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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 1750/2000

HINDUSTAN PAPER CORPORATION LTD. Plaintiff

Through: Mr. Ratan K. Singh, Mr. Nikhilesh
Krishnan, Mr. Vipul Agrawal and Mr. Nishank
Tyagi, Advs.

versus

GOLDEN NEWS PRINT INDUSTRIES

PVT. LTD. & ORS. Defendants

Through: Mr. Rajender Agarwal, Adv.

AND

+ CS(OS) 347/2000

GOLDEN NEWS PRINT INDUSTRIES PVT LTD. Plaintiff

Through: Mr. Rajender Agarwal, Adv.

versus

HINDUSTAN PAPER CORPORATION LTD. Defendant

Through: Mr. Ratan K. Singh, Mr. Nikhilesh
Krishnan, Mr. Vipul Agrawal and Mr. Nishank
Tyagi, Advs.

AND

CCP 70/2006

HINDUSTAN PAPER CORPORATION LTD. Petitioner

Through: Mr. Ratan K. Singh,
Mr. Nikhilesh Krishnan, Mr. Vipul Agrawal and
Mr. Nishank Tyagi, Advs.

versus

GOLDEN NEWS PRINT

INDUSTRIES PVT LTD & ORS. Respondents

Through: Mr. Rajender Agarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 30.11.2016

1. CS(OS) No.1750/2000 was instituted for recovery of Rs.6,39,16,479/- with interest from as many as 12 defendants towards recovery of price of paper supplied and delivered by the plaintiff to defendant No.1.

2. The counsel for the plaintiff states that the defendants No. 2 and 3 Mr. Ashok Kapoor and Mr. Surender Kapoor respectively were the Directors of the defendant No.1 and the defendants No. 4 to 12 were the employees of the plaintiff company who according to the plaintiff, in collusion with the defendants No. 2 and 3, had allowed supplies to be continued to be made without price thereof being paid.

3. On 19th July, 2005, on the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is entitled to the amount of Rs.4,60,73,531.10 on account of supply of paper to the defendant nos. 1 to 3?
2. Whether plaintiff is entitled to sum of Rs.12,33,755.53, Rs.37,98,787.14, & Rs.17,50,591 on account of withdrawal of cash discounts and incentive for the year 1998-99 and 1999-2000?
3. Whether the defendant no.1 is liable to supply ST-1 Forms to the plaintiff for the paper sold to them by the plaintiff?
4. Whether plaintiff is entitled to interest @ 28% amounting to Rs.1,10,59,814.22 for non payment of the principal amount for the paper supplied to the defendant nos. 1 to 3 and what is the rate of interest and amount of money under this head which plaintiff is entitled from defendants?

5. Whether defendant nos. 4 to 12 are jointly and severally liable as stated in the plaint for their illegal and fraudulent acts and omissions with the defendant nos. 1 to 3 for the suit amounts and relief of ST-1, Forms as stated in issues nos. 1 to 4 above?
 6. Whether suit is liable to be stayed under section 10 of CPC?
 7. Whether suit is properly instituted, filed and verified by the plaintiff company?
 8. Whether defendant nos. 2 and 3 are not proper parties?
 9. Whether suit is barred by time?
 10. To what amount the plaintiff is entitled to and against which defendant?
 11. Relief?
4. The counsel for the plaintiff states that vide order dated 1st April, 2016 the plaintiff was permitted to withdraw the suit in so far as against defendant Nos. 4 to 12 and the suit now survives only against defendant nos. 1 to 3.
5. The plaintiff in its evidence has examined three witnesses and closed its evidence.
6. The defendant Nos. 1 to 3 who are now the only defendants failed to lead any evidence despite repeated opportunities.
7. Rather the counsel for the defendant Nos. 1 to 3 today states that inspite of repeated attempts, the defendant Nos. 1 to 3 have not been contacting the counsel and the letters sent to the defendant Nos. 1 to 3 have also been returned back with the endorsement that the

defendants are not available at the address which they had given to the counsel.

8. The counsel for the defendants seeks discharge from appearance.

9. The counsel earlier appearing for the defendants is discharged from appearing for the defendants.

10. None else appears for the defendant Nos. 1 to 3.

11. The defendant Nos. 1 to 3 are also proceeded against ex parte.

12. The counsel for the plaintiff has been heard.

13. Even though the defendants have chosen not to lead any evidence, I have perused the pleadings and un-rebutted evidence of the plaintiff, also in the context of issues framed and find that the plaintiff has proved sale, supply and the delivery of goods to the defendant no.1 of the value of Rs.4,60,73,531.10 and that the amounts of Rs.12,33,755.53, Rs.37,98,787.14 and 17,50,591.16 were wrongly credited to the account of the defendant no.1 maintained with the plaintiff and that the suit claim is within time.

14. The plaintiff, besides the aforesaid amounts, has also established entitlement to ST-1 Form qua which the relief of mandatory injunction is claimed. I in this regard note that on an application of the plaintiff under Order 12 Rule 6 vide order dated 6th September, 2006 the defendant no. 1 to 3 were directed to deliver the said Form ST-1 but which they have not delivered till now.

15. Though the contractual relationship of the plaintiff was with the defendant no.1, a Private Limited Company and a legal entity but the plaintiff has also made out a case of the defendant nos. 2 and 3 having fraudulently used the corporate veil of the defendant no.1 for depriving the plaintiff of its dues. The plaintiff has thus made out a case for a decree as claimed, jointly and severally against the defendants.

16. A decree is accordingly passed in favour of the plaintiff and jointly and severally against the defendant nos. 1 to 3 namely M/s Golden Newsprint Industries Pvt. Ltd, Mr. Ashok Kapoor and Mr. Surender Kapoor for recovery of a sum of Rs.6,39,16,479.09 and for mandatory injunction directing the defendants to hand over the ST-1 Form in terms of para 13 of the plaint to the plaintiff.

17. The plaintiff shall also be entitled to interest *pendente lite* and future interest till the date of recovery on the said amount of Rs.6,39,16,479.00 at the rate of 15% per annum.

18. The plaintiff shall also be entitled to costs of the suit.

19. Decree sheet be prepared.

20. CS(OS) No.347/2000 was filed by the defendant no.1 in CS(OS) No.1750/2000 against the plaintiff in CS(OS) No.1750/2005, also for recovery of money.

21. The counsels state that the CS(OS) No.347/2000 was being taken up alongwith CS(OS) No.1750/2005.

22. The counsel for the plaintiff in CS(OS) No.347/2000 states that he is not getting any instructions from the plaintiff and seeks discharge.
23. The counsel for the plaintiff in CS(OS) No.347/2000 is discharged from the appearance on behalf of the plaintiff in CS(OS) No.347/2000.
24. None appears for the plaintiff in CS(OS) No.347/2000.
25. CS(OS) No.347/2000 is dismissed in default.
26. CCP No. 70/2006 filed by the plaintiff in CS(OS) No.1750/2000 is dismissed as infructuous.

RAJIV SAHAI ENDLAW, J

**NOVEMBER 30, 2016
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