IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.02.2025**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

C.S.(Comm.Div.) No.110 of 2022

Mr.Jigar Mahendra Sheth
Sole Proprietor of M/s.Pyara Intermediate and Chemical Co.,
having office at No.122/B, Kika Street, Gulal Wadi,
Mahavir Mansion, 4th Floor, Room No.68,
Mumbai-400 004.
Authorized Mr.G.Padham Chand
S/o.Late K.Gowtham Chand, Aged 41 years,
Residing at No.7/13a Kamaraj Street,
2nd Floor, Bharathipuram,
Chrompet, Chennai-600 044,
to Represent the above suit, vide Power of Attorney dated 29.12.2021
(Amended as per order dt.1511.2022 in Appln No.5074/2022) ... Plaintiff

-vs-

1.Sucram Pharmaceuticals Pvt. Ltd.
Represented by its Managing Director
Mr. Thangavel Pravinkumar,
Registered Office at No.H-37 J,
2nd Floor Manthoppu Colony,
Ashok Nagar, Chennai-600 083.

2. Mr.Thangavel Pravinkumar,
Managing Director of Sucram Pharmaceuticals Pvt. Ltd.
Registered Office at No.H-37 J,
2nd Floor Manthoppu Colony,
Ashok Nagar,
Chennai-600 083. ... Defendants

PRAYER: Civil Suit filed under Order VII Rule 1 of O.S.Rules 1956 r/w. Order VII Rule 1 & 2 of the Code of Civil Procedure 1908 r/w. The Commercial Courts Act, 2015, praying to grant a judgment and decree on the following terms:-

(a) Directing the Defendants to pay a sum of Rs.1,43,09,216/- (Rupees One Crore Forty Three Lakhs Nine Thousand Two Hundred and Sixteen Only) along with future interest @ 18% per annum on the principal amount of Rs.80,05,166/- (Rupees Eighty Lakhs Five Thousand One Hundred and Sixty Six only) till the date of realization; and

(b) Pay cost of this suit to the Plaintiff.

For Plaintiff : Mr.N.Balaji

For Defendants : MrE.Senthilkumar .
for M/s.Sampathkumar & Associates

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JUDGMENT

The suit was filed for recovery of a sum of Rs.1,43,09,216/- from both the defendants along with future interest at 18% per annum on the principal sum of Rs.80,05,166/- till the date of realization. In addition, the plaintiff prayed for costs of the suit.

Pleadings and Issues

2. In the plaint, it is stated that the second defendant had approached the plaintiff for supply of raw materials for its pharmaceutical unit. Pursuant to the issuance of the purchase order, it is stated that goods were supplied by the plaintiff to the first defendant. The plaintiff states that the last supply was made on 21.01.2017. After giving credit to a sum of Rs.2,50,000/-, which is said to have been received on 02.08.2017, it is stated that the total outstanding is the sum of Rs.80,05,166/-. The plaintiff asserts that confirmation statements were signed by the defendants on 22.03.2018, 31.03.2018 and 29.07.2021. The plaintiff asserts that

interest is payable at the rate of 21% per annum on the amounts due and payable by the defendants.

3. The defendants filed a written statement dated 06.07.2022. In the written statement, it is stated that the suit is barred by limitation. The supply made on 21.01.2017 is denied. The defendants also assert that the suit is not maintainable against the second defendant because the Managing Director of the first defendant cannot be made liable for supplies made to a private limited company. The claim for interest at 21% per annum is also denied.

4. Upon examining the pleadings, the Court framed the following issues on 14.12.2022:

> "i. *Whether, the Plaintiff is entitled to a decree for recovery of the sum of Rs.1,43,09,216/- (Rupees One Crore Forty-Three Lakhs Nine Thousand Two Hundred and Sixteen Only) from the defendants?*
>
> ii. *Whether the suit is represented by a power*

agent on behalf of the plaintiff concern is maintainable? or

iii. *Whether the suit is maintainable against the 2nd Defendant, as the supplies were made only against the private limited company viz., the 1st Defendant? or*

iv. *Whether, the 2nd Defendant, being a Managing Director of the 1st Defendant, is also jointly and severally liable for the Suit Claim?*

v. *Whether, the Plaintiff is entitled for interest @ 21% p.a. for payments due and payable by the Defendants?*

vi. *Whether the acceptance by the 1st Defendant in the Account Statement Confirmation, which was obtained for the purpose of Income Tax alone that too after the limitation period of 3 years from the date of last supply dated 21.07.2017 is an admission of liability by the 1st Defendant?*

vii. *Whether, the suit is barred by Law of Limitation?*

Viii. *To What other reliefs the Plaintiff is entitled?"*

5. Mr.G.Padham Chand was examined by the plaintiff as PW1 and Exs.P1-P20 were exhibited. PW1 was cross-examined by learned counsel for the defendants. The defendants did not adduce evidence.

Counsel and their contentions

6. Oral arguments on behalf of the plaintiff were advanced by Mr.N.Balaji and on behalf of the defendants by Mr.E.Senthilkumar. Written arguments were also filed by both the plaintiff and the defendants.

7. The first submission of learned counsel for the plaintiff was that the plaintiff initiated pre-institution mediation, as per Section 12A of the Commercial Courts Act, 2015, on 22.09.2021. After a non-starter report was issued on 29.12.2021, he submitted that the suit was filed on 03.01.2022. He points out that the first sale of raw materials was made by the plaintiff to the defendants on 04.04.2015 and that the last sale was made on 21.01.2017. He also pointed out that that confirmation statements were signed by the defendants on 22.03.2018, 31.03.2018 and 29.07.2021.

8. By referring to the affidavit of admission/denial of the defendants, learned counsel submitted that the invoices, lorry receipts and account statement confirmations dated 22.03.2018 and 31.03.2018 were admitted therein. In view thereof, he submits that the limitation period stood extended by a period of three years from the date of acknowledgment. Such date would therefore stand extended up to March 2021. By submitting that the Hon'ble Supreme Court held that the entire COVID period running from 15.03.2020 to 28.02.2022 stood excluded for purposes of limitation, he submitted that the present suit was filed within the period of limitation.

9. By adveting to the proof affidavit of PW1 and the exhibits marked through PW1, learned counsel submits that the suit claim stands proved, except for invoice dated 24.12.2015 for a sum of Rs.2,21,340/-. As regards the second defendant, he submits that he was the Managing Director of the first defendant and the person who

represented the first Defendant in all transactions with the plaintiff. Consequently, he submits that the second defendant is also liable for the suit claim. With regard to interest, learned counsel submits that interest has been claimed only from 01.04.2018 at the rate specified in the invoices.

10. In response to these contentions, the first contention of learned counsel for the defendants is that this Court does not have jurisdiction. In order to substantiate his contention, he points out that the first defendant's pharmaceutical unit in Himachal Pradesh received supplies from the plaintiff. He also points out that the plaintiff carries on business in Mumbai. The next contention of learned counsel for the defendants is that the suit is barred by limitation. In support of this contention, learned counsel referred to and relied upon the judgment of the Andhra Pradesh High Court in *M.S.N. Charities v. Pilla Ramarao and Others, (2009) 03 AP CK 0033,* and submitted that there is a material difference between

acknowledgment of liability for purposes of Section 18 of the Limitation Act, 1963 (the Limitation Act) and a promise to pay under Section 25(3) of the Indian Contract Act, 1872 (the Contract Act). If the aknowledgement is made beyond the period of limitation, learned counsel submits that the suit is not sustainable unless such acknowledgment qualifies as an express promise to pay a time barred debt. For the same proposition, learned counsel relies upon the judgment of a Division Bench of this Court in *N.Ethirajulu Naidu v. K.R.Chinnikrishnan Chettiar, AIR 1975 Mad 333.* The last contention was that the first defendant is a distinct juristic entity and, therefore, the second defendant is not liable for the suit claim.

Discussion, analysis and conclusions

11. Out of the issues framed by this Court, some of the issues are preliminary issues, which are required to be considered first. I propose to deal with Issue No.2 first.

Issue No.2

12. This issue relates to whether the suit is maintainable at the instance of an agent of Mr.Jigar Mahendra Sheth, sole proprietor of Pyara Intermediate and Chemical Co. In the plaint, the plaintiff avers that he has authorized Mr.G.Padham Chand under notarized power of attorney dated 29.12.2021. It is also asserted that the power of attorney is in force and has not been revoked by the principal. A photocopy of the general power of attorney was exhibited through PW1 as Ex.P1. The Contract Act enables a party to undertake all actions that such person can undertake personally and lawfully through a duly authorized agent. On perusal of Ex.P1, it is clear that the agent has been duly authorized to represent the principal in all proceedings filed by or against Pyara Intermediate and Chemical Co. in Tamil Nadu. Therefore, Issue No.2 is decided in favour of the plaintiff and against the defendants.

Issue Nos.6 and 7:

13. Both these issues relate to limitation. As stated earlier, in the written statement, the defendants have pleaded that the suit is barred by limitation. Even otherwise, an obligation is cast on the Court under the Limitation Act to examine whether the suit is barred by limitation. The plaint was presented on 03.01.2022. The plaintiff has exhibited three Accounts Statement Confirmations dated 22.03.2018, 31.03.2018 and 29.07.2021 as Exs.P3 to P5, respectively. In the affidavit of admission and denial of the defendants, the account statement confirmations dated 22.03.2018 and 31.03.2018 have been admitted.

14. The account statement confirmation dated 22.03.2018 [Ex.P3] relates to invoices issued by the plaintiff between 12.01.2017 and 21.01.2017. The period of limitation for filing a suit for recovery of amounts due (after expiry of an agreed credit period) towards supply of goods is a period of three years from the date when the credit period under the relevant invoices expires. This is stipulated

in Article 15 of the Schedule to the Limitation Act. The invoices on record mention a credit period of 75 days. Therefore, if the period of limitation were to be computed from the expiry of the credit period for the invoices referred to in Ex.P3, the period of limitation would expire some time in the year 2020. In fact, it would be beyond 15.03.2020, which is the commencement date for COVID related exclusion of time. The account confirmation letter bears the signature of the Managing Director of the first defendant, who is the second defendant herein.

15. The account confirmation letter dated 31.03.2018 (Ex.P4) does not contain details of any invoices. It is the account confirmation letter for the period running from 01.04.2017 to 31.03.2018. It records the carried forward balance of Rs.82,55,166/- and gives credit to the sum of Rs.2,50,000/-, which was received from the first defendant on 02.08.2017. After giving credit to the said sum, it records that the

amount due and payable as Rs.80,05,166/-. Since this statement has been drawn as on 31.03.2018, the period of limitation would run from 01.04.2018 to end March 2021 on the basis of Ex.P4. Upon excluding the Covid impacted period, as per order dated 10.01.2022 of the Supreme Court In re Cognizance for Extension of Limitation, Suo Motu Writ Petition (C) No.3 of 2020 the suit is within time.

16. Although learned counsel for the defendants contended that these account confirmation letters were not issued during the period of limitation, the evidence on record points in the opposite direction. Since these confirmation letters were issued while the period of limitation subsisted, these exhibits qualify as acknowledgments for purposes of Section 18 of the Limitation Act. The only acknowledgment beyond the period of limitation would be the Account Confirmation letter dated 29.07.2021 (Ex.P5), which is not material for reasons set out in the previous paragraph. The judgments relied upon by learned counsel for the defendants are distinguishable inasmuch as they pertain to acknowledgments made

after expiry of the period of limitation. Acknowledgments after expiry of the period of limitation would not fall within the scope of Section 18 of the Limitation Act, and the only recourse for a party in such situation would be to set up a plea on the basis of a promise to pay under sub-section 3 of Section 25 of the Contract Act. For reasons discussed above, Issue Nos.6 and 7 are held in favour of the plaintiff and against the defendants.

Issue Nos.3 and 4

17. Both these issues relate to the liability of the second defendant. It is common ground that the supply was made to a private limited company, being the first defendant. The second defendant is described as the Managing Director of the first defendant. As a juristic entity, the first defendant is capable of suing and being sued against. Except in cases where it is alleged and established that the corporate veil was used as a device to defraud the plaintiff, the corporate veil cannot be pierced so as to impose liability on the second defendant. On perusal of the plaint, it appears

that the plaintiff has asserted that the first defendant acted through the second defendant for purposes of placing the order on the plaintiff and in communications with the plaintiff. These averments are clearly insufficient to sustain the claim against the second defendant by piercing the corporate veil. Therefore, the suit claim cannot be sustained against the second defendant. Issue Nos.3 and 4 are, therefore, decided in favour of the second defendant and against the plaintiff.

Issue Nos.1, 5 & 8:

18. Issue No.1 relates to the monetary claim of Rs.1,43,09,216/-. This claim consists of the principal sum of Rs.80,05,166/- with interest thereon up to the date of plaint. While a jurisdictional argument was raised, since it pertains to territorial and not subject matter jurisdiction, the contention is rejected as untenable both on the ground that it was not raised in the written statement and, more importantly, because both the defendants carry on business within

the jurisdiction of this Court. In order to establish this claim, the plaintiff has exhibited invoices as Exs.P2, P10, P11, P12, P13 and P15. Exs.P10, P11, P12, P13 and P15 also include lorry receipts. In the affidavit of admission/denial of the defendants, except invoice dated 24.12.2015 and the corresponding lorry receipts, all invoices and lorry receipts have been admitted. Invoice dated 24.12.2015 is for a sum of Rs.2,21,340/-. Although this invoice was disputed by the defendants, the plaintiff has not otherwise proved that the amount claimed under this invoice is payable. Consequently, from the principal claim of Rs.80,05,166/-, the sum of Rs.2,21,340/-, is liable to be deducted. Therefore, a sum of Rs.77,83,826/- has been established by the plaintiff as due and payable by the first defendant.

19. With regard to interest, the respective invoices specify interest at 21% per annum. The invoices, however, do not bear the signature or acknowledgment of the first defendant. In fact, there is no document on record bearing the signature of the first defendant

and accepting the levy of interest at 21% per annum. At the same time, it should be noticed that this is a commercial transaction between the parties and, therefore, the plaintiff is entitled to interest at commercial rates. By taking into account the interest rate prevailing during the relevant period, the first defendant is directed to pay interest at the rate of 12% per annum on the principal sum from 01.04.2018, as claimed, until realisation. Issue Nos.1 and 5 are therefore decided as above in favour of the plaintiff and against the first defendant.

20. Since costs follow the event, as the successful party, the plaintiff is entitled to costs. The plaintiff has paid a sum of Rs.4,29,295/- as court fees. The plaintiff is entitled to this sum along with reasonable lawyer's fees and other expenses. In the aggregate, the first defendant is directed to pay the plaintiff a sum of Rs.7,00,000/- as costs.

21. In the result, the suit is decreed by directing the first defendant to pay the plaintiff a sum of Rs.77,83,826/- along with interest thereon at 12% per annum from 01.04.2018 till the date of realization. The first defendant is also directed to pay a sum of Rs.7,00,000/- as costs to the plaintiff.

17.02.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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Plaintiff's witness:

P.W.1 – Mr.G.Padham Chand

Documents exhibited by the Plaintiff:

Exhibits	*Documents*
Ex.P1	The photocopy of the General Power of Attorney executed by the plaintiff in favour of his agent dated 29.12.2021. (The counsel for the defendant has agreed to mark this document.)
Ex.P2	The true copy of the invoice between the plaintiff and the defendant dated 21.01.2017.
Ex.P3	The printout of the account statement confirmation dated 22.03.2018.
Ex.P4	The printout of the account statement confirmation dated 31.03.2018.
Ex.P5	The printout of the account statement confirmation dated 29.07.2021.
Ex.P6	The certificate under Section 65B of the Indian Evidence Act, 1872 is filed for Ex.P3, Ex.P4 and Ex.P5.
Ex.P7	The true copy of the extract of ledger account. (The counsel for the defendant has agreed to mark, subject to objection.)
Ex.P8	The original application to legal services authority for pre-institution mediation dated 19.09.2021.
Ex.P9	The original Non-starter Report given by the legal services authority.
Ex.P10	The photocopy of the invoices for the transaction of the months April & May 2015 and the Lorry receipts for respective delivery of goods in connection with the above

Exhibits	***Documents***
	invoices. (The counsel for the defendant has objected to mark on the ground that all the lorry receipts attached with the invoices are only xerox copies and the plaintiff is the custodian of original lorry receipts since they only booked the said consignment to Startrek Logistics Pvt. Ltd. The tax invoices are also not an office copy and only xerox copies and not attested by any authorized signatory of the plaintiff) (Marked subject to objection.)
Ex.P11	The photocopy of the invoices for the transaction of the months June & July 2015 and the Lorry receipts for respective delivery of goods in connection with the above invoices. (The counsel for the defendant has objected to mark on the ground that all the lorry receipts attached with the invoices are only xerox copies and the plaintiff is the custodian of original lorry receipts since they only booked the said consignment to Startrek Logistics Pvt. Ltd. The tax invoices are also not an office copy and only xerox copies and not attested by any authorized signatory of the plaintiff) (Marked subject to objection.)
Ex.P12	The photocopy of the invoices for the transaction of the months August & September 2015 and the Lorry receipts for respective delivery of goods in connection with the above invoices. (The counsel for the defendant has objected to mark on the ground that all the lorry receipts attached with the invoices are only xerox copies and the plaintiff is the custodian of original lorry receipts since they only booked the said consignment to Startrek Logistics Pvt. Ltd. The tax invoices are also not an office copy and only xerox copies and not attested by any aut signatory of the plaintiff) (Marked subject to objection)
Ex.P13	The photocopy of the invoices for the transaction of the months October, November & December 2015 and the

Exhibits	*Documents*
	Lorry receipts for respective delivery of goods in connection with the above invoices. (The counsel for the defendant has objected to mark on the ground that all the lorry receipts attached with the invoices are only xerox copies and the plaintiff is the custodian of original lorry receipts since they only booked the said consignment to Startrek Logistics Pvt. Ltd. The tax invoices are also not an office copy and only xerox copies and not attested by any authorized signatory of the plaintiff. Among the invoices, it is specifically denied the invoices of December 2015.) (Marked subject to objection.)
Ex.P14	The printout of the extract of Account Ledger for the period of 01.04.2015 to 31.03.2016 and same extract drawn on 31.07.2023 duly attested by the PW1 dated 31.07.2023. (The counsel for the Defendant ha objected to mark the document on the ground that it is already been denied in the affidavit of admissions and denial by the defendant since it is the mail send by Marcus Pharma who is not at all a party to this suit.) (Subject to objection, marked.)
Ex.P15	The photocopy of the invoices for the transaction of the year 2017 and the Lorry receipts for respective delivery of goods in connection with the above invoices. (the counsel for the defendant has objected to mark on the ground that all the lorry receipts attached with the invoices are only xerox copies and the plaintiff is the custodian of original lorry receipts since they only booked the said consignment to Startrek Logistics Pvt. Ltd. The tax invoices are also not an office copy and only xerox copies and not attested by any authorized signatory of the plaintiff) (marked subject to objection.)
Ex.P16	The printout of the corresponding emails and attachments namely the account confirmation statement dated

Exhibits	*Documents*
	27.03.2018. (The counsel for the defendant has objected to mark the document on the ground that it is already been denied in the affidavit of admissions and denial by the defendant since it is the mail send by Marcus pharma who is not at all a party to this suit.) (Subject to objection, marked.)
Ex.P17	The printout of the corresponding emails and attachments namely the account confirmation statement dated 03.08.2021. (The counsel for the defendant has objected to mark the document on the ground that it is already been denied in the affidavit of admissions and denial by the defendant since it is the mail send by Marcus pharma who is not at all a party to this suit.) (Subject to objection, marked.)
Ex.P18	The true copy of the extract of accounts ledger for the period of 01.04.2016 to 31.03.2017 and same extract drawn on 31.07.2023 duly attested by the PW1. The counsel for the defendant has objected to mark the document on the ground that it is already been denied in the affidavit of admissions and denial by the defendant and it is attested by the Power
Ex.P19	The certificate under section 65B of the Indian Evidence Act, 1872 is filed for Ex.P16 and Ex.P17.
Ex.P20	The certificate under section 65B of the Indian Evidence Act, 1872 is filed for Ex.P14 and Ex.P18.

SKRJ

SENTHILKUMAR RAMAMOORTHY,J

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