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

+ CS(OS) 2387/2014

M/S KLJ POLYMERS & CHEMICALS LTD Plaintiff

Through: Mr. Vikas Sharma and Ms. Jyoti
Sharma, Advs.

versus

M/S KRISHNA ELECTRICAL INDUSTRIES LTD &

ORS

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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15.07.2015

1. Plaintiff has filed this suit under Order XXXVII of The Code of Civil Procedure, 1908 (CPC, for short) against the defendants for recovery of ₹58,48,389/- together with pendente-lite and future interest @ 13% per annum.

2. Defendant no.1 is a company registered under The Companies Act, 1956. Defendant nos. 2 to 4 are directors/managing director of defendant no.1. Defendant no.1 is an independent juristic person under the Companies Act and can sue and can be sued in its names. Directors/managing director of the company are not personally liable to pay the debts of the company unless they have executed personal guarantee for repayment of debt. No such personal guarantee has been pleaded in the

plaint nor any such document has been placed on record. Accordingly, suit for recovery qua the defendant nos. 2 to 4 for price of goods supplied to defendant no.1 by the plaintiff is not maintainable, thus, suit is dismissed qua the defendant nos.2 to 4.

3. Plaintiff has alleged that pursuant to the purchase order as detailed in para 6 of the plaint, plaintiff had supplied goods to defendant no.1 vide bill nos. (i) 01793 dated 16th May, 2013 amounting to ₹18,55,737/-, (ii) 02819 dated 12th June, 2013 amounting to ₹19,72,594/- and (iii) 05119 dated 12th August, 2013 amounting to ₹21,15,424/-. It is alleged that a sum of ₹48,20,232/- was due and payable by the defendant no.1 to the plaintiff towards the supplies. Vide confirmation letter dated 13th May, 2014 defendant no.1 has confirmed the credit balance of ₹48,20,232/- as on 13th May, 2014. However, thereafter defendant no.1 had made payment of ₹3 lacs on 8th July, 2014 against invoice no. 1793 leaving behind a balance of ₹45,20,232/-.

4. Vide purchase orders defendant no.1 had agreed to pay interest @ 13 % per annum on overdue and outstanding dues. It is submitted that from 1st April, 2013 till 31st July, 2014 a sum of ₹13,28,157/- is due and payable together with interest. Thus, defendant no.1 is liable to pay ₹58,48,389/- to

the plaintiff.

5. Order XXXVII Rule 2(3) CPC stipulates that defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf.

6. Order XXXVII Rule 3 envisages 10 days time for entering appearance. Defendant no.1. was served on 22nd November, 2014. Despite service defendant no.1 has not entered appearance within the stipulated period of time.

7. For the foregoing reasons, a decree is passed in favour of the plaintiff and against the defendant no.1 for ₹58,48,389/- together with interest @ 12% per annum from the date of filing of suit till the date of decree. Plaintiff shall also be entitled to costs. Decree sheet be drawn accordingly.

A.K. PATHAK, J.

JULY 15, 2015/ga