IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

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THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.S.No.524 of 2019

ITC Limited,
Education and Stationery Products Business,
ITC Centre, 5th Floor,
No.760, Anna Salai,
Chennai – 600 002.
Represented by its Head of Sales and Marketing,
Power of Attorney Holder,
R.Ravinarayanan .... Plaintiff

Vs.

1. M/s.Duhra Enterprises,
   Partnership Firm,
   Rep. by its Partners,
   No.132, New Grain Market,
   Jalandhar - 144 008.

2. Dalwinder Singh

3. Amrit Pal Singh .... Defendants

Civil Suit is filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC praying for a judgment and decree against the defendants for a sum of Rs.1,53,47,443/- (Rupees One Crore Fifty Three Lakhs Forty Seven Thousand Four Hundred and Forty Three Only) together with interest at the rate of 24% on Rs.79,27,651/-(Rupees Seventy Nine Lakhs Twenty Seven Thousand Six Hundred and Fifty One Only) from the date of plaint till the date of realization and for costs of the suit.

For Plaintiff	: Mr.K.Krishnamoorthy
Defendants	: Set ex-parte

JUDGMENT

This Civil Suit has been filed by the petitioner seeking for a judgment and decree against the defendants for a sum of Rs.1,53,47,443/- (Rupees One Crore Fifty Three Lakhs Forty Seven Thousand Four Hundred and Forty Three Only) together with interest at the rate of 24% on Rs.79,27,651/-(Rupees Seventy Nine Lakhs Twenty Seven Thousand Six Hundred and Fifty One Only) from the date of plaint till the date of realization and for costs of the suit.

2. The plaintiff is a company within the meaning of the Companies Act, 2013 having its Registered Office at 37, Jawahar Lal Nehru Road, Kolkata-700 071 and their Education and Stationery products Business at ITC Centre, 5th Floor, 760 Anna Salai, Chennai 600 002. The plaintiff's company is represented through its authorized Power Agent and the plaintiff is engaged in the business in the marketing and sale of educational and Stationery products like notebooks, writing instruments etc.

2.1. As far as the business of education and stationery products are concerned, orders by the customers for the supply are to be placed at the plaintiff's principal office at Chennai either in person or through phone, web order/ e-mail. The delivery instructions would be issued to the Chennai office based on the orders placed. The defendants have purchased goods on various dates from the plaintiff. The payments for the goods purchased by the defendants were made at irregular intervals through RTGS/ NEFT to the plaintiff's Bank account. Often the defendants exceeded the credit period of making payments.

2.2. The defendant had acknowledged and confirmed that a sum of Rs.1,22,04,414/- is due and payable to the plaintiff as on 31.03.2016. The last purchase was made by the defendants in the month of March-2016 and the total outstanding payable by the defendants was Rs.1,22,04,414/-. After repeated demands the defendants made a part payment of Rs.1,00,000/- on 12.08.2016.

A sum of Rs.60,43,029/- was incurred in the course of trade towards the miscellaneous expenses and that is also payable by the defendants. After adjusting all the part payments by the defendants by way of RTGS/NEFT in plaintiff's account, it was found that a sum of Rs.79,27,651/- was due and payable by the defendants. The defendants also owes the plaintiffs a sum of Rs.74,19,792/- towards interest @ 24% per annum. Therefore a sum of Rs.1,53,47,443/- is payable by the defendants to the plaintiffs. Since the defendants failed to make payments and owes a sum of Rs. 1,53,47,443/- to be payable to the plaintiff, the plaintiff has filed a suit for recovery of money along with interest after issuing pre suit notice to the defendants on 12.11.2018.

3. On the basis of the above pleadings and materials available on record, this Court has framed the following issue:

"(a) Whether the plaintiff is entitled to the decree for entitlement as prayed for?

4. During the course of the trial, on the side of the plaintiff, the

Assistant Manager of the plaintiff's company has been examined as PW.1 and Ex.P1 to P10 were marked.

5. Heard the submission made by the learned counsel for the plaintiff and perused the materials available on record. The sole defendant was set exparte on 01.08.2022.

6. The plaintiff is a company engaged in the business in the marketing and sale of educational and Stationery products. PW.1 has stated that the defendants have purchased goods from the plaintiff's company on various dates on credit basis. Some of the invoices to substantiate the above fact have also been marked as Ex.P7. Apart from the invoices comprised in Ex.P7 the defendants have purchased goods by authorizing his transporters to collect the goods from the plaintiff's company. The authorization letter is marked as Ex.P3 and the defendant had agreed to the terms and conditions of the sale transaction between the plaintiff and the defendants and it is marked as Ex.P4. The defendants maintained a running account with the plaintiff's company and the defendant as his bank account at State Bank of India, Jalandhar Branch.

Ex.P5 Bank letter would show the same.

7. The defendant has also acknowledged the reconciliation made on 31.03.2016 and on which date there was an outstanding of Rs.1,22,04,414/- and the certificate issued by the Bank to that effect is marked as Ex.P6. But the defendant continued to purchase the goods and the last purchase was made by the defendant in the month of March, 2016 and there was a total outstanding of Rs.1,22,04,414/- in the account of the defendant.The plaintiff has accepted the payment of Rs.1,00,000/- made on 12.08.2016. The bank statement is produced as Ex.P9.

8. The defendant is seen to be owing a sum of Rs. 74,94,792/- towards interest and the total entitlement of the plaintiff is Rs.1,53,47,443/-. The statement of accounts which is produced as Ex.P10 would substantiate the same. The plaintiff has issued a legal notice on 12.11.2018 as Ex.P8 and for which the defendants did not send any reply and thereafter the suit has been filed and the summons have been sent.

9. The defendants remained *exparte*. The oral and documentary evidence which have been produced to substantiate the case of the plaintiff stands unchallenged. Since the plaintiff has proved the liability of the defendant as claimed by him in the plaint, the plaintiff is entitled to get the relief of decree as prayed for**,** however the rate of interest claimed at 24% per annum from the date of suit till the date of recovery is seen to be too high, even according to the standard rates of interest for business transactions.

10. In the result, this suit is **decreed.** The plaintiffs are entitled for a sum of Rs. 1,53,47,443/- together with interest at the rate of 12% from the date of the plaint till the date of decree and thereafter, at the rate of 9% from the date of the decree till the date of realization. Time for payment is 3 months.

23.08.2023

Index : Yes / No
Speaking order / Non-speaking order
Internet: Yes/No
Neutral :Yes/No
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APPENDIX

I. Witnesses :

PW.1	Mr.Dileep Patnana

II. Exhibits :

Exhibits	Description of documents
P1	Copy of the power of attorney dated 12.03.2022.
P2	original constitution letter dated 10.03.2015
P3	original letter from the defendant authorises transporters to collect the goods dated 07.03.2015
P4	original conditions of sale dated nil
P5	original certificate from the State Bank of India dated 10.03.2015
P6	original confirmation of balances as on 31.03.2016
P7	Original invoice for supply from plaintiff to defendant dated 25.03.2016 (6 pages)
P8	office copy of the legal notice dated 12.11.2018
P9	original bank statement of the plaintiff dated 12.11.2018
P10	original statement of accounts from 01.04.2014 to 30.06.2019

23.08.2023

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R.N.MANJULA.J.,

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