IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 30TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.No.357 of 2013

Beta Die Casting Equipment Inc.,
200 Beverly Street, Cambridge,
Ontario, Canada represented by
Area Manager Mr.Rajasekar Prasad,
having the Area Office at No.296,
N.Block, II Floor, Anna Nagar East,
Chennai – 600 102. : Plaintiff

Vs.

Devahi Tools represented by
its Proprietor Mr.E.D.Munuswamy,
No.29/23, Dhanapal Street,
Gandhi Nagr, Ekkattuthangal,
Chennai – 600 032. :Defendant

Civil Suit praying that this Hon'ble Court be pleased to pass a Judgment and Decree in favour of the Plaintiff and against the Defendant

(i) Directing the Defendant to pay the plaintiff a sum of Rs.71,34,065/- due to the plaintiff by the Defendant (Rs.26,87,100 on account of the Advance payment money, Rs.17,96,965 on account of the sale of machine to M/s. Feroz Metal Castings Ltd and Rs.26,50,000 towards business loss suffered by the Plaintiff) with interest at 18% per annum till payment.

(ii) In the event of the Plaintiff not being permitted to remove and sell the machines, namely, 4 Toshiba Cold Chamber Die Casting Machines (DC-135H-T Machines – 3 sets and DC-135-H-FT Machine – 1) with Serial Nos.821A09, 821A11, 821A51, 821A13 and 1 Toyo Cold Chamber Die Casting Machine (125 Ton Model BD 125 V2CW-T) with Serial No.4035081, directing the defendant to pay the Plaintiff a sum of Rs.49,11,404/- with interest at 18% per annum till payment.

(iii) Directing the Defendant to pay the Plaintiff the entire costs of the suit.

This Suit having been heard on 11.02.2022 in the presence of Mr.G.Krishnakumar for M/s S.Ashok Kumar, Advocates for the plaintiff herein, and Mr.R.Sivaraman for M/s P.Munusamy, Advocates for the defendant herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this day coming on this day before this court for orders in the presence of said advocates for the parties hereto, **It is ordered and decreed as follows:**

That the defendant herein, be and is hereby directed to pay the plaintiff herein, a sum of Rs.55,73,782/- (Rupees Fifty Five Lakhs Seventy Three Thousand Seven Hundred and Eighty Two only) towards repayment

of the amounts received as advances with further interest at the rate of 12%

per annum on the sum of Rs.26,87,100/- (Rupees Twenty Six Lakhs Eighty Seven Thousand and One Hundred only) from this date till the date of realisation.

2. That the defendant herein, be and is hereby directed to pay the plaintiff herein, a sum of Rs.39,25,655/- (Rupees Thirty Nine Lakhs Twenty Five Thousand Six Hundred and Fifty Five only) towards the net sale proceeds received by the defendant (after deducting commission) for and on behalf of the Plaintiff with further interest at the rate of 12% per annum on the sum of Rs.17,96,965/- (Rupees Seventeen Lakhs Ninety Six Thousand Nine Hundred and Sixty Five only) from this date till the date of payment.

3. That the defendant herein, be and is hereby directed to return four Toshiba Cold Chamber Die Casting Machines (DL-135H-T Machines – 3 sets and DC – 135-H-FT Machine – 1) with serial Nos.821 A09, 821A11, 821A51, A21A13 and 1 Toyo Cold Chamber Die Casting Machine (125 Ton Model BD 125 V2CW-T) with serial No.4035081 to the Plaintiff within 30 days from the date of receipt of a copy of the decree.

4. That the defendant herein, shall pay the plaintiff herein, a sum of Rs.3,00,000/- (Rupes Three Lakhs only) as costs, which comprises the court fees of about Rs.1,23,980/- Lawyer's fees and other expenses.

5. That both the plaintiff and the defendant herein, be and are

hereby directed to take all necessary action to give effect to the decree by complying with requirements under the Foreign Exchange Management Act, 2000.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 30th DAY OF MARCH 2022.

Sd/-
ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

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08.04.2022

C.S.No.357 of 2013

DECREE

DATED :30.03.2022

THE HON'BLE MR.JUSTICE

SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 11.04.2022

APPROVED ON: 13.04.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	11.02.2022
Judgment pronounced on	30.03.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Civil Suit No.357 of 2013

Beta Die Casting Equipment Inc.,
200, Beverly Street, Cambridge,
Ontario, Canada,
Rep. by Area Manager Mr.Rajasekar Prasad,
having the Area Office at
No.296, N. Block, II Floor,
Anna Nagar East,
Chennai – 600 012. ... Plaintiff

vs.

Devahi Tools
Rep. by its Proprietor
Mr.E.D.Munuswamy,
No.29/23, Dhanapal Street, Gandhi Nagar,
Ekkattuthangal, Chennai – 600 032. ... Defendant

Civil Suit is filed under Order VII Rule 1 CPC r/w Order IV Rule 1 of Original Side Rules to Direct the Defendant to pay the Plaintiff a sum of Rs.71,34,065/- due to the Plaintiff by the Defendant (Rs.26,87,100 on account of the Advance Payment money, Rs.17,96,965 on account of the sale of machine to M/s.Feroz Metal Castings Ltd and Rs.26,50,000 towards business loss suffered by the Plaintiff) with interest at 18% per annum till payment (ii) In the event of the Plaintiff not being permitted to remove and sell the machines, namely, 4 Toshiba Cold Chamber Die Casting Machines (DC-135H-T machines -3 sets and DC-135-H-FT machine -1) with Serial Nos.821A09, 821A11, 821A51, 821A13 and 1 Toyo Cold Chamber Die Casting Machine (125 Ton Model BD 125 V2CW-T) with Serial No.4035081, directing the Defendant to pay the Plaintiff a sum of Rs.49,11,404/- with interest at 18% per annum till payment and for costs.

For Plaintiff : Mr.G.Krishnakumar
for M/s.S.Ashok Kumar

For Defendant : Mr.R.Sivaraman
for M/s.P.Munuswamy

JUDGMENT

The suit is filed for recovery of a sum of Rs.71,34,065/- with interest thereon at 18% per annum from the Defendant. In addition, the Plaintiff seeks a decree to permit the Plaintiff to remove and sell five machines which are in the custody of the Defendant, and, if such removal is not permitted, to direct the Defendant to pay the Plaintiff a sum of Rs.49,11,404/- with interest thereon at 18% per annum. Apart from the above, the Plaintiff has claimed costs.

2. The Plaintiff is a company incorporated in the province of Ontario in Canada, and engaged in the business of selling second hand die casting machines and equipment. The Defendant is a proprietary concern and Mr.E.D.Munuswamy is the proprietor. The Defendant carries on business in pressure die casting and components. The Plaintiff and Defendant had a long standing business relationship. Since 2005, the Defendant represented the Plaintiff as its sales agent in India on commission basis. In December 2010, the Plaintiff and Defendant participated in the Alucast show in India and all expenses in connection therewith were borne by the Plaintiff. During that show, the Defendant agreed to set up an office for the Plaintiff at Pune. In such regard, the Plaintiff agreed to pay the Defendant US Dollar (USD) 500 per month. The Plaintiff wired a sum of USD 32,500 to the Defendant in January 2011, which included USD 6,000 as advance payment for the Pune office and USD 9,700 as advance payment of commission for the Pranav sale project. However, the said Pranav sale project was cancelled and the Pune office was not commissioned. Therefore, after adjusting the sum of USD 16,800 against future expenses for the Chennai office (USD 6,000) and sales commission in respect of the Tyche Sale Project(USD 10,800), the Plaintiff states that a sum of USD 15,700 was available with the Defendant .

3. According to the Plaintiff, the Defendant requested for a loan of USD 50,000 for constructing a building at Kondancherry Village, Thiruvallur Taluk for purposes of setting up a base for selling the used die casting machines supplied by the Plaintiff. The Plaintiff asserts that the Defendant and his Chartered Accountant made the Plaintiff believe that a loan cannot be given to a person or company in India and therefore it was agreed that the money would be sent in the form of payment against some invoices. Accordingly, the Plaintiff asked for three invoices (not backed by any transaction but intended only for filing purposes) from the Defendant and the Defendant filled up the invoices as "Start up, repairs and commissioning of machines" although such services were not provided by the Defendant. After extensive correspondence, these invoices were issued by the Defendant. As mentioned above, no services were rendered by the Defendant and the amounts were intended to be adjusted as advance payment of commission towards the sale of the die casting machines supplied by the Plaintiff. Pursuant thereto, the Plaintiff wire transferred USD 12,950 on 16.08.2011, USD 13,450 on 23.08.2011 and USD 8,600 on 08.10.2011. Thus, a total sum of USD 35,000 was wired by the Plaintiff to the Defendant. This was in addition to the sum of USD 15,700 already available with the Defendant.

4. In respect of the above transactions, an Advance Payment Agreement(the Agreement) was executed on 19.10.2011. The said Agreement sets out the details, as contained in the preceding paragraph, of amounts wired in three tranches by the Plaintiff to the Defendant and the sum of USD 15,700, which was available with the Defendant after the Pranav sale project and Pune office project were abandoned. Thus, according to the Plaintiff, the Agreement recorded that a sum of USD 50,700 had been paid by the Plaintiff to the Defendant. After the execution of the Agreement, the Plaintiff states that four machines bearing reference Nos.3891, 3892, 3893 & 3894 were purchased from MMI Industries (Yixing) Co. Ltd.(MMI Industries), Jiangsu, China under Invoice No.BETA/YX/12002, dated 11.05.2012, and that the Plaintiff paid USD 54,960 to MMI Industries as consideration for these machines. These machines were shipped to the Defendant. In addition, the Plaintiff states that two machines were dispatched from Malaysia by Beyonics Precision Machining to the Defendant. Out of the above mentioned six machines, the Plaintiff states that the Defendant sold one machine, namely, the 125 Toyo machine bearing Serial Nos.4035082 to M/s.Feroz Metal Castings Ltd, Guntur, Andhra Pradesh for a sum of INR 21,73,620 under Invoice No.00010 dated 16.05.2012. The other five machines are said to be in the

warehouse of the Defendant. Consequently, the Plaintiff claims that the

Defendant holds the advance payment of USD 50,700, the balance sale proceeds of USD 33905 after adjusting commission on the machine which was sold and five machines valued at USD 92,668.

5. A dispute arose between the parties with regard to the repayment of the advance money, the payment of the balance sale proceeds (after adjusting commission) and the return of the five machines. After exchanging notices on the disputed issues, the present suit was filed.

6. The Defendant filed a written statement and denied the contentions of the Plaintiff. According to the Defendant, he did not take a loan of USD 50,700 from the Plaintiff. The Defendant asserts that the sum of USD 50700 was transferred for start up, repairs and commissioning of the scrap machines which were consigned by the Plaintiff to the Defendant. Only upon sale of the machines, the Defendant was under a liability to pay the import value to the Plaintiff. The Defendant asserts that he was forced to sign the Agreement. The Defendant also states that he sold about 100 old die casting machines for and on behalf of the Plaintiff over a period of time. According to the Defendant, four scrap machines were imported from China and another four scrap machines were dispatched from Malaysia by Beyonics Precision Machining to the Defendant at the instance of the Plaintiff at a price of USD 31200. Out of the above, two scrap machines

were refurbished by the Defendant and sold by the Plaintiff directly to a person in Hosur for USD 77,600. The remaining two scrap machines are still in the custody of the Defendant. An alternative assertion is made that USD 35000 represents earned commission and that only USD 15700 remains towards future commission. The Defendant also asserts that the Plaintiff received a total sum of USD 56,400 and that only a sum of USD 43,739 and INR 10,44,366 would be payable on sale of the machines towards import value. As regards the sale to M/s. Feroz Metal Casting Ltd., the Defendant states that the Plaintiff is only entitled to the import invoice value and not the sale value. On such basis, the Plaintiff's claim for a sum of INR 71,34,065 and a further sum of INR 49,11,404 is denied.

7. Upon completion of pleadings, this Court framed the following issues:

> (i) Whether the suit is maintainable and whether the Court has jurisdiction to examine the issues raised by the Plaintiff?
>
> (ii) Whether the advance payment agreement dated 19.10.2011 entered into between the Plaintiff and the Defendant was with respect of future services to be rendered by the Defendant and whether the said agreement is lawful and binding on the parties?
>
> (iii) Whether the Plaintiff had shifted four machines after the agreement dated 19.10.2011 along with the two other machines to the Defendant and

whether such consignment had been acknowledged by the Defendant?

(iv) Whether the Defendant had sold one of the machine to M/s Feroz Metal Castings Ltd., and whether the Defendant had paid consideration to the Plaintiff?

(v) Whether there was an obligation that the Defendant to return the five machines?

(vi) Whether the Defendant is liable to pay to the Plaintiff a sum of Rs.71,34,065/- as claimed in the plaint together with interest?

(vii) Whether the Defendant is liable to pay a sum of Rs.49,11,404/- together with interest towards the value of the said five machines?

(viii) To what reliefs are the parties entitled to?

8. The Plaintiff adduced evidence through two witnesses who were examined as P.W.1 and P.W.2. Eight exhibits were marked through P.W.1 as Ex.P1 to Ex.P8. P.W.1 was cross examined by learned counsel for the Defendant. In course of the examination-in-chief of P.W.2, Ex.P9 to Ex.P32 were marked. P.W.2 was cross examined by learned counsel for the Defendant but it was contended that such cross examination was not concluded. The Defendant did not adduce oral or documentary evidence.

Issue No.1

9.The first issue pertains to the maintainability of the suit and the jurisdiction of this Court. The Plaintiff contended that the Agreement was executed at Chennai within the jurisdiction of this Court. The Agreement is exhibited as Ex.P4. In its written statement, the Defendant stated that the Plaintiff had no authorisation to file the present suit since there was no proof regarding the area office of the Plaintiff in Chennai. The Agreement contains a jurisdiction clause, which is extracted below:

> ***"5 MISCELLANEOUS-***
>
> *This agreement shall be governed by and construed in accordance with laws of India. In case of any dispute with regard to the agreement, the appropriate civil court in India will have jurisdiction. In case of any one or more of the provisions contained in this agreement shall for any reasons be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or enforceability shall not affect any other provisions hereof."*

Thus, it should be examined whether the cause of action arose within the jurisdiction of this Court. The Plaintiff filed an acknowledgment dated 22.06.2012(Ex.P3) which evidences that four die casting machines were received by the Defendant at the Chennai Port. The lawyer's notices were also received and sent from Chennai. Therefore, the cause of action has arisen at least partly within the jurisdiction of this Court. Consequently, Issue No.1 is decided in favour of the Plaintiff.

Issue No.2

10. Issue No.2 pertains to whether the Agreement is lawful and binding and whether such Agreement was in respect of future services to be rendered by the Defendant. As stated earlier, the Agreement is on record as Ex.P4. The Agreement is titled as “Advance Payment Agreement”. Clause 1 thereof records as under:

> **"REASON FOR ADVANCE PAYMENT**
>
> *The two parties agree that Beta would advance payment to Devahi the amount mentioned in point 2 of this advance payment agreement for future services rendered by Devahi by acting as an agent in India in selling Beta's machinery and equipment. Devahi will set up a sales force to act as agents in selling Beta's machinery and equipment for which Devahi is entitled to service charges in the form of sales commission which shall be based on the Sales Agency Agreement already signed by both parties".*

Clause 2 thereof sets out details of amounts wire transferred to the Defendant between January and October 2011. Clause 3 of the Agreement is also significant and reads as under:

“ TERMS AND CONDITIONS OF ADVANCE PAYMENT

The advance payment shall be offered to Devahi by Beta for said services rendered for no longer than three (3) years from the date of the agreement. In the event that Devahi is unable to earn its agency commission within a period of three years from the date of this agreement so as to cover the advance payment received from Beta, Devahi agrees to pay back to Beta any outstanding payment received from Beta. Devahi agrees to pay back to Beta any outstanding amount, in the form of a wire transfer directly to Beta's account.

The advance payment to Devahi shall be subject to a continued business relationship between Beta and Devahi. If this relationship is severed or ceases, for any reason, Devahi agrees to pay back to Beta any outstanding amount, within a maximum of sixty (60) days of ceasing business relationship with Beta in the form of a wire transfer directly to Beta's account.

Beta shall send a credit note to Devahi for commission earned by Devahi on each sale executed through Devahi in India with a statement of balance outstanding from Devahi on a transaction to transaction basis.”

From the above clauses, it is clear that the Agreement expressly records that the amounts wire transferred to the Defendant earlier were towards advance payment of commission for acting as a sales agent of the Plaintiff. There is evidence that some machines were consigned to the Defendant after the Agreement was signed. The common ground between the parties is that the business relationship ended before three years. In the proof affidavit of P.W.1, at paragraph 9, P.W.1 has given evidence that the payments were towards future services to be rendered by the Defendant as an agent of the Plaintiff for the sale of the Plaintiff's machinery and equipments. The relevant portion of paragraph 9 is extracted below:

> *"9. I submit that in the advance payment agreement dated 19.10.2011 all the above mentioned 4 amounts, namely, $ 15,700 (wired in January, 2011), $ 12,950 (wired on 16.08.2011), $ 13,450 (wired on 23.08.2011) and $ 8,600 (wired on 08.10.2011), totaling a sum of $ 50,700* were mentioned. ***If any part of this amount was towards any sale transaction or sales commission it would not have been included as "Advance Payment". It was specifically mentioned in the Advance Payment Agreement that the said***

payment was towards future services to be rendered by the defendant *(that is, after 19.10.2011) as an agent in India for selling the plaintiff's machinery and equipment...." (emphasis added)*

P.W.1 was cross examined on Ex.P4. The only question on Ex.P4 and the answer thereto are set out below:

Question 15	Where was Ex.P4 agreement signed?
Answer	I was not there I do not know where Ex.P4 agreement was signed.

In the proof affidavit of P.W.2, at paragraph 21, P.W.2 has given evidence that the Defendant admitted the execution of the Agreement, the receipt of the advance payment of USD 50,700 and further admitted that the said payment was towards future services to be rendered by the Defendant, which could be adjusted from and out of the advance payment. In course of cross examination of P.W.2, P.W.2 was questioned on Ex.P4. Questions 16 to 19 relate to Ex.P4. All these questions pertain to the signing of the Agreement. The same are set out below:

Question 16	You have filed an Advance Payment Agreement. On behalf of your company who has signed it?
Answer	This agreement was prepared by me and signed by Jack Iwanski and by me.
Question 17	In your proof affidavit filed before this court you have mentioned that you have signed this agreement in India. It is true or false?
Answer	I did not sign this agreement in India.
Question 18	Did Jack Iwanski execute the advance payment agreement in Canada?
Answer	This document was prepared by the lawyer of the Defendant and our lawyer in India.
Question 19	Jack Iwanski executed the advance payment agreement in Canada. Is it true or false?
Answer	To the best of my knowledge Jack Iwanski executed the document in Canada but I have to check with him. The document was executed by the defendant in India.

11. Thus, the Plaintiff has established the execution of the Agreement. The Agreement records that a sum of USD 50700 was paid to the Defendant towards future services to be provided by him as a sales agent of the Plaintiff. Oral evidence to the above effect was also given. Although the Defendant asserted in the written statement that USD 35000 out of USD 50700 represents earned commission, no evidence was adduced to establish such plea, which, in any event, contradicts the Agreement. The oral evidence of the Plaintiff was also not controverted by the Defendant. Therefore, issue No.2 is decided in favour of the Plaintiff.

Issue No.3

12. Issue No.3 relates to whether the Plaintiff shipped four machines after the execution of Ex.P4 along with two other machines to the Defendant and whether such consignment was acknowledged by the Defendant. The Plaintiff contended that four machines bearing reference Nos.3891, 3892, 3893 & 3894 were purchased from MMI Industries (Yixing) Co. Ltd.(MMI Industries), Jiangsu, China under Invoice No.BETA/YX/12002, dated 11.05.2012, and that the Plaintiff paid USD 54,960 to MMI Industries as consideration for these machines. The said invoice is exhibited as Ex. P-20. The Plaintiff also stated that it paid customs duty of USD 26,400 to import the machines into India. Upon arrival of the machines at Chennai Port, the Plaintiff stated that the Defendant issued an acknowledgment dated 22.06.2012. The said acknowledgment was exhibited through P.W.1 as Ex.P3. Moreover, in the proof affidavit of P.W.1, P.W.1 stated that the Defendant acknowledged receipt of the machines, and that the machines were received at Chennai Port and transported to a warehouse at No.1,Tharma Garden, Kondacherry Village, Arakonam Road, Thiruvallur – 631402. P.W.1 also stated that the Defendant understood that the machines belong to the Plaintiff, the Plaintiff

has full rights over these machines and that the Defendant only holds billing authority and the right to sell the machines with the permission of the Plaintiff. P.W.1 further deposed that two other machines, namely, two numbers of Toyo Cold Chamber Die Casting machines were purchased by the Plaintiff from Beyonics Technology Snd Bhd (Beyonics Technology), Johor, Malaysia, and that these machines were shipped from Malaysia in October 2011 and consigned to the Defendant. The Defendant did not adduce any evidence to the contrary. The following table sets out the description of the machines and their country of origin:

Ref. No.	Item	Size	Model	Serial	Country of Origin
3906	Toya Cold Chamber Die Casting Machine (LD, SP, EX)	125 Ton	BD125V2CW-T	4035081	Malaysia
3907	Toya Cold Chamber Die Casting Machine (LD, SP, EX)	125 Ton	BD125V2CW-T	4035082	Malaysia
3891	Toshiba Cold Chamber Die Casting Machine (LD, SP, EX)	135 Ton	DC-135H-T	821A09	China
3892	Toshiba Cold Chamber Die Casting Machine (LD, SP, EX)	135 Ton	DC-135H-T	821A11	China
3893	Toshiba Cold Chamber Die Casting Machine (LD, SP, EX)	135 Ton	DC-135H-T	821A51	China
3894	Toshiba Cold Chamber Die Casting Machine	135 Ton	DC-135H-FT	821A13	China

Ref. No.	Item	Size	Model	Serial	Country of Origin
	(LD, SP, EX)				

Therefore, as regards the four machines purchased by the Plaintiff from MMI Industries, the Plaintiff has established ownership both through documentary and oral evidence. As regards the remaining two machines, which were said to be imported from Beyonics Technology, the Plaintiff has adduced only oral evidence. However, in the absence of any evidence to the contrary from the Defendant, issue No.3 is decided in favour of the Plaintiff.

Issue No.4

13. The fourth issue pertains to whether the Defendant sold one machine to M/s. Feroz Metal Castings Limited (Feroz), Guntur, Andhra Pradesh. In the proof affidavit of P.W.1, it is stated that the Defendant sold one machine, namely, 125 Toya Machine bearing Serial No.4035082 to Feroz for a sum of INR 21,31,000 + CST of INR 42,620 aggregating to INR 21,73,620 under Invoice No.00010 dated 16.05.2012.

14. The above mentioned invoice was not exhibited in evidence. But, there was an exchange of emails between 04.07.2012 to 09.07.2013 between the Plaintiff and Defendant in relation to the sale to Feroz and the

Plaintiff's entitlement to the sale proceeds thereof after deducting the

Defendant's commission. The first email is dated 04.07.2012 (Ex.P21), wherein the Plaintiff asks the Defendant about the expected date of payment from the Defendant for the machine 125 Toyo, and the Defendant replied on 06.07.2012: “two weeks”. Next, on 01.12.2012(Ex.P23), there was another exchange of emails where the Plaintiff communicated its displeasure about the sale of one machine (125 Toyo) to Feroz without its prior consent, and that the money from that sale was being withheld by the Defendant unlawfully. Later, on 13.12.2012(Ex.P25), the Plaintiff sent an elaborate email regarding the withholding of the sale proceeds from the sale to Feroz. The email also mentions that the Defendant is neither releasing the Plaintiff's share of money from the sale of the machine nor releasing the rest of the machines which were stored in a warehouse by the Defendant. By an email of 08.01.2013 (Ex.P27), the Plaintiff alleged that the Defendant defrauded the Plaintiff by not transferring the sale proceeds in spite of the lapse of more than one year after the sale to Feroz. In the last of their email exchanges, an email dated 08.01.2013 (Ex.P29), the Plaintiff states that the Defendant's demand for the next machine as a pre-requisite for the Defendant to release the money from the sale to Feroz contradicts the earlier understanding between the parties.

15. The Defendant, on the other hand, asserted in the written statement, at paragraph 30 that the Plaintiff is only entitled to the import value and not the sale value of the machine, but did not adduce any evidence to establish the plea. Even the cross examination of PW1 and 2 does not deal with the sale to Feroz. Thus, the above evidence is sufficient to conclude that the Defendant sold one 125 Toyo machine to the Defendant, and received and retained the sale proceeds. The Plaintiff also established its ownership of the machine. Therefore, issue No.4 is also answered in favour of the Plaintiff and against the Defendant by concluding that the Defendant is liable to pay the sale proceeds minus the Defendant's commission, which is a sum of INR 17,96,965.

<u>Issue No.5</u>

16. Issue No.5 relates to whether there was an obligation imposed on the Defendant to return the five machines. The Agreement envisages that the Defendant would adjust his commission against the sum of USD 50,700 received in terms thereof. Clause 3 of the Agreement, which is set out at paragraph 10 *supra,* specifies that even the sum of USD 50700 or the unadjusted part thereof would be repayable if the business relationship is severed. The Defendant does not deny that he is in custody of the machines.

Indeed, in paragraph 24 of the written statement, the Defendant states that these machines can only be sold on refurbishing and repairing the same. In this case, the evidence indicates that only one machine was sold by the Defendant. The evidence also shows that the Plaintiff paid the consideration for all six machines. Therefore, the Defendant is under an obligation to return the unsold machines. Consequently, issue No.5 is also decided in favour of the Plaintiff.

Issue No.6

17. Issue No.6 relates to whether the Defendant is liable to pay to the Plaintiff the sum of INR 71,34,065. The Plaintiff has set out the manner of computation of the suit claim in paragraph 25 of the Plaint. This claim consists of the following elements: (i) the amounts wire transferred to the Defendant towards advance payment of commission; (ii) the sale proceeds of one machine minus the Defendant's commission thereon; and (iii) business loss of INR 26,50,000. As stated earlier, the first element comprises the sum of USD 15,700 from monies previously received by the Defendant from the Plaintiff and the sum of USD 35,000 that was wire transferred to the Defendant. This aggregates to a sum of USD 50,700. The sum of USD 50,700 is equivalent to INR 26,87,100 at a conversion rate of about INR 53 per USD. The second element was arrived at as follows: one machine was sold to Feroz for a sum of INR 21,73,620. After setting off

the amount payable to the Defendant by way of commission, the Plaintiff contended that the amount payable by the Defendant to the Plaintiff from and out of the sale proceeds is a sum of INR 17,96,965. The last element is a claim of INR 26,50,000 towards business loss. INR 26,87,100 plus INR 17,96,965 plus INR 26,50,000 aggregates to INR 71,34,065.

18. As regards the payments made to the Defendant by way of advance, the receipt of such payment by the Defendant is acknowledged in the Agreement, which was exhibited as Ex.P4 through P.W.1. As stated above, the Plaintiff exhibited emails evidencing that one machine was sold to Feroz, but no evidence was adduced with regard to the alleged business loss. Therefore, the Plaintiff has established its claim as regards the first and second elements, namely, the claim of INR 26,87,100 under the Agreement and the claim of INR 17,96,965 on account of the sale of one machine to Feroz. The third element, namely, the claim towards business loss has not been proved. Therefore, the said element of the claim is rejected. Since the transaction between the parties is commercial, the Plaintiff is entitled to interest on these amounts. If the business relationship had continued, the sum of USD 50700 = INR 26,87,100 would have been adjusted against sales commission. Therefore, interest is payable from the date of plaint on INR 26,87,100. Although the Plaintiff claimed interest at

18% per annum, interest is awarded at 12% per annum by taking into account the prevailing interest rates at the relevant point of time. As regards the claim of INR 17,96,965, interest is payable thereon at the same rate of 12% per annum from 16.05.2012, i.e. the date of sale to Feroz. Accordingly, Issue No.6 is decided in the above terms.

Issue No.7

19. Issue No.7 relates to whether the Plaintiff is entitled to a sum of INR 49,11,404 towards the value of five machines retained by the Defendant. The Plaintiff has claimed that the aggregate value of the five machines retained by the Defendant, namely, four Toshiba Cold Chamber Die Casting Machines (DC-135H-T machines -3 numbers and DC-135-H-FT machine -1 number) with Serial Nos.821A09, 821A11, 821A51, 821A13 and 1 Toyo Cold Chamber Die Casting machine (125 Tone model BD 125 V2CW-T) with Serial No.4035081 is USD 92,668. The Plaintiff seeks payment of this amount if the machines are not returned. The prayer in the plaint is in the alternative, i.e. the Plaintiff has prayed for the return of the machines, and only in the event of default in returning the same for the monetary value thereof. By submitting the invoices relating to the purchase of these machines and by exhibiting the acknowledgment under which the Defendant received the machines as a consignee, the Plaintiff has

established that these machines are under the custody of the Defendant.

Indeed, the Defendant does not deny the same in its written statement. Therefore, the Plaintiff is entitled to a direction for the return of the said machines by the Defendant within 30 days.

20. Because the Plaintiff is a company incorporated in Canada, the requirements of the Foreign Exchange Management Act, 2000 should be complied with. Both the Plaintiff and the Defendant shall take all necessary action to give effect to the decree by complying with such requirements.

21.Thus, the suit is decreed on the following terms:

(i) The Defendant is directed to pay the Plaintiff the sum of INR 26,87,100 towards repayment of the amounts received as advances with interest thereon at 12% per annum from the date of plaint till the date of realisation;

(ii) The Defendant is directed to pay the Plaintiff a sum of INR 17,96,965 towards the net sale proceeds received by the Defendant (after deducting commission) for and on behalf of the Plaintiff with interest thereon at 12% per annum from 16.05.2012 till the date of payment.

(iii) The Defendant is directed to return four Toshiba Cold Chamber Die Casting Machines (DC-135H-T machines – 3 sets and DC-135-H-FT machine – 1) with serial Nos.821A09, 821A11, 821A51, 821A13 and 1 Toyo Cold Chamber Die Casting Machine (125 Ton Model BD 125 V2CW-T) with Serial No.4035081 to the Plaintiff within 30 days from the date of receipt of a copy of the decree.

(iv) The Defendant shall pay the Plaintiff a sum of INR 3,00,000/- (Rupees three lakhs only) as costs, which comprises the court fee of about INR 1,23,980/-, lawyer's fees and other expenses.

(v) Both the Plaintiff and the Defendant are directed to take all necessary action to give effect to the decree by complying with requirements under the Foreign Exchange Management Act, 2000.

Sd./-S.K.R.J.
30.03.2022

Plaintiff's witnesses:

1.Mr. Rajasekar Prasad : P.W.1

2.Mr.Rafal Kujszezyk : P.W.2

Defendant's witnesses: Nil

Documents exhibited by the Plaintiff:

Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.P1	20.02.2013	Original authorization letter in favour of Mr.Rajasekar Prasad.
2.	Ex.P2	20.08.1998	Original articles of incorporation of the Plaintiff company
3.	Ex.P3	22.06.2011	Original Acknowledgment issued by the defendant for four machines.

Sl.No	Exhibits	Date	Particulars of Documents
4.	Ex.P4	19.10.2011	The original Advance Payment Agreement between the Plaintiff and Defendant.
5.	Ex.P5	22.01.2013	The original legal notice sent by the Plaintiff's counsel to the Defendant.
6.	Ex.P6	20.02.2013	Letter from the Defendant to the Plaintiff
7.	Ex.P7	02.03.2013	Reply notice issued by the Defendant counsel to the Plaintiff counsel.
8.	Ex.P8	09.04.2013	Original encumbrance certificate
9.	Ex.P9	24.02.2020	Certified true copy of the Board Resolution
10.	Ex.P10	22.01.2011	Download copy of the Email sent by Defendant to Plaintiff.
11.	Ex.P11	20.09.2021	Certificate under Section 65-B of Evidence Act
12.	Ex.P12	14.06.2011	Download copy of the Email
13.	Ex.P13	20.09.2021	Certificate under Section 65-B of Evidence Act
14.	Ex.P14	15.06.2011	Download copy of the Email
15.	Ex.P15	20.09.2021	Certificate under Section 65-B of Evidence Act
16.	Ex.P16	10.07.2011	Download copy of the Email
17.	Ex.P17	20.09.2021	Certificate under Section 65-B of Evidence Act
18.	Ex.P18	12.07.2011	Download copy of the Email
19.	Ex.P19	20.09.2021	Certificate under Section 65-B of Evidence Act
20.	Ex.P20	11.05.2012	Certified photo copy of the invoice issued by the MMI Industrieis, China in favour of the Plaintiff.
21.	Ex.P21	06.07.2012	Download copy of the Email
22.	Ex.P22	20.09.2021	Certificate under Section 65-B of Evidence Act
23.	Ex.P23	01.11.2012	Download copy of the Email
24.	Ex.P24	20.09.2021	Certificate under Section 65-B of Evidence Act
25.	Ex.P25	13.12.2012	Download copy of the Email
26.	Ex.P26	20.09.2021	Certificate under Section 65-B of Evidence Act
27.	Ex.P27	08.01.2013	Download copy of the Email
28.	Ex.P28	20.09.2021	Certificate under Section 65-B of Evidence Act

Sl.No	Exhibits	Date	Particulars of Documents
29.	Ex.P29	09.01.2013	Download copy of the Email
30.	Ex.P30	20.09.2021	Certificate under Section 65-B of Evidence Act
31.	Ex.P31	18.01.2013	Download copy of the Email
32.	Ex.P32	20.09.2021	Certificate under Section 65-B of Evidence Act

Documents exhibited by the Defendant : Nil

Sd./-S.K.R.J.
30.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.