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

Pronounced on: 15.12.2023

+ **CS(COMM) 73/2021**

TRINITY GLOBEMERCHANTS PVT LTD Plaintiff
Through: Mr. Arunav Patnaik, Mr. Nirbhay
Nitya Nanda, Advs.

versus

MANGANGA SAHAKARI
SAKHAR KARKHANA LTD Defendant
Through: None.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The instant suit has been filed by the plaintiff for recovery of Rs.19,25,77,431.41/- alongwith *pendente lite* and future interest at the rate of 18% per annum against the defendant.
2. The factual background in the context of which the aforesaid amount has become due and payable by the defendant to the plaintiff has been elaborately set out in the plaint.
3. The suit has been filed based on two contracts *i.e.*, Supply Agreement dated 12.10.2015 and Supply Agreement-2 dated 09.12.2016 [*Ex. PW1/I*].
4. Prior to filing of the instant suit, the plaintiff had filed a suit in this Court on the same cause of action, being CS(COMM) 16/2020. However, since the plaintiff had not exhausted the remedy of pre-institution mediation prior to filing of the said suit, the plaintiff filed an application being IA No.2504/2020 in the said CS(COMM) 16/2020 whereby the plaintiff sought liberty to withdraw the said suit. The said application was allowed *vide* order



dated 24.02.2020 in the following terms:-

“IA No.2504/2020(of the plaintiff un/S.151 CPC)

1. The plaintiff seeks to withdraw the suit owing to the formal defect of having not availed of pre-litigation mediation mandated before institution of a commercial lis.

2. The application is allowed and disposed of.

CS(COMM) 16/2020

3. The counsel for the plaintiff on enquiry states that the Registry was informed not to issue summons to the defendant ordered to be issued on 15th January 2020.

4. The suit is dismissed as withdrawn with liberty to sue again on same cause of action.

5. However all defences shall remain open to the defendant.

6. On request, a certificate is ordered to be issued, entitling the plaintiff to refund of Court fees paid less Rs.50,000/-, to the plaintiff.

7. The date of 3rd March, 2020 before the Joint Registrar is cancelled.”

5. On 27.02.2020, the plaintiff filed an application for initiation of pre-litigation mediation to the authority under the Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018 which was registered as case bearing No. 75/Pre-Inst./DHCLSC/2020. Notice in the said mediation case was issued to the defendant on 28.02.2020 by the concerned authority i.e., the Delhi High Court Legal Services Committee (the DHCLSC).

6. The counsel for the opposite party/defendant appeared on 18.03.2020 in the mediation proceedings and sought an adjournment on the ground that the MD & Chairman of the defendant was undergoing heart surgery. At the request of the opposite party/defendant, the mediation was adjourned to 01.04.2020. A copy of the said order dated 18.03.2020 is filed as document D-321 of the list of documents filed on behalf of the plaintiff and is exhibited as **Ex. PW-1/321**.

7. Thereafter, the defendant did not participate in the mediation proceedings despite receiving several notices/emails from the DHCLSC. On



04.09.2020, the Judicial Assistant, DHCLSC issued an email to all parties attaching therewith the Non-Starter report dated 30.08.2020 made under Rule 3(6) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. Printout of email dated 04.09.2020 is filed as document D-329 and the Non-Starter report dated 30.08.2020 is filed as document D-330 of the list of documents filed on behalf of the plaintiff (at pages 428-429, Volume IV) and the same are exhibited as **Ex. PW-1/329** and **Ex. PW 1/330** respectively.

8. Thereafter, the plaintiff was constrained to approach this Hon'ble Court by means of the present suit praying for a decree in favour of the plaintiff against the defendant for recovery of Rs.19,25,77,431.41/- alongwith *pendent lite* and future interest at the rate of 18% per annum from the time of filing the present suit till the date of realization.

Factual Background

9. The defendant had undertaken to supply the plaintiff white crystal sugar under Supply Agreement-2 dated 09.12.2016 - **Ex. PW 1/1** (see Document D-1, pages 33-41, Volume IV). Under Supply Agreement-2 dated 09.12.2016, the defendant was required to supply 23,400 MT (equivalent to 9 rakes or 2,34,000 quintals (Qtls) of sugar) of S-30/SS-30 grade sugar packed in PP bags, each bag weighing 50 kgs net weight @ Rs. 3,300/- per quintal (or Rs. 33000/- Per MT) inclusive of excise duty and cess by and before 31.03.2017.

10. Prior to executing Supply Agreement-2 dated 09.12.2016 (Ex. PW 1/1), the parties had earlier entered into a Supply Agreement dated 12.10.2015, under which the defendant was required to supply the plaintiff with 26,000 MT (Metric Tons)/ 10 rakes/ 2,60,000 quintals of white crystal



sugar produced in the crop year 2015-2016 of Grade S-31. The required quantity of sugar was to be supplied by the defendant during the period 01.12.2015 to 31.05.2016. Even though the plaintiff transferred an amount of Rs.16,71,05,200/- between the period 17.10.2015 to 10.03.2016 by means of bank transfers/RTGS, the defendant was able to supply sugar worth Rs.7,71,05,200/- only and an amount of Rs. 9,00,00,000/- (Rupees Nine crore) remained outstanding against which no sugar had been supplied. (see paras 3 to 6 of Evidence Affidavit of **PW 1-Ex. PW 1/A**).

11. The defendant then requested the plaintiff to execute a new Agreement, extending the time period for supply of sugar as well as revising the price of sugar. Acceding to the request of the defendant, the plaintiff entered into Supply Agreement-2 dated 09.12.2016, in which the supply period was extended from 09.12.2016 till 31.03.2017 and the crop year was changed from 2015-2016 to 2016-2017 and the new price of Rs. 3,300/- per quintal including excise duty and cess was also agreed to by the plaintiff. Accordingly, the parties executed Supply Agreement-2 dated 09.12.2016.

12. Sale order bearing No.MSSK/ACCOUNT/1755/2017-17 dated 09.12.2016 was also issued in which the Managing Director of the defendant confirmed to the plaintiff the sale of sugar as per the details of the Supply Agreement-2 dated 09.12.2016. (See: **Ex. PW 1/3**, Document D-3 at page 43 of Volume IV).

Relevant clauses of the Agreement between the parties:

13. In clause 6 of the Supply Agreement-2 dated 09.12.2016, the defendant acknowledged the receipt of the payments advanced to it of an amount of Rs.9,00,00,000 (Rupees Nine crore) *i.e.*, the amount which remained outstanding under the earlier Agreement of 2015 (however, due to



typographical error, it was inadvertently recorded in some parts of the Supply Agreement-2 dated 09.12.2016 that the defendant had received an advance payment of Rs. 10 crores from plaintiff, which is later clarified in clauses 6 and 7 of the said Agreement).

14. As per clause 7 of the Supply Agreement-2 dated 09.12.2016, it was mutually agreed that the advance payment of Rs.9,00,00,000/- (Rupees Nine crore) would be adjusted on a proportional basis *i.e.*, at the rate of Rs.1,00,00,000/- (Rupees One crore) per rake/2600 M.T of sugar from the further amounts to be paid by the plaintiff to the defendant.

15. As per clause 8 of the Supply Agreement-2 dated 09.12.2016, it was specifically understood between the parties that in the event the defendant failed or refused to supply the agreed quantity of sugar *i.e.*, 23,400 MT within the stipulated time period, the defendant would be liable to refund the advance amount of Rs.9,00,00,000/- (Rupees Nine crore).

16. In addition to refunding the amount of Rs.9,00,00,000/-, the defendant was also obligated to pay damages/penalty to the plaintiff. It is submitted that in the Supply Agreement-2 dated 09.12.2016, the minimum penalty payable by the defendant in case of breach was calculated at Rs.5,26,50,000/- being 23400 MT x Rs. 2250 PMT = Rs.5,26,50,000/-. That under clause 10 of the Supply Agreement-2, in the event the defendant failed to deliver the requisite quantity of sugar, the plaintiff was entitled to recover the penalty, which was to be determined using the methodology of Quantity of total sugar 23400 MT x difference in price (*i.e.*, market price of sugar minus agreed price of this contract *i.e.* Rs. 3300/- per quintal) PMT.

17. As per clause 11 of the Supply Agreement-2 dated 09.12.2016, in the event of failure to supply the agreed upon quantity of sugar, the defendant



was also obligated to pay interest at the rate of 18% per annum w.e.f. from the respective due dates of each 2600 MTs of sugar till the complete refund of Rs.9,00,00,000/- was made.

Details of payments transferred to the defendant by the plaintiff

18. The plaintiff transferred amounts to the tune of Rs.19,98,20,000/- to the defendant on various dates between the period 09.12.2016 to 04.02.2017 by means of RTGS which is clearly reflected in the plaintiff's bank statement.

19. Thus, the plaintiff made a total payment of Rs.28,98,20,000/- (approx. Rs. 28.98 crores) to the defendant *i.e.*, an amount of Rs.9,00,00,000/- retained by the defendant from the amounts transferred to it between 17.10.2015 to 10.03.2016 under the Supply Agreement of 2015 against which no sugar was supplied and an amount of Rs.19,98,20,000/- transferred to the defendant during the period 09.12.2016 to 04.02.2017.

20. All payments made by the plaintiff to the defendant are clearly reflected in the relevant pages of the bank statement of the plaintiff of its Account No.50200002855469 with HDFC Bank Limited, Nehru Place, New Delhi. The aforesaid bank statements have been duly filed along with Certificate under Section 2A of the Banker's Book Evidence Act, 1891, as *Ex. PW 1/4 (Colly)*.

Defendant's failure to supply sugar as per the contract between the parties:

21. The defendant has supplied only 6459.70 MTs or 64597 qtls./approx. 2.48 rakes of sugar against the requirement of 23400 MTs/9 rakes of sugar and raised 298 invoices on the plaintiff. The invoices issued by the defendant have been exhibited as *Ex. PW 1/29 to PW 1/314*.



22. Furthermore, even when the contract rate of sugar under the Supply Agreement-2 dated 09.12.2016 was Rs.3,300/- per quintal inclusive of excise duty and cess, the defendant raised several invoices in which it charged the plaintiff at the rate of Rs. 3650.00 per quintal.

23. On 21.01.2017, the plaintiff issued email attaching therein a letter to the defendant bringing to its notice that contractual rate of sugar was Rs.3300/- per quintal and there appeared to be some typographical error in the invoices raised by the defendant in which the cost of sugar was charged at the rate of Rs. 3650.00 per quintal. The defendant was requested to correct the rate of sugar in the invoices or issue debit notes to the plaintiff for the difference. [See: **Ex. PW 1/5 (Colly)**, Document D-5, at pages 62-63 of Volume IV].

24. The defendant, despite receiving total payment of Rs.28,98,20,000/-, was able to deliver sugar worth Rs.21,31,70,100/- only [*i.e.*, 64,597 quintals x Rs.3300 per quintal] and therefore, an amount of Rs.7,66,49,900/- [Rs.28,98,20,000/- - (minus) Rs.21,31,70,100/] remained with the defendant and no sugar was supplied against the same.

25. The plaintiff issued several reminder letters between 11.02.2017 to 13.04.2017, stating therein that only 6459.70 MT of sugar had been supplied and requesting the defendant to supply the remaining quantity of sugar (16940.3 MTs/ 169403 Qtls. of sugar) in discharge of its obligations under the Supply Agreement-2 dated 09.12.2016. The said requests and reminders were sent by the plaintiff as attachments to emails issued to the defendant. However, the defendant did not supply the balance quantity of sugar despite the numerous requests and reminders issued by the plaintiff. [See: **Ex. PW 1/6 (Colly) to PW 1/25 (Colly)**, Documents D-6 to D-25, at pages 64-104,



Volume IV.]

26. Thereafter, in order to discharge its liability and make repayments to the plaintiff, the defendant issued a cheque dated 01.03.2017 bearing No.100667 for an amount of Rs.1,20,46,000/-. On 23.03.2017, the defendant issued an email, attaching a letter dated 23.03.2017 wherein it stated that for the purpose of repayment it had issued a cheque bearing No.100667 dated 01.03.2017 for an amount of Rs.1,20,46,000/- to the plaintiff and had also transferred an amount of Rs.1,00,00,000/- (Rupees One crore) *vide* RTGS to the account of the plaintiff. The plaintiff was requested to acknowledge the receipt of the same. [See *Ex. PW /26 (Colly)*, Document D-26, pages 105-106, Volume IV).]

27. The RTGS payment of Rs.1,00,00,000/- made by the defendant on 23.03.2017 with Ref. No. ICICR52017032300884895, to the account of the plaintiff is clearly reflected in the bank statement of the plaintiff. However, the cheque for the amount of Rs.1,20,46,000/- was dishonored on presentation. The defendant requested the plaintiff not to initiate proceedings against it for the dishonour of cheque and assured the plaintiff that it would return all dues payable, including returning all money against which no supplies were made, damages for breach of contract and interest as per Clause 10 and 11 of the Supply Agreement- 2 dated 09.12.2016.

28. Thereafter, in order to discharge its acknowledged liability, the defendant asked the plaintiff to present cheque bearing No.340164 for an amount of Rs.9,00,00,000/- and cheque No.340165 for an amount of Rs.5,26,50,000/-. However, both cheques were also dishonored for want of sufficient funds. The plaintiff has been constrained to initiate legal proceedings under the Negotiable Instruments Act against the defendant



which is pending adjudication in the Saket District Courts, New Delhi. (See: **Ex. PW 1/315 to PW 1/317**].

29. The fact that the aforesaid cheques were dishonoured for want of sufficient funds is also reflected in the bank statement of the plaintiff. The relevant page of the bank statement of the plaintiff reflecting the dishonour of cheques due to insufficient funds, along with duly stamped certificate issued by the plaintiff's bank are filed as **Ex. PW 1/27**, Document D-28, Volume IV.

Amounts payable by the defendant to the plaintiff

30. The defendant did not supply any sugar against the amount of Rs.7,66,49,900/- and made a repayment of only Rs.1,00,00,000 on 23.03.2017, thus, the principal amount of Rs.6,66,49,900/- is liable to be refunded by the defendant along with interest at the rate of 18% per annum in accordance with clause 11 of the Supply Agreement-2 dated 09.12.2016 on the said amount w.e.f. from 31st March 2017, the last date on which sugar was to be supplied under the aforesaid Agreement dated 09.12.2016.

31. Under clause 10 of the Supply Agreement-2, in the event the defendant failed to deliver the requisite quantity of sugar, the plaintiff was entitled to recover the penalty, which was to be determined using the methodology of Quantity of total sugar 23400 MT x difference in price (*i.e., market price of sugar minus agreed price of this contract i.e., 3300/- per quintal*) PMT. The market price of sugar as on 31.03.2017 *i.e., the last date by which the supply should have been made* was Rs.3837.5 per quintal which is seen from the relevant page of NCDEX (National Commodity and Derivatives Exchange); and thus, the difference between the said market price of Rs.3837.5 per quintal and the contract price of Rs.3300/- per



quintal, is Rs.537.5 per quintal. Therefore, the defendant is liable to pay damages as follows: the quantity of 169403 Qtls. (sugar not supplied) multiplied by Rs.537.5, which equals to Rs.9,10,54,112.5/-. [Ex. PW 1/28, Document D-27, page 107, Volume IV- the relevant page of NCDEX (National Commodity and Derivatives Exchange)].

32. Despite several opportunities having been granted, none has appeared for the defendant in these proceedings. Right to file the written statement on behalf of defendant was closed on 06.01.2022. Thereafter, ex-parte evidence was led by the plaintiff.

33. The aforesaid material and evidence placed on record by the plaintiff in support of its claim in the present suit, remain uncontroverted and uncontested.

34. In the circumstances, the plaintiff is entitled to a decree for sum Rs.6,66,49,900/- i.e., money advanced to the defendant against which no sugar was supplied; as also, compensation under clause 10 of the Supply Agreement-2 amounting to Rs.9,10,54,112.5/-, as mentioned aforesaid. Although the plaintiff has claimed interest at the rate of 18% per annum on the amount of Rs.6,66,49,900/- retained by the defendant with effect from 31.03.2017 till 25.02.2020, this Court considers the same to be excessive, and is inclined to grant interest on the said amount of Rs.6,66,49,900/- at the rate of 12% per annum for the aforesaid period. The Supreme Court in **Central Bank of India v. Ravindra**, (2002) 1 SCC 367, has held as under:

“39.Pre-suit interest is referable to substantive law and can be subdivided into two sub-heads: (i) where there is a stipulation for the payment of interest at a fixed rate; and (ii) where there is no such stipulation. If there is a stipulation for the rate of interest, the court must allow that rate up to the date of the suit subject to three exceptions: (i) any provision of law applicable to moneylending transactions, or usury laws



or any other debt law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered into between the parties; (ii) if the rate is penal, the court must award at such rate as it deems reasonable; (iii) even if the rate is not penal the court may reduce it if the interest is excessive and the transaction was substantially unfair. If there is no express stipulation for payment of interest the plaintiff is not entitled to interest except on proof of mercantile usage, statutory right to interest, or an implied agreement. Interest from the date of suit to the date of decree is in the discretion of the court. Interest from the date of the decree to the date of payment or any other earlier date appointed by the court is again in the discretion of the court — to award or not to award as also the rate at which to award.”

35. Accordingly, the plaintiff is entitled to a decree for the following sums :-

	<i>Description of monies</i>	<i>Amount Payable in Rupees</i>
1.	<i>Amount retained by the Defendant against which no sugar was supplied</i>	<i>6,66,49,900</i>
2.	<i>Damages payable as per Clause 10 of Supply Agreement-2 dt.9.12.2016</i>	<i>9,10,54,112.5</i>

36. The plaintiff shall also be entitled to interest @12% per annum on the amount of Rs.6,66,49,900 retained by the defendant w.e.f. from 31st March 2017 till 25th February 2020, as also *pendente lite* interest thereafter on the said amount @12% per annum.

37. The plaintiff shall also be entitled to future interest @ 9% per annum on the entire decretal amount.

38. The suit is, accordingly, decreed in the above terms.

39. Let the decree sheet be drawn up accordingly.

DECEMBER 15, 2023/r, hg

SACHIN DATTA, J