OD – 12 & SL – 13

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

GA 1 OF 2020
GA 706 OF 2020
CS 44 OF 2020

RAMESH CO.
Versus
KOSC INDUSTRIES PRIVATE LIMITED

AND

GA 2 OF 2020
CS 44 OF 2020

RAMESH CO.
Versus
KOSC INDUSTRIES PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 1ST OCTOBER, 2020.

Appearance :
Mr. Sakya Sen, Adv.
Mr. S. Ghose, Adv.
Mr. R. Dutta, Adv.
…for the petitioner

Mrs. Sonal Shah, Adv.
Mr. K. Shah, Adv.
Mr. A. Chaudhury, Adv.
For the respondent

The Court : The dispute in the present case relates to the claims of an unpaid seller who has supplied Hot Rolled (HR) Slit Coils/Sheets/Plates to the buyer defendant.

In this application, the plaintiff/petitioner seeks judgment on admissions based on the principal sum due from the defendant which the petitioner claims to be an admitted amount and evident from documents which specifically indicate the principal amount due from the defendant to the plaintiff as on that date.

Learned Counsel appearing for the plaintiff submits that pursuant to orders placed by the respondent/defendant for supply of the specified goods from 15th March, 2016 to 30th May, 2016 after which the said goods were received by the defendant, the petitioner raised 51 invoices out of which 14 remain due and payable by the defendant. The goods were received by the defendant without raising any objection. Counsel places the confirmation of account statements issued by the plaintiff to the defendant for two successive years beginning 1st April, 2016 to 1st April, 2018 which takes into account the periodic payments made by the defendant to the plaintiff and culminating in a balance confirmation account as on 1st April, 2018 of an amount of Rs.1,06,19,002.00/- indicated as the closing balance.

Counsel submits that this is the principal amount due from the defendant on account of unpaid bills and seeks Judgment on Admissions based on the said document. It is submitted that the balance Rs.98,07,820/- is on account of the 24% per annum interest as per the contractual rate agreed upon by the parties.

Learned Counsel appearing for the defendant has filed a demurer the point of jurisdiction of this Court to entertain the present application. Counsel relies on The Insolvency and Bankruptcy Code, 2016 (IBC) which, according to counsel is a complete Code in itself and specifically bars the jurisdiction of Civil Courts to entertain matters which come within the purview of the IBC. Counsel places Section 63 of the IBC which provides that a Civil Court will not have jurisdiction to entertain any suit or proceeding in respect of any matter on which the National Company Law Tribunal (NCLT) has jurisdiction under the IBC. Counsel also relies on Section 11 of The Commercial Courts Act, 2015 which bars the jurisdiction of Commercial Courts and Commercial Divisions to entertain any suit, proceedings etc relating to any commercial dispute in which the jurisdiction of Civil Court is expressly or impliedly barred under any other law for the time being in force. Counsel further relies on Section 238 of the IBC which provides that the IBC would have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force.

It is further submitted that the defendant was unable to represent itself in Court on various occasions by reason of the pandemic as also an injury suffered by the advocate-on-record of the defendant.

This Court first wishes to deal with the point of demurrer.

The scheme of The Insolvency and Bankruptcy Code, 2016 is clearly brought out in the arrangement of the sections therein. The IBC was enacted for laying down a framework for the initiation of Corporate Insolvency Resolution Proceedings (CIRP) in relation to corporate debtors who require reorganization of assets for balancing the interests of all stakeholders. To put it simply, the scheme commences with the application for initiation of CIRP by an operational creditor followed by admission of the insolvency resolution process by the Adjudicating Authority under Section 9. The corporate insolvency proceedings are thereafter commenced under Section 10 and concludes either with the approval of the resolution plan under Section 31 or the rejection thereof under Section 33 pursuant to which liquidation process is initiated against the corporate debtor. The wording of Section 63 makes it clear that the scope of IBC is concerned with the initiation and culmination of the corporate insolvency resolution process with the resolution plan either being successful or rejected. Section 63 does not limit the jurisdiction of a Civil Court to pass a decree under the provisions of The Code of Civil Procedure, 1908 or specifically under Order XII Rule 6 of the CPC - Judgment on admissions. This Court is therefore of the view that the sections relied on behalf of the defendant cannot preclude this Court from deciding the application under the relevant provisions of the CPC.

With regard to the merits of the matter, the balance confirmation accounts clearly mention the principal amount due from the defendant to the plaintiff. The confirmation of accounts for the relevant years, namely, 1st April, 2018 indicate the amount of Rs.1,06,19,002.00/- with the endorsement of the defendant on the document itself to the effect that "*we hereby confirm the above*". There is no document disputing this amount nor has Counsel refuted the figure.

The conduct of the defendant as recorded in orders passed on earlier occasions by learned Judges of this court reinforces the view of this Court that the defendant does not have a defence to the claim of the plaintiff. An order passed on 24th September, 2020 sets out the observations recorded by the Court in an earlier order which contains the prima facie view of the Court that the defendant owes money to the plaintiff. The order dated 24th September, 2020 further records that the defendant was given enough opportunity to file its affidavit-in-opposition. The ground taken by the defendant in failing to file its affidavit by reason of the pandemic has also been found to be baseless.

In view of the above and by reason of the clear admission of fact in writing by way of irrefutable evidence of the principal outstanding amount due from the defendant, there shall be a Judgment and Decree for Rs.1,06,19,002/-. Although interest has been claimed at the rate of 24% per annum from 27th March, 2016 to 29th February, 2020 for the outstanding bills, this Court considers it fit to grant interest at the prevailing commercial rate of 12% from 1st April, 2018, which is the date of balance confirmation of accounts shown by the plaintiff till the decretal amount is realized by the plaintiff.

The department is directed to draw up the Decree expeditiously. The demurrer application of the defendant being GA No. 1 of 2020 (Old GA No.706 of 2020) and GA No.2 of 2020 for rejection of the plaint and dismissal of the suit have been considered and are disposed of accordingly.

CS No.44 of 2020 is decreed accordingly in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)

A.Dey/S.De