

**(2005) 11 SHI CK 0009**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Suit No. 69 of 1996**

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|---------------------------------------|------------|
| H.P. Agro Industries Corporation Ltd. | APPELLANT  |
| Vs                                    |            |
| S.N. Chemicals and Others             | RESPONDENT |

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**Date of Decision :** 25-11-2005

**Acts Referred:**

**Citation :** (2006) 1 ShimLC 162

**Hon'ble Judges :** Surjit Singh, J

**Bench :** Single Bench

**Advocate :** Kuldip Singh and Bimal Gupta, for the Appellant; Shrawan Dogra and Monika Joshi, for the Respondent

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## Judgement

Surjit Singh, J.—Plaintiff is a Company, registered under the Companies Act, 1950. It is owned and controlled by the State of Himachal Pradesh. Shri R.K. Sharma, its Divisional Manager of Pesticides Wing, is authorized to file the suit on behalf of it. The plaintiff deals in pesticides and insecticides, for which it has been issued a licence by the Government of India, Ministry of Commerce. Defendant No. 1 is a firm having two partners, i.e. defendants No. 2 and 3. This firm is engaged in formulation of pesticides and insecticides. Defendant No. 1 does not have the licence to import directly the technicals for the formulation of pesticides and insecticides. It approached the plaintiff for procurement of three technicals, namely Mancozeb technical, Dimethoate technical and Phenthoate technical for it from a firm of Italy. The plaintiff agreed to the proposal of defendants No. 1 to 3. It was agreed that the plaintiff will open an account of letter of credit with State Bank of Patiala, Chambaghat, District Solan for purchase of the technicals from a concern of Italy and the defendants will arrange for back to back letter of credit. On 1.2.1990 defendant No. 1 approached the plaintiff to procure seventy metric tones of Mancozeb technical and thirty-six metric tones Dimethoate technical for it. The plaintiff obtained two letters of credit from State Bank of Patiala, Chambaghat, one for U.S. Dollars 1,80,000/- on account of the cost, insurance, freight etc. of Dimethoate technical (36 metric tones) and another for 2,56,500/-

Swiss Francs on account of cost, insurance, insurance and freight etc. of Mancozeb technical (70 metric tones). Defendant No. 1, vide letter dated 17.2.1990, requested the plaintiff for purchase of 17 metric tones of Phenthoate technical. The plaintiff accepted the request and got the letter of credit of U.S. Dollars 1,80,000/- enhanced to U.S. Dollars 2,87,100/- so as to include the cost, insurance and freight in the cost of Phenthoate technical. On the basis of the aforesaid letter of credit, the Italy concern sent three consignments of the aforesaid technicals on different dates. The defendants, however, did not furnish back, to back letter of credit, despite repeated requests. The result was that the plaintiff had to pay interest on the amount of letters of credit at the rate of 18% to its banker. In addition to that, the plaintiff had to incur extra expenses on retaining, storage, handling, custom duty etc. of the technicals at the Bombay port. The defendants got retired the documents of the material on piece-meal basis by making payment to the Corporation, instead of furnishing back to back letter of credit. On or about 13.7.1990, the defendants gave six post-dated cheques for Rs. 46,35,000/- to the plaintiff for retiring the documents in respect of left-over quantity of the technicals. The cheques were submitted by the plaintiff for collection to its banker. Only two of the cheques for Rupees twelve lacs (both) were encashed. Rest of the cheques for a sum of Rs. 34,35,000/- were dishonoured. The plaintiff then got the left-over quantity of the technicals shifted to the custom bonded warehouse through Victor & Brothers (Agents) Bombay, impleaded as "defendant No. 4", with a clear direction not to release any material to the defendants, unless instructed by the plaintiff. Defendant No. 4, without there being any instructions from the plaintiff, released some of the quantity of the technicals to defendant No. 1 on the latter's paying the retiring charges. Defendant No. 4 thus committed breach of trust, in connivance with defendants No. 1 to 3. With respect to the remaining quantity, the plaintiff received notices from the Assistant Collector, Customs requiring it to remove the same. It was threatened that in case the same was not removed, it would be put to auction. The plaintiff was also pressed by its banker, with which it had opened the letter of credit accounts, to clear its liability. The defendants were required to pay the balance amount, so that the plaintiff could clear its liability towards the bank. The defendants paid a part of the money through four bank drafts from April to August, 1991 and acknowledged their liability in respect of the remaining amount through various letters, including one dated 3.9.1991. Through letter dated 29.7.1991, defendants No. 1 to 3 agreed that they would lift some material on certain conditions. The plaintiff, therefore, transported that material from Bombay to Parwanoo, where it has its store. The defendants, however, did not comply with the conditions and consequently only half of the material, agreed to be released, was actually released.

2. On the suggestion of defendants No. 1 to 3, the plaintiff agreed to purchase certain items from M/S Anu Products, a sister concern of defendant No. 1, and to adjust the price of those items against the liability of defendant No. 1. Accordingly, three orders were placed with M/S Anu Products from April, 1992 to

September, 1993 but said M/S Anu Products (impleaded as "defendant No. 5") supplied material worth Rs. 4,16,844.58 against the ordered quantity worth Rs. 8,47,300/-.

3. Ultimately a meeting was held on 16.6.1993 between the representatives of the plaintiff and a representative of defendant No. 1, for settling the accounts and clearance of their liability by the defendants. Minutes of the meeting were recorded, per which a sum of Rs 17,51,507/- was due to the plaintiff from the defendants, as per its account of books.

4. After the aforesaid meeting, the defendants discharged their liability partly by adjustment of the price of the products supplied by defendant No. 5. A sum of R. 3.5 lac, deposited by the defendants a margin money at the time of opening of letter of credit account by the plaintiff, was also adjusted. Some adjustment was given on account of error in calculating interest for the period upto March, 1993. A sum of Rs. 12,70,907,64 was due to the plaintiff as on 31.3.1996. The plaintiff filed a suit for recovery of the aforesaid amount of money together with interest at the rate of 20.5% per annum with quarterly rests.

5. The suit has been contested only by defendants No. 1 to 3. They have raised a number of preliminary objections, besides contesting the claim on merits. It is stated that the claim of the plaintiff is bailed by time, the suit is liable to be dismissed as having been filed by a person not authorized to sue on behalf of the plaintiff, the suit is bad for non-joinder of necessary parties.

6. On merits, it is not denied that defendant No. 1 had approached the plaintiff for import of the aforesaid three technicals for them as the said technicals were required by them for formulation of some pesticides and insecticides. However, it is alleged that they were kept in dark by the plaintiff as regards its eligibility to import Phenthoate technical, because in fact it had no such authorization nor did it possess any licence to import the said technical and so the contract between the plaintiff and the defendants, as regards the import of the aforesaid technical, was illegal and the rights and liabilities, arising under the said contract, are not enforceable through legal process. It has not been denied that there was an agreement that defendant No. 1 would be furnishing back to back letter of credit and that such letter of credit was not furnished. It is alleged that defendant No. 1 was forced by the plaintiff to get retired the documents pertaining to Phenthoate technical, which it did not have the licence to import, and because of this, the cash liquidity of the plaintiff got disturbed. It has been admitted that six cheques, as mentioned in the plaint, were issued by the defendants and out of those only two, amounting to rupees twelve lacs, had been honoured and the remaining four cheques were dishonoured, but it is alleged that this happened because the defendants were forced to first get retired the documents in respect of the entire quantity of Phenthoate technical, which was not that urgently required by the defendants as the other two technicals. It is also alleged that interest has been charged at an excessive rate and that in fact the plaintiff has paid interest at the rate of 16% per annum and that too simple interest to its

bankers, but it has calculated interest at the rate of 20 to 25% while working out the liability of the defendants. It is also alleged that there had been a proposal by the defendants to the plaintiff, which was conveyed through letter dated 29.7.1991, for lifting half container of Dimethoate technical. That proposal was accepted by the plaintiff subject to certain conditions, contained in its letter dated 31.7.1991. The defendants fulfilled all those conditions, but despite that only 1/4th quantity of the aforesaid technical was released and thus there was breach of the accepted proposal, regarding release of half of the quantity of Dimethoate technical.

7. It is admitted that there had been a meeting on 16.6.1993 for settling the accounts and for the payment of the money, if any, found due from the defendants, but it is alleged that no settlement was arrived at as the plaintiff had not maintained its accounts correctly, inasmuch as it had not credited the amount of Rs. 3,50,000/-, which was lying with it since 31.12.1991 nor had this amount been excluded from the liability of the defendants, while calculating the amount of interest. It is also alleged that because of the plaintiff's failure to release half of the quantity of Dimethoate technical, pursuant to the accepted proposal dated 29.7.1991, a part of the said technical to extent of 3375 Kgs. became useless, because its shelf life expired and so the value of the aforesaid quantity of the said chemical was required to be deducted from the liability of the defendants. Further it is alleged that the defendants had got retired a consignment of MONOCROTOPHOS meant for one M/S. Arti Minerals, on the asking of the plaintiff by paying huge amount of money and that a sum of Rs. 2,03,000/- was due to said M/S. Arti Minerals from the plaintiff and when the defendants asked the plaintiff to adjust the aforesaid amount against their liability, they adjusted only a sum of Rs. 37,087.60 out of the said amount in the account for the years 1989-90 and gave adjustment of the said amount only on 31.3.1990. It is alleged that the defendants are entitled to adjustment against their liability an amount equivalent to the interest for a period of one year, on the aforesaid amount of Rs. 2,03,000/-. Further it is alleged that the plaintiff has not given credit for a sum of Rs. 56,655/-, paid by defendant No. 1 to one M/S. R.K. Printers, on behalf of the plaintiff, on being approached by it through letter dated 8.2.1992.

8. The plaintiff has filed rejoinder, denying the correctness of the preliminary objections. Reply on merits, to the extent it controverts the averments made in the plaint, has also been disputed. It has been admitted that as per proposal dated 29.7.1991, half of the quantity of Dimethoate technical had been agreed to be released, but it is alleged that the defendants did not comply with all the conditions of the proposal and also because of their past conduct as also the fact that four, out of the six cheques issued by them earlier, had been dishonoured, only 1/4th of the quantity of the said technical was released. It has been denied that an amount of Rs. 3,50,000/- had been lying with the plaintiff as advance money. The said amount is alleged to have been paid as margin money for opening letter of credit account and so it is not adjustable till the accounts are

finally settled and money, found due, paid. It has been denied that the defendants were required to make any payment on behalf of the plaintiff to M/S. R.K. Printers.

9. Following issues were framed, on the pleadings of the parties, on 22.2.1999:

1. Whether the suit has not been filed by duly authorized person? OPD
2. Whether the suit is not within limitation? OPD
3. Whether the plaintiff could legally import the material in question namely, MANCOZEB, DIEMETHOATE and PHENTHOATE? If so, whether the plaintiff has imported the material on the request of defendant No. 1 and whether defendant No. 1 did not comply with the terms on which the material was imported? OPP
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the defendant No. 1 failed to give back the letter of credit in favour of the plaintiff and further failed to retire the documents and take delivery of the above mentioned imported technicals, if so, its effect? OPP
6. Whether defendant No. 1 had deposited post-dated cheques amounting to Rs. 46,25,000/- (sic) for presentation on due dates in lieu of back to back letter of credit and cheques for Rs. 34,25,000/- demanded by the defendants were dishonoured for want of funds contrary to the undertaking given by defendant No. 1? OPP
7. Whether the parties violated the terms of offer dated 29.7.1991? Which party and its effect? OP Parties
8. Whether the plaintiff had shifted material from port to custom bonded warehouse by appointing defendant No. 4 at the request of defendant No. 1 and whether the defendant No. 4 in connivance with defendant No. 1 released material to defendant No. 1 contrary to the instructions of the plaintiff? OPP
9. Whether the plaintiff accounted for the entire due amount of defendant No. 5 in the account of defendant No. 1 on the due dates? If so, its effect? OPD
10. Whether the plaintiff is entitled to withhold the payments in the accounts of M/S. Arti Minerals to be made in favour of defendant No. 1, when imported MONOCROTOPHOS technical was released to defendant No. 1 on its making payments for cost and other charges payable by Arti Minerals? If so, whether defendant No. 1 has ever paid any amount in excess while purchasing this MONOCROTOPHOS technical from the plaintiff? OPD
11. Whether Rs. 56,655/- is payable by the plaintiff to defendant No. 1 as the amount paid to M/S. R.K. Printers on behalf of the plaintiff by defendant No. 1 on the instructions of the plaintiff? OPD
12. Whether the plaintiff is entitled to recover any interest? If so, at what rate and from whom? OPP

13. Whether any accounts were settled on 16.6.1993 as alleged? If so, its effect?  
OPD

14. Whether the plaintiff is entitled to recovery any amount? If so, from whom and to what extent? OPP

15. Whether defendant No. 1 is entitled to full costs of Cytozyme supplied by him to the plaintiff as per order dated 8-1992, as unsold expired stock is still in possession of the plaintiff? OPD

16. Whether the plaintiff has given credit of the amount of sale of Cytozyme in the account of defendant No. 1 on the dates when it was sold? If not, its effect?  
OPD

17. Whether defendant No. 1 is entitled to interest on security amount of Rs. 3.5 Lacs at the same rate at which interest is being claimed by the plaintiff? OPD

18. Relief.

10. Parties have gone to trial. I have perused the evidence and heard the learned Counsel for the parties. My findings on the aforesaid issues are as under.

Issue No. 1

11. PW-4 R.K. Sharma, employed as Divisional Manager with the plaintiff Corporation, has testified that the plaint is signed and verified by him on behalf of the plaintiff. He has tendered in evidence copies of the minutes of the meetings of the Board of Directors, held on 21.4.1982 and 21.9.1998, which are Exts. PW-4/A and PW-4/B, respectively. The witness has claimed that through these resolutions, he is authorized by the plaintiff to sue on its behalf. In cross-examination, the witness has stated that he could not have filed the suit, on behalf of the plaintiff on the basis of document Ext. PW-4/A, because the document authorizes the Officers of his rank and certain other ranks, only to make statements in the cases, instituted by or against the plaintiff Corporation, but not to sign and verify the pleadings.

12. Learned Counsel for the defendants argued that Ext. PW-4/B, though authorizes the witness specifically to file the suit against the defendants, yet this resolution was passed after the institution of the suit. He argued that at the time of the institution of the suit, PW-4 was not authorized to sign and verify the plaint and hence the suit is not properly instituted.

13. The argument has been noticed only to be rejected. A similar point was raised before the Hon'ble Supreme Court in United Bank of India Vs. Naresh Kumar and others, The Hon'ble Supreme Court held that a Company may institute a suit through a person authorized by a Board of Directors by passing a resolution and in case where there is no such resolution, the Company/ Corporation can ratify the said action of its officer in signing the pleadings and such ratification can be express or implied. In the present case, the resolution Ext. PW-4/B, can be said to be an express ratification of the action of PW-4 Shri

R.K. Sharma in signing and verifying the plaint, on behalf of the plaintiff.

14. For the foregoing reasons, issue is answered in the negative. Issue No. 2

15. It has been admitted by the defendants that they approached the plaintiff for import of the chemicals on their behalf in the year 1990 and that in the year 1991 they issued six cheques, out of which two were honoured and four dishonoured and that in 1993 there was a meeting between their representative and the representatives of the plaintiff, for the settlement of accounts and ascertainment of the liability, if any, of the defendants and that it was followed by another meeting, held in the year 1995. It is also admitted case of the parties that the plaintiff had been releasing the technicals in favour of the defendants in instalments and the latter had been making part payments from time to time by cheques, bank drafts and supply of products through defendant No. 5. The fact is borne out from the statement of account Ext. PW-5/125, per which during the years 1990, 1991, 1992, 1993, 1994 and even 1996, the parties had been having various transactions. The plaintiff in the meeting held between its representative and the representatives of the defendants in June, 1993, per minutes copy Ext. PW-5/107, and another meeting held in April, 1995, copy of the minutes Ext. D-3, relied upon by the defendants themselves, have been acknowledging that the accounts had not been settled. The suit was filed in the year 1996 or say well within three years of the last transaction between the parties, as reflected by the aforesaid statement of account Ext. PW-5/125.

16. For the foregoing reasons, the issue is answered in the negative. Issue No. 3

17. As per import policy, which was effective from 1.4.1988 to 31.3.1991, copy of which is available on record, the plaintiff could have though imported Mancozeb and Dimethoate technicals, for which it had obtained licence too, it could not have imported Phenthoate technical, because this category of technical could have been imported only by the actual user, per said policy. (Appendix VI). The learned Counsel for the defendants argued with a great deal of vehemence that since the plaintiff could not have imported Phenthoate technical, the agreement between the plaintiff and the defendants, regarding the supply of the technicals or at least Phenthoate technical, was illegal and hence the plaintiff's suit was liable to be dismissed.

18. Admittedly, the plaintiff could have imported the other two technicals. It is the defendants' own case, vide para 8 (last sub-para) and para 12 of the written statement that the cost and other expenses incurred for importing Phenthoate technical already stand paid by them as they had been compelled by the plaintiff to get retired the documents of the said technical, as soon as the said technical landed at Bombay. That means there is no dispute between the parties, with respect to the payment of the cost, insurance and freight etc. of this technical and that the dispute is only with respect to the other two technicals, named above, for import of which the plaintiff was duly licensed. In any case, the plaintiff having utilized the said technical, it cannot escape its liability for paying

its price simply on the ground that the plaintiff did not have a licence. The plaintiff's not holding a licence to import the said technical by itself would not absolve the defendants of their liability to pay its price.

19. For the foregoing reasons, the issue is answered in the negative. Issue No. 4

20. It is alleged that defendant No. 1 has not been sued through any of its partners nor have its partners been impleaded. The plaintiff has stated in para 4 that the defendant No. 1 is a partnership concern and defendants No. 2 and 3 are its partners. It is admitted in the written statement, filed on behalf of the defendants, that defendant No. 1 is a partnership concern, but it is denied that defendant Nos. 2 and 3 are its partners. Defendant No. 2 Jugal Kishore Bhartiya, while in the witness box as DW-1, claimed that he was a Director of defendant No. 1. Now, when it is admitted that defendant No. 1 is a partnership concern, it is not understood how defendant No. 2 claims to be its Director. Partnership concerns have only the partners and one or more of such partners may be managing partner(s). The testimony of DW-1 Jugal Kishore Bhartiya defendant No. 2 that he is the Director of defendant No. 1, proves the plaintiff's assertion that defendants No. 2 and 3 are the partners of defendant No. 1. This apart, the defendants have not led any evidence to show that the partners of defendant No. 1 are some persons other than defendants No. 2 and 3. Also it is the admitted case of the defendants that defendant No. 1 had been dealing with the plaintiff through defendants No. 2 and 3. So the plea that the suit is bad for non-joinder of parties, cannot be upheld. Consequently, the issue is answered in the negative.

Issue No. 5

21. Defendants have conceded that there was an agreement between the plaintiff and the defendants for back to back letter of credit, but the defendants could not perform this part of the contract and they also failed to retire the documents, in time. Therefore, there was hardly any need for framing this issue. Now, since this issue is there, it is found in favour of the plaintiff, in view of the aforesaid admission by the defendants in the written statement itself.

Issue No. 6

22. The allegation on which this issue is based, is also admitted by the defendants in the written statement and so this issue is also answered in favour of the plaintiff.

Issue No. 7

23. The plaintiff examined one of its employees, namely PW-5 Rajiv Paul, to prove its case. The witness proved a large number of documents, all of which need not be referred to, because some of the facts, evidenced by these documents, are admitted by the defendants in their written statement or in the testimony of DW-1 Jugal Kishore Bhartiya (defendant No. 2). PW-5 Rajiv Paul, in the course of cross-examination, admitted that there had been a proposal from the side of the defendants, in writing, which is Ext. PW-5/83. He admitted that as

per this proposal, the defendants, on payment of certain amount of money and fulfilling certain other promises, were to be released half container of Dimethoate. He admitted that the defendants accepted the aforesaid proposal, subject to fulfilment of a few more conditions, which were conveyed to the defendants, vide letter Ext. D-I. He also admits that the defendants fulfilled all the conditions stipulated in Ext. D-I, but despite that only 1/4th of the container of the aforesaid technical was released in its favour, vide letter Ext. PW-5/86 and that the defendants had been raising objections and protesting continuously that the proposal Ext. PW-5/83, as accepted vide letter Ext. D-I, had not been adhered to by the plaintiff resulting in loss to the defendants. He has admitted that the remaining part of the aforesaid technical has become useless, because of its shelf life having expired.

24. The value of the remaining portion of the technical was Rs. 3,05,470.11, per entry in the statement of account Ext. PW-5/125. This amount has been debited in the account of the defendants.

25. The above referred to testimony of PW-5, Rajiv Paul, an employee of the plaintiff, makes it plainly clear that the plaintiff violated the terms of the proposal, made by the defendants on 29.7.1991, which was accepted by the plaintiff through letter Ext. D-1, subject to some more conditions, which conditions were complied with and fulfilled in their entirety by the defendants and, therefore, the plaintiff was not justified in debiting the value of the remaining portion of Dimethoate technical, which was to the tune of Rs. 3,05,470.11, in the account of the defendants. Consequently, the issue is answered in favour of the plaintiff. The effect of this finding is that out of the amount, alleged to be due from the defendants, the aforesaid amount, together with proportionate interest, is required to be deducted.

#### Issue No. 8

26. The issue was not pressed by the learned Counsel for the plaintiff during the course of hearing. So, the same is found against the plaintiff and in favour of defendant No. 4.

#### Issue No. 9

27. Defendants have not led any evidence to discharge the initial onus to prove this issue. So the same is found against them.

#### Issue No. 10

28. There is a letter on record written by the plaintiff to defendant No. 1, Ext. PW-5/121, per which a sum of Rs. 2,35,000/- is shown as balance in the account of M/S. Arti Minerals. The defendants have been asked through this letter to arrange to send a letter from said M/S. Arti Minerals for adjusting the aforesaid amount of credit balance in their account, in the account of the defendants. The defendants, it appears, have not arranged to send any such letter to the plaintiff and as such the latter could not have adjusted the credit balance in the account

of aforesaid M/S. Arti Minerals against the liability of the defendants. Therefore, this issue is answered against the defendants.

#### Issue No. 11

29. Defendant No. 2, while in the witness box as DW-1, has stated quite categorically that one M/S. R.K. Printers had supplied containers to the plaintiff and that the value of those containers was Rs. 58,000/- approximately. He has stated that this amount was to be adjusted by the plaintiff against the money due from the defendants, but the same has not been adjusted. No doubt, this part of the testimony of defendant No. 1 has not been challenged in the cross-examination, but still the same does not prove the plea covered by the issue. The witness has not stated why and under whose instructions the plaintiff was supposed to have adjusted the price of the containers, supplied by the aforesaid firm, against the money due from the defendants. He has not proved any communication, issued by said M/S. R.K. Printers, authorizing the plaintiff to adjust the price of the containers, allegedly supplied by them to the plaintiff. So this issue is also answered in the negative.

#### Issue No. 12

30. PW-5 Rajiv Paul has stated that the bankers of the plaintiff had though been charging interest at a higher rate earlier, but later on, as per of one time settlement, the rate of interest was reduced to 16% per annum (simple) with effect from 26.6.1991. There is a communication Ext. PW-5/121 also Ext. D-2 on record, which the plaintiff addressed to defendant No. 1. Through this letter the defendants were conveyed that the matter regarding reduction of rate of interest had been taken up by the plaintiff with its bankers and that the outcome would be conveyed to the defendants on hearing from its bankers. That means the defendants were held out a promise that they would be given the benefit of reduction in the rate of interest, if the plaintiff's bankers agreed to reduce the interest. Interest has been reduced by the bankers of the plaintiff, per admission of PW-5 Rajiv Paul, as noticed hereinabove. Therefore, it is held that the plaintiff is entitled to charge interest at the rate of 16% per annum (simple) with effect from 26.6.1991 and prior to that date, it can charge the interest at the bank rate.

#### Issue No. 13

31. It is nobody's case that accounts were settled on 16.6.1993. In fact the parties held a meeting for settling the accounts and the minutes of that meeting were drawn up, which are Ext. PW-5/107. The parties could not arrive at any settlement. The minutes show that the plaintiff claimed that a sum of Rs. 17,51,503.87 was due to it from the defendants. The defendants did not accept the claim.

32. In view of the above stated position, the issue is struck off. Issue No. 14

33. The minutes of the meeting held on 16.6.1993 for settling the accounts are Ext. PW-5/107. Per this document, the plaintiff asserted that a sum of Rs.

17,51,503.87 was due to it from the defendants as on 31.3.1993. The statement of account Ext. PW-5/125, however, shows that only a sum of Rs. 2,96,376.54 was due to the plaintiff from the defendants as on 31.3.1993. This figure has been written in the said statement after making deductions from the figure of an earlier entry, showing Rs. 6,31,446.07 as debit balance. Then there are two credit entries, one for Rs. 3,32,483.63 on account of excess charging of interest and another for a sum of Rs. 2,586.05 on account of cost of some material. The learned Counsel for the plaintiff, when called upon to explain the anomaly, viz. the statement of account showing a balance of Rs. 2,96,376.45 only and the minutes Ext. PW-5/107, showing that a sum of Rs. 17,51,503.87 was due to it from the defendants as on 31.3.1993, stated that the figure shown in Ext. PW-5/107 was inclusive of the cost of two amounts representing the cost, insurance and freight paid by it on account of part of two chemicals, namely Mancozeb and Dimethoate, which had yet not been lifted by the defendants. He argued that both these items had been debited in the statement of account later on, one on 31.3.1994 (Rs. 8,14,586.98) and the other on 31.3.1996 (Rs. 3,05,470.11). He further stated that credit entries, on account of excess charging of interest and cost of some material, in the statement of account, so as to reduce the initial amount of Rs. 6,31,446.72 to Rs. 2,96,376.54 had been made subsequent to the meeting for conciliation of accounts, held on 16.6.1993.

34. Now, if this explanation of the plaintiff is accepted, a sum of Rs. 14,16,433.59 [(Rs. 17,51,503.87) - (Rs. 3,32,483.63 + Rs. 2,586.65)] was due to the plaintiff.

35. Admittedly, a sum of Rs. 3,50,000/-, out of an amount of Rs. 7,80,000/-, paid by the defendants by way of 10% of margin money at the time of opening of the letter of credit accounts by the plaintiff with the State Bank of Patiala, Chambaghat, Solan, in connection with the import of the chemicals for the plaintiff, had been lying with the plaintiff. This amount was required to be adjusted, when the letter of credit account at Chambaghat Solan had been closed by the plaintiff. Such account had been closed on 26.6.1991, per statement of PW-5 Rajiv Paul and, therefore, this amount should have been entered on the credit side on 26.7.1991, Similarly, credit for Rs. 3,05,470.11, on account of the cost of the remaining 1/4th of Dimethoate chemical container, which the plaintiff illegally withheld in breach of the proposal dated 29.7.1991, was required to be credited to the account of the defendants on 29.7.1991. Now if these two amounts, together with interest at the rate of 16% per annum (simple), are further deducted from the aforesaid amount of Rs. 14,16,433.59, the liability of the defendants as on 16.6.1993 comes down to Rs. 5,81,505. Even in this amount of Rs. 5,81,505/- there is an element of excess charging of interest, because from 26.6.1991 onwards, as noticed here-in-above, the plaintiff has been charged interest at the rate of 16% per annum (simple) by its bankers, whereas the interest claimed from the defendants is at the rate of 20.5% with quarterly rests, per deposition of PW-5 Rajiv Paul. Now, if this amount is further reduced by 4.5% on account of excessive rate of interest, even ignoring the fact

that interest has been compounded by the defendants, the amount comes down to Rs. 5,42,364/-. This is the amount, which was payable by the defendants as on 31.3.1993.

36. According to the statement of account, the defendants, including defendant No. 5, supplied goods worth Rs. 4,31,269.36 to the plaintiff during the years 1993-94. Credit for the value of these goods is given in the statement of account on 31.3.1994. The testimony of PW-5 Rajiv Paul shows that these goods were supplied in June, July and August, 1993. Now, if this amount of Rs. 4,31,269.36 is subtracted from the aforesaid amount of Rs. 5,42,364/-, the liability of the defendants, as on 31.3.1994, comes down to Rs. 1,11,095/- and if interest at the rate of 16% is added to this amount, the total liability of the defendants, as on 31.3.1994, comes to Rs. 1,32,256/-. During the years 1994-95 the defendants supplied goods worth Rs. 3,748/-, per entries in the aforesaid statement of account Ext. PW-5/125. If interest at the rate of 16% per annum is added to the principal amount due on 31.3.1994, i.e. Rs. 1,11,095/-, less the value of the goods supplied during the years 1994-95, the liability of the defendants, as on 31.3.1995, works out to Rs. 1,45,682/- . The defendants further supplied material worth Rs. 3,334.34 during the years 1995-96 and if this amount is reduced from the amount due on 31.3.1995 and interest is added on the principal amount less this amount of Rs. 3,334.34, the liability of the defendants comes to Rs. 1,58,989/-.

37. It may be stated that after 31.3.1993 the plaintiff made no supplies to the defendants, except Mancozeb worth Rs. 8,14,586/-, the value of which has already been taken into account while working out the liability of the defendants as on 31.3.1993, because in the liability of the defendants, as shown in the minutes Ext. PW-5/107, the cost of this item was also included. Another entry is on account of interest. There is one more entry of an amount of Rs. 361/- on account of expenses on copying of plaint. The date of the entry is 31.3.1994. Now, if this amount, together with simple interest at the rate of 16% for two years is added to the aforesaid liability, the total liability of the defendants comes to Rs. 1,59,520/-.

38. In view of the above discussion, it is held that the plaintiff is entitled to a sum of Rs. 1,59,520/- from defendants No. 1 to 3, with proportionate costs and interest at the rate of 12% per annum.

#### Issue No. 15

39. In view of the findings on Issue No. 7, the issue is answered in favour of the defendants and against the plaintiff.

#### Issue No. 16

40. As the amount of the cost of the material, supplied by the defendants, has been reduced from their liability with effect from the dates of supply of such material, while working out their liability under Issue No. 14, the issue calls for

no separate finding.

#### Issue No 17

41. The plea covered by this issue, also does not call for any separate finding, because while working out the liability of the defendants under Issue No. 14, the amount has been adjusted against their liability from the date of the closure of the letter of credit account, i.e. 26.6.1991.

#### Relief

41. In view of the aforesaid finding, a decree for Rs. 1,59,520/-, with proportionate costs and interest at the rate of 12% per annum, from the date of institution of the suit till the payment of the aforesaid amount of money by defendants No. 1 to 3 to the plaintiff, is passed in favour of the plaintiff and against defendants No. 1 to 3. Decree sheet be drawn accordingly.