Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.695 OF 2026
IN
COMMERCIAL FIRST APPEAL NO.27 OF 2025

Steel Authority of India Ltd. …**Applicant/ Appellant**

Versus

M/s Kunal Corporation & Ors., …**Respondents**

Filji Frederick a/w Hritika Shroff & Tithi Raut i/b FF & Associates for the Applicant/Appellant.
Mr. Anirudh Hariani a/w Mr. Sourasubha Ghosh & Mr. Jash Shah i/b Induslaw for Respondents.

CORAM : R.I. CHAGLA AND
ADVAIT M. SETHNA, JJ.

DATED : 17TH MARCH, 2026.

ORDER :

1. By this Interim Application, the Applicant/Appellant has sought for a stay of the operation of the impugned Order and Judgment dated 27th March, 2025 passed by the City Civil Court at Mazgaon, Bombay.

2. We have heard the learned Counsel for the parties on the issue of stay of the impugned Order and Judgment dated 27th March, 2025 as well as on admission of the Commercial First Appeal.

3. The Trial Court has in the impugned Order and Judgment passed a monetary decree in Commercial Summary Suit No.50 of 2024 by directing the Defendants to pay an amount of Rs.1,38,08,451/- together with the interest at the rate of 9% per annum from the date of demand notice sent by the Plaintiff to the Defendant, till its realization in full.

4. Mr. Hariani, learned Counsel appearing for the Respondents in the above Commercial First Appeal who were the original Plaintiffs in whose favour the aforementioned Decree was passed by the Trial Court, has opposed the Application for stay of the impugned Order and Judgment. He has referred to the findings in the impugned Order and Judgment. In Paragraph 28 of the impugned Order and Judgment the Trial Court has arrived at a finding that on a conspectus of the evidence which had been led by the parties in the Commercial Summary Suit it appears that the original Defendant had issued credit notes to the Plaintiffs to enable

them to avail Turnover Discount ("**TOD**") for the year 2003-04 for a quantity of 42,331.384 MT, but failed to consider credit notes of 2788 MT for the same period in order to avail Additional TOD. It is further apparent that only in order to deny the benefits of Additional TOD, the original Defendant wrongly calculated the quantity lifted for the year 2003-04 to be less by 831 MT and showing it to be for the year 2004-05, though it was backlog delivered in April 2004. This is done arbitrarily and unilaterally.

5. Mr. Hariani has referred to the first Memorandum of Understanding ("**MoU**") as well as second MoU. As per the first MoU entered into on 8th April 2002, the quantity of materials to be lifted was 40,500 MT. Further, in Clause 2.4 of the first MoU it was provided that the backlog as on 1st April, 2003 due to the original Defendant – Steel Authority India Limited (SAIL) will be supplied till 30th April, 2004 at the price applicable for MoU prevailing as on 31st March, 2003 subject to the release of orders as per prevailing guidelines. Supplies against such backlog would be deemed to have been supplied against MoUs for the period 2002-2003 and benefits passed on accordingly.

6. Mr. Hariani has referred to the second MoU dated 1st April, 2003 between the original Plaintiff and original Defendant wherein total quantity of material to be lifted is mentioned as 41,500 MT. He has also referred to Clause 2.4 therein which is on similar terms as the provision of backlog in the first MoU. It is provided that the backlog as on 1st April, 2004 due to sales failure will be supplied till 30th April, 2004 at the price applicable for MoU prevailing on 31st March, 2004 subject to the release of orders as per prevailing guidelines. Supplies against such backlogs would be deemed to have been supplied against the MoU for the period 2003-2004 and benefits passed on accordingly.

7. Mr. Hariani has referred to the terms and conditions under eligibility for two year MoU for CR Coils / Sheets for 2002-2004 which form part of the Guidelines for Order Booking Schemes for Flat Products for the Year 2002-2003 and under which it is provided that minimum commitment for lifting in 2003-2004 should be atleast equal or more than the actual quantity to be lifted in the year 2002-2003. He has submitted that the words minimum commitment for lifting 2003-2004 is required to be interpreted in light of the aforementioned Clauses of the MoU including backlog

provided. This was the understanding between the parties which had been arrived at in correspondence exchanged from 13th March, 2004 till 21st October, 2005 and which has been exhibited in the Evidence recorded by the Trial Court. He has in particular highlighted the correspondence addressed by the Appellant itself on 28th October 2003, 5th November 2003 and 29th January 2004, wherein the Appellant/original Defendant's own understanding of the contract between the parties was that the Respondent / original Plaintiff would be entitled to Additional TOD if the amount lifted by the original Plaintiff in 2003-2004 was greater than amount lifted by the original Plaintiff in 2002-2003. He has submitted that this interpretation has found favour with the Trial Court and in view of which, the aforementioned monetary decree has been passed.

8. Mr. Frederick, learned Counsel appearing for the Appellant has supported the Application for unconditional stay of the impugned Order and Judgment passed by the Trial Court. He has submitted that as per the terms and conditions under eligibility for the MoU for CR Coils / Sheets for 2002-2004 in the Guidelines for Order Booking Scheme for Flat Products for the Year 2003-2004, it is provided that "minimum commitment for lifting in 2003-2004 should

be atleast equal or more than the actual quantity lifted in 2002-2003". He has submitted that the words 'minimum commitment' would have to be read in terms of the total quantity to be lifted viz. 41,500 MTS as per the second MoU dated 1st April, 2003. Accordingly, the minimum commitment for lifting in 2003-2004 was admittedly less than the actual quantity lifted in 2002-2003 which is the quantity of 42,162.912 MT. He has submitted that this was the understanding between the parties to the MoU's viz. the original Plaintiff and original Defendant. Further, the quantity actually lifted in 2002-2003 was known to the parties when the second MoU was entered into, and that is the reason as to why the second MoU had provided a minimum commitment for lifting of 41500 MTS.

9. Mr. Frederick has submitted that the Trial Court has failed to appreciate that the backlog in April 2004 was known to the parties when they entered into the second MoU and was accordingly taken into account whilst fixing the minimum commitment for lifting. He has further submitted that in any event the backlog can only be considered for TOD and not for Additional TOD.

10. Having considered the submissions, the issue which falls

for determination in the captioned Commercial First Appeal is, as to whether the actual quantity lifted in the year 2003-2004 is to be taken into consideration for the purpose of adjudicating Additional TOD and not the total quantity committed to be lifted as per the second MoU dated 1st April, 2003 viz. quantity of 41,500 MT. It appears that the Trial Court had decided this issue in favour of the original Plaintiff by considering the actual quantity lifted in the year 2003-2004 for the purpose of availing Additional TOD and which has been found to be more than the actual quantity lifted for the previous year 2002-2003. This finding would have to be examined in light of the plain language of the terms and conditions of the eligibility for the MoU for CR Coils / Sheets for 2002-2004 in the Guidelines for Order Booking Schemes for Flat Products for the Year 2002-2003 viz. "the minimum commitment for lifting in 2003-2004 should be atleast equal to or more than actual quantity to be lifted in 2002-2003". Prima facie this does not use the words 'actual lifting' but instead used the words 'minimum commitment' for lifting in 2003-2004. This would have to be also considered on the basis of the evidence on record as well as correspondence exchanged between the parties to determine the understanding of the parties with respect to the above terms for availing Additional TOD.

11. In view thereof, a case has been made out for admission of the Commercial First Appeal and for the stay of the impugned Order and Judgment. However, given that it is a monetary decree and the settled law on deposit, the stay of the impugned Order and Judgment shall be subject to deposit of the decretal amount alongwith interest which we consider appropriate for the stay to be @ 9% per annum from 4th June, 2024 which has also been claimed by the Respondent / Original Plaintiff in the particulars of claim filed in the Commercial Summary Suit.

12. Hence, the following order is passed:

(i) The Commercial First Appeal is admitted.

(ii) The R&P shall be called for.

(iii) Hearing of the Commercial First Appeal is expedited.

(iv) The operation of the impugned Order and Judgment dated 27th March, 2025 is stayed, subject to Appellant depositing the decretal amount of Rs.3,12,81,409/-

which includes interest @ 9% per annum from 4th June, 2004 as claimed by the original Plaintiff in the Particulars of Claim filed in the Commercial Summary Suit i.e. an amount of Rs.2,07,19,622/-.

(v) The Appellant shall deposit the aforementioned amount, within a period of four weeks from today.

(vi) The Respondents / original Defendants are permitted to take out an appropriate application for withdrawal of the said amount deposited and which application shall be considered on its own merits.

(vii) The Interim Application No.695 of 2026 is disposed of in the above terms.

[ADVAIT M. SETHNA, J.] **[R.I. CHAGLA, J.]**