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

\+ CS(OS) 896/2011

TECHNOLOGY INFORMATION FORECASTING AND ASSESSMENT COUNCIL(TIFAC) ..... Plaintiff

Through: Mr. D. Bhattacharya, Advocate

versus

M/S CLARISIS ORGANICS LTD ..... Defendant

Through: None

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 26.04.2019

1. Technology Information Forecasting And Assessment Council (TIFAC) a a Society registered under the Societies Registration Act, 1860 has filed the present suit for the recovery of Rs. 2,12,71,944.00 (Rupees Two Crores Twelve Lacs Seventy One Thousand Nine Hundred and Forty Four only) with *pendente lite* and further interest and costs.

2. The facts of the case are that Plaintiff entered into a Technology Development Assistance Agreement (TDA Agreement) dated 3rd August 1999 with the Defendant for setting up of Pilot Plant (600 MT) for production of 3,4 Dichloro Aniline. The cost for the entire project was Rs. 180 lakh. In terms of the TDA Agreement, the Plaintiff was to invest 70 lakhs in the Defendant's project and the balance amount of Rs. 110 lakh was to be brought in by the Defendant.

3. In terms of the agreement the Plaintiff disbursed the amount of Rs. 70 lakh in 3 installments of Rs. 35 lakh, 21 lakh and 14 lakh on 19th June 2009, 12th May 2000 and 19th June 2001, respectively. Further, as per the agreement, the Defendant was to re-pay the Plaintiff an amount of 105 lakh by way of 10 half yearly installments as mentioned in Annexure-III to the TDA agreement. The same is being reproduced as under:-

> "CONTRIBUTION OF FUNDS TO TIFAC BY THE COMPANY
>
> The Company shall contribute funds to TIFAC without any conditions in order to support the technology development and other objections of TIFAC as per the schedules indicated in the table below:-
>
> The first installment shall become due and payable on and after Sept. 30.2000. The table of payment is as under:-"

01	September 30, 2000 or within 6 months when the Project is declared successful	7
02	6 months from the commencement of repayment	7
03	12 months from the commencement of repayment	8
04	18 months from the commencement of repayment	8
05	24 months from the commencement of repayment	10
06	30 months from the commencement of repayment	11
07	36 months from the commencement of repayment	12
08	42 months from the commencement of repayment	13
09	48 months from the commencement of	14

	repayment	
10.	54 months from the commencement of repayment	15
Total repayment		105

4. The Defendant failed to honour the commitment and sought for extension of time and waiver of interest vide letters dated 15th January 2002, 31st July 2002 and 3rd March 2003. In response to the Defendants request for extension of time, Plaintiff revised the payment schedule vide letter dated 5th November 2002 with a rider that in case the Defendant fails to make the payment as per the revised schedule, they would be liable to pay interest on the amount due @ 18%. The revised payment schedule is as under:

S.no.	Particulars of payment	Amount (In lakh)
01	First installment of repayment is by 8th January 2003	14
02	2nd Installment of repayment is on 8th July 2003	16
03	3rd installment of repayment is on 8th January 2004	17
04	4th Installment of repayment is on 8th July 2004	18
05	5th installment of repayment is on 8th January 2005	19
06	6th Installment of repayment is on 8th July 2005	21
Total repayment		105

5. Pursuant to the revised schedule, Defendant made part payment of Rs. 9 lakh and thereafter failed to honour the commitments under the revised timeline for payment, pursuant to which the present suit was instituted.

6. On summons being issued, Defendant entered appearance through the

counsel for the Official Liquidator (OL), and appraised this court that the Defendant Company has been ordered to be wound up by the Hon'ble High Court of Gujarat vide order dated 8th February 2011 and that the OL has already taken over possession of the assets of the Defendant.

7. This court taking note of the aforenoted fact stayed the proceedings in the present suit and the matter was adjourned *sine die*, vide order dated 3rd May, 2012. The Plaintiff was permitted to revive the present suit after obtaining leave from the Company Court. Plaintiff then filed Company Application No. 210/2015 in Company Petition No. 50/2010 before the High Court of Gujarat and sought permission to continue with the present proceedings. The application was allowed and Plaintiff has been granted permission to seek compensation in the present suit vide order dated 13th August 2015 (**Ex. PW1/2**). The Plaintiff filed an application seeking revival of the suit. Notice of this application was directed to be sent to the Official Liquidator vide order dated 24th January, 2017. Despite service there was no appearance on behalf of the Official Liquidator and accordingly Defendant was proceeded ex-parte by the order dated 17th April, 2017 and the matter was directed to be listed before the Joint Registrar for completion of Plaintiff's ex-parte evidence.

8. Plaintiff has filed affidavit by way of evidence **(Ex. PW1/A)** and affidavit for leading secondary evidence **(Ex. PW 1/B)**. In the first affidavit, the Plaintiff through its authorized representative, Mr. Deep Prakash, deposed as as under :

"I, Deep Prakash, Late Shrl Sant Kumar, aged 53 years. Accounts Officer of Technology Information Forecasting and Assessment Council (TIFAC), having my office at Vishwakarma Bhawan, Shaheed Jeet Singh Mafg, New Delhi - 110016, do hereby solemnly affirm and declare as under:-

1. I am the Authorised Representative of the Plaintiff in view of the letter of authority dated 09.12.2015 issued in my favour. The Plaintiff is a Society registered and incorporated under the Societies Registration Act, 1860, and is competent to initiate this complaint. As such I am competent to depose hereto. The Letter of authority dated 09.12.2015 is **Exhibit PW 1/1**. The Plaintiff functions under the Department of Science and Technology. Ministry of Science and Technology, Government of India, one of its main objectives is to promote development of technologies in e country which have national and commercial Importance.

2. The Defendant Is a company, incorporated under the provisions of The Companies Act; and is facing winding-up/ liquidation proceedings before the Hon'ble High Court of Gujarat, in CP No. 50/ 2010. Accordingly, leave of the Hon'ble High Court of Gujarat, under Section 446 of The Companies Act, was obtained on behalf of the Plaintiff, vide order dated 13.08.2015, to pursue with the present civil suit. The certified copy of the said Order dated 13.08.2015 is marked as **Exhibit PW 1/ 2**.

3. The Defendant obtained a financial assistance to the tune of INR 70,00,000/- (Indian Rupees Seventy Lakhs only) from the Plaintiff vide Technology Development Assistance Agreement dated 03.08.1999, along with Deed of Hypothecation dated 03.08.1999. Either of the agreements was duly signed by Defendant through its then Dy. Managing Director (J.V. Joshi), Manager Accounts (Ramesh Iyer) and Dy. Manager: Sales (H.C. Sikh). The said two agreements dated 03.08.1999 are marked as **Exhibit PW 1/ 3** and **Exhibit PW 1/ 4** The board resolution dated 03.03.1999 drawn up by the board of directors

of Defendant is **Exhibit PW 1/ 5**. Form nos. 8 & 13, with respect to, registration of the charge created by the Defendant, over its moveable assets under the aforesaid deed of hypothecation, with ROC- Ahmedabad is marked as **Exhibit PW 1/ 6** Thereafter, the financial assistance amounts (i.e. INR 70,00,000/-) were released by Plaintiff to the Defendant.

4. The aforesaid funds were thus procured by Defendant from the Plaintiff under the Agreement, post execution of the aforesaid agreements. As such the terms of the agreement were duly accepted by Defendant. As per the agreement, in return of the financial assistance, the Defendant had to repay a sum of Rs. 1,05,00,000/ to the Plaintiff, by way of 10 half yearly instalments. This repayment schedule was enumerated under Schedule (ie. Annexure III) to the Agreement, whereby the first repayment instalment fell due on 30.09.2000, or within 06 months of the project being declared successful.

5. On 08.07.2002, the project, with respect to which the Defendant procured funds from Plaintiff, was declared successful by the Monitoring Committee appointed by Plaintiff under the agreement. Even according to the defendant, the project was commercially commissioned in year 2001 itself. Accordingly, the repayment had to commence latest by 08.01.2003. However, the Defendant citing various economic and process difficulties, requested for re- negotiating the repayment plan under the agreement, vide its letters dated 15.01.2001 and 31.07.2002. Upon due consideration, that Plaintiff is a Government of India undertaking, and that the financial assistance were already of soft terms, the Plaintiff suggested a repayment schedule, vide its letter dated 05.11.2002 (which was in accordance with the terms of the agreement). Vide this plan, the repayment was commencing from 08.01.2003, which was within 06 months of the project being declared successful. The letter dated 15.01.2001 sent by Defendant is **Exhibit PW 1/7**. The letter dated 05.11.2002 issued by the Plaintiff to Defendant is marked as **Exhibit PW 1/8.**

Vide the aforesaid letter, it was further stated that in the event of any further default in repayment, the Defendant shall be liable for payment of interest @ 18% per annum on the outstanding amounts/ instalment.

6. Subsequently, the Plaintiff received a mere sum of INR 9,00,000/- from Defendant, in the following manner:

Date of payment	Amount (Rs)
03.03.2003	2.00 lacs
27.06.2003	25000.00
13.11.2003	2.25 lacs
24.05.2004	2.25 lacs
16.08.2004	2.25 lacs
Total	Rs. 9.00 lacs

As evident, the aforesaid payments were clearly deficient, since the amounts that fell due were much larger (as can be seen from the repayment schedule). The Defendant wrote various letters to the Plaintiff, citing various difficulties being faced by them, and hence requested for further concession from Plaintiff. However, the Plaintiff being a Government of India undertaking couldn't accede to such requests. The letters dated 03.03.2003, 22.06.2003, 12.11.2003, 01.08.2006 and 03.09.2007 sent by Defendant, along with its accompanying annexure marked as **Exhibit PW 1/ 9 to PW/1/13**.

7. It may be noticed that the Defendant consistently acknowledged its liability towards the Plaintiff under the aforesaid agreement. However, the Defendant failed to honour its commitment under the agreement. Accordingly, the Plaintiff issued a legal notice dated 23.01.2008. The said notice was received by Defendant, whereafter it sent a vexatious reply dated 07.02.2008. However, the Defendant did not deny of having availed the financial assistance under the agreement.

8. In the mean time however, the Defendant approached the BIFR, on 07.12.2004 for obtaining appropriate reliefs. The said proceedings ultimately culminated to an Order dated 25.02.2010, whereby BIFR opined for the winding up of the Defendant. Based on the said opinion and reference, the Hon'ble High Court of Gujarat directed winding up of the Defendant on 08.02.2011. Subsequently, the Plaintiff herein obtained relief for pursuing with the present suit on 13.08.2015 (already marked as **Exhibit PW 1/2**. The Orders dated 17.12.2007, 04.02.2009, 05.11.2009 and 05.03.2010 passed by BIFR Is **Exhibit PW 1/ 14 to PW 1/ 17**. The Order dated 01.09.2009 passed **Exhibit PW 1/18**.

9. The aforesaid loan/ financial assistance obtained by the Defendant from Plaintiff was advanced/ effected / provided In the general / usual course of the business of the Plaintiff. The said finahclal assistance/ loan had been offered to many other companies/ firms, etc. as well, and the Defendant herein was not given any special or unusual assistance. The transaction was not anything new or uncommon for the Plaintiff, and In fact forms part of the goals and objectives for which Plaintiff functions and operates. The funds that are released by the Plaintiff by of such financial assistance/ loans etc., are part of the public funds allocated to It by the Government of India In advancing the purposes of Its Incorporation.

10. It may further be noticed that, the Defendant was granted the assistance on soft terms, with the belief that It will comply with the terms of repayment. However, having failed doing so, the Defendant had put the public funds to risk, thereby causing serious loss to public exchequer. Accordingly, the Defendant is liable to pay Interest @ 18% per annum (In view of the letter dated 05.11.2002 sent by Plaintiff). It is pertinent to say that had the Defendant approached a commercial financial institution or a regular bank. It would have been liable to pay Interest @ atleast 15- 20 % per annum, which are usually levied for offering commercial loans (or loan of like nature). Hence, the Plaintiff has rightly claimed interest @ 18% per annum.

> 11. Hence, the present suit is liable to be decreed as per terms of prayer clause. Out of the agreed sum of Rs. 1,05,00,000/-, the Defendant has simply repaid Rs. 9,00,000/-, so far, as detailed above. Accordingly, a sum of Rs. 96,00,000/- continues to be pending, which is liable to be repaid with interest @ 18% per annum, from the date of respective accrual to the date of filing of the present suit, which is Rs. 2,12,71,944.00. Additionally, *pendente lite* and future interest @ 18% be also awarded in favour of the Plaintiff from the date of filing the present suit till the date of actual recovery. Litigation costs be also awarded in favour of Plaintiff. "

9. In terms of the evidence brought on record, the Plaintiff has proved the Technology Development Assistance Agreement **Ex. PW1/3** and the hypothecation deed **Ex. PW1/4**. Plaintiff has also proved the correspondence exchanged between the parties including the letters of the Defendant **Ex. Nos. PW1/9, PW1/10** and **PW1/11,** wherein the Defendant has acknowledged its liability while seeking extension of time and waiver of interest amount. Plaintiff has also proved the revised payment schedule agreed between the parties **Ex. PW 1/8**. Relevant para of **Ex. PW 1/9** is as under:

> "We make this sincere request to TIFAC as the company is unable to cover its Financial Cost, and in this situation it even becomes very difficult to service the debt without cash accruals and it is becoming very difficult to even manage the daily operations without the help of our Bankers State Bank of India. Hence we request you accept our detailed plan and help us in this time of crisis.
>
> We are very hopeful to clear the principal amount of Rs 70 Lacs the way we have cleared the other Institutions on time as per their settlement Letter.

> Hence, looking into the Facts and Circumstances we request TIFAC once again to consider our Request for Waiver of interest to the tune of Rs 35 lakhs and approve the Repayment Schedule. Starting 01/04/2003."

10. The evidence led by the Plaintiff has been uncontroverted. The letters proved on record **Ex. Nos. PW1/9, PW1/10** and **PW1/11** clearly show that Defendant has consistently acknowledged its liability under the TDA Agreement **(Ex. PW1/3)**. Further, the Defendant in breach of the agreement has failed to honor its commitment.

11. On the basis of the evidence led by the Plaintiff, it is found that the Plaintiff is entitled to receive a sum of Rs. 96,00,000/- (Rupees Ninety Six Lakh only) from the Defendant along with interest. Accordingly, the suit is decreed in favour of the Plaintiff and against the Defendant for an amount of Rs. 96,00,000/- (Rupees Ninety Six Lakh only) along with interest @ 9 % p.a. simple, from the date of filing of the present suit till the actual date of payment. The remaining prayers were not pressed.

12. Since the Defendant Company is under liquidation, the decree passed by this Court would now be executed in terms of the provisions of the Companies Act in accordance with law.

13. Decree sheet be drawn up.

SANJEEV NARULA, J

APRIL 26, 2019/rr