



2025:DHC:6946-DB



\$-30

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

Date of decision: 04th August, 2025

+ **RFA(COMM) 441/2025 & CM APPL. 47282/2025, CM APPL. 47283/2025, CM APPL. 47284/2025**

KAWAL MAHAJAN

.....Appellant

Through: Mr. Nitesh Gupta and Mr. Ravi,
Adv.

Versus

UNITECH FIBRES PVT LTD

.....Respondent

Through: *Nemo.*

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. This is an appeal under Section 13 of Commercial Courts Act, 2015, read with Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "**CPC**").

2. Appellant (*original plaintiff*), has questioned the judgment and decree dated 26th April, 2025 delivered in **CS (COMM.) No. 690/2022**, titled as "**Kawal Mahajan Vs. Unitech Fibres Pvt Limited**" (hereinafter

Signature Not Verified

Signed By: SURYAKANT
YADAV
Signing Date: 21.08.2025
18:39:57

RFA(COMM) 441/2025

Page 1 of 10



referred as “*impugned judgement and decree*”), whereby appellant/plaintiff was seeking recovery of Rs.50,92,143/- along with *pendente lite* and future interest @18% per annum came to be dismissed.

3. Facts necessary for deciding the present appeal are as under:

- a. The appellant/plaintiff, a proprietary concern, is engaged in the business of manufacturing and supplying thermoplastic rubber compound and Pet Flakes. According to him, the last transaction of sale between the appellant/plaintiff and respondent (*original defendant*) was on 23rd August, 2019, against which a sum of Rs.9,000/- was paid by the respondent/defendant on 16th October, 2021 in cash. An amount of Rs. 24,36,244/- remained outstanding against the respondent/defendant in terms of the various invoices.
- b. Alleging that there is failure to pay the amounts due and receivable from the respondent/defendant, the appellant/plaintiff initiated aforesaid suit. The total amount sought to be recovered is Rs.50,92,143/-.
- c. The aforesaid claim was resisted by the respondent/defendant through a written statement whereby objections were raised to the maintainability of the suit on the ground of territorial jurisdiction. Issues of limitation and about malicious, false claim were also put forth.
- d. In view of the written statement, replication was placed on record by the appellant/plaintiff denying the contentions raised and suit to be decreed.



- e. Having regard to the rival contentions, the Commercial Court had framed the issues, which are as under:

“(i) Whether the plaintiff is entitled to decree in the amount of Rs.50,92,143/- as prayed for OPP

(ii) Whether the plaintiff is entitled to any interest, if so, at what rate and for what period OPP

(iii) Relief.”

- f. To prove the claim canvassed by the appellant/plaintiff, the appellant/plaintiff examined himself as **PW1**. Respondent/defendant examined its Director/AR as **DW-1** (evidences of **PW1** and **DW-1** referred above and also the documents are at **Annexure A-5A** and **Annexure A-6A** of the paper book).

- g. After appreciating the evidence in the backdrop of the rival pleadings, the Commercial Court dismissed the claim *vide* impugned judgment and decree.

4. Learned counsel for the appellant/plaintiff urged that the impugned judgment and decree is liable to be quashed and set-aside as same is without appreciating the pleadings and evidence on record. It is urged that the goods which were received by the respondent/defendant, if were faulty or with certain shortfalls, it was incumbent on the part of the respondent/defendant to return the consignment.

5. It is claimed that the Commercial Court has committed an error in relying upon a unilateral debit note dated 5th March, 2020 issued by the respondent/defendant. It is claimed that there is no evidence on record to



infer that the goods supplied by the appellant/plaintiff were defective or short. According to the counsel for the appellant/plaintiff in the absence of there being any forensic analysis of audit account/ report, the Commercial Court ought not to have believed the audit account/ report of the respondent/defendant.

6. It is also urged that even if the unilateral debit note dated 05th March, 2020 of Rs.17,93,532/- for the sake of argument is accepted, the undisputed balance amount of Rs.6,43,000/- should have been taken into account for decreeing the suit.

7. It is further claimed that the finding on the issue of *Mr. Amit Mahajan* being brother of the appellant/plaintiff is without any evidence.

8. As such, it is urged that the impugned judgment and decree is liable to be quashed and set-aside.

9. In light of the pleadings, the evidence of rival parties, and on the findings recorded in the impugned judgment and decree, we have heard the learned counsel for appellant/plaintiff at length in support of the aforesaid grounds.

10. It is apparent from the record, particularly the pleadings, that the business transaction in question is in relation to the supply of the Pet Flakes by the appellant/plaintiff to the respondent/defendant. The supply of the Pet Flakes is in fact not in dispute. The dispute arose in the matter of transaction of clearance of goods, material viz. Pet Flakes, which were imported by the appellant/plaintiff and cleared for and on behalf of the appellant/plaintiff by the respondent/defendant. It is the case of the



respondent/defendant that the material in question *i.e.* Pet Flakes were received in the city of *Mumbai* and not in Delhi as claimed.

11. It is claimed by respondent/defendant in the written statement that the appellant/plaintiff was in the business of supplying Pet Flakes material from foreign destination through sea route to the respondent/defendant in Mumbai, and the respondent/defendant would then receive the same on behalf of the appellant/plaintiff. The respondent/defendant, accordingly, used to make payments to the appellant/plaintiff for the materials received. The goods which were received were found to be *short, defective and damaged*, and accordingly, the appellant/plaintiff was informed through various *e-mails* and phone calls; the same with an intention to have adjustment of accounts.

12. It is established by the respondent/defendant from his evidence that he has served the unilateral debit note dated 05th March, 2020 for an amount of *Rs.17,93,532/-* through an *e-mail* dated 06th March, 2020. Subsequent thereto, there was no transaction by the appellant/plaintiff with the respondent/defendant. Said debit note was towards the full and final payment for the business transaction between the appellant/plaintiff and the respondent/defendant. The appellant-plaintiff thereafter has never approached the respondent/defendant claiming any outstanding payment.

13. The appellant/plaintiff claimed an outstanding amount of *Rs.24,36,244/-* towards the business transaction from 21st April, 2018 to 06th October, 2022. As per the statement of account maintained with him the said amount is claimed with an interest @ 24%.



14. In addition to above, the appellant/plaintiff has claimed an amount of Rs.26,55,899/-, with 24% interest towards unpaid amount from 01st April, 2019 to 10th November, 2022. Appellant/plaintiff has relied on number of days by which the delayed payment was made and interest @ 24% on such delayed payment.

15. As against the aforesaid claim, the respondent/defendant has deposed that the *e-mail* dated 31st October, 2018, 01st November, 2018, 12th February, 2019, 16th March, 2019, 04th May, 2019 and 16th May, 2019 in respect of *short, defective and damaged* goods were duly received by the appellant/plaintiff but not disputed. It is categorically stated by the respondent/defendant that there was no business transaction after 2019 with the appellant/plaintiff.

16. The respondent/defendant has categorically stated the he has never passed any payment in cash and all the amount were settled through account payments and as such, the claim that Rs.9,000/- was paid in cash on 06th October, 2021 was subsequently denied. The fact remains that the *e-mails* written by the respondent/defendant viz. **Ex. DW1/2, Ex. DW1/3** are not disputed. Though, the appellant/plaintiff has claimed that the *e-mails* were addressed to *Mr. Amit Mahajan*, who was an agent of the respondent/defendant; however, there is no specific plea raised by the appellant/plaintiff to this effect. The aforesaid two exhibits **Ex. DW1/2** and **Ex. DW1/3** speak of short supply in the consignment received and miscellaneous charges regarding detention, shipping line charges, Container Freight Station (**CFS**) charges etc., incurred by respondent/defendant for the appellant/plaintiff.



17. The said claim of the respondent/defendant which was received through *e-mails* was never contested at the relevant time by the appellant/plaintiff. Rather, the appellant/plaintiff has come out with a stand that the *e-mails* were sent to *Mr. Amit Mahajan*, who is the representative of the respondent/defendant and not to the appellant/plaintiff. The said fact was tested by the Commercial Court in the light of evidence and it is rightly so observed, upon analysis of evidence, by the Commercial Court, that *Mr. Amit Mahajan* has replied the *e-mails* by sending bill of entry of two commercial invoices to the respondent/defendant on 12th February, 2019. Though, the appellant/plaintiff in his cross-examination has admitted to have received *e-mail* (**Ex. PW1/D1**) which was though initially disputed, but the fact that the appellant/plaintiff has responded to the said *e-mail*, rightly speaks of the same having been received by the appellant/plaintiff.

18. Though, appropriate opportunity was given to the appellant/plaintiff to demonstrate as to the source of receipt of the *e-mail*, rightly so adverse inference was drawn by the Commercial Court against the appellant/plaintiff about receipt of the said *e-mail* **Ex. PW1/D1** through *Mr. Amit Mahajan*, who happens to be his own man.

19. The credit note of *Rs.70,000/-* dated 19th September, 2018, raised by the appellant/plaintiff was based on the rate difference. Also, credit note for *Rs.16,000/-* was issued on 08th October, 2018, and credit note for *Rs.35,000/-* was issued on 23rd October, 2018, because of the rate difference. The respondent/defendant also raised a verbal debit note on 03rd October, 2018 and 27th March, 2019. Thereafter, a credit note for



Rs.4,99,999/- was raised because of rate difference on 02th April, 2019. Thereafter rate difference debit notes were issued by the appellant/plaintiff on 20th June, 2019 for Rs.56,788/- and Rs. 61,419/- and Rs.62,304/-.

20. The appellant/plaintiff reversed the debit note of the respondent/defendant dated 03rd October, 2018 for Rs.2,55,500/- on 04th March, 2020 after more than 18 months of the receipt of the same and another debit note for Rs.64,850/- dated 27th March, 2019 was reversed on 04th March, 2020 i.e. after about a year.

21. The aforesaid conduct of the appellant/plaintiff of accepting the debit note and thereafter reversing the same after taking entries of the same in his account books, sufficiently speaks of the intention of the appellant/plaintiff. Rather, the transaction aforesaid speaks of the rate difference and intention of the appellant/plaintiff.

22. The debit note dated 05th March, 2020 also sufficiently speaks of being enclosed with the ledger account, which was received by the appellant/plaintiff, as is admitted in the cross-examination. The said debit note was received along with the ledger account through *Mr. Amit Mahajan*, however, the said *e-mail (Ex. PW1/D1)* was never replied by the appellant/plaintiff, which only invites the conclusion that the appellant/plaintiff had not objected to the ledger account submitted with the debit note.

23. The other debit note of Rs.17,93,533/- containing value of goods of Rs.15,19,943/- and IGST credit of Rs. 2,73,589/- sufficiently speaks of



the receipt of the said debit note, as the appellant/plaintiff has taken benefit of the said GST credit of Rs.2,73,589/- in his account.

24. Since 06th March, 2020 the appellant/plaintiff remained idle, instead of approaching/pursuing his creditor, which speaks that the claim put forth by him is completely an afterthought. Perusal of the legal notice issued by the appellant-plaintiff to the defendant-respondent would reflect that the appellant/plaintiff has never mentioned about the reversal of debit note of the respondent/defendant dated 03rd October, 2018, 27th March, 2019, 05th March, 2020 and 06th March, 2020.

25. The ledger account of the appellant/plaintiff (**Ex. PW1/5**) demonstrates that from 21st April, 2018 till 06th March, 2020, there was no payment in cash; however, it is only after one and half years from the debit note dated 05th March, 2020, a meagre sum of Rs.9,000/- was shown to have been deposited in cash by the respondent/defendant, which fact is not established at all.

26. In the aforesaid backdrop, inference drawn by the Commercial Court while dismissing the claim of the appellant/plaintiff of manipulating the books of account by reversing the debit note entries is sufficiently established.

27. In the backdrop of aforesaid reasoning, which are based on the analysis of the pleadings, oral and documentary evidence, we are of the opinion that the view expressed by the Commercial Court is just and proper in the facts and circumstances of the present case.

28. That being so, no case for interference in appellate jurisdiction is made out as the appellant has failed to establish or discharge burden of



2025:DHC:6946-DB



proving the liability of the respondent/defendant to pay the alleged amount.

29. The appeal stands dismissed.

30. Pending applications, if any, also stand disposed of.

31. A copy of this judgment be uploaded on the website of this Court forthwith.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**ANISH DAYAL
(JUDGE)**

AUGUST 04, 2025/sky/tk

Signature Not Verified

Signed By: SURYAKANT
YADAV
Signing Date: 21.08.2025
18:39:57

RFA(COMM) 441/2025

Page 10 of 10