IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

I.A. G.A. No. 2 of 2023

With

CS-COM 387 of 2024

(Old No. CS 135 of 2022)

Usha Martin Limited

Versus

Hema Springs Private Limited & Ors.

Mr. Arif Ali
Mr. Sarban Bhattacharjee
Mr. Aishwarya Kumar Awasthi
... for the plaintiff.

Hearing Concluded On : 21.06.2024

Judgment on : 28.06.2024

Krishna Rao, J.:

1. The plaintiff has filed the present application for judgment upon admission for a sum of Rs.1,27,50,762/- along with an interest at the rate of 18% per annum.

2. The plaintiff is engaged in the business of manufacturing of integrated specialty steel and value-added steel products (including wire and wire ropes) having business locations across the length and breadth of the country including through its subsidiaries and/or joint ventures.

3. The defendant no. 1, is a part of Hema Group of Companies and is engaged in the business of manufacture of accumulators, primary cells, primary batteries and allied businesses, and the Defendant Nos. 2 and 3 are the directors and/or principal officers of the defendant no.1 company.

4. In or around January, 2019, the defendant no.1 through the defendant no.3 approached the plaintiff for supply of diverse grades and/or dimensions of spring steel wires, with the object of augmenting its business activities and/or furthering its business interests.

5. It was further decided between the parties that the goods will be supplied by the plaintiff to the defendant no.1 based on purchase orders issued by it and accordingly, payment thereof would be made in terms of the invoices raised by the plaintiff on the defendant no.1 and the defendant no.1 had also assured the plaintiff that the payments in respect of purchase orders issued on the plaintiff would be made within 45-60 days from the date of delivery of the said goods.

6. Based on the representations made and/or assurances given by the defendant Nos. 2 and 3 on behalf of the defendant no.1 and finding the terms of the contract to be lucrative and/or commercially viable the plaintiff agreed to supply the said goods to the defendant no.1.

7. The defendant no.1 had placed 6 (six) purchase orders on the plaintiff amounting to a total sum of Rs.83,35,000/- and also had provided the specifications and/or dimensions of the said goods to be supplied and those orders were duly received, accepted and/or acknowledged by the plaintiff. The particulars of such orders are mentioned herein below:

SL. No.	***Date***	***Particulars***	***Amount***
1.	*14.01.2019*	*P.O. No. PO18190000586*	*21,44,000.00*
2.	*14.01.2019*	*P.O. No. PO18190000587*	*12,80,000.00*
3.	*05.02.2019*	*P.O. No. PO18190000641*	*10,24,000.00*
4.	*05.02.2019*	*P.O. No. PO18190000642*	*12,73,000.00*
5.	*11.03.2019*	*P.O. No. PO18190000696*	*14,08,000.00*
6.	*12.03.2019*	*P.O. No. PO18190000697*	*12,06,000.00*
		TOTAL VALUE OF PURCHASE ORDER	*83,35,000.00*

8. The plaintiff submits that prior to placing the purchase orders, the defendant no.1, sometimes in the Month of May, 2018, had made payment of a sum of Rs.18,29,000/- to the plaintiff out of which a sum of Rs.15,18,765.02/- was adjusted on account of an earlier invoice dated 5th May, 2018, which was due and payable to the plaintiff by the defendant no.1 with respect to separate purchase order dated 4th May, 2018, while the balance sum of Rs.3,10,234.98 was treated as advance for the present purchase orders.

9. Upon receipt of such purchase orders, the plaintiff duly issued instructions for dispatch of the goods, and all the materials were transported and/or supplied to the defendant no,1 from the warehouse of the plaintiff which is situated at Ranch, Jharkhand.

10. The defendant no.1 had duly received, accepted and acknowledged the said materials without demur and/or raising any dispute of any nature whatsoever by also endorsing the challans.

11. Upon successful fulfilment of the supply obligations, the plaintiff has raised its invoices in line with the purchase orders.

12. Thereafter, the plaintiff received a communication, i.e. an email, dated 24th October, 2019, from the defendant no.3, by admitting and/or acknowledging its liability which a total sum of Rs.84,23,000/-.

13. The plaintiff has repeatedly called upon the defendant no.1 through the defendant nos. 2 and 3 to make payment of the legitimate dues, though demand notices as also through a statutory notice under Section 8 of the Insolvency and Bankruptcy Code, 2016.

14. Despite repeated requests, reminders and/or demands, the defendants have failed and/or neglected and/or ignored to discharge the amount due and/or payable by them to the plaintiff.

15. As the defendants failed to pay the amount to the plaintiff, the plaintiff has initiated Pre-Institution Mediation process but only the defendant no.2 had participated in the proceedings but the defendant no. 1 & 3 have not appeared, accordingly, Non-Starter Report is submitted.

16. After failure of Mediation process, the plaintiff has filed the present suit. The plaintiff had also filed an application for interim order and on 11th December, 2023, this Court passed interim orders, which reads as follows:

> *"In the aforesaid facts and circumstances, being satisfied that the plaintiff's interest is required to be protected at this stage, the defendant is directed not to operate its bank account bearing no.915020002781902 maintained with Axis Bank, Gurgaon Brach as stated in paragraph 27 of the application without leaving a balance of Rs.83,35,000/-.*
>
> *The defendant no.1 is also retrained by an order of injunction from dealing with its immovable properties situate at plot no.C-5/7/3 measuring about 9152 square-meter as described in paragraph 28 of the application without the leave of the court."*

17. Learned Counsel for the plaintiff submits that from the communication dated 24th October, 2019, it is clear, unequivocal and unambiguous admission by the defendants, that a sum of Rs.84,23,000/- is due and payable to the plaintiff. He submits that the defendants have categorically informed the plaintiff by an email dated 24th October, 2019, that an amount of Rs. 15,00,000/- will be paid on 30th November, 2019 and the balance amount of Rs.69,23,000/- will be paid on 21st December, 2019.

18. Learned Counsel for the plaintiff submits that two of the companies of the defendant no.1, namely, Hema Automotive Pvt. Ltd. and Hema Engineering Industries Limited, were undergoing Corporate Insolvency Process (CIRP) and are currently under liquidation.

19. Learned Counsel for the plaintiff submits that even after publication of notice, the defendants have not entered appearance in the suit. He submits that the defendants have made clear and unequivocal admission but neither they entered appearance nor have they file written statement and thus there is no defence, hence the plaintiff is entitled to get judgment upon admission.

20. The defendants have issued 6 (Six) purchase orders upon the plaintiff for supply of Spring Steel Wires of different dimensions, on and from 14th January, 2019 to 12th March, 2019 for a total amount of Rs.83,35,000/-. On receipt of purchase orders, the plaintiff has supplied the materials to the defendants and the defendants have received and acknowledged the said materials without any demur or any dispute.

21. After supply of materials to the defendants, the plaintiff has raised all together 16 (sixteen) invoices which are as follows:

SL. No.	Invoice No.	Date of Invoice	Amount (in Rs.)
1.	9030041270	22.01.2019	13,72,086.30
2.	9030041271	22.01.2019	5,,54,694.40
3.	9030041615	29.01.2019	82,91,81.28
4.	9030041617	29.01.2019	5,32,896.12
5.	9030042719	16.02.2019	4,22,836.48
6.	9030042720	16.02.2019	1,09,260.92
7.	9030042721	16.02.2019	3,63,024.64
8.	9030042722	16.02.2019	63,089.88
9.	9030042723	16.02.2019	3,08,650.24
10.	9030042724	16.02.2019	6,33,191.54
11.	9030043856	06.03.2019	3,56,907.52
12.	9030043857	06.03.2019	7,21,738.74
13.	9030043858	06.03.2019	1,49,605.12
14.	9030044572	18.03.2019	8,41,141.76
15.	9030044573	18.03.2019	98,983.12
16.	9030044603	18.03.2019	13,76,513.66
TOTAL			87,33,774.72

22. On receipts of invoices, the defendants have not paid any amount but on 24th October, 2019, by an email, admitted that the defendants will pay an amount of Rs.84,23,000/- in two instalments, i.e. Rs.15,00,000/- on 30th November, 2019 and Rs.69,23,000/- on 21st December, 2019. Inspite of the admission, the defendants have not paid the said amount to the plaintiff.

23. The total invoice amount is Rs.87,33,774.72/- but the plaintiff has deducted Rs.3,10,234.98/- from the advance payment made by the defendants and thus the balance amount is Rs.84,23,539.74/- only. As per the terms of the invoices, the defendants have agreed to pay the amount within 45 to 60 days from despatch of materials and in case of failure to pay the amount within the time prescribed, the defendants are liable to pay 18% interest on the billed amount.

24. It is found from record that even after publication of the notice of this application as well as of the suit, the defendants have neither entered appearance nor have filed written statement or written objections.

25. The plaintiff has also brought on record of the orders passed by the National Company Law Tribunal, New Delhi, wherein it reveals that two group companies of the defendants namely, Hema Automotive Pvt. Ltd. and Hema Engineering Industries Limited were undergoing Corporate Insolvency Resolution Process (CIRP) and currently liquidation.

26. Order 12, Rule 6 of the Code of Civil Procedure, 1908, reads as follows:

> *"**6. Judgment on admissions**.—(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

27. In the case of ***Himani Alloys Ltd. v. Tata Steel Ltd.*** reported in ***(2011) 15 SCC 273,*** It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear "admission" which can be acted upon. In the case of ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India and Others*** reported in ***(2000) 7 SCC 120,*** Learned counsel for the Petitioner contended that admissions referred to in Order XII, Rule 6 CPC should be of the same nature as other admissions referred to in other rule preceding this Rule. Admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds, they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice. Since we have considered that admission for passing the judgment is based on pleadings itself it is unnecessary to examine as to what kinds of admissions are covered by Order XII, Rule 6 CPC, 1908.

In the case of ***Karan Kapoor v. Madhuri Kumar*** reported in ***(2022) 10 SCC 496,*** it was held that, thus, legislative intent is clear by using the word “may” and “as it may think fit” to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the court can refuse to invoke the power of Order 12 Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by the other, and the court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trail and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the court a decree be drawn accordingly and parties to the case is not required to go for trial.

28. In the present case by an email dated 24th October, 2019, the defendants have informed the plaintiff as follows:-

> *"Dear Mr. Raina,*
> *It was pleasure meeting with you. The following is the proposed payment plan from Hema Spring:*
>
> *(i) Rs.15 Lac of PDC dated 30.11.2019*
> *(ii)Balance amount Rs.69.23 Lac of PDC dated 21.11.2019*
>
> *Kindly confirm so that PDC can be issued accordingly.*
>
> *Regards,*
>
> *Suresh Kalra"*

From the said email the defendants have clearly, unequivocally and unambiguously admitted the amount due amount paid to the plaintiff

29. As per the terms and conditions of the invoices, if the defendants fail to pay the amount within 45 to 60 days is liable to pay interest at the rate of 18% per annum and admittedly, the defendants have not paid the amount within 45 to 60 days from the receipt of the materials.

30. Considering the above facts and circumstances, this Court finds that the defendants have clearly and unequivocally admitted the claims of the plaintiff and have also not paid interest, thus the plaintiff is entitled to get decree upon admission.

31. In view of the above, the defendants are directed to pay an amount of Rs.84,23,539.74/- (Eighty Four Lacks, Twenty Three Thousand, Five Hundred and Forty Rupees) along with an interest at the rate of 18% per annum with effect from 15th February, 2022 till realisation of the amount.

32. Thus **G.A. No. 2 of 2023** and **CS-COM 387 of 2024 (Old No. C.S. 135 of 2022)** are **disposed of**. Decree to be drawn accordingly.

(Krishna Rao, J.)