IN THE HIGH COURT AT CALCUTTA

(ORIGINAL SIDE)

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

GA (COM) No. 2 of 2024

In

CS (COM) No. 500 of 2024

[Old CS No. 85 of 2023]

Agarwal Coal Corporation Pvt. Ltd.

Versus

R. K. Commotrade Pvt. Ltd. & Ors.

Mr. Moti Sagar Tiwari
Mr. Sailendra Kumar Tiwari
Ms. Muskan Jalan
Ms. Shweta Poddar

… For the plaintiff.

Mr. Rajarshi Dutta.
Mr. Vikas Baisya
Mr. Aurin Chakraborty
Ms. Ranjana Seal
Mr. Abhisekh Agarwal

… For the defendants.

Hearing Concluded On : 17.06.2025

Judgment on : 24.07.2025

Krishna Rao, J.:

1. The Plaintiff has filed the present application for judgment upon admission for a sum of Rs.1,25,50,000/- along with an interest at the rate of 12% per annum.

2. The Plaintiff is engaged in the business of transportation of Coal in India and worldwide.

3. The Defendant no. 1 company, is engaged in the business of trading of Coal and the Defendant Nos. 2 and 3 are the directors of the Defendant No. 1 Company and are responsible for the day-to-day affairs and operations of the Defendant No. 1 Company.

4. In or around 2019, both the parties mutually agreed to start their business in which the terms and conditions of such sale was deliberated between the parties.

5. In pursuance of the aforesaid, the Plaintiff made supplies of coal of various qualities to the Defendant No. 1 Company from time to time. Cumulatively, the plaintiff supplied goods (coal) aggregating to Rs. 11,86,96,743/- to the Defendant No. 1 Company against invoices delivered at the registered office of the Defendant No. 1.

6. The Defendant No. 1 made part payment aggregating to Rs. 10,61,46,742/- against the aforesaid invoices. However, Rs.

1,25,50,000/- still remains due and payable against the aforesaid invoices by the Defendant No. 1.

7. In or around 2021, the Defendant No. 2 by the pen of Defendant No. 1 issued five cheques of Rs. 25,00,000/- each all dated 9th March, 2021 in favour of the Plaintiff being Cheque Nos. 119802, 119803, 119804, 119805 and 119806, drawn on the Bank of India, Rash Behari Avenue Branch.

8. The Plaintiff states that after presenting the aforesaid cheques for payment in its bank account, the aforesaid cheques were dishonoured and returned unpaid with the reason “Exceeds Arrangement”. In such circumstances, the plaintiff through their Counsel issued notices to the Defendant No. 1 Company informing them about the status of the cheque and further requested to pay the outstanding amount validly due to the Plaintiff.

9. On 16th July, 2021, a Criminal Complaint was filed by the plaintiff against the Defendant Nos. 1 and 2 before the Learned Court of Metropolitan Magistrate, Calcutta, being Case No. CS– COMPLAINT CASE (SOUTH) 40254/2021 under Sections 138/141 of The Negotiable Instruments Act, 1881.

10. Further on 28th July, 2021, the Plaintiff has filed another case against the Defendant Nos. 1 and 2 before the Learned Court of XVIII Civil Judge, Class-II, Indore, Madhya Pradesh, being Case No. SC NIA –

SPECIAL CASE Negotiable Instruments ACT 21845/2021 under Section 138 of The Negotiable Instruments Act, 1881.

11. Counsel for the Plaintiff submits that the Plaintiff had sent a Demand Notice/Invoice dated 26th August, 2021 via email as well as via Speed Post being Consignment No. EI131113994IN, demanding payment under Section 8 of Insolvency and Bankruptcy Code, 2016 read with rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

12. However, the Defendant No. 1 Company failed and neglected to reply to such demand notice. Accordingly, the Plaintiff filed an Application under Section 9 of Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before Learned National Company Law Tribunal, Kolkata Bench with case no. CP.(IB) 344/KB/2021, which was withdrawn by the plaintiff with an order stated *"Liberty is granted to avail other remedies available as per law"*.

13. 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.

14. As the defendants failed to pay the amount to the plaintiff, the plaintiff has initiated Pre-Institution Mediation process under Section 12-A of Commercial Courts Act, 2015 read with rule 3(1) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 before the Mediation Centre, High Court at Calcutta, but the defendants have not appeared, accordingly, "Non-Starter Report" is submitted, wherein it was stated that *"In spite of receiving final notice from the Mediation Centre, High Court at Calcutta, the Opposite Party did not turn up for the Mediation Process".*

15. After failure of Mediation process, the plaintiff has filed the present suit.

16. Learned Counsel for the plaintiff submits that the claim for the plaintiff amounting to Rs. 1,25,50,000/- appears in the defendant's Audited Balance Sheet for Financial Year 2020-2021, under the head "Trade Payables".

17. Learned Counsel for the plaintiff submits that the defendants have admitted and has made unequivocal admission with regard to the claim of the plaintiff by issuing cheques and the audited balance sheets for the year 2020-2021 and there is no issue remains to be adjudicated by this Court.

18. The plaintiff in support of his submissions has relied upon the following judgments:

> ***i.*** ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Another,*** reported in ***(2021) 6 SCC 366***.
>
> ***ii.*** ***Bengal Silk Mills Co. (In Liquidation) v. Ismail Golam Hossain Ariff***, reported in ***1961 SCC OnLine Cal 128.***

iii. ***Asset Reconstruction Company (India) Limited v. Tulip Star Hotels Limited & Ors.*** reported in ***2022 SCC OnLine SC 944***.

iv. ***Barnwal Marketing & Ors. v. Gee Pee Infotech Pvt. Ltd.***, reported in ***2014 SCC OnLine Cal 20106***.

v. ***Deccan Chronicle Holdings Limited, a Company incorporated under the Companies Act, 1956 and Anr. v. Tata Capital Financial Services Ltd.,*** reported in ***2016 SCC OnLine BOM 5319*** .

vi. ***Ultramatix Systems Pvt. Ltd. v. State Bank of India and Others***, reported in ***2007 SCC OnLine Bom 286***.

19. The defendants say that as per the assurance of the plaintiff that the best quality of coal at in a low rate would be supplied with the condition that the defendants would have to provide blank cheques for the purpose of security before entering into a business transaction, the defendant no.1 had issued 5 (five) cheques to the plaintiff for a total sum of Rs.1,25,00,000/-.

20. It is the case of the defendants that on receipt of cheques, the plaintiff supplied inferior and degraded quality of coal, which the defendant no.1 could not be able to use and the same was duly informed to the plaintiff and requested the plaintiff to return the cheuqes. The defendants say that despite several requests, the plaintiff did not pay any heed to the request of the defendants and had presented the cheques for encashment only to harass the defendants and to extract money from the defendants.

21. The defendants submit that the plaintiff has filed false and frivolous case against the defendants under Section 7 of the Insolvency and Bankruptcy Code, 2016 which the plaintiff subsequently withdrawn the same.

22. The defendants submit that on 27th April, 2021, the defendant no. 1 has lodged a General Diary with the Hare Street Police Station, Kolkata against the plaintiff for return of cheques.

23. The defendants have relied upon the judgment in the case of ***Sandeep Singh Vs. Hindustan Spirits Ltd.*** reported in ***2023/DHC/000857*** and submitted that the specific defence taken by the defendants in regard to the nature of transactions which cannot be termed as an unequivocal admission of liabilities of the Company.

24. Order XII, Rule 6 of the Code of Civil Procedure, 1908, reads as follows:

> *"**ORDER XII**
> **ADMISSIONS***
>
> ***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."*

25. On receipt of order of the defendants, the plaintiff delivered coal worth of Rs. 11,86,96,743/- and raised altogether 569 invoices upon the defendants. The defendants have received materials and invoices and have not raised any objection either to the materials supplied or the invoices raised by the plaintiff. Out of the total bill amount of Rs. 11,86,96,743/-, the defendants have made part payment of Rs. 10,61,46,742/- from time to time by leaving the balance amount of Rs. 1,25,50,000/-.

26. The defendants have issued five (5) cheques of Rs.25,00,000/- each cheque dated 9th March, 2021 to the plaintiff. The plaintiff has presented the cheques for encashment but the cheques were returned with the endorsement "Exceeds Arrangement".

27. The plaintiff has disclosed the balance sheet of the defendant as on 31st March, 2021 wherein an amount of Rs. 1,25,50,000/- is showing in favour of the plaintiff as Sundry Creditor.

28. In the case of ***Asset Reconstruction Company (India) Limited Vs. Tulip Star Hotels Limited and Others*** reported in ***2022 SCC OnLine SC 944,*** the Hon'ble Supreme Court held that:

> ***"85.*** *It is well-settled that entries in books of accounts and/or balance sheets of a corporate debtor would amount to an acknowledgment under section 18 of the Limitation Act. In Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal authored by Nariman, J. this court quoted with approval the judgments, inter alia, of Calcutta High Court in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff and Pandam Tea Co. Ltd., the judgment of the Delhi High Court in South Asia*

Industries P. Ltd. v. General Krishna Shamsher Jung Bahadur Rana and the judgment of Karnataka High Court in Hegde and Golay Ltd. v. State Bank of India and held that an acknowledgment of liability that is made in a balance-sheet can amount to an acknowledgment of debt.

86. *In Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, the Calcutta High Court held:*

> *"9. I am unable to agree with the reasoning of the Nagpur decision that a balance-sheet does not save limitation because it is drawn up under a duty to set out the claims made on the company and not with the intention of acknowledging liability. The balance sheet contains admissions of liability ; the agent of the company who makes and signs it intends to make those admissions. The admissions do not cease to be acknowledgments of liability merely on the ground that they were made in discharge of a statutory duty. I notice that in the Nagpur case the balance-sheet had been signed by a director and had not been passed either by the board of directors or by the company at its annual general meeting and it seems that the actual decision may be distinguished on the ground that the balance-sheet was not made or signed by a duly authorized agent of the company. ..*
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> *11. To come under section 19 an acknowledgment of a debt need not be made to the creditor nor need it amount to a promise to pay the debt. In England it has been held that a balance-sheet of a company stating the amount of its indebtedness to the creditor is a sufficient acknowledgment in respect of a speciality debt under section 5 of the Civil Procedure Act, 1833 (3 and 4 Will—4c. 42), see Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd., In re [1928] Ch D 836."*

29. The defendant by a letter dated 8th January, 2020, issued six (6) cheques of the Bank of India of Rs. 25,00,000/- each cheque to the plaintiff with an undertaking that in case the cheque in not honoured by any reasons, the defendants shall be held liable for all the cost and consequences of the same.

30. The defence of the defendants that the plaintiff has supplied inferior quality of coal to the defendants which the defendants could not be used the same and the same was informed to the plaintiff. The defendants have not disclosed any document either in the affidavit-in-opposition or in the written statement that when the defendants found that the plaintiff has supplied inferior quality of coal, the defendants have informed to the plaintiff.

31. The judgment relied by the defendant in the case of ***Sandeep Singh (supra),*** the same is distinguishable from the facts and circumstances of the present case. In the present case, the defendants have taken the defence that the defendants have issued cheques for the purpose of security but in the letter dated 8th January, 2020 by which the defendants have issued cheques to the plaintiff in the said letter is is categorically mentioned that *"in case above cheques is not honoured by any reason, we shall be held liable for all the cost and consequences of the same"*. The case relied by the defendants, in the said case, the defendants have initiated counterclaim against the plaintiff but in the present case there is no counter claim filed by the defendants.

32. In the case of ***Barnwal Marketing & Ors. Vs. Gee Pee Infotesh Pvt. Ltd.*** reported in ***2014 SCC Online Cal 20106,*** the Coordinate Bench of this Court held that :

> *"**(17)** The case sough to be made out by the respondent in its affidavit-in-opposition is not credible. There was no reason or occasion for the respondent to furnish security to the petitioner in the form of the two cheques which were subsequently dishonoured. The respondent has, in my opinion, concocted a story which is not acceptable. This is unfortunate but nothing new. We have often come across stories being churned out in a desperate attempt to raise a defence to a claim. The present case seems to be one of such examples.*
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> ***(18)** The defence of the respondent as noted above, in my opinion, is completely incongruous and also vague, nebulous and convoluted. I have no hesitation in saying that the defence is moon shine. In my opinion, no triable issue has been raised by the defendant and it will be a travesty of justice to relegate the petitioner's claim in this application to trial. The object of Order 12 Rule 6 of the Code of Civil Procedure is to enable a party to obtain a speedy judgment at least to the extent of the admission made by the other party. If frivolous defences are allowed to stand in the way of the plaintiff obtaining expeditious judgment to the extent of the admission made by the defendant, the purpose of Order 12 Rule 6 would be defeated. Recalcitrant parties to a litigation often raise disputes and defences only with a view to protracting the litigation and delaying grant of relief to the other party. This cannot be encouraged."*

33. In the present case also the plaintiff has supplied coal of various qualities to the defendants for a total sum of Rs. 11,86,96,743/- and the defendants have made part payment of Rs. 10,61,46,742/- keeping the balance amount of Rs. 1,25,50,000/-. The defendants have also issued five cheques of Rs. 25,00,000/- each cheque but all the cheques were dishonoured with the reasons “Exceeds Arrangement”. Considering the defence of the defendants as mentioned above, this Court finds that the same is moon shine and no triable issue has been raised by the defendants to relegate the suit for trial.

34. In view of the above, the plaintiff is entitled to get decree on admission amounting to Rs. 1,25,50,000/- along with interest at the rate of 12% per annum from 17th November, 2020 till realisation of the total amount. The defendants are directed to pay Rs.1,25,50,000/- along with interest at the rate of 12% per annum from 17th November, 2020 till the realisation of the total amount. The suit filed by the paintiff is commercial in nature and before initiation of the suit, the plaintiff has issued notice to the defendants for payment but the defendants failed to pay the said amount and the plaintiff has also initiated pre-institution mediation process but the defendants failed to appear in the mediation process. The defendants compelled the plaintiff to filed the present suit and thus the plaintiff is also entitled to get cost of Rs. 1,00,000/-. The defendants are also directed to pay the cost of Rs. 1,00,000/- to the plaintiff.

35. **G.A. (Com) No. 2 of 2024** is **allowed**. **C.S. (Com) No. 500 of 2024 (Old No. CS. 85 of 2023)** is **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)