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**IN THE COURT OF MS. SUGANDHA AGGARWAL,
ADDL. DISTRICT JUDGE, WEST, TIS HAZARI, DELHI
CIVIL SUIT NO. 609335/16**

M/s Instromedix India P.ltd Plaintiff

versus

M/s Surgi Aid Pharma & anr Defendants

Order

1. This order shall decide the application under Order 12 Rule 6, CPC filed by plaintiff.
2. Facts as essential for disposal of the present application and as averred in the plaint are that plaintiff is engaged in trading of medical instruments. Defendant no.1 is also engaged in business of trading of medical equipments and defendant no.2 is Sole proprietor of defendant no.1.
3. It is further averred that defendants placed orders for supply of 7 ventilators at the unit price of Rs. 6,60,000/- vide order dated 28.02.2002. It is further averred that parties also entered into High Sea Sale Agreement with respect to said purchase order. Said goods were purchased and payment was made by defendants. It is further averred that subsequent to that, defendants placed order for purchasing 17 ventilators. Out of said 17 ventilators, order for 16 ventilators was placed in writing on 28.06.2002 and subsequently,

: 2 :

verbal order for 1 ventilator was reduced into writing vide purchase order dated 16.07.2002. It is further stated that High Sea Sale Agreement with respect to said orders was also executed. It is further averred that defendant did not obtain delivery of the articles and plaintiff has paid custom duty of Rs. 3,65,433/- on 31.08.2002 in name of the defendants. It is further averred that subsequently, certain terms were reduced to writing and an agreement dated 11.09.2002 was executed. After receiving said 17 ventilators, defendant has duly supplied same further to different district hospitals and received payment against said supply. Plaintiff has averred that defendant has not cleared the dues towards the payment for said 17 ventilators and total outstanding amount is a sum of Rs. 65,85,433/-. Hence, plaintiff has filed the present suit claiming said amount along with interest.

4. Written statement was filed by defendant. In the written statement, defendant has admitted placing of orders for 16 ventilators vide order dated 28.06.2002 and one ventilator vide order dated 16.07.2002. Defendant has also averred that subsequent to that, there was another order dated 28.09.2002 which was placed for purchase of 17 ventilators. Defendant has further stated that amount which is mentioned by plaintiff is towards fourth order dated 28.09.2002. It is further stated that the amount of consideration for earlier two

orders was never ascertained and defendant has already paid payment to the plaintiff.

5. In the written statement, defendant has denied execution of any agreement dated 11.09.2002. It is stated that on plaintiff request, said agreement was drafted and was sent to plaintiff for signatures. However, plaintiff never signed the same not returned it to defendants. Defendant has also stated that even High Sea Sale Agreement as mentioned in the plaint was got prepared and was sent to plaintiff for signing. However, instead of returning signed High Sea Sale Agreement, plaintiff without any information to the defendant got 17 ventilators released from customs.
6. The present application has been moved on behalf of plaintiff stating that defendant has admitted the fact of placing purchase order, delivery of ventilators and fact that payment was not made. It is further averred that fourth order dated 28.09.2002 was never given to plaintiff by defendant. Sale amount which was ascertained which is mentioned by defendant was for the ventilators supplied against purchase order mentioned in the plaint. It is further averred that consideration amount was not qua the fourth order.
7. Counsel for the plaintiff has referred to certain police complaints stating that police complaints are filed by plaintiff. The fourth order is not mentioned in the said complaints.

8. I have heard and considered the rival contentions and have perused the record.
9. Though the fact of placing order is mentioned in the plaint and supply of goods is not denied by defendant but defendant has denied execution of any of High Sea Sale Agreement or agreement dated 11.02.2002 as stated by plaintiff. As per plaintiff, sale consideration for the said ventilator was ascertained in agreement dated 11.02.2002, however, execution of the said agreement is denied by defendant. Defendant has also denied sale consideration as mentioned in the plaint. Hence, said fact requires trial and it cannot be said that there are clear and unequivocal admission on part of the defendant. Defendant has admitted certain facts stated in the plaint but there are no such admission made in the written statement that will entitle plaintiff for judgment on admissions. From the entire reading of written statement, it cannot be stated that defendant has admitted its liability to pay amount as claimed in the plaint. Hence, present application is dismissed.

Announced in the open court on 21.12.2018.

Sugandha Aggarwal
ADJ/West/Delhi/21.12.2018

This order contains 4 pages and all pages are duly signed by me.

Sugandha Aggarwal
ADJ/West/Delhi/ 21.12.2018