IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.09.2025	Pronounced on 14.11.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

A No. 2593 of 2025
in
C.S(COMM DIV) No. 44 of 2025

M/S Seapol Port Private Limited
Having its registered office at 1st Floor
No.42/85, Dheen Estate, Moore Street, Parrys,
Chennai 600 001.

Also having branch office at Ground Floor,
Door No.11-2-15, Archana Buidling,
Eilderness Drive, Daspalla Hills, Daspalla,
Vishakhapatnam - 530003,
Andra Pradesh.
Represented by its authorised signatory
M.K.Shajahan

Applicant(s)

Vs

Cred Avenue Private Limited
Having its registered office at
12th Floor, Prestige Polygon,

No.47 1, Anna Salai, Nandanam,
Chennai 600 035.
Represented by its Authorised Signatory
Adithya Murali.

Respondent(s)

PRAYER

Application filed under Order XIV Rule 8 of the Madras High Court Original Side rules 1956 r/w. Order 37 Rule 3(5) of CPC to adjudge and declare that the Applicant be granted leave to defend this suit since there exists a triable issue.

For Applicant: Mr.Arun C Mohan
for Mr.Abhishek Singh

For Respondent: Mr.P.Giridharan

ORDER

The present application has been filed by the Applicant/Defendant viz., Seapol Port Private Limited, seeking leave to defend the suit instituted by the Respondent/Plaintiff viz., Cred Avenue Private Limited.

2.1.The brief facts as set out by the Applicant/Defendant are that, the Applicant/Defendant was awarded a Letter of Intent dated 07.01.2022 by Paradip Port Authority for supply and installation of two Harbour Mobile

Cranes (HMCs). To finance the project, the Applicant/Defendant engaged the Respondent/Plaintiff as an exclusive debt arranger under an Engagement Letter dated 23.06.2022 for raising a sum of Rs.100 crores, with payment terms payable by the Applicant in two stages to the Respondent viz., 50% on receipt of sanction letters and 50% upon the time of documentation signing. Due to the Russia-Ukraine conflict, the equipment manufacturer, i.e, M/s.Liebherr MCCtec Rostock GmbH (M/s.Liebherr) intimated certain challenges and cost escalation in the delivery of the two HMCs. Consequently, extensions were sought from Paradip Port Authority, however, the same were not granted. The Paradip Port issued a show cause notice to the applicant dated 19.04.2023, whereby, the applicant was called upon to explain the delay in supply of two HMCs, pursuant to which the Letter of Intent dated 07.01.2022 issued in favour of the Applicant was cancelled for all purposes without any financial liabilities to Paradip Port Authority. Though three conditional sanction letters for a sum of Rs.160.79 crores were issued by HDFC Bank on 24.09.2022, the major portion of the sanctioned amount (Rs.95.01 crores) was never disbursed, as the Port Authority declined to extend time. However, the Respondent prematurely raised Invoice No.CAPLA2022090026 dated 27.09.2022. Due to repeated insistence and threat on the part of the respondent, a provisional payment of Rs.84 lakhs was made by the applicant in favour of the Respondent.

2.2.After such payment, when it became categorically certain that the extension sought from Paradip Port Authority would not be forthcoming, the Respondent, instead of returning the amount paid by the Applicant, bizarrely sought the purported remainder of amount on the wholly fictitious premise that the transaction had been closed between the Applicant and HDFC Bank, and that such facility had been disbursed in favour of the Applicant.

2.3.According to the applicant, any amount claimed by the Respondent are neither due, nor payable by the Applicant. Any acceptance by the Applicant pertaining to the completion of services that were to be rendered under the Engagement Letter dated 23.06.2022, was restricted to the amount actually disbursed by HDFC bank in their favour, and would obviously not include the amounts not disbursed.

2.4.According to the applicant, while filing the Suit, the Respondent has deliberately withheld and suppressed the material documents, including the invoice dated 27.09.2022 (bearing No. CAPLA2022090026) and the sanction letters dated 24.09.2022, solely to avoid facing the consequences of its failure to fulfil its obligations under the Engagement Letter dated 23.06.2022. The Respondent has conveniently omitted to file the communications exchanged between the parties, particularly where the Applicant repeatedly requested the Respondent to procure an extension from the Paradip Port Authority, which was a critical precondition for the completion of the financial transaction. Additionally, the Respondent has failed to disclose the Applicant's multiple written requests for the removal or modification of the restrictive condition imposed by HDFC Bank, which required a formal extension from Paradip Port Authority before the disbursal of fresh credit facilities. The deliberate non-disclosure of these crucial correspondences and documents constitutes a gross suppression of facts and is a clear attempt to mislead this Court.

3.The Respondent in his counter affidavit stated that the Engagement Letter clearly bifurcated the payment schedule as 50% upon receipt of sanction letters and 50% upon execution of documentation and that both the conditions were satisfied. The Applicant/Defendant's part payment and subsequent correspondence constitute admission of liability. According to the Respondent, the non-disbursement of remaining loan amount by the bank was due to the Applicant's failure to fulfill post sanction conditions. The defences raised are illusory, sham and to delay the payment to be made in favour of the respondent.

4.Heard the learned counsel for the Applicant/Defendant and the learned counsel for the Respondent/Plaintiff.

5.The present case arises out of a commercial engagement between the parties, under which the Respondent/Plaintiff acted as a debt arranger for the Applicant/Defendant's project. The dispute revolves around the interpretation of the payment terms in the Engagement Letter dated 23.06.2022, and the stage at which the Respondent/Plaintiff's fee becomes payable.

6.The learned counsel for the Applicant/Defendant contended that the payment in favour of the respondent/plaintiff would be made only after the entire financing was completed, which includes signing of loan documents and disbursement of funds and not merely the issuance of sanction letters and signing loan documents. The learned counsel for the Applicant/Defendant also relied on the conditional nature of the sanction letters issued by the bank to establish that the Respondent/Plaintiff's work was incomplete and that the demand for full payment is premature.

7.Per contra, the learned counsel for the Respondent/Plaintiff contended that the engagement letter clearly indicates the two stages at which the Respondent/Plaintiff is entitled for payment pursuant to the service rendered to the Applicant/Defendant, i.e., 50% on receipt of sanction letters and 50% upon executing final documentation and that both conditions were satisfied when HDFC Bank issued sanction letters and subsequent documentation signing. The learned counsel further contended that the part payments made by the Applicant/Defendant, in favour of the Respondent/Plaintiff amounts to admission of liability and non-disbursement of remaining loan amount by the bank was due to the Applicant/Defendant's own failure to secure necessary permissions from the Paradip Port Authority.

8. The question that arises for consideration is, *whether the Respondent/Plaintiff's right to payment under the engagement letter dated 23.06.2022 was automatic upon issuance of sanction letters and upon*

documentation signing or only upon completion of the loan transaction?

9. Determination of this issue depends on the interpretation of the Engagement Letter dated 23.06.2022, exchange of correspondence between the parties on various dates and appreciation of evidence which would clarify as to what happened after the sanction letters were issued. The conditionality of the sanction letters, the extent of documentation completed, and whether there was a definite admission of liability, are all disputed factual matters, which can be decided only after a full-fledged trial.

10.It is also relevant to note that according to the Applicant/Defendant, the part payment in favour of the Respondent/Plaintiff was made pursuant to the repeated insistence and threat by the Respondent/Plaintiff and not in acknowledgement of liability. Whether such payment constitutes an admission of liability or a mere provisional payment, is again a matter for evidence. Similarly, the Applicant/Defendant's contention regarding suppression of material documents and non-performance by the Respondent/Plaintiff requires factual examination.

11.While considering an application for leave to defend, the Court is not required to conduct a detailed examination, but only to ascertain whether the Defendant has raised substantial defence which requires adjudication. If the defence raised by the defendant involves triable issues or is not a mere sham, unconditional leave ought to be granted. In the present case, this Court finds that the defence raised cannot be said to be sham. The dispute involves interpretation of commercial terms, performance of contractual obligations and effect of conditional sanctions, which are triable issues and the same can be properly adjudicated only after recording of evidence. Therefore, leave is granted to defend this Suit.

12.In fine, this Application is allowed. No costs.

14.11.2025
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Cred Avenue Private Limited
Having its registered office at
12th Floor, Prestige Polygon,
No.47 1, Anna Salai,
Nandanam, Chennai 600 035.
Represented by its Authorised Signatory Adithya Murali.

N.SENTHILKUMAR J.

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Pre-delivery order made in
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(½)