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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.92 OF 2016

IN

COMMERCIAL SUIT NO.184 OF 2016

KG International FZCO

...Plaintiff

vs

Nisiki India Pvt. Ltd.

...Defendant

.....

Mr. Umesh Shetty, a/w. Mr. A.S. Pal, Mr. Jehan Mehta and Mr. Tanmay Vaspute, i/b. Sameer J. Singh, for the Plaintiff.

Mr. H.N. Noronha, i/b. Rathina Maravarman, for the Defendant.

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CORAM : S.C. GUPTE, J.

DATED : 16 APRIL 2018

P.C. :

. Heard learned Counsel for the parties. This summons for judgment is based on a written contract termed as cooperation agreement dated 22 July 2012 between the parties along with bills of exchange accepted by the Defendant. Under this contract, the Defendant, who held ownership rights in respect of certain ball and roller bearings of a particular brand and who was engaged as a contract manufacturer of several ball and roller bearings from factories in China and India, had engaged the Plaintiff for product development, production and logistics in respect of these goods. It is submitted that the Plaintiff used to get these goods manufactured from China and ship them to designated Indian Port/s under this particular brand name. The Plaintiff

would draw invoices and bills of exchange payable within 120 days from the date of bill of lading and the Defendant would accept these invoices and bills of exchange. In respect of these goods sold and delivered, the Plaintiff have drawn bills of exchange and issued invoices, which have been accepted by the Defendant. The Defendant has failed to pay for the goods sold and delivered under these invoices and covered by these bills of exchange. The Plaintiff has, accordingly, prayed for a decree in the sum of USD 196,936.00 as per particulars of claim annexed at Exhibit 'B' to the plaint. The claim includes a principal amount of USD 191,015.

2. The Defendant resists the summons for judgment on various grounds. It is submitted in the first place that under the agreement between the parties, it is the UAE Courts, which alone have jurisdiction to go into the disputes between the parties arising out of the cooperation agreement. Learned Counsel relies on the case of **Swastik Gases Private Limited vs. Indian Oil Corporation Limited**¹ and submits that under the principle of this judgment, this Court would not have jurisdiction to entertain the present suit. The Defendant secondly submits that the Defendant has supplied various goods to the Plaintiff from 2013 onwards, for which the Defendant is entitled to recover a sum of USD 123,992.68 on account of principal together with interest. It is submitted that the Defendant is entitled to a set off or, at any rate, raise a counter claim in respect of price of goods sold and delivered.

3. As is obvious, these are all triable issues which arise as genuine and probable matters of defence brought before the Court in the

¹ (2013) 9 Supreme Court Cases 32

Defendant's reply to the summons for judgment. On these pleadings and the documents relied upon by the Defendant in support of its defence, the Defendant deserves an unconditional leave to defend the suit.

4. In the premises, the following order is passed:
 - (i) The Defendant is granted unconditional leave to defend the suit.
 - (ii) Written statement within four weeks from today.
 - (iii) The suit to appear on board for directions after four weeks.
 - (iv) The summons for judgment is disposed of.

(S.C. GUPTE, J.)