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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CS/129/2024
IA No.GA/1/2024, GA/2/2024, GA/4/2026

AMOGA GLOBEX PRIVATE LIMITED
VS.
S. K. GUPTA & SONS (HINDU UNDIVIDED FAMILY) & ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 22nd June, 2026.

Mr. Chayan Gupta, Mr. Tanay Agarwal ,Ms. Darshana Sett, Ms.
Priyansha Agarwal, Advocates for the plaintiff/petitioner.

The Court : Perused the report filed by the Registrar, Original Side of this Court dated 20th June, 2026 in terms of the order dated 17th June, 2026. On a perusal of the report it appears that the Writ of Summons through the District Court North West Delhi, Rohini Court Complex, Delhi – 110085 may not have been served on all the defendants but the summons sent through post in all likelihood has been received by the defendant on the presumption that the registered envelop sent by the Sheriff's office has not come back undelivered. The defendants have, in any event entered appearance initially through Mr. Debasish Sarkar, learned Advocate and

thereafter through Mr. Amit Chowdhury, learned Advocate after obtaining change from Mr. Debasish Sarkar. The defendants have also filed their written statement on 15th January, 2025. The administrative notice in terms of the direction contained in the order dated 17th June, 2026 was sent through speed post to the defendant nos.1 and 2 on 18th June, 2026. Learned Advocate Mr. Amit Chowdhury was served with the administrative notice on 18th June, 2026 by special messenger. The defendants, however, remain unrepresented even today.

GA-COM 4 of 2026 is an application for reinstatement and/or to restore the interim order passed on 6th May, 2024 which expired by efflux of time on or about 7th November, 2025.

Since the defendants remain unrepresented for consecutive two days, the application is taken up for consideration in the absence of the defendants.

In order to reinstate and/or restore the interim order or reimpose the same in line with the order dated 6th May, 2024 it is necessary to find out whether this Bench has the jurisdiction to receive, try and adjudicate the suit in aid of the relief claimed wherein the interim prayers can be allowed.

A bare perusal of the plaint and the averments made therein it appears that the suit is predominantly for damages arising out of a breach of contract between the parties for sale of goods. The plaintiff had given money but the goods have not been supplied by the defendants. The plaintiff has claimed realization of the consideration paid for sale and delivery of the goods by the defendants which the defendants ultimately failed and neglected to do so by claiming damages for the same. The damages, therefore, arise out of a breach of contract for sale of goods.

An agreement relating to sale of goods gives rise to a commercial dispute in view of the provisions of Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015 (hereinafter referred to as 'the 2015 Act'). Even though the principal relief claimed is for damages but it arises out of a contract for sale. The damages claimed, therefore, arise out of a breach of contract for sale.

In paragraph 2 of the plaint, the plaintiff has set out the terms agreed with the defendants which clearly indicates that the defendants will sell the goods in accordance with the need and as per specification provided by the plaintiff adhering to the delivery schedule. The agreement, therefore, specifically includes within its fold the obligation of the defendants to sell and deliver the goods. Section 57 of the Sale of Goods Act, 1930 (hereinafter referred to as the 1930 Act) provides for damages for non-delivery of the goods. As held in ***Raptakos Brett And Co. Ltd. Vs. Ganesh Property reported in 1998 (7) SCC 184*** if there was no stipulation in the contract fixing an obligation on the defendants to sell and deliver the goods, then it could have been urged that the damages claimed arise out of the statutory provisions under Section 57 of the 1930 Act and not out of breach of contract. The damages in such a case would have been arising out of breach of a statutory obligation and not a contractual obligation. The damages in such a situation would stand outside the purview of a commercial dispute as enumerated under Section 2(1)(c)(xviii) of the 2015 Act.

In the instant case as discussed hereinabove, the breach is of a contractual obligation which has given rise to damages claimed by the plaintiff. The dispute, therefore, is breach of a contractual term which gives rise to the damages and brings the same within the ambit of Section

2(1)(c)(xviii) of the 2015 Act. The suit, therefore, was required to be framed and filed as a commercial suit under the provisions of 2015 Act. This Bench does not have the determination to hear out a commercial suit filed in the year 2024 and the applications in connection thereto. The suit in the light of the discussion hereinabove has to be framed and filed as a commercial suit under the provisions of the 2015 Act. The suit has been admittedly instituted as one under the Ordinary Original Civil Jurisdiction.

It is submitted by the plaintiff that this Bench may not have the determination at the present for hearing commercial suits instituted in the year 2024 or applications in connection therewith but this Bench has commercial jurisdiction in connection with the matters relating to intellectual property rights and admiralty suits. The Bench wherein the plaint was presented and the application was initially moved resulting in the passing of the interim order dated 6th May, 2024 had the jurisdiction to receive, try and determine both commercial as also ordinary suits instituted in the year 2024. The plaintiff relies upon the cause list of the particular date in support of its contentions.

The plaintiff also relies upon a judgment and order of the Hon'ble Supreme Court dated 22nd April, 2026 passed in *SLP(C) No 8111 of 2026 (Shri Balaji Industrial Engineering Ltd. (formerly known as Balaji Industrial Products Ltd.) Vs. Steel Authority of India Ltd.- IISCO Steel Plant (Formerly known as IISCO Steel Plant)* to contend that when a Court has both the commercial and non-commercial jurisdiction, it cannot be said that a jurisdiction in respect of the suit which was required to be filed in the Commercial Division but filed as an ordinary suit the Court has exercised a jurisdiction not vested in it. The suit, therefore, is required to be transferred

to the Commercial Division for being moved before the appropriate Bench. It is also submitted by the plaintiff that after institution of the suit, the Bench having jurisdiction had considered the urgency and had allowed the interim application wherein the order dated 6th May, 2024 was passed after being satisfied with the urgency made out by the plaintiff.

The defendants may not have objected to the jurisdiction, by submitting that the suit had to be framed and filed as a commercial suit and further on having submitted to the jurisdiction it may be contended that the defendants have waived the jurisdiction issue on having found that it lacks in jurisdiction. The Court, however, cannot retain jurisdiction over the suit even if the defendants have waived their objection as to the jurisdiction issue. Moreover, the allocation of determination and the matters relating to the roster is within the purview of the jurisdiction exercised by the Hon'ble the Chief Justice. This Bench, therefore, cannot also direct the suit being placed before the Bench having the commercial determination.

Although, the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 (in short CPC) was not applicable to this Court but by way of an amendment in 1974, the said provisions have been made applicable to this Court. The appropriate relief, therefore, is to return the plaint to be filed before the appropriate forum.

In the aforesaid facts and circumstances, the suit which has appeared in the list along with all the connected applications are directed to be returned to the plaintiff for being presented before the appropriate Commercial Court in accordance with law which may be also this Court in exercise of its commercial jurisdiction. The plaint shall be returned along with the court fees. Once the plaint is returned after completion of the

requisite formalities, the department shall deregister the suit as a suit filed in the Ordinary Original Civil Jurisdiction from the data base of this Court.

It will be open to the plaintiff to take appropriate steps in accordance with law.

(ARINDAM MUKHERJEE, J.)

pa/sb