

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUMMARY SUIT NO. 23 OF 2024**

Trisons Impex through its proprietor
Mr. Kamlesh Kanungo ... Plaintiff

Versus

India Steel Works Ltd. ... Defendant

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Mr. Devashish Godbole alongwith Mr. Vibhav Gadre, Advocate for the Plaintiff.
None for the Defendant.

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CORAM : ABHAY AHUJA, J.

DATE : 12 MARCH 2025

P.C. :

1. This Suit seeks a decree of Rs.49,32,47,822/- alongwith further interest as per the particulars of claim as well as interest of Rs.20,06,77,538.54 being the interest from 29th March 2022 till the date of filing of the Suit, calculated at 18% p.a. and interest @ 18% p.a. on Rs.49,32,47,822/- from the date of filing of the Suit till the complete payment is made.

2. Mr. Godbole, learned Counsel, appears for the Plaintiff and submits that the Plaintiff has had a long term relationship with the Defendant for the past 15 to 20 years. That the Plaintiff used to supply

many types of ferrous and nonferrous metals, steel scrap being raw materials used by the Defendant to produce stainless-steel long products by the Defendant.

3. From the year 2009 onwards, the Defendant had purchased and the Plaintiff had sold various quantities of HC coil, Nickel, Manganese, CC, Col, Sheet, Scrap in different grades from time to time in ordinary course of business. Mr. Godbole would submit that the said materials were sold and delivered to the Defendant at its factory being India Steel Works Complex, Zenith Compound, Khopoli, District – Raigad – 410203, Maharashtra. The said materials were accepted by the Defendant without any demur. It is submitted that various invoices have been raised upon the Defendant for the materials sold and supplied, aggregating to an amount of Rs.56,62,51,904/- which have remained unpaid. It is submitted that the Defendant had also sold and supplied certain materials to the Plaintiff aggregating to Rs.18,95,04,081/-. That after deducting the said amount from the aggregate outstanding amount, Rs.37,67,47,823/- remained outstanding. Mr. Godbole would submit that the details of the invoices of the outstanding are at Exhibit “B” to the Plaintiff.

4. Mr. Godbole submits that demand notices were sent. That after discussions and deliberations between the Plaintiff and the

Defendant, both the parties entered into a Deed of Settlement dated 30th September 2020, wherein the Defendant agreed that the total amount due and payable to the Plaintiff as on 30th June 2020 alongwith interest stood at Rs.64,79,03,645/- and the parties had *inter se* agreed to the liability of the Defendant to be fixed for an amount of Rs.33,52,47,822/-, which was payable within eighteen months from the date of the Deed of Settlement i.e. on or before 29th March 2022. It was also agreed that in the event the Defendant failed to pay the entire settlement amount by the due date, the Defendant would forthwith be liable to pay a sum of Rs.15,80,00,000/- over and above the said settlement amount, by way of lumpsum interest, for the period of delay caused by the Defendant.

5. It is submitted that the Settlement Agreement was operating as a starting point for determining the rights and liabilities *inter se* between the parties. It is also submitted that the Plaintiff could choose to recover the total monies due through either of the two means, at the sole discretion of the Plaintiff, namely :

- a. Monetary recovery with the said due date of 18 months from the date of the Settlement Agreement.
- b. Carpet area upto 60,000 sq.ft. at price of Rs.6,000/- per sq.ft. in the buildings constructed by the Defendant on the property being old survey No.28(1)(P), 28(2)(P), 29/1, 30/1/1, 30/1/2, 30/3, 32/1(P), 32/2(P), 32/3(P),

32/4, 33/1, 44/2(P), 32/5, 33/2, 44/1(P), 27/2(P), 26(P) and revised survey Nos. 28, 32/5, 33/2, 44/1, 272 and 26 situated Village Vihari, District Raigad.

6. Mr. Godbole would submit that the Defendant consistently failed to abide by the terms of the Settlement Agreement and thereafter various communications were issued calling upon the Defendant to pay Rs.33,52,47,822/- being the outstanding amount on the material supplied by the Plaintiff under various challans/invoices.

7. It is submitted that thereafter, legal notice was also issued, calling upon the Defendant to pay the settlement amount of Rs.33,52,47,822/-. Further, upon the Defendant's failure to pay the entire settlement amount before the due date, the Defendant was also liable to pay a sum of Rs.15,80,00,000/- over and above the settlement amount, by way of lumpsum interest, for the period of delay caused by the Defendant, aggregating to Rs.49,32,47,822/-, failing which the Plaintiff would be constrained to take appropriate civil/criminal action against the Defendant.

8. Mr. Godbole would submit that however since no payment was forthcoming, the Plaintiff had filed an application for mediation under Section 12A of the Commercial Courts Act, 2016, before the Main Mediation Centre, High Court on 1st November 2023.

9. Mr. Godbole submits that however the mediation has failed, as the Defendant continued to make false promises of settlement after commencement of mediation, but never gave a concrete offer. That the mediation went on for 5-6 meetings for more than five months. Mr. Godbole draws the attention of this Court to Exhibit-J, which is a copy of the mediation report. A perusal of the same indicates that the mediation has been unsuccessful.

10. That thereafter this Suit has been filed on 3rd July 2024 as a Summary Suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) as the same is based on written contract.

11. Mr. Godbole submits that the cause of action arises from the Settlement Agreement dated 30th September 2020. That pursuant to Clause 4.1 of the Settlement Agreement, the Defendant undertook to pay an amount of Rs.33,52,47,822/- within a specified due date, which was explicitly set at 18 months from the execution date of the Agreement.

12. Mr. Godbole submits that consequently, the default in fulfilling the obligations under the Agreement occurred on 30th March 2022. That the pre-institution mediation application is dated 1st November 2023 and it is submitted that the present Suit is filed within the time of limitation.

13. Mr. Godbole submits that a copy of the writ of summons and the Plaint have been served upon the Defendant on 11th December 2024 at its Corporate Office at 304, Naman Midtown, Tower A, Senapati Bapat Marg, Elphinstone (West), Lower Parel, Mumbai – 400 013. Mr. Godbole draws the attention of this Court to the Affidavit dated 11th December, 2024 and particularly page 7 thereof, which in the report of the Bailiff of the Sheriff's Office proving service on the Defendant on 11th December 2024. Mr. Godbole submits that since no appearance has been entered by the Defendant within 10 days of service, the Plaintiff is entitled to a decree in terms of Order XXXVII Rule 2(3) of CPC.

14. Sub-rule (3) of Rule 2 of the said Order XXXVII of the CPC provides that the Defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by this Court.

15. Having heard the learned Counsel and having considered the submissions, in view of sub-rule (3) of Rule 2 of Order XXXVII of the

CPC, since the Defendant has not entered appearance within 10 days of having been served the writ of summons on 11th December 2024 and the Suit having been filed as contained in Rule 2 of Order XXXVII of the CPC, the allegations in the Plaint have been deemed to be admitted and the Plaintiff has become entitled to a decree in the sum mentioned in the summons.

16. Accordingly, the Suit is decreed in terms of prayer clauses (a), (b) and (c), which read thus :

(a) This Hon'ble Court be pleased to direct the Defendant to pay the Plaintiff a sum of Rs.49,32,47,822/- (Rupees Forty-Nine Crores Thirty-Two Lakhs Forty-Seven Thousand Eight Hundred and Twenty-Two only) and further interest as more particularly set out in the particulars of claim, Exhibit G hereto.

(b) This Hon'ble Court be pleased to direct the Defendant to pay the Plaintiff a sum of Rs.20,06,77,538.54 (Rupees Twenty Crores Six Lakhs Seventy-Seven Thousand Five Hundred And Thirty Eight And Fifty Four Paise Only) being the interest from 29th March 2022 (being the due date) till the date of filing of the present Suit, calculated at 18% per annum.

(c) The Defendant be directed to pay the Plaintiff interest @ 18% p.a. on Rs.49,32,47,822/- (Rupees Forty-Nine Crores Thirty-Two Lakhs Forty-Seven Thousand Eight Hundred and Twenty-Two only) from

the date of filing the present Suit till the complete payment is made.

17. Decree be drawn up expeditiously.
18. Refund of court fees as per Rules.

(ABHAY AHUJA, J.)