

IN THE HIGH COURT AT CALCUTTA

ORIGINAL SIDE

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

C.S. (Com) No. 660 of 2024

Jalnidhi Bitumen Specialities Private Limited

-Versus-

Harpal Singh

Mr. Tanish Ganeriwala

Mr. Shiv Ratan Kakrania

Mr. T. Kakrania

Ms. Surabhi Mehta

Ms. Shreya Goenka

Ms. Jiya Bose

...for the plaintiff

Hearing Concluded On : 22.07.2025

Judgment On : 29.07.2025

Krishna Rao, J.:

1. The plaintiff has filed the suit being C.S. (Com) No. 660 of 2024 against the defendant praying for a decree for an amount of Rs. 2,20,22,472/- along with interim interest and interest upon judgment at the rate of 18% per annum.
2. After filing the suit, the plaintiff lodged the writ of summons for service upon the defendant. In this process, the plaintiff made two attempts to serve the writ of summons along with a copy of the plaint at both addresses of the defendant.

The first attempt was made on 11th June, 2024, through the District & Sessions Judge's Court Complex, Hooghly Sadar, Chinsurah – 712101, at the second address of the defendant. However, neither the original writ of summons nor the service report has been received through the GPO, Kolkata. Furthermore, it appears from the records that service at the first address could not be effected by the concerned Court due to the non-availability of the original writ of summons.

The second attempt was made on 30th May, 2024, when the plaintiff sent the documents via Speed Post with Acknowledgement Due to both the addresses of the defendant. On 14th June, 2024, the postal packet sent to the second address was returned undelivered with the remarks “Left.” In respect of the first address, neither the postal Acknowledgment receipt nor the returned undelivered packet has been

received. However, the tracking report reflects that the packet was delivered to the addressee on 11th June, 2024.

3. On 5th December, 2024, the Deputy Registrar (Legal) of this Court issued Certificate, certifying that the defendant has not entered appearance either in person or through Advocate. As none appeared on behalf of the defendant, this Court had fixed the matter in the list of “Undefended suit”.
4. The plaintiff is engaged in the business of manufacturing and supply of bitumen emulsion and integration of equipment materials and technology for resolution of road repair and maintenance process.
5. The defendant is carrying on business under the name and style of M/s. Harpal Singh, as sole proprietor and is engaged in the business of micro surfacing on roads in various parts of the country including West Bengal.
6. Sometime in or around June, 2019, the plaintiff was approached by the defendant for obtaining supply of diverse quantities of different types of bitumen emulsions manufactured and/or sold by the plaintiff and hire various micro surfacing/slurry seal machines for hire on rental basis from the plaintiff. The said machines were purchased by the plaintiff from one ‘M/s. Atcon India Limited’.
7. After the discussions and negotiations held between the plaintiff and the defendant, the following terms were agreed by both the parties:-

- a. The defendant would place orders upon the Plaintiff from time to time, for supply of specific types and quantities of the said goods and as also to provide the said machines on rental, at the rates mutually agreed upon between the parties;*
 - b. The products would have to be delivered to the Defendant at his store, godown or warehouse as may be specified in the order.*
 - c. The plaintiff would arrange for transportation, however, the defendant would be liable to bear the freight charges which shall form part of the invoices raised upon the defendant.*
 - d. The Plaintiff would raise bills upon the Defendant for supplies of the said goods or rental of the said machines, which would have to be paid within 15 days from the date of issuance thereof.*
 - e. Any delay and/or failure to make payment would attract simple interest at the rate of 18% per annum.*
- 8.** The plaintiff has submitted that in terms of the aforesaid agreement, the plaintiff had supplied goods to the defendant which was accepted without any demur, protest and/or objection. The defendant had even shared the test results with the plaintiff as obtained by the defendant from one 'Omega Consultant Services' showing that the said goods supplied by the plaintiff were within the required parameters.
- 9.** The plaintiff further submitted that the plaintiff raised 81 bills/invoices upon the defendant between 3rd July, 2019 to 11th June, 2021 against the supplies and services. The said bills accurately reflect the description and quantity of the goods supplied by the plaintiff to the

defendant and the machines hired by the defendant from the plaintiff at the rate mutually agreed upon by and between the parties.

- 10.** The plaintiff while transporting goods to supply to the defendant has generated e-way bills which show that the plaintiff has supplied materials to the defendant at his work place. The plaintiff has supplied materials to the defendant by raising total 81 invoices and e-way bills total amounting to Rs. 1,53,94,743/-.
- 11.** Out of total amount of Rs. 1,53,94,743/-, on 30th March, 2021, the defendant made an ad-hoc payment to the plaintiff aggregating to a sum of Rs. 15,00,000/- which was credited to the plaintiff's bank account maintained with ICICI Bank, Account No. 000651000324, R. N. Mukherjee Road Branch, Kolkata – 700 001.
- 12.** The plaintiff submitted that the defendant acknowledged that the total outstanding dues against the supplies of the goods made to him by the plaintiff on 25th March, 2021 by confirmation of balance. The said balance confirmation was signed by the defendant.
- 13.** The plaintiff further submitted that despite the repeated reminders by the plaintiff to the defendant and despite assurances made by the defendant, the defendant failed and/or neglected to pay the outstanding dues.
- 14.** The plaintiff had sent notices calling upon the defendant for payment but inspite of receipt of notices, the defendant failed to pay the amount.

The plaintiff before filing of the suit has also initiated pre-institution mediation but the defendant inspite of receipt failed to come forward to settle the issue between the parties and on 19th March, 2024, a “Non-Starter Report” was issued and the plaintiff filed the present suit.

15. The plaintiff in order to prove his case, has examined one witness, namely, Bidyut Chandra Sen, being the Manager of the Finance Department at the plaintiff company.
16. During evidence of the plaintiff's witness, altogether 11 documents were marked as **Exhibit “A”** to **Exhibit “K”** which are as follows:-

Exhibit-A is the copy of the Board Resolution dated 7th February, 2025 passed by the Board of Jalnidhi Bitumen Specialities Private Limited.

Exhibit-B is the copy of the Memorandum of Understanding dated 13th February, 2020 executed between M/s. Atcon India Limited and the Plaintiff.

Exhibit-C is the copy of the test results issued by the Omega Consultant Services to the defendant and shared by the defendant to the plaintiff.

Exhibit-D collectively are the copy of the invoices along with electronic way bills as well as the credit and debit notes.

Exhibit-E collectively are the copies of the ledger from 1st April, 2019 to 31st March, 2024.

Exhibit-F is the copy of the bank statements received by the plaintiff from its banker under cover of a letter dated 27th March, 2024.

Exhibit-G collectively are the copies of the confirmation of balance due and payable by the defendant and duly signed by 25th March, 2021.

Exhibit-H collectively are the copies of the emails dated 2nd July, 2022 and 23rd December, 2023 issued by the plaintiff to the defendant for payment of outstanding amounts.

Exhibit-I is the copy of the computation of claim indicating the amount due and payable by the defendant to the plaintiff.

Exhibit-J is the copy of the 'Non-Starter Report' dated 19th March, 2024 issued by the Mediation Centre, High Court at Calcutta.

Exhibit-K is the copy of the certificate dated 5th December, 2024 issued by the Deputy Registrar (Legal), Original Side.

17. As per agreement between the plaintiff and the defendant, the plaintiff has supplied different types and quantities of bitumen emulsion to the defendant and the defendant has also hired machineries from the plaintiff for execution of his work. The plaintiff has exhibited about 81 invoices along with e-way bills to prove that the plaintiff has supplied materials to the defendant. The defendant has also procured test result

of the bitumen supplied to the plaintiff from Omega Consultant Services and the said certificate is marked as Exhibit “C” which proved that the materials supplied by the plaintiff to the defendant was up to the mark.

- 18.** The plaintiff has supplied materials for a total amounting to Rs. 1,53,94,743/- from 3rd July, 2019 to 11th June, 2021 out of which the defendant has paid an amount of Rs. 15,00,000/- to the plaintiff on 30th March, 2021 by way of bank transfer leaving the balance amount of Rs. 1,38,94,743/-. The amount due and payable by the defendant to the plaintiff is also reflected in the balance confirmation account of the defendant as well as the plaintiff.
- 19.** The plaintiff has sent notices to the defendant calling upon the defendant to pay the balance amount but inspite of receipt of notices, the defendant has neither sent any reply nor has paid the balance amount to the plaintiff. The plaintiff has also initiated pre-institution mediation process but the plaintiff failed to come forward to settle the issue in the mediation process. After filing of the suit also the plaintiff has not entered appearance in the suit.
- 20.** Considering the evidence of the plaintiff and the documents relied by the plaintiff, this Court finds that the plaintiff has proved the case that the plaintiff has supplied materials to the defendant and the defendant has also hired machineries from the plaintiff. It is also proved that the materials supplied by the plaintiff are up to the mark as the defendant

has obtained test report from the Competent Authority. The ledgers relied by the plaintiff proves that the plaintiff has supplied materials for a total sum of Rs. 1,53,94,743/- out of which the defendant has paid only Rs. 15,00,000/-.

- 21.** As per the terms and conditions of the invoices, it is provided that if payment is not made within 15 days then interest will be charged at the rate of 18% per annum.
- 22.** In view of the above, the plaintiff is entitled to get an amount of Rs. 1,38,94,743/- along with interest at the rate of 18% per annum from 1st April, 2021 till the realization of the total amount.
- 23.** The defendant is directed to pay an amount of Rs. 1,38,94,743/- along with interest at the rate of 18% per annum from 1st April, 2021 till the realization of the total amount. The plaintiff before filing of the suit requested the defendant for payment but the defendant failed to pay the amount. Thereafter the plaintiff has initiated pre-institution mediation but the defendant failed to participate in the said process and the defendant compelled the plaintiff to file the suit. Considering the same, this Court finds that the plaintiff is also entitled to get cost from the defendant. The defendant is directed to pay cost of Rs. 1,00,000/- to the plaintiff.
- 24. C.S. (Com) No. 660 of 2024 is disposed of.** Decree be drawn accordingly.

(Krishna Rao, J.)