

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

% Order delivered on: August 29, 2014

+ **CS(OS) No. 2785/2012**

M/S ANOOPAM INDIA PVT LTD ..... Plaintiff  
Through Mr.T.K Dadhich, Advocate

versus

M/S NEWGEN SPECIALITY PLASTIC LTD & ORS. ...Defendants  
Through None.

**CORAM:**  
**HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The present suit has been filed by the plaintiff for recovery of Rs.1,03,94,539/- against the defendants. Despite of service of summons, no one appeared on behalf of the defendants. The defendants were proceeded ex-parte by order dated 27<sup>th</sup> March, 2014.
2. The ex-parte evidence was produced by the plaintiff. From the record it appears that no written statement is filed by the defendants. The defendant No.1 is a company incorporated under the Companies Act and defendants No.1 to 4 are the directors and office bearers of the company and according to the plaintiff the defendants were involved in the transaction in the present suit.
3. The case of the plaintiff is that the defendants approached the plaintiff company and placed orders for purchasing Plastic

Granules/Danas/Polymers etc. on credit basis and the plaintiff therefore was maintaining a ledger account in the name of the defendants in books of accounts, as plaintiff maintains in its normal course of business and as per the said books of accounts a sum of Rs.1,03,94,539/- are recoverable from the defendants by the plaintiff. The copy of the said ledger account is exhibited as Ex.CW1/2.

4. It is further the case of the plaintiff that the plaintiff supplied ordered material/goods to the defendants at their sites in full satisfaction and confidence of the defendants and they received the same. The plaintiff sent the said material through proper bills and invoices. The copies of the said bills and invoices and LR/GR, Bills/Receipts are exhibited as Ex.CW1/3 (Colly.).

5. The defendants also issued four post dated cheques bearing Nos. 458183 dated 23<sup>rd</sup> May, 2010 for Rs.8,00,000/-, 458184 dated 26<sup>th</sup> May, 2010 for Rs.7,74,880/-, 458155 dated 10<sup>th</sup> April, 2010 for Rs.7,19,308/- and 458156 dated 7<sup>th</sup> May, 2010 for Rs. 12,17,921/- all drawn on Oriental Bank of Commerce, Barola, Sector-49, Noida, U.P., in partial discharge of their payment liability.

6. The defendants assured the plaintiff that the above said cheques shall be encashed on their representation by their banker but the same stood dishonoured and the plaintiff immediately talked with the defendants and they requested not to file legal case or initiate legal proceedings against them and also shown their financial crises and hardship and assured that they shall make the payment soon because their credit limit is likely to be sanctioned from some financial institution/bank and the plaintiff relied on their assurance

due to old business relations and had not initiated legal proceedings against the defendants.

7. It is deposed in the affidavit that inspite of repeated requests, personal visits and reminders, the defendants neither made any payments nor the cheques already issued got honoured and encashed.

8. It is further deposed that in the affidavit that on receipt of legal notice, the defendants again assured the plaintiff that they shall make the payments soon and again requested not to initiate legal proceedings against them and had also released a meagre sum of Rs.3 lac to the plaintiff by RTGS Mode on 23<sup>rd</sup> October, 2011 but thereafter no payment had been released by the defendants till filing of present suit, inspite of making repeated requests and reminders. The copies of the said e-mail conversation/correspondences between the parties are exhibited as Ex.CW1/8 (Colly.).

9. It is stated in the affidavit that on receipt of summons, the defendants issued some posted dated cheques to the plaintiff in partial discharge of the payment liability and assured their encashment on presentation. However, on their presentation, they stood dishonoured and plaintiff filed criminal complaints under Section 138 of Negotiable Instruments Act which are pending before Metropolitan Magistrate, Tis Hazari Courts, Delhi. However, the defendants have made some payments in installments through RTGS mode and thereafter, stopped making further payments. As per the books of accounts a sum of Rs.58,82,284/- is still recoverable

from defendants. The copy of ledger account as on 30<sup>th</sup> June, 2014 is exhibited as Ex.CW1/9.

10. It is the admitted position that when the suit was filed a sum of Rs.1,03,94,539/- was due. The plaintiff has received certain payments from the defendants after filing the complaints under Section 138 of the Act. As per Ex.CW1/9 i.e. ledger account a sum of Rs.58,82,284/- is due. The evidence of the plaintiff has not been rebutted by the defendants who have also failed to file the written statement. They have also not cross-examined the plaintiff's witness. Therefore, the amount shown in the ledger account as on 30<sup>th</sup> June, 2014 as mentioned in Ex.CW1/9 is taken as correct.

11. In view of the above, the suit of the plaintiff is decreed for a sum of Rs.58,82,284/- along with pendente lite and future interest from the due date @ 9% per annum till the date already fixed. of payment. The plaintiff is also entitled for cost. Decree be drawn accordingly.

**(MANMOHAN SINGH)**  
**JUDGE**

**AUGUST 29, 2014**