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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 23RD DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.No.249 of 2014

(*) Halonix Technologies Private Limited,

Having its registered office at

B-31, Phase-II, Noida,

Distt. Gautam Budh Nagar (UP) – 201305

Rep. by its Constituted Attorney

() Mr.Shashwat Gaur**

(*) (Amended as per the order dated 26.09.2019

in A.No.7287 of 2019 and

time extended as per order dated 15.10.2019)

(**) (Amended as per order dated 12.02.19 in A.No.1095/19)

...Plaintiff

vs.

Cema Electric Lighting Products India Pvt. Ltd.,

No.10, Anna Avenue,

Bhaktavatsalam,

Adyar, Chennai – 600 020.

Rep. by its Director.

...Defendant

Civil Suit praying that this Hon'ble Court may be pleased to pass a judgement and decree against the defendant in the following terms:-

<https://hcservices.ecourts.gov.in/hcservices/> (a) Directing the Defendant, Cema Electric Lighting Products

India Pvt. Ltd., to pay the Plaintiff a sum of Rs.4,48,00,986/- with further



interest on the principal amount of Rs.3,08,97,232/- at 15% per annum from the date of the institution of this suit till the date of realization.

(b) to direct the Defendant to pay the Plaintiff, the costs of such suit.

This Civil Suit having been heard on 03.03.2022 in the presence of M/s.Thriyambak J.Kannan and Preeti Mohan, Advocate for the plaintiff herein and Mr.B.Giridhara Rao and Mr.T.Poornam Advocate for the defendant herein and upon reading the plaint filed herein and the other exhibits therein referred hereto and and upon perusing the evidence adduced therein and having been stood over consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this Court having observed that there is an admission of liability to the extent of Rs.2,40,49,163/- as of 30.11.2010, the Plaintiff admitted that the Defendant paid a sum of Rs.25,00,000/- through two cheques dated 05.02.2011, and these receipts are subsequent to the admission of liability, thereafter, the predecessor-in-interest of the Plaintiff issued credit note dated 17.02.2011 for Rs.25,56,000/-, both these material developments are subsequent and credit should be given to these amounts while arriving at the amount due from the Defendant as on the date of suit,

therefore, after reckoning the aforesaid amounts, the Plaintiff is entitled to a



decree for a sum of Rs.1,89,93,163/-, which is Rs.2,40,49,163 minus Rs.25,00,000 minus Rs.25,56,000/-, the contract documents do not specify the rate of interest, the relationship between the predecessor-in-interest of the Plaintiff and Defendant was commercial and, consequently, the Plaintiff is entitled to interest at a rate commensurate with the applicable interest rates during the relevant period, on such basis, it is concluded that the Plaintiff is entitled to interest at 12% per annum from the date of the e-mail of December 2010,

it is ordered and decreed as follows:-

That the defendant herein, do pay to the plaintiff herein, a sum of Rs.4,46,90,132/- (Rupees Four Crores Forty Six Lakhs Ninety Thousand One Hundred and Thirty Two only) with interest at the rate of 12% per annum on the sum of Rs.1,89,93,163/- (Rupees One Crore Eighty Nine Lakhs Ninety Three Thousand One Hundred and Sixty Three only) from this date till the date of realization.

2. That the defendant herein be and is hereby directed to pay costs assessed in a sum of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) (this includes a sum of Rs.4,51,535/- (Rupees Four Lakhs Fifty One



Thousand Five Hundred and Thirty Five Only) towards court fees and the remainder towards lawyer's fees and other costs) to the plaintiff herein.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH
BHANDARI CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 23rd DAY OF MARCH 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//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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06.04.2022

C.S.No.249 of 2014

DECREE:

DATED : 23.03.2022

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 06.05.2022

APPROVED ON: 11.05.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	03.03.2022
Judgment pronounced on	23.03.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY****Civil Suit No.249 of 2014**

Halonix Technologies Private Limited,
Having its registered office at
B-31, Phase-II, Noida,
Distt. Gautam Budh Nagar (UP) – 201305
Rep. by its Constituted Attorney
Mr. Shashwat Gaur
(Amended as per the order dated 26.09.2019
in A.No.7287 of 2019)

... Plaintiff

vs.

Cema Electric Lighting Products India Pvt. Ltd.,
No.10, Anna Avenue,
Bhaktavatsalam,
Adyar, Chennai – 600 020.
Rep. by its Director.

... Defendant

Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC to direct the Defendant, Cema Electric Lighting Products India Pvt. Ltd., to pay the Plaintiff a sum of Rs.4,48,00,986/- with further interest on the principal amount of Rs.3,08,97,232/- at 15% per annum from the date of the institution of this suit till the date of realization and for costs.



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For Plaintiff : M/s.Thriyambak J.Kannan
and Preeti Mohan

For Defendant : Mr.B.Giridhara Rao
and Mr.T.Poornam

J U D G M E N T

The suit is filed for recovery of a sum of Rs.4,48,00,986/- with interest on the principal sum of Rs.3,08,97,232/- at 15% per annum from the date of institution of the suit till the date of realization.

2. The Plaintiff asserts that it is the successor-in-interest of a company called Halonix Limited. According to the Plaintiff, it entered into a Business Transfer Agreement dated 23.07.2013(the BTA) with Halonix Limited (earlier known as Phoenix Lamps Limited). In terms of the BTA, the Plaintiff purchased the non-automotive lighting product line of Halonix Limited, including the receivables, contracts and employees pertaining to the said business. The Plaintiff asserts that one of the receivables to be transferred under the BTA were amounts payable by the Defendant to Halonix Limited towards supply of lamps. These alleged receivables along with interest are claimed in the suit. In view of the fact that the claim is made by an alleged successor-in-interest of the seller of lamps against the



purchaser/Defendant, while discussing the transaction, the parties thereto are referred to as the Seller and Purchaser.

3. The Plaintiff states that Halonix Limited supplied lamps of different categories and specifications to the Defendant from the year 2005 onwards. As per the standard terms and conditions incorporated in the purchase orders, a warranty was extended by the Seller to the Purchaser in respect of performance and manufacturing defects. According to the Plaintiff, the warranty period of 14 months runs from the date of supply of products by the Seller to the Purchaser. Upon such supply, the Purchaser was required to provide Form - 'C' to the Seller. With regard to defective products, the parties would conduct joint inspections from time to time. On such basis, the Seller would issue credit notes to the Purchaser provided claims were within the warranty period. In respect of such supplies, the Purchaser made 'on account' payments periodically. The Plaintiff states that the last lot was supplied by the Seller to the Purchaser in the month of September 2009. On account of the failure of the Purchaser to make payments, reminders were issued by the Seller. The Plaintiff states that a sum of Rs.11,76,63,747/- was due and payable by the Purchaser as of 09.03.2009. After giving credit to the amounts received and credit notes issued by the Seller, it is stated that a sum of Rs.3,59,53,232/- was payable.



The Defendant paid a sum of Rs.25,00,000/- in early 2011, and the Seller issued a credit note for Rs.25,56,000/- on 17.02.2011. After taking the aforesaid into account, according to the Plaintiff, a sum of Rs.3,08,97,232/- became payable. The Plaintiff relies upon a letter dated 14.12.2010 from the Purchaser, by which the Purchaser agreed that a sum of Rs.2,40,49,163/- was due and payable as at the close of business on 30.11.2010. On account of non-payment in spite of such admission, the Seller issued a lawyer's notice on 31.01.2011. By such notice, a claim of Rs.3,59,53,231/- was made. Thereafter, the parties endeavoured to resolve the dispute amicably. Upon failure of efforts at an amicable settlement, the Seller issued a statutory notice under Section 434 of the Companies Act, 1956 and filed a petition to wind up the Purchaser/Defendant by filing C.P.No.217 of 2011. The winding up petition was dismissed by order dated 15.03.2013. Meanwhile, the Plaintiff acquired the business of the Purchaser on 23.07.2013 under the BTA and filed the suit in the above facts and circumstances.

4. The Defendant refuted the claims of the Plaintiff by filing a written statement with a set off. In the written statement, the Defendant raised the preliminary objection that the suit is not maintainable at the instance of the Plaintiff, Halonix Technologies Private Limited, on the



ground that there is no privity of contract between the Plaintiff and Defendant. In other words, the Defendant states that its business relationship was only with Halonix Limited and not with the Plaintiff. On the merits of the dispute, the Defendant states that the Seller supplied defective goods. Although the contract required joint inspection by the Seller and Purchaser, the Seller failed to depute its authorized representatives to inspect the defective stock. Consequently, the Purchaser/Defendant was saddled with defective stocks and was constrained to hire warehouses to store such stock. According to the Defendant, the direct losses incurred by the Defendant as a result of defective stock aggregates to Rs.3,48,65,583.88. Moreover, the Defendant claims loss of profit at 21% of the value of the total rejected stock.

5. The Defendant also states that the claim made by the Plaintiff on the basis of the alleged admission in the letter dated 14.12.2010 was categorically rejected by this Court while adjudicating C.P.No.217 of 2017. The judgment of this Court was not carried in appeal. Therefore, the Defendant states that the Plaintiff is bound by the judgment and the present suit, which is filed on the same basis, is unsustainable. The Purchaser/Defendant also states that it issued debit notes in respect of the defective stock. Such debit notes were issued after conducting a meeting



for reconciliation of accounts on 23.05.2011 at the office of the Purchaser/Defendant. The Seller deputed Mr. Manoj Goyal as its authorised representative to attend the meeting. After reckoning amounts paid earlier and the value of the debit notes, only a sum of Rs.23,90,836/- remained due and payable by the Defendant to the seller. The Defendant further contended that the Plaintiff has failed to prove the claim by producing accounts or otherwise.

6. Based on these pleadings, the following issues were framed:

1) Whether the Defendant has admitted their liability to pay a sum of Rs.2,40,49,163/- to the Plaintiff?

2) Whether the Plaintiff has promptly issued credit notes to the defendant whenever defective goods were found to have been supplied as per the joint inspection report?

3) Whether the Plaintiff is entitled to a sum of Rs.4,48,00,986/- including an interest at the rate of 15% per annum on the principal amount of Rs.3,08,97,232/- and the interest penalty on overdue payments at the rate of 18% per annum?

4) Whether the Plaintiff had, while accepting the Defendant's purchase orders guaranteed, the performance and quality of the CFL lamps, that had been supplied by it to the Defendant against any



manufacturing and/or other defects, for a period of 14 months from the date on which the Defendant's customers had purchased the same?

5) Is the Plaintiff liable to pay to the Defendant towards the debit notes raised by the Defendant, towards costs of warehouse lease incurred owing to the Plaintiff's failure in not inspecting the defective goods, as well as for loss of market share and additional charges?

6) Would the Defendant be entitled to a set off against the Plaintiff for a sum of Rs.4,48,00,986/- together with interest at the rate of 15% per annum from the date of filing its written statement/set off together with costs?

7) Whether the Plaintiff is entitled to any other relief?

7. The Plaintiff adduced oral evidence through three witnesses who were examined as P.W.1 to P.W.3. The Defendant adduced evidence through one witness who was examined as D.W.1. In course of the examination-in-chief of P.W.1, 28 documents were exhibited as Ex.P1 to Ex.P28. In course of the examination-in-chief of P.W.2, two documents were exhibited as Ex.P29 and Ex.P30. In course of the examination-in-chief of P.W.3, one document was exhibited as Ex.P31. Exhibits D1 to D38 were



were advanced by Mr. Thriyambak Kannan, learned counsel, on behalf of the Plaintiff and by Mr. B.Giridhara Rao, learned counsel, on behalf of the Defendant. Both counsel also submitted written arguments.

8. Although no issue was framed earlier with regard to whether the Plaintiff is entitled to maintain the suit, the said issue is required to be considered at the outset because it is a preliminary objection of the Defendant which goes to the root of the matter. The said issue is considered first.

9. The Plaintiff relies on the BTA to establish its right to maintain the suit. The BTA is between Halonix Limited and Halonix Technologies Private Limited. Clause 1 deals with sale and purchase. Sub-clause 1.1 is of particular relevance and is set out below:

"1.1. Subject to the provisions of this agreement, the seller shall sell, transfer, convey, assign and deliver (as the case may be) or procure the sale, transfer, conveyance, assignment or delivery (as the case may be) to the Purchaser, and the Purchaser hereby agrees to purchase from the Seller, on the closing date, all rights, title and interest in and to the business as at the closing date free from all encumbrances, as a going concern and on a slump sale basis; such that from the closing date: (a) the business shall be transferred to and vested in the



purchaser(transaction); (b) the purchaser will be entitled, subject to the terms and conditions of this agreement, to all rights, title, interest and rewards in the business and shall be liable for the assumed liability (as defined in Schedule 5) [but not, for the avoidance of doubt, the Excluded Liabilities (as defined in schedule 5)]; and (c) the Purchaser shall have the full ability, rights, power and authority, necessary for conducting and carrying on the Business. Ownership and all risk/Assumed Liabilities in the Business shall (except as otherwise set out in the Agreement) pass to the Purchasers with effect from Closing. It is hereby clarified that in this Slump Sale process as provided in this Agreement, the Business shall be transferred as a going concern by the Seller to the Purchaser for the Business Price as on the Closing Date without assigning any values to the individual Business Assets or Assumed Liabilities. "

10. On perusal of sub clause 1.1, it is evident that the Purchaser under the BTA agreed to purchase the Business, as defined in the BTA. The expression Business is defined under Schedule 1 as follows:

SCHEDULE 1

THE BUSINESS

The Business includes, but is not limited to, the

following:



1. *Business Assets:*

(a) A description of the insurance policies, attached as Exhibit A;

(b) IPR set out in Exhibit B;

(c) Warehouse Leases, attached as Exhibit C;

(d) Fixed Assets, attached collectively as Exhibit D;

(e) Business Properties set out in Schedule 4;

(f) Stock-in-Trade, as verified by the parties and reflected in the Reference Accounts;

(g) Trade Debtors, as reflected in Reference Accounts;

(h) Benefit of all Business Contracts, as reflected in the Reference Accounts;

(i) Business Claims, as reflected in the Reference Accounts;

(j) Business Information;

(k) Business Goodwill.

2. *Employees, attached as Exhibit E; and*

3. *Assumed Liabilities, as reflected in the Reference*

Accounts (including the Employee Benefit Plan, attached as Exhibit E.



The definition of 'Business' is inclusive and not exhaustive; and the expression "Business Assets" is defined therein as including "Trade Debtors", as reflected in the Reference Accounts. The BTA defines the balance sheet/accounts of the Business as on 31.03.2013 as the Reference Accounts in Clause 2.3 thereof. The BTA further provides that the Reference Accounts are attached to the BTA as Exhibit F. Therefore, Exhibit F should be examined. Exhibit F is the Balance Sheet of the General Lighting Division of Halonix Limited as at 31.03.2013. Under the head, current assets, there is an entry pertaining to trade receivables. The value thereof is specified as Rs.471,138,620/-. On examining the definition of Business Assets along with the Balance Sheet of the General Lighting Division of Halonix Limited, it appears that all the trade debtors pertaining to the General Lighting Division formed part of the Business which was agreed to be transferred to and vested in the Plaintiff as of closing. Significantly, there is no exclusion as regards trade debtors. The Plaintiff asserts that the transaction was closed or completed and all the receivables pertaining to the General Lighting Division were transferred under the BTA to the Purchaser, i.e. the Plaintiff. The BTA discloses that the transaction is in the nature of a business transfer on a going concern and slump sale basis.



entitled to institute the suit in respect of the receivables of Halonix Limited is not tenable. Although the Defendant contended that it was not put on notice before the BTA was executed and that its consent was not taken, the legal position is that notice to or the consent of the debtor is not required when receivables are transferred. By contrast, if a contract comprising a bundle of rights and obligations is transferred, the consent of the counter party to such contract is necessary. In effect, in those circumstances, as per Section 62 of the Indian Contract Act, 1862 (the Contract Act), novation of the original contract between the Seller and Purchaser would be required. Such requirement does not apply to a mere transfer of receivables as in this case. It should also be noticed that this is a transfer of receivables and not the transfer of a mere right to sue. Hence, it is a permissible transfer as per Section 6 of the Transfer of Property Act, 1882. For these reasons, the objections of the Defendant to the maintainability of the suit at the instance of the Plaintiff are rejected. Consequently, the Seller is also referred to as the predecessor-in-interest of the Plaintiff over the remainder of this order.

Issue Nos.1,2, 4 and 5:

11. Issue Nos.1, 2, 4 and 5 relate to the alleged admission of liability in Ex.P16, the issuance of credit notes, debit notes and the applicable warranty period. These issues are inter-related and have a



bearing on the Plaintiff's claim and the Defendant's counter claim.

Therefore, these issues are clubbed and decided. The common ground between the Plaintiff and the Defendant is that the supply of goods was subject to an express warranty. The standard purchase order issued by the Defendant contains a warranty clause. The said warranty clause is set out below:

"All lamps will have 14 months guarantee against performance and manufacturing defects of unbroken."

In addition, the replacement policy of the predecessor-in-interest of the Plaintiff also contained a warranty clause. The said warranty clause, including the exclusions thereto, are as under:

"3. The lamps are warrantible for 14 months from the date of sale.

4. The following defect will NOT be considered as warrantible:

- Both filament broken*
- Excessive blackening*
- Lamps exceeding the permissible period from the date of sale.*
- Breakage allowance exceeding 1%*
- The lamps not marked with date of sale"*



12. Keeping in mind the two warranty clauses set out above, the rival contentions pertaining to warranty should be addressed. The Plaintiff contended that the warranty period of 14 months runs from the date of sale by the predecessor-in-interest of the Plaintiff to the Defendant. By contrast, the Defendant contended that the warranty period would run from the date of purchase of the relevant products by the end consumer. According to the Defendant, any defects would become noticeable only upon the products being put to use by the end consumer. Consequently, the Defendant contended that the warranty clause should be interpreted in a manner that would render the warranty meaningful and not meaningless. This contention was controverted by the Plaintiff on the ground that the transaction between the Plaintiff and Defendant was on business to business (B2B) basis. By referring to the cross-examination of D.W.1, the Plaintiff asserted that D.W.1 admitted that it sold goods purchased from the predecessor-in-interest of the Plaintiff to other business entities and not to end consumers. Thus, the Plaintiff contended that the warranty period cannot be construed to commence only upon the end consumer using the product. Such construction would render the warranty clause void for uncertainty as per Section 29 of the Contract Act. Therefore, the Plaintiff contended that the warranty period should be construed as commencing from the date of sale by the Plaintiff's predecessor-in-interest to the



Defendant. By relying upon the judgment of the Hon'ble Supreme Court in *Tata Motors Limited v. Antonio Pualo Vaz*, 2021 SCC OnLine SC 125, it was contended that the warranty provided by the predecessor-in-interest of the Plaintiff was only to the Defendant and not to subsequent purchasers, who cannot invoke the warranty. Nonetheless, it was contended that the warranty would hold good for a period of 14 months from the date of sale and could be invoked by the Defendant even if the relevant products had been transferred to the end consumer. If construed in this manner, the Plaintiff contended that the warranty clause would be meaningful and certain.

13. The warranty clause contained in the purchase order indicates that the warranty period is 14 months, and that such warranty applies to performance and manufacturing defects. There is no indication therein as to the start date of the warranty period. The replacement policy clearly specifies a warranty period of "14 months from the date of the sale". The exclusions from warranty contained therein expressly include "lamps exceeding the permissible period from the date of sale". Thus, the warranty clause in the replacement policy provides a clear indication that the warranty period runs from the date of sale. The only question that remains



Plaintiff or the date of sale by whoever sells to the end consumer. Given the fact that the replacement policy is a policy framed by the predecessor-in-interest of the Plaintiff, the only logical inference is that the warranty period should be linked to the date of sale by the person who framed the replacement policy. Therefore, the warranty period should be interpreted as running from the date of sale by the predecessor-in-interest of the Plaintiff to the Defendant. The contention of the Defendant that any defects would be discernible only when the product is put to use is not devoid of merit. This concern is addressed by the reasonably long warranty period of 14 months. As long as the product is put to use or tested within the stipulated 14 month period, a warranty claim may be made by the Defendant. Whether this position is altered by warranties under law merits examination. S.16 of the Sale of Goods Act, 1930 (the Sale of Goods Act) deals with implied warranties. Even *de hors* contractual warranties, implied warranties constitute exceptions to the doctrine of *caveat emptor*. Section 16 prescribes warranties, which may be implied in certain circumstances, such as that the goods shall be of merchantable quality and are fit for purpose. Significantly, sub-section(4) provides as under:

“An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.”



Therefore, if there is inconsistency between an express and implied warranty, the express warranty would override to that extent. When tested against the express warranties in this case, as long as the duration is restricted to 14 months from the date of sale, there would be no conflict between the contractual and statutory warranty. Whether the Defendant has established that warranty claims were made within this 14 month period or even thereafter would be examined later. Before doing so, the alleged admission of liability by the Defendant is considered.

14. The Plaintiff relied heavily on the letter issued by the Defendant on 14.12.2010 (Ex.P16) as evidence of admission of liability. Before delving further into this issue, the contention of the Defendant that the Plaintiff cannot rely on this letter as an admission of liability because of the dismissal of the winding up petition should be considered. The order 15.03.2013 of this Court dismissing C.P.No.217 of 2011 was exhibited as Ex. P28 and throws considerable light on this defence. This Court held, in relevant part, as under in paragraphs 7 and 8:

“7.... That being the nature of the claim and defence raised by both parties, the same, on the basis of the material available herein appears to be bona fide and substantial one and to be adjudicated in full



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fledged enquiry and the same cannot be determined in the winding up proceedings, which is summary in nature.”

“8....In my considered view, considering the bona fide of the defence raised herein, the claim made by the petitioner herein cannot be effectively decided herein and remedy available to the petitioner is through appropriate civil forum.”

Thus, the Court held that it cannot be concluded, in summary proceedings, that there is an undisputed liability on the basis of the above letter to warrant an order of winding up. Therefore, parties were directed to approach the appropriate civil court. This is the limited nature of the conclusion drawn by this Court in the winding up proceedings, and this order cannot be set up in defence to a civil action, wherein parties are provided the opportunity to adduce and test evidence in course of trial. Hence, this contention of the Defendant is rejected and the evidence on this issue warrants independent scrutiny.

15. By the letter dated 14.12.2010, as stated earlier, the Defendant appeared to admit liability to the extent of Rs.2,40,49,163/- as of 30th November, 2010. On scrutiny, it appears to have been sent either by registered post or courier to the predecessor-in-interest of the Plaintiff.



Since the letter is of particular significance, the letter, in relevant part, is reproduced:

Dated: 14.12.2010

Regd Post/Courier

*To: M/s.Halonix Limited
59-A, NSEZ, Phase II, Noida,
Gautam Budh Nagar,
U.P.*

*Sub: Confirmation of balance outstanding as on
30.11.2010.*

Dear Sir/Madam,

Our records indicate that, at the close of business as on 30.11.2010, Rs.2,40,49,163/- (Rupees two crore forty lakhs forty nine thousand one hundred and sixty three only) is payable to you. (Net payable after adjusting the value of defective returns inspected upto August, 2010).

If the above amount is not in agreement with your books, please indicate the balance as per your records along with details at the place specified below at (2), so that the pending issues can be sorted out at the earliest.

Please note that this confirmation from your side should reach us by 21.12.2010, or else we will assume the balance confirms with our records.

*Yours faithfully
for CEMA, Electric Lighting Products India Private
Limited*

xxxxxxxxx

(Authorized Signatory)



(emphasis added)

The letter indicates, beyond doubt, that the Defendant agreed that it owes the predecessor-in-interest of the Plaintiff a sum of Rs.2,40,49,163/- as at the close of business on 30.11.2010. Significantly, the Defendant categorically stated that this amount was arrived at after adjusting the value of defective returns inspected up to August 2010. The predecessor-in-interest of the Plaintiff was called upon to confirm the outstanding indicated by the Defendant by 21.12.2010. In the event of default, it was stated that it would be assumed by the Defendant that the balance is in accordance with the sum specified in the letter. Although the Defendant contended that this letter should not be relied upon or assigned much materiality or weight in view of the failure of the predecessor-in-interest of the Plaintiff to provide a confirmation, this contention is liable to be rejected because the letter specifies the consequence of default in providing such confirmation. In other words, the letter provides that the amounts outstanding as stated therein would be assumed as confirmed if the Seller did not revert on or before 21.12.2010. The Plaintiff relied on the judgments of the Hon'ble Supreme Court in *State of Kerala v. T.M. Chacko* (2000) 9 SCC 722 and *Uttam Singh Duggal & Co. Ltd. v. United Bank of India* (2000) 7 SCC 120 to contend that the letter constitutes an admission of liability and for reasons



the Defendant of an outstanding of Rs.2,40,49,163/- as on 30.11.2010 after taking into account defective returns up to August 2010.

16. The reconciliation of accounts for the period commencing from 01.12.2010 and with regard to defective goods for the period commencing from 01.09.2010 remains open, and this would have a material bearing on liability as on the date of suit notwithstanding the above conclusion on admission of liability as on 30.11.2010. For such purpose, the evidence on record with regard to warranty claims, requests for and issuance of credit notes, and issuance of debit notes in the above mentioned period should be examined. While the Defendant relied on judgments such as *Godavari Bai Ammal v. P.S. Seshadrinathan*, (1961) 2 MLJ 333, *Ishwar Dass Jain v. Sohan Lal*, AIR 2000 SC 426, and *Central Bureau of Investigation v. V.C. Shukla*, AIR 1998 SC 1406, to contend that entries in books of account are relevant but not sufficient as per Section 34 of the Indian Evidence Act, 1872, the said judgments are not relevant because the Plaintiff is not relying on its books of account to establish its claim. Turning to the evidence on record, the Seller/predecessor-in-interest of the Plaintiff issued a credit note on 17.02.2011 bearing Credit Note No.1006/2010-2017/DG-1600005835. This credit note was exhibited as



that the credit note was issued in the financial year 2010-2011, it cannot be discerned from the document as to whether defective goods up to the date of the credit note were taken into consideration. Therefore, this credit note should be examined along with contemporaneous correspondence. By e-mail of 22.02.2011(Ex.P20), the Defendant referred to the meeting held between the parties on 17.02.2011. By such e-mail, the Defendant informed the Seller that a credit note should be issued for the defective stock which had been inspected. Thus, it is possible and even likely that the above credit note was issued after such inspection. In addition, the Defendant called upon the Seller to arrange for a further inspection to examine the stock of defective lamps lying in the Defendant's godowns and issue credit notes in respect thereof. The Defendant agreed to complete the reconciliation process on or before 15.03.2011, and to arrive at the final amount on such basis. Pending such reconciliation, the Defendant agreed to pay a sum of Rs.100 lakhs between March and July 2011. By reply dated 28.02.2011(Ex.P21), the Seller informed the Defendant that the sum of Rs.100 lakhs is not even 50% of the total overdue which was discussed. The Seller also put the Defendant on notice that no progress had been made on the 'C' Form front and called upon the Defendant to settle the amount arrived at after reconciliation between March and July in equal installments.



17. A meeting appears to have taken place thereafter in May 2011.

The admitted position is that the Seller deputed a representative called Manoj Goyal for such meeting. The purpose of the meeting was to reconcile accounts. After the meeting, Mr. Jacob Alexander, an employee of the Defendant, issued e-mail of 24.05.2011 with the reconciliation statement as on 17.05.2011. The said statement enumerates four debit notes, DN-7, DN-9, DN-8 and DN-6, each dated 31.03.2011, for sums of Rs.60,31,610/-, Rs.12,90,737/-, Rs.37,97,532/- and Rs.80,09,633/-, respectively. In addition, it refers to three warranty claims, each dated 31.08.2010, for Rs.3,29,643/-, Rs.63,93,743/- and Rs.21,47,220/-, respectively. As per the email of 24.05.2011, after taking into consideration the above and the credit note issued by the Seller, a sum of Rs.23,90,836/- was arrived at as the net outstanding from the Defendant to the Seller. A subsequent e-mail also dated 24.05.2011 from the said Mr. Jacob Alexander (Ex.P24) is also on record. This e-mail was allegedly sent by Mr. Manoj Goyal from the e-mail ID of Mr. Jacob Alexander to Mr. Sanjeev Malhotra. The substantial contents are the same as Ex.P23 except for stating that it was sent by Mr. Manoj Goyal from the e-mail ID of Mr. Jacob Alexander. The Defendant asserted that the above sum of Rs.23,90,836/- was arrived at after reconciliation was carried out in the presence of and with the participation of Mr. Manoj Goyal. The Plaintiff did not deny receipt of the email but



denied that its predecessor-in-interest agreed to the alleged reconciled outstanding. Indeed, the Plaintiff asserted that the debit notes referred to in this e-mail were never received by the Seller/ the predecessor-in-interest of the Plaintiff. Significantly, the e-mail does not appear to contain attachments, including the debit notes.

18. On examining the evidence on record, it is clear that the debit notes are on record but there is no proof of receipt thereof by the predecessor-in-interest of the Plaintiff. These debit notes were exhibited by the Defendant as Ex.D18 to Ex.D38. Ex.D18 to Ex.D20 correspond to DN-7, 8 and 9 as per the e-mail of 17.05.2011. Exhibits D21 and D22 correspond to the warranty claims for May 2010 and June 2010 as per the e-mail of 24.05.2011. Ex.D24 corresponds to the warranty claim for August 2010 as per the e-mail of 24.05.2011. Ex.D38 corresponds to DN-6 in the e-mail of 24.05.2011. The other credit notes specified in the e-mail of 24.05.2011 are not on record. The Defendant did not adduce evidence through Mr. Jacob Alexander with regard to the reconciliation of accounts in May 2011. The Plaintiff, therefore, relied on the judgment in *Manicka Gounder v. Lakshmi Ammal* 2003 (3) L.W. 281 to contend that an adverse inference should be drawn. In the absence of evidence that the predecessor-in-interest of the Plaintiff received the debit notes, the question whether



much materiality or weight should be attached to the debit notes should be considered.

19. All the debit notes, which are referred to in Ex.P23 and ExP24, were issued on 31.03.2011. The other debit notes on record appear to have been issued between 31.07.2011 and 30.06.2014. These debit notes were exhibited as Ex.D25 to Ex.D34. Once again, there is no evidence of receipt of these by the predecessor-in-interest of the Plaintiff. Out of these debit notes, Ex.D25 dated 31.07.2011 for a sum of Rs.17,69,042/- contains details of defective materials. However, on closer examination, there is nothing in the annexure to Ex.D25 which indicates that the relevant defective stock was returned to the Plaintiff. On examining Exhibits D18 to D24 for purposes of examining whether such evidence appears on the face of these debit notes or the annexures thereto, it is noticeable that Exhibits D18 to D20 and D38, which were referred to in the email of 24.05.2011 (Ex.P23 and Ex.P24), do not contain annexures which *prima facie* indicate that the defective materials were returned. By contrast, Ex.D21 to D24 contain annexures which *prima facie* indicate that the defective materials were returned. All these debit notes are dated 31.08.2010 and the annexures pertain to defective goods returned in May 2010, June 2010, July 2010 and August 2010, respectively. Significantly, the e-mail of 14.12.2010 (Ex.P16)



refers to adjustment of the value of defective returns up to August 2010.

Thus, the evidence on record indicates that defective stocks were last returned in August 2010, and these defective stocks were taken into consideration while arriving at the net outstanding of Rs.2,40,49,163/- in the letter dated 14.12.2010. It is pertinent to notice that all the other debit notes do not contain any indication that the defective stock was returned to the predecessor-in-interest of the Plaintiff. In fact, the debit notes which were exhibited as Ex.D26 to D34 do not contain any details of the allegedly defective materials.

20. Moreover, some of the debit notes do not pertain to defective material; instead, they pertain to the cost of handling defective material. For instance, the debit note dated 29.02.2012 for a sum of Rs.6,25,746/- pertains to the cost of handling defective materials for 19 months; likewise, the debit note of 01.08.2012 relates to the cost of handling defective materials for five months between March 2012 and July 2012. The debit notes of 28.02.2013, 30.06.2013 and 30.06.2014 are also for cost of handling defective materials during different periods. The claims towards cost of handling defective materials are not warranty claims. At best, these claims could be construed as claims for damages. In the absence of evidence of



breach, loss and the causal connection between the two, these claims are untenable.

21. Thus, the evidence on record leads to the following conclusions. First, defective goods were returned to the Plaintiff only up to August 2010. As regards these goods, it appears that the cost was debited while arriving at the net outstanding of about Rs.2.40 crores in December 2010. Secondly, the Defendant failed to establish that any of the debit notes and, in particular, the subsequent debit notes were received by the Defendant. Thirdly, the subsequent debit notes do not contain any evidence that the defective goods were returned to the Plaintiff. In fact, several debit notes contain no particulars of the defective goods. Fourthly, at least five debit notes do not pertain to defective goods but to the cost of storing defective goods. These claims are completely untenable for reasons set out earlier. On this basis, the only reasonable inference is that the Defendant has failed to establish that it returned the goods and issued debit notes in respect of the defective goods to the predecessor-in-interest of the Plaintiff. Therefore, the Defendant is not entitled to its alleged warranty claims even *de hors* the conclusion on the warranty period. Hence, Issue Nos.1, 2, 4 and 5 are decided in favour of the Plaintiff and against the Defendant.



issued thereafter by the Defendant. As a corollary to the said conclusion, the Defendant becomes liable to the extent of Rs.2,40,49,163/- minus the value of issued credit notes and any subsequent payments towards discharge of liability.

24. What remains to be considered is the principal claim of Rs.3,08,97,232/- and the interest claim thereon. In support of the principal claim, the Plaintiff provided an explanation in paragraphs 20 to 22 of the plaint. As per the said explanation, the amount outstanding from the Defendant to the Plaintiff, as of 09.03.2009, was a sum of Rs.11,76,63,747/- The Plaintiff states that the aggregate value of invoices for the above period was Rs.14,17,00,925/-. The Plaintiff states that its predecessor-in-interest received a sum of Rs.16,36,65,191/- from the Defendant during the said period, and issued credit notes for the period 10.03.2009 to 13.02.2010 for an aggregate value of Rs.5,97,46,249/-. By reckoning all the aforesaid amounts, the Plaintiff arrived at an outstanding of Rs.3,59,53,232/-. Credit was given to a sum of Rs.25 lakhs paid by the Defendant on 05.02.2011 (Ex.P30) and a credit note dated 17.02.2011 for a sum of Rs.25,56,000/-. In this manner, the net outstanding of Rs.3,08,96,252/- was arrived at. The credit note for the sum of Rs.25,56,000/- is on record as Ex.P31. However, the statement of account is not on record. By way of evidence of the amounts set out above, the Plaintiff relied on Ex. P3-P4, P7, P11-P13 and



P15. While the email of 12.03.2009 (Ex.P4) indicates an outstanding of about Rs.11 crore as of that date, the above exhibits do not establish or prove the other variables in the computation: (i) the amounts invoiced by the predecessor-in-interest of the Plaintiff; or (ii) the amounts received from the Defendant; or (iii) the consolidated value of credit notes. Therefore, the documentary evidence on record is insufficient to draw the inference that the suit claim has been proved. The Plaintiff adduced oral evidence through P.W.1 and P.W.2. Neither the proof affidavit of P.W.1 nor that of P.W.2 contains evidence with regard to the computation of the amount claimed in the suit by the Plaintiff. The Plaintiff relied on the judgments in *Pig Iron Supplying Syndicate Private Limited v. Steel Authority of India, 2008 OnLine Cal 736* and *Gujarat Heavy Chemicals Limited v. Diwan Mundhra Bros Private Limited, 2012 SCC OnLine Del 5018*, to contend that parties maintained a mutual open and current account, and that the amounts indicated as outstanding in the plaint are liable to be accepted. The judgment in *V.K. Abraham v. N.K. Abraham 90 L.W.686* as to what constitutes a mutual open and current account was relied upon by the Defendant. In the absence of a statement of account, and in the absence of sufficient documentary or oral evidence to establish the suit claim, the only conclusion that can be drawn is that the principal claim of Rs.3,08,00,000/-



an admission of liability to the extent of Rs.2,40,49,163/- as of 30.11.2010.

The Plaintiff admitted that the Defendant paid a sum of Rs.25,00,000/- through two cheques dated 05.02.2011, and these receipts are subsequent to the admission of liability. Thereafter, the predecessor-in-interest of the Plaintiff issued credit note dated 17.02.2011 for Rs.25,56,000/-. Both these material developments are subsequent and credit should be given to these amounts while arriving at the amount due from the Defendant as on the date of suit. Therefore, after reckoning the aforesaid amounts, the Plaintiff is entitled to a decree for a sum of Rs.1,89,93,163/-, which is Rs.2,40,49,163 minus Rs.25,00,000 minus Rs.25,56,000/-. The contract documents do not specify the rate of interest. Nonetheless, the relationship between the predecessor-in-interest of the Plaintiff and Defendant was commercial and, consequently, the Plaintiff is entitled to interest at a rate commensurate with the applicable interest rates during the relevant period. On such basis, it is concluded that the Plaintiff is entitled to interest at 12% per annum from the date of the e-mail of December 2010.

25. In the result, the suit is decreed by directing the Defendant to pay the Plaintiff a sum of Rs.1,89,93,163/- along with interest thereon at 12% per annum from 14.12.2010 till the date of realisation by the Plaintiff.

The Defendant is also directed to pay costs assessed in a sum of



Rs.7,50,000/- to the Plaintiff. This includes a sum of Rs.4,51,535/- towards court fees and the remainder towards lawyer's fees and other costs.

Sd./- S.K.R.J
23.03.2022

Plaintiff's witnesses:

- 1.Mr. Shashwat Gaur : P.W.1
- 2.Mr.Radhakrishnan : P.W.2
- 3.Mr.Sanjeev Malhotra : P.W.3

Defendant's witnesses:

- 1.Mr.Ramesh Chandra : D.W.1

Documents exhibited by Plaintiff:

<i>Sl.No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
1.	Ex.P1	29.08.2017	Authorization letter in favour of Mr.Shashwat Gaur.
2.	Ex.P2	23.07.2013	A copy of the Business Transfer Agreement
3.	Ex.P3	09.03.2009	A copy of the e-mail letter addressed by the Plaintiff to the Defendant company.
4.	Ex.P4	12.03.2009	A copy of the e-mail letter addressed by the Defendant Company.
5.	Ex.P5	12.03.2009	A copy of the e-mail letter, Plaintiff's response to the Defendant's reply.
6.	Ex.P6	12.03.2009	A copy of the e-mail letter, Defendant's reply to the Plaintiff response.
7.	Ex.P7	13.03.2009	A copy of the e-mail letter, Plaintiff's response to the Defendant's reply
8.	Ex.P8	27.07.2009	A copy of the e-mail letter addressed by the Plaintiff to the Defendant company.
9.	Ex.P9	27.07.2009	A copy of the e-mail letter addressed by the Defendant to the Plaintiff.



Sl.No	Exhibits	Date	Particulars of Documents
10.	Ex.P10	28.07.2009	A copy of the e-mail letter addressed by the Plaintiff to the Defendant.
11.	Ex.P11	01.10.2009	A copy of the e-mail letter addressed by the Defendant company to the Plaintiff
12.	Ex.P12	09.10.2009	A copy of the e-mail letter addressed by the Defendant
13.	Ex.P13	09.10.2009	E-mail addressed by the Plaintiff to the Defendant.
14.	Ex.P14	12.10.2009	E-mail addressed by the Plaintiff to the Defendant.
15.	Ex.P15	24.11.2010	E-mail addressed by the Plaintiff to the Defendant.
16.	Ex.P16	14.12.2010	Letter addressed by the Defendant to the Plaintiff
17.	Ex.P17	17.12.2010	E-mail addressed by the Plaintiff to the Defendant.
18.	Ex.P18	17.12.2010	E-mail reply addressed by the Defendant
19.	Ex.P19	31.01.2011	Legal Notice sent on behalf of the Plaintiff to the Defendant.
20.	Ex.P20	22.02.2011	E-mail addressed by the Defendant to the Plaintiff.
21.	Ex.P21	28.02.2011	E-mail reply of the Plaintiff to the Defendant
22.	Ex.P22	01.03.2011	Reply notice to notice dated 31.03.2011 sent on behalf of the Defendant.
23.	Ex.P23	24.05.2011	E-mail addressed by the Defendant to the Plaintiff.
24.	Ex.P24	24.05.2011	E-mail addressed by the Defendant to the Plaintiff
25.	Ex.P25	26.07.2011	Statutory notice sent on behalf of the Defendant.
26.	Ex.P26	10.08.2011	Interim reply sent on behalf of the Defendant.
27.	Ex.P27	16.08.2011	Reply notice sent on behalf of the Defendant
28.	Ex.P28	15.03.2013	Judgment in C.P.No.213 of 2011

Sl.No	Exhibits	Date	Particulars of Documents
29.	Ex.P29	25.08.2021	Authorization letter in favour of Mr.Radhakrishnan
30.	Ex.P30	19.02.2007	Standard Purchase order issued by the Defendant Company to the Plaintiff.
31.	Ex.P31	17.02.2021	Credit note issued by the Plaintiff to the Defendant.

Defendants' side exhibits

Sl. No.	Exhibits	Date	Particulars of Documents
1.	Ex.D1	20.09.2021	Authorisation letter issued in favour of D.W.1 by the Defendant company.
2.	Ex.D2	24.09.2008 - 17.10.2008	E-mails exchanged between the Plaintiff and Defendant.
3.	Ex.D3	26.03.2008 - 31.03.2008	Emails sent by the Defendant to the Plaintiff.
4.	Ex.D4	2009 - 2010	Annual Report of the Plaintiff for the year 2009-2010
5.	Ex.D5	2010 - 2011	Annual Report of the Plaintiff for the year 2010-2011
6.	Ex.D6	22.09.2009	Emails exchanges between the Defendant and the Plaintiff.
7.	Ex.D7	07.10.2009	Email from the Defendant to the Plaintiff.
8.	Ex.D8	13.10.2009	Email from the Defendant to the Plaintiff
9.	Ex.D9	29.10.2009	Email from the Defendant to the Plaintiff
10.	Ex.D10	06.11.2009	Internal email between the employees of the Defendant.
11.	Ex.D11	10.11.2009	Email from the Defendant to the Plaintiff
12.	Ex.D12	17.11.2009	Email from the Defendant to the Plaintiff
13.	Ex.D13	20.11.2009	Email from the Defendant to the Plaintiff
14.	Ex.D14	09.12.2009	Email from the Defendant to the Plaintiff



<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
15.	Ex.D15	15.02.2010	Email from the Defendant to the Plaintiff
16.	Ex.D16	02.04.2011	Email from the Defendant to the Plaintiff
17.	Ex.D17	28.01.2010 - 03.03.2010	Email from the Defendant to the Plaintiff
18.	Ex.D18	31.03.2011	Debit Note raised by the Defendant for the period 2007-2008
19.	Ex.D19	31.03.2011	Debit Note raised by the Defendant for the period 2008-2009
20.	Ex.D20	31.03.2011	Debit Note raised by the Defendant for the period 2009-2010
21.	Ex.D21	31.08.2010	Debit Note raised by the Defendant for the period May 2010
22.	Ex.D22	31.08.2010	Debit Note raised by the Defendant for the period June, 2010
23.	Ex.P23	31.08.2010	Debit Note raised by the Defendant for the period July, 2010
24.	Ex.D24	31.08.2010	Debit Note raised by the Defendant for the period August, 2010
25.	Ex.D25	31.07.2011	Debit Note raised by the Defendant for the period between 15.03.2011 to 31.12.2011
26.	Ex.D26	31.12.2011	Debit Note raised by the Defendant for the period between 01.08.2011 to 31.12.2011
27.	Ex.D27	29.12.2012	Debit Note raised by the Defendant for the period between August 2010 to February 2012.
28.	Ex.D28	31.05.2012	Debit Note raised by the Defendant for the period between 01.01.2011 to 31.05.2013.
29.	Ex.D29	25.01.2011 - 22.02.2011	Email exchanged between the Plaintiff and the Defendant.
30.	Ex.D30	01.08.2012	Debit Note raised by the Defendant for the period between March 2012 to July 2012.



<i>Sl. No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Particulars of Documents</i>
31.	Ex.D31	01.08.2012	Debit Note raised by the Defendant for the period between 01.07.2012 to 31.07.2012.
32.	Ex.D32	28.02.2013	Debit Note raised by the Defendant for the period between August 2012 to February 2013.
33.	Ex.D33	30.06.2013	Debit Note raised by the Defendant for the period between March 2013 to June 2013.
34.	Ex.D34	30.06.2014	Debit Note raised by the Defendant for the period between July 2013 to June 2014.
35.	Ex.D35	-	'C' form issued by the Defendant to the Plaintiff
36.	Ex.D36	2010 - 2011	Balance sheet of the Defendant for the period 2010-2011.
37.	Ex.D37	-	Statement of Account of the Defendant
38.	Ex.D38	31.03.2011	Debit Note raised by the Defendant for the period between 01.09.2010 to 10.03.2011.

Sd./- S.K.R.J
23.03.2022

//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.