IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.12.2025**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

A.No.1997 of 2025
in C.S.(Comm.Div.) No.102 of 2025

Rajesh Corporation Rep By Its Partner M Kunal Khicha
No 27 Barnaby Road Kilpauk Chennai 600 010 ... Applicant

-vs-

ESGI GARMENTS PRIVATE LIMITED and 8 others
No.K-2d, Talco Industrial Estate, S-3, Madhavaram,
Ch-60 represented by its Directors AND 8 OTHERS ... Respondents

For Applicant : Mr.P.Senthil Dhandapani

For Respondents : Mr.K.K.Prasanth
for M/s.A.Mohan

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ORDER

By asserting that the plaintiff supplied various chemical products to the first defendant and that part payments were made leaving the outstanding of Rs.2,15,22,319.79/-, the plaintiff instituted the suit seeking recovery of the aggregate sum of Rs.3,95,56,624.52/- along with interest on the principal sum of Rs.2,15,22,319.79/- from the date of suit till the date of realization. Although the supply was made to the first defendant, the plaintiff has sought for a judgment and decree against defendants 1 to 7 by also declaring that defendants 2 to 7 are liable upon the corporate veil being lifted.

2. In the above mentioned suit, the plaintiff has presented this application to direct the respondents to provide security for the aggregate suit claim. Upon notice being issued in the application, at the hearing on 09.06.2025, the affidavit of service dated 06.06.2025 was taken note of and it was recorded that notice has been served on all the respondents except respondents 8 and 9. Subsequently, it appears that substituted service was

effected on the ninth respondent pursuant to order dated 28.07.2025. Respondents 2, 3 and 4 are represented through counsel. Respondent 8 remains unserved. The other respondents have not entered appearance in spite of service of notice.

3. Learned counsel for the applicant / plaintiff invited my attention to the invoices in Volume-II of the typed set filed by the plaintiff. Thereafter, he referred to the confirmation of balance as on 31.03.2023, wherein the plaintiff informed the first defendant that the account shows a debit balance of Rs.2,38,24,863.79/- as on 31.03.2023. The said document appears to contain the rubber stamp of the first defendant and the signature of one of its directors. After giving credit to payments made subsequently, by referring to the statement of accounts at page 77 of Volume-I, learned counsel for the plaintiff submits that the principal amount outstanding as on 25.01.2024 was Rs.2,15,22,319.79/-. In view of these documents, learned counsel submits

that a strong *prima facie* case is made out. He also submits that defendants 2 to 5 are the Directors of the first defendant and that defendants 6 to 9 are close relatives or related entities of the first defendant. Consequently, he seeks orders against all the respondents.

4. Learned counsel for defendants 2 to 4 responded to these contentions by submitting that defendants 2 to 4 are only Directors of the first defendant and that the Managing Director of the first defendant is the 5th defendant, which is currently in Australia. Learned counsel contends that the application, as framed, is not maintainable because the plaintiff cannot invoke Section 94 without satisfying the requirements of Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908.

5. From the documents on record, it is clear that supplies were made to the first defendant and not to the other defendants. All the invoices have

been issued to the first defendant. The confirmation of balance is also issued to the first defendant and acknowledged by the said defendant. Therefore, at this juncture, liability cannot be fastened on any of the other defendants. Put differently, the request to lift the corporate veil should await trial. Hence, the application is proceeded with only as regards the first defendant.

6. The invoices filed by the plaintiff contain *prima facie* evidence that the goods referred to therein were delivered to the first defendant. By communication dated 04.05.2023, the plaintiff has informed the first defendant that the account shows a debit balance of Rs.2,38,24,863.79/- as on 31.03.2023. The said document contains the rubber stamp and signature of the first defendant represented by one of its Directors. The plaintiff has also filed the ledger account up to 25.01.2024. The suit was filed shortly thereafter in February 2025. The ledger account discloses *prima facie* that the amount outstanding as on 25.01.2024 was Rs.2,15,22,319.79/-.

7. As narrated earlier, in spite of service of notice, the first defendant has failed to enter appearance and contest the suit. Curiously, three Directors of the first defendant, namely, defendants 2 to 4 have entered appearance and are contesting the suit. The plaintiff has filed the financial statements of the first defendant for financial year ended 31.03.2023. The Directors' report has been signed by Mohammed Khalid Rahman, who is the third defendant, and Mohamed Rafiur Rahman, who is the fifth defendant. The financial statements carry the signature of these two Directors and the signature of Abdul Haque, who is the second defendant. The documents annexed to the financial statements, include Form AOC-2, which indicates that defendant 2, 3 and 4 are salaried Directors and that the fifth defendant is the Managing Director.

8. In these circumstances, the failure of the first defendant to enter

appearance although the second to fourth defendants entered appearance tilts the scales in favour of the plaintiff as regards interim relief. It appears from the conduct of defendants 2 to 4 that, in spite of being salaried Directors of the first defendant, they are unwilling to assume any responsibility for the alleged liabilities of the first defendant. The fifth defendant, who is described as the Managing Director in the financial statements, appears to be resident of Australia. The financial statements disclose that security has been provided to bank over the assets of the first defendant. These defendants have also failed to provide details of unencumbered assets of the first defendant.

9. When the above facts and circumstances are considered in totality, particularly the failure to enter appearance and contest the suit, a case is made out to direct the first defendant to provide security for the principal

suit claim of Rs.2,15,22,319.79/-. This application is, therefore, disposed of by directing the first defendant to provide security within ***thirty days*** from the date of receipt of a copy of this order.

08.12.2025
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<u>SENTHILKUMAR RAMAMOORTHY,J</u>

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