



2025:DHC:5004



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 27th February 2025**
Pronounced on: 24th March 2025

+ **CS(COMM) 410/2023**

THALES DIS INDIA PVT LTDPlaintiff

Through: Mr. Sukrit R. Kapoor, Adv Mr. Vijay
Shankar VL, Adv and Mr. Sarthak
Miglani, Adv.

versus

TATVIK BIOSYSTEMS PVT. LTD. & ORS.Defendants

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

CS(COMM) 410/2023

1. The present suit has been filed seeking recovery of Rs. 08,06,50,968/- (*Rupees Eight Crore Six Lakhs Fifty Thousand Nine Hundred Sixty-Eight only*), *pendente lite* and *future* interest at the rate of 18% per annum, till the date of payment along with costs.

2. The plaintiff is engaged in the business of providing '*Identity and Biometric Solutions and Data Protection Technology*'. Defendant no(s). 2 & 3 are directors in defendant no. 1. Defendant no. 1 is engaged in the business of '*Distribution of Biometric Devices*'.



2025:DHC:5004



3. Summons were issued in the suit on 2nd June 2023.
4. By Order of this Court, dated 24th May 2024, the defendants were proceeded *ex parte* and the defendant no. 4 was deleted from the array of parties, considering he was an erstwhile director in defendant no.1 and no relief was sought in the present suit, *qua* him.

Submissions on behalf of the plaintiff

The plaintiff in his plaint and through arguments, submits as under:

5. Business relationship between the parties dates back to 2017. The following purchase orders ('POs'), dated 16th June 2017, were issued by the defendants to the plaintiff company:
 - i. TBSPL/PO/2017-18/45 for 2000 units of *CIS 202 IRIS scanners* @ Rs. 14,000/- per unit.
 - ii. TBSPL/PO/2017-18/46 for 2000 units of *CS 500e finger print scanners* @ Rs. 35,500/- per unit.
6. The invoices raised against the said POs are attached with the plaint and the details thereof have been tabulated in the plaint, as under:



2025:DHC:5004



Customer PO	PO Qty	PO Value including GST Tax	Invoice	Inv Date	Qty invoiced	Price	Net Value	Tax Value	Total Invoice Value	Payment Received	Outstanding Amount
TBSPL/PO/2 D17-18/45	2,000	58410000 (4,95,00,00 0 +89,10,000)	D1700165	8/30/2017	300 (CS 500e)	35,500	1,06,50,000	19,17,000	1,25,67,000		
					300 (CS 202 (RIS)	14,000	42,00,000	7,56,000	49,56,000	1,75,23,000.00	NIL
			D1700234	9/25/2017	700 (CS 500e)	35,500	2,48,50,000	44,73,000	2,93,23,000		
					668 (CS 202 (RIS)	14,000	93,52,000	16,83,360	1,10,35,360	82,23,550.00	3,21,34,810.00
TBSPL/PO/2 D17-18/46	2,000	58410000 (4,95,00,00 0 +89,10,000)	D1700235	9/25/2017	189 (CS 500e)	35,500	67,09,500	12,07,710	79,17,210		79,17,210
Total	4,000						5,57,61,500	1,00,37,070	6,57,98,570	2,57,46,550.00	4,00,52,020

7. Dues were cleared by the defendants, as regards Invoice bearing no. D1700165 dated 30th August 2017. However, only Rs. 82,23,550/- (*Rupees Eighty-Two Lakhs Twenty-Three Thousand Five Hundred Fifty only*) were paid by the defendants, against Invoice bearing no. D1700235, under which the total liability incurred by the defendants was Rs. 4,03,58,360/- (*Rupees Four Crore Three Lakhs Fifty-Eight Thousand Three Hundred and Sixty only*). Thus the remaining amount to be paid under the said invoice is Rs. 3,21,34,810/- (*Rupees Three Crore Twenty-One Lakhs Thirty Four Thousand Eight Hundred Ten only*).



2025:DHC:5004



8. Another Invoice bearing no. D1700235 dated 25th September 2017, was issued against supply of 189 (CS 500e) scanners. The amount due under the said invoice was Rs. 79,17,210/- (*Rupees Seventy-Nine Lakhs Seventeen Thousand Two Hundred Ten only*). No payments have been made by the defendants to clear dues under the said invoice.

9. Under the POs, payments were to be made within sixty days of the invoices being raised. In the event of a delay, the outstanding amount would attract interest rate of 18% per annum. The said period got exhausted on 24th November 2017.

10. Invoices that form the subject matter of the present suit and liabilities arising thereunder, have been tabulated in the plain, as under:

S. No	Description	Unit	Invoice No.	Invoice date	Outstanding Amount (INR)
1.	CIS 202 IRIS SCANNERS CS 500E FINGER PRINT SCANNERS	668 pcs. 700 pcs.	D1700234	25.09.2017	3,21,34,810/-
2.	CS 500E FINGER PRINT SCANNERS	189 pcs.	D1700235	25.09.2017	79,17,210/-

11. In view of the delayed payment, an e-mail dated 12th February 2018 was sent by the plaintiff, requesting the defendant to make payment.

12. Due to continued non-payment, another e-mail was sent by the plaintiff on 26th February 2018, requesting to meet the defendants to agree upon a



2025:DHC:5004



payment schedule. On 28th February 2018, the defendants replied to the said e-mail, assuring the plaintiff, that substantial dues will be cleared soon.

13. However, only part payments were received on 17th March 2018, 22nd March 2018 and 26th March 2018, totalling up to Rs. 43,00,000/- (*Rupees Forty-Three Lakhs only*). The same were adjusted with the outstanding invoices, and accordingly, an intimation was sent to the defendants on 2nd April 2018.

14. Due to repeated defaults in payment, a demand notice dated 17th April 2018 was sent by the plaintiffs. Defendants replied to the same on 14th May 2018. In the said reply, defendants admitted their liability, and requested a time of 4 months to clear dues.

15. Plaintiff, in its reply to said response, sought for a firm payment schedule to be proposed by the defendants. As the assurances of the defendants turned out to be hollow, another notice dated 10th January 2019 was sent, in response to which, a cheque bearing no. 894841 was issued by the defendants. The same was dishonoured.

16. Two more post-dated cheques were issued bearings no(s). 894852 and 894853 dated 28th May 2019 and 26th June 2019. Both the cheques were for Rs. 25,00,000/- (*Rupees Twenty-Five Lakhs only*).

17. By e-mail dated 14th August 2019, plaintiff expressed its intention to deposit cheque no. 894852, since its was nearing the date of expiry. Upon assurance made by defendants, for payment of Rs. 10,00,000/- (*Rupees Ten*



2025:DHC:5004



Lakhs only), the plaintiff deferred the date of the deposit. However, said payment was, yet again, not made.

18. The other cheque, bearing no. 894853, was dishonoured despite prior intimation of deposit, being given by the plaintiff *vide* e-mails dated 17th September 2019 and 23rd September 2019.

19. Further assurance was given by the defendants *vide* e-mail dated 4th November 2019, however, was again not honoured.

20. Legal notices were again sent on 2nd September 2021.

21. Pre-institution mediation was admitted and notices were issued to defendants on 12th May 2022. Upon the defendants consenting to the same, proceedings were held on 9 dates. Defendant no. 2 appeared before the mediator, to represent defendant no.1. The mediation proceedings culminated into a '*non-starter*' report on 6th October 2022.

22. The plaintiff submits a tabulation of dues already cleared by the defendant, against the outstanding invoices noted above, the said tabulation has been extracted as under:



2025:DHC:5004



S. No.	Payment / Credit Note Date	Payment / Credit Note Amount (INR)
1.	16.08.2017 (CN)	5,31,000/-
2.	14.06.2019	3,42,550/-
3.	25.06.2019	3,00,000/-
4.	11.07.2019	5,00,000/-
5.	08.08.2019	10,00,000/-
6.	26.08.2019	4,40,000/-
7.	27.08.2019	1,10,000/-
8.	12.09.2019	1,50,000/-
9.	17.09.2019	2,00,000/-
10.	18.11.2019	1,00,000/-
11.	28.11.2019	2,00,000/-
12.	04.12.2019	2,00,000/-

13.	16.12.2019	2,00,000/-
14.	13.05.2020	5,00,000/-
15.	10.06.2020	5,00,000/-
16.	13.07.2020	2,00,000/-
17.	08.09.2020	3,00,000/-
18.	30.11.2020	2,50,000/-
19.	30.03.2021	2,00,000/-
20.	06.10.2021	10,00,000/-
21.	12.10.2021	5,00,000/-
TOTAL		77,23,550/-

23. Having adjusted the payments already made, the remaining outstanding liability of the defendants amounts to Rs. 4,00,52,020/- (*Rupees Four Crore Fifty-Two Thousand and Twenty only*).



2025:DHC:5004



24. The counsel for the plaintiff submits that the suit is within limitation, since the outstanding invoices dated 25th September 2017 envisage that payments be made within sixty days of issuance. Thus, the limitation would start running from 24th November 2017.

25. Accordingly, the limitation would have ended on 25th November 2020. However, in light of acknowledgements of payments made by the defendants, the plaintiff seeks to derive benefit from Section 18 of the Limitation Act, 1963.

26. The plaintiff presses upon two instances of acknowledgement of debt: *firstly*, vide e-mail dated 28th February 2018, *secondly*, vide reply notice dated 14th May 2018.

27. Plaintiff seeks to rely upon a decision of the Karnataka High Court in ***Sudarshan Cargo Pvt. Ltd. v. Techvac Engineering Pvt. Ltd.***, 2013 SCC OnLine Kar 5063, to contend that acknowledgement of debt *via* e-mail would satisfy the requirements under Section 18 of the Limitation Act, 1963.

28. As also, decisions of the National Company Law Appellate Tribunal ('NCLAT') in ***PEC Ltd. v. Tathagat Exports (P) Ltd.*** 2022 SCC OnLine NCLAT 3006 and ***R.R. Gopaljee v. Indian Overseas Bank*** 2020 SCC OnLine NCLAT 1049, to further the proposition that acknowledgement of debt under a reply to a legal notice would satisfy the requirements of Section 18 of the Limitation Act, 1963.



2025:DHC:5004



29. Thus, limitation period would end on 28th February 2021, in relation to acknowledgement dated 28th February 2018, and on 14th May 2021, in relation to acknowledgement dated 14th May 2018.

30. Counsel for the plaintiff submits that in light of the Supreme Court's judgment in ***Cognizance for Extension of Limitation, In re***, (2022) 3 SCC 117 and the second *proviso* to Section 12A of the Commercial Courts Act, 2015 ('CCA'), the limitation would end on 11th July 2023, in relation to the first acknowledgement and on 24th September 2023, in relation to the second acknowledgement. It is pertinent to note, according to counsel for the plaintiffs, that the parties were in mediation for '*4 months and 24 days*'.

31. The present suit was instituted on 31st May 2023 and thus would be within the limitation threshold.

32. It is also submitted that the plaintiff can derive benefit under Section 19 of the Limitation Act, 1963, on account of the acknowledgement towards payment made by the defendants *vide* e-mail dated 20th January 2020 in respect of the payment that was received on 09th June 2020.

33. The counsel for the plaintiffs submits the following tabulation to support their submissions in relation to limitation:



2025:DHC:5004



S. No.	Date of Acknowledgment	Date of end of original period of limitation	Balance period remaining as on 15.03.2020 and available from 01.03.2022	Period under PIM Process which is to be excluded	Final Limitation end date (Balance as on 01.03.2022 + period utilised in PIM)
1.	28.02.2018	28.02.2021	11 months, 13 days (350 days)	4 months, 24 days (147 days)	11.07.2023 (after adding 350 + 147 days to 01.03.2022)
2.	14.05.2018	14.05.2021	1 year, 1 month, 29 days (425 days)	4 months, 24 days (147 days)	24.09.2023 (after adding 425 + 147 days to 01.03.2022)

34. In relation to the relief sought, places reliance on the decisions of this Court to contend that rate of interest, if specified in the outstanding invoice, would be applicable to the dues arising thereunder. The decisions relied upon by the plaintiffs are as under:

- i. ***CHL Ltd v. Alitalia Airlines***, 2011 SCC OnLine Del 2543
- ii. ***Pasupati Acrylon Ltd. v. Assam Syntex Ltd.***, 1997 SCC OnLine Del 840
- iii. ***Coim India Pvt. Ltd. v. Kurt O John Shoe Components(I) Pvt. Ltd.***, 2013 SCC OnLine Del 2505
- iv. ***Dura-Line India Pvt. Ltd. v. BPL Broadband Network Pvt. Ltd.***, 2003 SCC OnLine Del 1160



2025:DHC:5004



v. *Wockhardt Ltd. v. Satish Ahuja*, 2002 SCC OnLine Del 941

35. Reliance is also placed on the decision of the High Court of Bombay in *Jatin Koticha v. VFC Industries Pvt. Ltd.* 2007 SCC OnLine Bom 1092, to place forth the proposition that if good/ services under an invoice are accepted by the recipient, without objection to its terms, the same would constitute a contract, even if not signed by the parties to the same.

Evidence

36. POs have been exhibited as **PW-1/2**. The copy of the unpaid invoices, bearing no(s). D1700234 and D1700235 have been exhibited as **PW-1/3**. E-mails dated 12th February 2018, 26th February 2018, 28th February 2018, 2nd April 2018, have been exhibited as **PW-1/4**. Exhibit **PW-1/5** is the ledger account maintained in the name of the defendant company. The first legal notice issued by the plaintiff dated 17th April 2018 is exhibited as **PW-1/6**. The reply and rejoinder to the reply to the said notice have been exhibited as **PW-1/7 and PW-1/8**, respectively. Copy of the second legal notice dated 10th January 2019 has been exhibited as **PW-1/9**. E-mail communications exchanged between the parties are contained in exhibit **PW-1/10**. The final legal notice issued by the plaintiff has been exhibited as **PW-1/11** with the ‘non-starter’ report issued by the Mediator, exhibited as **PW-1/12**.

Analysis

37. In the opinion of this Court, basis the following documents and evidence on record, the liability of the defendants stands admitted:

- i. E-mail dated 28th February 2018 (**Ex. PW-1/4**):



2025:DHC:5004



From: Anmol.Kumar [mailto:anmol@tatvikbiosystems.com]
Sent: 28 February 2018 09:54
To: Tyagi Anubhav <anubhav.tvagi@gemalto.com>
Cc: ARYA arun <Arun.Arya@gemalto.com>
Subject: RE: TATVIK Overdue Payment status

Dear Anubhav

Sorry for delayed response , I have limited accessibility due to travel.

We are trying to collect all the dues against supply as well as liquidation of held up stock ASAP. So that we can close the ongoing issue ASAP.

As you are aware we were expecting the payment in last week of Jan 2018. But After holding the cheque for 15 days , the cheque returned and we are co-ordinating with Customer for payment .

Attaching the return slip for your reference.

If sharing the invoice and customer Detail(SI) will satisfy you, We will share the same. End customer details is not available all the time with us, As we never ask customer to share his customer details.

I again reassure that you we are committed to clear all the dues ASAP, So that we can start new Transactions. We can meet on 8th Feb 2018 at your office .

Request you to confirm the same.

Mean while request you to give clarity on Credit note for Not repairable devices as well as discount on earlier billing.

- ii. Reply dated 21st May 2018, to the legal notice sent by the plaintiff
(Ex. PW-1/7):



2025:DHC:5004



3. I have clear instructions to say that that my client is ready and willing to pay the outstanding balance of your client as per books of account without any dispute, but your client is not entitled at all for the interest as claimed in the notice under reply, for the reason mentioned in the forgoing para of present reply. I have further instructions to say that my client has built a good reputation in the field of his business market and it (my client) does not want to lose or even damage the same in any manner and similarly my client expects that the relationship between your client and my client may prove beneficial for each other in future, without any dispute. I have instructions to say that my client has always made payment to your client in time for the goods purchased, except the present outstanding amount which is only due to the reason mentioned in the forgoing paras.
4. I have instructions to say that although your client has failed to discharge its obligation towards my client to market the Scanners (as purchased by my client from your client) despite clear understanding in this regard, my client is still ready to bear the losses suffered by it (my client) to put extra manpower/experts for selling the product in the market, subject to cooperation from your client to bear with some time i.e. almost 4 months to clear the outstanding, as per books of account and without any interest. I have instructions to say that if your client wants to proceed with the recovery proceeding as threatened by you in the notice under reply, my client shall also claim the losses and sufferings occurred due to non-fulfillment of commitments made by your client as mentioned in the forgoing paras of the present legal notice. Lastly I have instructions to say that my client needs at least 4 months from the date of present reply to clear the outstanding amount towards your client as per books of account, but without any interest with clear hope to continue the business in future with your client, under the harmonious and pleasant environment.

iii. The ledger of accounts dated 17th August 2021 (**Ex. PW-1/5**), maintained by the plaintiff in relation to the defendants, is also instructive, as regards liability suffered by the defendants. The said ledger of accounts has been extracted hereunder, for ready reference:



2025:DHC:5004



										17-08-2021	18%			
Customer Name	Invoice	Cust PO No./Payment Remark	Date	Due Date/Receipt Date	Cur	Invoice Amount	Receipt/ CN	Basic Outstanding Amount Date Wise	Basic Outstanding Amount as on 17-08-2021	Overdue Days	Days for Interest	Interest Amount @18%	Total Outstanding Amount as on 17-08-2021	
TATVIK BIOSYSTEMS PVT LTD	D1700234	TBSPL/PO/2017-18/45	25-09-2017	24-11-2017	INR	4,03,58,360		4,03,58,360	-	-	-		-	
	D1700105	Credit Note		16-08-2017	INR		5,31,000	3,98,27,360		-	-		-	
	C115894	RTGS 14-06-19		17-06-2019	INR		3,42,550	3,94,84,810		570	570	1,10,99,018	1,10,99,018	
	C115909	RTGS 25-06-19		26-06-2019	INR		3,00,000	3,91,84,810		579	9	1,73,916	1,73,916	
	C115929	RTGS 11-07-19		15-07-2019	INR		5,00,000	3,86,84,810		598	19	3,62,471	3,62,471	
	C115958	RTGS 08-08-19		13-08-2019	INR		10,00,000	3,76,84,810		627	29	5,38,944	5,38,944	
	C115970	RTGS 26-08-19		26-08-2019	INR		4,40,000	3,72,44,810		640	13	2,38,775	2,38,775	
	C115974	RTGS 27-08-19		27-08-2019	INR		1,10,000	3,71,34,810		641	1	18,313	18,313	
	C115997	RTGS 12-09-19		12-09-2019	INR		1,50,000	3,69,84,810		657	16	2,91,825	2,91,825	
	C116001	RTGS 17-09-19		17-09-2019	INR		2,00,000	3,67,84,810		662	5	90,702	90,702	
	C116088	RTGS 118-11-19		18-11-2019	INR		1,00,000	3,66,84,810		724	62	11,21,651	11,21,651	
	C116104	RTGS 28-11-19		28-11-2019	INR		2,00,000	3,64,84,810		734	10	1,79,925	1,79,925	
	C116113	RTGS 04-12-19		05-12-2019	INR		2,00,000	3,62,84,810		741	7	1,25,257	1,25,257	
	C116123	RTGS 16-12-19		17-12-2019	INR		2,00,000	3,60,84,810		753	12	2,13,543	2,13,543	
	16348	RTGS 13-05-20		13-05-2020	INR		5,00,000	3,55,84,810		901	148	25,97,204	25,97,204	
	16373	RTGS 10-06-20		10-06-2020	INR		5,00,000	3,50,84,810		929	28	4,84,459	4,84,459	
	16413	RTGS 13-07-20		13-07-2020	INR		2,00,000	3,48,84,810		962	33	5,67,714	5,67,714	
	16523	RTGS 08-09-20		08-09-2020	INR		3,00,000	3,45,84,810		1,019	57	9,72,165	9,72,165	
	16738	RTGS 30-11-20		30-11-2020	INR		2,50,000	3,43,34,810		1,102	83	14,05,376	14,05,376	
	17004	RTGS 30-03-21		30-03-2021	INR		2,00,000	3,41,34,810		1,222	120	20,20,033	20,20,033	
		Payment re	06-10-2021		06-10-2021	INR		10,00,000	3,31,34,810		1,412	190	31,04,686	31,04,686
		Payment re	12-10-2021		12-10-2021	INR		5,00,000	3,26,34,810		1,418	6	96,563	96,563
Subtotal	D1700234	TBSPL/PO/2017-18/45	25-09-2017	30-10-2021	INR		-	3,26,34,810	3,26,34,810	1,436	18	2,89,690	3,29,24,500	
TATVIK BIOSYSTEMS PVT LTD	D1700235	TBSPL/PO/2017-18/46	25-09-2017	24-11-2017	INR	79,17,210	-	79,17,210		-	-		-	
Subtotal	D1700235	TBSPL/PO/2017-18/46	25-09-2017	30-10-2021				79,17,210	79,17,210	1,436	1,436	56,06,686	1,35,23,896	
TOTAL						4,82,75,570	77,23,550		4,05,52,020			3,15,98,917	7,21,50,937	

Limitation

38. The claim of the plaintiffs qualifies the tests of the Limitation Act, 1963, for the following reasons:

- In light of acknowledgements of liability made in e-mail dated 28th February 2018 (**Ex. PW-1/4**) and reply dated 21st May 2018 to the legal notice sent by the plaintiff (**Ex. PW-1/7**).
- Thus, in light of Section 18 of the Limitation Act, 1963, the limitation period would effectively start running from the dates of said acknowledgements and end on 21st February 2021 and 14th May 2021. Section 18 of the Limitation Act, 1963, reads as under:

“18. Effect of acknowledgment in writing.—



(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

(emphasis supplied)

- iii. Also, decision of the Supreme Court in ***Cognizance for Extension of Limitation, In re (supra)***, would extend the limitation for further period. The relevant extract of the said decision is as under:



2025:DHC:5004



“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.”

(emphasis supplied)



2025:DHC:5004



- iv. Further, it's a matter of record that the parties were in mediation for the period between 17th May 2022 and 26th September 2022. 'Non-starter' report dated 6th October 2022 (**Ex. PW-1/12**) is on record.
- v. At this juncture it is pertinent to take note of the tabulation provided by the plaintiffs in paragraph no. 33 above, in light of the same, the claim of the plaintiff survives the test of limitation.

Interest payable

39. Terms and conditions mentioned in invoices bearing no(s). D1700234 and D1700235 (**Ex. PW-1/3**), stipulate that, in the event payments are not made within 60 days from the date the invoice is raised, interest, at the rate of 18% per annum, shall become payable.

40. It is pertinent to note from the record that no objections have been raised to the said invoice(s), and goods were duly received under the same. Objections were raised to the rate of interest, only at the stage of reply dated 21st May 2018 (**Ex. PW-1/7**), to the legal notice sent by the plaintiff.

41. Reliance may be placed on the decision of the Bombay High Court in **Jatin Koticha** (*supra*), relevant paragraph(s) of the said judgment, read as under:

“6. Now it is clear that there is no written contract signed by both the parties relied on by the plaintiff. It is not the requirement of the law that it should be a written contract signed by both the parties. What is necessary is that the suit should be based on a written contract. That, one can find in this case, in the form of invoices which were raised on the defendants along with delivery of the goods in pursuance of



each purchase order. The invoices, as stated above, contained the terms and conditions. There is a clear parole acceptance of the invoice on the part of the defendants. The defendants accepted delivery of the goods along with the invoice without any demur or suggestion that they do not accept any of the terms whether pertaining to the rate, price, quantity etc. It makes no difference therefore that the invoices are not signed by both the parties. I am of view that the invoices must be treated as a written contract and the suit based on such invoices is a suit based on the written contract. This view is fortified by the Madras High Court reported in The Madras Law Journal Reports 1988 page 187 (Lucky Electrical Stores, by partner Mahendra Kumar Shah v. Ramesh Steel House by Partner Babulat)¹ where the Chief Justice M.N. Chandurkar, rejected the contention similar to the one applied by the defendants in this case. The relevant observation reads thus...

.....

13. It was next contended on behalf of the defendants that there is no stipulation as to the interest in the contract. Having held that the written contract in this case are the invoices, it must be held that there is a stipulation for interest in view of the specific term in the invoice that interest at the rate of 21% p.a. will be charged on over due payments. Hence, the suit is decreed in the sum of Rs. 4,39,585/- i.e. the principal amount plus interest at the rate of 21% p.a. till the filing of the suit. The defendants are liable to pay future interest however at the rate of 18% per annum on the principal sum of Rs. 3,82,096/- from the date of filing of the suit till realisation and/or payment and costs. Decree be drawn up accordingly. Summons for judgment and the suit stands disposed of accordingly.

(emphasis supplied)



2025:DHC:5004



42. In light of the aforesaid, interest shall be payable at the rate of 18% per annum from 24th November 2017, i.e. sixty days from the date of default.

Pendente lite and future interest payable

43. At this juncture, it is apposite to refer to Section 34 of the Code of Civil Procedure, 1908, ('CPC'), which reads as under:

“34. Interest.—

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.]

Explanation I.—In this sub-section, “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected



2025:DHC:5004



with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.”

(emphasis supplied)

44. The Supreme Court in ***Central Bank of India v. Ravindra*** (2002) 1 SCC 367, held as under:

“41. A few points are clear from a bare reading of the provision. While decreeing a suit if the decree be for payment of money, the court would adjudge the principal sum on the date of the suit. The court may also be called upon to adjudge interest due and payable by the defendant to the plaintiff for the pre-suit period which interest would, on the findings arrived at and noted by us hereinabove, obviously be other than such interest as has already stood capitalised and having shed its character as interest, has acquired the colour of the principal and having stood amalgamated in the principal sum would be adjudged so. The principal sum adjudged would be the sum actually loaned plus the amount of interest on periodical rests which according to the contract between the parties or the established banking practice has stood capitalised. Interest pendente lite and future interest (i.e. interest post-decree not exceeding 6 per cent per annum) shall be awarded on such principal sum i.e. the principal sum adjudged on the date of the suit. It is well settled that the use of the word “may” in Section 34 confers a discretion on the court to award or not to award interest or to award interest at such rate as it deems fit. Such interest, so far as future interest is concerned may commence from the date of the decree and may be made to stop running either with payment



or with such earlier date as the court thinks fit. Shortly hereinafter we propose to give an indication of the circumstances in which the court may decline award of interest or may award interest at a rate lesser than the permissible rate.”

.....

44. We are of the opinion that the meaning assigned to the expression “the principal sum adjudged” should continue to be assigned to “principal sum” at such other places in Section 34(1) where the expression has been used qualified by the adjective “such”, that is to say, as “such principal sum”. Recognition of the method of capitalisation of interest so as to make it a part of the principal consistently with the contract between the parties or established banking practice does not offend the sense of reason, justice and equity. As we have noticed, such a system has a long-established practice and a series of judicial precedents upholding the same. Secondly, the underlying principle as noticed in several decided cases is that when interest is debited to the account of the borrower on periodical rests, it is debited because of it having fallen due on that day. Nothing prevents the borrower from paying the amount of interest on the date it falls due. If the amount of interest is paid there will be no occasion for capitalising the amount of interest and converting it into principal. If the interest is not paid on the date due, from that date the creditor is deprived of such use of the money which it would have made if the debtor had paid the amount of interest on the date due. The creditor needs to be compensated for deprivation. As held in Pazhaniappa Mudaliar v. Narayana Ayyar [AIR 1943 Mad 157 : (1942) 2 MLJ 753] the fact situation is analogous to one as if the creditor has advanced money to the borrower equivalent to the amount of interest debited. We are, therefore, of the opinion that the expression “the principal sum adjudged” may include the amount of interest, charged on periodical rests, and capitalised with the principal sum actually



advanced, so as to become an amalgam of principal in such cases where it is permissible or obligatory for the court to hold so. Where the principal sum (on the date of suit) has been so adjudged, the same shall be treated as “principal sum” for the purpose of “such principal sum” — the expression employed later in Section 34 CPC. The expression “principal sum” cannot be given different meanings at different places in the language of same section i.e. Section 34 CPC.

.....

48. It was also submitted that Section 34 CPC is general in its application to all money suits and if banking practice or banking contracts providing for capitalisation of interest charged on periodical rests were to be recognised it will mean that application of Section 34 would be different in suits filed by banks and in suits filed by creditors other than bankers. In our opinion it is bound to be so. Section 34 is a general procedural provision and whether it would apply or not and if apply then to what extent would obviously depend on the fact situation of each case.

49. We are, therefore, of the opinion that the two-Judge Bench decision of this Court in Corpn. Bank v. D.S. Gowda [(1994) 5 SCC 213] and the three-Judge Bench decision in Bank of Baroda v. Jagannath Pigment & Chemicals [(1996) 5 SCC at p. 280] are correctly decided and are, therefore, affirmed. A creditor can charge interest from his debtor on periodical rests and also capitalise the same so as to make it a part of the principal. Such a course can be justified by stipulation in a contract voluntarily entered into between the parties or by a practice or usage well established in the world to which the parties belong. Such practice is to be found already in vogue in the field of banking business. Such contract or usage or practice can stand abrogated by legislation such as usury laws or debt relief laws and so on.

.....



55. ..However, we propose to place on record a few incidental observations, without which, we feel, our answer will not be complete and that we do as under:

(1) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.

(2) Novation, that is, a debtor entering into a fresh agreement with a creditor undertaking payment of previously borrowed principal amount coupled with interest by treating the sum total as principal, any contract express or implied and an express acknowledgement of accounts, are the best evidence of capitalisation. Acquiescence in the method of accounting adopted by the creditor and brought to the knowledge of the debtor may also enable interest being converted into principal. A mere failure to protest is not acquiescence.

(3) The prevalence of banking practice legitimatises stipulations as to interest on periodical rests and their capitalisation being incorporated in contracts. Such stipulations incorporated in contracts voluntarily entered into and binding on the parties shall govern the substantive rights and obligations of the parties as to recovery and payment of interest.

(4) Capitalisation method is founded on the principle that the borrower failed to make payment though he could have made and thereby rendered himself a defaulter. To hold an amount debited to the account of the borrower capitalised it should appear that the borrower had an opportunity of making the payment on the date of entry or within a reasonable time or period of grace from the date of debit entry or the amount falling due and thereby avoiding capitalisation. Any debit



entry in the account of the borrower and claimed to have been capitalised so as to form an amalgam of the principal sum may be excluded on being shown to the satisfaction of the court that such debit entry was not brought to the notice of the borrower and/or he did not have the opportunity of making payment before capitalisation and thereby excluding its capitalisation.

.....
(8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.

(emphasis supplied)

45. Basis the aforesaid position of law, in the facts circumstances of the present case, and considering the rate of interest leviable under the invoices, the prevailing market rate and the nature of the transaction between the parties, this Court deems it fit to award *pendente lite* and *future* interest at the rate of 9% per annum till the date of realization of payment.

Relief

46. Accordingly, the suit of the plaintiff is decreed for a total amount of Rs. 8,06,50,968/- (*Rupees Eight Crore Six Lakhs Fifty Thousand Nine Hundred Sixty-Eight only*) [(Rs. 4,00,52,020/- as principal) + (Rs. 4,05,98,948/- as



2025:DHC:5004



interest)], along with *pendente lite* and *future* interest at the rate of 9% per annum, on the said amount, till the date of realization of payment,

47. Decree sheet be drawn up accordingly.

48. Pending applications, if any, be rendered infructuous.

(ANISH DAYAL)
JUDGE

MARCH 24, 2025/kp