IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.02.2022

Coram:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.4907 of 2021 in
C.S.No.82 of 2020 (Comm. Suit)

M/s.Indian Japan Lighting Private Limited,
Having its registered office at:
"AALIM CENTER" 2nd Floor,
82, Dr. Radhakrishnan Salai,
Chennai-600 004. .. Applicant/Defendant

Vs.

M/s.Pennar Industries Limited,
Formerly known as
M/s.Pennar Engineered Building System Limited,
Floor No.3, DHFL VC Silicon Towers,
Kondapur, Hyderabad-500 084. .. Respondent/Plaintiff

This application has been filed under Order VII Rule 11(d) read with Order XIV, Rule 8 of Original Side Rules read with Section 151 of CPC seeking to reject the plaint in C.S.No.82 of 2020 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 along with exemplary costs.

For Applicant : M/s.A.K.Mylsamy and Associates

For Respondent : M/s.P.Subba Reddy

ORDER

This application is filed to reject the plaint in C.S.No.82 of 2020 as barred by limitation.

2. C.S.No.82 of 2020 is a suit for recovery of a sum of Rs.1,27,63,501/-. On perusal of the plaint, it appears that the suit relates to amounts allegedly due and payable by the defendant to the plaintiff in relation to two purchase orders for supply and erection in relation to a building. As per the plaint, the total value of invoices issued by the plaintiff against the purchase orders was a sum of Rs.6,91,74,519/-. After giving credit to a sum of Rs.6,29,14,628/-, which the plaintiff acknowledges receiving from the defendant, it is stated that the sum of Rs.62,59,891/- is due and payable as principal. After adding interest thereon up to the date of plaint, the suit claim of Rs.1,27,63,501/- is made.

3. In support of the application, learned counsel for the applicant relies upon the dates on which invoices were issued by the plaintiff. By drawing reference to paragraph 4 of the plaint, learned counsel for the applicant / defendant contends that

invoices were issued between 23.02.2015 and 18.09.2015. Therefore, it is contended that the suit is barred by limitation. The applicant further contends that the respondent / plaintiff had approached the National Company Law Tribunal seeking the institution of corporate insolvency resolution process against the applicant. The said endeavour was unsuccessful. According to the applicant, the time taken up by such process cannot be excluded while computing the period of limitation in the suit.

4 The respondent refutes the above contentions. According to the respondent, the applicant acknowledged liability by a reply issued in the year 2016.

5. Order VII Rule 11(d) of CPC prescribes that a plaint may be rejected if the suit appears to be barred by any law from a statement in the plaint. In the case at hand, the plaint discloses that the suit is on the basis of purchase orders for supply and erection. From the plaint, the terms of payment are not evident. Therefore, it is unclear as to when the invoices issued by the respondent / plaintiff became payable. The period of limitation in an action for recovery of money based on invoices issued by a party would run from the date the invoices became payable. Given the nature of the contract, such date and the limitation period cannot be discerned from the

statements made in the plaint. The respondent/plaintiff has asserted that the plaint is within the time of limitation. In this case, limitation is clearly a mixed question of fact and law and the plaint is not liable to be rejected based on any statements made therein. It is a separate matter that the applicant / defendant may be entitled to request the court to frame an issue on limitation before the matter goes to trial.

6. With the above observations, A.No.4907 of 2021 is dismissed. However, there shall be no order as to costs.

Sd./SKRJ.

11/02/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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EVK 15/02/2022