

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 1392 of 2018
IN
COMMERCIAL SUIT NO. 537 OF 2017**

Shalina Laboratories Pvt Ltd	...Plaintiff
<i>Versus</i>	
Subnil Packaging Machineries Pvt Ltd	...Defendant

Mr Sunil Gangan, *with Jayesh Mestry, i/b RMG Law Associates, for the Plaintiff.*
Mr Sanjay Prabhu, *i/b MB Barai, for the Defendant.*
Mr Rajesh Subramaniam, *Director of the Defendant is present.*

CORAM: G.S. PATEL, J
DATED: 5th December 2018

PC:-

1. The Notice of Motion is by the Defendant. It seeks a modification of Consent Terms dated 12th January 2018, and, specifically, an extension of time to the Defendant to complete its manufacturing and delivery obligations under those Consent Terms. The other prayer is that, pending the final disposal of the Notice of Motion, the order in terms of the Consent Terms should be stayed.

2. The Motion is opposed by the Plaintiff. It says that the Defendant has not even commenced manufacturing. Although the Notice of Motion was filed in July 2018, and five months have passed since then, the Defendant has taken no steps whatsoever to fulfil its obligations. The Defendant has not, in the time since the filing of the Notice of Motion, moved Court for any urgent reliefs or given any undertaking with a specific date by which the Defendant will comply with its obligations. Indeed, the only thing the Defendant seems to have manufactured is this Notice of Motion.

3. The application for stay of the order dated 12th January 2018 is rejected.

4. By 5th March 2019, i.e., a three-month period that suggested by the Defendant's Director Mr Rajesh Subramaniam who is personally present in Court, the Defendant will fulfil its obligation under the Consent Terms. Mr Subramaniam is the very person who gave the personal undertaking recorded in the Consent Terms. He also agrees that if delivery is not made of the machine specified in the Consent Terms by 5.00 pm on 5th March 2019, with a grace period of one week and no more, the Defendant will by 29th March 2019 refund the entire amount to the Plaintiff with agreed interest at 15% per annum as set out in the Consent Terms. This statement is accepted as an undertaking to the Court.

5. Since there is now this undertaking, in default the Defendant will be subjected to contempt proceedings apart from all other

enforcement proceedings that the Plaintiff will be at liberty to initiate.

6. In order to ensure that there is not the slightest possibility of escaping his obligation, the Defendant also agrees and undertakes that should there be a default committed of these undertakings, by 29th March 2019 the Defendant through Mr Subramaniam will file a comprehensive Affidavit of Disclosure of all assets both movable and immovable, of the Defendant and all its directors, including disclosures of all bank accounts and investments. The Affidavit of Disclosure will include bank statements of the 1st Defendant of all banks for last one year, as also bank statements of all bank accounts of all directors for last one year. In addition, there will also be a disclosure of income-tax returns for last three years of the Defendant and all directors.

7. The Defendant agrees similarly that in the event of default the Defendant will be subjected to an injunction restraining it from disposing of, alienating, parting with possession or creating any third party rights in any of its assets movable or immovable except in the ordinary and usual course of its business without leave of the Court obtained after at least two weeks' prior notice to the Advocates for the Plaintiff.

8. Liberty to the Plaintiff to apply.

(G. S. PATEL, J)