

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.11.2018

Delivered on : 20.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

A.No.7113 of 2018
and
C.S.No.851 of 2015

Powerwave Technologies Sweden AB (in bankruptcy)
 Rep. By the Bankruptcy Administrator
 Mr.Niklas Korling
 C/o.Wistrand Advokabyra
 Govt. of Sweden
 P.O.Box 7543
 SE 103 93 STOCKHOLM, SWEDEN .. Applicant

Vs.

1.Syrma Technology Private Limited
 Plot No.B27, Phase II, Zone 'B'
 MEPZ-SEZ Tambaram Sanatorium
 Chennai – 600 045, India

2.State Bank of India
 Chennai Branch
 No.16, Whannels Road, Egmore
 Chennai – 600 008

..Respondents

Application filed under Order XIV Rule 8 of the Original Side Rules read with Order XIII-A of the Code of Civil Procedure to pass a summary judgment on the admitted amount of USD 5,49,033.40 equivalent to Rs.3,56,87,171/- (Rupees Three Crores Fifty Six Lakhs Eighty Seven Thousand One Hundred and Seventy one) and the Applicant's claim as per the plaint, being the amount paid by the applicant/plaintiff which is continued to be wrongfully retained by the 1st respondent/defendant by not effecting supplies as per the Purchase Orders together with interest at 18% p.a from the date of plaint till the date of realization along with costs of the suit and other legal proceedings.

For Applicant : Mr.P.V.Balasubramaniam

For Respondents : Mr.Raghavan Ramabadran for R1
 Mr.S.Seetharaman for R2

JUDGMENT

In the main suit, there is a sole plaintiff, which goes by the name 'Powerwave Technologies, Sweden AB' (hereinafter 'Powerwave, Sweden' for the sake of brevity) and there are two defendants. The first defendant goes by the name 'Syrma Technology Private Limited', Chennai (hereinafter after 'STPL' for the sake of brevity) and the second defendant is State Bank of India, Chennai (hereinafter referred to as 'SBI' for the sake of brevity). Besides the above said abbreviations and short forms, parties in this application shall also be referred to by their respective ranks in the main suit wherever necessary for the sake of convenience and clarity.

2. Instant application has been taken out by Powerwave, Sweden primarily under Order XIII-A of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity).

3. It is necessary to notice that aforesaid Order XIII-A of amended CPC, as amended by said Act is captioned 'SUMMARY JUDGEMENT' and it pertains to provisions/procedure by which this Commercial Division can decide/dispose off a suit without recording oral evidence. Primary grounds on which a summary judgment can

be given are spelt out in Rule 3 of Order XIII-A of amended CPC as amended by said Act. According to Rule 3, a Summary Judgment can be given by the Commercial Division against the plaintiff, if the plaintiff has no real prospect of succeeding on the claim and summary judgment can be given against the defendant if the defendant has no real prospect of successfully defending the claim. Besides these two possibilities, other kinds of judgments / orders that can be passed without oral evidence have been adumbrated in various rules and sub-rules under Order XIII-A of amended CPC as amended by said Act. Both these possibilities are circumscribed by a rider that there should be no other compelling reason as to why the suit should not be disposed of before recording oral evidence. As this is spelt in Rule 3 of Order XIII-A of amended CPC, as amended by said Act, this Commercial Division deems it appropriate to extract entire Rule 3, which reads as follows:

'Order XIII-A Summary Judgment

1.....

2.....

3. Grounds for summary judgment

The Court may give a summary judgment against a plaintiff or defending on a claim if it considers that--

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.'

4. Reverting to the case on hand, to be noted, the suit claim made by Powerwave, Sweden, which is the plaintiff is Rs.3,90,19,305/- (Rupees Three Crores Ninety Lakhs Nineteen Thousand Three Hundred and Five only). The instant summary judgment application seeks a summary judgment and decree to the extent of 5,49,033.40 USD, the equivalent of which is Rs.3,56,87,171/- (INR). Therefore, the instant application is virtually for the suit claim though technically, it is Rs.33,32,134 (INR) lesser than the suit claim. To be noted 'USD' denotes American Currency i.e, 'Dollars' and 'INR' denotes Indian Currency i.e, 'Rupees'.

5. After hearing this summary judgment application in detail, it came to light that this application turns on a very narrow compass owing to the nature of the transaction between the parties and the stated positions of the adversaries as it unfurled in the hearing, all of which shall be alluded to infra.

6. Mr.P.V.Balasubramaniam, learned counsel for plaintiff and Mr.Raghavan Ramabhadran, on behalf of first defendant (STPL) besides Mr.S.Seetharaman on behalf of second defendant (SBI) were before this Commercial Division.

7. Learned counsel for second defendant SBI submitted that second defendant is only a formal party and therefore, they are neither opposing nor supporting the instant application for Summary

Judgment taken out by the plaintiff. In other words, it is the stated position of SBI that it remains completely neutral qua this application for summary judgment and that they will remain bound by the outcome of the same.

8. Before advertng to the rival submissions made by the contesting parties, it is necessary to give short facts which are imperative and essential for appreciating this order.

9. It is not in dispute that plaintiff, Powerwave, Sweden, has now slipped into bankruptcy. Before slipping into bankruptcy, plaintiff claims that it was a telecommunication service provider providing solutions designed to amplify coverage capacity and data speed in wireless communications network. It is also submitted that first defendant STPL is in the business of manufacturing disc drives, memory modules, power supplies/adapters, DC Motors, fiber optic assemblies and several other electronic components including antennae. Second defendant SBI is the principal banker for first defendant STPL. In the course of business, plaintiff placed orders on first defendant for supply of antennae of specific models. To be noted, term 'antennas' has been used in the plaint, but going by the Oxford dictionary, the plural of 'antenna' is 'antennae' and therefore notwithstanding the use of 'antennas' in the plaint, this Commercial Division prefers to use the term 'antennae' in rest of this order/judgment. These antennae, in turn had to be supplied by

the plaintiff to entities in Kazakhstan and Indonesia. Plaintiff made pre-payment for supply of antennae by first defendant under various purchase orders. First defendant manufactured and shipped only a part of the orders placed under the purchase orders and failed to supply the entire quantity of antennae covered under the purchase orders, but retained the prepayment made by the plaintiff. This left plaintiff facing proceedings by its clients in Indonesia to whom the antennae had to be supplied.

10. Under aforesaid circumstances, instant suit has been filed by the plaintiff Powerwave, Sweden with a money claim and according to the plaintiff, the money claimed in the suit is what has been retained by the first defendant from and out of the prepayment, after giving credit to the antennae already supplied.

11. As mentioned supra, first defendant has entered appearance and filed a written statement in the main suit along with which ten documents have been filed. The primary and pivotal defence of STPL is that plaintiff's holding company which goes by the name 'Powerwave Technologies Inc', USA (hereinafter 'Powerwave Inc' for brevity and clarity) owes monies to first defendant STPL and the suit claims have been adjusted towards monies payable by Powerwave Inc. to STPL. Both sides submit that this is the crux and gravamen of this lis and therefore, the core pleadings and pivotal issue have been adequately captured thus for.

Having done this, this Commercial Division now moves on to capture and set out the rival submissions.

12. The submissions made by learned counsel for Powerwave, Sweden (plaintiff) in this summary judgment application are three fold and the same are as follows:

a) Primary and primordial defence of STPL (first defendant) is adjustment of the monies due towards plaintiff's holding company on oral instructions. Such oral instructions, according to written statement, are said to have been given on 31.05.2013, but such oral instructions could not have been given on 31.05.2013, as Powerwave Inc. slipped into bankruptcy in Delaware USA on 28.01.2013 itself;

b) A settlement agreement dated 22.10.2015 was entered into between Powerwave Group of Companies, first defendant STPL and another third party which goes by the name 'Memory Electronics Private Limited' ('MEPL' for brevity) and post this settlement, first defendant cannot be heard to raise the defence of adjustment towards monies payable by Powerwave Inc., which, as mentioned supra, is the primary and primordial defence of first defendant;

c) The invoices, which are subject matter of the suit supplies, will reveal that the same are directly between the

first defendant STPL and plaintiff Powerwave, Sweden as exporter and buyer respectively and therefore, the plea of adjustment towards plaintiff's holding company's dues to STPL i.e, Powerwave Inc., is completely untenable.

13. In response to the aforesaid three fold submissions made by plaintiff Powerwave, Sweden, learned counsel for first defendant very fairly submitted that neither the receipt of pre-payment under Purchase Orders, which are subject matter of the suit nor non-supply of a part of consignment covered under the Purchase orders are disputed. Learned counsel also submitted that even the retention of prepayment made by plaintiff Powerwave, Sweden, under the Purchase Orders after giving credit to the supplies made is not disputed, but the plea of the first defendant STPL is that there are no dues to plaintiff Powerwave, Sweden, as the balance monies retained from and out of the prepayment were adjusted towards dues of the Plaintiff's holding company Powerwave Inc. or in other words towards dues owed by plaintiff's holding company owed to first defendant. In short, the submission of learned counsel for first defendant is to the effect that the transaction, non-supply of a part of consignment and retention of a part of pre-payment are not in dispute and the only plea is that there are no dues from the first defendant STPL to plaintiff Powerwave, Sweden owing to adjustments made with plaintiff's holding company. It is owing to this clear, specific and fair stand taken by first defendant that this

Commercial Division has observed in the earlier part of this order/judgment that the scope of this application and the main suit have become very narrow and that this application/main suit turns on a very narrow compass.

14. The narrow compass, on which this application/main suit now turns, is whether the adjustment plea/ defence raised by the first defendant STPL with regard to adjustment of monies said to be payable by plaintiff's holding company Powerwave Inc. to STPL is to be believed or not. If this is believed, plaintiff will be non-suited. If this adjustment theory is disbelieved, plaintiff will be entitled to a decree. Therefore, the issue in the entire lis is not only wafer thin, but being a lone point, can ideally be described as the cliff anchor clincher point in the instant suit.

15. In the aforesaid backdrop, this Commercial Division now proceeds to deal with the rival submissions in the instant summary judgment application.

16. With regard to the first of the three fold submissions i.e., that there could not have been any verbal instructions from plaintiff's holding company on 31.05.2013 (as pleaded in Paragraph 3.14 of the written statement), as the plaintiff's holding company Powerwave Inc. went into liquidation on 28.01.2013 itself, learned counsel for plaintiff pointed out that it is the admitted position of first defendant that plaintiff's holding company went into liquidation

on 28.01.2013. To support this, learned counsel pointed out that the voluntary winding up petition in this regard dated 28.01.2013 filed by the plaintiff's holding company i.e., Powerwave Inc. has been filed by the first defendant themselves as Document No.2 along with written statement and therefore, no further oral evidence in this regard is required.

17. Responding to this, learned counsel for first defendant submitted that the name of the individual, who actually gave oral instructions has now been mentioned in the counter affidavit filed in the summary judgment application. In this regard, it is necessary to extract Paragraph 3.14 of the written statement of the first defendant, which reads as follows:

'Paragraph 3.14 of written statement

3.14.Furthermore, it is submitted that the Defendant No.1 consequent to the specific oral instructions of the plaintiff's Holding Company had adjusted the balance amount of USD 5,49,033.40 on 31st May 2013, against USD 1,491,179 legally due and payable by the plaintiff's Holding Company to the Defendant No.1. For easy reference the Statement of Account of the Plaintiff in the books of the Defendant No.1 is extracted herein below:

<i>Date</i>	<i>Particulars</i>	<i>Debit (US\$)</i>	<i>Credit (US\$)</i>
7-Jan-13	Receipts		32,581.40
10-Jan-13	Receipts		4,613.30

<i>Date</i>	<i>Particulars</i>	<i>Debit (US\$)</i>	<i>Credit (US\$)</i>
29-Mar-13	STPL/EXP/207/12-13	46,902.24	
29-Mar-13	STPL/EXP/208/12-13	53,375.64	
29-Mar-13	STPL/EXP/209/12-13	5,863.66	
3-Apr-13	Receipts		1,13,855.91
5-Apr-13	Receipts		5,60,541.18
18-Apr-13	Receipts		2,06,827.20
19-Apr-13	Receipts		7,983.36
30-Apr-13	STPL/EXP/1/13-14	7,729.37	
30-Apr-13	STPL/EXP/2/13-14	3,991.68	
30-Apr-13	STPL/EXP/3/13-14	13,305.60	
30-Apr-13	STPL/EXP/4/13-14	19,339.00	
30-Apr-13	STPL/EXP/5/13-14	7,735.60	
30-Apr-13	STPL/EXP/6/13-14	76,507.20	
30-Apr-13	STPL/EXP/7/13-14	7,880.40	
30-Apr-13	Receipts		7865.40
10-May-13	STPL/EXP/8/13-14	51,706.80	
13-May-13	Receipts		17,401.24
16-May-13	STPL/EXP/8/13-14	1,08,298.40	
31-May-13	Transfer to Powerwave Technologies Inc.	5,49,033.40	
	Total	9,51,668.99	9,51,668.99

18. Learned counsel for first defendant submitted that once there is a pleading that there was oral instruction from plaintiff's holding company, it is open to the defendant to let-in oral evidence and examine the individual who gave instructions. Furthering his submission, Mr.Ramabadran, learned counsel for first defendant submitted that merely because the plaintiff's holding company i.e., Powerwave Inc. applied for voluntary liquidation on 28.01.2013, there is no bar in law for giving oral instructions as officers

concerned with USA bankruptcy machinery will be incharge of Powerwave Inc.

19. I have carefully considered the rival submissions and I have also perused the relevant document being Document No.2 filed by the first defendant along with the written statement as well as the pleadings in the written statement and the counter affidavit in the instant application which have all been alluded to supra. A careful and cogent analysis of the pleadings and submissions made leaves this Commercial Division with little doubt that the plea of oral instructions regarding adjustment is very vague in the written statement. To be noted, Paragraph 3.14 of written statement, where this pleading occurs, has been extracted and reproduced elsewhere supra in this order / judgment. The name of the person who gave such instructions is not given. There are no pleadings as to whether it was given telephonically or in a personal meeting. As per amended CPC, as amended by said Act, pleadings have to be very specific and the relevant provision in this regard is Order VIII Rule 3A, which reads as follows:

"3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court—

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall

state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.'

20. A perusal of Rule 3A and particularly the five sub-rules therein makes it clear that when the defendant intends to put forward a different version of events different from one given by plaintiff, defendant must state its own version. This is specifically mandated in Sub-Rule(3) of Rule 3A extracted supra. In the instant case, it is the specific and categorical case of the plaintiff that prepayments towards supply of Antennae was made. First defendant STPL made only part supply and retained the remaining part of the pre-payment without making rest of the supply. In the instant case, STPL (first defendant) while not disputing the

prepayment and while not disputing that only part of the consignment was supplied, merely says that the remaining part of the pre-payment, after adjusting the value of the part of the consignment that was supplied, was retained by the STPL, as plaintiff's holding company gave oral instructions that first defendant STPL can do so and adjust the same towards monies said to be owed to first defendant by plaintiff's holding company, namely Powerwave Inc. In such a scenario, it becomes imperative that defendant sets out its version of the events in this regard. In other words, first defendant STPL should set out with clarity the name of the person/individual who gave such oral instructions on behalf of plaintiff's holding Company Powerwave Inc, details of such oral instructions, whether it is given telephonically or in a personal meeting and more importantly, the person/s in first defendant STPL to whom such instructions were given. A perusal of Paragraph 3.14 of written statement extracted supra would reveal that it is bereft of such particulars. It is bare and bald besides being vague.

21. This takes us to the counter affidavit filed by the first defendant STPL in the summary judgment application. In paragraph 7.19 of the counter affidavit filed by STPL in the summary judgment application, it has been mentioned that one Mr.Heiko B. Juritz, who is said to be the Chief Procurement Officer in the plaintiff and plaintiff's holding company had given such instructions and had said that STPL need not bother about supplying

the remaining consignment. This does not carry the first defendant STPL any further and this does not help first defendant STPL in opposing this summary judgment application for two clear reasons.

22. One reason is, it is an afterthought. Not having given the name of the individual, who is said to have given oral instructions in the written statement, first defendant is giving the name of the individual, whom according to the first defendant STPL is Chief Procurement Officer of the plaintiff and plaintiff's holding company Powerwave Inc in the counter affidavit filed in the summary judgment application for the first time. In the light of the mandate in Order VIII Rule 3-A Sub-Rule (3) of amended CPC, as amended by said Act, this is impermissible. Though it was not argued, with an intention of a fair and balanced examination, this Commercial Division took into account the obtaining position that the instant suit is a transferred suit. It was originally filed in the regular Civil Court on the Original Side of this Court prior to the constitution / notification of the Commercial Division and was later transferred to the Commercial Division after constitution/notification of Commercial Division in this Court. Therefore, first defendant STPL would not have had the benefit of Order VIII Rule 3-A Sub-Rule 3, of amended CPC as amended by said Act as it was in the regular Court prior to the constitution of Commercial Division. However, after the constitution of Commercial Division, post transfer, nothing prevented first defendant STPL from seeking permission to file

additional written statement or a fresh/new written statement and make a plea for prescribing new timelines. There is provision for such a course under proviso to Section 15(4) of said Act. In the considered opinion/view of this Commercial Division, such a provision is made vide Section 15(4) of said Act specifically to deal with such situations, but first defendant STPL did not choose to avail this and only after it is faced with the application for summary judgment, the first defendant has come up with the name of the person who is said to have given oral instruction. Therefore, this Commercial Division has no difficulty in coming to the conclusion that it is a clear case of afterthought.

23. Be that as it may, I will move on to the second reason, which according to me, can be read as a point in demurrer qua the first defendant. In other words assuming that first defendant STPL by oversight missed out the aforesaid provisions of amended CPC, as amended by said Act and assuming that the averment made particularly averment made in paragraph 7.19 of the counter to the summary judgment is taken to be a defence that is now exemplified, it will still fall short of the required rigour of specificity in pleadings. If one carefully looks at averments made in paragraph 7.19 of the counter affidavit to the summary judgment, it merely mentions the name of the individual and that the said individual is Chief Operating Officer of plaintiff's holding company Powerwave Inc and he gave instructions. There is no further pleading. Details such

as whether instructions were given telephonically or in a personal meeting are absent. Most importantly, the person(s) in first defendant STPL to whom such instructions were given, their names and designations have not been mentioned. This, according to me, is fatal. The moment a defendant predicates its defence on oral instructions plea, it will not suffice if the name of the person who gave oral instruction alone is given. The name and names of person/s to whom such oral instructions were given in its own office has to necessarily be given and they also have to be examined if defendant is to prove its plea. Even now, as the first defendant has not given details regarding the mode of communication and the person/s to whom such instructions were given, clearly leaves the pleading lacking qua required rigour of specificity.

24. This Commercial Division has also examined this aspect of the matter from one other perspective. If pleas in defence to summary judgment applications are entertained and such vague pleadings of oral instructions are permitted to be made in the pleadings, it will open the floodgates and defeat the very objective of the said Act. Objective of the said Act is to fast track commercial disputes, improve the international image of justice dispensation system in India, enhance the faith of the investor world in the international canvas particularly, in the legal culture of our country and ultimately accelerate economic growth. If such a course is permitted, any defendant can make a casual plea of oral

instructions or oral arrangement and compel the plaintiff to go for trial rendering the summary judgment provision a mere theory with no tooth in practice or implementation. To borrow the language of Hon'ble Supreme Court in the celebrated judgment rendered with regard to defence in summary suits under Order XXXVII CPC [***IDBI Trusteeship Services Limited Vs. Hubtown Limited*** reported in **(2017) 1 SCC 568**], this is, 'moonshine defence'.

25. Before moving further, for the purpose of abundant clarity, it is made clear that view of this Commercial Division is that the pleadings of first defendant STPL lacks specificity and this shall not be construed as a general principle that no plea of oral instructions or oral agreements can be taken by parties to lis in proceedings before this Commercial Division. This Commercial Division now moves on to other aspects of the matter with this word of caution.

26. In the light of aforesaid conclusion to the first of the three fold submissions made by plaintiff, it may not even be necessary to go into the second and third submissions raised by the plaintiff as the conclusion arrived at is that sole and pivotal defence of first defendant STPL fails and plaintiff is entitled to a summary judgment. However, as parties have chosen to raise two more points, this Commercial Division deems it appropriate to deal with those two points also.

27. With regard to the second submission made by learned counsel for plaintiff that in the light of settlement agreement which has been filed by the defendant as Document No.7 along with the written statement (settlement agreement dated 22.10.2015), nothing survives in the lis, a careful perusal of the settlement agreement dated 22.10.2015, which is Document No.7 filed by the first defendant STPL reveals that it talks about plaintiff's holding company Powerwave Inc. entering into an agreement with Syrma Technology Private Limited for manufacture and supply of products. More specifically it talks about Powerwave Inc., USA on behalf of itself and its affiliates and subsidiaries. Any oral evidence let-in on this document cannot travel beyond this covenant. This is covenant (A) and the same reads as follows:

'A.Powerwave Technologies Inc. Usa (on behalf of itself, its affiliates and subsidiaries) entered into agreement with Syrma (on behalf of itself, its affiliates and subsidiaries) for manufacture and supply of products.'

28. Most importantly, this document has not been filed by the plaintiff. It is first defendant's document. Therefore, the first defendant STPL obviously cannot assail this document. On the contrary, this document is being relied on by the first defendant STPL. Even if the first defendant intends to let-in oral evidence on

this document, it can at best perambulate only within the four corners of the covenant therein. Therefore, the faint plea of learned counsel for first defendant that there is no specific mention of Powerwave, Sweden, in this document pales into insignificance and the assertion of the plaintiff's counsel that this document is a complete answer to the issues between the parties at lis and nothing survives in the lis post this document is to be sustained.

29. The last of the three fold submissions made by learned counsel for plaintiff is with regard to the invoices between the plaintiff, Powerwave, Sweden and first defendant STPL. Referring to defendant's Document No.3 dated 22.03.2013, learned counsel for plaintiff pointed out that exporter is clearly the first defendant (STPL) and the buyer is the plaintiff Powerwave, Sweden. There is also a reference to buyers order and date, which reads as PO No.1054345 dated 19.03.2013. A perusal of Document No.3 dated 22.03.2013 reveals that it is a series of 51 invoices, there is no dispute or disagreement between the parties that these are the invoices under which part supplies were made. In these invoices, name and address of the buyer is given as Powerwave Technologies Sweden, AB, Knarrarnasgatan, 7. SE 16440, Kista, Sweden and the exporter is given as Syrma Technology Private Limited, Plot No.B27, Phase II, Zone 'B', MEPZ-SEZ Tambaram Sanatorium, Chennai – 600 045, India. In other words, buyer is plaintiff i.e., Powerwave, Sweden

The column 'buyer' and 'exporter' have been circled and shown by
n
Court of the purpose of clarity and for the purpose of highlighting.

30. This again, is not plaintiff's document, but it is first defendant's document. To be precise, it is first defendant STPL's Document No.3, as it is first defendant's document and as first defendant has chosen to file the document (series of 51 invoices) together with the written statement, first defendant has to either stand or fall by these invoices. The very fact that part supplies have been vide invoices between STPL and Powerwave, Sweden reveals that the transaction is essentially between STPL and Powerwave, Sweden. Therefore, nothing remains for trial/oral evidence.

31. In the light of the narrative supra, it emerges very clearly that no oral evidence is required for the plaintiff to succeed in its claim. Furthermore, it emerges clearly owing to the stated position of first defendant STPL that it has no real prospect of successfully defending the claim. It also unfurls indisputably from the narrative supra that there is no reason, much less compelling reason as to why the claim in the instant suit should not be disposed of before recording oral evidence. In other words, requirements / grounds or in other words determinants/parameters for summary judgment under Order XIII-A of CPC, as amended by said Act, stand satisfied in its entirety in the instant case. Therefore, this Commercial Division is of the view that prayer in the summary judgment

32. Resultantly, summary judgment application being A.No.7113 of 2018 is allowed.

33. As already mentioned supra, the suit claim in the plaint is Rs.3,90,19,305/- and the summary judgment application is predicated on admitted amount of Rs.3,56,87,111/-, leaving a difference of Rs.33,32,134 (INR). It has also been set out supra elsewhere in this order / judgment that oral instructions from plaintiff's holding company Powerwave, Inc. and adjustment of prepayment made by plaintiff Powerwave, Sweden after giving credit to part supply made by first defendant STPL, is not only crux and gravamen of the lis, but is also the sole cliff anchor clincher of this suit. As this is a clear position that emerges from the hearing in the summary judgment application (based on stated positions of parties), exercising powers of this Commercial Division under Order XIII-A 6(1)(d) a part of the suit claim i.e., claim to the extent of Rs.33,32,134 (INR) is dismissed and there shall be a judgment/decree on the remaining part of the suit claim i.e., Rs.3,56,87,171/- together with interest at the rate of 18% per annum. This is qua sub-paragraph (a) of the prayer paragraph. With regard to sub-paragraph (b) of the prayer paragraph in the plaint, considering the nature of the matter and considering that a giant part of the suit claim is being decreed by way of summary judgment, parties are left to bear their own costs. In other words, sub-paragraph (b) of the prayer for costs is not acceded to. No

orders are required under sub-paragraph (c), which is the usual residuary limb of any prayer. For the purpose of convenience, prayer paragraph in the plaint is extracted and given below:

'In the light of the above mentioned circumstances, the plaintiffs humbly prays for a judgment and decree directing the 1st Defendant to pay to the plaintiff:

a. sum of Rs.3,90,19,305/- (Rupees Three Crores Ninety Lakhs Nineteen Thousand Three Hundred and Five only), being the amount paid by the plaintiff which is continued to be wrongfully retained by the First Defendant by not effecting supplies as per the Purchase Orders, together with interest at 18%p.a from the date of the plaint till the date of realization,

b. The costs of the suit and other legal proceedings; and

c. For such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstance of the case and thus render justice.

A.No.7113 of 2018 is allowed and suit is decreed in part

on the above terms. No costs.

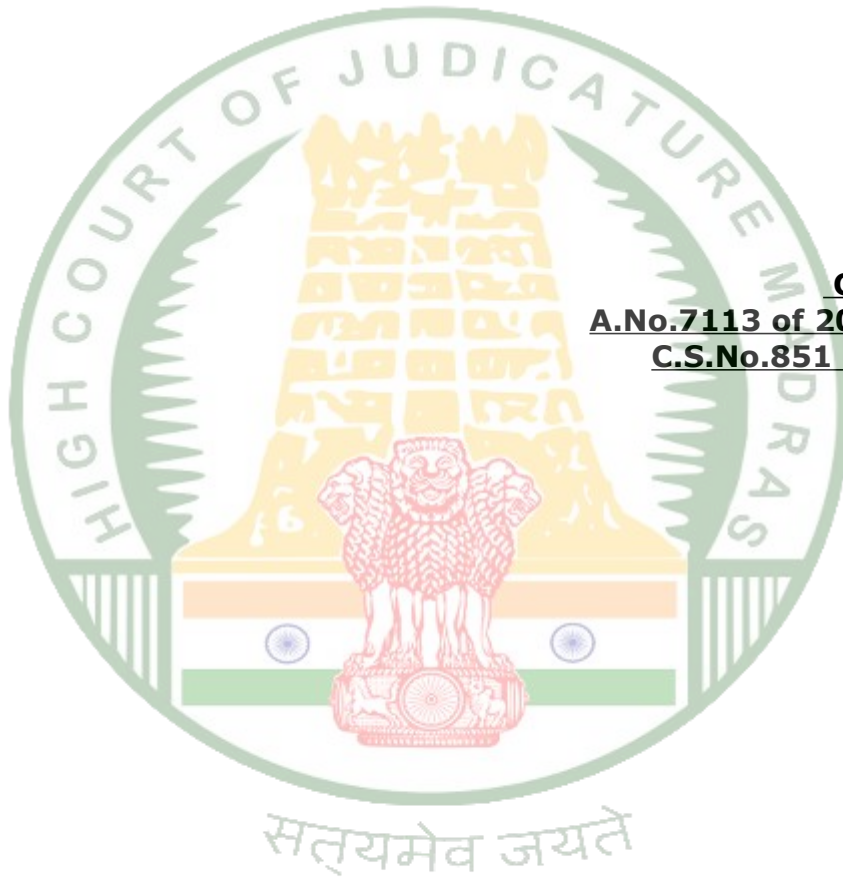
20.12.2018

Speaking order: Yes/no

Index: Yes/no

M.SUNDAR.J.,

gpa



Order in
A.No.7113 of 2018 and
C.S.No.851 of 2015

WEB COPY

20.12.2018