

OCD-28

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/507/2024
[Old No. CS/100/2023]
IA No.GA-COM/2/2024

SPUTIK INTERNATIONAL INC.
-VS-
JANAV OVERSEAS PRIVIATE LIMITED

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : December 6, 2024.

Appearance :
Mr. Debrup Bhattacharjee, Adv.
Mr. Ritesh Kumar Ganguly, Adv.
...for the plaintiff

The Court: Mr. Debrup Bhattacharjee, learned advocate, is appearing for the plaintiff.

None appears on behalf of the defendant.

The matter was listed on 8th November, 2024. On the said date, learned counsel for the defendant prays for time to file affidavit-in-opposition. Accordingly, this Court has granted time to file affidavit-in-opposition within three weeks; reply thereto, if any, within a week thereafter and directed to list the matter on 3rd December, 2024. In terms of the order dated 8th November, 2024, the matter is listed today.

Counsel for the plaintiff submits that as the defendant has not served affidavit-in-opposition within the period of three weeks from 8th November, 2024, accordingly, on 3rd December, 2024, the plaintiff had sent e-mail to the learned advocate for the defendant informing that the time to file affidavit-in-opposition has expired but the defendant has not

filed affidavit-in-opposition and the matter is running in the list. In spite of receipt of the said e-mail dated 3rd December, 2024 neither the defendant has filed affidavit-in-opposition nor has appeared before this Court or prayed for extension of time to file affidavit-in-opposition. Accordingly, the application filed by the plaintiff being GA-COM/2/2024 under Order XIII A of the Code of Civil Procedure is taken up for hearing.

The plaintiff has filed the present application praying for summary judgment for a sum of USD 93121.77 corresponding to Indian Rs.76,52,784/- along with interest @ 18% per annum.

Counsel for the plaintiff submits that after the negotiation between the plaintiff and the defendant, plaintiff supplied the materials i.e. PVC Compound Floor Sweeping to the defendant in a containers being container nos.TCLU-551390-9, TCLU-948264-2, TCLU5513909, TCLU9482642, TCNU359911-4, TCLU961695-2 and KKFU799989-4 to the defendant and the defendant has duly received the materials sent by the plaintiff through containers. After receipt of the materials, the plaintiff has raised invoices but in spite of receipt of the materials, the defendant has not paid the amount. Accordingly, the plaintiff had sent e-mails to the defendant requesting the defendant for making payment and on receipt of e-mails; the defendant had sent reply to the said e-mails admitting that they will make payment as early as possible.

In spite of the same, the defendant has not paid the amount to the plaintiff. The plaintiff had issued notice to the defendant which was duly served upon the defendant but in spite of receipt of the notice, the defendant has neither sent any reply nor paid any amount. Consequently,

the plaintiff has initiated pre-institution mediation process before the Mediation Centre and the notice was issued to the defendant. On receipt of notice, the defendant has appeared before the Mediation Centre but failed to pay the fee. Accordingly, the mediation fails and non-starter report has been passed. Thereafter, the plaintiff has filed the present suit.

Now the plaintiff has filed the present application stating that the defendant is not having any defence as the defendant has admitted that the defendant has received the materials. Counsel for the plaintiff has relied upon the invoices and the challans of the containers which show that the materials were duly supplied to the defendant through containers which were duly received by the defendant and the defendant has not denied with regard to the receipt of the materials. Subsequently on receipt of the materials, the defendant has not paid the amount. The plaintiff by e-mails requested the defendant to pay the amount and by e-mails dated 14th September, 2020 and 25th September, 2020, the defendant has categorically mentioned that they will do the needful for making payment but in spite of the said e-mails, the defendant has not paid the amount.

The defendant has filed the written statement. Counsel for the plaintiff has relied upon the statement made in paragraph 6 of the written statement wherein the defendant has given the reply in paragraphs 5, 6 and 7 of the plaint in which the plaintiff has given the details of the materials and the containers which were sent to the defendant. In paragraph 6 of the written statement, the defendant has admitted that the materials and the containers have been received but the defendant has only raised the defence that the materials which have been received by the

defendant is low quality during the lockdown period, as such, the defendant was not in a position to utilize the said materials. Thus, the question of payment of amount does not arise.

The defence which the defendant has taken in paragraph 6 of the written statement, in view of this Court, is a moonshine as after delivery of the materials, the plaintiff has sent the e-mails and the defendant has responded to the e-mails of the plaintiff stating that he will do the needful with regard to the payment of the invoices raised by the plaintiff and in none of the e-mails the defendant has raised any issue with regard to the quality of the goods received by the defendant.

Subsequently, the plaintiff has sent the legal notice calling upon the defendant to pay the amount with regard to the materials received. The notice was also duly served upon the defendant but the defendant has not sent any reply. Thereafter, the plaintiff had initiated pre-institution mediation process and the defendant had entered appearance but has not paid fee. Accordingly, non-starter report has been issued.

In the mediation process also the defendant has not raised objection with regard to the quality of the materials as the defence taken in the written statement.

The plaintiff has relied upon Section 42 of The Sale of Goods Act, which reads as follows:

42. Acceptance – The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he

retains the goods without intimating to the seller that he has rejected them.

Considering the above, this Court finds that after receipt of materials and invoices, the defendant has not raised any objection with respect of quality of materials and responded to the e-mails assuring that the defendant will do needful but in the written statement the defendant has raised the plea of low quality. Thus, this Court finds that there is no defence for the defendant to proceed with the case.

Accordingly, this Court finds that this is a fit case wherein the summary judgment has been passed.

Accordingly, the defendant is directed to pay USD 52,760.21 along with interest at the rate of 18% per annum from 1st June, 2020 till realization of the said amount.

GA-COM/2/2024 is disposed of.

Consequently, CS CS-COM/507/2024 [Old No. CS/100/2023] is also disposed of.

Decree be drawn accordingly.

(KRISHNA RAO, J.)