

(2002) 04 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 110 of 1992

Ajeet International

APPELLANT

Vs

H.P. Horticulture Produce Marketing and Processing
Corporation Ltd.

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Contract Act, 1872 — Section 51

Citation : AIR 2002 HP 159 : (2003) 1 ARBLR 72

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; Shrawan Dogra, for the Respondent

Judgement

M.R. Verma, J.—In this suit, the plaintiff has prayed for a decree for Rs. 12,62,165.30 along with costs and future interest @ 24% per annum from the date of suit till realisation of the amount.

2. Case of the plaintiff as made out in the plaint is that it is a company incorporated under the Companies Act having its registered office in Lower Jakhu Road, Shimla. It is engaged in the manufacture and sale of corrugated fibre board and boxes for packing horticultural produce and industrial goods and also registered with the Director of Industries, Himachal Pradesh, Shimla and Arun Jain being its Managing Director is authorised to sue on its behalf. The defendant is a Public Limited Company and incorporated under the Companies Act having its registered office in Nigam Vihar, Shimla. Vide tender notice dated 28.1.1989, defendants asked the plaintiff to quote rates for supply of CFB cartons and the plaintiff tendered the offer along with earnest money deposit of Rs. 1.25 lacs, though, as per the policy decision of the State Government, plaintiff was not required to make said deposit. The validity of the tender was admitted by a High Power Committee and the plaintiff Company was invited for negotiations. As per the decision taken by the High Power Committee, an order for I lac cartons was

placed with the plaintiff subject to the conditions that a team of the defendant shall inspect the cartons before despatch by drawing four sets of samples on random basis out of the lots offered for despatch. One set of samples would be utilised by the team for post testing, another for laboratory of repute at the cost of supplier, the third would be retained by the supplier i.e. the defendant and the 4th by the plaintiff for reference and record. The payment to the extent of 90% was agreed to be released on receipt of goods at the destination, subject to favourable test report from the testing team and 10% payment was to be released after receipt of a favourable report from the testing institution. Freight was to be paid by the plaintiff for transportation at destination in good condition, accompanied with S.T. Form 26. The inspection team drew the requisite samples, tested the same, issued clear test reports and took delivery of the material after physically counting the supplies.

3. In pursuance of Clause (P) of the supply order, repeat orders were issued by the defendant company on 2.6.1989 and 24.6.1989 for 1.15 lac cartons and 2 lac cartons respectively and the specifications given in the supply order dated 15.5.1989, 2.6.1989 and 24.6.1989 were modified by the defendants vide letters dated 27.6.1989, 17.6.1989 and 25.8.1989 and sent despatch instructions for 1.20 lacs of cartons vide letters dated 6.1.1990, 2.1.1990 and 30.6.1990. The plaintiff, in all, supplied 4,15,066 cartons including 1806 cartons supplied for testing valued at Rs. 69,54,355.50 on different dates against different bills. Against the said supplies, the defendant paid Rs. 62,30,312.75 on cheques to the plaintiff on different dates. Apart from the payment by cheques, a sum of Rs. 1,97,000 was adjusted being freight paid by the defendants as per the terms and conditions of the supply order. The defendants having received all the cartons and recovered the full payment by further sale, have failed to pay the remaining legitimate amount to the plaintiff despite repeated reminders and notices, that too, when the samples had met the specified parameters of testing. It is further claimed that the defendants failed to implement the payment schedules and terms, therefore, debit notes for interest were raised by the plaintiffs @ 24% per annum which was paid by the plaintiff as a result of overdraft facility to ANZ Grindlays bank. The defendant is financially hopelessly crippled, commercially insolvent and is unable to run and pay the dues of its creditors. The plaintiff filed Company petition No. 4 of 1999 for winding up the defendant company, which is pending in this Court, wherein this Court has directed the defendant company to deposit or pay Rs. 1 lac to the plaintiff. The defendant company admitted liability to pay Rs. 1,80,239.10 to the plaintiff and deposited the amount in the High Court, but opposed the release thereof to the plaintiff. However, this Court directed release of the amount to the plaintiff which was received by it thereafter. After adjustment of the aforesaid payments received by the plaintiff, a sum of Rs. 12,62,165.30 is payable by the defendants on account of the balance of costs of supplies, balance of earnest money deposit, interest and warehousing charges. It is also claimed that the defendants have now come forward with a plea that 1.20 lac cartons were substandard which is wholly incorrect and the plaintiff is

entitled to recover the aforesaid amount along with interest as claimed.

4. The defendants contested the claim. The case of the defendants, as made out in its written statement, is that as against supply order of 4.15 lacs cartons during 1989-90, the plaintiffs supplied 3,16,957 cartons upto the end of January 1990. The plaintiff held out that it had got 90,000 cartons available with it which were left over from the previous year and offered to supply them at that previous years rates and the plaintiff supplied 95,958 cartons against that offer. Thus, the plaintiff supplied only 4,12,915 cartons in all. The cartons sent for testing were to be supplied by the plaintiff as per the terms and conditions and price thereof could not be claimed. Five lots of cartons comprising 1,20,000 cartons failed in Cobb test conducted by the Indian Institute of Packaging which were sent by the inspection team at the time of pre despatch inspection. Therefore, the defendant is entitled to recover the costs of 1.20 lac defective cartons being below specifications. However, following the prevalent practice, the defendant withheld 10% of the costs of the sub standard cartons amounting to Rs. 2,01,000, the claim of the plaintiff for freight has been denied as the supply was to be made by the plaintiff at the station as agreed, therefore, the amount on this count has legitimately been deducted. While admitting the reports by the local inspecting team, it has been claimed that the local inspection was subject to ultimate success of the sample sent to the Indian Institute of Packaging, New Delhi (hereinafter referred to as the I.I.P.). The alleged failure of the defendant regarding payments has been denied and it has been claimed that the payments were withheld for just and legitimate reasons. The allegation that the financial position of the defendant is hopelessly crippled and it is commercially insolvent and unable to run and pay the dues have been denied. The facts regarding institution of a Company Petition, orders of this Court regarding deposit of a sum of Rs. 1 lac and the defendant having deposited a sum of Rs. 1,80,239.10 have not been disputed. The defendant has, thus, denied the claim of the plaintiff.

5. Plaintiff filed replication wherein the grounds of defence as taken in the written statement were denied and the claim as made out in the plaint was reaffirmed.

6. On the pleadings of the parties, the following issues were framed :

- (1) Whether the plaintiff supplied 4,15,666 cartons of the value of Rs. 69,52,355.50 to the defendant, as alleged ? OPP
- (2) What were the terms, on which the plaintiffs supplied the cartons to the defendants ? OPP
- (3) To what amount the plaintiff is entitled to recover from the defendants and on what account ? OPP
- (4) Whether the plaintiff is entitled to recover interest on the balance amount of the cartons and on the balance amount of earnest money deposited ? If so, at what rate and from which date ? OPP
- (5) Whether the plaintiff is entitled to recover warehousing charges for 90,000

cartons, as alleged ? OPP

(6) Whether the withholding of the amount of Rs. 2,01,000.00 by the defendants from out of the amount payable to the plaintiff is legal and justified ? OPD

(7) Relief.

7. Parties led evidence. Arguments were heard.

8. My finding on the aforesaid issues are as follows :

9. Issue No. 1.

As per the plaintiff, it supplied 4,15,066 cartons to the defendant whereas according to the defendant, it received only 4,12,915 cartons from the plaintiff. Thus, the dispute on this count is regarding supply/non-supply of 215 cartons.

It is admitted case that the plaintiff has added 1806 cartons which were drawn for the purpose of "Inspection and check" in the total number of "supplied cartons" whereas according to the defendant, the sample cartons were not to be included. Each of the admitted supply orders Exts. PW 4/2, PW 4/3 and PW-4/4 provides for drawing 4 cartons from each lot offered for supply for the purpose of inspection etc. and the similarly worded condition in each supply order reads as follows :

"(h) Inspection and quality check Inspection of the cartons shall be made by a team appointed by the managing Director, hmpc before despatch. Four sets of samples on random basis shall be drawn by the inspecting officers out of the lots offered for despatch in the presence of supplier from their premises. One set will be utilised by the team for post testing, another for in laboratory of repute at the cost of supplier, the third one will be retained by the supplier and the fourth one by hpmc for reference and record. There will be no retesting of re-inspection if first sample fails. The despatch instructions will be issued by the Corporation on favourable test report from the inspecting team. This will enable the supplier to claim 90% payment from hpmc on receipt of goods at destination in satisfactory condition. The remaining 10% payment will become due after favourable report from IIP. The party will not be entitled for 10% payment in case the cartons do not perform as per specifications of hpmc and IIP test. Besides this, the random test of the supply will also be carried out on the receipt of the goods at destinations and if any variation found the suppliers shall be held responsible and besides recovery of 90% payment made they shall also be liable to be black listed."

10. It is clear from the above that favourable test report by the Committee appointed for the purpose of inspection and checking of the cartons in the specified manner, was a precondition for despatch instruction and to enable payment of 90% of the price of the cartons supplied against the supply order. Release of payment of the remainder was subject to favourable test report from I.I.P. It follows that in the absence of a favourable report by the inspecting team,

cartons were not to be purchased by the defendant and despatch instructions were to follow only after favourable test report of the inspection team. Out of the sample drawn from each lot one carton was to be used by the inspection team, one carton was meant for test by I.I.P. at the cost of the supplier, i.e. the plaintiff, one carton each was to be retained by the parties. All the four sample cartons were to be drawn for different purposes before the despatch instructions for which favourable test report was a precondition. In case the sample failed, no despatch instruction could follow and the defendant would not be liable to pay anything to the plaintiff. This situation and the condition that test was to be carried out at the cost of the plaintiff, clearly show that the plaintiff is not entitled to claim the price of the sample cartons one of which remained with it. This conclusion is further strengthened by the fact that price of the sample cartons was not included in the bills given by the plaintiff regarding supply of cartons but the demand for payment of price of sample cartons had been raised much after the supplies.

11. Regarding supply of 345 cartons mere is no cogent evidence to prove that these were actually supplied. It is stated by PW-4 that the bills regarding supply sent to the defendant are Ext. PW-3/313 to PW 3/456 and the defendant used to incorporate the receipt of the cartons in the bills. A perusal of these documents, however, reveals that all of them are not bills. Only Exts. PW-3/313, PW-3/315, PW-3/317, PW-3/319, PW-3/321, PW-3/ 324, PW-3/328, PW-3/333, PW-3/340, PW-3/347, PW-3/351, PW-3/355, PW-3/359, PW-3/363, PW-3/367, PW-3/371, PW-3/375, PW-3/379, PW-3/382, PW-3/387, PW-3/392, PW-3/397, PW-3/402, PW-3/407, PW-3/412, PW-3/ 416, PW-3/421, PW-3/424, PW-3/426, PW-3/431, PW-3/434, PW-3/437, PW-3/440, PW-3/442, PW-3/444, PW-3/446, PW-3/448, PW-3/450, PW-3/452 and PW-3/456 are the bills. Other exhibits are CRS/nothing etc. Out of the aforesaid bills, Ext. PW-3/397 is regarding supply of 3500 cartons but the receipt on its back is about 3490 cartons showing shortage of 10 cartons in the supply. Bill Ext. PW-3/382 is regarding supply of 2800 cartons but it does not contain any receipt at its back as in other bills, therefore, receipt of these cartons by the defendant is not proved. Bills Exts. PW-3/412 and PW-3/416 are about supply of 3350 and 3500 Nos. of cartons on the same day by the same truck which prima facie raises doubt the correctness of these bills inasmuch as the supply was to be made at distant place and does not appear possible on the same day by the same vehicle. On the contrary, the plaintiff itself examined T.G. Negi (PW-5) in support of its case and he had proved Ext. PW-5/1 as the details of the supply of cartons by the plaintiffs at various stations. As per these details, the defendant had received $3,16,957 + 95,958 = 4,12,915$ cartons from the plaintiff as is the case of the defendant. These figures also do not support the case of the plaintiff.

12. It was contended by the learned counsel for the plaintiff that it has been stated by PW-5 that the cost of short supply had been deducted from the driver, therefore, the plaintiff is entitled to recover the price of short delivered cartons. The contention cannot be upheld for the reason that the plaintiff has not proved

that 345 cartons were short delivered and it was not a case of non-supply and that the price of 345 cartons in question was recovered by the defendant from the driver and not of any other short supplied cartons. Thus, the plaintiff has failed to prove that it had supplied 4,15,066 cartons to the defendant against the aforesaid supply orders. However, in view of the admission by the defendant, the plaintiff supplied 4,12,915 cartons to the defendant against the supply order. The value of the cartons so supplied at the agreed rate of Rs. 16.75 per carton works out to Rs. 69,16,326.25 P.

13. In view of the above discussion, it is held that the plaintiff supplied 4,12,915 cartons worth Rs. 69,16,326.25 P. to the defendant against the supply orders and not 4,15,066 as claimed in the plaint. This issue is accordingly decided partly in favour of the plaintiff and partly against it.

14. Issue No. 2.

It has not been disputed by either of the parties at the time of arguments that the cartons were to be supplied by the plaintiff to the defendant as per the terms and conditions in the supply orders Exts. PW-4/2, PW-4/3 and PW-4/4.

15. It is, therefore, held that the cartons were to be supplied by the plaintiff as per the terms and conditions as specified in the supply orders Exts. PW-4/2, PW-4/3 and PW-4/4. This issue is accordingly decided.

16. Issues No. 3, 4, 5 and 6

Since all these issues are interconnected and interdependent, therefore, are taken up together for discussion and disposal.

17. The plaintiff has claimed the following amounts in the plaint:

(1)

Balance on costs of supplies

=Rs. 5,25,042.75

(2)

Balance earnest money deposit

=Rs. 25,000.00

(3)

Warehousing charges upon 31.3.1991

=Rs. 54,000.00

(4)

Interest for belated payments in terms of Clause (k) of supply orders

=Rs. 29,264.00

(5)

Interest for delayed lifting

=Rs. 4,35,642.00

(6)

Interest for delayed payment of 10% balance

=Rs. 20,560.00

(7)

Interest from 1.4.1991 to 31.5.1992 at the rate of 24% per annum

=Rs. 3,15,545.65

Total

=Rs. 14,42,494.40

Less paid through Court

=Rs. 1,80,329.10

Net payable

=Rs. 12,62,165.30

18. In view of the findings on issue No. 1 as above, the total cost of the cartons supplied by the plaintiff to the defendant at the agreed rate works out to Rs. 69,16,326.25 p. Against this amount a sum of Rs. 64,27,312.75 p. had already and admittedly been received by the plaintiff inclusive of the adjustment of freight charges payable by it leaving a balance of Rs. 4,89,013.50 p. There is no dispute that the plaintiff had deposited a sum of Rs. 1,25,000 with the defendant as earnest money. Out of this amount a sum of Rs. 1,00,000 had already been released to the plaintiff leaving a balance of Rs. 25,000. Thus, the principal amount payable to the plaintiff works out to Rs. 5,14,013.50.

19. The liability to pay this amount has been denied by the defendant on the ground that as per the clause already quoted heretofore, the favourable report of the inspecting team enabled the supplier for payment of 90% of the cost of the material supplied. The payment of the remaining 10% of the cost was to be made only in the event of the cartons sample, qualifying the test to be conducted by the I.I.P. If the sample failed, the supplier was not entitled to the remaining payment, i.e. 10% of the costs, and that apart from the payment of Rs. 64,27,312.75 p. the defendant, pursuant to the order of this Court in a Company Petition filed by the plaintiff, had deposited a sum of Rs. 1,80,329.10 in this Court which had been released to the plaintiff against its claim. Thus, according to the defendant, nothing is now payable to the plaintiff.

20. There is no dispute that test/inspection reports of the inspection team

relating to the cartons which failed in the test by I.I.P. are Exts. PW-4/ 10, PW-4/11, PW-4/12, PW-4/13 and PW-4/14 which show that team inspected the samples vide aforesaid reports respectively on 5.8.1989, 11.9.1989, 13.9.1989, 21.9.1989 and 21.9.1989 and in view of these reports being favourable, despatch instructions followed. The relevant samples were sent to the I.I.P. for test vide letters Exts. DW-4/3, PW-4/1, PW-4/2, PW-4/ 5 and PW-4/4 respectively dated 23.10.1989, 26.9.1989, 26.9.1989, 23.10.1989 and 23.10.1989. The respective test reports received from the I.I.P. Laboratory are Ext. DW-3/3, DW-3/1, DW-3/2, DW-3/4 and Ext. DW-3/5 respectively dated 27.11.1989, 23.10.1989, 23.10.1989, 27.11.1989 and 27.11.1989.

21. To prove the reports Ext. DW-3/1 to DW-3/5 the defendant has examined John F.D. Chunha (DW-3). He has stated that these reports had been sent by them (I.I.P.). In the cross examination he has stated that in the copies of the reports produced in the Court (and exhibited as aforesaid) hand written words "Ajit" is written which is not in the record of reports as produced by him and that the said word had not been inserted in these reports at the instance of the I.I.P. It is nobody's case that the said insertion had been made in the reports by a certain person with any purpose. This insertion in the ordinary circumstances may not be very material but for want of explanation as aforesaid, some doubt is created about the genuineness of these reports, more so, in view of the fact that the original reports were not produced at all and even DW-3 had compared these exhibits only with copies of the reports which he had brought with him. This suspicion is further confirmed by the fact that report Ext. DW-3/4 is not proved to be the report regarding the sample sent to the I.I.P. Laboratory vide letter Ext. DW-4/5. It is so because letter Ext. DW-4/5 sending samples of lot No. 12 to I.I.P. bears reference No. 12/89-4207 whereas the report Ext. DW-3/4 is regarding sample which was sent under reference No. 12/ 89-4206. Thus, these reports are rendered unreliable and cannot be acted upon.

22. Even if it is presumed that reports Exts. DW-3/1 to DW-3/5 are regarding samples of the cartons in question, these are still unreliable for obvious reasons. The samples were initially found as per the agreed standards by the inspection team vide reports Exts. PW-4/10 to PW-4/14. The inspection team carried out the inspections on the dates already set out earlier. It means the samples were drawn on or before such dates. The corresponding forwarding letters and dates of test reports of I.I.P. as already mentioned, show that none of the sample was tested in the I.I.P. Laboratory within 20 days of the drawing of the sample. Three samples were tested after more than two months and two samples were tested after more than one month of these taking of the samples.

23. "Indian Standard Specification for Fiber Board Boxes" Ext. DW-3/ 1-P1 published by Indian Standard Institute, according to DW-3, is one of the books on" the subject of conducting the test according to the Indian Standards. Clause 8 of the said book deals with sampling, conditioning and testing of the samples of boxes and Sub-clause (1) thereof provides for testing the sample within 20

days. The testing of the samples in this case was not within 20 days but much thereafter. What adds to the injury is that there is no evidence to prove that during the period after drawal of samples till the date of testing, these were dealt with and kept in such a manner which could protect them from seasonal affects. The variations in the data collected at the time of test by the inspection team and the data collected at the time of test in the I.I.P. Laboratory, are indicative of unsafe custody of the samples. For the reasons stated hereinabove, the reports Exts. DW-3/1 to DW-3/5 cannot be relied upon to hold that the cartons supplied by the plaintiff were not as per the specification agreed to between the parties. Therefore, the defendant could not withhold the payment of 10% of the cost of the cartons, i.e. a sum of Rs. 2,01,000 as admittedly withheld by the defendant.

24. The security was required to be deposited as per the terms and conditions of the tender document Ext. PW-4/1. There is no cogent evidence in the form of OM or Notification or instructions issued by the State Government to the effect that the small scale industries were not to deposit the earnest money as claimed by the plaintiff. Each of the supply orders Exts. PW-4/2 to PW-4/4 contained the condition that in case of failure by the supplier to make the supplies as per the condition of the said supply orders, the earnest money was to be forfeited by the defendant apart from black listing the party for further dealings.

25. As per the supply orders Exts. PW-4/2 to PW-4/4, the plaintiff was to supply 4,15,000 cartons in all whereas it supplied only 4,12,915 cartons. However, the defendant did not invoke the forfeiture clause during the subsistence of the agreement. On the contrary, admittedly, allowed the plaintiff "to continue the supply of the cartons beyond the specified time. This act and conduct on the part of the defendant bars it from invoking the clause regarding forfeiture of the earnest money.

26. It is admitted case of the parties that the plaintiff deposited a sum of Rs. 1,25,000 as earnest money with the defendant. Out of this amount a sum of Rs. 1,00,000 had already been released to the plaintiff leaving a balance of Rs. 25,000. The plaintiff is entitled for the refund of this balance amount.

27. The total liability of the defendant to pay on account of balance price of the cartons and the balance amount of earnest money, as already found, is Rupees 5,14,013.50 p. However, during the pendency of a company petition, pursuant to the orders of this Court, the defendant deposited a sum of Rs. 1,80,239.10P. which was, admittedly, released in favour of the plaintiff. Taking, this amount into account, the amount now payable by the defendant to the plaintiff works out to Rs. 3,33,774.10P.

28. There is no specific, reliable and cogent evidence to prove the claim of the plaintiff for warehouse charges in the sum of Rs. 54,000. PW-4 has stated that 90,000 cartons were "to be lifted in September, 1989 but were actually taken in the month of June/July 1990. These were not lifted in time because of funds. We suffered housing problem and interest we paid to the bank". There is no evidence

to corroborate the cryptic statement of PW-4 on this count. On the contrary, Gopal Singh (DW-5) has stated that the cartons offered for sale in October 1989 were not ready. His statement finds corroboration from a contemporaneous communication Ext. D1, a typed copy whereof is Ext. PW-3/D-4. Thus, in view of the material on record, claim of the plaintiff for Rs. 54,000 on account of warehouse charges is not proved.

29. Insofar as the claim of the plaintiff for interest on account of belated payments, delayed lifting, delayed payment of 10% balance cost of cartons and interest from 1.4.1991 to 31.5.1992 as laid, are concerned, these are cryptic and lacks in material particulars and are not proved by leading cogent evidence. In the former three claims the amount on which the interest has been claimed and the period for which it is claimed, had not been mentioned in the plaint nor proved by evidence. The last claim is so because this interest appears to have been calculated even on the amounts of interest as claimed in the former three claims for interest. Thus, the interest as claimed, cannot be correctly worked out and awarded.

30. In the supply orders containing the terms and conditions, no rate of interest has been specified as payable by the defaulting party. The plaintiff, however, has claimed interest at the rate of 24% per annum. To substantiate this rate, the plaintiff has examined Rakesh Sharma (PW-1) who has stated that the rate of interest in the year 1991-92 was 30% in respect of clean overdraft facility. He is, however, not aware whether the plaintiff had availed such facility. PW-4 director of the plaintiff has also not stated about availing of such facility from the bank by the plaintiff. He has stated that interest has been claimed at the rate of 24% per annum but he has not stated any basis to claim interest at the said rate. It is also not stated by him that the money invested by the plaintiff for manufacturing the cartons had been borrowed at the rate of 24% interest. Thus, the claim for interest at the rate of 24% as made in the plaint is not established.

31. There is, however, no dispute that the transaction between the parties was commercial. The plaintiff is the manufacturer of the cartons and such a job cannot be undertaken without investment of money. Therefore, I am of the view that the plaintiff is entitled to interest on the due amount and the reasonable rate of interest, in view of the above discussion and the facts and circumstances of the case particularly the fact that the payment of the substantial amount was withheld by the defendant because of adverse test report which has been found unreliable and the fact that the material record relating to the transaction between the parties, was admittedly taken in possession by the investigating agency in connection with some criminal case, the reasonable rate of interest, in my opinion, will be 12% per annum.

32. The next question which requires consideration is as to from which date the plaintiff is entitled to interest ? As per the terms and conditions of the supply orders Exts. PW-4/2 to PW-4/4, 90% of the payment of the cost of the cartons was to be made with 15 days on receipt of the goods at destination and the

balance 10% payment was to be released after the receipt of favourable reports from the testing institution which in the ordinary course ought to have been obtained within 20 days of the drawal of the sample cartons. Since the withholding of the payment on the basis of the unreliable test report was not justified, therefore, the interest on the amount due on account of the cost of the cartons must be held liable to be paid w.e.f. 16th day from the date(s) when the last supplies comparable in value to the due amount were received. Insofar as the interest on the earliest money is concerned, it shall be payable on and w.e.f. 1.3.1990 when a part of the earnest money was ordered to be released vide Ext. PW-3/B2.

33. In view of the above discussion and conclusions, it is held and decided as under:

(a) the plaintiff is entitled to recover a sum of Rs. 333,774.10 from the defendant and issue No. 3 is, accordingly decided in favour of the plaintiff to the extent indicated ;

(b) The plaintiff is entitled to recover simple interest on the balance amount of the cartons and the balance amount of earnest money at the rate of 12% per annum w.e.f. 1.3.1990 on the balance amount of Rs. 25,000 of earnest money and on and w.e.f. the date on which the cost of the cartons became payable as per the conditions of the supply orders, i.e. after the 15th day of the last delivery of the cartons comparable to the amount found due on this count. Issue No. 4 is accordingly decided in favour of the plaintiff to the extent as indicated ;

(c) The plaintiff is not entitled to recover warehouse charges as claimed. Issue No. 5 is accordingly decided against the plaintiff; and

(d) the defendant is not legally entitled to withhold the amount of Rs. 2,01,000 because of the alleged negative reports from the test laboratory. Issue No. 6 is accordingly decided against the defendant.

34. In view of the findings given above, a decree for Rs. 3,33,774.10 with simple interest at the rate of 12% per annum on Rs. 25,000 w.e.f. 13.1990 and on the remainder w.e.f. on expiry of 15th day from the date of the last supply(s) of the cartons comparable in value to the remainder till the realisation of the decretal amount is passed in favour of the plaintiff and against the defendant. It is further ordered that the defendant shall also be liable to pay proportionate cost of the suit calculated on the decretal amount.

35. The relief claimed over and above the relief hereinabove granted, is dismissed.