

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

IA NO. GA-COM/1/2025

In

CS-COM/31/2025

M/S. NANDY TRADING CO

Vs

**EMBEE FERRO ALLOY
PRIVATE LIMITED**

**For the plaintiff : Mr. Subir Banerjee, Adv.
Mr. Anujit Mookherjee, Adv.
Mr. Sarangam Chakraborty, Adv.**

**For the defendant : Mr. Chayan Gupta, Adv.
Mr. Rajesh Upadhyay, Adv.
Ms. Surabita Biswas, Adv.**

**For Shree Ramdoot Ferro
Pvt. Ltd : Mr. Utpal Bose, Sr. Adv.
Mr. Debjyoti Manna, Adv.
Ms. Moumita Bhattacharjee, Adv.**

Heard on : January 8, 2026

**Judgment on : January 8, 2026
[In Court]**

ANIRUDDHA ROY, J :

FACTS :

1. This application **IA No. GA-COM/1/2025** is filed by the plaintiff praying for a judgment upon admission.
2. The inescapable facts are stated. The plaintiff had sold and supplied coal to the defendant from time to time upon the order being placed by the defendant. The defendant has consumed the goods. Sale consideration was agreed by and between the parties. Since the defendant has failed and neglected to pay the sale consideration, the plaintiff demanded the same. The demand notice in this regard is dated **November 27, 2024** at **page 217** of the petition.
3. The defendant through its ledger, **Annexure-‘F’** at **page 214** of the petition, has admitted a sum of **Rs.1,31,84,275.64** being the closing balance due and payable to the plaintiff.
4. The relevant averment made by the plaintiff in its application is quoted below:

“11. In the usual course of business, the respondent has issued a statement of balance confirmation to the petitioner admitting to its debts and liabilities towards the petitioner. In such way, on December 12, 2024 the respondent has issued balance confirmation admitting its debts to the petitioner for the sum of Rs.1,31,84,275.64/-. A copy of such confirmation

issued by the Respondent is annexed hereto and marked as 'F'."

5. The defendant has filed its affidavit-in-opposition. The relevant paragraph from the affidavit-in-opposition dealing the admission of the defendant pleaded by the plaintiff in its application is quoted below:

"8. With reference to the contents of paragraphs 9 to 16 of the said application, save and except what are matters of record, allegations to the contrary are denied. It is denied that the petitioner is entitled to any protection or benefits under the Micro Small Medium Enterprises Development Act, 2006, (for short MSMED Act) as alleged or at all. It is denied that the registration of the petitioner as an MSME in the MSMED Act was made over to the respondent for any purported negotiations or that the respondent had in consideration of any purported handing over made any promise to pay within a period of 45 days from receipt of any invoices, as alleged or at all. It is denied that the petitioner is entitled to interest in terms of the MSMED Act, 2006, as alleged or at all. It is denied that the petitioner is entitled to interest on any sum in terms of the provisions of the MSMED Act, 2006. It is denied that any amounts

let alone the amounts of Rs.1,32,17,647.90/- or an amount of Rs.11,53,239/- can be recovered from the respondent, as alleged or at all. It is stated that the respondent is admittedly is in in involved conditions, as would be evident from the averments made in the paragraphs hereinbefore. It is denied that the claims as made by the petitioner in the plaint can be made over to the petitioner by the respondent, as alleged or at all.”

6. In addition to above, the defendant has also made the following averment in its affidavit-in-opposition:

“4.w. The respondent’s business has been completely closed. As on date, there is no income which is generated by the respondent and on top of that there is still an outstanding amount of Rs.63974709.58/- which is due and payable by the respondent to HDFC Bank Ltd. The respondent, unfortunately, does not have the wherewithal to make payment of the said amount. In order to bring the exact facts to the notice of this Hon’ble Court, the assets and liabilities of the respondent, as on date, are indicated in a schedule annexed hereto and marked with the letter “K”. ”

7. On a close scrutiny of the document being **Annexure-‘K’** at **page 147** to the said affidavit-in-opposition filed by the defendant, it appears that the defendant has admitted its liability towards its diverse operational creditors. **Serial no.15** of the said chart at **page 151** to the affidavit-in-opposition shows a specific and unequivocal admission on the part of the defendant towards the plaintiff that a sum of **Rs.1,31,84,275.64** is due and payable to the plaintiff and the plaintiff has been included in the list of the said operational creditors.

SUBMISSIONS:

8. Mr. Subir Banerjee, learned Counsel appearing for the plaintiff submits that the defendant has unequivocally and unconditionally admitted its liability towards the plaintiff to the extent of a sum of **Rs.1,31,84,275.64**, though the claim of the plaintiff in the plaint is **Rs.1,32,17,647.90** as would be evident from **paragraph 28** of the plaint.
9. At this juncture, learned Counsel for the plaintiff, on instruction from his client, submits that the plaintiff is prepared to relinquish the balance sum of claim which shall be around **Rs.33,372/-** and the plaintiff, accordingly, relinquishes the same.
10. Learned Counsel for the plaintiff further submits that interest may be granted on the said principal amount admitted by the defendant.

11. Mr. Chayan Gupta, learned Counsel appearing for the defendant submits that the default was not intentional. The defendant had all bona fide to pay off the just and lawful dues of the plaintiff but because of the circumstance beyond control, the same could not be paid off.
12. According to Mr. Gupta, there was a retrospective tariff enhancement by DVC, the electricity providing company, for about a sum of **Rs.10.53 crores** for which the defendant was compelled to shut down its business, as the electricity was disconnected.

DECISION:

13. After hearing the rival contentions of the parties and on perusal of the record, it appears to this Court that there has been a clear, specific and unequivocal admission of liability by the defendant towards the plaintiff to the extent of **Rs.1,31,84,275.64**. The supply of goods by the plaintiff and the consumption thereof by the defendant has not been denied. In a commercial transaction when the goods have been consumed by the purchaser of the goods without any objection or demur, the consumer of the goods is liable to make payment of the entire sale consideration.
14. Inasmuch as, the plaintiff has relinquished its claim to the extent of **Rs.33,000/-** and odd, as indicated above.

15. The reflection in the ledger account of the defendant towards the plaintiff read with the details of the amount due and payable by the defendant to its operational creditors, as would be appearing from **page 151** of the affidavit-in-opposition as already narrated above, this Court is of the firm and considered view that the admission of debt by the defendant towards the plaintiff is unequivocal and crystal clear.
16. There is no defence on the part of the defendant.
17. The parties have not agreed for a particular rate of interest and the interest claimed by the plaintiff is not agreed by and between the parties. In such circumstance, discretion is left with the Court to award interest.
18. Accordingly, on the said admitted sum, the defendant shall pay interest at the rate of 4% per annum from the date of the demand notice dated **November 27, 2024** till the date of actual payment to be made by the defendant.
19. In view of the foregoing reasons and discussions, there shall be a **decree** for a sum of **Rs.1,31,84,275.64** together with interest at the rate of 4% per annum, since the date of the demand notice being dated **November 27, 2024** till the payment is made to the plaintiff.
20. The defendant shall pay the aforesaid decretal amount positively within a period of **four months** from date.
21. The decree shall be drawn up and completed expeditiously.

22. On the above terms, this application being **IA GA-COM/1/2025** stands **allowed**.
23. In view of the above, **CS-COM/31/2025** stands decreed accordingly.

(ANIRUDDHA ROY, J.)

sg.