IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.29 of 2015

R.R.Stones Pvt. Ltd.,
Rep.by its Authorised Person
Captain G.Mohanarangam,
Deputy General Manager
(Shipping and Logistics),
8-2-120/86/5, 4th Floor,
Sneha House,
Road No.3, Banjara Hills,
Hyderabad – 500 034.
Telangana. ... Plaintiff

Vs.

M/s.Compac Minerals (India) Pvt. Ltd.,
Rep.by its Managing Director, Jonatan the,
New No.241, Old No.116,
Linghi Chetty Street,
Parrys, Chennai – 600 001. ... Defendant

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of the High Court Original Side Rules praying for:

(a) To pass decree thereby directing the defendant to pay a sum of Rs.1,33,32,524/- (One Crore Thirty Three Lakhs Thirty Two Thousand Five Hundred and Twenty Four) to the plaintiff of which Rs.63,67,774/- (Sixty Three Lakhs Sixty Seven Thousand Seven Hundred and Seventy Four) being the principal and

Rs.69,64,750/- (Sixty Nine Lakhs Sixty Four Thousand Seven Hundred and Fifty) being the interest, together with future interest at the rate of 26.25% p.a., till the realization of the amount.

(b) To pass any other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(c) To cost of the suit.

For Plaintiff : Mr.K.Sridhar

For defendant : M/s.D.Jawahar

JUDGMENT

The suit has been filed for recovery of a sum of Rs.1,33,32,524/- out of which Rs.63,67,774/-, being principal and remaining is interest at the rate of 26.25%.

2. The case of the plaintiff is that he is a manufacturer of Potash Feldspar Power 100 MESH (100-200#) and 200 mesh (200-325#) at their Mehaboobnagar Factory. The defendant had approached the plaintiff to purchase Potash Feldspar 100 mesh (100-200#) and 200 mesh (200-325#) and after mutual negotiation, the defendant on different dates had placed purchase orders for supply of Potash Feldspar 100 mesh (100-200#) and 200

mesh (200-325#). Accordingly, the plaintiff has effected various supplies and various invoice numbers. As on 30.11.2014, the defendant is due to pay a sum of Rs.1,33,32,544/-. The defendant also made a payment on 20.08.2013, the supply was effected on 05.10.2010. Hence, the suit.

3. It is the case of the defendant that the suit is barred by limitation. The defendant has been making the payment for supply effected by the plaintiff. However, in the year 2010, the plaintiff had stopped the supply of the required quantity to the defendant. The defendant incurred huge loss because of stoppage of the materials and the statements of accounts are not correct. Hence, prays for dismissal of the suit.

4. This Court, vide order, dated 06.10.2016, framed the following issues:-

1. Whether the suit is barred by limitation?

2. Whether the plaintiff had supplied potash feldspar power 100 Mesh (100-200#) and 200 mesh (200-325#) to the defendant as per purchase order?

3. Whether the defendant is liable to pay the cost of supply of potash feldspar amounting to

Rs.69,64,750/- and with interest?

4. Whether the letters/copies of returns filed by the plaintiff/Sales registers without the sign and seal of the defendant is enough to prove delivery of the materials by the plaintiff to the defendant?

5. Whether the plaintiff is entitled for the relief as prayed for?

5. On the side of the plaintiff, Mr.R.Satheesh, Manager (HR) and authorized signatory of the plaintiff Company was examined as P.W.1 and the following documents were marked as Exs.P1 to P175 and no oral and documentary evidence adduced on the side of the defendant.

Exhibits	Date	Description of documents
Ex.P.1	19.06.2019	Minutes of Meeting of Board of Directors.
EX.P.2	11.06.2014	Minutes of Meeting of Board of Directors.
Ex.P.3		Plaintiff's resolution.
Ex.P.4	19.12.2008	Form No.SMALL00063 (copy)
EX.P.5		Memorandum and Articles of Association Company registration certificate (copy)
Ex.P.6	26.04.2011	Form No.007100623
Ex.P.7	11.02.2010	Purchase Order No.CM 2103010
Ex.P.8	21.06.2010	Invoice No.22 (Fax)
Ex.P.9	21.06.2010	Invoice No.23
Ex.P.10	21.06.2010	Invoice No.24
Ex.P.11	28.06.2010	Invoice No.26
Ex.P.12	28.06.2010	Invoice No.27
Ex.P.13	28.06.2010	Invoice No.28
Ex.P.14	30.06.2010	Invoice No.31
Ex.P.15	01.07.2010	Invoice No.33

Exhibits	Date	Description of documents
Ex.P.16	07.07.2010	Invoice No.34
Ex.P.17	12.07.2010	Invoice No.36
Ex.P.18	12.07.2010	Invoice No.37
Ex.P.19	15.07.2010	Invoice No.38
Ex.P.20	17.07.2010	Invoice No.39
Ex.P.21	20.07.2010	Invoice No.42
Ex.P.22	26.06.2010	Purchase Order No.RRS 200610 (Fax)
Ex.P.23	28.06.2010	Invoice No.29
Ex.P.24	12.07.2010	Purchase Order No.RRS 120710 (Fax)
Ex.P.25	20.07.2010	Invoice No.40
Ex.P.26	20.07.2010	Invoice No.43
Ex.P.27	21.07.2010	Invoice No.44
Ex.P.28	26.07.2010	Invoice No.46
Ex.P.29	27.07.2010	Invoice No.47
Ex.P.30	28.07.2010	Invoice No.48
Ex.P.31	23.08.2010	Invoice No.58
Ex.P.32	04.09.2010	Invoice No.62
Ex.P.33	06.09.2010	Invoice No.63
Ex.P.34	07.09.2010	Invoice No.64
Ex.P.35	05.10.2010	Purchase Order No.CM 1101005 (Fax)
Ex.P.36	27.09.2010	Invoice No.67
Ex.P.37	27.09.2010	Invoice No.68
Ex.P.38	19.10.2010	Invoice No.72
Ex.P.39	15.10.2010	Purchase Order No.CM1101015 (Fax)
Ex.P.40	19.10.2010	Invoice No.73
Ex.P.41	20.10.2010	Invoice No.74
Ex.P.42	18.05.2010	Invoice No.12
Ex.P.43	10.06.2010	Invoice No.17
Ex.P.44	11.06.2010	Invoice No.18
Ex.P.45	12.06.2010	Invoice No.19
Ex.P.46	14.06.2010	Invoice No.20
Ex.P.47	14.06.2010	Delivery Challan No.146
Ex.P.48	19.06.2010	Delivery Challan No.155
Ex.P.49	19.06.2010	Delivery Challan No.156
Ex.P.50	24.06.2010	Delivery Challan No.157

Exhibits	Date	Description of documents
Ex.P.51	26.06.2010	Delivery Challan No.165
Ex.P.52	26.06.2010	Delivery Challan No.166
Ex.P.53	26.06.2010	Delivery Challan No.167
Ex.P.54	26.06.2010	Delivery Challan No.168
Ex.P.55	26.06.2010	Delivery Challan No.169
Ex.P.56	26.06.2010	Delivery Challan No.170
Ex.P.57	26.06.2010	Delivery Challan No.171
Ex.P.58	26.06.2010	Delivery Challan No.172
Ex.P.59	26.06.2010	Delivery Challan No.173
Ex.P.60	27.06.2010	Delivery Challan No.176
Ex.P.61	27.06.2010	Delivery Challan No.178
Ex.P.62	28.06.2010	Delivery Challan No.179
Ex.P.63	28.06.2010	Delivery Challan No.180
Ex.P.64	09.07.2010	Delivery Challan No.206
Ex.P.65	09.07.2010	Delivery Challan No.207
Ex.P.66	09.07.2010	Delivery Challan No.208
Ex.P.67	09.07.2010	Delivery Challan No.209
Ex.P.68	10.07.2010	Delivery Challan No.210
Ex.P.69	10.07.2010	Delivery Challan No.211
Ex.P.70	16.07.2010	Delivery Challan No.226
Ex.P.71	17.07.2010	Delivery Challan No.228
Ex.P.72	18.07.2010	Delivery Challan No.231
Ex.P.73	18.07.2010	Delivery Challan No.232
Ex.P.74	26.09.2010	Delivery Challan No.384
Ex.P.75	18.07.2010	Delivery Challan No.233
Ex.P.76	18.07.2010	Delivery Challan No.234
Ex.P.77	18.07.2010	Delivery Challan No.235
Ex.P.78	18.07.2010	Delivery Challan No.236
Ex.P.79	19.07.2010	Delivery Challan No.237
Ex.P.80	19.07.2010	Delivery Challan No.238
Ex.P.81	25.07.2010	Delivery Challan No.240
Ex.P.82	25.07.2010	Delivery Challan No.252
Ex.P.83	25.07.2010	Delivery Challan No.253
Ex.P.84	25.07.2010	Delivery Challan No.256
Ex.P.85	25.07.2010	Delivery Challan No.257

Exhibits	Date	Description of documents
Ex.P.86	03.09.2010	Delivery Challan No.347
Ex.P.87	03.09.2010	Delivery Challan No.350
Ex.P.88	03.09.2010	Delivery Challan No.351
P.89	03.09.2010	Delivery Challan No.352
P.90	25.09.2010	Delivery Challan No.380
P.91	26.09.2010	Delivery Challan No.381
P.92	26.09.2010	Delivery Challan No.385
P.93	26.09.2010	Delivery Challan No.386
P.94	30.09.2010	Delivery Challan No.392
P.95	01.10.2010	Delivery Challan No.393
P.96	01.10.2010	Delivery Challan No.396
P.97	03.10.2010	Delivery Challan No.409
P.98	12.10.2010	Delivery Challan No.410
P.99	12.10.2010	Delivery Challan No.412
P.100	12.10.2010	Delivery Challan No.413
P.101	12.10.2010	Delivery Challan No.414
P.102	12.10.2010	Delivery Challan No.415
P.103	12.10.2010	Delivery Challan No.416
P.104	15.10.2010	Delivery Challan No.421
P.105	15.10.2010	Delivery Challan No.422
P.106	16.10.2010	Delivery Challan No.424
P.107	17.10.2010	Delivery Challan No.425
P.108	17.10.2010	Delivery Challan No.426
P.109	17.10.2010	Delivery Challan No.427
P.110	19.10.2010	Delivery Challan No.431
P.111	19.10.2010	Delivery Challan No.432
P.112	14.06.2012	Letter sent to CTO, Narayanguda Circle. (Copy) being copy, objected.
P.113	Oct ' 10	CST FORM 'H' with Annexure vide No.L313589.
P.114	-	CST FORM 'H' with Annexure vide No.762867.
P.115	-	CST FORM 'H' with Annexure vide No.762866.
P.116	-	Series of Statemen of accounts issued by Andhra Bank.
P.117	03.01.2014	Letter sent by plaintiff company.
P.118	30.01.2014	Legal Notice (office copy).
P.119	28.02.2014	Reply Notice.

Exhibits	Date	Description of documents
P.120	08.04.2014	Letter sent by defendant counsel.
P.121	23.04.2010	Bill of Lading No.MAACB10001987
P.122	23.04.2010	Bill of Lading No.MAACB10001901
P.123	25.04.2010	Bill of Lading No.MAACB10002459
P.124	27.04.2010	Bill of Lading No.MAACB10002187
P.125	14.05.2010	Bill of Lading No.SSLMAJAKTCA2369
P.126	14.05.2010	Bill of Lading No.SSLMASUBCA2370
P.127	15.05.2010	Bill of Lading No.MAACB10002470
P.128	16.05.2010	Bill of Lading No.INMAAPKL238820
P.129	22.05.2010	Bill of Lading No.MAACB10002743
P.130	22.05.2010	Bill of Lading No.MAACB10002744
P.131	28.05.2010	Bill of Lading No.SSLMAJAKTCA2369
P.132	14.06.2010	Bill of Lading No.TALTSM00731530
P.133	16.06.2010	Bill of Lading No.TALTSM00731532
P.134	16.06.2010	Bill of Lading No.TALTSM00733522
P.135	19.06.2010	Bill of Lading No.TALTSM00733882
P.136	22.06.2010	Bill of Lading No.TALTSM00733929
P.137	26.06.2010	Bill of Lading No.TALTSM00733927
P.138	01.07.2010	Bill of Lading No.TALTSM00736404
P.139	02.07.2010	Bill of Lading No.TALTSM00737597
P.140	05.07.2010	Bill of Lading No.TALTSM00737620
P.141	05.07.2010	Bill of Lading No.TALTSM00737471
P.142	06.07.2010	Bill of Lading No.TALTSM00738204
P.143	14.07.2010	Bill of Lading No.TALTSM00740575
P.144	14.07.2010	Bill of Lading No.TALTSM00740575
P.145	14.07.2010	Bill of Lading No.TALTSM00739229
P.146	16.07.2010	Bill of Lading No.TALTSM00741649
P.147	16.07.2010	Bill of Lading No.TALTSM00741249
P.148	21.07.2010	Bill of Lading No.TALTSM0074609
P.149	24.07.2010	Bill of Lading No.TALTSM00742806
P.150	24.07.2010	Bill of Lading No.TALTSM00741915
P.151	31.07.2010	Bill of Lading No.MAASUB10070090
P.152	07.08.2010	Bill of Lading No.MAASUB10080005
P.153	17.08.2010	Bill of Lading No.TALTSM00748874
P.154	27.08.2010	Bill of Lading No.MAASUN10080032

Exhibits	Date	Description of documents
P.155	16.09.2010	Bill of Lading No.MAAJKT10090019
P.156	03.10.2010	Bill of Lading No.MAAJKT10100004
P.157	11.10.2010	Bill of Lading No.MAASUB10100016
P.158	18.10.2010	Bill of Lading No.KCA/MAA/PKG/1010/0218
P.159	24.10.2010	Bill of Lading No.MAASUB10100076
P.160	24.10.2010	Bill of Lading No.MAASUB10100077
P.161	24.10.2010	Bill of Lading No.MAAJKT10100078
P.162	27.10.2010	Bill of Lading No.MAASUB10100099
P.163	31.10.2010	Bill of Lading No.MAAJKT10110001
P.164	14.01.2011	E-mail sent by the defendant to plaintiff.
P.165	19.01.2011	E-mail sent by the defendant to the plaintiff.
P.166	08.02.2011	E-mail sent by the plaintiff to the defendant.
P.167	05.09.2012	E-mail sent by the defendant to the plaintiff.
P.168	03.10.2012	E-mail sent by the plaintiff to the defendant.
P.169	05.11.2012	E-mail sent by the plaintiff to the defendant.
P.170	01.12.2012	E-mail sent by the plaintiff to the defendant.
P.171	03.12.2012	E-mail sent by the defendant to the plaintiff.
P.172	28.07.2012	Show cause notice of the Commercial department.
P.173	02.08.2012	Reply to show cause notice.
P.174	08.08.2012	Proceedings of Commercial tax office.
P.175		Statement of Accounts.

6. Heard both sides.

7. The learned counsel for the plaintiff submits that Exs.P.113 to P.115-H-Form, clearly proves the nature of supply by the plaintiff. The Bill of Lading, Exs.P.21 to P.163, transaction and Ex.P.168 Email sent by the defendant, wherein he has admitted the liability besides payment made by the defendant. On 20.08.2018,

Ex.P.116 proves that the plaintiff is entitled to suit amount.

8. It is the contention of the learned counsel for the defendant that the plaintiff has not supplied the goods as per the document, there is a short supply besides the suit is barred by limitation and invoice has not been filed. Hence, prays for dismissal of the suit.

Issue No.1

9. As far as Issue No.1, admittedly, there is no dispute with regard to the supply and delivery of the goods. The invoices raised in the purchase order were issued in the year 2010. The last purchase order dated 15.10.2010, wherein the materials were supplied about 30500 metric tons supplied on 15.10.2010. The accounts statements filed by the plaintiff is only a running account. Ex.P.175, clearly indicates that on 20.08.2013, the defendant has paid a payment of Rs.50,000/- towards the outstanding amount and this amount have been spoken by the plaintiff. It is clearly noted that no oral and documentary evidence adduced by the defendant, the defendant himself has not come before the Court to substantiate his allegation with the plaintiff evidence clearly indicates that the

part payment has been made within the period of limitation. The fresh period of limitation starts from the date of payment. The suit has been filed within one year from the date of payment made in the year 2013. Such being the position, the suit is well within the period of limitation and not barred by limitation. Accordingly, the issue is answered.

Issue Nos.2 to 4

10. It is not in dispute that the place of purchase order and supply of materials and Exs.P.113 to P.115 Form-H, have been carefully perused, the same would not only to show the nature of metric tons but also the invoice numbers and dates, H-Form not only signed by the plaintiff but also defendant. H-Form, in fact issued by the defendant and Ex.P.173, the order of the CTO clearly proves that the goods were supplied by the plaintiff and Bill of Lading Exs.P.121 to P.163 also clearly establishes the fact that the plaintiff has supplied the materials. The main contention of the defendant that there was short supply, therefore the plaintiff is not entitled to such amount except in an oral submission of the counsel, whatsoever placed contend that there is a short supply. The defendant has also failed to appear before the Court for subjecting

himself for cross examination that itself clearly indicates that the defence is not correct. At any event, the document filed on the side of the plaintiff particularly Bill of Lading and Exs.P.121 to 163 and H-Form, Exs.P.113 to P.115 and email sent by the defendant, Ex.168, clearly proves that the plaintiff claim that the defendant is due to pay a sum of Rs.63,67,774/- towards the materials supplied. Even in the written statement, there is no specific denial about the supply of materials. When such being the position, from the above documents and Ex.P1, the plaintiff is entitled to suit claim. Accordingly, interest is calculated as per Section 16 of Micro, Small and Medium Enterprises Development Act, 2006, as the plaintiff is a Small and Medium Enterprises. When the statute itself provides for claiming such interest, the interest calculation by the plaintiff while filing of the suit is not disturbed. However, taking note of the fact that pending suit, the Court can invoke the jurisdiction under Section 34 of CPC, this Court is inclined to reduce the interest at the rate of 9% during the pendency of the suit till the date of realization. With costs.

26.11.2019

AT

C.S.No.29 of 2015

N.SATHISH KUMAR,J.

AT

C.S.No.29 of 2015

26.11.2019