IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.04.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.S.(Comm.Div.).No.24 of 2024

M/s.BEST PULSES AND FOODS LLP,
Rep. by its Designated Partner,
Mr.G.Chandran,
No.1/L, Blackers Road, 6B, Gaiety Road,
6th Floor, Chintadripet,
Chennai-600 002.

...Plaintiff

vs.

M/s.B.S.G.TRADERS,
Rep. by its Authorized Person,
Ground Floor, H.No.4, Rajiv Gandhi Nagar,
Main Street, Errukuncherry,
Chennai-600 118.

...Defendant

Plaint filed Under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of Code of Civil Procedure & Proviso 1 of Section 7 of the Commercial Courts Act, 2015 and the suit numbered and filed to pass judgment and decree in favour of the plaintiff:

(a) to direct the defendant herein to pay a sum of Rs.1,14,09,814/- (Rupees one crore fourteen lakhs nine thousand eight hundred fourteen only) to the plaintiff with subsequent interest at the rate of 12% per annum on the principal sum of Rs.92,01,463/- (Rupees ninety two lakhs one thousand four hundred sixty three only) till realization;

(b) For cost of the suit

For Plaintiff : Mr.J.Hariharan
for M/s.KV Law Firm

For Defendant : Mr.S.Arulandu

JUDGMENT

The present suit has been instituted for recovery of money.

2. (i) The learned counsel for the plaintiff submitted that the plaintiff is a Limited Liability Partnership Firm and is engaged in the business of trading of pulses and other food products. The plaintiff got acquaintance with the defendant in the course of its business, as it was in the trade of supply of Toor Dhall and there were business transaction between the plaintiff and the defendant from the year 2020. The learned counsel further submitted that the defendant would send amounts as credit to the bank account of plaintiff and the plaintiff would supply the products as ordered by the defendant in proportions and bills would be raised for the same

now and then which would be adjusted towards the credit amount already sent by the defendant. Every year, the accounts would be checked and the balance would either be paid by any party, if any, or would be kept as credit for the next year, as both the plaintiff and the defendant were in the course of business in a continuous manner.

(ii) The learned counsel for the plaintiff submits that on the closing of the financial year 2020-2021, i.e. on 31.03.2021, there was a balance of Rs.12,35,202/- and the same were to be repaid by the plaintiff towards the supply of goods (Toor Dhall) to the defendant. As agreed between the plaintiff and the defendant, the aforesaid amount was treated as pending from the plaintiff towards the business transaction for the following year. On a series of transaction till 05.11.2021, the Plaintiff had supplied goods (Toor Dhall) to the defendant as per their requirement for which the plaintiff had raised invoice to the tune of Rs.6,07,83,438/-. For those invoices, the defendant have made payments on various dates totalling an amount of Rs.5,03,46,773/- which includes TDS (Tax Deduction at Source) amount of Rs.55,783/-. The defendant have kept balance sum of

Rs.1,04,36,665/- towards the purchase of goods (Toor Dhall) from the Plaintiff. After adjusting the previous year balance, there is a remainder amount of Rs.92,01,463/- to be payable by the defendant to the plaintiff.

(iii) The learned counsel for the plaintiff further states that as the defendant and the plaintiff were in regular course of business, the plaintiff had reminded for the balance to be paid by the defendant on various occasions orally. Though the defendant had promised to return the amount orally when the plaintiff made request, the defendant had not even paid in full or a part, even after a span of 14 months till January 2023. The plaintiff is continuously engaged in the business and such a huge amount lying with the defendant without being returned for no reasons causes huge financial constraints and risks in its business which cannot be accepted.

(iv) The plaintiff states that it is an unhealthy practice of holding the funds of the business transactor for months together even after the transactions between the business transactors have come to an end. The defendant is aware that in the course of business, such huge amounts cannot be let to lie with others simply for no reason and even if there are bona-fide reasons, the amounts would carry interests for the same till it is being refunded. It is unfortunate for the plaintiff that its amounts were not returned despite several requests were made for return and the plaintiff was Left with no other choice, the plaintiff is constrained to take the course of law to recover the amounts belonging to the plaintiff, lying with the defendant in an unlawful manner. The same has to be returned with interests at the rate of 12% p.a. and interests would be calculated after 30 days from the expiry of the business transaction, i.e. from 05.12.2021. Even such a genuine demand is made only due to honouring the business relationship which the plaintiff had with the defendant.

(v) The plaintiff states that the plaintiff caused a legal notice dated 24.01.2023 calling upon the defendant to pay the principal amount with interests and the same was received by the defendant on 25.01.2023. Despite receipt of the legal notice, the defendant has not sent any reply notice which itself would show that the defendant has admitted the claim.

(vi) The plaintiff states that the plaintiff filed an application before the Tamil Nadu State Legal service Authority, as envisaged under the Act

2015 as Pre-Mediation and same was taken on file as TNSLSA No.1326/PIMS/24/2023 and the defendant had appeared and admitted the claim amount. The plaintiff considering the request of the defendant agreed to waive a sum of Rs. 4,89,667/- and expressed its willingness to accept Rs.1,00,00,000/- alone as full and final Settlement.

(vii) The plaintiff states that the plaintiff and defendant entered the Memorandum of Understanding on 23-03-2023 before Mediator. The recitals of the MOU as follows:-

> "5. The Petitioner and the respondent respectfully submit that the Petitioner accepted the offer of the Respondent and expressed his willingness to receive a sum of Rs.1,00,00,000/- (Rupees one crore only) within two months in two Instalments from today i.e on or before 22-05- 2023. The Parties make it clear that if the respondent on any event fails to comply with the above stated term within the specified time limit, the concessions given by the Petitioner and also waiver of Interests from the institution of this Pre-mediation would no longer be taken in to

consideration and the parties would be relegated to
the Original Position"

The defendant not paid any amount till date, now left with no other alternate, hence the Plaintiff is constrained to file this present suit seeking the relief as stated below.

(viii) The Cause of action for the present suit arose in the year 2020 when the plaintiff and the defendant started having business transaction: the plaintiff had supplied goods (Toor Dhall) to the defendant on the above said dates, on 05-11-2021 when defendant paid credit amount to plaintiff on partly and defendant Kept balance payment to plaintiff and when the plaintiff caused a legal notice dated 24.01.2023 and the same was received by the defendant on 25.01.2023 and when the plaintiff instituted Pre Institution Mediation before the Tamil Nadu State Legal Services Authority Chennai, the compromise arrived between the defendant and plaintiff and entered the MOU on 23-03-2023, the defendant agreed to pay sum of Rs.1,00,00,000/-(One Crore only) to the plaintiff within two months in two instalment on or before 22-05-2023, on all subsequent dates when the defendant has not paid the money, which all falls within the Jurisdiction of this Court.

(ix) The plaintiff submits that the Commercial Division of this Court has got jurisdiction to entertain this suit. The subject matter of the suit is recovery of money and other consequential reliefs. Therefore, it is a commercial dispute under Section 2(1)(c)(i) of the Commercial Courts Act, 2015. In view of this statutory mandate, the suit falls within the ambit of Section 7 proviso (1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

3. The learned counsel for the defendant filed written statement and stated as follows:

(i) The Defendant submits that, at the outset, all the averments contained in the above plaint are denied as incorrect and false save those that are specifically admitted hereunder by the Defendant. The plaintiff has filed the above suit which has to be dismissed in limine as devoid of merits.

(ii) The Defendant submits that the Plaintiff has rightly stated in para 5 of the plaint that the Plaintiff and the Defendant were involved in the business of Toor Dhall from the year 2020. It is also admitted that every year, the accounts would be checked and the balance would either be paid by any party, if any, or would be kept as credit for the next year, as both the parties were in the course of business in a continuous manner.

(iii) It is submitted that due to outbreak of pandemic in 2020 and 2021, the business of Defendant was drastically affected. Huge amounts of money due to her is still not forthcoming from her customers in spite of her innumerable attempts. Two 138 cases filed by the Defendant against her customers are pending. It is admitted that a sum of Rs.92,01,463/ was, in all, payable by the Defendant to the Plaintiff as on 05.11.2021 for the supply of Toor Dhall. As the remaining balance amount could not be paid by the Defendant, the Plaintiff filed an application before the Tamil Nadu State Legal Services Authority which was taken on file as TNSLSA No.1326/PIMS/24/2023. The request of the Defendant was accepted by the Plaintiff before the Mediator and expressed its willingness to accept Rs.

1,00,00,000/-(Rupees One Crore only) as full and final settlement.

(iv) It is submitted that in this connection, a Memorandum of Understating dated 23.03.2023 was arrived at before the Mediator between the parties. Para 5 of the said MOU reads as follows:

> "*The Petitioner and the Respondent respectfully submit that the Petitioner accepted the offer of the Respondent and expressed his willingness to receive a sum of Rs.1,00,00,000/- (Rupees One Crore only) within two months in two instalments from today i.e. on or before 22-05- 2023. The parties make it clear that if the respondent on any event fails to comply with the above stated term within the specified time limit, the concessions given by the Petitioner and also waiver of interests from the institution of this Pre-mediation would no longer be taken in to consideration and the parties would be relegated to the original position*".

(v) It is further submitted that as assured in the said MOU, the amount of Rs. 1,00,00,000/- (Rupees One Crore only) could not be settled by the Defendant as the dues payable to her were not forthcoming from her customers. Hence, the Defendant requested the Plaintiff over phone to give some more time to settle the amount as agreed upon. However, the Defendant is bound to pay the agreed amount and a further period of 4 months may be required for settling the issue once for all. The Defendant is prepared to pay Rs. 1,00,00,000/- (Rupees One Crore only) along with interest at the rate of 6% per annum with effect from 23.05.2023 within four months to the Plaintiff. The request of the Defendant is bona-fide.

4. Heard both sides and perused the materials available on record.

5. This Court heard the learned counsel for the plaintiff who took the Court through the plaint and made his submissions.

6. The learned counsel for the defendant is admitting the claim of the plaintiff and only he seeks time for payment, in four months, with accrued interest at 6%. In view of the submission made by the learned counsel for

the defendant, suit is decreed, however, the rate of interest is 12% per annum from the date of filing of the suit till passing of the Decree and thereafter 6% till realisation. The defendant is directed to pay the said suit claim with 12% interest from the date of suit till the date of Decree (16.04.2024) and thereafter at 6% till realisation. Time for payment is four months.

With the above terms, suit is decreed with costs.

16.04.2024

dsn

P. VELMURUGAN, J

dsn

C.S.(Comm.Div.)No.24 of 2024

16.04.2024