

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

% Order delivered on: 31st October, 2014

+ **CS (OS) No.1801/2007**

M/S DIGI CONTENTPlaintiff
Through Mr. Vishnu Mehra, Adv

versus

M/S MINDLOGICX INFOTECH LTD.Defendant
Through Mr. Rishi Manchanda, Adv. with
Mr. Siddhartha Jain, Adv.

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

MANMOHAN SINGH, J.

1. The plaintiff has filed a suit for recovery for a sum of Rs.37,63,961/- against the defendant.
2. Brief facts of the case are that the plaintiff is the sole proprietary concern of Smt. Deepshikha Jain wife of Shri Anurag Jain carrying on *inter-alia* the business of printing and supplying of books. The defendant placed a purchase order bearing Reference No. MLX/PO/160/04 dated 28th September, 2004 on the plaintiff at their Delhi Office for printing and supplying of books as per the list enclosed with the said purchase order for Distance Education, Directorate of Punjab Technical University (PTU), Jalandhar at the agreed rate of 26 paisa per page. The agreed terms of payment schedule were "in two instalments after 45 days and 90 days". The place of delivery stipulated in the purchase order was Jalandhar

office of defendant. The aforesaid purchase order dated 28th September, 2004 was duly executed by the plaintiff and the books were delivered to the defendant at their Jalandhar office under delivery challan of the plaintiff dated 19th October, 2004, 25th October, 2004 and 29th October, 2004 which were duly received by the defendant on 20th October, 2004, 26th October, 2004 and 30th October, 2004. The plaintiff correspondingly, raised three bills bearing No. 0044 dated 23rd October, 2004 for Rs. 18,87,153.84/-; bill bearing No.0045 dated 25th October,2004 for Rs.2,14,739.20/- and bill bearing No.0047 dated 30th October, 2004 for Rs.1,99,586.40/- for payment by the defendant as per the agreed payment schedule.

3. Thereafter, the defendant placed on the plaintiff at their New Delhi office another purchase order through e-mail dated 29th October, 2004 for supply of 40,000 feedback forms on the same terms and conditions of payment schedule which was duly executed and delivered to the defendant at their Jalandhar Office under delivery challan dated 30th October, 2004 which was received by the defendant on 1st November, 2004. The plaintiff raised bill bearing No. 0048 dated 3rd November, 2004 for Rs.19,500/-.

4. The third purchase order bearing Reference No. MLX/PO/164/04 dated 23rd November, 2004 was placed by the defendant on the plaintiff at their New Delhi office, to print and supply 9300 books as per the same terms and conditions of the payment schedule which was duly executed and delivered at the Jalandhar office under the delivery challan of the plaintiff dated 29th November, 2004. Correspondingly, the plaintiff raised their bill bearing No.0058 dated 1st December, 2004 for Rs.5,32,688/-.

5. The aggregate value of the various bills raised by the plaintiff on the defendant is a sum of Rs. 28,53,667/-.

6. It is the case of the plaintiff that though the agreed period for payment/settlement of various bills have expired but till date the defendant have not paid any amount i.e. first instalment after 45 days of the delivery and second instalment after 90 days of the delivery of books at the Jalandhar office and the entire amount of Rs. 28,53,667/- is still outstanding.

7. The plaintiff demanded the payment from the defendant through e-mails, letters sent under registered cover and tele-conversation which was duly acknowledged by the defendant and also promised to pay/liquidate the aforesaid amount. Since the payment was not forthcoming, in spite of demand by the plaintiff, acknowledgment of debt by the defendant and promises in writing by the defendant to pay, the plaintiff issued notice dated 26th February, 2007 and demanded Rs.40,70,827/- including interest liability at the rate of 12% per annum which was duly served on the defendant but the defendant has not paid any amount to the plaintiff till date. Consequently, the plaintiff filed this suit.

8. The matter was listed before Joint Registrar and the defendant was duly served with the summons of the suit. In spite of various opportunities, the defendant did not file its written statement and accordingly, the right of the defendant to file its written statement was closed vide order dated 14th July, 2009. On 10th October, 2009 the plaintiff also issued notice under Order 12 Rule 8 CPC to the defendant to produce the original documents, however no documents were produced.

9. The plaintiff filed their affidavit by way of evidence dated 13th October, 2009 of Mr. Anurag Jain as PW1 as husband and Power of Attorney of Smt. Deepshika Jain, sole proprietor of plaintiff and reiterated the contents of the plaint and also exhibited certain documents exhibited as Ex.PW1/1 to Ex. PW1/38 in support of its case. PW1 was duly cross-examined by the Counsel for the defendant and the evidence of the plaintiff was concluded on 18th March, 2013. The counsel for the plaintiff also filed the certificate under Section 65 B of the Indian Evidence Act, 1865.

10. The defendant further filed an application being I.A.No. 10650/2013 under Order 8 Rule 1 CPC for leave of the Court to file the written statement belatedly. However the same was dismissed for non-prosecution vide order dated 10th July, 2013. Thereafter, the defendant filed an application being I.A.No. 8136/2014 under Section 151 CPC for restoration of application being I.A.No. 10650/2013 which was allowed vide order dated 5th August, 2014 and I.A.No. 10650/2013 was restored to its original position which was also dismissed as the delay of 4 years in filing the written statement could not be condoned.

Contract between the parties and jurisdiction of this Court

11. It is the admitted position that the defendant placed a purchase order bearing Reference No. MLXIPO/160/04 dated 28th September, 2004 on the plaintiff at their Delhi Office for printing and supply of Books as per the list enclosed with the said purchase order for Distance Education, Directorate of Punjab Technical University (PTU), Jalandhar at the agreed rate of 26 paise per page. The agreed terms of payment were "In two installments after 45 days and 90

days". The place of delivery stipulated in the purchase order was Jalandhar office of defendant. The purchase order is produced as Exhibit *PW1/2*.

The aforesaid purchase order was duly executed by the plaintiff. The books were delivered to the defendant at their Jalandhar Office as per the details set out in the delivery challans dated 19th October, 2004 as Exhibit *PW1/3*, dated 25th October, 2004 as Exhibit *PW1/4* and dated 29th October, 2004 as Exhibit *PW1/5*.

12. It is not disputed that the plaintiff raised three bills bearing No.0044 dated 23rd October, 2004 for Rs.18,87,153.84 as Exhibit *PW1/6*, Bill bearing No.0045 dated 25th October, 2004 for Rs.2,14,739.20 as Exhibit *PW1/7* and Bill bearing No.0047 dated 30th October, 2004 for Rs.1,99,586.40 as Exhibit *PW1/8* for payment by the defendant as per the agreed payment schedule i.e. "In two installments after 45 days and 90 days".

13. It is evident that the defendant placed on the plaintiff at their New Delhi office another purchase order through E-mail dated 29th October, 2004 as Exhibit *PW1/9* for supply of 40,000 Feed Back Forms on the same terms and conditions i.e. Delivery at Jalandhar Office and payment in the same mode.

The plaintiff executed the aforesaid purchase order dated 29th October, 2004 and delivered 40,000 Feed Back forms to the defendant at their Jalandhar office under delivery challan dated 30th October, 2004, which was duly received by the defendant on 1st November, 2004 as Exhibit *PW1/10*.

Bill bearing No.0048 dated 3rd November, 2004 as Exhibit PW1/11 for Rs.19,500/- was raised by the plaintiff with regard to the delivery.

14. Third purchase order bearing Reference No. MLXIPO/164/04 dated 23rd November, 2004 being Exhibit PW 1/12 was placed by the defendant on the plaintiff at their New Delhi office, to print and supply 9300 books comprising of 2047000 pages as per the list enclosed with the purchase order for Distance Education, Directorate of Punjab Technical University (PTU) at the agreed price of 26 paisa per page having the aggregate value of Rs.5,32,220/-. The agreed terms of payment were again "In two installments after 45 days and 90 days". The delivery location stipulated in the purchase order was again Jalandhar Office.

The aforesaid purchase order dated 23rd November, 2004 was duly executed by the plaintiff who delivered the books at the Jalandhar Office as per the agreed terms under delivery challans of the plaintiff dated 29th November, 2004 as Exhibit PW1/13 Collectively.

The plaintiff raised their bill bearing No.0058 dated 1st December, 2004 for Rs.5,32,688/- as Exhibit PW1/14 on the defendant for payment as per the agreed terms.

15. In view of the deliveries received by the defendant on 20th October, 2004 against purchase order dated 28th September, 2004, the first installment after 45 days fell due for payment on or before 4th December, 2004 and the second installment fell due for payment on or before 18th January, 2005 and the defendant was liable to pay on or before 4th December, 2004 and 18th January, 2005 respectively.

16. With regard to the deliveries received by the defendant on 26th October, 2004 against purchase order dated 28th September, 2004, the first installment after 45 days fell due for payment on or before 10th December, 2004 and the second installment fell due for payment on or before 24th January, 2005 and the defendant was liable to pay on or before 10th December, 2004 and 24th January, 2005 respectively.

17. Pertaining to the deliveries received by the defendant on 30th October, 2004 against purchase order dated 28th September, 2004, the first installment after 45 days fell due for payment on or before 14th December, 2004 and the second installment fell due for payment on or before 28th January, 2005 and the defendant was liable to pay on or before 14th December, 2004 and 28th January, 2005 respectively.

18. In terms of the agreed payment schedule in respect of the supplies received by the defendant on 1st November, 2004, the first installment after 45 days fell due for payment on or before 16th December, 2004 and the second installment fell due for payment on or before 30th January, 2005 and the defendant was liable to pay accordingly.

19. As per the agreed payment schedule, as aforesaid, with regard to the delivery received by the defendant on 30th November, 2004 against purchase order dated 23rd November, 2004, the first installment fell due for payment on or before 14th January, 2005 (after 45 days) and the second installment fell due for payment on or before 28th February, 2005 (after 90 days) and the defendant was liable to

pay on or before 14th January, 2005 and 28th February, 2005 respectively.

20. The aggregate value of the various bills namely (1) bill bearing No. 0044 dated 23rd October, 2004 for Rs.18,87,153.84/-; (2) bill No. 0045 dated 25th October, 2004 for Rs.2,14,739.20/-; (3) bill No. 0047 dated 30th October, 2004 for Rs.1,99,586.40/-; (4) bill bearing No.0048 dated 3rd November, 2004 for Rs.19,500/- and (5) bill bearing No.0058 dated 1st December, 2004 for Rs.5,32,688/- raised by the plaintiff on the defendant as per the particulars mentioned in the paragraphs herein above is Rs.28,53,667/-.

21. The plaintiff demanded the payment from the defendant in writing vide E-mail dated 26th January, 2004 which was duly acknowledged by the defendant as per reply E-mail dated 28th October, 2004 through Shri Suresh acknowledging the liability and promising to pay to the plaintiff the pending bills by mid-week of March in the following terms :

"The payment of the pending bills will be made by mid-week of March. The payment has prolonged due to some procedural delay in the bank. And moreover, the Directors are out of town and are expected in the first week of March only. Please be assured that the payment will be released by the mid-week of March. I once again thank you for all the support given by you."

22. The defendant through Shri Srijith P.S., Senior Manager Commercial again acknowledged the liability towards the plaintiff and promised to pay vide E-mail dated 12th February, 2005 addressed to the plaintiff.

23. Though the agreed period for payment/settlement of various bills of the plaintiff as aforesaid have expired but till date the defendant did not pay any amount as per the agreed terms and conditions and the entire amount of Rs.28,53,667/- payable by the defendant to the plaintiff is outstanding till date.

24. In response to E-mail dated 12th February, 2005, plaintiff again demanded payment as per E-mail dated 15th February, 2005 from the defendant followed by various e-mails. The plaintiff by letters dated 27th July, 2005, 13th September, 2005, 5th June, 2006 and 1st December, 2006 sent under registered cover with Acknowledgment Due again demanded payment due to the plaintiff. The said letters were duly served on the defendant. The plaintiff has also demanded payments through tele-conversation from time to time as well as by visiting the office of the defendant at Bangalore on several occasions but without any success.

25. The plaintiff thereafter issued legal notice dated 26th February, 2007 through Counsel, demanding the outstanding amount. The said notice was duly served on the defendant but the defendant has not paid any amount to the plaintiff till date.

26. The defendant in the above said matter has failed to demolish the case of the plaintiff who has also to make the payment despite of admission of its liabilities. The defendant has failed to file the written statement. The evidence of the plaintiff has gone unchallenged and unrebutted. Thus, the plaintiff is entitled for a decree.

27. Accordingly, the suit of the plaintiff is decreed for recovery for a sum of Rs.37,63,961/- against the defendant.

28. Decree be drawn accordingly. The plaintiff is also entitled to the costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 31, 2014