconditionally and unequivocally

acknowledged its dues. It has however continued to illegally withhold the same in a illegal and unjustified manner.”

The defendant in its written statement responded thereto as under:-

“Para 11 as stated is false and denied. It is denied that any communication dated 21st September, 2008 or any other date was sent to the plaintiff as alleged”

28. The letter dated 21st September, 2008 is on the same letterhead of the defendant as other admitted documents. The issuance of such letter seeking confirmation of accounts is widely prevalent in the commercial world. The said letter in fact requires confirmation by the plaintiff to M/s A.F. Ferguson & Co. Chartered Accountants of the defendant. Such letters, since are sent to a large number of persons with whom the companies have accounts, are generally initialed, as the subject letter also is. For the defendant to have specifically denied the pleadings in para 11 of the plaint, the defendant ought to have pleaded as to whether M/s A.F. Ferguson & Co. were its Chartered Accountants in the relevant year or not and whether or not the amount of Rs.1,21,37,542/- of which confirmation was sought shown in the Books of Accounts of the defendant as on 31st August, 2008 as due to the plaintiff. Even at the time of hearing when it is asked from the counsel

for the defendant as to whether the said amount is still standing to the credit of the plaintiff in the Books of Accounts of the defendant, the reply of the counsel for the defendant is that merely because the same may be so shown does not stop the defendant from contesting the claim of the plaintiff. I am unable to agree. A purchaser of goods would not enter the price thereof in its Books of Accounts as to the credit of the seller if has rejected the said goods and would be at best shown as a contingent liability. As aforesaid, a person is not entitled to have two faces, one for the taxation authorities and other for its creditors. On a meaningful reading of the pleadings it has to be necessarily held that the defendant is continuing to show the claim of the plaintiff in its own Books of Accounts as due to the plaintiff and the insistence on putting the plaintiff to trial on the said claim is clearly *mala fide*.

29. The Supreme Court recently in ***M/s Gian Chand Brothers Vs. Rattan Lal*** MANU/SC/0015/2013 reiterated that it shall not be sufficient for a defendant to deny generally the grounds alleged by the plaintiff, but he must be specific with each allegation of fact. It was further held that where there is evasive denial, the defendant cannot be permitted to lead evidence, when nothing is stated in the pleadings. With respect to books of accounts

also, it was reiterated that accounts regularly mentioned in the case of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable.

30. That brings me to the aspect of TIFAC. Even though the defendant has filed only photocopies of Agreement with TIFAC and which have been denied by the plaintiff but the same can always be used against the defendant. The said documents also show that TIFAC had only agreed to render financial assistance to the defendant for the purchase of the said equipment by the defendant from the plaintiff. There is no letter of the defendant to TIFAC also complaining of the equipment supplied by the plaintiff and it is only in reply to the letter dated 22nd October, 2009 of TIFAC that the defendant for the first time on 27th October, 2009 i.e. after the defendant was already resisting this suit that the defendant replied on the same lines to TIFAC also.

31. The Code of Civil Procedure requires issues to be framed only on 'material' propositions of fact and law. The legislature has not required issue to be framed merely on a denial being made. When the parties are found to be dealing with each other in writing and there is no plea also of any verbal communications between any officers of the two corporate entities, the pleas

of rejection of goods and/or of the goods supplied being not as per the Purchase Order, cannot be said to be material so as to be required to be proved by examination and cross examination of witnesses. Allowing so would amount to putting a premium on dishonest pleadings and litigation to be used as a tool of oppression.

32. It is significant that the FIR by the defendant of the goods supplied by the plaintiff being defective also has been lodged only after the suit has been filed; had the defendant felt itself cheated by the plaintiff, the same would have been immediately after the supply and delivery of goods which was nearly three years prior to the lodging of the FIR.

33. I am therefore satisfied that a case for decreeing the suit on admissions, as far as the principal amount is concerned, is made out. Reference may be made to the dicta of the Division Bench of this Court in ***Vijaya Myne Vs. Satya Bhushan Kaura*** 142 (2007) DLT 483, (an appeal whereagainst being SLP(Civil) No. 20273/2007 was dismissed on 12th November, 2007) where on a conspectus of the case law on the subject, it was observed that admissions can even be constructive admissions, which can be inferred from vague and evasive denial in the written statement while answering specific pleas in the plaint and further, that admissions can even

be inferred from the facts and circumstances of the case.

34. That leaves the aspect of interest. The plaintiff has claimed interest prior to the institution of the suit and *pendente lite* at 16% per annum, claiming the same to be the market rate of interest. There is admittedly no contract between the parties as to interest. The rate of interest claimed by the plaintiff is found to be excessive and it is deemed appropriate to award interest to the plaintiff, for the period prior to the institution of the suit at the rate of 11% per annum and *pendente lite* and future at the rate of 9% per annum, in consonance with the average rate of interest paid by Banks on Fixed Deposits.

35. The suit is accordingly decreed for recovery of Rs.1,28,16,407/- with interest from the date of the invoices up to the date of institution of the suit at the rate of 11% per annum and *pendente lite* and future at the rate of 9% per annum. The plaintiff shall also be entitled to costs in accordance with schedule.

36. As far as counter claim of the defendant for refund of the advance price of Rs.1crore is concerned, the same, in view of the above, has to necessarily fail and is dismissed. The same having been dismissed at an initial stage, no costs.

Decree sheet be prepared.

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RAJIV SAHAI ENDLAW, J

FEBRUARY 1, 2013

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(corrected and released on 4th March, 2013)