OCD-10

ORDER SHEET

AD-COM/2/2025

WITH

CS-COM/432/2024

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
ORIGINAL SIDE

BUILDSTAR INFRA PRIVATE LIMITED
VS
UTKARSH INDIA LIMITED

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 16th June, 2025.

Appearance:
Mr. Rabindra Kumar Mitra, Adv.
Mr. Sourjya Das, Adv.
Ms. Poulami Bhowmick, Adv.
..for the appellant

Mr. Chayan Gupta, Adv.
Mr. Souryadeep Banerjee, Adv.
Mr. Dwip Raj Basu, Adv.
..for the respondent

Dictated by Arijit Banerjee, J.

The Court: This appeal is directed against a judgment and order dated September 10, 2024, whereby the respondent's application for judgment upon admission to the tune of Rs.25,20,606/- was allowed by a Learned Judge of this Court along with interest at the rate of 18% per annum from May 1, 2021, till realisation of the said amount.

The relevant facts of the case are that the respondent/plaintiff is engaged in, *inter alia*, the business of manufacture and sale of Steel Structures, Crash Barriers, Steel ERW Pipes etc., of diverse specifications. The appellant/defendant is engaged in the manufacture and sale of construction equipment including crash barriers of diverse specifications.

It appears that pursuant to negotiation, an agreement/arrangement was arrived at between the parties hereto for supply of crash barriers along with allied accessories by the plaintiff to the defendant as per the verbal purchase orders placed by the defendant on the plaintiff. It, further, appears that the defendant placed several orders on the plaintiff and received supply of the relevant products. The parties appear to have maintained a running and continuous account. *Ad hoc* payments were made from time to time by the defendant to the plaintiff, which were adjusted in the running accounts.

It appears that on April 23, 2021, the defendant paid a sum of Rs.8.50 lakh to the plaintiff. Out of the said sum, an amount of Rs.12,195/- was adjusted against the pending dues of the plaintiff and the balance Rs.8,37,805/- was adjusted against four invoices raised by the plaintiff on the defendant during March and April, 2021. After such adjustment, a sum of Rs.25,20,606/- remained due and payable by the defendant to the plaintiff.

The plaintiff claimed the outstanding amount. The defendant issued a communication dated January 4, 2022. This communication is important as the same forms the fulcrum of the plaintiff's prayer for judgment upon admission. The communication reads thus:-

> *"We will clear the pending amount i.e., INR 2520606/- lying in the ledger of Utkarsh India Ltd. From Buildstar Infra Pvt. Ltd. Will be cleared maximum by 6 months. We are not be able to clear the full amount at a glance as we have a huge financial crisis. We will pay the first payment in the month of Jan'22 appx. Upto 800000/- and the balance will be paid in the specified time frame mentioned above.*
> *In between any requirement of the materials, we will lift those with the payment at the time of lifting. Please co-operate with us to revive the situation.*
> *Thanking you"*

In spite of the aforesaid communication, nothing was paid by the defendant. The plaintiff sent reminder e-mails on June 22 and June 25, 2022. On July 6, 2022, the plaintiff sent a legal notice to the defendant which the latter duly received. However, no further payment was made by the defendant.

According to the plaintiff, on August 5, 2022, the defendant approached the plaintiff with a proposal to settle the disputes amicably. According to the plaintiff, it was decided that the defendant will pay the sum of Rs.27,50,000/- in full and final settlement of the plaintiff's claim, in two instalments within September 15, 2022. The defendant issued a cheque for Rs.7.50 lakh, dated August 23, 2022, in favour of the plaintiff and apparently assured the plaintiff that another cheque for the balance amount would be issued within September 15, 2022. The cheque for Rs.7.50 lakh, when presented for payment, was dishonoured by reason of there being insufficient funds in the concerned bank account of the defendant.

In the aforesaid factual matrix, the plaintiff instituted the present suit. In the suit, the plaintiff took out an application under Order XII Rule 6 of the Code of Civil Procedure for judgment upon admission to the tune of Rs.25,20,606/-

The Learned Single Judge noted the rival contentions of the parties in great detail. The Learned Judge considered the legal precedents cited on behalf of both the parties. His Lordship came to the conclusion that there was a clear and unequivocal admission of liability to the tune of Rs.25,20,606/- in the defendant's letter dated January 4, 2022. Accordingly, the Learned Judge allowed the plaintiff's application. Hence this appeal at the instance of the defendant.

Learned counsel appearing for the appellant/defendant argued that the letter dated January 4, 2022, cannot be considered to be an unequivocal admission of liability by the defendant. The defendant had issued that communication only to persuade the plaintiff not to stop supplies to the defendant. In fact, the supplies made by the plaintiff earlier were not as per the specifications by reason of which the defendant has suffered huge loss and damage. Exchange of WhatsApp messages would show that the letter dated January 4, 2022, was not meant to be an admission of the defendant's liability. Several triable issues have been raised by the defendant and unless the order under appeal is set aside or stayed immediately, the defendant shall suffer irreparable loss and prejudice.

We have not called upon the respondent's counsel to make submission.

We find no apparent infirmity in the order under appeal. The authenticity of the letter dated January 4, 2022, emanating from the defendant, is not disputed by the defendant. The defendant attempts to offer an explanation as to why the letter was issued, which is not acceptable to us. As regards the defendant's contention that the plaintiff supplied defective goods to the defendant, we do not find any contemporaneous document on record to that effect. If indeed the plaintiff failed in its contractual obligations, vis-à-vis the defendant, nothing stopped the defendant from recording the same by issuing appropriate letters. The defendant should not have, in that event, issued the admission letter dated January 4, 2022, nor should it have issued the cheque for Rs.7.50 lakh in favour of the plaintiff.

On an overall consideration of the facts of the case and the documents on record, we have no doubt in our mind that the communication dated January 4, 2022 amounts to a clear and unequivocal admission of liability by the defendant to the tune of Rs.25,20,606/-.

The provision of Order XII Rule 6 of the Code of Civil Procedure has been promulgated by the Parliament to enable plaintiffs with genuine and undisputed and/or admitted claims to recover their dues without going through an unduly long process of trial of the suit. In a case where the defendant has clearly and unconditionally admitted its liability, as in this case, it would indeed be unfair to subject the plaintiff to a long process of trial. The purported defence sought to be raised by the present defendant appears to be moonshine and an attempt in desperation to try and delay payment of the plaintiff's claim.

We do not find any reason to interfere with the judgment and order under appeal. The Learned Judge has rightly appreciated the scope of Order XII Rule 6 of CPC and has rightly allowed the plaintiff's application.

In view of the aforesaid, this appeal stands dismissed.

There will be no order as to costs.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

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