IN THE HIGH COURT AT CALCUTTA

(ORIGINAL SIDE)

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

CS (COM) No. 391 of 2024

(Old No. CS 142 of 2022)

Mamta Jaiswal

Versus

APL Metals Ltd.

Mr. Kanishk Kejriwal
Mr. Pranav Sharma

... For the plaintiff.

Mr. Satyaki Mukherjee
Mr. Aditya Mondal

... For the defendant.

Hearing Concluded On : 27.01.2025

Judgment On : 31.01.2025

Krishna Rao, J.:

1. The plaintiff has filed the present suit praying for Decree for a sum of Rs.18,50,257.58 along with interest and interest upon judgment at the rate of 18% per annum.

2. The plaintiff is engaged in the business of retail and wholesale of lead and lead ingots. The defendant is engaged in production and supply of refined lead, lead alloys and lead oxides.

3. The defendant was in need for Lead for its manufacturing process, therefore, the defendant, being aware that the plaintiff is a whole-seller of Lead, approached the plaintiff. After negotiations between the parties, it was agreed that the defendant would place purchase orders upon the plaintiff for supply of lead at specific rates and the plaintiff would supply Lead and raise invoices upon the defendant and thereafter the defendant will make payment in terms of the invoices raised by the plaintiff. It was also agreed between the parties that in the event of delay in making payment, the defendant would make payment of interest at the rate of 18% per annum.

4. On 25th November, 2021, the defendant placed a purchase order upon the plaintiff, for supply of 20,000 MT of Lead which the plaintiff has supplied the same on 28th November, 2021. On the same day, the plaintiff has raised invoice for a sum of Rs. 42,24,400/- on 28th November, 2021.

5. The defendant received the goods sold and delivered by the plaintiff without raising any objection and/or demur in any manner whatsoever.

6. The defendant has made part payment of a sum of Rs. 25,00,000/- on 24th December, 2021 and thereafter the defendant failed to make further balance payment to the plaintiff. The plaintiff through her Learned Advocate sent a legal notice to the defendant no 1st March, 2022 calling upon the defendant for making further balance payment of Rs.17,67,248/- along with interest total amounting to Rs. 18,21,282.21. The defendant has received the notice but neither the defendant has sent any reply nor has paid the due amount to the plaintiff.

7. The plaintiff submits that the defendant has also deducted and deposited TDS (Tax Deducted at Source) in respect of the said invoice raised by the plaintiff in acknowledgement of its dues.

8. The plaintiff has filed the suit by obtaining leave under Section 12A of the Commercial Courts Act, 2015 by an order dated 14th June, 2022.

9. The writ of summons was served upon the defendant on 16th September, 2022 but the defendant has not filed written statement. The application filed by the defendant being G.A. No. 3 of 2023 for extension of time to file written statement was dismissed and the suit was placed in the list of "undefended suit".

10. The plaintiff in order to prove its case has examined one witness, namely, Mr. Anand Kumar Gupta and exhibited 10 (Ten) Documents and are marked as **"Exhibit A to Exhibit J"**.

Exhibit A – *Original Copy of the Power of Attorney, authorising the P.W.1 to give evidence on behalf of the plaintiff company.*

Exhibit B – *Copy of purchase order dated 25th November, 2021 sent by the defendant to the plaintiff through electronic mail.*

Exhibit C – *copy of the purchase order dated 25th November, 2021.*

Exhibit D and D/1 – *Original copy of the tax invoice and containing the seal and signature of the APL Metals Ltd.*

Exhibit E – *Copy of e-Way bill showing transportation of materials from the factory of the plaintiff to the defendant's address.*

Exhibit F – *Copies of bank statements of Kotak Mahindra Bank of the plaintiff.*

Exhibit G – *Copy of ledger account sent by the defendant to the plaintiff sharing the closing balance amount of Rs. 17,67,248/-.*

Exhibit H – *Copy of ledger confirmation for the year 2021-22 signed by both the parties.*

Exhibit I – *TDS Certificated under section 26AS.*

Exhibit J – *Goods and Services Tax Certificate for financial year 2021-22.*

11. Though the defendant has not filed written statement but the defendant has cross-examined the plaintiff's witness. The plaintiff has proved purchase order dated 25th November, 2021 issued by the defendant to the plaintiff for supply of 20,000 MT of lead which is marked as Exhibits– B and C. The plaintiff has raised Tax Invoice dated 28th November, 2021 against the supply of 20,220 Kg of Lead Ingot to the defendant for a sum of Rs. 42,70,868/- and the same is marked as Exhibit- D. To prove that the materials were supplied by the plnaitff to the defendant, the plaintiff has Exhibited e-Way Bill dated 28th November, 2021 wherein is reveals that the materials were transported from the factory of the plaintiff to the address of the defendant through the vehicle No. WB11C9219. The e-Way Bill is marked as Exhibit-E.

12. The plaintiff has exhibited bank statement of the plaintiff maintained with the Kotak Mahindra Bank wherein is reveals that the defendant has transferred an amount of Rs. 25,00,000/- in the account of the plaintiff on 24th December, 2021. The Bank statement is marked as Exhibit-F. The defendant by an email dated 14th February, 2022 forwarded ledger confirmation to the plaintiff confirming that as on 24th December, 2021 closing balance was Rs. 17,67,248/-. The ledger confirmation is marked as Exhibit-G. The defendant has also signed confirmation of account dated 23rd February, 2022 confirming that closing balance was Rs. 17,67,248/-. The confirmation of account is marked as Exhibit-H. The plaintiff has also produced TDS certificate showing that an amount of Rs. 7,977/- was deducted. The TDS certificate is marked as Exhibit-I. The plaintiff has also produced Goods and Service Tax Return-1 showing that the plaintiff has regularly paid the tax with respect to the goods sold and delivered. The GSTR-1 is marked as Exhibit- J collectively.

13. Learned Counsel for the defendant during his argument referred question nos. 46, 47, 48 and 53 and submitted that during the cross-examination of the plaintiff's witness, he has admitted that when the materials were loaded and delivered, he was not present and he also admitted that at the time of endorsement in the receipt of the invoice, he was not present. He submits that the plaintiff failed to prove the delivery of materials to the defendant. In support of his submission, he has relied upon the judgment in the case of ***Anil Rice Mill Vs. Sate of U.P. and Others*** reported in ***2024 SCC OnLine All 4510*** wherein the Hon'be Allahabad High Court held that:

> *"**15.** Similarly, this Court in the case of the Commissioner, Commercial Tax v. Ramway Foods Ltd. has held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc., and if the dealer fails to prove the actual physical movement of goods, the benefit cannot be granted."*

14. All documents were exhibited in presence of the Learned Advocate appearing on behalf of the defendant and at the time of exhibiting the documents, the defendant has not raised any objection. The defendant during cross-examination also has not put any question to the effect that the documents relied or exhibited are forged or fabricated. In question no. 69, during the cross-examination, the witness of the plaintiff stated as follows:

> ***"69.*** *I suggest to you that the plaintiff has not come forward to give evidence herself as she is aware that the contents of her plaint are false and untrue?/ I do not agree. They have made part payment through the bank. It is confirmed on the ledger and moreover, there is E-Way bill which is generated from the government portal and that E-Way bill cannot be false and the transporter who carries the goods takes receipt in the tax invoice or in the challan otherwise he will not receive the payment. This is the rule and there is another thing the stamp of my factory is totally different and my office stamp is different. Sometimes, the office stamp and the factory stamp are the same where the factory and the office are located in the same building. They have made part payment. They have given receipts. It can also be depicted in the bank statement."*

15. Considering the pleading, evidence of the plaintiff's witness and the documents exhibited during the evidence, this Court finds that the plaintiff has proved the case that the defendant has placed purchase order to purchase 20,000 MT of Lead for a total sum of Rs. 42,24,400/- and the plaintiff has delivered Lead Ingot of 20,220 Kg for a total sum of Rs. 42,70,868/- and raised invoice. On receipt of materials, the defendant paid part payment of Rs. 25,00,000/-. The defendant by forwarding ledger account and confirmation of account admitted that as on 24th December, 2021 closing balance was Rs. 17,67,248/- but the defendant failed to pay the said amount.

16. This Court finds that the plaintiff has proved the case and is entitled to get an amount of Rs. 17,24,400/- along with interest at the rate of 18% per annum from 25th December, 2021 till the realization of the total amount.

17. The defendant is directed to pay Rs. 17,24,400/- along with interest at the rate of 18% per annum from 25th December, 2021 to the plaintiff till the realisation of the said amount.

18. **C.S. (Com) No. 391 of 2024 (Old No. C.S. 142 of 2022)** is **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)

Later :

After delivery of the judgment, Learned Counsel appearing for the defendant prays for stay of the order.

Counsel for the plaintiff raised objection.

Considering the submission made by the Counsel for the defendant, Stay is refused.

(Krishna Rao, J.)