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

\+ CS(OS) 3343/2014 & I.A. 21632/2014

KODAK INDIA PVT LTD ..... Plaintiff

Through: Mr.Dayan Krishnan, Sr. Adv. with Mr.Karan Luthra, Advocate

versus

ARS GRAPHICS ..... Defendant

Through: Mr.Jagmohan Sabharwal, Sr. Adv with Mr.Bhavesh Kr. Sharma & Ms.Seema Singh, Advs. Mr.Surinder Kumar Malik, President of the association in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

ORDER

% **22.12.2014**

IA.No.26116/2014

1. This is an application under Order 1 Rule 10 CPC, which has been filed by the Northern India Colour Lab Association. President of the Northern India Colour Lab Association appears in person and he has drawn the attention of the Court to the order dated 8.5.2013 passed in CS(OS)No.2985/2011. The applicant is neither an appropriate nor a necessary party in view of the fact that the present suit arises out of a dispute between the plaintiff and the defendant, the application is misconceived. Consequently the application is dismissed.

I.A. 21631/2014 (O.39 Rs=1 & 2 CPC)

2. Plaintiff has filed the present suit for mandatory, permanent injunction and damages against the defendant. Along with the plaint the plaintiff has

filed the present application [I.A. 21631/2014 under Order 39 Rules 1 and 2 CPC].

3. The facts of the case as set out in the plaint are that the defendants have been purchasing supplies from the plaintiff for the last two and a half years through the plaintiff's various distributors for other Kodak equipments. On 29.11.2013 the defendant placed an order of a NexPress 2500 (R) for a total sum of Rs.1,10,00,000/- plus taxes.

4. The plaintiff requested the defendant to provide 100% advance for the said machinery. As the defendant was unable to do so, the defendant on 2.5.2014 issued a fresh purchase order #001/May14 committing to pay the purchase price in advance for purchase of "Nexpress 2500 Reman Machine" for a price of Rs.1.10 crores plus taxes. The Defendant also placed a purchase order #002/May14 dated 2.5.2014 for purchase of a Gold Kit for Rs.12 lacs plus taxes.

5. The transaction was partially financed by Siemens Financials Services Pvt. Ltd. The plaintiff received the entire payment of Rs.1.10 crores plus taxes against purchase order #001 by 31.5.2014 partly from the defendant and partly from the Siemens Financials Services Pvt. Ltd. The said machine has been hypothecated by defendant in favour of Siemens Financials Services Pvt. Ltd. Against the purchase order #001/May 2014, plaintiff generated Invoice No. MH00171670 dated 3.6.2014 for Rs.1.10 crores plus 2% Central Sales Tax. This machine was received by the defendant on 8.6.2014 against Lorry Receipt No. MUM_000504/505. The Unique Identification Number of the machine is 1487-XC which is, *inter alia*, mentioned on the manufacturing plate fixed to the Machine.

6. One machine against both the orders were duly installed at the premises of the defendant on 17.6.2014. In the last week of August, 2014 defendant

raised certain print quality related issues. The complaints of the plaintiff were attended to and experts were also called from Germany to fix the problem, who visited the defendant's premises on 16.9.2014.

7. According to the plaint, the deficiencies were concocted, fictitious and non-existent, however, since the defendant was dissatisfied with the performance of the machine, to resolve the issues, two offers were made by the plaintiff on 17.9.2014 either to return the old machine and accept refund of the purchase price or that the plaintiff would replace the machine and also provide added incentives to the defendant. Reliance is placed on letter dated 17.9.2014, which is reproduced below:

> "*1st option is immediate replacement with another R2500 which we had imported for another customer. If this option is acceptable, then Kodak India will give clear timelines for delivery, installation and commissioning of the replacement unit. In this case also, we will honor all the points discussed and agreed upon yesterday (and also detailed in my mails yesterday) for support for your business re-start & continuity.*
> *2nd option: you/ ARS can choose to return the press installed at your site and Kodak India will immediately refund the amounts paid by you for the press.*"

8. Since the defendant chose the latter option, in addition to replacing the original machine the plaintiff also agreed to give free products to the defendant, which are approximately of value of Rs.20.28 lacs.; and another sum of Rs.3.40 lacs was also waived off. Plaintiff also agreed not to charge the defendant for approximately 3,50,000 A3 size prints taken by defendant which in turn were sold by defendant to his customers. As requested by the defendant the new machine was to be delivered by 1.10.2014. The new machine with Unique Identification Number 1350-ZC was delivered and acknowledgement was made by the defendant. On

receipt of the new machine, the first machine was to be handed back, however, the defendant refused to hand over the same.

9. It is the case of the plaintiff that the defendant continued to use the first machine uptill 14.10.2014 and derived profit from the same. Various communications were exchanged between the parties and on 14.10.2014 the defendant informed the plaintiff that he wanted to return both the machines i.e. the first machine and the replaced machine. The letter of 17.10.2014 is reproduced hereunder.

> "*Reference our letter dated 19th September, 2014, and further to your discussions with Mr.Nikumb and Natesh Puri, we understand that you are insisting on not retaining the NexPress.*
> *Based on your acceptance and instructions, we had delivered the replacement press on Oct 1st (auspicious day as per you).*
> *Also based on your agreeing to continue the business with the replacement NexPress, we had also partially delivered CtP plates and other financial assistance agreed by us.*
> *Now as you have decided not to continue your business with the NexPress, we are arranging to pick up the replacement NexPress on Monday 20th Oct.*
> *Please confirm if we can start dismantling the original NexPress from tomorrow and start packing it up. Once we get the original NexPress, we will immediately refund the amounts paid by you towards the same, less the cost of CtP plates given free of cost and the pending invoice towards the CtP head replacement of Rs.3.43 Lacs.*"

10. Another e-mail relied upon by the plaintiff is of 19.10.2014, which is reproduced below:

> "*As per our discussion we mutually agreed on flowing:*
> 1. *Kodak India can send there engineer to pack the nex press.*
> 2. *Kodak India will refund full amount of Rs.1,12,20,000/- paid by ARS before taking out the NexPress from ARS premises.*
> 3. *Once the payment is done at our bank and after getting the confrontation from our bank you can load the NexPress and take back.*

4. You have given us commitment of extra 1000 sq mtr plates as foc.

We are thankful for your kind gesture and hope this issue solve soon."

11. As agreed and to resolve the entire issue the plaintiff agreed to return the entire amount i.e. Rs.1,12,20,000/- received from the defendant and the defendant was to hand over both the machines on receipt of Rs.1,12,20,000/-. This amount was admittedly, transferred to the account of the defendant through RTGS transfer, which is not disputed. A confirmatory e-mail at 12 noon on 30.10.2014 has also been placed on record.

12. The complaint of the plaintiff is that today both the machines are in illegal custody of the defendant besides Rs.1,12,20,000/- stands deposited in the account of the defendant, which is admitted by the defendants. Plaintiff has accordingly prayed that the defendant be directed to return both the machines to the plaintiff which is in their illegal custody.

13. The defendant has filed a detailed written statement. As per the written statement, various objections have been raised including non-payment of sufficient court fee; the suit has not been filed by a duly authorized person; and the suit is a gross misuse of law and is liable to be dismissed. The defendant has claimed a charge over the machines. It is the case of the defendant that as per the assurances and confirmation given by the plaintiff that they will remove the machine only after clearing the entire dues of the defendant i.e difference in purchase price and damages and loss suffered by the defendant on account of faulty machiness provided by the plaintiff to the defendant.

14. It is also the case of the defendant that the price of the machine was in fact Rs.1,42,80,000/-, out of which the amount of Rs.30.0 lacs was paid in cash to the plaintiff. It is also the case of the defendant that the plaintiff has acknowledged this payment received on 28.5.2014. In support of this argument, reliance is also placed on an estimate invoice and final invoice issued by the plaintiff to the defendant wherein the price of the machine has been mentioned as Rs.1,42,82,000/-. Counsel for the defendant further submits that a loan was procured for Rs.1,42,80,000/-; the machine has also been insured at the cost of Rs.1,42,80,000/- and thus there is sufficient evidence to show that the machine was valued at Rs.1,42,80,000/- and the defendant paid the plaintiff Rs.1,42,80,000 less Rs.1,12,20,000 by cheque = Rs.30,60,000/- in cash.

15. It is also the case of the defendant that the defendant is liable to recover from the plaintiff a loss suffered of Rs.1.50 crores under various heads including rent of the building, electricity expenses, labour charges interest of loan, renovation of the building, paper wastage and other expenses and in case the plaintiffs are permitted to remove the machinery the defendants would have no security in their favour for recovery of amount due as an amount of losses suffered, as the plaintiff has applied for liquidation in the United States of America.

16. Reliance is also place on e-mails dated 29.8.2014 and 13.9.2014, wherein the plaintiff had agreed to remove the machinery only after the amounts payable to the defendant are cleared. E-mail dated 29.8.2014 is reproduced below:

"Fri, Aug 29, 2014 at 2:33P

From Ramani Viswanathan
Sent 08/29/2014 04:54 AM EDT

To : arsgraphics2010@gmail.com
Cc: Natesh Puri; Bhalchandra Nikumb; Vijay Kamat
Subject: NexPress

Dear Mr.Sunil,

As discussed today during our meeting, we agree on the following points:

1. We thank you for allowing us time till September 12, 2014 to resolve all the pending points (color registration and yellow drop on random prints). For doing this whatever resources in terms of manpower etc. will be deployed.
2. On successfully solving the problems and you accepting the print quality, Natesh and I will meet you the 13th September, 2014. During this meeting we will list all wastage of material and expenses waste incurred by you in past couple of months till that date. We will then transparently share a plan with you on how Kodak India will reimburse this amount.
3. In the unforeseen event that even by 12th September, 2014, we are not able to provide the correct image and print quality on the NexPress, we will still sit with you and work out the amount as per point no.2 above. This amount along with the amount paid by you for the purchase of the NexPress will be refunded back to you and we will dis-install the NexPress and take it back at our cost.

We sincerely thank you for your loyalty to Kodak and hope to prove that our support team can set things right by the above time, thus living up to the trust you reposed in us. This way we can have a mutually beneficial long-term relationship with you and your organisation.

Regards,

Ramani Viswanathan."

17. In response to the submission made by counsel for the defendant, counsel for the plaintiff submits that the payment receipt for Rs.1,42,80,000/- is a

forged and fabricated document which is evident from the fact that a letter-head used is only a colour photocopy. Counsel also points out that in all letter-heads invoices of the plaintiff Dani Corporate Park is written in inverted comas, which is missing from the alleged letter head. It is also submitted that the signatures in this communication are forged and fabricated.

18. Counsel for the plaintiff also submits that being a multi-national and public limited company there is no question of receiving any amount in cash. Performa invoice filed at page 32 and tax invoice at page 33 of documents filed by the defendant are also forged documents. It is also submitted by Mr.Dayan Krishnan, learned Senior Counsel for the plaintiff that the figure of Rs.1,42,80,000/- has been filled up by the defendant with malafide intention to secure loan of a higher amount and consequently the machine has been insured for a higher amount, both these are the unilateral actions on the part of the defendant and thus in no way prove the actual price of the machine. Counsel for the plaintiff also submits that the paper receipt sought to be relied upon consists of payments, which were received as defendant's share after the financial institution had made their share and no amount of Rs.25,30,000/- has been received through RTGS on 27.5.2014 neither any proof thereof has been provided.

19. Counsel for the defendant has clarified that this amount has been incorrectly mentioned by RTGS, it fact it was made in cash.

20. It is not in dispute that the defendant had placed an order with the plaintiff for supply of a NexPress machine. The invoices placed on record by the plaintiff, show that this machine was for a sum of Rs.1,12,20,000/- inclusive of taxes. After supply of the first machine, there were certain issues between the parties with regard to working of this machine; and

plaintiff agreed to supply another machine to the defendant to satisfy the defendant with regard to the working of the machine. It is also not in dispute that the second machine was supplied to the defendant. A local commissioner was also appointed by this Court who has submitted her report stating that one machine is lying with the defendant in packed condition and the second machine is also in the possession of the defendant. This is also not disputed by the defendant. It is also not in dispute that in addition to both the machines lying in the premises of the defendant, the plaintiff has also repaid the price of the first machine, which is Rs.1,12,20,000/- to the defendant, which is also acknowledged by the defendant. In the report of the local commissioner, the paragraphs which deal with the condition of machine, are reproduced below:

> "4. That the proprietor of the defendant firm duly consented for the commission proceedings after the receipt of the order and after consulting his advocate on telephone. The undersigned alongwith the two technicians of the plaintiff surveyed the shop and found one of the machine lying in the shop premises. The machine being NexPress 2500 bearing UIN No.1487-XC was identified by the plaintiff and the Gold Kit was also identified. As per the orders of this Hon'ble Court, the technicians were asked to thoroughly examine the machine and assess its condition and to report if it has been tampered with or any part has been removed thereof. The technicians examined the machine from all angles and reported that the machine has not been tampered with nor has any part been removed. All the five parts of the machine being right frame, main print engine, fuser system, HCD and ECS were examined by the technicians and were found in proper condition. In fact, as per the proprietor of the defendant firm, the machine was not being used by him. His stand appears to be genuine since the machine was lying disconnected. After the examination of the machine, the machine was seized, sealed alongwith the components and then released to the defendant on superdari.
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> 5. The second machine being NexPress bearing UIN No.1350-ZC was lying at a nearby premises being WZ-3064, GF, Mahindra

Park, Rani Bagh, Delhi. The machine was lying in a packed condition; disconnected and not being used by the defendant. The machine was identified by the two technicians and it was reported by them that it has not been tampered with nor any part has been removed thereof. The components of the machine as well as spare parts were all lying packed. As per the orders of this Hon'ble Court, the machine was seized, sealed and released to the proprietor of the defendant on superdari."

21. As of today two machines and the cost paid by the defendant are lying with the defendant. The defendant's own stand in the letters annexed in the list of documents is that the defendant has suffered a loss of Rs.19.0 lacs, as per letter dated 4.9.2014, which is at page 45 of the documents filed by the plaintiff. The break-up given in the said letter is as under:

"Thu, Sep 4, 2014 at 6:23 PM

Dear Sir,

As per conversation regarding the problem of NEX PRESS machine, you get the time till 12th September, 2014 to resolve all the printing problem of the machine, and you are agree to refund the amount which is already spent on the machine to trying to solve the problem from last three months:

1) Rent of Building -45000 (per month)x3 =136000/-
2) Electricity Bill - 40280 (june)
   -71340 (july)
   -80000 (August)
   Total 191620/-
3) Labour Charges : 70000 (per month) x3 =21000
4) Loan Instalment :

	Principle	Interest	Amount
1)	347053/-	106981/-	454034/-
2)	349653/-	104381/-	454034/-
3)	352272/-	101762/-	454034/-
		Total	1362102/-

5) Paper : Uncountable Papers.
   So the total amount is Rs.1899722/-
   As above i mention, I already spent a large amount of money.

so i want to know that how you refund that amount, Because I don't earn anything from last three month only spent my all other savings in processing of the machine"

22. By a letter of 9.9.2014 the defendant has increased the claim to Rs.41.0 lacs and by 30.10.2014 the claim is increased to one and a half crore.

23. It may be noticed that along with the written statement no counter claim has been filed by the defendant. As far as submission of counsel for the defendant with regard to the payment of cash in the sum of Rs.30.0 lacs is concerned, *prima facie* the stand of the defendant appears to be false and dishonest as it is not expected that a multi-national company will accept a sum of Rs.30.0 lacs in cash against the value of the machine of Rs.1,12,20,000/-, as shown in their invoices. It is also evident from the e-mail dated 19.10.2014, which refers to the full amount of Rs.1,12,20,000/-, is reproduced below:

> "Dear natesh
>
> as per our discussion we mutually agreed on flowing
>
> 1. Kodak india can send there engineer to pack the next press.
> 2. Kodak india will refund full amount of rupees 1,12,20000 paid by ars before taking out the nexpress from ars premises.
> 3. once the payment is done at our bank and after getting the confrontation from our bank you can load the nexpress and take back.
> 4. you have given us commitment of extra 1000 sq mtr plates as foc
>
> we are thankful for your kind gesture and hope this issue solve soon."

24. To say that since the machine has been insured for Rs.1,42,80,000/- therefore the court must accept this to be the correct sale figure is not acceptable, as the defendant had unilaterally insured the machine based on

an invoice, which is disputed by the plaintiff. The plaintiff has also disputed both the invoices, which have been filed by the defendant at pages 32 and 33 of the defendant's documents.

25. To adjudicate upon the issue in hand, it would be appropriate to verify the authenticity of the invoices. Accordingly, a direction is issued to Siemens Financials Services Pvt. Ltd. to file the original invoices in this court. Let the invoices relied upon by both the parties be sent to the CFSL along with the admitted invoices. Both the parties are granted leave to file admitted invoices.

26. The signatures appearing on the payment receipt dated 28.5.2014, original of which has been handed over in court are marked as 'A', 'B' and 'C', shall also be sent to the CFSL for examination. CFSL will also give a report, as to whether the letter-head on which payment receipt dated 28.5.2014 has been typed is a genuine letter-head of the plaintiff or not.

27. It is made clear that in case documents filed in this court are found to be forged and fabricated, legal consequences will follow, including registration of a complaint / FIR against the defendant. Since the defendant has received the full amount paid by them for purchase of the machine, I am of the view that the defendants cannot be permitted to hold two machines as ransom for the alleged amount of damages suffered by them more particularly when the defendants have failed to file a counter claim along with the written statement. Moreover, the claim of Rs.1.50 crores *prima facie* appears to be imaginary and fanciful. As far as the plea of the defendant that the U.S. Company has filed for liquidation is concerned, plaintiff has refuted the allegation that their company is in liquidation and no proceedings are pending in India and the plaintiff company is carrying on their business in the ordinary course.

28. Needless to say that all rights of defendants are kept open in accordance

with law to seek recovery of damages, which they have suffered, if such a right is available to them.

29. Ms.Sonam Gupta, Advocate (Cell No.9873498887), who was appointed as a Local Commissioner vide order dated 07.11.2014, shall in the presence of the parties remove both the machines from the premises of the defendants and hand over the same to the plaintiff. The local commissioner will be entitled to police assistance. Any obstruction by the defendants shall be viewed seriously. The Local Commissioner shall be paid a sum of Rs.50,000/-, besides all out of pocket expenses, by the plaintiff at the first instance.

30. List on 7.4.2015 for further orders.

CS(OS) 3343/2014

31. List the matter before the Joint Registrar for completion of pleadings and for admission /denial of documents on 25.2.2015.

32. List the matter before Court on 7.4.2015 for framing of issues and for hearing of pending applications. Parties shall bring suggested issues to Court on the next date of hearing. Parties will strictly adhere to the time schedule fixed by the court.

G.S.SISTANI, J

DECEMBER 22, 2014
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