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

\+ **<u>CS(COMM) 178/2016</u>**

SHIV RATNA PAPER (P) LTD. ..... Plaintiff

Through Mr O.P. Gaggar, Advocate.

versus

RIDHI PETROCHEM PVT. LTD. ..... Defendant

Through Mr Rakesh Kumar Khanna, Senior Advocate with Mr Dhaminder N. Grover, Mr Jay K. Bhardwaj and Mr Harsh Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **23.03.2017**

<u>VIBHU BAKHRU,J</u>

<u>IA No. 11237/2016</u>

1. This is an application filed by the plaintiff (hereafter 'SRP') under Order XIIIA Rule 4 of the Code of Civil Procedure, 1908 (hereafter 'the CPC'), *inter alia*, praying that the suit be decreed by pronouncing a summary judgment.

2. SRP has filed the above captioned suit for recovery of a sum of ₹1,52,49,918.07, being the sale consideration for the goods claimed to have been supplied to the defendant (hereafter 'RPPL') along with *pendente lite* and future interest.

3. SRP is a private company, engaged in trading of paper and allied

products (hereafter 'the goods') as a distributor and reseller. SRP sources the above goods from manufacturers located in Uttarakhand and supplies the same to its customers including RPPL.

4. RPPL is a company having its registered office in Mumbai and its factory in the District Valsad, Gujarat.

5. It is SRP's case that it had supplied goods to RPPL and had raised several invoices for the said supplies. SRP has also produced invoices for all the goods supplied. Indisputably, the goods were received by RPPL and it has also issued C forms for claiming the sales tax benefit.

6. The fact that the goods have been supplied by SRP is not disputed. It is also not disputed that RPPL had issued the C forms in respect of the invoices.

7. The defences sought to be set up by RPPL broadly are that (i) this Court does not have any jurisdiction as no part of cause of action has arisen within the territorial jurisdiction of this Court; (ii) the statement of accounts is exaggerated; (iii) RPPL had also issued cheques aggregating sum of ₹39,41,614/- in respect of certain purchases; (iv) RPPL had paid cash for some of the supplies made; (v) RPPL had also made payments from its other group concern for the goods invoiced to RPPL; and (vi) RPPL had also made payments directly to the manufacturers against some of the invoices/supplies.

8. Mr Gaggar, learned counsel for SRP drew the attention of this Court to an e-mail dated 15.05.2015 received from RPPL, *inter alia*, enclosing a

statement of accounts. The said statement of accounts acknowledges that a sum of ₹1,30,38,021/- was owed and payable by RPPL to SRP as on 31.03.2015. This was against a sum of ₹1,31,21,160/- claimed by SRP as on 31.03.2015. In view of the aforesaid discrepancy between amount claimed by SRP and as reflected in the statement of accounts furnished by RPPL, SRP claims to have sent another e-mail dated 16.05.2015, *inter alia*, pointing out that the discrepancy was on account of a debit note dated 16.09.2014 for ₹29,517/- and a debit note dated 10.02.2015 for ₹53,622/-. SRP disputed the said debit notes on the ground that the manufacturer from who SRP had sourced the goods, had disputed the same.

9. The above statement of accounts and the e-mails between the parties produced by SRP have been denied by RPPL. This Court is of a *prima facie* view that the said evidence would be clinching; but, since the e-mails have been disputed, the same have been ignored for the purposes of the present application.

10. Even if the aforesaid statement of accounts and e-mails are ignored, the undisputed facts remain that invoices were raised by SRP for the goods supplied and the C forms were issued by RPPL. The receipt of goods is also not disputed.

11. In the circumstances, the onus to show that any payments had been made for the goods and the liability for consideration of the goods had been discharged would lie squarely on RPPL. However, it is seen that RPPL has not produced a single document or material which would indicate that the invoices raised had been paid. On the contrary, it is not disputed that certain

cheques issued by RPPL were dishonoured on presentation.

12. Although, certain averments regarding payments have been made in the written statement, it is also seen that the written statement is not in conformity with the provisions of Order VI Rule 15A(1) of the CPC inasmuch as it is not supported by an affidavit in the prescribed form; RPPL has not filed a statement of truth in support of its pleadings. This also attains significance as in terms of the prescribed format, RPPL would have to affirm that all documents in power and possession, control and custody pertaining to the facts and circumstances of the deponent have been disclosed and there is no other document in its possession. This is also mandated by Sub-rule 9 of Order XI of the CPC as applicable. In the present case, the written statement filed by RPPL is lacking in material particulars and further RPPL has also chosen not to file any relevant documents to support any of its contentions.

13. In the circumstances, this Court is not inclined to permit any reliance on the written statement filed by RPPL in terms of Sub-rule 4 of Order VI Rule 15A of the CPC. Thus for all intents and purposes, the plaint remains uncontroverted. Thus in view of the material produced by the parties, there is no escaping the conclusion that SRP is entitled to the amount claimed, which also includes interest at the rate of 24% p.a. as specified in the invoices.

14. Insofar as the issue of jurisdiction is concerned, it is seen that all the invoices raised by the plaintiff expressly provided that *"All disputes are subject to Delhi jurisdiction only"*. SRP further claims that the payments

were to be made in Delhi. Indisputably, a part of the cause of action has arisen in Delhi and in view of the express stipulation in the invoices regarding jurisdiction, the contention that this Court does not have the jurisdiction to entertain the suit cannot be accepted.

15. In view of the above, the suit is decreed in favour of SRP and against RPPL for a sum of ₹1,52,49,918.07. However, the claim for *pendente lite* and post decree interest at the rate of 24% p.a. is excessive considering the prevalent bank rate. Accordingly, interest at the rate of 12% p.a., which is more consistent with the prime lending rate of the State Bank of India, is awarded in favour of SRP. The same would be payable from the date of institution of the suit till discharge of the *decretal* amount.

16. Let a decree sheet be drawn up. Any pending application(s) stands disposed of.

VIBHU BAKHRU, J

MARCH 23, 2017
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