



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

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*Reserved on: 23<sup>rd</sup> November, 2023*

*Pronounced on: 30<sup>th</sup> January, 2024*

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**CS (COMM) 25/2019**

**M/S PADMASHREE INC**

A registered Partnership Firm  
through its Authorized Partner  
Mr. Vijay Aggarwal

Having its Registered Office at:

A-Bunglow, Malkaganj

Opp. Hansraj College

Near Petrol Pump

Delhi-110007.

..... Plaintiff

Through: Mr.R.Y.Kalia, Advocate.

versus

**M/S UTTAM ENTERPRISES**

through its Sole Proprietor

Mrs. Rani Jain

Having its Office at:

G-56/57/58, Agro Food Park, Ranpur,

Kota-325003 (Rajasthan)

Also at:

1-B-1, Tilak Nagar

Kota-324007 (Rajasthan)

.....Defendant

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. The present suit for recovery of Rs.6,63,37,439/- along with pendent-lite and future interest @ 18% per annum, has been filed on behalf of the plaintiff.



2. The plaintiff, a Registered Partnership Firm entered into an Agreement dated 08.03.2017 with defendant M/s Uttam Enterprises through its Sole Proprietor Mrs. Rani Jain for *procurement of Coriander having specification 'Badami'* for the quantity of 1290 MT at the fixed price of Rs.87,000/- per Metric Ton inclusive of cost and expenses of warehouse, transportation and insurance, irrespective of the fluctuations in the price of the Coriander in the market during the contract period, starting from 08.03.2017 to 07.10.2017.
3. The plaintiff also entered into a similar second Agreement dated 08.03.2017 with Sole Proprietor Mr. Ashok Kumar Jain (husband of Mrs. Rani Jain, defendant in the present case) for *procurement of Coriander having specification 'Badami'* for the quantity of 1340 MT which is the subject matter of CS COMM 26/2019.
4. The defendant issued a Certificate dated 08.03.2017 for procurement of 1290 MT 'Coriander Badami'. Also, having faith and trust in the plaintiff as the parties were having business dealings for last several years, she also handed over a blank signed cheque bearing No.060576 drawn on ICICI Bank in the name of the plaintiff Firm as security, in terms of Clause III of the Agreements dated 08.03.2017.
5. It was further agreed that in case the defendant did not come forward after thirty days of expiry of the contract period i.e. 07.10.2017, for collecting the balance quantity of Coriander lying in various warehouses duly purchased by the plaintiff in compliance of the Agreement, the plaintiff shall be entitled to resell the Coriander in open Market and reserve its right to recover its losses so suffered, from the defendant along with the interest calculated @18% per annum. It was also agreed that plaintiff shall have a



right to recover such losses and interest by filling up the blank cheques given by the defendant to the plaintiff as security.

6. The defendant in order to express her genuine interest in the transaction, also executed an unregistered Mortgage Deed dated 08.03.2017 on a Stamp Paper in favour of Mr. Vijay Aggarwal, authorized partner of the plaintiff Firm in respect of her three properties, as Collateral Security. In the event of any loss suffered by the plaintiff, it was entitled to recover the same through the sale of the following properties, which are :

- (i) Plot bearing No. 19A Area admeasuring 157.50 sq mt, Anandpura Awasiya Yojna, Kota, Rajasthan.
- (ii) Plot bearing No. 18 , Area admeasuring 486 sq mt, Anandpura Awasiya Yojna, Kota, Rajasthan.
- (iii) Plot No. 6, Area measuring 12000 square feet. Stone Mandi, Anandpura Scheme, Kota, Rajasthan.

7. The plaintiff in compliance of the Agreement, made the procurement of 'Coriander Badami' of 1290 MT and intimated the defendant through a personally delivered Letter dated 28.08.2017 that it was ready for delivery, which was much before the last date of procurement i.e. 07.10.2017. It further requested the defendant to pay the sale price of Rs.11,22,30,000/- calculated @ Rs.87,000/- per Metric Ton.

8. The second Reminder Letter dated 05.10.2017 was served on the defendant personally in Kota by the authorized persons of the plaintiff Firm with a request to pay the due amounts. The defendant handed over a notarized Special Power of Attorney dated 06.10.2017 in favour of Mr. Ashish Bansal and Mr. Nikhil Kwatra, the authorized persons of the plaintiff



Firm, and assured that the funds were being arranged by selling the properties as the defendant was in financial crunch.

**9. A final Reminder Letter was delivered to the defendant by hand on 06.11.2017. However, the defendant failed to give any response to the final Reminder.**

10. In accordance with the terms and conditions of the Agreement, to calculate the loss suffered, the plaintiff took the rates of 'Coriander Badami' from National Commodity and Derivative Exchange of India (NCDEX) in November 2017 for reference, according to which the rates had reduced from Rs.78,900/- in April, 2017 due to fall in market price and the prevailing rate was Rs.49,850/- per Metric Ton (*excluding warehouse charges, transportation and insurance*). He further gave a discount of Rs.7,465/- per Metric Ton on the prevailing market rate of Rs.49,850/- and took the sale price as Rs.42,385/- per Metric Ton in the following manner:

| S.No. | Particulars                                                                                                                                                                               | Amount (Rs.)                |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 1     | Agreed price of 1290 MT of Coriander (at the rate of Rs.87000/- per MT), including charges of warehouses, transportation and insurance upto 07.11.2017 as per Agreement dated 08.03.2017. | 11,22,30,000/-              |
| 2     | Rates of Coriander prevailing on expiry of grace period i.e. 07.11.2017 as per NCDEX.                                                                                                     | 49,850/-                    |
| 3     | Further Discount given by the Plaintiff per MT as per market practice.                                                                                                                    | 7,465/-                     |
| 4     | Net price for calculating the losses after discount per MT.                                                                                                                               | 42,385/-                    |
| 5     | Current Value of the Coriander lying in Warehouse (1290 MT x42,385/-)                                                                                                                     | 5,46,76,650/-               |
| 6     | <b><i>Loss suffered by the Plaintiff due to fall in the price of Coriander (Rs.11,22,30,000.00 – Rs.5,46,76,650.00)</i></b>                                                               | <b><i>5,75,53,350/-</i></b> |



|   |                                                               |                      |
|---|---------------------------------------------------------------|----------------------|
| 7 | Interest calculated from 08.11.2017 to 30.09.2018 @ 18% p.a.) | 92,81,068/-          |
| 8 | <b>Total of (6 + 7)</b>                                       | <b>6,68,34,418/-</b> |

11. The plaintiff served a *Legal Notice dated 20.09.2018* giving an opportunity to lift the entire 1290 MT 'Coriander Badami' lying in the various warehouses and to pay the due amount of Rs.11,22,30,000/- including interest @ 18% per annum from 18.11.2017 to 30.09.2018. The plaintiff also stated that otherwise it shall resell the aforesaid goods in open market and claimed a sum of Rs.6,68,34,318/- (including interest @ 18% per annum from 18.11.2017 to 30.09.2018) towards the losses suffered by it.

12. **The defendant failed to give any response to the Legal Notice and the various letters/notices sent by the plaintiff from time to time.** The last Letter was written on 17.10.2018, intimating the defendant that due to its failure to accept the delivery, the plaintiff was reselling the 'Coriander Badami' from 03.10.2018 at the prevailing rate, in the open Market. On receiving no response, the plaintiff then sold the goods to various vendors from 6.10.2018 to 01.12.2018 for a total sum of Rs. 6,09,23,011.20.

13. The plaintiff further submitted that he has paid a sum of Rs.53,375.59 proportionately towards the charges for Fire, Burglary and Insurance for the period 08.11.2017 to 31.12.2018 in respect of the contracted goods (1290 MT of 'Coriander Badami') by means of two cheques drawn on HDFC Bank in favour of The New India Insurance Company. It also paid a sum of Rs.30,36,950.42 towards the Warehouse Charges for the period of 08.11.2017 to 31.12.2018 to M/s Staragri Warehousing & Collateral



Management Ltd., and M/s Shree Shubham Logistics Ltd. situated in Rajasthan and Gujrat, respectively. It also incurred expenditure of *Rs.5,00,000 towards legal advice/legal expenses.*

14. The plaintiff has also filed a complaint under Section 138 of Negotiable Instruments Act, 1881 in respect of cheque bearing No. 060576 drawn on ICICI Bank, having filled an amount of Rs.5,81,77,350/- towards the losses suffered by it, which is pending adjudication.

15. The plaintiff by way of this suit has claimed recovery of *Rs.6,63,37,439.42 along with interest @ 18% per annum for the period 08.11.2017 to 31.12.2018 along with pendent lite and future interest @ 18% per annum.*

16. The defendant was duly served with the summons as recorded in Order dated 26.03.2019, it but failed to file the Written Statement within the stipulated time of 120 days. **The defendant's right to file Written Statement was thus closed vide Order dated 13.08.2019.**

17. No issues were framed by this Court in the present case.

18. **The plaintiff examined PW1 Vijay Agarwal who is the authroised partner of the plaintiff** tendered his affidavit of evidence Ex.PW1/A. The documents relied upon by the plaintiff are Ex.PW1/1 to Ex.PW1/23. The detailed evidence shall be considered subsequently.

**19. Submissions heard and the Written Submissions on behalf of the plaintiff perused.**

20. The plaintiff has claimed a recovery of *Rs.6,63,37,439.42 along with interest* from the defendant due to non-performance of the Agreement entered into between the parties. The unrebutted and unchallenged testimony



of PW-1 Vijay Agarwal proves that the plaintiff entered with the defendant into an Agreement dated 08.03.2017 which is Ex.PW1/4 which is as under:

*“1.That the First Party agrees and assures that it shall procure the Coriander 1290 Metric Tonnes, having specification of 'Badami', during the period 08.03.2017 to 07.10.2017 at its own costs and expenses, which includes the charges of Warehouses, Transportations and Insurance etc.*

*2. That the Second Party agreed to purchase the Coriander at a fix price of Rs.87000/-(Rupees Eighty Seven Thousand Only) per Metric Tonne. Irrespective of fluctuation of the price of coriander in the market and the First Party undertakes that it will not charge the over and above the agreed price of Rs.87000/-(Rupees Eighty Seven Thousand Only) per Metric Tonne from the Second Party.*

*3. That it is also agreed between the First Party and the Second Party that the **Second Party shall have a right to collect the Coriander procured by the First Party for the Second Party subject to the payment of above-said fix price i.e. Rs.87000/-(Rupees Eighty Seven Thousand Only)**per Metric Tonne and Party of Second Part have deposited the cheque amount Rs.\_\_\_\_\_ Bearing No.\_\_\_\_\_ Dated\_\_\_\_\_ drawn \_\_\_\_\_ bank as a Security for Securing against any Non Fulfilment of Trade.*

*4. That before the expiry of the above-said stipulated period of time, **the First Party shall intimate the Second Party for the delivery of the total quantity**, of the above-said coriander lying with the First Party in various Warehouse.*

*5. That in case the **Second Party does not turn up after 30 days from the expiry of the above-said period for collecting its balance quantity of the above-said Coriander lying with the First Party**, then in that event, the First Party shall be entitled to sell the balance quantity of the coriander in open market and reserve its*



***right to recover the losses suffered by the First Party from the Second Party along with interest calculated at the rate of 18% per annum and the First Party shall also have a right to realise/encash the Cheque received as Security from the part of Second part.***

6. Further, in case if there is any excess shortfall after realising the amount from the above security cheque, the Party of second part shall be liable for giving the sufficient collateral security to the party of the first part so as to compensate any damages/loss.

7. That all the stamp duty of this Agreement shall be borne and paid by the Second Party, as the Second Party had purchased the Stamp Paper for this Agreement. In case at any stage it is found that this Agreement is typed on insufficient stamp paper, then in that event, the Second Party shall be liable for its deficiency / penalty.

8. That in case of any disputes and differences arises between the parties in relation to this Agreement, then, the matter shall be settled mutually. In case, there is a failure between the parties, then the same shall be taken up as civil and criminal case, subject to the Delhi Jurisdiction.”

21. The PW-1 has deposed that despite the express Agreement and due intimation of procurement of the contracted Goods vide Letters/ Notice Ex. PW1/ Vijay Agarwal, the defendant failed to come forth to take the delivery of the goods, as agreed. He further deposed that the goods i.e. Coriander Badami was tried to be sold to other purchasers. However, by then there was fall in market price and the prevailing rate of Coriander Badami to Rs.49,850/- per Metric Ton (*excluding warehouse charges, transportation and insurance*). A further discount of Rs.7,465/- per Metric Ton on the prevailing market rate of Rs.49,850/- was given and calculated the sale price as **Rs.42,385/- per Metric Ton.**



22. Before actually selling the Coriander Badami, the plaintiff served the Legal Notice dated 20.09.2018 Ex. PW1/14 giving the defendant an opportunity to lift the entire 1290 MT 'Coriander Badami' and to pay the agreed price of Rs.11,22,30,000/- along with interest @ 18% per annum or else the aforesaid goods shall be sold in the open market and the losses shall be recovered. Since the defendant did not respond to the repeated letters and Legal Notice the goods were sold in the market at the prevailing rates.

23. The PW-1 Vijay Agarwal deposed about the quantities sold and the amount recovered as under:-

**TABLE B**

| S.No. | Name of Purchaser(s)      | Quantity (MT) | Amount realised (including GST) | Invoices/ Agreements                                      |
|-------|---------------------------|---------------|---------------------------------|-----------------------------------------------------------|
| 1     | M/s Ram Farm<br>Commodity | 410.540       | 1,93,65,975.50                  | Invoices dated 6.10.2018 to 19.10.2018 Ex.PW1/16 (Colly)  |
| 2     | M/s Jai Maruti Traders    | 130.300       | 71,01,355.22                    | Invoices dated 26.11.2018 to 30.11.2018 Ex.PW1/17 (Colly) |



|   |                                                                                                                                                                                           |                  |                       |                                            |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------------------|--------------------------------------------|
| 3 | M/s Shantilal Gautam Kumar                                                                                                                                                                | 12.040           | 6,56,180.48           | Invoices dated 1.12.2018 Ex.PW1/18 (Colly) |
| 4 | M/s Somnath Trading Co. (As per Agreement dated 11.10.2018 of 1520 MT), with the hope M/s Somnath Trading Co. honoured the said Agreement dated 11.10.2018 and amount yet to be realized. | 740.000          | 3,37,99,500.00        | Agreement dated 11.10.2018 Ex.PW1/19       |
|   | <b>Total</b>                                                                                                                                                                              | <b>1,292.880</b> | <b>6,09,23,011.20</b> |                                            |

24. Thus, the plaintiff has proved that the defendant committed breach of the Agreement Dated 08.03.2017 Ex.PW1/4 and that it made all efforts to mitigate its losses by selling **1,292.880 MT** of Coriander Badami, albeit at a lesser price and that he had recovered an amount of **Rs.6,09,23,011.20/- from various purchasers.**

**Warehousing and Insurance charges**

25. In addition to the above, along with the invoices Ex. PW-1/16 to Ex. PW-1/19, the corresponding warehouse slips are also attached which corroborate that the Coriander Badami was actually withdrawn from the Warehouse and sent to the respective purchasers corresponding to the various Invoices. The warehouse charges and insurance expenses incurred during the period 08.11.2017 to 31.12.2018, are proved as under:



| Particulars                                                                                                                                           | Amount          | Documents                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------|
| Warehouse charges incurred by the plaintiff from 08.11.2017 to 31.12.2018                                                                             | Rs.30,36,950.42 | 22 Cheques<br>Ex.-PW1/21<br>(Colly.)                                                                    |
| Fire, Burglary and Insurance expenses incurred by the plaintiff till the contractual goods was sold to other purchasers from 08.11.2017 to 31.12.2018 | Rs.53,357.59    | Insurance policies and one cheque for Rs.2,75,500/- to New India Insurance Company - Ex-PW1/20 (Colly). |

26. The defendant has failed to contest the suit and rebut the assertions and deposition of the plaintiff. Thus, the unrebutted and uncontested testimony of PW1 Sh. Vijay Agarwal proves that the plaintiff has paid a sum of Rs.30,36,950.42 towards warehouse charges and Rs. 53,357.59 towards Insurance charges.

27. The plaintiff has also asserted that it paid an amount of Rs, 5,00,000 towards legal advice/legal expenses, but has not corroborated it with any document.

28. The plaintiff has thus, been able to prove the following amounts:

| S.No | Particulars                                   | Amount           |
|------|-----------------------------------------------|------------------|
| 1.   | Loss recoverable by the plaintiff towards the | Rs.5,13,06,988.8 |



|    |                                                                                                                          |                         |
|----|--------------------------------------------------------------------------------------------------------------------------|-------------------------|
|    | defendant's failure to take delivery of the contractual goods (Rs. 11,22,30,000 - Rs. 6,09,23,011.20)                    |                         |
| 2. | Warehouse charges incurred by the plaintiff                                                                              | Rs.30,36,950.42         |
| 3. | Fire, Burglary and Insurance expenses incurred by the plaintiff till the contractual goods was sold to other purchasers. | Rs.53,357.59            |
|    | <b>TOTAL</b>                                                                                                             | <b>Rs.5,43,97,296.8</b> |

29. The plaintiff is thus, entitled to recovery of **Rs.5,43,97,296.8**. It has also claimed interest at the rate of 18% p.a. However, considering the prevailing market rate, the interest is granted @ 9% p.a. from the date it became due i.e. 08.11.2017 till the date of payment.

**Relief:**

30. It is, therefore, held that he is entitled to recovery of **Rs.5,43,97,296.8** (Five Crores Forty Three Lakhs Ninety Seven Thousand Two hundred and Ninety six Rupees and Eight paisa) along with the interest @ 9% from 08.11.2017 till the institution of the suit and pendent lite and future interest @ 6% per annum w.e.f 17.01.2019. i.e. the date of institution of the Suit, till the date of payment by the defendant.

31. Parties to bear their own cost. Decree sheet be prepared, accordingly.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**JANUARY 30, 2024/va/nk/ek**