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Date of Institution- 08.03.2010
Date of Registration- 19.04.2010
Date of Disposal- 27.09.2018
Duration- 8 Years 5 Months 8 Days

**IN THE COURT OF 2ND ADDITIONAL SENIOR CIVIL JUDGE,
BHARUCH**

Special Civil Suit No. 32 of 2010

Exh- 81

Plaintiff

M/s. Gujarat Flurochemicals Limited
A Company incorporated under the
Companies Act, 1956.

Office Address: ABS Towers, 2nd Floor,
Old Padra Road, Vadodara

V E R S U S

Defendant

M/s. Nuwave Technologies Pvt. Ltd.
A company registered under the
Companies Act, 1956
Office: 6, Alpana, 2nd Floor,
Pedder Road, Mumbai- 400 604

Subject: Suit For Recovery And Damages of Rs. 43,63,200/-

Appearances:

Learned Advocate Anand Majmudar For the Plaintiff

Ex-parte For the Defendant

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JUDGMENT

1. The plaintiff has filed this suit for recovery of Rs. 43,63,200/- along with interest at the rate of 18% per annum from the date of the suit till realization.

1.1 The brief facts of the plaintiff's case is that, the plaintiff is a Company registered under the Indian Companies Act, 1956. The plaintiff is engaged in the business of manufacture and supply of refrigerant gases. The defendant is also registered under the Indian Companies Act, 1956. The plaintiff in order to aid to their production process desired to purchase and get the screw conveyors installed through the defendant. The plaintiff accordingly vide order dated 20/6/2006 placed an order for supply of 4 screw conveyors with drive unit for TFE-PTFE plant at the plaintiff's site. The said purchase order was subsequently amended vide various amendments and the said amendments were accepted by the defendant. The scope of purchase order was explicitly clear and defined the technical specifications as well as time line for delivery and installation. The main function of the Screw conveyors is to transport the crushed and washed PTFE material from the washing section to the drying section. The Screw conveyors carry the freshly washed PTPE material to the drying section without allowing the material to get contaminated. In order to avoid contamination during the passage of the product the shaft of the screw conveyors has to be a seamless tube.

1.2 It is the say of the plaintiff that the plaintiff accepted the screw conveyors from the defendant only after the defendant produced the Test Certificate certifying that the steel used for the shaft was Stainless Steel 316L grade during the final inspection. The stainless steel 316L grade is

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the standard material as per the industry norms for the manufacturing of such conveyors which are used for performing the task as required by the plaintiff. However, on receipt of the screw conveyors the plaintiff found out that the said screw conveyors were not manufactured according to the specifications given by the plaintiff. The screw shafts started breaking and on inspection by the plaintiff, the plaintiff found that the said breakage was due to the shaft material being fabricated at different places. The said shaft broke down on multiple occasions resulting into stoppage in the plant resulting into reduction of output. Due to such frequent stoppage in plant, the production of the plaintiff suffered leading into huge losses to the plaintiff.

1.3 The plaintiff has further pleaded that when the problem persisted the plaintiff sent a sample of the material for technical investigation by an independent authority and it was found that the material composition of the shaft was not meeting the grade of SS316L as per the test certificate given by the defendant at the time of supply of the conveyors. The investigation further revealed that the material used was a non standard stainless steel of ASTM 240 grade which was in utter breach of the standard practices and specifications of the purchase order. The defendant has failed, neglected and omitted to perform as per the purchase order and therefore the plaintiff is entitled to recover the amount of Rs. 9,00,000/- paid to the defendant. The defendant is also responsible for the loss of production to the tune of Rs.23,00,000/- . When the defendant failed to indemnify the plaintiff even after repeated callings and reminders, the plaintiff was constrained to serve a legal notice dated 12.02.2009 to the defendant for the payment of outstanding amount. The defendant is also liable to pay interest at the rate of 18% amounting to Rs.11,63,200/-. Thus the total amount coming to

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Rs.43,63,200/-. Hence the plaintiff has filed this suit for recovery of Rs. 43,63,200/- along with interest at the rate of 18% p.a. from the date of filing of this suit till realization along with the cost of this suit.

2. The summons was duly served on the defendant. But the defendant chose not to appear before the Court. The plaintiff also filed service affidavit vide Exh- 18 and Exh- 21. Since the defendant failed to appear and file its written-statement, my learned predecessor Judge was pleased to pass an order to proceed exparte against the defendant.
3. Issues were framed by my learned predecessor Judge vide Exh- 22. Thereafter the plaintiff has produced the following oral and documentary evidence.

ORAL EVIDENCE

1.	Bhavin Vipin Desai (Company Secretary of plaintiff Co.)	Exh- 34
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DOCUMENTARY EVIDENCE

1	Copy of PO for supply of 4 Nos. Screw Conveyors	T-Exh- 37A
2	Amendment in Purchase Order	T-Exh- 38
3	Amendment in Purchase Order	T-Exh- 39
4	Amendment in Purchase Order	T-Exh-40
5	Amendment in Purchase Order	T-Exh-41
6	Test certificate given by defendant company	T-Exh-42
7	Test certificate for the test made by plaintiff company	T-Exh-43
8	E-mail written by plaintiff to defendant	T-Exh-44
9	E-mail written by plaintiff to defendant	T-Exh-45
10	Reply by defendant to plaintiff's E-mail	T-Exh-46
11	Reply by plaintiff to defendant's E-mail	T-Exh-47

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12	Notice by RPAD	T-Exh-48
13	Returned Cover and Acknowledgment Slip	Exh-49
14	Invoice No. 019/06-07	Exh-50
15	Delivery challan No. 019/06-07	Exh-51
16	Goods Receipt Note of Invoice No. 019/06-07	Exh-52
17	Invoice No.021/06-07	Exh-53
18	Invoice No.022/06-07	Exh-54
19	Delivery challan No. 021/06-07	Exh-55
20	Delivery challan No. 022/06-07	Exh-56
21	Service Tax Receipt	T-Exh-57
22	Goods Receipt Note of Invoice No.021/06-07	T-Exh-58
23	Service Tax Receipt	T-Exh-59
24	Goods Receipt Note of Invoice No.022/06-07	T-Exh-60
25	Invoice No.026/06-07	Exh-61
26	Delivery challan No.026/06-07	Exh-62
27	Goods Receipt Note Invoice No.026/06-07	Exh-63
28	Invoice No. 025/06-07	Exh-64
29	Delivery Challan No.025/06-07	Exh-65
30	Packing Slip-I	Exh-66
31	Goods Receipt Note of Invoice No.025/06-07	Exh-67
32	Invoice No.027/06-07	Exh-68
33	Delivery Challan No.028/06-07	Exh-69
34	Service Tax Receipt	Exh-70
35	Goods Receipt Note of Invoice No.027/06-07	Exh-71
36	Authority Letter	Exh-72
37	Ledger Account (01/04/05 to 31/03/2006)	Exh-73
38	Ledger Account (01/04/06 to 31/05/2007)	Exh-74

4. The closing pursis on behalf of the plaintiff is produced vide Exh- 76.

5. On behalf of the defendant no evidence was produced though given enough time and opportunity. Hence the right of the defendant to

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produce evidence was closed.

6. The learned advocate for the plaintiff has produced the written arguments vide Exh- 78. The defendant has chosen not to remain present for arguments. Thus no arguments are advanced on behalf of the defendant.
7. For the determination of the suit the following issues are framed vide Exh- 22.

ISSUES

1. Whether the plaintiff proves that on 20/06/06 plaintiff placed an order for supply of 4 screw conveyors more particularly stated in para-4 of the plaint with the present defendant?
2. Whether the plaintiff proves that it was agreed with the defendant to use steel for shaft to be of stainless steel 316L grade? If No...
3. Whether the plaintiff proves that use of stainless steel 316L grade is the standard material as per the Industry Norms?
4. Whether the plaintiff proves that the defendant herein has used non standard stainless steel of ASTM 240 grade instead of standard one?
5. Whether the plaintiff proves that it has made payment of Rs.9,00,000/- (Rs. Nine Lakhs) for the 4 Screw Conveyors? If yes
6. Is there any breach of contractual obligation by defendant?

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7. Whether the plaintiff proves that by use of non standard stainless steel by defendant the plaintiff sustained loss of production to the tune of Rs.23,00,000/- (Rs. Twenty Three Lakhs)?
8. Whether the plaintiff proves that the plaintiff is entitled to get relief as prayed for?
9. What order and decree?

8. My findings on the above issues are as under:

1. In Affirmative
2. In Negative
3. In Negative
4. In Negative
5. In Affirmative
6. In Negative
7. In Negative
8. In Negative
9. As per Final Order

DISCUSSION ON EACH ISSUES

9. Issue No. 1

(9.1) On behalf of the plaintiff company Bhavin Vipin Desai, Company Secretary in the plaintiff company has produced his affidavit of examination-in-chief vide Exh- 34. He has stated that the plaintiff had placed an order for supply of 4 screw conveyors with drive unit for TFE-

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PTFE plant with the defendant on date 20/06/06. The said purchase order was amended vide Amendment no. GFL/Dahej/TFE-PTFE/06-07/G705/R01 dated 3/8/06. The purchase order was again amended vide Amendment No. GFL/Dahej/TFE-PTFE/06-07/G705/R2 dated 8/1/07. The purchase order was again amended vide Amendment No. GFL/Dahej/TFE-PTFE/06-07/G705/Rev.03 dated 30/1/07. The purchase order was again amended vide Amendment No. GFL/Dahej/TFE-PTFE/06-07/G705/Rev.04 dated 1/2/07.

(9.2) The plaintiff has produced the said purchase order and its amendments. The said documents are given Tentative Exhibit No's 37A, 38 to 41 because they are zerox copies. The plaintiff has not produced the original purchase orders. But since the defendant has not appeared because the Court and taken any objection as to the production of zerox copies the objection as to mode of proof is not considered. Now on perusing the purchase orders it appears that the plaintiff has placed a purchase order for 4 Nos. of Screw Conveyors with drive unit for TFE-PTFE plant with the defendant. It also appears that amendments were made in the purchase orders from time to time.

(9.3) The plaintiff has also produced the print out copies of E-mails sent by the plaintiff to the defendant which are on record at Tentative Exh- 44 and Tentative Exh- 45. The plaintiff has also produced the print out copy of E-mail sent by the defendant to the plaintiff which is on record at Tentative Exh- 46. All these documents are given Tentative Exhibits. But since they are print out copies of E-mails they can be read in evidence. Now on perusing the E-mail sent by the defendant to the plaintiff it transpires that the defendant has admitted that the purchase order for screw conveyors was placed by the plaintiff with the defendant.

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(9.4) Furthermore, the plaintiff has also produced the original Invoice No. 027/06-07 dated 13/4/07 which is on record vide Exh- 68. On perusing the same it appears that the said invoice is for purchase order No. GFL/Dahej/TFE-PTFE/06-07/G705/REV.3 dated 30/01/2007. It is in confirmation with the purchase order produced vide Exh-40. The said invoice is in the name of the plaintiff and bears the seal of defendant company. It also mentions the description of items in which one of the item is screw conveyor in the quantity of 4 Nos. Further the plaintiff has also produced its delivery challan vide Exh- 69. The said delivery challan also bears the same purchase order number. The plaintiff has also produced the receipt of transport company vide Exh- 70. On perusing the same it appears that the name of the defendant is shown as consignor and the name of the plaintiff is shown as consignee. The materials which were carried were screw conveyor with accessories. The consignment was delivered at the address of the consignee on date 13/4/07. The plaintiff has also produced the Goods Receipt Note vide Exh- 71.

(9.5) Thus from all above documentary evidence it transpires that the plaintiff had placed a purchase order with the defendant for the purchase of 4 screw conveyors on date 20/6/06 and thereafter the purchase orders were amended from time to time. As per the said purchase orders the defendant had delivered the goods which were received by the plaintiff. Thus the plaintiff has proved that the plaintiff company placed an order for supply of 4 screw conveyors as stated in para-4 of the plaint with the defendant. Hence **Issue No. 1** is answered **In Affirmative**.

10.Issues No. 2, 3 and 4

For the sake of brevity all the above three issues are discussed and

decided together.

(10.1) It is the say of the plaintiff that the plaintiff accepted the screw conveyors only after the defendant produced the test certificate certifying that the steel used for the shaft was stainless steel 316L grade. The plaintiff has further stated that the Stainless Steel 316L grade is the standard material as per the Industry norms. It is further the say of the plaintiff that the defendant did not use the standard material and used the non standard material. In order to substantiate its say the plaintiff has produced and relied upon the certificates of chemical analysis which are produced vide Tentative Exh- 42 and Tentative Exh- 43.

(10.2) Now before appreciating both of these documents it is required to first find out that whether the purchase order placed by the plaintiff contains any specification as to the description of the screw conveyors to be of Stainless Steel 316L grade. For that the first purchase order which is on record vide T-Exh- 37A is required to be perused. On perusing the said purchase order it is mentioned in it that ***“The scope of supply shall include fabrication & supply of 4 Nos. of Screw Conveyors with drive unit as per Annexure II attached herewith”***. In point No. 1.1 it is mentioned that ***“ The material being supplied should be new and complete in all respects and the supply should be as per discussions”***. The Annexure II attached with the purchase order also mentions the Item description as ***Screw Conveyor+Drive Unit Comprising of 2 HP, Helical drive unit + Drive Accessories (L-752-A-D)***.

(10.3) Thus from perusal of the above purchase order produced by the plaintiff, nowhere it is mentioned that the Screw Conveyors which

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are to be supplied by the defendant has to be of Stainless Steel 316L grade. It is specifically stated in the purchase order that the screw conveyors and drive unit shall be as per the Annexure II. Even in Annexure II the description does not say that the screw conveyors shall be made of Stainless Steel 316L grade. Thus in the purchase order there is no stipulation that the shaft of the screw conveyors shall be made of Stainless Steel 316L grade.

(10.4) Furthermore, the plaintiff has not produced any cogent evidence to prove that the use of Stainless Steel 316L grade is the standard material as per Industry norms. The plaintiff has not examined any technical person in this field who could testify about the standards used for the making of screw conveyors. The witness for the plaintiff company who has deposed vide Exh- 34 is the Company Secretary in the plaintiff company. He is not a technical person to testify about the standards used in the Industry norms. The plaintiff has not examined any engineer of the plaintiff company who would be an expert to testify about the normal industry norms required for the making of screw conveyors. The Company Secretary is not a technical person to testify about the standard materials which are used for the making of shaft of the screw conveyors. Thus even if the defendant has not cross-examined the witness for the plaintiff, the deposition as regards to the standard material as per industrial norms cannot be considered. Furthermore, the plaintiff has to prove its case on its own by producing cogent evidence. The plaintiff cannot rely upon the fact that the facts stated in the examination-in-chief have remained unchallenged. It has been written in the written arguments on behalf of the plaintiff that since the defendant has chosen not to appear before the Court it has to be believed that the defendant has admitted the plaintiff's claim. But this argument on behalf

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of the plaintiff is not tenable. The plaintiff has to prove its case on its own footing. Simply because the case is proceeded exparte against the defendant it cannot be said that the defendant has admitted the plaintiff's claim. If it was so the defendant would have not denied the allegations of the plaintiff in its reply to the E-mails which is on record vide T-Exh- 46. Thus the fact that the defendant has not appeared or not filed any written-statement or not produced any evidence is of no help to the plaintiff in proving its case. As discussed above the purchase order produced by the plaintiff does not mention that the steel which is to be used for the making of shaft of screw conveyors should be of Stainless steel 316L grade. The plaintiff also failed to prove that the Stainless steel 316L grade is the standard steel as per industry norms.

(10.5) Now on perusing the certificate of chemical analysis which is produced by the plaintiff vide T-Exh- 42, the said certificate is given by Deep Metallurgical Services. The defendant's name is written as the clients name. In remarks column it is written that it confirms AISI 316. It is the say of the plaintiff that the said certificate was given by the defendant at the time of supply of the purchase materials. But on perusing the said certificate nowhere it is mentioned that the said certificate is given by the defendant to the plaintiff. If the said certificate was given to the plaintiff by the defendant, the plaintiff could have produced the original certificate. But the plaintiff has produced the zerox copy. Furthermore, there is no mention of the sample description in the said certificate. Therefore it is not clear from the said certificate that the chemical analysis was done for which sample. It cannot be said that the chemical analysis was done for the materials supplied by the defendant to the plaintiff. Nowhere in the said certificate there is any mention about the description of the material which was supplied for the analysis.

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It does not appear that the chemical analysis was done for the same material which was supplied by the defendant to the plaintiff. On the contrary it is mentioned in the said certificate that the specification is '1inch NB Pipe'. Whereas the material which is supplied by the defendant is screw conveyor. Furthermore, the plaintiff has not examined the person who has carried out the chemical analysis and who has given the said certificate. Thus from the said certificate it is not proved that the said certificate is for the analysis done of the materials supplied by the defendant to the plaintiff.

(10.6) Now on perusing the certificate produced by the plaintiff vide T-Exh- 43 also it is not proved that the sample which was given for chemical analysis was the same sample which was supplied by the defendant to the plaintiff. Further, the plaintiff has not even examined the person who has done the chemical analysis and given the said certificate. Thus even from the certificate produced at T-Exh-43 it is not proved that the said certificate is for the materials supplied by the defendant to the plaintiff. Thus it cannot be said from the above two certificates that the materials supplied by the defendant are not of standard as per industry norms. Thus when the plaintiff has failed to prove that as per the purchase order the defendant was required to use stainless steel 316L grade in making of shaft of screw conveyor and also that stainless steel 316L grade is the standard material as per industry norms, it cannot be said that the materials supplied by the defendant are of non standard steel instead of standard one.

(10.7) Thus the plaintiff has failed to prove that it was agreed with the defendant to use steel for shaft to be of stainless steel 316L grade. The plaintiff has failed to prove that use of stainless steel 316L grade is

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the standard material as per the Industry norms. The plaintiff has also failed to prove that the defendant has used non standard stainless steel of ASTM-240 grade instead of standard one. Hence **Issues No. 2, 3 and 4** are answered **In Negative**.

11. Issue No. 5

(11.1) The plaintiff has proved that the plaintiff company had made a purchase order for the purchase of 4 screw conveyors with the defendant. The plaintiff has proved that the delivery of the screw conveyors was given by the defendant to the plaintiff. The plaintiff has stated that the total price of the screw conveyors was Rs.9,00,000/-. It is the say of the plaintiff that the plaintiff has paid Rs.9,00,000/- to the defendant. In order to prove its say the plaintiff has produced the original Invoice vide Exh-68. On perusing the same it appears that the price of 4 screw conveyors is Rs.9,00,000/-. The plaintiff has produced the ledger account of defendant company maintained by the plaintiff vide Exh- 73. On perusing the same it appears that for purchase order no. TFE/PTFE/06-07/G705/R01 i.e. for the purchase of screw conveyors the plaintiff has made payment of Rs.70,000/- as advance payment of 10% of total cost on date 18/8/06 through cheque no. 302480. Thereafter an amount of Rs.1,01,600/- is made through cheque no.996401 for the same purchase order. Thereafter an amount of Rs.10,93,678/- is shown as debit on date 17/3/07. Lastly an entry for an amount of Rs.10,89,440/- is shown on date 31/5/07 for the Invoice No. 27/06-07/13-04-07 and the purchase order is the same. Even on perusing the Invoice Exh- 68 the total price shown in it is Rs. 10,89,440/-. Thus it transpires that the plaintiff has paid the total purchase price for 4 screw conveyors to the defendant. Hence **Issue No. 5** is answered **In Affirmative**.

12.Issue No. 6

(12.1) As discussed above the plaintiff has not proved that the purchase order contained a stipulation that the material which was to be used for the making of shaft of screw conveyor was stainless steel 316L grade. The plaintiff has also not proved that the said standard is as per industry norms. The plaintiff has also not proved that the defendant had used non standard material in the making of screw conveyors. Thus the plaintiff has failed to prove that the defendant has made a breach of contractual obligation. Hence **Issue No. 6** is answered **In Negative**.

13.Issue No. 7

(13.1) It is the say of the plaintiff that because of use of non standard stainless steel by the defendant the plaintiff sustained loss of production to the tune of Rs.23,00,000/-. But as discussed above the plaintiff has failed to prove that the defendant was required to use stainless steel of 316L grade only. Further the plaintiff has failed to prove that the defendant had used non standard stainless steel. Furthermore, the plaintiff has not produced any evidence to prove that the shaft of the screw conveyors started breaking. The plaintiff has not produced any evidence to prove that the shaft was fabricated at different places. The plaintiff has not produced any photographs showing the same. The plaintiff has not examined any technical person who could depose regarding the technical specifications of shaft. Furthermore, there is no evidence on behalf of the plaintiff to prove that the plaintiff suffered any financial loss due to breaking down of shaft. The plaintiff has not produced any cogent supporting evidence to prove that its plant had to be

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stopped and it suffered any financial loss. There is no iota of evidence to prove that the plaintiff suffered loss of production. The plaintiff has not brought on record any evidence to show that how much production was made by its plant and thereafter what was the reduction in the plant. The plaintiff has produced the copy of notice sent to the defendant vide T-Exh- 48. But this is not an evidence to prove loss of production. Thus there is no evidence on behalf of the plaintiff which would prove that the plaintiff suffered any financial losses. The amount which the plaintiff has claimed as damages is not proved by the plaintiff. The plaintiff has not brought on record any details or specifications regarding the amount claimed by the plaintiff company. There is not a single evidence to prove that the screw conveyors were defective and were made by using steel of non standard grade. Thus the plaintiff has not brought on record any evidence to prove that the plaintiff company suffered a loss of production amounting to Rs. 23,00,000/-. Hence **Issue No. 7** is answered **In Negative.**

14.Issue No. 8

(14.1) The plaintiff has prayed for a decree of Rs. 43,63,200/- with interest at the rate of 18% per annum against the defendant. The plaintiff has claimed this amount as damages for the loss of production caused by the act of defendant i.e. the defendant supplying screw conveyors of non standard quality. But as discussed above the plaintiff has failed to prove that the defendant had used non standard steel. The plaintiff has failed to prove any stipulation regarding use of stainless steel 316L grade only in the making of screw conveyors. The plaintiff has also failed to prove that it has suffered a loss of production amounting to Rs.23,00,000/-. Thus the plaintiff has failed to prove that the plaintiff company is entitled to a

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decree of Rs.43,63,200/- against the defendant. Hence **Issue No. 8** is answered **In Negative**.

In view of above legal and factual aspect, the suit is required to be dismissed and final order in answer to Issue No. 9 is passed as under:

FINAL ORDER

1. The suit of the plaintiff is hereby dismissed.
2. The plaintiff shall bear its own cost and also the cost of the defendant.
3. Decree shall be drawn accordingly.

Pronounced in open court today on 27th day of September, 2018.

Date : 27-09-2018

Place: Bharuch

(Madhavi Ketanbhai Bhatt)

**UIC No - GJ 00856
2nd Addl. Senior Civil Judge
Bharuch**