**IN THE HIGH COURT AT CALCUTTA**
**COMMERCIAL DIVISION**
**ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**CS (COM) 527 of 2024**

**(Old No. CS 144 of 2023)**

**With**

**IA No. GA (COM) 2 of 2024**

**J.K. Yarn Private Limited**

**Versus**

**Thiruvalluvaar Textiles Private Limited**

Mr. Anuj Singh
Mr. Vikas Baisya
Ms. Ranjana Seal

... for the plaintiff.

Hearing Concluded On : 10.05.2024

Judgment on : 26.07.2024

**Krishna Rao, J.:**

**1.** The plaintiff herein had instituted the captioned suit against the defendant, for a decree of a sum of Rs.1,65,90,037.41/- along with interest at the rate of 12% per annum on and from 1st July, 2023 till date of realisation and allied prayers.

**2.** The plaintiff has filed the present application under Chapter XIIIA of the Original Side Rules of this Court, praying for final judgment and decree for a sum of Rs. 1,65,90,037.41/- along with interest.

**3.** The plaintiff is a company incorporated on or about 23rd January, 2008, under the Companies Act, 1956, and is engaged in the business of trading of yarn.

**4.** In the month of March, 2008, the Directors of the defendant approached the plaintiff to start a business relationship with the plaintiff. After series of meetings and discussion, the parties thereto entered into an oral agreement on the following terms and conditions:

> *(i) The plaintiff shall place orders upon the defendant for purchase of yarn and upon placement of such orders, the defendant would forthwith supply the desired quantity and quality of yarn to the plaintiff;*
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> *(ii) The plaintiff shall make payments including advance payments, as and when required to the defendant from its bank accounts maintained with Tamilnad Mercantile Bank Limited, Netaji Subhas Road Branch, Kolkata and HDFC Bank Limited, Tollygaunge Branch, Kolkata, for the defendant to take steps for causing delivery of the desired quantity and quality of yarn to the plaintiff;*
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> *(iii) The advance so received by the defendant shall be exclusively utilised by the defendant for the purpose of effecting supply upon the plaintiff;*

(iv) *In the event, if the goods supplied by the defendant do not conform with the specifications as desired by the plaintiff, the defendant shall forthwith replace the said goods with the goods of the desired specification at its own cost and expenses;*

(v) *The orders shall be placed by the plaintiff from its office and the goods would be supplied by the defendant from its factory;*

(vi) *The account between the parties would be mutual, current, and open as the advances or part payments made by the plaintiff to the defendant shall not be on invoice-wise basis but shall be generally made from time to time.*

**5.** Thereafter, the parties started transacting business between them, and in or around August, 2018, upon reconciliation of accounts, it became apparent that the defendant owed the plaintiff a total amount of Rs.1,46,94,527.66/- and thus the parties mutually agreed to allocate the aforesaid due sum in manner mentioned herein below:

(i) *An amount of Rs.1,00,00,000/- would be adjusted toward refundable advance payable to the defendant by the plaintiff under an agreement of lease, by virtue of which the factory, which belongs to the defendant, located at 2-9, Singlalundapurnam Privu Road, Rasipuram, District – Namakkal, Rasipuram – 637408, was leased out to the plaintiff.*

(ii) *The remaining balance of Rs. 46,94,527.66/- was identified as the opening balance in a separate account titled "J.K. Yarn Private Limited, Rasipuram".*

**6.** As agreed between the parties, a sum of Rs.1,00,00,000/- was adjusted by the defendant toward refundable advance payable by the plaintiff, under a 'Lease Agreement' executed on 16th July, 2018, as per the terms of which, the plaintiff would have the right to utilize the entire factory premises that encompassed two mills, namely Mill "A" and "B" and pursuant thereto the plaintiff had deposited a sum of Rs.1,00,00,000/- as a refundable advance with the defendant.

**7.** The terms and conditions of the said 'Lease Agreement' dated 16th July, 2018, are mentioned herein below:

> *(i) That the defendant has agreed to grant lease for a period of eleven months initially with the option of renewal every 11 months up to a maximum of thirty-six months. Either party may terminate the lease by providing a two-month notice to the other party. The Lease pertained to the factory premises including the plant and machinery located at 2-9, Singlalundapuram Privu Road, Rasipuram, District – Namakkal, Rasipuram - 637408.*
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> *(ii) Continuing from 16th July, 2018, the plaintiff shall have the right to utilize the entire factory premises that encompassed two mills, namely Mill "A" and Mill "B".*
>
> *(iii) That the plaintiff had deposited a sum of Rs.1,00,00,000/- as a refundable advance with the defendant.*
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> *(iv) That the defendant acknowledged the accuracy of the books of accounts between the parties and admitted that the aforementioned sum of Rs.1,00,00,000/- was held by the defendant.*

**8.** The defendant by a letter dated 22nd December, 2018, terminated the lease and demanded that the plaintiff relinquish possession of factory premises and two units specifically, Mills "A" and "B" upon expiration of two months period from the date of receipt of the notice.

**9.** On 10th March, 2019, the defendant visited the office of the plaintiff and represented that notwithstanding the termination of the Lease Agreement, the amount held in the defendant's account as a credit payable to the plaintiff would be considered as a loan from the plaintiff. The defendant further assured that they would repay the said amount upon demand along with an interest at the rate of 12% per annum to the plaintiff.

**10.** The plaintiff surrendered possession of the factory premises to the defendant on 31st March, 2019, subsequent upon the defendant's admission in acknowledgment that a total sum of Rs.1,57,21,329.66/- along with interest accrued at the rate of 12% per annum, remained outstanding and payable to the plaintiff as on 31st March, 2019.

**11.** The defendant by an email dated 4th July, 2020, provided a Statement of Accounts, regarding the sum of Rs.1,00,00,000/- appropriated by the defendant as an advance payment for the factory premises. In the said Statement of Account, the defendant explicitly acknowledged the principal amount of Rs.1,00,00,000/- along with interest at the rate of 12% per annum for the period 1st April, 2019 to 31st March, 2020. As per Statement of Account, the defendant categorically admitted that an aggregated sum of Rs.1,10,80,000/- stands due and payable by the defendant to the plaintiff in relation to the advance received.

**12.** The remaining sum of Rs.46,94,527.66/-, it was discussed between the parties that it will be allocated towards opening balance in a distinct account named “J.K. Yarn Private Limited, Rasipuram”, which was established for the purpose of documenting subsequent loans and/or advances provided by the plaintiff to the defendant as well as other expenses incurred by the plaintiff on behalf of the defendant in connection with the operation of the factory premises.

**13.** By an e-mail dated 4th July, 2020, the defendant further admitted that an amount of Rs.16,32,548.49 was outstanding and payable by defendant to the plaintiff as on 31st March, 2020.

**14.** On and from August, 2018, the plaintiff commenced supplying various quantities and qualities of Yarn to the defendant, which were recorded in a separate account titled “J.K. Yarn (National Handloom Development Corporation)”. All the supplies made by the plaintiff to the defendant were ultimately intended for supply to an entity known as the National Handloom Development Corporation. However, the transactions between the plaintiff and the defendant were independent of back-to-back transaction between the defendant and National Handloom Development Corporation.

**15.** Between 10th August, 2018 and 31st March, 2019, the transactions took place within the J.K. Yarn (National Handloom Development Corporation) account between the plaintiff and the defendant and within the same the plaintiff was engaged in sale, supply and delivery of yarn to the defendant for a sum of Rs.7,20,82,709/- in response to which the defendant made part payments at various intervals, totalling to a sum of Rs.6,96,47,051/- and upon balancing the said sums an aggregated sum of Rs.24,04,029/- stood due and payable. As such, by an email dated 4th July, 2020, the defendant furnished a comprehensive ledger pertaining to the J.K. Yarn (National Handloom Development Corporation) account, thereby explicitly and unambiguously acknowledging the due sum as of 31st March, 2020.

**16.** The defendant further by an email dated 23rd April, 2021, acknowledged that the principal amount of Rs.1,51,16,577.49/- and an additional sum of Rs.16,77,940/- being the interest amount accrued at the rate of 12% per annum, calculated for the period of 1st April, 2020 to 31st March, 2021, therefore total receivable amount by the plaintiff is a sum of Rs.1,67,94,517.49/-.

**17.** The defendant between 1st April, 2021 and 31st March, 2022, has made several part payments to the plaintiff amounting to a total sum of Rs.40,00,000/-. Despite repeated request and demands, the defendant thereafter failed to make further payments since 3rd January, 2022.

**18.** It appears from the Service Report dated 16th November, 2023, issued by the Deputy Sheriff of Calcutta, that on 6th October, 2023, a duplicate copy of writ of summons along with a copy of the plaint was sent to the defendant but no reply was received. It was also informed that the copy of the writ of summons along with a copy of the plaint was also served through speed post with acknowledgment and the same was received on 6th October, 2023.

**19.** The Learned Deputy Registrar (Court & Judicial) issued a certificate dated 22nd November, 2023, certifying that defendant had not entered appearance, neither in person nor through its Learned Advocate.

**20.** The plaintiff in terms of the order passed by this Court has also sent a notice informing the date of hearing of the application but the inspite of receipt of notice, the defendant failed to appeared before this Court.

**21.** In the agreement dated 16th July, 2018, it is recorded that:

> *"The LESSEE has paid a sum of Rs.100,00,000/- (Rupees Once Crore Only) as refundable advance carrying no interest, in favour of the LESSOR, by way of adjustment of credit balance to an extent of Rs.1 Crore lying in favour of the LESSEE's account in the books of account of the LESSOR, which the LESSOR hereby acknowledges. The said amount will be adjusted at the time of termination of the lease"*

**22.** By an e-mail dated 4th July, 2020, the defendant has provided Statement of Account regarding the sum of Rs. 1,00,00,000/- appropriated by the defendant as advance payment for the factory premises. By an e-mail dated 4th July, 2020, the defendant has further admitted and acknowledged the amount of Rs. 16,32,548.49/- which was outstanding and payable by the defendant to the plaintiff as on 31st March, 2020.

**23.** On 4th July, 2020, the defendant furnished a comprehensive ledger pertaining to the "J.K. Yarn (NHDC)" account by acknowledging the amount of Rs. 24,04,029/- as the amount due and payable by the defendant to the plaintiff as on 31st March, 2020. Based on the email dated 4th July, 2020, wherein the defendant provided a statement of accounts regarding three distinct split accounts, it is evident that the defendant acknowledged and accepted the liability for a cumulative amount of Rs. 1,51,16,577.49/- payable to the plaintiff as on 31st March, 2020.

**24.** In a separate statement of account transmitted by the defendant to the plaintiff by an e-mail dated 23rd April, 2021, the defendant has further admitted the amount of Rs.1,51,16,577.49/- and an additional sum of Rs. 16,77,940/-as accrued interest at the rate of 12% per annum for a period from 1st April, 2020 to 31st March, 2021. As per the said statement the defendant has admitted an amount of Rs. 1,67,94,517.49/- is payable to the plaintiff.

**25.** In between 1st April, 2021 and 31st March, 2022, the defendant made several part payments to the plaintiff amounting to Rs. 40,00,000/-. The defendant has sent the statement of account through WhatsApp from mobile no. +91 9443319929 to mobile no. +91 9831028650 to Amit Tulsian who is the Director of the plaintiff. It is evident that the defendant acknowledged a total sum of Rs. 1,44,26,119.49/- as due and payable to the plaintiff as on 31st March, 2022. The defendant has also periodically deposited Tax Deducted at Source to the credit of the plaintiff as a confirmation of its outstanding dues to the plaintiff.

**26.** The plaintiff has relied upon the judgment in the case of ***Shri Ajodhya Pd. Bhargava Vs. Shri Bhawani Shankar Bhargava and Another*** reported in ***AIR 1957 All 1 (FB)*** wherein the full Bench of the Allahabad High Court held that:

> *"**117.** In the subsequent portion the same law is explained as follows :*
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> > *"Admissions are ordinarily admissible as original or substantive evidence of the truth of the statements made or of the existence of any facts which they have a tendency to establish, and their admissibility is not dependent on any tendency to discredit the person by whom they were made. Of course, where the party who has made, the admis sions testifies, and the admissions are contradictory to or inconsistent with his testimony, the admissions are competent for the purpose of discrediting and impeaching him, although they should not be limited to the purpose of discrediting."*
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> ***120.** In Cockle's Cases and Statutes on Evidence (Edn. 6) with reference to the case of 'Slatterie v. Pooley', (D) it is stated at p. 196 that "Admissions are considered primary evidence against a party, and they are admissible to prove even the contents of written documents, without notice to produce, or accounting for the absence of, the originals."*

**27.** In the present case, from the documents as mentioned above which the plaintiff has relied upon in the present application as well as in the suit it is crystal clear that by the communications, the defendant has admitted that as on 31st March, 2022, the defendant is liable to pay an amount of Rs. 1,44,26,119.49/ - to the plaintiff and the defendant is also liable to pay the interest at the rate of 12% per annum.

**28.** Inspite of receipt of notice of the suit as well as the present application, the defendant failed to appear before this Court and has not denied the contention of the plaintiff. Considering the documents relied by the plaintiff, this Court finds that the defendant has no defence to contest the suit filed by the plaintiff.

**29.** The present suit is also a commercial suit within the definition of the Commercial Court, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing written statements, the courts should invoked the provisions of Order VIII Rule 10 to decree such cases.

**30.** Resultantly, having being satisfied with the averments made and duly supported by documents and affidavit and no written statement being on record, this Court deem it fit case for invoking the provisions of Order VIII Rule 10 of the Code of Civil Procedure, 1908.

**31.** In view of the above, the defendant is directed to pay an amount of Rs. 1,44,26,119.49/- along with interest at the rate of 12% per annum from 1st April, 2022 till the realisation of the total amount. As the suit is of commercial nature thus the defendant is also liable to pay cost of Rs. 1,00,000/-to the plaintiff.

32. **G.A. (Com) No. 2 of 2024** is **disposed of**. **C.S. (Com) 527 of 2024 (Old C.S. No. 144 of 2023)** is also **disposed of**. Decree be drawn accordingly.

**(Krishna Rao, J.)**