

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.08.2020

PRONOUNCED ON: 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.355 of 2019

Kemin Industries South Asia Private Limited
“The Trapezium”, Second Floor,
No.39, Nelson Manickam Road
Chennai – 600 029,
represented by its Director-Finance, Sri M.S.Sridhar

Plaintiff

Vs

1. Pioneer Feeds and Poultry Products Private Limited
No.7/67, Trichy Road
Pongalur – 641667
Tirupur Taluk
Coimbatore District
represented by its Managing Director
Sri. V.Leelakrishnan
2. Sri. V.Leelakrishnan
No. 1/84, Trichy Road
Pongalur – 641667,
Tirupur Taluk
Coimbatore District.

Defendants

PRAYER:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC., praying for a Judgment and decree against the defendants granting the following reliefs:

(a) allowing the plaintiff to recover from the defendants jointly and severally and from their assets and properties and from the second defendant personally, the aforesaid sum of Rs.2,33,67,532.65 together with future interest thereon at 18% per annum from the date of suit till recovery of the amount in full;

(b) allowing the plaintiff to recover from the defendants all costs of this suit.

For Plaintiff : Mr. Abraham Markos

For Defendants: Set Exparte

JUDGEMENT

The plaintiff is a Company incorporated under the Companies Act 1956. The first defendant is a Private Limited Company and the second defendant is the Managing Director of the first defendant.

2. The plaintiff specialises in technology based solutions in the area of agri-foods, dietary supplements, pet food, etc. The plaintiff transacts business with its customers by way of direct supply of its products from its factory at Gummidipundi or through duly appointed C & F agencies at various places in India or through distributors. The defendants are the plaintiff's customers.

3. The second defendant had approached the plaintiff seeking to purchase its product for and on behalf of the first defendant. The defendant issued purchase orders and the plaintiff used to sell their products to the defendants. There was a regular request for supply by the defendants and consequent regular sales by the plaintiff. The plaintiff used to raise invoices for the value of the products supplied with a credit period of 90 days to pay the amounts due. It is stated in the plaint that the defendants used to make payments by cheques/demand drafts to the plaintiff's bank account with HDFC Bank, Anna Salai, Chennai. If the payments were not made within the credit period stipulated, interest was to be charged at 18% p.a. There were two running accounts maintained by the plaintiff in the name of the defendants under Payer Code No. A0910593 and No. A0910594 in the computerised accounts of the

plaintiff. It was stated that there was a huge outstanding amount payable by the defendant as on June 2008. The plaintiff issued a legal notice on 13.06.2008 calling upon the defendants to pay a sum of Rs.1,37,53,998/- together with interest at 18% p.a. A further legal notice was issued on 27.06.2008 calling upon the defendants to pay an aggregate amount of Rs.1,44,78,998/- together with interest at 18% p.a. It had been stated that the last of the transactions between the plaintiff and the defendants was on 19.07.2008. Since the defendants had failed to pay the amounts, the suit had been instituted seeking a Judgment and Decree against the defendants for a sum of Rs.2,33,67,532.65 together with future interest at 18% from the date of the suit till the recovery of the amount and also for costs of the suit.

4. The defendants had taken a conscious decision not to participate in the judicial proceedings. On 05.02.2014, it was noted that there was no representation for the defendants and that written statement had not been filed. The defendants were therefore set exparte.

5. The plaintiff was then invited to adduce evidence. The plaintiff originally examined T.Muthu Saravanan, Senior Manager, Finance and Accounts and Principal Officer of the plaintiff company and marked Exs.

P-1 to P-8. These documents included the computerised ledger account in the name of the defendants and payer code A0910593 for the period 01.04.2007 to 18.03.2011 as Ex.P-2 and for the payer code No. A0910594 for the period ranging from 01.04.2007 to 18.03.2011 as Ex.P-2. The Registered notice sent by the plaintiff dated 13.06.2008 was marked as Ex.P5 and the acknowledgement card was marked as Ex.P-6. The second notice sent by the plaintiff dated 27.06.2008 was marked as Ex.P7 and acknowledgement card was marked as Ex.P-8. Thereafter, the plaintiff filed A.No. 6679 of 2014, seeking leave to file to produce additional documents. This was allowed on 31.10.2014. The plaintiff thereafter filed the proof affidavit of S.Boopathiraj, Manager -Finance & Accounts and a Principal Officer of the plaintiff company. The said 8 exhibits were once again marked through the said witness and further documents to Exs. P-9 to P42 were also marked. Exs. P-10 to P-42 are office copies of the original invoices for supply of goods to the defendants. These invoices substantiate the claim of the plaintiff. They have supplied lysoforte dry in various quantities on the dates mentioned in the invoices to the defendants. The payments were due within a period of 90 days from the date of invoices. It was mentioned that interest would be charged at 18% if the amounts were not settled within the credit period.

6. The defendant had not paid the amounts towards purchase under the invoices produced as exhibits.

7. I therefore hold that the plaintiff has established by admissible and credible evidence the suit claim. I further hold that the transactions being commercial in nature, the plaintiff is entitled to interest at the rate of 18% p.a., from the date of suit till the date of realisation.

8. The suit is decreed as prayed for. In so far as the costs are concerned, in view of the fact that the defendants have shown scant regard for the sanctity of the judicial proceedings by deliberately avoiding appearance, I hold that the plaintiff is entitled to costs as determined under the amended Section 35 of the Code of Civil Procedure as applicable to the Commercial Division of the High Court.

9. Registry is delegated by the Court to determine the costs as per the Bill of Costs submitted by the plaintiff in accordance with Section 35 CPC as amended by the Commercial Courts Act 2015. The plaintiff is specifically entitled to the fees and expenses of the witnesses, the legal fees and expenses incurred and for any other expenses incurred in

connection with the judicial proceedings and also for recovery of the actual Court fees paid into Court.

10. The suit is decreed as above with costs as mentioned above.

.08.2020

Index:Yes/No

Web:Yes/No

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Speaking/Non Speaking Order

1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 – S.Boopathiraj (Plaintiff)
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 The original power of attorney dated 11.09.2008
 2. Ex.P2 The computerized ledger account for period from 01.04.2007 to 18.03.2011
 3. Ex.P3 The computerised ledger account for period from 01.04.2007 to 18.03.2011
 4. Ex.P4 The true copy of letter dated 10.04.2008
 5. Ex.P5 The true copy of the legal notice dated 13.06.2008
 6. Ex.P6 the original acknowledgement card dated 16.06.2008
 7. Ex.P7 the true copy of the legal notice dated 27.06.2008

8. Ex.P8 the original acknowledgement card dated 30.60.2008
9. Ex.P9 the original Board Resolution dated 11.07.2008
- 10.Ex.P10 the original letter dated 15.12.2006
- 11.Ex.P11 the original invoice dated 29.01.2007
12. Ex.P12 the original invoice dated 31.01.2007
13. Ex.P13 the original invoice dated 31.01.2007
14. Ex.P14 the original invoice dated 28.02.2007
15. Ex.P15 the original invoice dated 12.03.2007
16. Ex.P16 the original invoice dated 15.03.2007
17. Ex.P17 the original invoice dated 22.03.2007
18. Ex.P18 the original invoice dated 22.03.2007
19. Ex.P19 the original invoice dated 26.03.2007
20. Ex.P20 the original invoice dated 22.06.2007
21. Ex.P21 the original invoice dated 30.06.2007
22. Ex.P22 the original invoice dated 30.06.2007
23. Ex.P23 the original invoice dated 20.07.2007
24. Ex.P24 the original invoice dated 31.07.2007
25. Ex.P25 the original invoice dated 31.07.2007
26. Ex.P26 the original invoice dated 23.08.2007

27. Ex.P27 the original invoice dated 24.08.2007

28. Ex.P28 the original invoice dated 31.08.2007

29. Ex.P29 the original invoice dated 10.09.2007

30. Ex.P30 the original invoice dated 20.09.2007

31. Ex.P31 the original invoice dated 26.09.2007

32. Ex.P32 the original invoice dated 05.10.2007

33. Ex.P33 the original invoice dated 17.10.2007

34. Ex.P34 the original invoice dated 31.10.2007

35. Ex.P35 the original invoice dated 19.11.2007

36. Ex.P36 the original invoice dated 19.11.2007

37. Ex.P37 the original invoice dated 30.11.2007

38. Ex.P38 the original invoice dated 30.11.2007

39. Ex.P39 the original invoice dated 06.12.2007

40. Ex.P40 the original invoice dated 17.12.2007

41. Ex.P41 the original invoice dated 29.12.2007

42. Ex.P42 the original invoice dated 29.02.2008

3. List of Witnesses Examined on the side of the defendants:-
Nil

4. List of Exhibits Marked on the side of the defendants:-
Nil

31.08.2020

C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
C.S.No.355 of 2011

WEB COPY

31.08.2020