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

%   Decidedon: 17th December, 2019

+   **CS(COMM) 306/2017**

M/S TROPICAL EXIM INTERNATIONAL PVT. LTD.
..... Plaintiff
Represented by: Mr. Chetan Roy, Advocate.

versus

DHIR GLOBAL INDUSTRIA PVT. LTD. AND ORS.
..... Defendant
Represented by: None

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present suit the plaintiff seeks a decree for recovery of ₹ 1,06,42,447.69 along with interest @ 18% from the due date till the actual date of realization and a decree of pendente lite and future interest @ 18% per annum on the amount of the suit from the date of each invoice and until the date of filing of the suit and from the date of filing the suit till realization of decretal amount and cost of the suit.

2. Summons in the present suit were issued to defendant No.1 vide order dated 28th April 2017 and defendant Nos.2 and 3 being Directors of defendant No.1 were deleted from the array of parties. The defendant entered appearance on 12th July 2017. Issues were framed vide order dated 16th October, 2017 and the matter was listed before the learned Joint

Registrar for recording of evidence on 21st November, 2017. PW-1 Pushkar Chopra tendered his examination-in-chief but his cross-examination was deferred to 22nd March, 2018 as the affidavit of witness was supplied in Court itself.

3. On 22nd March, 2018 PW-1 was discharged unexamined as the learned counsel for the defendant had gone to attend last rites of his uncle. Learned counsel for the plaintiff however, requested to place this matter before this Court for appointment of local commissioner to record the evidence as early as possible. On 23rd April, 2018 local commissioner was appointed for recording of the evidence. Plaintiff examined two witnesses PW-1 Mr.Pushkar Chopra, Director of plaintiff company and PW-2 Mr.Sajan George, Accountant of plaintiff company, who were cross-examined by the counsel for the defendant. Thereafter the plaintiff's evidence was closed on 17th September, 2018. On 13th December, 2018 the matter was listed on office note by the Registry in view of order dated 7th December, 2018 passed by the local commissioner whereby it was noted that the defendants have failed to file their affidavit by way of evidence and lead any evidence. Thereafter the matter was adjourned to 25th January, 2019 whereby learned counsel for the defendant made a submission that they were trying to contact their clients and sought one more opportunity to lead evidence. Thereafter the matter was listed for final arguments on 25th April, 2019.On 6th August, 2019 none appeared on behalf of the parties and the matter was adjourned to 27th November, 2019, when none appeared on behalf of defendant No.1 despite pass-over. Defendant No.1 despite several opportunities failed to file his affidavit by way of evidence and has also led

no evidence. Thus defendant No.1's right to lead evidence was closed and it was proceeded ex-parte.

4. Case of the plaintiff is that it is engaged in import, contract manufacturing and supply of viscose fabric, poly viscose fabric, nylon fabric, polyester fabric, cotton fabric, tefatta, twill, dobby, satin, hair canvas, woven front fuse etc. in Delhi NCR and across country. Vide Resolution of Board of directors dated 2nd February 2017, the plaintiff on behalf of the plaintiff company has authorized one Mr. Pushkar Chopra to carry out all the necessary acts in relation to the present suit.

5. Multiple orders were placed by the defendants vide emails dated 18th March 2016, 28th April 2016, 2nd September 2016 and 17th September 2016, for supply of products such as Buckram Black, Armhole Tape etc. with the plaintiff. The same had been supplied by the plaintiff on specific promises and assurances from the defendant but complete payments towards the supply of the said products were not made by defendant no. 1 and an outstanding of ₹ 1,06,42,447.69 became due. The said goods were supplied by the plaintiff against the invoices with an implied business understanding that the dues have to be cleared by the defendants, with a credit facility of 14 days from the date of issuance of the invoices.

6. In furtherance to the aforementioned, the defendants issued several cheques including but not limited to ₹ 77 lakhs. A total of 77 chequeswere issued by the defendants out of which 42 cheques of ₹ 1,00,000/- eachwere dishonoured with the remarks 'Exceeds Arrangement' and 35 cheques were yet to be presented due to which the plaintiff has suffered a huge financial loss. The cheques bearing nos. 073232-245, 073247-260, 703497-499,

703502-509 and 703511-512 aggregating to ₹ 42,00,000/- were dishonoured.

7. Plaintiff also initiated appropriate proceedings against defendants under Section 138 of the NI Act.

8. Various requests with respect to the payment of the said outstanding amount were made by the plaintiff which were avoided by the defendants. Vide notice dated 29th December 2016 and several other notices, defendants were provided with various opportunities to pay the admitted amounts. However, no reply to the same was received by the plaintiff.

9. Defendants did not dispute the existence of the debt which is apparent from the account statement issued by defendant no. 1 on 27th December 2016 for the period 1st April 2016 to 31st March 2017.

10. The authorized representative of the plaintiff tendered his evidence by way of an affidavit vide Ex. PW-1/1. The board resolution dated 2nd February 2017 was proved as Ex. PW-1/A. Copy of emails dated 18th March 2016, 28th April 2016, 2nd September 2016 and 17th September 2016 were proved as Ex. PW-1/B (Colly) and copy of invoices dated 2nd April 2016 to 19th December 2016 along with the corresponding delivery challans were proved as Ex. PW-1/C (Colly). The copy of account statement maintained by the plaintiff for the period 1st April 2016 to 27th December 2016 was proved as Ex. PW-1/D. Copies of dishonoured cheques bearing nos. 073232 dated 10th June 2016, 073233 dated 20th June 2016, 073234 dated 30th June 2016, 073235 dated 9th July 2016, 073236 dated 19th July 2016, 073237 dated 30th July 2016, 073238 dated 10th August 2016, 073239 dated 20th August 2016, 073240 dated 30th August 2016, 703497 dated 10th September 2016, 703498 dated 20th September 2016, 703499 dated 30th

September 2016, 073241 dated 10th September 2016, 703509 dated 14th September 2016, 073242 dated 20th September 2016, 073243 dated 30th September 2016, 703500 dated 10th October 2016, 703502 dated 30th October 2016, 073244 dated 30th October 2016, 073245 dated 10th October 2016, 073247 dated 10th November 2016, 703511 dated 14th November 2016, 073248 dated 19th November 2016, 703503 dated 10th November 2016, 703504 dated 21st November 2016, 703505 dated 30th November 2016, 073249 dated 30th November 2016, 703506 dated 10th December 2016, 073250 dated 10th December 2016, 703512 dated 14th December 2016, 703507 dated 20th December 2016, 073251 dated 20th December 2016, 703508 dated 30th December 2016, 073252 dated 30th December 2016, 073253 dated 10th January 2017, 073254 dated 20th January 2017, 073255 dated 30th January 2017, 073256 dated 10th February 2017, 073257 dated 20th February 2017, 073258 dated 28th February 2017, 073259 dated 10th March 2017, 073260 dated 20th March 2017 were proved as Ex. PW-1/E (Colly). Copies of the postdated cheques bearing no. 073261 dated 30th March 2017, 073262 dated 10th April 2017, 073263 dated 20th April 2017, 073265 dated 10th May 2017, 073266 dated 20th May 2017, 073267 dated 30th May 2017, 073268 dated 10th June 2017, 073269 dated 20th June 2017, 073270 dated 30th June 2017, 073271 dated 10th July 2017, 073272 dated 20th July 2017, 073273 dated 31st July 2017, 073274 dated 10th August 2017, 073275 dated 19th August 2017, 073276 dated 30th August 2017, 073277 dated 9th September 2017, 073278 dated 20th September 2017, 073279 dated 30th September 2017, 073280 dated 10th October 2017, 073281 dated 20th October 2017, 073282 dated 30th October 2017, 073283 dated 10th November 2017, 073284 dated 20th November 2017, 073285 dated 30th November 2017, 073286 dated 9th December 2017, 073289 dated 10th January 2018, 073287 date 20th December 2017, 073288 dated 30th December 2017, 073290 dated 20th January 2018, 073291 dated 30th January 2018, 073292 dated 10th February 2018, 073293 dated 20th February 2018, 073294 dated 28th February 2018, 073295 dated 10th March 2018 and 073296 dated 20th March 2018 are proved as Ex. PW-1/F (Colly). Copy of legal notice dated 30th January 2017 with postal receipts and tracking reports were proved as Ex. PW-1/H. Copy of the statement of accounts for the period starting from 1st April 2016 to 31st March 2017 issued by the defendant was proved as Ex. PW-1/I (Colly).

11. In his cross-examination by the learned counsel for the defendant, PW-1 stated that he is not maintaining the accounts of the plaintiff company but there is an accountant who is maintaining the same. The minute book maintained by the plaintiff company is in loose leaf format and the bills relied upon by him were not issued under his signature but were issued by the plaintiff upon the defendant under signature of the accountant. He further stated that the books of accounts are maintained in tally software and no paper books were being maintained. The claim of the suit was shown in the balance sheet as receivables by the plaintiff company and the defendant also reflected its liability towards the plaintiff in its balance sheet and books of accounts. M. K. Dhir, managing director of the defendant company gave his personal cheque as guarantee. The purchase order contains the time of making the payment that is 90 days. However, the defendant had been making payments during the period of 90 to 120 days to the plaintiff. The defendant company was issued the purchase order via emails for effecting the supplies by plaintiff and that there was no

agreement between the plaintiff and defendant no. 1 for the payment of interest for the delayed payments.

12. The account officer of the plaintiff company tendered his evidence by way of an affidavit vide Ex. PW-2/A. Copy of invoices dated 2nd April 2016 to 19th December 2016 along with corresponding delivery challans are proved as Ex. PW-2/B (Colly). Copy of account statement issued by the plaintiff for the period 1st April 2016 to 27th December 2016 is proved as Ex. PW-2/C. Copy of the statement of accounts for the period 1st April 2016 to 31st March 2017 issued by the defendant is proved as Ex. PW-2/D (Colly). In his cross examination by the learned counsel for the defendants, he stated that the defendant placed orders for supply of material manufactured/ trading by the plaintiff through email and oral orders were also placed. He stated that around 60 to 70 oral orders were placed by the defendant during the abovementioned period. He further stated that there was no written agreement for payment interest @18% p.a. However, it is a printed clause on footnote of the bill that in case of default the plaintiff would charge interest at the said rate on account of delayed payment. The invoices raised by the plaintiff against the defendant were dispatched along with the material and the same can be proved by the delivery invoices.

13. Considering the evidence led by the plaintiff which has not been rebutted by the defendant nor anything material elicited in the cross-examination of the plaintiff's witness, the suit is decreed in favour of the plaintiffs and against the defendant directing the defendant to pay a sum of ₹ 1,08,27,151.69 with an interest @9% from the date of disposal of suit till date of actual payment.

14. Suit is disposed of. Decree sheet be drawn accordingly.

(MUKTA GUPTA)
JUDGE

DECEMBER 17, 2019
'mv/sk'

HIGH COURT OF DELHI