

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 17.08.2011

+ **CS(OS) 712/2006**

M/S CENTURY PULP AND PAPER & ANR..... PLAINTIFFS

Through: Mr A.K. Singla, Sr. Adv with
Mr. J.K. Sharma, Adv.

VERSUS

M/S SHIV GANGA PAPER DEFENDANT

Through: Mr Manish K. Saryal, Adv. for
D-4

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

V.K. JAIN, J. (ORAL)

1. The learned Senior Counsel appearing for the plaintiffs states that he will file an amended memo of parties giving the name of plaintiff No. 1 as M/s Century Textiles and Industries Limited. The Registry will take the amended memo of parties on record.

2. This is a suit for recovery of Rs 1,90,07,000/-. Plaintiff No. 1 is a leading manufacturer of Paper and Pulp, whereas plaintiff No. 2 is one of its authorized dealers. Under an arrangement between the plaintiffs, plaintiff No. 1 used to execute the sale orders negotiated by plaintiff No. 2, by delivering the same to the purchaser, identified by plaintiff No. 2. The sale consideration used to be paid by the purchaser to either of the plaintiffs. The case of the plaintiffs is that in April, 2004, defendant No. 4 (whose name has since been deleted from the array of defendants) Shri Prashant Jhunjhunwala negotiated the Paper Rate and Supply Terms Agreement, on behalf of defendant No. 1 Shiv Ganga Paper Converters P. Ltd. for the year 2005-2006 at Delhi. The agreement envisaged lifting of a minimum quantity of 4000 MT +/- 5% bagasse & wood based paper during the period 01.04.2005 to 31.03.2006. The agreement stipulated a special discount called "Shiv Ganga Discount/Contractual Discount" of Rs 750/- per MT, which was reversible in the event of either non-liftment of the contracted quantity of 4000 MT +/-5% or breach of contract by any means. The amount of the invoice was to be paid within 30 days and overdue payments attracted interest at

the rate of 18% per annum from 31st day, till payment. The supplies were effected to defendant No. 1-company in terms of the above-mentioned agreement. A separate account was maintained with respect to the supplies made to the defendant-company and the payment received from it. The plaintiffs were receiving payments without delay until November-December, 2005. However, difficulties surfaced thereafter since the first week of January, 2006 when the defendant represented to the plaintiffs that payment of Rs 12,57,636/- was sent by them to Kota branch of Corporation bank, whereas only one cheque of Rs 5,70,722/- was deposited by it. Last supply of the paper was made to the defendant-company vide invoice dated 22st January, 2006. At that time, the amount outstanding against the defendant-company was Rs 2,88,77,705/-. This amount represented the supplies made to the units of company to four separate units of defendant-company. Realizing the liquidity crunch faced by it, the defendant-company desired the plaintiffs to take back the material lying at their various establishments. The plaintiffs in terms of the authorization from the defendant-company lifted 101.034 MT of the paper form Daman Unit on 02nd

February, 2006 and 64.363 MT of paper from Rudrapur Unit on 08th February, 2006, valued in aggregate at Rs 58,26,428/-.

3. The defendant-company made payments of Rs 20 lakh, Rs 10 lakh vide cheque dated 31.01.2006 and another Rs 10 lakh vide cheque dated 02.02.2006 against the supplies of Rs 2,88,77,705/- made up to 22nd January, 2006. Goods worth Rs 68,69,018/- were also seized from the premises of the defendant-company pursuant to an order dated 08th February, 2006 passed by the Court on the complaint of plaintiffs. After giving credit for the payments, Rs 58,26,428/- for the material lifted from Rudrapur and Daman Units and Rs 68,69,018/- for the material received in proceedings initiated before Chief Judicial Magistrate, Daman, a sum of Rs 1,41,82,259/- is stated to be due to the plaintiffs from the defendant-company towards unpaid price of goods supplied to it. Since the defendant-company committed breach of clause 3.5 of the agreement by not lifting contracted quantity of 4000 MT and also failed to make payment in terms of the contract between the parties, the discount of Rs 750 per MT tones, which had already been passed on to the defendant in the invoices, was

reversed by the plaintiff. The amount of discount reversed in the account of defendant-company comes to Rs 18,71,738/-. The plaintiff also claims to have incurred expenditure of Rs 13,74,697/- in defending various legal proceedings filed by the defendants against it in Courts at Daman. The total amount claimed by the plaintiff from the defendant-company thus comes to Rs 1,90,06,609.00/- (rounded off to Rs 1,90,07,000/-), which includes Rs 15,77,915 towards interest at the rate of 18% per annum.

4. The defendant-company was proceeded ex parte on 26th May, 2011.

5. The plaintiffs have filed affidavit of Mr K.K. Bagla, constituted attorney of plaintiff No.1 by way of ex parte evidence. In his affidavit by way of evidence, Mr Bagla has supported, on oath, the case setup in the plaint and has stated that the plaintiff No. 1 maintains account of supplies made by it. According to him, plaintiff No. 2 was also maintaining similar account. He has further stated that amounts received from defendant-company, whether direct or through plaintiff No. 2, were credited in the account and the last payment from the defendant-company was received vide letter dated 31st January, 2006. He has further stated

that credit was given to the defendant-company in respect of the goods lifted by the plaintiffs pursuant to the request received from the defendant.

6. Ex. PW-1/6 is an affidavit filed by Mr Arun Kumar Kejriwal, Director of the defendant-company. In his affidavit, he has stated that the letter dated 27th November, 2006 was sent by him in the name of defendant-company and was faxed to the plaintiffs on the same date. He has further stated that defendant-company admits liability to the extent of amount stated in the letter dated 27th November, 2006 and has no objection, if part decree for the aforesaid amount is passed in favour of plaintiff No. 1 and against the defendant-company.

7. Ex. PW-1/5 is the agreement between plaintiff No. 1 and defendant-company for supply of 4000 MT +/- 5% bagasse & wood based paper except copier paper. Clause 3.5 of the agreement which deals with the discount reads as under:

“As narrated above at point No. 3.1, Shiv Ganga discount/contractual discount of Rs 750/- PMT will be passed in the invoice. However, in the event of non liftment of contractual quantity of 4000 MT +/- 5% by Shiv Ganga during the contractual period or by breach of

contract by any means, Century will reverse the entire Shiv Ganga/Contractual Discount @ Rs 750/- PMT already passed in the invoices.”

8. Clause 7 of the agreement deals with the terms of the payment and it provides that if payment is not made within 30 days, interest at the rate of 18% per annum will be charged from 31st day till the date of payment.

9. Ex.PW-1/6 is the statement of account which shows that as on 09th November, 2005, a sum of Rs 5,56,766.00/- was due to the plaintiff No. 1 from the defendant-company. Separate bill-wise details in respect of the papers supplied to various units of the defendant-company forms part of this statement of account. A sum of Rs 2,67,66,779.00/- was due to the plaintiff No. 1 from the defendant as on 31st January, 2006, in respect of Daman Unit-I. Rs 11,38,407.00 in respect of Daman-II Unit, Rs 4,44,444/- in respect of Rudrapur Unit, Rs 5,28,075/- in respect of Kota unit, making a total of Rs 2,88,77,705/-. Two payments of Rs 10 lakh were received by plaintiff No. 1 vide cheques, copies of which are Ex.PW-1/7. Ex.PW-1/13 and Ex.PW-1/14 are the credit note of Rs 58,26,428/- in respect of the material lifted by the plaintiffs from Daman

and Rudrapur Units. After giving benefit for the aforesaid amount and benefit of Rs 92,30,210/- towards price of the material received by the plaintiff in judicial proceedings, the balance amount comes to Rs 1,41,82,259/-. Since the defendant-company defaulted in lifting the contracted quantity of 4000 MT +/- 5% of the paper, the plaintiff was entitled, in terms of the agreement, to reverse the discount of 750 per MT tones which it had given in the invoices. The amount of discount reversed in this manner comes to Rs 18,71,738/-. The plaintiff is, therefore, entitled to recover of a sum of Rs 1,60,53,997/- towards price of the goods sold by it to the defendant-company, after reversal of the discount.

10. The learned Counsel for the plaintiffs state that they are not pressing the claim for Rs.13,74,697/- towards litigation expenses.

11. The learned counsel for the plaintiff states that the interest amount of Rs 15,77,915/- has been claimed by the plaintiff only on the principal sum of Rs 1,41,82,259/- at the agreed rate of 18% per annum. The plaintiff, therefore, is entitled to recovery of Rs 1,76,31,912/- from the defendant-company.

12. During pendency of the suit, a sum of Rs 40 lakh was paid by the defendants No. 2 and 3 to the plaintiffs towards discharge of the liability of the defendant-company; adjustment of that amount needs to be given to the defendant.

ORDER

For the reasons given in the preceding paragraphs, a decree for recovery of Rs.1,36,31,912/- with proportionate costs on Rs.1,76,31,912/-, interest @ 12% p.a. on Rs.1,76,31,912/- from the date of filing of the suit till 18th January, 2011 and interest on Rs.1,36,31,912/- w.e.f. 19th January, 2011 till realization is hereby passed in favour of plaintiff No.1 and against the defendant.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

AUGUST 17, 2011
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