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**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,  
KRISHNAGIRI**

**PRESENT: Tmt.M. Sumathi Sai Priya., M.A., M.L.,  
Principal District Judge, Krishnagiri.**

Thursday, the 4<sup>th</sup> day of July 2024.

**COMMERCIAL ORIGINAL SUIT NO. 03/2023**

**[CNR.NO.TNKI01-002851-2023]**

GRB Dairy Foods Private Limited,  
Rep by its Director, Mr. P.Kasturi  
Plot No.45, Phase I  
Sipcot Industrial Complex,  
Hosur – 635 126,  
Krishnagiri District.

...Plaintiff.

//Versus//

Ganga Food Products Private Limited,  
Rep by Mr. Gopinathan Boopesh (Managing Director)  
Survey No.490 & 471, NH 46 Road,  
Erraiyankadu Village,  
Virinjiupuram Post,  
Vellore, Tamil Nadu – 632 104.

...Defendant.

This suit came up before me for final hearing on 14.06.2024 in the presence of Thiru.N.S.Rajaganesh, Advocate appearing for the Plaintiff; Thiru.N. Poongundran, Advocate filed for vakalath for respondent and written statement was not filed and called absent and set exparte and hearing the plaintiff's side arguments, upon perusing the case records, having stood over till this day for consideration, this court delivers the following:

## **JUDGMENT**

The suit has been filed by the plaintiff to pass a Judgment and Decree for the suit claim amount of Rs.99,93,750/- (i.e., Principal amount Rs.75,00,000/- and interest calculated @ 6% per annum from 1<sup>st</sup> July 2017 till date) against the defendant and directing them to jointly or severally pay the suit claim to the plaintiff company with interest at 6% per annum with rests from the date of this suit till date of realization to grant costs of the suit against the defendant and grant such other reliefs.

### **2. Brief averments made in the plaint:**

i] The dispute for adjudication in the present suit is a commercial dispute as defined in Section 2(1)(c) read with Section 6 of the Commercial Courts Act, 2015. The suit is laid based on documents such as bank statement, ledger accounts and acknowledgment of debt by the defendant. The suit transaction is a contract for sale of butter. The plaintiff is engaged in the business of manufacturing and selling ghee, ice-creams, sweets, instant mixes, spice blends and other dairy products and that the Plaintiff's commitment to excellence and its vision of providing best quality products is unwavering. The plaintiff states that in December 2016, the parties had arrived at a business/commercial understanding wherein the defendant had agreed to supply butter to the plaintiff

on a regular and on-going basis and in this regard the defendant had sought an advance payment of Rs.75,00,000/- "Advance Amount" as a security against the continuous supply of butter. The Defendant insisted upon payment of the said Advance Amount to safeguard its interests in case of default and to ensure continuous supply of butter. The defendant agreed to adjust the Advance Amount paid against invoices or return the same, towards the end of business transaction. As agreed between the parties, the plaintiff had transferred the Advance Amount during December 2016 and January 2017 by way of bank transfer, pursuant to which the defendant had commenced the supply of butter to the plaintiff company. The bank account statement of the plaintiff as enclosed evidence the transfer of Rs.90,00,000/- to the defendant out of which Rs.75,00,000/- was towards the Advance amount given as security and the balance amounts were towards supply of butter. Copy of the plaintiff company's bank account statement evidencing payment of the Advance Amount to the defendant on 1<sup>st</sup> December 2016, 2<sup>nd</sup> December 2016 and 4<sup>th</sup> January 2017 and the statement of account as on date is enclosed as a part of this suit.

ii] The defendant supplied the quantities of butter on a regular basis to the plaintiff at its office premises in Hosur. The consignment of butter was generally delivered along with the tax invoice raised in the name of the plaintiff and such invoice was accompanied by an outward gate pass provided by the

defendant's stores department to its security. Upon receipt of the consignment of butter by the plaintiff at its premises in Hosur, the same would be stamped and acknowledged by the plaintiff's personnel. Further submit that the tax invoices as raised by the defendant were cleared by the plaintiff in a timely manner. Following are the details of the invoices and outward gate pass issued by the defendant with respect to the supply of butter.

INVOICE DETAILS			OUTWARD GATE PASS DETAILS	
No.	Date	Amount	S.No.	Date
92	07.05.2017	Rs.13,55,500.00	450	07.05.2017
103	15.05.2017	Rs.16,85,760.00	454	14.05.2017
122	22.05.2017	Rs.17,12,720.00	459	21.05.2017
139	29.05.2017	Rs.12,00,480.00	463	28.05.2017
158	19.06.2017	Rs.13,00,300.00	475	19.06.2017
172	29.06.2017	Rs.13,33,100.00	183	30.06.2017
8	07.07.2017	Rs.13,34,704.00	492	07.07.2017
21	19.07.2017	Rs.6,91,936.00	508	19.07.2022

Copy of the said invoices and outward gate passes are enclosed as a part of this suit. Further submit that, to the plaintiff's shock and dismay the Defendant without any reason had discontinued the supply of butter to the plaintiff after July 2017. The plaintiff had suffered losses due to sudden stoppage of supply of butter by the defendant. The plaintiff is also entitled to claim damages along with the claim for return of security deposit. That being so, due to the long standing relationship between the plaintiff and the defendant, the plaintiff only

demanded return of advance amount.

iii] The plaintiff had sent several letters dated 02.07.2018, 10.07.2018, 20.07.2018, 01.08.2018, 27.08.2018, 18.09.2018, 13.10.2018, 19.11.2018 and 12.06.2019 vide email to the defendant, seeking for a refund of the Advance Amount paid to the defendant. Copy of the follow up letters sent by the plaintiff to the defendant are enclosed as part of this suit. The defendant has time and again acknowledged that the said Advance Amount is lying with the defendant and in this regard, a copy of the confirmation of balance, signed and acknowledged by the defendant as on 1<sup>st</sup> April 2018 was provided to the plaintiff, thereby stating that the balance as per their accounts is Rs.72,50,520.75/- and the same was communicated to the plaintiff vide an email dated 31<sup>st</sup> May 2018. Copy of the said confirmation of balance and email dated 31<sup>st</sup> May 2018 are enclosed as a part of this suit. The defendant had requested for additional time and that the defendant, vide email dated 29.08.2018, had agreed to refund the Advance Amount on an installment basis from October, 2018. However, the defendant failed to honour its commitment yet again did not pay any installment as promised. Copy of the said email dated 29.08.2018 is enclosed as a part of this suit.

iv] The defendant vide email dated 10<sup>th</sup> August 2020, stated that the defendant has shutdown their plant operations and are in the process of

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restructuring loans with their bank and pursuant to the completion of the same, the defendant shall settle the Advance Amount due to be refunded to the plaintiff. Copy of the email dated 10.08.2020 is enclosed as a part of this suit. The plaintiffs stated that the current outstanding balance stands at Rs.99,93,750/- i.e., the security deposit of Rs.75,00,000/- plus and interest of Rs.24,93,750/- calculated at 6% per annum from 1<sup>st</sup> July 2017. The plaintiff had caused issue of a lawyer's notice dated 18<sup>th</sup> October 2022, by virtue of an email on 31.10.2022 as well as speed post on 19.10.2022. It is further submitted that on receipt of the legal notice by email the defendant has neither replied and nor has refunded the Advance Amount to the plaintiff. The plaintiff herewith has enclosed the copy of the layer's notice, speed post receipt, online delivery status of the notice and notice sent by email to the defendant. The plaintiff had approached the Districit Legal Services Authority (Mediation Centre), for mediation under section 12A of the Commercial Courts Act, 2015 on 15.02.2023. As things stood thus, the Mediation commenced on 23.02.2023 between the plaintiff and the defendant and continued on subsequent dates 06.02.2023 and 27.03.2023. Further, the plaintiff states that the matter could not be settled as the defendant did not appear before the Mediation Centre for any of the aforesaid dates. Hence, a non-starter report dated 28.03.2023 was issued. The plaintiff herewith has enclosed the non-starter report dated 28.03.2023

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issued by the District Legal Services Authority. Therefore, the plaintiff humbly prays that the court may be pleased to pass judgment and decree for the suit claim amounting to Rs.99,93,750/- i.e., principal amount Rs.75,00,000/- with interest calculated @ 6% per annum from 1<sup>st</sup> July 2017 till date against the defendant directing them to jointly or severally pay the suit claim to the plaintiff company with interest at 6% per annum with rests from the date of this suit till date of realization to grant costs of the suit against the defendants and deems fit and necessary under the circumstances and thus render justice.

### **3. The defendant called absent and set exparte.**

4]. In order to prove the claim of plaintiff, Tmt.Kasthuri was examined as P.W.1. Ex.A1 to A12 were marked through her on 23.04.2024. Defendant side neither witness have been examined or Exhibits have been marked.

### **5] Now the question for determination is that**

Whether the defendant is liable to repay the Advance amount to the plaintiff?

### **Discussion and decision:**

6] The suit has been filed by the plaintiff to pass a Judgment and Decree for the suit claim amount of Rs.99,93,750/- (i.e., Principal amount Rs.75,00,000/- and interest calculated @ 6% per annum from 1<sup>st</sup> July 2017 till

date) against the defendant and directing them to jointly or severally pay the suit claim to the plaintiff company with interest at 6% per annum with rests from the date of this suit till date of realization.

7] This suit has been filed on 16.06.2023 and taken on file on 03.07.2023 and posted for first hearing to 31.08.2023, on which date, for the defendant Mr.N.Poongundran filed vakalath and later on 27.09.2023 this suit is referred for mediation. After some hearings on 12.02.2024 though plaintiff present, as there is no representation on the side of defendant, who is also absent this court has called for mediation report and posted the matter to be heard on 28.02.2024. On 28.02.2024 statement of truth has been filed on the side of plaintiff and the right of defendant filing written statement is closed as per the provision of commercial courts act and directed the defendant to submit his statement regarding admission and denial of documents produced on the side of plaintiff by adjourning the matter to 14.03.2024 on condition defendant would be called absent and set exparte if not represented by then. While so even on 14.03.2024 defendant was not present and no representation from his counsel on record and hence defendant was called absent and set exparte to proceed further.

8] On 23.04.2024 on the side of plaintiff concerned one P.Kasthuri authorized person examined himself as P.W.1 and through him Ex.A1 to Ex.A12 were marked subject to proof and relevancy as the defendant being

exparte by this court. Further on the side of the plaintiff affidavit as certificate required under sec.65 (B) of Indian Evidence Act, pertaining to admissibility of electronic evidence has been submitted and on 14.06.2024 plaintiff's side evidence being closed as per endorsement made by plaintiff's counsel as "plaintiff's side evidence closed". More over on the side of plaintiff's concern written argument also produced on 14.06.2024 as follows:

9] The case of the plaintiff is that the plaintiff had paid an advance of Rs.75,00,000/- in two tranches vide bank transfer to the defendant for the continuous supply of butter and the same is proved through the plaintiff's bank statement Ex.A2. On the side of plaintiff it is submitted that until July 2017, the plaintiff had cleared the Defendant's invoices in a timely manner against the said purchase. Subsequently, the defendant abruptly ceased the supply of butter without any prior intimation to the plaintiff thereby causing the plaintiff to face huge financial loss and hardships.

10] Even on perusal of Ex.A5 to Ex.A7, it is evident that the defendant has time and again acknowledged its liability and payment obligations to the plaintiff and however, has failed to refund / repay the sum of Rs.75,00,000/- to the plaintiff which they ought to have. More over the defendant was also duly served with the notice of summons issued by the plaintiff based on the directions of this court. In this regard, reliance is placed on C.C.Alavi Haji Vs.Palapetty

Muhammed and Ors. {MANU/SC/2263/2007} wherein the Apex Court has observed that, Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is necessary to further aver in the matter that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. That said observation was upheld on a later date by the Hon'ble Supreme Court in the case of Vishwabandhu Vs. Krishna and Ors (MANU/SC/0729/2021).

11] The defendant has failed to comply with the directions of this court and has not filed its written statement in this suit. In Balraj Taneja & Ors Vs. Sunil Madan and Ors (MANU/SC/0551/1999), the Hon'ble Supreme Court has held that there are two separate and distinct provisions under which the court can pronounce judgment on the failure of the defendant to file Written Statement. The failure may be either under Order 8 Rule 5(2) under which the court may either pronounce judgment on the basis of the facts set out in the plaint or require the plaintiff to prove any such fact; or the failure may be under

Order 8 Rule 10 CPC under which the court is required to pronounce judgment against the defendant or to pass such order in relation to the suit as it thinks fit. The Hon'ble Supreme Court had made the aforesaid observation by placing reliance on Sangram Singh Vs. Election Tribunal, Kotah and Anr (MANU/SC/0126/1954)

12] Further more, the action of the defendant by consciously not appearing before this court amounts an admission of the averments levelled against it. Since the case stands unchallenged by the defendant and more so owing to the documents relied upon by the plaintiff which clearly evidences the admission of liability by the defendant, there is no reason to disbelieve the case of the plaintiff. The Hon'ble Supreme Court in Anil Rishi Vs. Gurbaksh Singh (MANU/SC/8133/2006) held that the initial burden of proof would be on the plaintiff in view of section 101 of the Indian Evidence Act, 1872 i.e. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. On perusal of Ex.A2 would indicate that the plaintiff had paid a sum of Rs.75,00,000/- in advance to the defendant. More over, on perusal of Ex.A5 to Ex.A7, evidences the admission of liability made by the defendant on several occasions.

13] The plaintiff concern represented by its director Mr.Kasthuri examined himself as P.W.1 and through him Ex.A1 to Ex.A12 have been

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marked in support of the suit. Through his proof affidavit the plaintiff deposed through its director P.Kasthuri regarding its case filed against the defendant concern as stated in the plaint specifically as the alleged document Ex.A1 copy of the Board Resolution Authorising P.W.1 Kasthuri to present this case is found as to represent its disputes with Vaishno Devi Food Products Pvt.Ltd., and all legal proceedings to be initiated on behalf of the company etc., and found to be dated on 19.12.2020. Hence this court clarified about the authorisation given by way of Board Resolution and through memo dated 25.06.2024 the copy of the Board Resolution dated 19.12.2020 is produced before this court as authorising Kasthuri / P.W.1 through represent the company (Plaintiff) in respect of its disputes with Ganga Food Products Pvt. Ltd., (defendant) and all legal proceedings..... Thus this court has verified plaintiff concern has given authorisation through its Director Kasthuri (P.W.1) to represent itself against the defendant before this court of law. Further it is also verified on perusal of plaint, this P.w.1/Kathuri alone represented the plaintiff concern as authorised person by Board Resolution dated 19.12.2020.

14] Ex.A2, Ex.A3 are the statement of account of the plaintiff's company and invoices and corresponding outward gate passes marked on the side of plaintiff so as to prove consignment of butter to the defendant company dated 07.05.2017, 14.05.2017 and 15.05.2017, (outward gate pass dated 14.05.2017),

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22.05.2017 (outward gate pass dated 21.05.2017), 29.05.2017 (outward gate pass 28.05.2017), 19.06.2017, 29.06.2017 (outward gate pass dated 30.06.2017), 07.07.2017, 19.07.2017. In Ex.A4 series the follow of letters dated 2.07.2018, 10.07.2018, 20.07.2018, 1.08.2018, 27.08.2018, 18.09.2018, 13.10.2018, 19.11.2018 and 12.06.2019 sent by the plaintiff company to the defendant company are marked. Ex.A5 is the confirmation of balance and email dated 31.05.2018 sent to the defendant counsel where in it is clearly stated as per plaintiff's accounts book the closing balance is Rs.72,40,520.75.

15] Similarly, Ex.A6 is the email dated 29.08.2018 received from defendant's company through its manager purchase namely J.Mohan which reads as follows:

We are currently under tremendous financial stress. Our bank account has been capped by our banker for want of payment. At this juncture we are unable to immediately settle your payments. However we are in the process of liquidating our assets. We hope to start repaying you in installments from the month of October 2018. We request your co-operation in this regard.

16] Ex.A7 is the communication sent by the defendant concern through email to the plaintiff company on 10.08.2020 reads as follows:

..... We are currently shutdown with our plant operations coming to a complete halt. We are however in the process of rescheduling and reconstructing

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of our loans with our bank. Only once this process is complete we would be able to start our payments to our creditors. This pandemic situation has burdened us with additional pain and sufferings .... We request you to kindly bear with us for some more time for we are looking forward to settle our dues at the earliest through the best of our ability.....

17] It is also verified even before above said email, the plaintiff concern has sent letter on 30.07.2020 regarding the demand notice under the provision of insolvency and bankruptcy code, 2016 on perusal of Ex.A7

18] Ex.A8 is copy of legal notice sent by the plaintiff concern through its counsel dated 18.10.2022 demanding repayment for the debt arising out of advance payment for supply of goods in detailed.

19] Ex.A9 is the copy of postal receipt and Ex.A10 is the copy of track consignment pertaining to legal notice Ex.A8. Ex.A11 is the copy of email notice sent on 31.10.2022 on behalf of plaintiff concern through its counsel. Ex.A12 is the non-starter report sent by the Secretary DLSA (Pre Institution Mediation) Krishnagiri dated 28.03.2023 wherein it is clearly stated the application for Pre Institution Mediation dated 15.02.2023 though for appearance of opposite party (defendant) schedule for 23.02.2023, 06.02.2023 and 27.03.2023 the defendant concern has not come forward for Pre Institution Mediation as required by law and hence report is made as non-starter with

reasons as follows:

Petitioner and petitioner Advocate present. Respondent and Respondent advocate absent for all hearings. Hence Pre Institution Mediation closed as non-starter.

20] As discussed above on perusal of both oral and documentary evidence produced on the side of plaintiff concern it is clarified that the defendant company is liable to repay the advance along with reasonable interest at the rate of 6% as claimed for the principal amount of Rs.75,00,000/- and in total Rs.99,93,750/- with future interest at the rate of 6% per annum from the date of suit till the date of realization and the plaintiff concern as proved its case specifically also appeared before DLSA, Krishnagiri for Pre Institution Mediation and only after non-starter report dated 28.03.2023, this suit has been filed before this court on 16.06.2023 complying the mandatory provision under Sec.12(A) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018.

21] In this case, the defendant did not come forward to defend the case of the plaintiff and also did not produce any oral or documentary evidence to disprove the case of plaintiff. Therefore, the case of the plaintiff remains unchallenged. Considering the aforesaid case of the plaintiff, this Court is of the considered view that the plaintiff has proved its case by way of examining the

Director namely Kasthuri as P.w.1 and by producing documentary evidence.

22] Therefore, in the light of the above facts and circumstances that the present suit is admitted and consequently, directing the defendant to pay the plaintiff a sum of Rs.99,93,750/- (i.e. principal amount Rs.75,00,000/- + interest calculated @ 6% per annum from 1<sup>st</sup> July till 2017 till date) along with the costs of this suit.

Finally, this suit is decreed with costs. Defendant is hereby directed to pay the plaintiff the suit amount of Rs.99,93,750/- together with subsequent interest on Rs.75,00,000/- at the rate of 6% per annum from the date of suit till the date of realization.

Dictated to Steno-Typist, directly typed by her/him in computer, corrected and pronounced by me in the Open Court today this the 4<sup>th</sup> day of July 2024.

Principal District Judge,  
Krishnagiri.

**Plaintiff side Witnesses:**

P.w.1. - Tmt. Kasthuri

**Plaintiff side Exhibits:**

Ex.A1	19.12.2020	Board Resolution authorizing Mr.P.Kasturi – True copy
Ex.A2	01.12.2016 to	Bank Account and statement of the Plaintiff evidencing transfer of Advance amount to the defendant and

	03.12.2016 02.01.2017 to 04.01.2017	statement of Account of plaintiff as on date – True copy
Ex.A3	07.05.2017, 15.05.2017, 22.05.2017, 29.05.2017, 19.06.2017, 29.06.2017, 07.07.2017, 19.07.2017.	Invoices and outward gate pass issued by the defendant – Original
Ex.A4	02.07.2018, 10.07.2018, 20.07.2018, 01.08.2018, 27.08.2018, 18.09.2018, 13.10.2018, 19.11.2018, 12.06.2019.	Follow up letters and emails sent by the plaintiff to the defendant Internet copy
Ex.A5	01.04.2017 to 31.05.2018	Confirmation of balance signed by the defendant acknowledgment the debt – Internet copy
Ex.A6	29.08.2018	Email sent by the defendant requesting the plaintiff for additional time to refund the Advance Amount – Internet copy
Ex.A7	10.08.2020	Email sent by defendant to the plaintiff confirming that the Advance Amount shall be refunded once their restructuring of loans is completed – Internet copy
Ex.A8	18.10.2022	Legal Notice issued by the plaintiff against the Defendant – Office copy
Ex.A9	19.10.2022	Speed post receipt evidencing the dispatch of the Legal Notice- Original
Ex.A10	-	Online status page evidencing the delivery status of the Legal Notice – Internet copy

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Ex.A11	31.10.2022	Email sent by the plaintiffs Advocates for issuing the Legal Notice against the Defendant – Internet copy
Ex.A12	28.03.2023	Non- Starter report - Original

**Defendants' side Witness and Exhibits:** Nil

Principal District Judge,  
Krishnagiri.