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

% ***Date of Decision : 28.02.2014***

+ CS(OS) 157/2014

CISCO FINANCIAL ADVISORY (INDIA) Plaintiff
Through: Mr.Sanjay Aggarwal, Advocate

versus

DIVIJ INFRAPROJECT (P) LTD Defendant
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S. SISTANI, J. (Oral)

1. Plaintiff has filed the present suit for recovery of Rs.59,80,000/- under the provisions of Order XXXVII of the Code of Civil Procedure. Summons were issued in the prescribed form to the defendant. The defendant stands duly served at both the addresses. However, appearance has not been entered into by the defendant in terms of Order 37 Sub-Rule 3 CPC. Affidavit of service has also been handed over in Court as per which the deponent sent a copy of the plaint along with annexures at both the addresses of the defendant company by registered post as well as speed post. Postal receipts have been placed on record. However, the defendant has refused to accept the envelopes from the defendant.
2. Counsel for the plaintiff submits that the plaintiff is entitled to a decree under Order XXXVII Sub-Rule 3 CPC of the Code of Civil Procedure. As per the plaint, Ms.Ashima Chopra and Ms.Karishma Chopra introduced themselves as Directors of the defendant company and expressed their willingness for purchase of shirting and shirting fabric as

per samples passed by the defendant from the plaintiff. Parties entered into an agreement on 05.09.2012. As per the agreement it was agreed that the plaintiff would supply shirting and shirting fabric as per samples passed by defendant company in different shades, colours and designs for Rs.52,50,000/- as per the schedule. In order to show their bona fides the defendant paid a cash advance in sum of Rs.2,50,000/- and for the balance amount a post dated cheque bearing No.674357 dated 03.05.2013 in sum of Rs.50,00,000/- drawn on State Bank of India, Model Town was handed over to the plaintiff. It was assured by the Directors of the defendant that the aforesaid cheque would be encashed on presentation. The plaintiff supplied the shirting and shirting fabric as per the schedule in the total sum of Rs.52,50,000/- against the following invoices:-

- (i) VD No.1559 dated 10.1.2013 for Rs.12,46,500/-;
- (ii) VD No.1570 dated 25.1.2013 for Rs.12,41,940/-;
- (iii) VD No.1583 dated 12.2.2013 for Rs.12,71,430/-; and
- (iv) VD No.1617 dated 19.3.2013 for Rs.14,90,130/-.

3. As per the plaint, the goods were received by the defendant in good condition and to their entire satisfaction. Upon the delivery of the goods the cheque in sum of Rs.50,00,000/- was presented to the bankers. However, the same was returned due to insufficient funds. A legal notice was sent by Regd.A.D.Post on 14.05.2013. Despite service of legal notice no payment was made. The plaintiff has already instituted a case under Section 138 of the Negotiable Instruments Act which is still pending. During the pendency of the proceedings under Section 138 of the Negotiable Instruments Act the defendants again offered to clear the entire payment of Rs.50,00,000/- in three instalments through three post-

dated cheques. The following cheques were handed over:-

<i>Sl.No.</i>	<i>Bank, Branch</i>	<i>Cheque No.</i>	<i>Dated</i>	<i>Amount</i>
1.	State Bank of India, Model Town	128676	10.10.2013	15,00,000/-
2.	State Bank of India, Model Town	128677	15.11.2013	20,00,000/-
3.	State Bank of India, Model Town	128678	10.12.2013	15,00,000/-
			Total:	50,00,000/-

4. The first cheque when presented was returned with the endorsement “referred to drawer”. The defendants were contacted. No explanation was rendered by the defendants. Another legal notice was issued on 25.10.2013. Even after the aforesaid notice, the payment was not cleared. Subsequent cheque for Rs.20,00,000/- was also presented which was dishonoured.
5. I have heard learned counsel for the plaintiff and also perused the plaint and the documents filed along with the plaint. The present suit is based on invoices and dishonour of cheques. Thus, the present suit is maintainable under the provisions of Order XXXVII of CPC.
6. Order 37 Rule 2(3) and Rule 3 CPC reads as under:-

“[2. Institution of summary suits.- (1).....

(3) The defendant shall not defend the suit referred to in sub-rule

(1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

7. Taking into consideration the averments made in the plaint, documents filed on record and taking into consideration that despite service defendant has not entered appearance within the time allowed in terms of Order 37 Rule 2(3) CPC, the present suit is decreed in favour of the plaintiff and against the defendant in sum of Rs.59,80,000/- together with *pendente lite* and future interest @12% per annum. Let a decree sheet be drawn up accordingly.

IA No.1016/2014 (O.XXXVIII R.5 CPC)

8. Disposed of as infructuous.

(G.S.SISTANI)
JUDGE

FEBRUARY 28, 2014
ssn/dkb