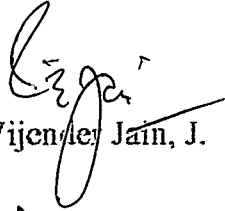
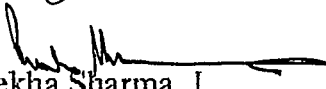


Sr. No.	Date	Orders
		<p>% 04-10-2005</p> <p>Present : Mr Parag P. Tripathi, Sr. Advocate with Mr. Anurag Kumar Agarwal for appellant.</p> <p>+ <u>CO.App 111/2005.</u></p> <p>*</p> <p>This appeal has been filed impugning the order of the learned Company Judge dated 20.7.2005. Mr. Parag P. Tripathi learned counsel for the appellant has contended that the learned Company Judge failed to take into consideration the fact that as per the collaboration agreement the permission granted by the Reserve Bank of India was for supply of technological know-how and as the respondent failed to supply the technical know-how in entirety the appellant was not bound to make the payment.</p> <p>Learned counsel for the appellant has drawn our attention to a letter written on 4th March 1996 at page 228 of the paper book inter-alia stating that even in 1996 much prior to the start of litigation the appellant had written a letter to the respondent to supply complete drawings to the appellant and that the learned Company Judge erred in not taking into consideration the letter dated 4th March 1996. It is further submitted that the observation of the learned Company Judge that the company is lying closed since 1996 is also not correct as the company is still manufacturing. On the basis of the aforesaid submissions learned counsel for the appellant has contended that in view of complete drawings i.e. the technology transfer in terms of the agreement having not been done by the respondent, the appellant was not bound to make the</p>

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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		<p style="text-align: right;">(7)</p> <p style="text-align: center;">-2-</p> <p>payment to the respondent and that the finding of the learned Company Judge that the company was unable to pay its debt was based on surmises and conjectures.</p> <p>We have given our careful considerations to the arguments advanced by learned counsel for the appellant but we find no merit in the same.</p> <p>The learned Company Judge in para 12 of the impugned judgment has held that the appellant had informed the respondent by letter dated 9.2.1996 that it was satisfied with the technology documentation etc. given by the respondent and that the customers were highly satisfied with the quality of product. The relevant extract of the said letter are as under:-</p> <p style="margin-left: 40px;">“(1) I am thankful to the assistance given to us in respect of technical documentation, testing of submersible motors and initial order of machined castings placed on us.</p> <p style="margin-left: 40px;">(7)As far as using the word 'In collaboration with Aturia Pompe S. P. A., Italy, the usage of the same was clarified and permitted by Dr. Alessandro Rent during his visit to Delhi. However, I can assure you that there will never be any risk to ATURIA/ROTOS image in Indian market as our future is also linked in developing and upgrading the image of Aturia/Rotos in the Indian market. Only a good image can be helpful to us. Wherever we have supplied submersible pumps under your know-how, the customers are highly satisfied with the quality of the product and have placed repeat orders for the same. Further once Aturia name is popular in India market, we</p>

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		<p style="text-align: center;">-3-</p> <p>have plans to import certain sophisticated pumps manufactured by Aturia, Italy for refinery, Oil & Natural Gas, Petro Chemicals and other products for which there is a big scope in India. As a matter of fact, we are thinking of recruiting a person to handle import such special pumps in India and send him to Aturia, Gessate factory for one month training in order to upgrade his knowledge and expertise in selling such pumps in India.”</p> <p>It is clearly borne out from the above extracts of the letter dated 9th February, 1996 that the appellant communicated to the respondent that wherever they had supplied submersible pumps under the know-how of the respondent, the customers were highly satisfied with the quality of product and that they placed repeated order for the same. It therefore follows that the production of the appellant was not in any manner affected by lack of technical know-how. As a matter of fact, the appellant expressed satisfaction and thanks to the respondent. In this view of the matter the appellant cannot now turn around and say that the complete set of drawings was not supplied to it. We have asked Mr. Parag P.Tripathi learned counsel appearing for the appellant to show any letter written to the respondent for non- supply of complete drawings from 1994 onwards but he has failed to show any such letter.</p> <p>The learned Company Judge has also given a finding that within few months of writing of letter dated 9th February, 1996 there was closure of the</p>

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		<p style="text-align: right;">(B)</p> <p style="text-align: center;">-4-</p> <p>appellant's factory. The learned Company Judge relied upon appellant's own letter dated 27th July, 1996 and has held that the factory was closed down not because of lack of technical know-how but because the requirement of pumps by the Government had gone down substantially because of elimination of aids previously given to them and the new economic policy guided by the World Bank had laid great emphasis on shifting of Government purchase to privatisation.</p> <p>In view of the above, we find no reason to interfere with the findings as given by learned Company Judge. There is no merit in the appeal. The same is dismissed.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p>October 04, 2005 kv</p> </div> <div style="width: 45%; text-align: right;"> <p> Vijen/er Jain, J.</p> <p> Rekha Sharma, J.</p> </div> </div>