$~OS-3

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

% ***Date of decision*: 15.04.2019**

\+ CS(COMM) 737/2017

M/S CENTURY PULP & PAPER ..... Plaintiff
Through Mr.Pankaj Kumar Singh, Adv.

Versus

SHIV SALES CORPORATION ..... Defendant
Through Mr.P.K.Sharma and Mr.Ayush, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

IA No.3469/2019

1. This application is filed by the plaintiff under Order XIIIA of the Commercial Courts Act, 2015 as amended by the 2018 Act r/w section 151 CPC. The present suit is filed for recovery of Rs. 2,20,00,000/-. The case of the plaintiff is that he is engaged in the business of manufacture and sale of writing, printing and tissue paper. The defendant was appointed as a distributor/dealer for writing and tissue paper for the Delhi region in terms of distribution/dealership agreement. It is pleaded that on 4.9.2015 a Settlement was arrived at between the parties on account of which the defendant had acknowledged that they will pay to the plaintiff a sum of Rs.280 lacs. Further, on 7.9.2015 in terms of the Account Settlement Agreement the defendant handed over 12 post-dated cheques of Rs.280 lacs to discharge liability under a covering letter to the plaintiff. The first three

cheques of Rs.20 lacs each i.e. total of Rs.60 lacs were duly honoured. Subsequent cheques have been dishonoured by the bankers of the defendant leaving a balance of Rs.2,20,00,000/-. The plaint also relies upon a reply dated 13.2.2016 sent by the defendant to the legal notice sent by the plaintiff. There again, the defendant has admitted an outstanding amount of Rs.220 lakhs payable to the plaintiff. Subsequently another legal notice was sent to the defendant. The defendant has on 15.5.2017 replied and admitted an outstanding amount of Rs.1.33 crores stating that a sum of Rs.15 lacs was paid to the plaintiff by RTGS. It is further stated that a sum of Rs.72 lacs is lying as a security which is also to be adjusted by the plaintiff.

2. I have heard learned counsel for the parties. Learned counsel for the plaintiff has taken me through the aforesaid documents including the Settlement Agreement dated 4.9.2015, the communication dated 7.9.2015 forwarding the PDCs of Rs.280 lacs, reply to the legal notice dated 13.2.2016 and letter dated 15.5.2017.

3. Learned counsel appearing for the plaintiff further states that as far as adjustment of the security amount is concerned, the same has not been deposited by the defendant but by a sister company of the defendant, namely, Scraft Paper Products Pvt. Ltd.

4. Learned counsel appearing for the defendant has reiterated his submissions, namely, that the plaintiff is obliged to adjust the security deposit of Rs.72 lacs plus a sum of Rs.15 lacs already paid. He further states that in terms of the Settlement Agreement dated 4.9.2015 credit notes were to be issued by the plaintiff which the plaintiffs have failed to do. He also states that in the absence of the necessary credit notes, there was an impact on the balance sheets of the defendant. Further, the plaintiff was also obliged

to continue the business dealings with the defendant which he failed to do. Hence, he states that on account of the defaults of the plaintiff the defendant cannot be blamed and is not liable to pay any amount.

5. I may note paragraph 5 of the Settlement Agreement which reads as follows:-

> "5. SSC agreed to pay Rs. 280 lakhs as full & final amount towards item (1) & (2), as under;
>
> a) Rs. 180 lakhs in 3 equal monthly instalments, and
>
> b) Rs. 100 lakhs in 4 equal monthly instalments upto
>
> 31st March, 2016.

6. Reference may be had to the reply dated 13.2.2016 where again in paragraph 5 of the same the defendant has admitted his liability to pay a sum of Rs.280 lacs. Reference may also be had to communication dated 15.5.2017 where the defendant states as follows:-

> "To,
>
> M/s Century Pulp & Paper
> (Prop. Century Textiles & Ind. Ltd.)
> DLF Tower, Jasola
> New Delhi
>
> Sub.: - Outstanding Amount Confirmation
> Dear Sir,
> We would like to inform you that the total outstanding amount is Rs. 1.33 Crore as on date as per the following detail:-

Settlement Amount as per settlement note dated 04-09-15 Less	28000000
Security Adjusted: -	7200000

Cheque cleared : -	6000000
RTGS Made: -	1500000
Net Balance as on date: -	13300000

We request you to kindly confirm the above outstanding amount. We will clear the above amount in June 2017."

7. Hence, as late as on 15.5.2017 defendant has made a categorical admission of its liability to pay a sum of Rs.1,33,00,000/- to the plaintiff after security adjustments.

8. In my opinion, in view of the clear admission by defendant the plaintiff is entitled to a decree for the said amount of Rs.133 crores. The plea stated by the defendant, namely, that the plaintiff did not commence business or did not give credit notes is misplaced inasmuch as the post dated cheques given by the defendant were being returned unpaid. In the light of this conduct the plaintiff cannot be faulted for having not commenced business with the defendant.

9. Coming back to the communication dated 15.5.2017 of the defendant there is a security adjustment of Rs.72 lacs being made by the defendant. Admittedly, this security was paid by a sister company of the defendant. In my opinion, the defendant would be entitled to seek adjustment only on receipt of appropriate communication by the plaintiffs from the said company Scraft Paper Products Pvt. Ltd. permitting the plaintiff to adjust the security amount against the suit dues. This amount would be adjustable only on receipt of the said communication. Needless to add that on receipt of the full payment the plaintiff would issue necessary credit notes to the defendant in terms of the settlement agreement for Rs.4,68,22,0000/-. Application is

disposed of accordingly.

CS(COMM)737/2017

1. In view of the above, a decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.2,05,00,000/-. On receipt of appropriate communication from Scraft Paper Products Pvt. Ltd permitting the defendant to adjust the security amount of Rs.72 lacs, the same shall be duly adjusted by the plaintiff from the decreetal amount. A decree of mandatory injunction is also passed in favour of the defendant and against the plaintiff directing the plaintiff to issue necessary credit notes for stated sum of Rs.4,68,22,000/- after receipt of the decreetal amount. Plaintiff shall also be entitled to costs. The plaintiff shall be entitled to interest @ 6% simple interest per annum from the date of institution of the suit till the date of a decree. The plaintiff shall also be entitled to interest @ 10% per annum from the date of decree till recovery of the amount.

2. Suit stands disposed off. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J.

APRIL 15, 2019/n