IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.S.(Comm Div.)No.229 of 2022

M/s.Techno Products Development Pvt. Ltd.
87/2B, Kanni Amman Nagar,
Vangaram Main Road,
Vangaram,
Chennai - 600075.
Rep. by its Authorised Signatory,
Mr.N.Mahadevan ... Plaintiff

Vs.

1.M/s.Goms Electricals Pvt. Ltd.
Rep. by its Directors,
New No.43, Old No.113,
First Main Road, R.K.Nagar, Mandaveli,
Chennai - 600028.

2.Mrs.Goms Sivakamairani,
Director of M/s.Goms Electricals Pvt. Ltd.
New No.43, Old No.113,
First Main Road, R.K.Nagar, Mandaveli,
Chennai - 600028.

3.Mr.Esakkia Pillai Goms.
Director of M/s.Goms Electricals Pvt. Ltd.
New No.43, Old No.113,
First Main Road, R.K.Nagar, Mandaveli,
Chennai - 600028.

4.Mr.Sanjeev,
Director of M/s.Goms Electricals Pvt. Ltd.
New No.43, Old No.113,
First Main Road, R.K.Nagar, Mandaveli,
Chennai - 600028.

5.Mrs.Sripriyanka Goms,
Director of M/s.Goms Electricals Pvt. Ltd.
New No.43, Old No.113,
First Main Road, R.K.Nagar, Mandaveli,
Chennai – 600028. ...Defendants

Prayer: Plaint has been filed under Order IV Rule 1 of Original Side Rules and Order VII Rule I of Civil Procedure Code R/W. Section 7 of the Commercial Courts, Act 2015, to grant a judgement and decree on the following terms:-

a) to pay to the Plaintiff a sum of Rs.1,24,23,289/- (Rupees One Crore Twenty-Four Lakhs Twenty-Three Thousand Two Hundred and Eighty-Nine Only) together with interest at the rate of 24% per annum from the date of Plaint till realisation;

b) for the cost of the suit; and

c) for such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : M/s.Elaya Rajkumar for Mr.A.Damodaran

For Defendant : M/s.R.T.S.Kannan [D.1 to D.5]

J U D G E M E N T

This above suit is filed for the recovery of a sum of Rs.1,24,23,289/- together with the interest of 24 % per annum from the date of plaint till the date of realization. The suit has been filed against the first defendant company and Defendants 2 to 5 are the Directors in the first defendant company.

Plaintiff case:-

2. It is the case of the plaintiff that they are a registered company engaged in the business of supply of the electrical goods and they have been carrying on this business since 1986. The 1st defendant company is engaged in the business of electrical contracting from the year 1995. In the course of their business activities, the plaintiff would submit that in the year 2014, the 1st defendant represented by its Directors had approached the plaintiff for purchasing electrical items. Pursuant to the negotiations that had been entered between the parties, the plaintiff had agreed to sell and the defendants had agreed to purchase the electrical items. The defendants had placed their order for the supply of the

electrical goods and had assured the plaintiff that they would promptly pay the dues for each of the supplies effected.

3. On the basis of this assurance, the plaintiff had started effecting the supplies on a 120 day credit basis starting from the year 2020, The goods were supplied under 15 invoices. Contrary to their assurance, the defendants did not come forward to clear the payment towards the invoices. The plaintiff had made several demands for the payment and the defendants who assured the repayment, did not come forward to clear the same. Meanwhile, the defendants had issued three post-dated cheques as follows:-

i) for the sum of Rs.3,70,164/- dated 05.06.2020;

ii) for a sum of Rs.7,43,001/- dated 10.06.2020; and

iii) for a sum of Rs.1,42,927/- dated 12.06.2020.

The defendants, however, requested the plaintiff to keep the cheques on hold and not present them for collection. As a result of which, the cheques got lapsed. In spite of repeated follow-ups, the defendants had not come forward to clear the outstanding invoices.

4. Meanwhile, on 11.06.2020, the 1st defendant had sent an e-mail stating that the goods which were supplied by the plaintiff were not as per the specifications and that they were returning the same. The contention of the plaintiff is that the last of the goods was delivered in the month of March 2020 and this e-mail had been sent by the defendants nearly three months thereafter. This would clearly show that the defendants have no intention to make the payments to the plaintiff. The plaintiff would submit that though they had received this e-mail nearly three months after the last delivery, they had taken steps to amicably sort out the issues and the same was also sorted out.

5. The plaintiff would contend that the supplies were made only on the purchase order made by the defendants and the materials had also been supplied to the defendants as per their orders. However, with an intention to cheat the plaintiff, the defendants had come forward with a case that the quality of the goods were not up to the mark.

6. The plaintiff would submit that a sum of Rs.79,55,822/- is due towards the invoices and calculating 24 % interest per annum on the same from the respective dates of all the invoices, a sum of Rs.44,67,467/- is the interest outstanding. Therefore, the plaintiff has come forward with the suit for recovering the total sum of Rs.1,24,23,289/-. The plaintiff would further submit that in adherence to Section 12 (A) of the Commercial Courts Act, they had also attempted pre-mediation settlement which has ended in failure since the defendants had not chosen to remain present in the said mediation proceedings. Therefore, the suit.

7. The Defendants on entering appearance have filed a written statement in which they have inter alia admitted the receipt of the electrical materials supplied by the plaintiff. They have also contended that these materials have been put to use in the projects, namely, Shriram Gate Way and M/s.Aptodco and Mahindra World City. They would reiterate the contention that as per their quality department, after

testing goods, the goods worth amounting to a sum of Rs.20.00.000/- was rejected and the 1st defendant had sent a detailed e-mail regarding the rejection of the goods to the plaintiff.

8. They would also submit that due to the supply of poor quality materials by the plaintiff and rejection of the same, their client had stopped payment under the contract. They would further submit that the bills submitted by them towards the Electrical contract work which includes the supplied Electrical items, were still under scrutiny and further they have not received the payment from their clients and unless and until they receive the payment, they would not be in a position to pay such a huge sum to the plaintiff. The defendants had also questioned the interest stating that it is exorbitant and also contended that the suit is barred by limitation and the Court does not have the territorial jurisdiction to try the same.

<u>Issues:-</u>

9. This Court, by an order dated 06.04.2023, had framed the

following issues:-

"1. Whether the Defendants are liable to pay a sum of Rs.1,24,23,289/- to the plaintiff on the goods purchased/delivered?

2. Whether the Defendants are liable to pay interest at the rate of 24% per annum from the date of plaint till the date of realization?

3. Whether the Defendants can withhold the payment of the Plaintiff of the goods they purchased since they have not received payments from their vendors?

4. Whether the suit is affected for misjoinder of parties?

5. Whether the Plaintiff has not delivered/sold the quality and standards goods if so, to what value, the Plaintiff is eligible for decree for recovery of money?

6. To what other reliefs the Plaintiff is entitled to?"

10. PW1 had adduced evidence and marked Ex.P1 to Ex.P6.

DW1 had entered the box and marked only one document which is an authorisation letter dated 28.06.2023.

Submission:-

11. Mr.Elaiyarajkumar the learned counsel appearing on behalf of the plaintiff would submit that the defendants have accepted the receipt of the goods under 15 invoices in their written statement and they have also admitted to the fact that these goods have been put to use. He would draw the attention of the Court to Paragraph Nos.5 and 6 of the plaint.

12. He would further submit that after the plaintiff had demanded the repayment, the defendant had come forward with the contention that the goods that had been supplied by the plaintiff were not up to the mark and goods worth of Rs.20,00,000/- had been returned to the plaintiff. However, there is no proof or pleading to show how the products were defective and how the defective products were handed over to the plaintiff. He would submit that although the defendant had pleaded that goods to the tune of Rs.20,00,000/- had

been returned, there is no mention about the payments that are due towards the other invoices where goods have not been retained. Therefore, he would submit that tacitly the defendants have admitted that they are due and owing money for the other supplies. As regards the defence that the interest was high, the learned counsel would submit that under the invoices the interest that has to be paid on the delayed payment was 24% and the defendants are bound by the said clause in the invoices.

13. Per contra, Mr.R.T.S.Kannan learned counsel appearing on behalf of the defendants would submit that the transactions are only between the plaintiff and the 1st defendant, and the suit filed against the defendants 2 to 5 is not maintainable as they are unnecessary parties to the proceedings. He would submit that they are only Directors of the 1st defendant company and therefore, the they cannot be mulcted with the liability. He would also submit that, in paragraph no.11 of the plaint, the plaintiff had themselves admitted that the goods

had been defective. Having said so, it does not lie on the mouth of the plaintiff to now contend that there is no proof for the goods being returned. He would also submit that the interest at the rate of 24 % per annum is rather high.

Discussion

14. The records, particularly Ex.P2 series, would show that the 1st defendant has placed orders upon the plaintiff to effect supplies. The invoices are 15 in number and the goods that had been supplied under these invoices have been clearly admitted by the defendants in their written statement. In paragraph number 5 of the written statement, the defendants have stated as follows:-

> *"5. It is true that the Plaintiffs have supplied Electrical materials on placement of orders by the 1st Defendant. The 1st Defendant is a Electrical contractor and they are in the field for the last several years. The 1st Defendant used to take Electrical contract work of Industrial buildings, IT parts, Office buildings, Apartment buildings. The 1st Defendant Electrical work consists of Supply of materials, Installation, testing and commissioning."*

15. Further, the defendants have also admitted to the fact that the goods which have been purchased under the said invoices (Ex.P2 series) have been used in projects. In Para.No.6 of the written statement, the defendants have stated as follows:-

> *"6. The 1st Defendant sates that for the subject supply materials supplied was used in the projects namely M/s Shriram Gate way, M/s. Aptidco and Mahindra World City. The supplied materials are used to test by client's end through their men and agents."*

16. Therefore, from a reading of the contents of the paragraph nos.5 & 6, it is clear that plaintiff has effected the supply of the goods and same has been received by the 1st defendant who in turn used it for their other projects. The only defense which has been raised by the defendants is that they have returned the goods worth Rs.20,00,000/- since they were of inferior quality. However, there is no evidence to prove: (A) that the goods were of inferior quality; (B) that the goods

have been returned. That apart, the defendants are not clear about the invoices under which these defective goods have been supplied. Considering the fact, that the defendants have accepted the supply of goods and put it to use, this Court can only conclude that the entire supply effected by the plaintiff has been used by the defendants. Assuming without admitting that the goods supplied to the defendants worth Rs.20,00,000/- were of inferior quality, there is no explanation forthcoming from the defendants as to why they have not paid the amounts due under the various invoices to the plaintiff. Therefore, issue no.1 has to be answered in favour of the plaintiff.

17. A perusal of invoices (Ex.P2 series) would clearly show that in case of a delayed supply, interest at 24% would be charged and it is this contracted interest that is claimed by the plaintiff. Therefore, the defendants are liable to pay 24% interest from the date of supply till the date of the filing of the suit. However, interest of justice would be sub-served if interest is levied at 12% p.a, from the date of the plaint till the date of realization since even banks have now reduced the

interest rates. Therefore, the plaintiff shall be entitled to 12% interest from the date of supply till the date of the filing of the suit. Therefore, issue no.2 is answered in favour of the plaintiff.

18. The defendants have neither shown that the goods were defective nor have they produced proof to show that the goods were returned. If really the goods were defective, the defendants, at the first instance, ought to have brought the same to the notice of plaintiff and not wait till the plaintiff demands repayment. Once the defendants are not in a position to prove the defective goods were supplied, they cannot withhold the payment to the plaintiff and therefore, issue no.3 is answered in favour of the plaintiff.

19. The suit has been filed against the 1st defendant company and the defendants 2 to 5 are the Directors of the 1st defendant company. Admittedly, the contract is only with the 1st defendant company and none-else. The plaintiff seeks to rope in the other

defendants into litigation on the ground that only on the basis of the assurance given by the Directors (i.e, D.2 to D.5) of the 1st defendant company, the plaintiff had given credit to the 1st defendant company. Further, the plaintiff has not pleaded fraud against defendant 2 to 5. Therefore, considering the fact, that the contract is only between the plaintiff and the 1st defendant company, defendants 2 to 5 cannot be mulcted with the liability of repaying the plaintiff. Therefore, the suit is bad for misjoinder of parties and accordingly, issue no.4 is answered against the plaintiff.

20. As already submitted that the defendants have neither proved that the quality of the goods supplied by the plaintiff was inferior nor have they proved that the same was returned to the plaintiff. The official who had adduced evidence on behalf of the defendants has no personal knowledge about the disputed transactions between the plaintiff and the defendants, and he has in answer to the first question stated that he has been working with the 1st defendant company only

from the year September 2022 an adverse inference has to be drawn for the non-examination of the official who has a personal knowledge in the same. The defendants have not proved their contention that sub-standard goods were supplied to them and they had returned the defective goods. There is no evidence in support of this claim and in the absence of pleadings as to what was the quantity rejected and the quantity is retained by them. This assumes significance since the only defense of the defendants is that the goods to the tune of 20,00,000/- is defective. As already submitted this plea is not supported by proof and therefore, issue no 5 is answered in favour of the plaintiff.

21. In the result, the suit is partly decreed. The first defendant shall pay a sum of Rs.1,24,23,289/- together with interest at the rate of 12% per annum on the sum of Rs.79,55,822/- from date of plaint till date of payment together with costs. The suit is dismissed against defendants 2 to 5.

11.09.2023

Index:Yes/No

Speaking order/Non-speaking order
Neutral Citation:Yes/No
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APPENDIX

List of Witness Examined on the side of the Plaintiff:

1. P.W.1 - M.N.Mahadevan

List of Exhibits marked on the side of the Plaintiff:-

S.No.	*Exhibits*	*Description of documents*
1.	P-1	The original board resolution and letter of authority dated 12.05.2022.
2.	P-2	(Series) (15 Nos.) is the true copies of the Invoices raised by the plaintiff in favour of the 1st defendant company and attested by the plaintiff company.
3.	P-3	(series) (3Nos) is the original cheques issued by the defendants to the plaintiff.
4.	P-4	The printout of the email dated 11.06.2020 along with 65B affidavit.
5.	P-5	The true copy of the ledger statement maintained by the plaintiff during the course of their business activities which reflects the transactions in between the plaintiff and the defendants
6.	P-6	The photocopy of the Non-starter report dated 25.03.20233. (The learned counsel for the defendant has objected that the original should be with the plaintiff.)

List of Witnesses Examined on the side of the Defendants:

1. D.W.1 -Mr.M.Raju.

List of Exhibits marked on the side of the Defendant:-

S.No.	*Exhibits*	*Description of documents*
1.	D-1	The original authorisation letter dated 28.06.2023. (The learned counsel for the plaintiff has objected to mark this document on the ground that the document was not filed at the time of filing written statement, considering the fact that only a original letter of authorisation we have consented for marking this document.)

P.T. ASHA, J.

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