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

\+ CS(COMM) 1561/2016

ABBOTT HEALTHCARE PRIVATE LIMITED ..... Plaintiff

Through: Mr. Shantanu Parashar, Adv.

versus

LAKSHMI DISTRIBUTORS & ANOTHER ..... Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **20.11.2018**

1. The plaintiff has instituted this suit for recovery of Rs.1,74,42,094/- jointly and severally from the two defendants i.e. Lakshmi Distributors and Prem Thacholi, both at Cochin.

2. The suit was instituted under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) and came up before this Court first on 28th November, 2016, when on request of the counsel for the plaintiff it was adjourned to 16th December, 2016 when the counsel for the plaintiff stated that the suit may be treated as an ordinary suit. Summons of the suit were ordered to be issued. The order dated 17th March, 2017 records that both the defendants had been served and the defendant no.2 had also filed *Vakalatnama*. Subsequent order dated 24th May, 2017 records that no written statement was filed by either of the defendants and none had appeared for the defendants on 17th March, 2017 as well as on that date. Vide order dated 24th August, 2017, the defendants were proceeded against *ex parte* and the plaintiff relegated to *ex parte* evidence. The plaintiff has

examined its Manager (Finance) as PW1 and closed its *ex parte* evidence. The counsel for the plaintiff has been heard.

3. The plaintiff has pleaded, (i) that the plaintiff is engaged in the business of manufacturing, marketing and selling medical products; (ii) that plaintiff, on 4th June, 2011 entered into a Distribution Agreement with the defendant no.1 for the period 31st December, 2010 to 31st December, 2012; (iii) the said Agreement was mutually extended from 1st January, 2013 to 31st December, 2013 vide Letter of Extension dated 14th January, 2013; (iv) that as per terms and conditions of the Distribution Agreement, the defendants had to make payment of invoiced amount within sixty days from the date of invoice; (v) it was further agreed that for late payment, a surcharge of 1.5% was leviable; (vi) that the defendants purchased goods from the plaintiff against Purchase Orders submitted to the plaintiff; (vii) that the defendants, after June, 2013 became irregular with their payments, inspite of repeated requests and reminders of the plaintiff and assurances of the defendants; (viii) that a number of cheques issued by the defendants to the plaintiff were dishonoured; (ix) that the plaintiff, in view of business relations, did not lodge any complaints; (x) that no payments were received after 31st October, 2013; (xi) that a sum of Rs.3,07,06,261/- was due as of 31st December, 2013 from the defendants to the plaintiff against legally issued invoices; (xii) that in fact it was owing to such defaults of the defendants that the Distribution Agreement was not renewed beyond December, 2013; (xiii) that the defendants, vide letter dated 12th December, 2013 of the defendant no.2, confirmed the liability to the plaintiff as on 12th December, 2013 of Rs.3,07,06,261/-; (xiv) that the plaintiff, in order to limit

its losses encashed two unconditional Bank Guarantees issued by the defendants to the plaintiff in terms of the Distribution Agreement and recovered a total sum of Rs.70,00,000/-; (xv) that a sum of Rs.33,30,998/- was also due from M/s. Lakshmi Enterprises, another proprietorship firm of the defendant no.2 and out of the amounts received under the Bank Guarantees, the said sum of Rs.33,30,998/- was first adjusted; (xvi) that the defendants also returned certain stocks; and, (xvii) that after adjusting the value of the stocks returned, credit notes issued and the amounts released under the Bank Guarantees, a sum of Rs.1,74,42,093.74p remained due from the defendants to the plaintiff and which the defendants have failed to pay. Hence the suit.

4. The plaintiff, though has sued for recovery of Rs. 1,74,42,094/- only, has valued the suit for the purposes of jurisdiction at Rs.2,15,00,000/- and paid court fees of Rs.2,15,000/- thereon. The suit was instituted on 25th October, 2016 i.e. when the minimum pecuniary jurisdiction of this Court was above Rs.2 crores and the suit for receiving of Rs.1,74,42,094/- was below the minimum pecuniary jurisdiction of this Court and ought not to have been entertained in this Court. However, since the said fact was not noticed and the suit was entertained and defendants did not contest, the suit has reached till this stage. In this view of the matter, it is now not deemed appropriate to return the plaint for filing in the Court of appropriate pecuniary jurisdiction.

5. The plaintiff, in its *ex parte* evidence has proved its case.

6. A decree is passed in favour of the plaintiff and jointly and severally against the defendants, of recovery of Rs. 1,74,42,094/- with interest

pendente lite and future at 9% per annum.

7. The plaintiff shall also be entitled to costs of the suit, limited to the court fees paid on the plaint. No costs qua professional charges, since the defendants have not contested the suit.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 20, 2018
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