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

\+ RFA(OS) 7/2016

BPI (INDIA) PVT. LTD. & ORS ..... Appellants

Represented by: Mr.Shailesh K.Kapoor, Advocate with Mr.Ajay Kumar, Advocate

versus

CREATION FOR CHILDREN INTERNATIONAL NV ..... Respondents

Represented by: Ms.Ayushi Kiran, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% 18.11.2016

Review Pet. 368/2016

1. The appeal was disposed of on August 08, 2016, dismissing suit filed by the respondent against appellants No.2 and 3 and decreeing the same against appellant No.1 in sum of ₹1,15,20,481.63 (Rupees One Crore Fifteen Lacs Twenty Thousand Four Hundred Eighty One and Paisa Sixty Three only) together with interest on the sum of ₹96,75,508.04 (Rupees Ninety Six Lacs Seventy Five Thousand Five Hundred Eight and Paisa Four only) @ 8% per annum from the date of the suit till realization. The reason being that as per the plaint goods worth US$ 2,94,398.68 were supplied and after crediting the payments received in sum of US$ 86,359.03 the balance comes to US$ 2,08,039.65. The latter sum converted into Indian rupees translates to ₹96,75,508.04. Together with pre-suit interest, how computed

not being disclosed in the plaint, decree was claimed in sum of US$2,85,653.15; and converted into Indian rupees the sum becomes ₹1,32,85,239.33. US$ 2,08,039.65, at the conversion rate applied in the plaint, comes to ₹96,75,508.04; which was the sum decreed by us.

2. The respondent has sought review concerning computation of pre-suit interest as also the agreement between counsel recorded in para 27 of the decision, review whereof is prayed for. In respect of which issue, it is pleaded that no such consent was given; and in respect of which pleading, being incorrect because the consent was given, limited notice in the review petition was issued on September 15, 2016. While issuing notice it was made clear that the notice pertains only to the computation of pre-suit interest.

3. It is the admitted case of the parties that from time to time goods worth US$ 2,94,398.68 were supplied by the respondent to the appellant No.1 and from time to time appellant No.1 paid US$ 86,359.03. The outstanding sum as per the invoices raised would therefore be US$ 2,08,039.65.

4. In para 11 of the plaint, pleading that US$ 2,08,039.65 remain outstanding as per the invoices for the goods supplied, without indicating the period and the manner in which pre-suit interest has been calculated, it is stated that US$ 2,85,653.15 is payable together with interest as on the date of the suit.

5. In the application seeking review it is pleaded that since delayed payments were received, the respondent No.1 would be entitled to first adjust the amount received towards interest which has accumulated and the remainder, if any, towards principal. On this premise, review is prayed, for

the reason pre-suit interest has been determined by us treating US$ 2,08,039.65 as the principal sum payable after adjusting, towards the principal sum as per invoices, the payments made from time to time.

6. Now, it is settled law that where a debtor makes payment to a creditor without indicating as to on what account the payment has to be credited, it is open to the creditor to adjust the money tendered in any manner. Whilst it may be true that it is open for a creditor to adjust the amount tendered by the debtor towards interest first and the remainder, if any, towards the outstanding sum due but this must be so done by the creditor.

7. The respondent has itself proved the statement of account maintained by it as Ex.PW-1/41, English translation whereof is Ex.PW-1/42. The same is an extract from the ledger account maintained by the respondent concerning the goods supplied to the appellant No.1. In the said statement no interest whatsoever has been credited in the account for the sales made and we find that the money paid from time to time by the appellant No.1 to the respondent has been credited and adjusted against the amount due as per the invoices. The ledger evinces that in its books of account the respondent showed US$ 2,08,039.65 as payable by the appellant to it. We find that in para 9 of the plaint the summary of the account has been penned profiled and the same does not show any interest debited to the account. It does not show that the payments which were made by the appellant No.1 to the respondent were first adjusted towards the outstanding interest. As a matter of fact the account, as noted hereinabove, makes no debit entry towards interest payable and therefore obviously the adjustments of the amounts paid by the appellant No.1 to the respondent are towards the invoices raised when

the goods were supplied.

8. Therefore, we find no error in our decision.

9. The review petition is accordingly dismissed.

10. No costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

NOVEMBER 18, 2016
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