

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

CS 11 of 2020

**ANTARCTICA LIMITED
Versus
WESTCO INTERNATIONAL FZE**

Mr. Aniruddha Mitra
Mr. Koushik Banerjee
Ms. R. Sen

... for the plaintiff

Hearing Concluded On : 07.07.2023

Judgment on : 03.08.2023

Krishna Rao, J.:

1. The present suit has been filed by the Plaintiff being CS No. 11 of 2020 praying for a Decree of US \$66414.30 or its equivalent Indian Rupee on the date of payment and/or realization.
2. The defendant has approached the plaintiff company for supply of various kinds and qualities of tea packing paper board boxes by two purchase orders dated 21st December, 2017 and 15th March, 2018.

3. Pursuant to the said orders and in terms of the purchases made by the defendant, the plaintiff got the said boxes manufactured and shipped the goods in two consignments from Kolkata port and delivered the order to Emirates NBD Bank, Mamazer Branch, U.A.E., being the banker of the defendant by vessels SSL Chennai U-88 and SSL Kolkata U-32 respectively. The plaintiff had thereafter sent the required documents for shipment through United Bank of India, 16, Old Court House Street, Kolkata – 700001 to the Banker of the defendant, Emirates NBD Bank, Mamazer Branch, U.A.E.. The list of such documents sent are mentioned herein below:-

“ Shipment No. 1

- (i) *Packing list duly endorsed by the Collector of Customs, Kolkata*
- (ii) *Invoice No. 012669 dated 22nd March, 2018*
- (iii) *Export Declaration Form no. S18E00075211*
- (iv) *Shipping bill no. 400185 dated 22nd March, 2018 for export of duty free goods.*
- (v) *Copy of Purchase order no. 001/ANTA/2017 dated 21st December, 2017*
- (vi) *Certificate of Origin dated 6th April. 2018*
- (vii) *Insurance Cover Note*
- (viii) *Original Bill of Lading No. TSVINCCU1804704 dated 6th April, 2018*
- (ix) *A bill of Exchange no. 04201801 dated 6th April, 2018 for US \$25736 drawn by the plaintiff.*

Shipment No. 2

- (i) *Packing list duly endorsed by the Collector of Customs, Kolkata*
- (ii) *Invoice No. 012706 dated 10th May, 2018*
- (iii) *Export Declaration Form No. S18E00120901*
- (iv) *Shipping bill No. 4001900 dated 10th May, 2018 for export of duty free goods.*
- (v) *Copy of Purchase Order No. 001/ANTA/2018 dated 15th March, 2018*
- (vi) *Certificate of Origin dated 28th May, 2018*
- (vii) *Insurance cover note.*

- (viii) *Origin Bill Of Lading No. TSVINCCU1805785 dated 26th May, 2018*
- (ix) *A Bill of Exchange No. 05281802 dated 28th May, 2018 for US \$25620.30 drawn by the plaintiff.”*

4. The defendant had accepted two Bills of Exchange on 16th April, 2018 and on 16th June, 2018 respectively and the defendant has duly accepted the delivery of the exported goods.
5. On receipt of such goods and Bill of Exchange dated 16.04.2018 and 16.06.2018, the defendant had failed, neglected and/or refused to honour the same and had also failed to pay the promised sum as per the Purchase Orders made by the defendant to the plaintiff.
6. By a letter dated 22nd July, 2019, the plaintiff has called upon the defendant to pay the due sum along with the interest which is at the rate of 18% per annum from the due dates of the said Bills of Exchange until payment but inspite of receipt of the notice, neither the defendant sent any reply nor had made the payments.
7. Even after receipt of Writ of Summons, the defendants failed to appear in the suit and accordingly on receipt of report from the office, by an order dated 6th June, 2022, this Court has fixed matter in the list as “Undefended Suit”.
8. To prove the case, the plaintiff has examined the Director of the plaintiff company, as witness in the present suit. During the evidence, the

plaintiff has exhibited all together 10 documents as “Exhibit A to Exhibit J”.

- 9.** Exhibit-A evidently shows that there has been purchase orders made by the defendant via e-mail which was duly acknowledged and accepted by the plaintiff through e-mail dated 21st December, 2017.
- 10.** From Exhibit-B it appears that mode of payment which was to be made against acceptance of the delivery within 60 days from the bill of lading.
- 11.** As per the evidence of P.W. 1, the plaintiff used to send documents through their Bank which is the United Bank of India now known as Punjab National Bank and to that the consignee i.e. the Emirates NBD Bank which is the bank for the defendant.
- 12.** It appears from the document submitted by the plaintiff the bill of lading dated 6th April, 2018, the port of loading is mentioned as Kolkata and the port of delivery is mentioned as Jabel Ali, the documents has been admitted as Exhibit-C.
- 13.** The plaintiff had done transit insurance of Rs.1,840,124/- on 24th March, 2018 insuring the safety of the goods to be delivered to the defendant. This document was tendered and marked as Exhibit-E.
- 14.** The documents sent through United Bank of India to the Emirates NBD Bank in Dubai, wherein the Emirates NBD Bank handed over the entire bunch of documents to the defendant. The bank had accepted the terms and conditions of the bill of exchange, where it gives them the

authority to hand over the documents to the defendants and then they go to collect the shipment. Emirates NBD Bank of Dubai had sent back the documents to the plaintiff through the United Bank of India wherein it proves that the materials sent by the plaintiff to the defendant as per the purchase order, was received by the defendant. Even after receipt of the materials, the defendant has failed to make any payment within 60 days from the date of the receipt of the materials.

- 15.** The defendant has duly received the delivery of the goods on 28th May, 2018. The plaintiff has submitted a receipt from the shipping company being the Bengal National Chamber of Commerce & Industry, wherein it shows that the shipment has been delivered to the destination of the defendant.
- 16.** Documents such as 'Original bill of lading'; 'Packaging list for the shipment'; 'Invoices for the shipment'; 'Export declaration form for the shipment'; 'Shipping bill for export of duty free goods'; 'Certificate of origin for the shipment' & 'Transit Insurance for the Shipment' being Exhibit-H. Collectively also proved that the materials have been sent by the plaintiff and received by the defendant.
- 17.** Heard the learned counsel appearing on behalf of the plaintiff and perused the documents, exhibits and the evidence of P.W. 1.

18. This Court finds that the defendant after receiving the delivery of packages in terms of purchase orders, has failed and neglected to pay the sum due to the plaintiff.
19. The plaintiff has proved that there has been a contract between the parties wherein the defendant has ordered for supply of various kinds of articles of the packaging papers board boxes for a total sum of US \$66414.30 and the plaintiff has supplied the same to the defendant but on receipt of materials, the defendant failed to pay the amount to the plaintiff.
20. In view of the above, the plaintiff is entitled to get a decree for a total sum of US \$66414.30 along with interest @ 18% per annum from 1st December, 2019 till the date of realisation of the said amount.
21. In view of the above, the plaintiff do get decree in terms prayers (a) and (b) of the plaint.
22. **C.S. 11 of 2020** is **disposed of**. Decree to be drawn accordingly.

(Krishna Rao, J.)