



WEB COPY



C.S.(Comm.Div.) No.47 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

C.S.(Comm.Div.) No.47 of 2022

Himalaya Intertrade Pvt. Ltd.
Represented by its Director
Registered office :
No.202, Poonam Complex, 2nd Floor
179, 3rd C Road, Sardarpura, Jodhpur
Rajasthan - 342 003.

Branch Office at :
Flat -'A', 2nd Floor,
New No.130/11, Old No.106/11
Vepery High Road
Vepery, Chennai - 600 007.

.... Plaintiff

Vs

Loocust Incorp Apparel Export Private Limited
Represented by its Managing Director
Registered office :
28/13, M.G.R. Nagar, 4th Street
P.N.Road, Tirupur, Coimbatore
Tamil Nadu - 641 602.

Admin. Office :
S.F.No.302/1, Behind Texport Syndicate
15 - Velampalayam, Tirupur - 641 652.

... Defendant



C.S.(Comm.Div.) No.47 of 2022

WEB COPY

Prayer : Civil suit filed under Order VII Rule 1 of Code of Civil Procedure, 1908 read with Sections 2(1)(c)(i), 2(1)(c)(xviii), 2(1)(i), 4(1) and 12(1)(a) of the Commercial Courts Act, 2015 praying to pass a judgment and decree :

- a) directing the defendant to pay the plaintiff a sum of Rs.1,14,72,522/- (Rupees One Crore Fourteen Lakhs Seventy Two Thousand Five Hundred and Twenty Two only) together with further interest @ 18% p.a. from the date of plaint, till the date of realization;
- b) directing the defendant to pay the cost of the suit; and
- c) for such further or other relief as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.S.Dhakshanamoorthy
along with Mr.O.Hasmukh Jain

For Defendant : set *ex parte* on 24.08.2022

JUDGMENT

In the captioned suit, there is a sole plaintiff and a lone defendant.

Both of them are private limited companies incorporated in India.

2. Captioned suit is a money suit i.e., a suit for recovery of money.

3. Before advertng to the transaction between plaintiff and defendant companies, it is necessary to set out the trajectory which the captioned suit has taken in travelling to this listing today. For this purpose, this



C.S.(Comm.Div.) No.47 of 2022

WEB COPY

Commercial Division deems it appropriate to scan and reproduce the proceedings dated 24.08.2022 made by Hon'ble predecessor Judge, which is as follows :

C.S.(Comm.Div.) No.47 of 2022

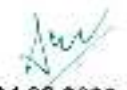
C.S.(Comm.Div.) No.47 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

The sole defendant was served with suit summons on 29.03.2022. M/s.V.Jayuchandran, learned counsel had initially filed vakalat on behalf of the defendant but the said vakalat was returned. On account of the non-appearance of the defendant at the hearing on 17.08.2022, the Registry was directed to verify whether the vakalat had been re-presented and, if not, print the name of the defendant in the cause list. At the hearing today, in spite of the name of the defendant being printed in the cause list, there is no representation for the defendant either in person or through counsel. Therefore, the defendant is set *ex parte*.

2. List the matter before the learned Additional Master No.I on 07.09.2022 for recording the *ex parte* evidence of the plaintiff. Such evidence shall be recorded in full on or before 09.09.2022.

3. List the matter before this Court on 16.09.2022.


24.08.2022



C.S.(Comm.Div.) No.47 of 2022

WEB COPY

4. Thereafter, the matter was listed before the 'Additional Master-I' [hereinafter 'AM-I' for the sake of convenience and brevity], *ex parte* evidence was recorded (one Anil Jain, Director of plaintiff-company who has verified the plaint, deposed as P.W.1), as many as 35 exhibits namely Exs.P1 to P35 were marked and listed for arguments. To be noted, filing of written arguments is really not necessary as the defendant has been set *ex parte* and *ex parte* evidence has been recorded is learned plaintiff counsel's say.

5. In the hearing today, Mr.S.Dhakshanamoorthy along with Mr.O.Hasmukh Jain, learned counsel on record for the plaintiff is before this Commercial Division. One Mr.P.Rajendran who was in Court submitted that he is a counsel [third named counsel] who entered appearance for sole defendant and he has nothing to say as the defendant has been set *ex parte*, P.W.1 has not been cross-examined, he is not getting instructions from plaintiff, therefore he does not want to participate in the proceedings and that this Commercial Division can proceed with the matter. Learned counsel also mentioned that he is keeping track of the matter as per his senior's instructions as their names are shown in the cause list.

6. Be that as it may, this Commercial Division deems it appropriate to



C.S.(Comm.Div.) No.47 of 2022

record the obtaining position that the case file before this Commercial Division shows that suit summons were duly served on sole defendant on 29.03.2022. This means that the sole defendant should have filed the written statement within thirty days i.e., by 27.04.2022 but that had not happened. Sole defendant had the option of seeking condonation of delay and filing the written statement but that cannot be later than 120 days from the date of service of suit summons. To be noted, this 120 days elapsed on 27.07.2022 and the Hon'ble predecessor Judge has made the above mentioned proceedings dated 24.08.2022 only thereafter.

7. Reverting to the facts of the case on hand, learned counsel for plaintiff advertent to plaint submits that the plaintiff company is engaged in the business of buying and selling of 'Duty Credit Scrip License (Import and Export License)' [hereinafter 'said scrip' for the sake of brevity, convenience and clarity]. It is submitted that the defendant company is a manufacturer and exporter of knitted and woven garments. The defendant company was selling 'Merchandised Exports from India Scheme Licences' [hereinafter 'MEIS Licenses' for the sake of brevity, convenience and clarity] to the plaintiff. To be noted, there is an adumbration of as many as 29 invoices in the form of tabulation in paragraph No.4 of the plaint.



C.S.(Comm.Div.) No.47 of 2022

WEB COPY

8. In the aforementioned backdrop, it is submitted that the plaintiff had given an advance payment of Rs.1.25 crores to the defendant towards providing in 'MEIS Licenses' and the manner in which such payment is made, is set out in paragraph No.5 of the plaint and the tabulation is as follows :

<i>S.No.</i>	<i>Date of Payment</i>	<i>Amount in Rs.</i>	<i>Bank details</i>
1.	08/01/2019	Rs. 50,00,000/-	ICICI Bank Ltd. A/c.No.354005000326 Chennai - Vepery Branch
2.	02/02/2019	Rs. 25,00,000/-	
3.	04/03/2019	Rs. 50,00,000/-	
Total Amount		Rs. 1,25,00,000/-	

9. Though the defendant company received Rs.1.25 crores, it did not supply 'MEIS Licenses' and after enormous persuasion, it supplied 'MEIS Licenses' to the value of Rs.24,98,417/- and refunded Rs.24,00,000/- by way of bank transfer leaving a balance of Rs.76,01,583/-.

10. Adverting to the pleadings in paragraph No.9 of the plaint, it was submitted that though a notice dated 18.10.2021 under Form-3 qua 'Insolvency and Bankruptcy Code, 2016' [hereinafter 'IBC' for the sake of brevity] was issued, the plaintiff did not carry the matter any further. This submission is recorded. It is also pointed out that this notice has been marked as Ex.P31 and the reply from sole defendant dated 30.10.2021 has



C.S.(Comm.Div.) No.47 of 2022

been marked as Ex.P32. Adverting to Ex.P32, the learned counsel submitted that the defendant has not denied the transaction and it has only taken a plea that a third party one Shivalaya Enterprises has committed some misdeeds and that has derailed the providing of 'MEIS Licenses' to the plaintiff by the defendant.

11. As already alluded to supra, one Mr.Anil Jain, Director of the plaintiff company, who has verified the plaint on behalf of the plaintiff company has deposed himself as P.W.1. To be noted, the aforementioned 29 invoices qua 'said scrip' supplied by plaintiff adumbrated in paragraph No.4 of the plaint have been marked as Ex.P1 to Ex.P29. The ledger account of the plaintiff has been marked as Ex.P34. Aforementioned deposition of P.W.1 was on 07.09.2022. A careful perusal of the deposition brings to light that it is in tune and tandem with the pleadings in the plaint.

12. As regards the exhibits, more particularly, invoices [Ex.P1 to Ex.P29], besides Ex.P33 demand notice dated 11.11.2021 and Ex.P32, reply from the defendant dated 30.10.2021, buttresses the deposition. The ledger account [Ex.P34] is another buttressing document is learned counsel's say.

13. In the light of narrative thus far, this Commercial Division has no difficulty in coming to the conclusion that the plaintiff has discharged its



C.S.(Comm.Div.) No.47 of 2022

burden of proof and is entitled to a decree in the captioned suit. It is seen from the prayer paragraph, more particularly sub-clause (a) in paragraph No.20 of the plaint that the defendant has claimed future interest at the rate of 18% per annum and that 18% per annum as has been claimed, has not been clearly specified that it is on the principal sum. Paragraph No.20(a) of the plaint reads as follows :

20. (a) directing the defendant to pay the plaintiff a sum of Rs.1,14,72,522/- (Rupees One Crore Fourteen Lakhs Seventy Two Thousand Five Hundred and Twenty Two only) together with further interest @ 18% p.a. from the date of plaint, till the date of realization;

14. Therefore, it gives an impression that 18% per annum has been claimed on the suit claim of Rs.1,14,72,522/- (Rupees One Crore Fourteen Lakhs Seventy Two Thousand Five Hundred and Twenty Two only). There is no written contract between the parties specifying the rate of interest. Therefore, this Commercial Division resorts to Section 34 of 'Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of convenience, clarity and brevity] in captioned suit.

15. Resorting to Section 34 of CPC, this Commercial Division finds it



C.S.(Comm.Div.) No.47 of 2022

appropriate to award future interest i.e., interest from the date of plaint, till the date of realization at 6% per annum not on Rs.1,14,72,522/- but on Rs.76,01,583/- being the principal sum. The prayer for costs vide sub-clause (b) of paragraph No.20 is acceded to and that will be in accordance with the bill of costs.

16. Be that as it may, for the purpose of specificity, it is made clear that the decree is for a sum of Rs.1,14,72,522/-, together with interest at 6% per annum on Rs.76,01,583/- from the date of presentation of the plaint (i.e., on 21.12.2021) till the date of realization.

17. The sequitur is, the captioned suit is decreed in the manner and to the extent indicated supra.

14.10.2022

Index : Yes / No

Speaking order / Non-speaking orders



C.S.(Comm.Div.) No.47 of 2022

WEB COPY

I. List of Witnesses examined on the side of the plaintiff :

P.W.1 - Mr.Anil Jain

II. List of Exhibits marked on the side of the plaintiff :

1. Ex.P1 is the original Delivery cum Invoice dated 01.06.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
2. Ex.P2 is the original Delivery cum Invoice dated 02.06.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
3. Ex.P3 is the original Delivery cum Invoice dated 13.06.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
4. Ex.P4 is the original Delivery cum Invoice dated 23.06.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
5. Ex.P5 is the original Delivery cum Invoice dated 27.06.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
6. Ex.P6 is the original Delivery cum Invoice dated 29.06.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
7. Ex.P7 is the original Delivery cum Invoice dated 03.07.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
8. Ex.P8 is the original Delivery cum Invoice dated 13.08.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
9. Ex.P9 is the original Delivery cum Invoice dated 04.09.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.



WEB COPY



C.S.(Comm.Div.) No.47 of 2022

- 10.Ex.P10 is the original Delivery cum Invoice dated 10.09.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 11.Ex.P11 is the original Delivery cum Invoice dated 28.09.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 12.Ex.P12 is the original Delivery cum Invoice dated 23.10.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 13.Ex.P13 is the original Delivery cum Invoice dated 29.10.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 14.Ex.P14 is the original Delivery cum Invoice dated 14.11.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 15.Ex.P15 is the original Delivery cum Invoice dated 30.11.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 16.Ex.P16 is the original Delivery cum Invoice dated 13.12.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 17.Ex.P17 is the original Delivery cum Invoice dated 26.12.2018 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 18.Ex.P18 is the original Delivery cum Invoice dated 08.01.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 19.Ex.P19 is the original Delivery cum Invoice dated 18.01.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 20.Ex.P20 is the original Delivery cum Invoice dated 23.01.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of



WEB COPY



C.S.(Comm.Div.) No.47 of 2022

Himalaya Intertrade Pvt Ltd - Chennai.

- 21.Ex.P21 is the original Delivery cum Invoice dated 28.01.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 22.Ex.P22 is the original Delivery cum Invoice dated 05.02.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 23.Ex.P23 is the original Delivery cum Invoice dated 08.02.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 24.Ex.P24 is the original Delivery cum Invoice dated 11.02.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 25.Ex.P25 is the original Delivery cum Invoice dated 14.02.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 26.Ex.P26 is the original Delivery cum Invoice dated 20.02.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 27.Ex.P27 is the original Delivery cum Invoice dated 28.02.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 28.Ex.P28 is the original Delivery cum Invoice dated 28.02.2019 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 29.Ex.P29 is the original Delivery cum Invoice dated 18.02.2020 raised by Loocust Incorp Apparel Export Pvt Ltd., in favour of Himalaya Intertrade Pvt Ltd - Chennai.
- 30.Ex.P30 is the print out of email dated 11.10.2021 sent by Himlaya Intertrade Pvt.Ltd., to Loocust Incorp Apparel Export Pvt Ltd. demanding outstanding amount.



WEB COPY



C.S.(Comm.Div.) No.47 of 2022

- 31.Ex.P31 is the original FORM 3 Demand Notice sent by Himalaya Intertrade Pvt.Ltd., to Loocust Incorp Apparel Export Pvt Ltd demanding payment in respect of unpaid operation debt due under the Insolvency and Bankruptcy Code, 2016.
- 32.Ex.P32 is the original served copy of reply letter dated 30.10.2021 sent by Loocust Incorp Apparel Export Pvt Ltd to Himalaya Intertrade Pvt.Ltd. (with regard to Form 3 Demand Notice) enclosing (i) envelop and (2) declaration-cum-indemnity bond dated 15.04.2019.
- 33.Ex.P33 is the legal notice dated 11.11.2021 issued to Loocust Incorp Apparel Export Pvt Ltd enclosing two acknowledgement cards.
- 34.Ex.P34 is ledger account statement from 01.04.2018 to 20.12.2021.
- 35.Ex.P35 is computation of interest from 08.01.2019 to 20.12.2021.

14.10.2022



WEB COPY



C.S.(Comm.Div.) No.47 of 2022

M.SUNDAR. J.,

ds

C.S.(Comm.Div.) No.47 of 2022

14.10.2022