

**IN THE COURT OF SH. ANUJ AGARWAL,
ADDL. DISTRICT JUDGE, WEST, TIS HAZARI, DELHI
CIVIL SUIT NO. 1135/17**

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and Raw material etc and has supplied and delivered LED lighting to the defendant against various invoices to the tune of Rs. 15,40,915/- between 28.10.2016 to 23.02.2017.

4. As per plaintiff, defendant made part payment against supply of said goods and has already got issued C-form from the Central Sales Tax department and had given same to the plaintiff. As per plaintiff, a sum of Rs. 6,06,774/- is outstanding against the defendant towards supply of said goods.
5. Plaintiff further goes on to aver that defendants after receiving the goods, have never served any rejection notice of goods to the plaintiff and this clearly shows that goods were supplied as per his satisfaction.
6. The defendant, in the application seeking leave to defend, has taken a defence that plaintiff has supplied some ordered goods to the defendants at Jaipur from Delhi along with some defective/rejected/inferior quality goods with intention to cheat the defendants vide invoice No. 313 to 316. As per defendants, they immediately intimated the plaintiff in respect of said inferior quality and requested the latter to pick the same back

telephonically as well as through written correspondences dated 22.11.2016, 10.02.2017, 03.04.2017 and 12.05.2017. Plaintiff never came forward to collect or pick up the same. It is further being averred by defendants that defendants were constrained to send the defective/inferior quality goods as mentioned in invoice no. 313 and 316 through one Jaipur Golden Transport Co.

7. Plaintiff in his reply refuted the averments of the defendants and reiterated the averments made in the plaint.
8. The Hon'ble Apex Court in the case of **IDBI Trusteeship Services Ltd v/s Hubtown Limited. (2017) 1 SCC 568** has held that:

“ (a). If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

(c) Even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness

of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

(d) If the defendant raises a defence which is plausible but improbable, the trial judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

(e) If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

(f) If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

9. The admitted case of the defendant is that goods were supplied to him, however as per defendants, some of the goods as reflected in invoices no. 313 and 316 were of inferior and rejected quality and therefore, no liability whatsoever exist against defendants against the said goods. Defendants have relied upon the letter dated 22.11.2016, 10.02.2017, 03.04.2017, 12.05.2017 and 14.06.17 written by them complaining about the inferior quality of goods with request to plaintiff to pick the same back. However, it is seen that no postal/courier receipts regarding dispatch of letters dated 22.11.16, 10.02.17, 03.04.17 and 12.05.17 have been placed on record by defendants. Though the last of such correspondances i.e. letter dated 14.06.17 written by defendants in this regard is supported by postal receipt and proof of delivery, however, on perusal of the record, it is revealed that said letter was sent subsequent to the legal notice dated 17.05.2017 sent by counsel for plaintiff to the defendants. In my considered view, though the defendants have raised a triable issue i.e. whether they were supplied with inferior quality of goods as alleged by them, however, all the correspondences (except the last one) sent in this regard have not been supported by any postal receipt. The last correspondance sent by defendants is subsequent to the legal notice sent by plaintiff and therefore, a doubt is left in the mind of

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this court regarding the good faith of the defence of defendants.

10. In these circumstances, I am of the view that defendants be granted conditional leave to contest and present case falls under Principle (C) of the **IDBI Trusteeship Services Ltd v/s Hubtown Limited (supra)**. Defendant shall deposit 50% of the principal amount i.e. Rs. 3,03,387/- in the form of FDR in the name of this court within one month from today.

Announced in the open court on 24.01.2020.

Anuj Agarwal
ADJ/West/Delhi/24.01.2020

This order contains 6 pages and all pages are duly signed by me.

Anuj Agarwal
ADJ/West/Delhi
24.01.2020