IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	**27.09.2024**
Judgment Pronounced on	**23.01.2025**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

C.S No.480 of 2013

M/s.Five Star Marine Exports Private Limited
Represented by its Managing Director
Mr.K. Eravikumar,
No.70 (Old No.55) Venkatesa Street, Chintadripet,
Chennai 600 002 ...Plaintiff

Vs.

1) SEA WEALTH PRODUCTS INC.
Represented by its President
Mr.Paul Morris Faustin,
100, S.Electric Ave,
Alhambra, CA 91801, USA.

2) Mr.Paul Morris Faustin,
President SEA WEALTH PRODUCTS INC.
100, S.Electric Ave, Alhambra, CA 91801, USA,
Currently residing at Nalathil House, Neendakara Post,
Karunagapally Village,
Quilon Taluk, Kollam District, Kerala-691 582.

3) Umang Sodagar,
Manager-Sales and Accounting,
M/S.SEA WEALTH PRODUCTS,
202, Akansha Building, Opposite Vadilal House,
46, Srimali Society, Navrangpura,
Ahmedabad-380 009 (Gujarat) …Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure praying for the following judgment and decree against the defendant:

(i) Directing the Defendants jointly and severally to pay the plaintiff an amount of Rs.2,56,15,793.37 (Rupees Two Crores Fifty Six Lakhs Fifteen Thousand Seven Hundred and Ninety Three and Thirty Seven Paise only) with interest accrued thereon at 18% per annum from the date of plaint till the date of decree and further interest from the date of decree till the date of realization at such interest as this Court may deem fit; and

(ii) Direct the Defendants to pay for the costs of the suit.

For Plaintiff : Mr.T.Mohan, Senior Advocate
for Mr.R.Anish Kumar

For Defendants : Mr.A.K.Sriram, Senior Advocate
for M/s Vincent and Vincent for D2
No appearance for D1 & D3

****

JUDGMENT

The suit was filed by the plaintiff seeking a judgment and decree against the defendants, jointly and severally, to pay the plaintiff a sum of Rs.2,56,15,793.37 along with interest thereon at 18% per annum from the date of plaint till the date of decree and for further interest from the date of decree till the date of realization at such rate as the Court decides. In addition, the plaintiff also prayed for costs of the suit. In course of trial, the plaintiff relinquished the claim against the third defendant and confined such claim to the first and second defendants.

2. In the plaint, the plaintiff averred that it supplied 10 consignments of Frozen Headless Shell On Black Tiger shrimp under the brand 'Bamboo' by transfer from within the United States of

America (the USA). After giving credit to amounts paid in respect of these 10 consignments, the plaintiff stated that a principal sum of Rs.46,89,261.72 remains unpaid and that the defendants are also liable to pay interest thereon at 12% p.a. amounting to Rs.5,47,410/-. Thus, an aggregate sum of Rs.52,36,671.72 was claimed in respect of amounts remaining due and payable towards these 10 consignments.

3. The plaintiff also stated that Purchase Order No.100470 dated 20th December 2011 and Purchase Order No.100471 dated 20th December 2011 and 5th April 2012 were issued by the first defendant for the import of Frozen Raw Head On Fresh Water shrimp under the brand 'Blue Rose'. Pursuant thereto, the plaintiff stated that it exported goods as per the above mentioned purchase orders. The goods were returned subsequently by the defendants. Upon such return, the goods were sold at a discount. The plaintiff also stated that it suffered interest loss, foreign exchange loss, cold storage charges and transportation charges in relation to the return of these goods by the defendants. Towards this head, the plaintiff claims an

aggregate sum of Rs.67,82,147/-.

4. Apart from the above, the plaintiff stated that the first defendant issued Purchase Order No.100477 on 5th April 2012 for supply of Frozen Raw Head Less Shell on Black Tiger shrimps under the 'Sea Wealth' brand. The total supply value was US $ 199,233.60 which is equivalent to Rs.1,13,17,464.65 at the exchange rate of Rs.54 per US $ as per the rates prevailing on the date of institution of the suit. After reckoning interest on the principal sum of Rs.1,13,17,464.65 and adding foreign exchange loss of Rs.1,16,846/- and Government incentive loss of Rs.7,74,720/-, an aggregate claim of Rs.1,35,96,974.65 was made on this account.

5. The plaintiff asserts that all the communications relating to the aforementioned supplies and payments in respect thereof were between the plaintiff and the second defendant. The plaint draws reference to several of these emails. The plaintiff also asserts that the second defendant is the principal officer of the first defendant and

holds 90% of the paid-up share capital/stock of said first defendant. According to the plaintiff, the second defendant filed bankruptcy proceedings before the court in the USA and that, therefore, it becomes clear that the first defendant was used as a facade by the second defendant to defraud suppliers of shrimp, such as the plaintiff. Consequently, the plaintiff asserts that the corporate veil of the first defendant is liable to be lifted so as to grant the judgment and decree against the first and second defendants jointly and severally.

6. In spite of service of suit summons, the first defendant failed to appear either in person or through counsel. The second and third defendants filed written statements.

7. In the written statement of the second defendant, the second defendant asserted that he is a foreign national, who is not resident in India, and, therefore, not amenable to the jurisdiction of this Court. The second defendant further stated that he became the President of

the first defendant on 1st February 2013 and that Mr.Jolly Tharayil was the President prior thereto. The second defendant also stated that the day-to-day affairs of the first defendant were managed by the Board of Directors with guidance from the Chief Financial Officer, the Chief Executive Officer and other officers of the first defendant.

8. As regards the 10 consignments, i.e. goods which were already imported into the USA and stored in a warehouse called "US Growers Cold Storage Inc" in the State of California at Los Angeles, USA, the second defendant stated that the first defendant was unable to sell these goods to its customers. The second defendant further stated that some customers returned the goods citing poor quality; some others refused to pay the price of the goods citing poor quality; and yet others neither returned the goods nor paid the price of the goods. In those circumstances, the second defendant stated that the first defendant had contacted the plaintiff and asked the plaintiff to inspect and take back the goods. Although the plaintiff promised to draw up an inventory and take back the goods, it failed to do so.

Hence, the second defendant stated that the first defendant is not liable to pay any money in respect thereof to the plaintiff.

9. As regards the goods supplied by the plaintiff under Purchase Order Nos.100470 and 100471, the second defendant stated that these goods were found unfit for sale in the USA due to poor quality and, therefore, the first defendant was constrained to return the goods by refrigerated truck on the specific instructions of the plaintiff. The second defendant further stated that the first defendant has raised a credit note on the plaintiff towards costs of shipment / transportation /storage, etc., which the plaintiff agreed to but failed to pay.

10. As regards the supply made by the plaintiff under Purchase Order No.100477, the second defendant stated that the first defendant was unable to sell the goods to its customers and that the plaintiff was contacted and requested to take back the goods. As in the case of Purchaser Order Nos.100470 and 100471, the second defendant stated

that the plaintiff promised to take back the goods but failed to do so.

11. The second defendant also stated that the first defendant filed for bankruptcy proceedings under Chapter 7 of the United States Bankruptcy Court on 21st June 2013 and that an amount of US $ 199,333 was mentioned in the schedule of unsecured creditors as the amounts due to the plaintiff from the first defendant. In addition, the second defendant stated that a sum of US $ 150,000 was mentioned as the value of goods belonging to the plaintiff out of the total sum of US $ 250,000 shown as inventory.

12. The second defendant also asserted in the written statement that the first defendant is a limited liability company and that, consequently, the second defendant cannot be mulcted with liability in respect of any claim against the first defendant either as shareholder or officer. The second defendant denied that he had conducted the business of the first defendant in a fraudulent manner.

13. The third defendant stated that he was only acting as the Manager of the first defendant and that he merely acted in compliance with the instructions of the first defendant. He also stated that he did not obtain any pecuniary gain from the suit transactions, and that he cannot be held liable for the alleged debt owed by the first defendant to the plaintiff.

14. Based on the above pleadings, the following issues were framed by this Court on 18th October 2019:

> *"1. Whether the defendants are liable to pay the plaintiff an amount of Rs.2,56,15,793.37 together with interest thereon at 18% p.a. from the date of plaint till the date of decree?*
>
> *2. Whether the 2nd defendant being the President and Majority shareholder of the 1st defendant can hide behind the corporate veil of the 1st defendant to avoid payments to the plaintiff for the supplies effected to the 1st defendant company and contracted by the 2nd defendant after deliberately taking steps to declare the the 1st defendant company a bankrupt company in the*

US in anticipation of the present suit and legal proceedings?

3. Whether the 2nd defendant representing to the 1st defendant is entitled to act contrary to the undertaking given to the plaintiff to make payments for the suppliers effected to the 1st defendant?

4. Whether the 2nd defendant has any legal excuse to deny payment to the plaintiff for the supplies contracted by the 2nd defendant and 3rd defendant on behalf of the 1st defendant?

5. Whether the present suit initiated against the defendants is barred merely because a fraudulent bankruptcy proceeding was initiated to declare the 1st defendant bankrupt by the 2nd defendant anticipating the filing of the present suit?

6. To what other relief the plaintiff is entitled?"

15. The plaintiff examined Mr.K.Eravikumar, its Managing Director, as PW1. Mr.K.Eravikumar filed an affidavit by way of evidence and 131 documents were exhibited through him as Exs.P1

to P131. The second defendant filed an affidavit by way of evidence and was examined as DW1. Through DW1, 21 documents were exhibited as Exs.D1 to D21. Both PW1 and DW1 were cross-examined by learned counsel for the rival party concerned.

Counsel and their contentions:

16. Oral arguments on behalf of the plaintiff were advanced by Mr.T.Mohan, learned senior counsel, assisted by Mr.R.Anish Kumar, learned counsel. Oral arguments on behalf of the second defendant were advanced by Mr.A.K.Sriram, learned senior counsel, assisted by Mr.V.K.Arul Raj, learned counsel. Written arguments and revised written arguments were filed on behalf of the plaintiff and written arguments were filed on behalf of the second defendant.

17. Mr.Mohan opened his submissions by stating that the suit was filed for recovery of money towards supply of goods under 13 purchase orders. With regard to the objection on the ground of jurisdiction, he contended that the second defendant did not protest

while lodging the vakalat. He further submitted that the plaintiff applied for leave to sue the defendants before this Court and such leave was granted by allowing A.No.2769 of 2013. He also adverted to the fact that the second defendant filed an application (A.No.5935 of 2013) to revoke leave and that such application was rejected by order dated 27th February 2014. In these circumstances, he contended that it is no longer open to any of the defendants to challenge the jurisdiction of this Court.

18. The next contention of Mr.Mohan was that the first defendant sought discharge of liability by filing a petition under Chapter 7 of the United States Bankruptcy Court. He pointed out that the first defendant failed to obtain an order of discharge. In this connection, he referred to and relied upon Ex.D17, particularly at pages 941 to 943 of the convenience typed set. As regards the personal bankruptcy petition of the second defendant, he pointed out that the bankruptcy filing was limited to customer debts and did not extend to business debts. He further submitted that all the email

communications on behalf of the first defendant were sent by the second defendant, who holds more than 90% of the paid-up share capital/stock of the first defendant and completely controls the first defendant.

19. By referring to the criminal complaint filed by the plaintiff against the second defendant, Mr.Mohan pointed out that anticipatory bail was granted to the second defendant subject to several conditions, including the surrender of his passport. In breach of such condition, he submitted that the second defendant fled to the USA and proceeded to file a bankruptcy petition on behalf of the first defendant so as to evade liability towards creditors including the plaintiff. He also submitted that an order of attachment was issued in respect of one of the immovable assets of the second defendant in India and that the said attachment order was made absolute after the application was contested by the second defendant. In this factual context, he submitted that the corporate veil is liable to be raised to hold the second defendant liable for the debts of the first defendant.

20. With regard to the merits of the matter, Mr.Mohan submitted that no quality issues were raised by the first and second defendants upon receipt of the consignments. He then pointed out that a sum of US $ 199,333 was mentioned in the schedule to the bankruptcy petition as being due and payable to the plaintiff. He relied upon the admission of DW1 in response to question No.98 in course of cross-examination. By also relying upon the answers to question Nos.1 to 3 by DW1 during cross-examination, he pointed out that DW1 admitted that he has been the sole shareholder of the first defendant from May 2013. By relying upon the judgments in *Lakhpat Rai v. Atma Singh, AIR 1962 Punj 228, In Re Sumermul Surana, AIR 1932 Cal 124,* and *Veeranna v. Official Assignee, AIR 1940 Mad 47*, he contended that even the adjudication by a foreign court of a person as an insolvent does not vest an immovable property in India with the Assignee. By further referring to the answer of DW1 to question No.257 in course of cross-examination, he submitted that DW1 admitted that he did not disclose the personal properties in

Kerala in the bankruptcy proceedings in the USA on the ground that the bankruptcy court does not have jurisdiction over properties outside the USA. Therefore, he submitted that the plaintiff is entitled to a decree both against the first and second defendants and to enforce such decree against the second defendant by bringing the attached property for sale.

21. As regards lifting the corporate veil, after referring to several communications from the second defendant with regard to the liability to make payment, he referred to and relied upon several judgments. Paragraph 20 of the judgment of the Delhi High Court in *Murli Manohar Leasing and Finance Co. Pvt. Ltd. v. Intraport India Ltd, 2009 SCC OnLine Delhi 2026*, was relied upon with regard to the principles relating to lifting of the corporate veil. *Singer India Limited v. Chander Mohan Chadha, (2004) 7 SCC 1,* particularly paragraph 15 thereof, was relied upon for the proposition that the corporate veil may be disregarded if the corporate personality is being used as a cloak for fraud or for improper conduct or if the company was formed to evade obligations imposed by law. The judgment of the *Delhi High Court in Saurabh Exports vs Blaze Finlease*

And Credits Pvt. Ltd., (2006) 129 DLT 429, was also relied upon for the principle that a money decree could be passed against the directors of the company if it is found that the company was a front for the business of the directors. As regards violation of the conditions imposed while granting anticipatory bail, he relied on an order of the Punjab and Haryana High Court in *Dr.William Dean v. State of Punjab and Another, Crl-M. No.54203 of 2021 (OandM),* dated 07.02.2024, wherein the Court imposed costs of Rs.10 lakhs.

22. Mr.A.K.Sriram, learned senior counsel, made submissions in response. By way of preliminary objections, he submitted that the plaintiff was aware of the bankruptcy proceedings in the USA. In this connection, he referred to paragraph 93 of the plaint, the answers of PW1 to question Nos.105 to 108 and 121 to 124, and Exs.D17 to D20. According to him, knowledge of bankruptcy proceedings is sufficient and receipt of notice in such proceedings is not necessary for such proceedings to be valid and binding on the plaintiff. He also referred to the personal insolvency proceedings of the second defendant by

drawing attention to Ex.D20.

23. The next preliminary objection raised by him was on the ground that Mr.Eravi Kumar was disqualified as director on the date of passing the resolution to file the present suit. In order to substantiate this contention, he referred to the answers of PW1 to question Nos.1 to 8 and 82 to 92 in course of cross-examination. As regards the scope of Order XXIX of the Code of Civil Procedure, 1908 (the CPC), he submitted that the same only authorises verification of pleadings, but not the institution of a suit. In support of this proposition, he relied upon the judgment in *Indian Commerce and Industries Pvt. Ltd. v. Swatharma Swarajya Sangha, 1998-1-L.W.195.*

24. On the merits of the dispute, the first contention of Mr.Sriram was that the plaintiff failed to submit a statement of account indicating the total value of goods supplied, the value of damaged goods, the amount realized by sale to third party buyers

and the like so as to sustain a money claim in respect of supply of goods. On this issue, he referred to the answers of PW1 to question Nos.133 and 134 and Ex.P92, which was relied upon by PW1. He pointed out that Ex.P92 does not contain the requisite details to sustain a money claim, especially when several consignments were returned to the plaintiff or rejected by the customers of the first defendant. He also submitted that the Export Credit Guarantee Corporation (ECGC) paid a sum of Rs.79,50,000/- in respect of goods supplied under Purchase Order No.100477 to the plaintiff's bank, IDBI Bank. Consequently, without prejudice to other contentions, he contended that the plaintiff is not entitled to this claim to that extent.

25. His next contention was that no evidence was adduced by the plaintiff with regard to the interest claim, foreign exchange loss claim, price discount claim and cold storage charges in respect of the originally goods supplied pursuant to Purchase Order Nos.100470 and 100471, and later returned to the plaintiff.

26. As regards the supply made under Purchase Order No.100477, he submitted that the invoice value was disclosed in the bankruptcy petition. Consequently, he contended that the plaintiff should have lodged a claim in the bankruptcy proceedings with regard to this claim. Having failed to do so, he submitted that the said claim cannot be sustained in this suit.

27. On the question of lifting the corporate veil, learned senior counsel submitted that the only relevant averments are those in paragraphs 83 and 93 of the plaint. Likewise, with reference to the proof affidavit of PW1, he submitted that only paragraphs 97(k), (l) and (m) are relevant. By referring to the averments in paragraphs 83 and 93 of the plaint, learned senior counsel submitted that these averments are totally insufficient for the purposes of foisting liability on the second defendant by lifting the corporate veil. In this regard, he pointed out that the first defendant was incorporated in 2001, whereas the transactions forming the subject of the suit took place much later. He also pointed out that the bankruptcy petition (Ex.D17)

discloses several creditors and not only the plaintiff. As a corollary, he contended that it cannot be said that the bankruptcy petition was filed solely with a view to defeat the claim of the plaintiff. With regard to the circumstances under which the corporate veil may be lifted, he referred to and relied upon the following judgments and concluded his submissions by contending that the facts and circumstances herein do not justify imposing liability on the second defendant by piercing the corporate veil:

(i) Delhi Development Authority v. Skipper Construction Co. Pvt. Ltd., (1994) 4 SCC 622 (Skipper Construction), particularly paragraphs 26 to 28 thereof.

(ii) Rakesh Mahajan v. State of U.P. and 4 others, AIR OnLine 2019 ALL 2059, especially paragraphs 70 to 74 thereof.

(iii) Sanuj Bathla & another v. Manu Maheswari & another in CRP No.166 of 2018, order dated 12.04.2021, particularly paragraphs 14 to 17 thereof.

(iv) Balwant Rai Saluja v. Air India

Limited, (2014) 9 SCC 407(Balwant Rai Saluja), particularly paragraphs 70 to 74 and 82 thereof.

28. By way of rejoinder, Mr.Mohan refuted the contention on the scope of Order XXIX of the CPC by referring to and relying upon the judgment of the Hon'ble Supreme Court in *United Bank of India v. Naresh Kumar and Others, (1996) 6 SCC 660.* He further contended that the disqualification was set aside with effect from the original date of alleged disqualification and, therefore, the institution of the suit was in order. He reiterated that the suit claim was partly admitted. With regard to the payment of Rs.79,50,000/- by ECGC, he contended that the plaintiff is required to pay ECGC this amount upon receipt thereof from the first and second defendants, and that the claim cannot be rejected on that count. As regards evidence in support of the claims, he submitted that all claims are supported by documentary evidence, except for the claims towards interest and foreign exchange losses. As regards these, he contended that the claims may be decided on the basis of undisputed information in the

public domain regarding prevailing interest and conversion rates.

Discussion, analysis and conclusion

29. Out of the six issues framed by this Court, the 6th issue pertains to the implications of the bankruptcy proceeding on the prosecution of the suit. Since this is a preliminary issue, it is dealt with first. A document relating to the bankruptcy proceedings of the first defendant was exhibited through DW1 as Ex.D17. The document discloses that the said petition was filed by the first defendant, Sea Wealth Products Inc., through the second defendant, Mr.Paul Morris Faustin. The petition was lodged under Chapter 7 of the United States Bankruptcy Code on 21st June 2013.

30. At page 927 of the convenience typed set, the details of current partners, officers, directors and shareholders of the first defendant are set out. In relevant part, it reads as under:

> *"b. If the debtor is a corporation, list all officers and directors of the corporation, and each stock holder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.*

NAME AND ADDRESS	*TITLE*	*NATURE AND PERCENTAGE OF STOCK OWNERSHIP*
Paul Morris *8238 Sheffield Road* *San Gabriel, CA 91775"*	*President/Secretary*	*100%*

In response to question Nos.1 to 3 in course of cross-examination, DW1 stated as under:

> *"Q1: Who were the major shareholders of the 1st defendant company at the time of initiation of bankruptcy proceedings?*
> *A: Just me.*
> *Q2: Would I be right in saying that your wife and son were also shareholders in the company for a substantial a period of time prior to the bankruptcy?*
> *A: No.*
> *Q3:How long were you the sole shareholder of the 1st defendant company?*
> *A: I became the sole shareholder of the 1st defendant company from May 2013. Witness adds: I do not know the exact date."*

31. When Ex.D17 and the answers of DW1 are considered

jointly, it is abundantly clear that the second defendant was the sole shareholder of the first defendant at the time of lodging of the bankruptcy petition on 21st June 2013. In response to Question No.99 in course of cross-examination, DW1 admitted that he did not file any evidence of service of notice on the plaintiff in the bankruptcy proceedings. The relevant Question No.99 and the answer thereto are set out below:

> *"Q99: Have you filed any proof to show that notice was served on the plaintiff in the bankruptcy proceedings?*
> *A:No. Because bankruptcy court does not give me the freedom to follow up on every mail that goes out to the creditors. On one occasion the supervisor showed me the addresses and list of all the creditors which I had to certify as correct so I assumed that they were all served with the notice."*

The bankruptcy petition appears to have been closed on 11th June 2014 as per pages 941 to 943 of the convenience typed set. At page 941, it is recorded as under:

> *"disposition: Discharge Not Applicable"*

32. In spite of the plaintiff contending expressly that the claims against the first defendant were not discharged in the bankruptcy proceedings, the second defendant has failed to effectively counter such contention, including by placing necessary evidence on foreign law. The following answers of DW1 in response to questions 271-273 during cross-examination are relevant in this regard:

> *"A271: What is meant by "NO DISCHARGE" at page no.56 of Ex.D17?*
> *A: This is the standard legal phrasing in the US of company bankruptcy proceedings.*
> *Q272. The witness is shown Ex.D17 page No.54. What is meant by "Debtor Disposition: Discharge Not Applicable"?*
> *A: I do not know.*
> *Q273: I put it to you that "NO DISCHARGE" means the 1st defendant company is not entitled for protection under bankruptcy code?*
> *A: No. It is a wrong interpretation"*

33. The first defendant, which is an entity entirely under the

control of the second defendant, has chosen not to contest the proceedings although the second defendant has actively contested the same. There is also no evidence that the first defendant was dissolved, either pursuant to the bankruptcy proceedings or otherwise, and has ceased to exist as an entity. DW1 also admitted that there is no evidence of service of notice on the plaintiff in the bankruptcy proceedings. In these facts and circumstances, it certainly cannot be concluded that these proceedings are barred against the first defendant either on account of the bankruptcy proceedings or for any other reason.

34. As regards the personal bankruptcy proceedings of the second defendant, the plaintiff contended that the bankruptcy proceedings are confined to customer debts and would not have any impact on business debts. The second defendant has not placed on record any evidence of the outcome of these personal bankruptcy proceedings. In addition, on being questioned with regard to the failure to disclose the immovable assets of the second defendant in

the bankruptcy proceedings in the USA, the second defendant (DW1) admitted that courts in the USA do not have jurisdiction over the immovable assets of said defendant in India.

35. On the basis of the above discussion and analysis, I conclude that the present suit is not barred in view of the bankruptcy proceedings in the United States. Issue No.5 is disposed of on these terms.

Issue Nos.2 to 4

36. Issue Nos.2 to 4 pertain to the liability of the second defendant for the dues of the first defendant. Since these issues are interrelated, they are dealt with and disposed of jointly. As stated earlier, Ex.D17, particularly the statement of financial affairs, Sl.No.12 thereof, discloses that the second defendant owns 100% of the stock of the first defendant. The said document also discloses that he is the President of the Corporation. The names of no other directors or officers are disclosed therein. In response to Question Nos.1 to 3 in

course of cross-examination on 19th April 2022, DW1 admitted that he was the sole shareholder of the company from May 2013, i.e. even before the bankruptcy petition was filed.

37. The information disclosed in Ex.D17 contradicts the statement made by the second defendant in paragraph 8 of the written statement to the effect that the first defendant is managed by a board of directors consisting of Mr.Jolly Tharayil, Mr.Paul Morris, Mr.Sanjay Paul and Mr.Patrick Law. It also contradicts the statement made in paragraph 12 of the written statement to the effect that the day-to-day affairs and management of the business is the collective responsibility of the board of directors.

38. In course of cross-examination, DW1 was asked whether the plaintiff and its claims was one of the reasons for filing the bankruptcy petition in the USA. The relevant question No.120 and the answer thereto are as under:

> *"Q.120 Have you alleged that the plaintiff was the reason for you to file bankruptcy*

proceedings in the U.S.?

A: One of the reasons."

The plaintiff asserted in the plaint that the second defendant assured payment by the first defendant of amounts payable towards goods supplied in multiple communications with the plaintiff. It is sufficient to refer to the following communications. By email of 17th November 2012 (Ex.P91), the second defendant, communicating on behalf of the first defendant, stated as under:

> *"From: Paul Morris [mailto:paul@scewealthproducts.com]*
>
> *Sent: 17 November 2012 00:19*
>
> *To Five Star Marine*
>
> *Cc:marketing@seaweatproducts.com, Daniel Chitsten*
>
> *Subject: Final Account of Five Star as of 11/14/12*
>
> *Dear Ravi,*
>
> *Since Umang was back last night, we have prepared the final account as per books. The differences that you may have is highlighted in red with comments. As such we owe you $199,382.40 from our PO 100477 and $71,637.12 from the stock transfer. I will start our discussion with Mr. Daniel Christen on the repayment possibilities on PO 100477 and will discuss with you how we should settle the stock transfer portion.*

Best regards
Paul Morris
SEA WEALTH
100 S. Electric Ave
Alhambra, CA 91801
Phone:626-289-7196
Cell 626-826-2780
www.seawealthproducts.com"

39. In response, the plaintiff, by email of 17th November 2012 (Ex.P92), made a claim of US $ 86,838.98 towards local stock transfer and a further claim of US $ 199, 238.60 towards the export consignment under Purchase Order No.100477. By reply dated 21st November 2012 from the first defendant through the third defendant, liability of US $ 199382.40 + US $ 71637.12 was admitted. The relevant email is set out below:

"From:
Umang-Sea Wealth Products Inc
[mailto:marketing@seawealthproducts.com)
Sent: 21 November 2012 02:03
To: 'Five Star Marine'; paul@seawealthproducts.com
Cc: 'Daniel Christen'

Subject: Resending account as of 11/20/12 of Five Star Marine

Ravi:

Attaching our account in PDF version. Please note we are showing total payable $ 271,019.52. Please double check at your end. I have highlighted the missing information.
Please double check at your end as our account shows $199,382.40 + $71,637.12 payable to you.
Regards,

Umang Sodagar

Sea WEALTH

Sea Wealth Products Inc

100 S Electric Ave
Unit # 1,
(Alhambra CA 91801) direct: (626) 737 1247
t:(626) 289 7196 ext 103
f.(626)289 3076
marketing@seawealthproducts.com
www.seawealthproducts.com"

40. The plaintiff has placed on record the order issued by this Court in the anticipatory bail petition filed by the second defendant. The said order was exhibited as Ex.P111. Paragraph 11 of the said order sets out the bail conditions, which are as under:

"11. Accordingly, the petitioner is ordered to be released on bail, in the event of arrest, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) together with two sureties each for a like sum to the satisfaction of XIV Metropolitan Magistrate, Egmore, and on further condition that he shall appear before the respondent police everyday twice at 10.30 AM and 5.30 PM for a period of two weeks and thereafter as and when required. The petitioner is further directed to surrender his passport before the Magistrate concerned.

Petitioner shall surrender before the Court referred to above, for executing the bond and furnishing sureties within two weeks from the date of receipt of copy of this order, failing which, this order shall stand cancelled."

41. The admitted position is that the second defendant failed to comply with the conditions by surrendering his passport and instead left for the USA. The anticipatory bail order was issued on 10th April 2013. The bankruptcy petition was lodged soon thereafter by the

second defendant for and on behalf of the first defendant on 21st June 2013. As narrated earlier, the second defendant admitted in course of cross-examination that the plaintiff was one of the reasons for lodging the bankruptcy petition.

42. The second defendant/DW1 was questioned about the violation of the conditions imposed by this Court while granting anticipatory bail. The relevant questions and answers are as under:

> *"Q121: How did you leave India after obtaining anticipatory bail?*
>
> *A: I legally left. I took a flight.*
>
> *Q122. From which Airport did you leave India?*
>
> *A: I do not remember.*
>
> *Q123: Did you inform the authorities at the Airport about your anticipatory bail conditions?*
>
> *A:I do not remember.*
>
> *Q124: At the time you left the country you were aware that you had to surrender your passport to the Jurisdictional Magistrate?*
>
> *A:I do not know.*

Q125: Please see Ex.P111. Is this order not passed in your petition?

A: I have not seen this order.

Q126: Is this the first time you are seeing this order?

A:Yes. I was only told about an order and I was legally advised not to comply.

Q127: Who told you not to comply with the court order?

A: I refuse to say. It was a legal opinion."

43. The pleadings and evidence on record disclose that the first defendant is an entity in which the second defendant holds 100% of the share capital/stock. The only officer disclosed in the bankruptcy proceedings in the USA is the second defendant. The bankruptcy proceeding was initiated by the second defendant for and on behalf of the first defendant on 21st June 2013, which is a few months after the conditional order of anticipatory bail was issued on 10th April 2013. The answers of DW1 to Question Nos.121 to 127 disclose that the conditional order of bail was contravened by leaving the country without surrendering the passport as directed. The material

communications relating to the liability of the first defendant to discharge its debts to the plaintiff emanated from the second defendant.

44. The Hon'ble Supreme Court dealt with the facts and circumstances in which the corporate veil of an entity may be lifted in multiple judgments such as *Skipper Construction* and *Balwant Rai Saluja*. It is sufficient to set out paragraphs 71 and 74 of *Balwant Rai Saluja*:

> *"71.In recent times, the law has been crystallized around the six principles formulated by Munby J. in Ben Hashem v. Ali Shayif. The six principles, as found at paras 159– 64 of the case are as follows-*
>
> *(i) Ownership and control of a company were not enough to justify piercing the corporate veil;*
>
> *(ii) the Court cannot pierce the corporate veil, even in the absence of third party interests in the company, merely because it is thought to be necessary in the interests of justice;*
>
> *(iii) the corporate veil can be pierced only if there is some impropriety;*
>
> *(iv) the impropriety in question must be linked*

to the use of the company structure to avoid or conceal liability;

(v) to justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and

(vi) the company may be a 'façade' even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The Court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

....

74.*Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the* *veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case."*

Thus, in a nut-shell, the corporate veil may be lifted or pierced if an individual has control over the company and misuses the corporate veil as a device or facade to evade liability.

45. For reasons set out above, the facts and circumstances of this case justify and warrant piercing the corporate veil to fasten liability on the second defendant. Issue Nos.2 to 4 are disposed of in these terms.

46. Issue No.1 pertains to the liability of the defendants to pay the plaintiff a sum of Rs.2,56,15,793.37 with interest thereon at 18% p.a. from the date of plaint till the date of decree. As stated at the outset, this claim consists of about three components. The three components are set out at paragraph 4 of the plaint. Out of these

components, the first component pertains to the amounts outstanding towards supply of 10 consignments on local stock transfer basis under the brand "Bamboo" and for the value of retained stock pertaining to Purchase Order Nos. 100470 and 100471.

47. The claim is for a sum of US $ 86838.18, which includes the principal claim of Rs.46,89,261.72 and interest claim of Rs.5,47,410/-. Both in Exs.P91 and P93, as regards this claim, a sum of US $ 71637.12 has been admitted as due and payable. By virtue of such admission, it is not necessary for the plaintiff to prove the claim to this extent. Ex.P92 is a statement of account for the sum of US $ 86838.98. The computation provided therein is as follows. The aggregate value of 3890 cartons that were transferred by local stock transfer was US $ 343829.50. A sum of US $ 164980.52 was received as part payment. While returning goods supplied under Purchase Order Nos.100470 and 100471, stocks of the value of US $ 36494 were retained by the contesting defendants. By adding this amount to US $ 343829.50 and deducting the sum of US $ 164980.52 therefrom, the net receivable of

US $ 86838.18 was arrived at. The relevant purchase orders were filed as Exs.P4-P10 and P12-P14. Corresponding invoices were filed as Exs.P15-P17, P31, P37, P41 and P47-P49. In response to Ex.P92, the first defendant issued email of 21 November 2012. This email refers to an attached statement of account, but neither party has placed the same on record. On balance of probability, especially in the absence of effective rebuttal, this claim stands proved. On account of the conclusions reached while disposing of Issue Nos.2 to 4, the second defendant also becomes liable for this claim.

48. The second component of the suit claim is for a sum of Rs.67,82,147/- towards alleged losses suffered on account of return of consignments by the defendants. The details of this claim are set out in Table X and XI at internal pages 28 to 30 of the plaint. The claim consists of four components. These components are interest, foreign exchange loss, price discount and cold storage charges and transport charges.

49. The defence raised by the second defendant is that the goods were returned by the first defendant to the plaintiff because they did not meet the quality requirements or standards. In the written statement, the second defendant asserted that these goods were taken back by the plaintiff without demur. It was further stated that the defendant failed to adduce evidence with regard to the re-sale of such goods at discount or with regard to any of the claims made under Sl. Nos.1 to 3 of Tables X and XI.

50. On examining the documentary and oral evidence of the plaintiff, the first aspect to be noticed is that the plaintiff appears to have accepted the return of goods without communicating that it is at the risk and cost of the first and second defendants. It is also conspicuous that no credible documentary evidence of resale, including the alleged discounted resale price, is available. Although the plaintiff relied on Ex.P101 in this regard, on examining the same, it is not possible to discern whether it pertained to stock returned by the first defendant or, more importantly, to conclude that the re-sales

were at a discount. Likewise, no evidence of foreign exchange losses was adduced. As regards cold storage charges and transport charges, the plaintiff relied on Ex.P100. As in the case of alleged discounted re-sales, on the basis of Ex.P100, it is not possible to identify the shrimp stocks it pertains to. For these reasons, including the failure to submit a statement of account in this regard, the contention of the second defendant is liable to be accepted and the suit claim as regards the alleged loss of Rs.67,82,147/- towards the return of consignments of Frozen Head-on Shell on Freshwater Shrimp exported under the brand 'Blue Rose' is rejected.

51. The third component of the suit claim is for US $ 199,233.60 towards export of Frozen Raw Headless Shell on Black Tiger shrimp under the brand 'Sea Wealth' pursuant to Purchase Order No.100477. The claim consists of the principal sum of Rs.1,13,17,464.65 + interest of 13,87,944 + foreign exchange loss of 1,16,846/- + Government incentive loss at Rs.7,74,720/-. As regards this claim, there is an admission both in Exs.P91 and P93 to the extent of US $ 199,382.40.

Similarly, in the bankruptcy petition, at Schedule F, the first defendant acting through the second defendant, disclosed claims of US $ 199,333 towards the above mentioned purchase order and a further sum of US $ 71637.12/- towards the first component discussed above. In the written statement of the second defendant, this claim was dealt with as under:

"21. The Defendant submits that, 1st Defendant had also issued import purchase order on the Plaintiff, the details whereof is given hereunder:

S No	***Purchase order No***	***Dated***	***Description of the Goods supplied/ Exported***	***Invoice No/Dated***	***Value of Goods Supplied***	
					In USD	***In INR***
12	*100477*	*04.05.2012*	*Frozen Raw Head Less Shell on Black Tiger Shrimps "Sea Wealth" Brand*	*FSMP/SWP/005/2012-13 Dated 10.05.2011*	*1,99,233.60*	*113,17,464.65*

22. The Defendant submits that, however the 1st Defendant was not able to sell the "Goods" to the customers. In fact, some customers returned the "Goods" citing poor quality, *some customers refused to pay the price of the "Goods" citing poor quality and some customers neither returned the "Goods" nor paid the price of the "Goods".*

23. The Defendant submits that, therefore the 1st Defendant had contacted the Plaintiff asking them to inspect and take back the returned "Goods" so that the accounts could be finalized and settled. The Plaintiff promised to take an inventory and take back the returned "Goods" and adjust the sale price, but failed to do so. On account of shortage of quantity and lack of quality the Defendant is not liable to pay any money to the Plaintiff."

52. The second defendant failed to adduce any evidence to substantiate the assertions in paragraphs 22 and 23 of the written statement with regard to the poor quality of the consignment, the alleged return of goods by the first defendant's customers or the non-payment by such customers. In these facts and circumstances, on appreciation of the evidence on record, the only reasonable conclusion is that the claim stands proved on balance of probability. The other defence on the basis of the payment of Rs. 79,50,000/- by ECGC was refuted by the plaintiff on the ground that the amount is liable to be refunded to ECGC upon recovery of the same from the

contesting defendants. In response to Question No.55 in cross-examination, PW1 deposed to this effect. Therefore, the claim cannot be rejected for this reason. Since the amount has remained unpaid from May 2012, the plaintiff is also entitled to interest on this claim. Interest has been claimed and computed at 12% p.a. from 24th May 2012. By taking into account the interest rate prevailing at the relevant point of time, the claim is reasonable notwithstanding the absence of a contractual rate of interest. The claims towards foreign exchange loss due to crystallisation by bank (Rs.1,16,846) and Government incentive losses (Rs.7,74,720/-) are, however, rejected due to lack of credible evidence.

53. The plaintiff has paid a sum of Rs.2,59,683/- as court fee. As the partly successful party, the plaintiff is entitled to a sum of Rs.2,00,000/- towards court fee and a further sum of Rs.4,00,000/- towards lawyer's fees and other expenses. In the aggregate, the plaintiff is entitled to a sum of Rs.6,00,000/- as costs.

54. In the result, the suit is partly decreed by directing the first and second defendants to pay the plaintiff the following:

(i) a sum of Rs.52,36,671.72, including the principal sum of Rs.46,89,261.27 and interest of Rs.5,47,410/- up to 31 May 2013, towards balance dues for supply of 10 consignments of shrimp on local stock transfer basis under the brand "Bamboo", and for the price of retained goods under Purchase Order Nos.100470 and 100471.

(ii) a sum of Rs.1,27,05,408.65 towards supply of shrimp pursuant to Purchase Order No.100477, which sum consists of the principal sum of Rs. 1,13,17,464.65 and interest of Rs.13,87,944/- up to 31 May 2013.

(iii) The principal sums of Rs.46,89,261.27 and Rs. 1,13,17,464.65 shall be paid with further interest on these amounts from the date of plaint till the date of decree at 12% per annum and at 6% p.a. from the date of decree until realisation.

(iv) a sum of Rs.6,00,000/- as costs to the plaintiff.

(v) The order of attachment issued earlier in this suit shall remain in force until the decree is fully discharged.

23.01.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking Order: Yes/ No
Neutral Citation : Yes/No
kal

Plaintiff's witness:

Mr.K.Eravikumar - P.W.1

Second defendant's witness:

Mr.Paul Morris Faustin - D.W.1

Documents exhibited by the plaintiff:

Sl.No.	Description
Ex.P1	The Board Resolution of the plaintiff authorizing the signatory dated 20.08.2021.
Ex.P2	The print out copy of Direct Exports Against Purchase orderP.O

	No.100470 issued by 1st defendant to plaintiff dated 20.12.2011 along with enclosures and originals of Pre shipment report, test report, Bill of lading, certificate of origin declaration Form. (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P3	The print out copy of Direct Export Against Purchase order P.O No.100471 also dated 5/4/2012) issued by 1st defendant to plaintiff dated 20.12.2011 along with enclosures and originals of pre-shipment report, Test report, Bill of lading, Declaration Form (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P4	The print out copy Mail attaching purchase order of the defendant to the plaintiff for stock transfer in P.O.No.L00863/02.02.2012 dated 03.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P5	The print out copy of Mail from 3rd Defendant to plaintiff attaching PO.No.L00864 and mail attaching revised P.O.No.L00864 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P6	The Mail attaching purchase Order of the defendant to the plaintiff for stock transfer in P.O.No.L00865/07.02.2012. (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P7	The Mail attaching purchase order of the defendant to the plaintiff for stock transfer in P.O.No.L00866 / 03.05.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P8	The Mail attaching purchase order of the defendant to the plaintiff for stock transfer in P.O.No.L00872/07.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P9	The Mail attaching purchase order of the defendant to the plaintiff for stock transfer in P.O.No.L00876/23.03.2012 (The learned counsel for

	the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed)
Ex.P10	The Mail attaching purchase order of the defendant to the plaintiff for stock transfer in P.O.No.L00877 / 02.04.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P11	The print out copy of Direct Exports Against Purchase order P.O No.100477 issued by 1st Defendant to plaintiff together along with enclosures and originals of pre-shipment report, Test report, Bill of lading, Declaration Form (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P12	The print out copy of Mail attaching purchase order of the defendant to the plaintiff for stock transfer in O.P.No.L00883/ 11.05.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P13	The print out copy of Mail attaching purchase order of the defendant to the plaintiff for stock transfer in O.P.No.L00884/ 14.05.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed)
Ex.P14	The print out copy of Mail attaching purchase order of the defendant to the plaintiff for stock transfer in O.P.No.L00885/ 14.05.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P15	The print out copy of Invoice No.FSMP/SWP/TRF/002/2011- 2012 for P.O.No.L00863 together with details of cases released from US Growers Cold Storage Inc. dated 02.02.2012. (The learned counsel for the 2nd defendant objected the 65B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P16	The print out copy of Invoice No FSMP/SWP/TRF/002/2011- 2012 for P.O.No.L00864 together with details of cases released from US Growers Cold Storage Inc. dated 07.02.2012. (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section

	65 B filed).
Ex.P17	The print out copy of Invoice No.FSMP/SWP/TRF/003/2011- 2012 for P.O.No.L00865 together with details of cases released from US Growers Cold Storage Inc. dated 07.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P18	The print out copy Mail from 2nd Defendant to Motiphilip dated 09.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P19	The print out copy Mail from 2nd Defendant to Moti philip dated 10.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P20	The print out copy Mail from 2ndDefendant to Moti philip dated 15.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P21	The print out copy email from 2nd Defendant to Gadler dated 15.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P22	The print out copy email from 3rd Defendant to plaintiff dated 16.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P23	The print out copy of email from 2nddefendant to plaintiff dated 21.02.2012 (Affidavit under section 65 B filed).
Ex.P24	The Email from 2nddefendant to plaintiff dated 02.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P25	The Email from 2nd defendant to Timothy Jr.McDonell dated 24.02.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).

Ex.P26	The email from 2nd defendant to plaintiff dated 28.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex P27	The Email from plaintiff to 2nd defendant dated 28.02.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P28	The Email from 2nd defendant to plaintiff dated dated 29.02.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P29	The email from 2nd defendant to plaintiff dated 2.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P30	the Email from 2nd defendant to plaintiff dated 03.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P31	the print out copy of Invoice No.FSMP/SWP/TRF/004/2011- 2012 Invoice No.FSMP/SWP/TRF/005 2011-2011 Invoice No.FSMP/SWP/TRF/006/2011-2012 for P.O.No.L00866 together with details of cases released from US Growers Cold Storage Inc. (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P32	The Email from 3rd Defendant to Plaintiff dated 05.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B four) (Affidavit under section 65 B filed).
Ex.P33	The Email from Plaintiff to 3rd Defendant dated 6.3.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P34	The Email from 3rd Defendant to Plaintiff and Email from 2nd Defendant to Plaintiff dated 06.03.2012 and 07.03.2012 respectively (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).

Ex.P35	The Email from 3rd Defendant to Plaintiff dated 06.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P36	The Email from 2nd Defendant to Plaintiff dated 08.03.2012 (Affidavit under section 65 B filed).
Ex.P37	The Invoice No. FSMP/SWP/TRF/008/2011-2012 for P.O.No. L00876 together with details of cases released from US Growers Cold Storage Inc. dated 23.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P38	The Email from 2nd Defendant to Plaintiff dated 10.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P39	The Email from 2nd Defendant to Plaintiff dated 16.03.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P40	The Email from 3rd Defendant to Plaintiff dated 21.03.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P41	The Invoice No. FSMP/SWP/TRF/007/2011-2012 for P.O.No. L00877 together with details of cases released from US Growers Cold Storage Inc.dated 23.03.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P42	The Email from 2nd defendant to Plaintiff dated 04.04.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four)(Affidavit under section 65 B filed).
Ex.P43	The Email from 3rd Defendant to Plaintiff dated 06.04.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P44	The Email from Plaintiff to 2nd Defendant dated 18.04.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate

	enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P45	The Email from 3rd Defendant to Plaintiff dated 23.04.2012 (Affidavit under section 65 B filed).
Ex.P46	The Email from Plaintiff to 1st Defendant dated 12.05.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P47	The Invoice No. FSMP/SWP/TRF/009/2012-2013 for P.O.No. L00883 together with details of cases released from US Growers Cold Storage Inc. dated 11.05.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex. P48	The Invoice No. FSMP/SWP/TRF/010/2012-2013 for P.O.No. L00884 together with details of cases released from US Growers Cold Storage Inc. dated 14.05.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P49	The Invoice No. FSMP/SWP/TRF/011/2012-2013 for P.O.No.L00885 together with details of cases released from US Growers Cold Storage Inc. dated 14.05.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P50	The Email from 2nd Defendant to Plaintiff dated 29.05.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P51	The Email from Plaintiff to 2nd Defendant dated 12.06.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P52	The Email from 2nd Defendant to Plaintiff dated 12.06.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P53	The Email from 2nd Defendant to Plaintiff dated 13.07.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate

	enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P54	The Email from 3rd Defendant to 2ndDefendant dated 18.07.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P55	The Email from Plaintiff to 2nd defendant dated 27.07.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P56	The photocopy of F.I.R. 1881/2012 registered with the (J-9 Police Station) Thoraipakkam, Adyar filed by another party in the similar offense. Dated 21.07.2012.
Ex.P57	The Mail correspondence for taking back of returned consignments and truck charges paid details dated July 25 to August 4, 2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P58	The Email from 2nd Defendant to Plaintiff dated 03.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P59	The Email from Daniel to 3rd Defendant and Email from 3rd Defendant to Plaintiff both dated 06.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P60	The Email from 3rd Defendant to Plaintiff dated 08.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P61	The Email from Plaintiff to 2nd defendant dated 08.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P62	The Email from 2nd Defendant to Plaintiff dated 14.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four)

	(Affidavit under section 65 B filed).
Ex.P63	The Email from Plaintiff to 2nddefendant dated 18.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P64	The Email from 3rd defendant to Plaintiff dated 24.08.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P65	The Email correspondence from Plaintiff to 2nddefendant dated 24.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P66	The Email from Plaintiff to 2nd defendant dated 25.08.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P67	The Email from Welcome Fisheries to Plaintiff dated 01.09.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P68	The Email from Defendant to Welcome fisheries 3rd attaching accounts dated 06.09.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P69	The Email from Plaintiff to 3rd defendant dated 07.09.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P70	The Email from 3rd Defendant to Plaintiff dated 11.09.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P71	The Email from Plaintiff to 1st defendant dated 12.09.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed)

Ex.P72	The Email from Plaintiff to 3rddefendant dated 14.09.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P73	The Email from Plaintiff to 2nd defendant dated14.09.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P74	The Email from Plaintiff to 2nddefendant dated 24.09.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P75	The Email from Plaintiff to 2nd defendant dated 27.09.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P76	The Email from 2ndDefendant to Plaintiff dated 25.09.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P77	The Email from Plaintiff to 2 ^ (nd) defendant dated 26.09.2012 (The learned counsel for the 2 ^ (ed) defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P78	The Email from Plaintiff to 2nd defendant dated 01.10.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P79	The Email from Plaintiff to 2nd defendant dated 3.10.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P80	The Email from Defendant to Plaintiff dated 2nd 04.10.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P81	The Email from Plaintiff to 2nd defendant dated08.10.2012 (The

	learned counsel for the 2^{nd} defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P82	The Reminder Email from Plaintiff to 2^{nd}defendant dated16.10.2012 (The learned counsel for the 2^{nd} defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P83	The Reminder Email from Plaintiff to 2^{nd}defendant and Reminder Email from Plaintiff to 2^{nd} defendant both dated 19.10.2012 (The learned counsel for the 2^{nd}defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P84	The Email from 2^{nd} Defendant to Plaintiff dated 19.10.2012 (The learned counsel for the 2^{nd}defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P85	The Email from 2^{nd} Defendant to Plaintiff dated 07.11.2012 (The learned counsel for the 2^{nd}defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P86	The Email from Daniel Christen to Plaintiff dated 31.10.2012 (The learned counsel for the 2^{nd}defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P87	The Email from 2^{nd} defendant to Plaintiff dated 05.11.2012 (The learned counsel for the 2^{nd}defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P88	The Email from Plaintiff to 2^{nd}defendant dated 08.11.2012 (The learned counsel for the 2^{nd}defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P89	The Reminder Email from Plaintiff to 2^{nd}defendant dated 09.11.2012 (The learned counsel for the 2^{nd}defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P90	The Email from 2^{nd} Defendant to Plaintiff dated 11.11.2012 (The

	learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P91	The Email from 2ndDefendant to Plaintiff dated 17.11.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P92	The Email from Plaintiff to 2nd defendant dated 17.11.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P93	The Email from 3rd Defendant to Plaintiff dated 21.11.2012 (Affidavit under section 65 B filed).
Ex.P94	The Email from Plaintiff to 3rd defendant dated 21.11.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P95	The Email from Plaintiff to 2nd defendant dated 30.11.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P96	The Email from 2nd Defendant to Plaintiff dated 30.11.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P97	The Email from 2ndDefendant to Plaintiff dated 7.12.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P98	The Email from Plaintiff to 2nd defendant dated 07.12.2012 (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P99	The Email from 2nd Defendant to Plaintiff dated 11.12.2012 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).

Ex.P100	The Details of storage charges paid by the Plaintiff (Affidavit under section 65 B filed).
Ex.P101	The Details of goods sold after returned by the 1st Defendant (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P102	The office copy of Criminal Complaint lodged by the Plaintiff with F1-Chitadripet Police Station 29.12.2012
Ex.P103	The original Complaint Acknowledgment vide Community Service Register No. 402/2012 filed before the Chintadripet Police Station dated 31.12.2012.
Ex. P104	The photocopy of Petition for direction u/s 156(3) of CrPC in Crl MP No.276/2013 dated 18.1.2013.
Ex.P105	The photocopy of Order in Crl MP.No.276/2013 dated 23.01.2013.
Ex.P106	The original of F.I.R.108/2013 registered with the (F1-Police Station) Chintadripet, Egmore by the Plaintiff dated 03.02.2013.
Ex.P107	The Intimidating Email sent by 2nd defendant to Plaintiff and reply by the Plaintiff dated 17.02.2013 (The learned counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P108	The photocopy of Legal Notice issued by the 2nd Defendant dated 24.03.2013.
Ex.P109	The photocopy of Petition for anticipatory bail by 2nd defendant in Crl.O.P.MNo.4862/2013 inCr.no.108/2013 dated 25.02.2013.
Ex.P110	The photocopy of Status Report filed by Chintadripet Police in Crl.OP No.4862 / 2013 in Cr No.108/2013 dated 14.03.2013.
Ex.P111	The original of High Court Order in CrlOP.No.4862/2013 dated 10.04.2013.
Ex.P112	The photocopy of Bail Petition filed by 2nd 30.01.2013.
Ex.P113	The photocopy of Condition Bail granted by the Hon'ble Judicial Magistrate Court, Alandur in Crime No. 1881/2012 dated 01.02.2013.
Ex.P114	The photocopy of Intervening Petition in Crime No.1881/2012, filed before the Hon'ble Judicial Magistrate Court, Alandur, by the Plaintiff dated 18.02.2013.
Ex.P115	The Email correspondence of Magnum Estates Ltd. from B.B.Mishra to Consulate General of India in USA dated 13.02.2013 (The learned

	counsel for the 2nd defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed).
Ex.P116	The office copy of Plaintiff's letter to American Citizen Services dated 18.02.2013.
Ex.P117	The office copy of Letter from Plaintiff to Chief Public Grievances Officer, Chennai dated 25.02.2013.
Ex.P118	The office copy of Letter from Plaintiff to Commissioner of Police, Chennai dated 11.04.2013.
Ex.P119	The office copy of Letter from Plaintiff to Foreign Regional Registration Office, Chennai-6 dated 03.05.2013.
Ex.P120	The office copy of Letter from Plaintiff to the Chief Public Grievances 03.05.2013. Officer,, Chennai-2 dated
Ex.P121	The office copy of Letter from Plaintiff to American Citizen Services, Chennai-2 dated 03.05.2013.
Ex.P122	The office copy of Letter from Plaintiff to Foreign Regional Registration Office, Chenai-6 dated 13.06.2013.
Ex.P123	The Printout of the U.S journal SEAFAX, article made against due payments by 1st defendant dated 14.01.2013 (Affidavit under section 65 B filed)
Ex.P124	The Copy of Publication from US journal SEAFAX about 1st Defendant's Bankruptcy petition filed in US dated 27.06.2013 (Affidavit under section 65 B filed)
Ex.P125	The Bankruptcy Notice issued by US Bankruptcy Court on behalf of 1st Defendant (Affidavit under section 65 B filed)
Ex.P126	The Details of goods locally transferred from US Growers Cold Storage Inc. for stock transfer (The learned counsel for the 2 ^ (rd) defendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed)
Ex.P127	The photocopy of Details of properties owned by Mr.Paul Morris Faustin, in Kerala, India.
Ex.P128	The Details of the Mr. Paul Morris Faustin, in their company portal id paul@sealwealthproducts.com (The learned counsel for the 2nddefendant objected the 65 B certificate enclosed are not conformity under section 65 B proviso four) (Affidavit under section 65 B filed)
Ex.P129	The photocopy of Details of amounts due to the various customers by Mr. Paul Morris Faustin.

Ex.P.130	Invoice No.330311 of William Clarke Company
Ex.P131	Entry Summary of PO.No.100477

Documents exhibited by the second defendant

Ex.D2	The photocopy of certificate of Incorporation dated 6.2.2001
Ex.D3	The photocopy of Articles of Association dated 06.02.2001
Ex.D4	The Bye Laws of 1 ^ (st) defendant dated 05.02.2001
Ex.D5	The Import refusal by FDA dated 24.09.2009
Ex.D6	The Email of plaintiff & defendant dated 13.3.2012
Ex.D7	The Debit memo dated 30.03.2012
Ex.D8	The email of plaintiff to 1st defendant dated 7.7.2012
Ex.D9	The email of plaintiff to 1st defendant dated 03.08.2012
Ex.D10	The email of plaintiff to 3rd defendant dated 03.08.2012
Ex.D11	The email of 3rddefendant to plaintiff dated 04.08.2012
Ex.D12	The Release orders issued to plaintiff dated 06.08.2012
Ex.D13	The defendant August, September 2012 Bank Statement of 1st defendant
Ex.D14	The IDBI bank ECGC Claims Reg dated 25.09.2012
Ex.D15	The email of 1" defendant dated 30.11.2012
Ex.D16	The Bankruptcy Proceedings of 1 defendant dated 21.06.2013
Ex.D17	The Import refusal by FDA dated 16.07.2013
Ex.D18	The Import refusal by FDA dated 16.7.2013
Ex.D19	The Import refusal by FDA dated 17.9.2013
Ex.D20	The Bankruptcy of 2nd defendant dated 09.12.2013.
Ex.D21	The plaintiff Director Disqualification dated 01.11.2017.

23.01.2025

kal

SENTHILKUMAR RAMAMOORTHY J.

kal

Pre-delivery judgment in
C.S.No.480 of 2013

23.01.2025