



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 4th February, 2026

Pronounced on: 29th May 2026

+ **RFA No.776/2023, CM APPL. 48929/2023 (stay), CM
APPL.48930/2023 (for additional documents)**

JOHNSON ENGINEERS

Through its Proprietor Mr. Christopher Pacheco

Having its office at:

At 206, Bhanot Corner, Pamposh Enclave, Greater Kailash-I,
New Delhi-110048

Through: Mr. Ankur Singhal, Advocate.

versus

INDIATECH

A Partnership Firm

Having its office at:

74-B, Sector 31, Faridabad-121003 (Haryana)

Through: Mr. Rajnish Gaiind, Mr.
Hemant Kaushik, Mr. Devansh
Bhargava and Mr. Himanshu
Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 read with Order XLI and Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellant/Defendant, against the Judgment and decree dated 18.05.2023, whereby the Suit of the



Plaintiff/Respondent, *has been decreed for a sum of Rs.10,89,733/- along with interest @10% p.a.*

2. The Plaintiff had filed CS DJ No. 7509/2016 for recovery of Rs.14,96,069/- including the interest @18% p.a.

3. The ***facts, in brief***, are that the Plaintiff was a partnership firm, duly registered with the Registrar of Firms. It was engaged in the business of manufacturing electrical control panels under the name and style of M/s Indiatech, having its registered Office at 74-B, HSIIDC, Sector-31, Faridabad, Haryana. The Defendant is the sole proprietorship firm of Mr. Christophar Pacheco, who is an Electrical Contractor.

4. During the period from May 2008 to December 2009, the Defendant had placed various Purchase Orders upon the Plaintiff firm, for the supply of electrical panels to various places. The goods were supplied to the Defendant *vide* various Invoices at different places, as per the Orders of the Defendant.

5. The Plaintiff claimed that electrical panels amounting to a total value of Rs.23,25,044/- had been supplied by the Plaintiff to the Defendant between May 2008 and December 2009, against which the Defendant had made payments aggregating to Rs.12,25,363/-, thereby leaving an outstanding balance of Rs.10,99,681/-.

6. The parties were *maintaining a mutual, open, running and current account*, in which entries were made of the Invoices raised by the Plaintiff upon the Defendant from time to time, as well as the various payments made by the Defendant to the Plaintiff. The Account had neither been closed nor settled till date. The last entry in the Account pertained to a payment of Rs.2,97,628/-, made on 09.03.2010 by the Defendant. However, an amount



of Rs.10,99,681/- still remained unpaid and outstanding against the Defendant.

7. The Plaintiff made repeated requests to the Defendant for clearance of the outstanding dues and eventually served a Legal Notice dated 03.09.2011, despite which the payment was not made.

8. Hence, the Plaintiff filed the Suit for recovery of Rs.14,96,069/-, (*compromising the principal amount of Rs.10,99,681/- with interest amounting to Rs.3,96,388/- calculated @18% p.a.)* along with the *pendente lite* and future interest.

9. The Defendant/Appellant, in his **Written Statement**, asserted that Plaintiff, against the *Purchase Order dated 08.11.2008*, had raised Invoice dated 09.12.2008 for a sum of Rs.2,79,537/-; Invoice dated 11.12.2008 for a sum of Rs.64,631/-; and Invoice dated 15.12.2008 for a sum of Rs.5,65,724/-, *aggregating to a total amount of Rs.9,09,622/-*. The goods were supplied by the Plaintiff to the Defendant at one of its sites, i.e., Rockmans Beer Garden, 4th Floor, Ambiance Mall, Gurgaon.

10. The Defendant claimed that the goods were supplied after considerable delay, against the stipulated delivery period of 10 days from the date of Purchase Order, as mentioned therein, and, therefore, were not accepted. This led to delay in completion of certain works entrusted to the Defendant by M/s Rockman Breweries Ltd. for its site at Ambiance Mall, Gurgaon, Haryana.

11. Consequently, M/s Rockman Breweries Ltd. refused to release certain payments to the Defendant, on account of which the Defendant claimed to have suffered substantial losses and damages, attributable to the delayed supply of goods by the Plaintiff. Subsequently, the Defendant was left with



no option, but to file a *Suit for Recovery against M/s Rockman Breweries Ltd.*, in this Court and had claimed certain amount, which were due to the Defendant from them.

12. The Defendant further asserted that the claim in respect of the aforesaid three Invoices, raised against the Purchase Order dated 08.11.2008, *was barred by limitation*, having been filed beyond the prescribed period of three years. It was further claimed that the Defendant had already paid the Plaintiff the entire amount against the other Purchase Orders, even though the deliveries thereunder, were also delayed.

13. The *Ledger Account* of the Plaintiff, as maintained by the Defendant, reflected a debit balance of Rs.19,888/-, which according to the Defendant, had been paid in excess, to the Plaintiff. The Defendant further claimed that the amounts against the Purchase Orders dated 26.10.2009, 16.10.2009 and 22.12.2009, already stood paid and that no amount remained due thereunder. The other Purchase Orders pertained to the other sites of the Defendant, and not to the site of Rockman Breweries Ltd.

14. The Defendant further asserted that all the dealings between the Plaintiff and the Defendant, were on the basis of separate Purchase Orders, for which separate invoices were raised, and separate deliveries were effected. It was thus, claimed that there existed no mutual, open or running account between the parties, as alleged by the Plaintiff. According to the Defendant, payments were made against respective Purchase Orders and not on a running account basis.

15. The Defendant thus, asserted that no amount was recoverable from him.



16. **On merits**, all averments made in the Plaint were denied, except the fact that the Plaintiff and the Defendant had certain dealings with each other during the period 2007-2009.

17. On the basis of the pleadings of the parties, the following **Issues** were framed on 08.04.2013:-

1. *Whether the plaintiff is entitled for a decree of recovery of Rs.14,96,069/- along with pendente lite and future interest @18% per annum as claimed in the plaint? OPP*
2. *Whether the plaintiff has no cause of action to file the present suit, if so, to what effect? OPD*
3. *Whether the suit is barred by limitation? OPD*
4. *Whether the plaint has not been signed, verified or filed by a properly authorized person as claimed in the written statement? OPD*
5. *Whether the plaintiff has not approached this Court with clean hands and has concealed the material facts, if so, to what effect? OPD*
6. *Relief.*

18. The Plaintiff examined **PW-1**, Mr. Rajeev Kakkar, who tendered his evidence as Ex-PW-1/A and proved the online Purchase Orders, Invoices and Statement of Account as Ex.PW-1/1 to Ex.PW-1/6, respectively.

19. **PW-2, Mr. Umesh Dhiman**, the Accountant of the Plaintiff firm, deposed about the account maintained with the Plaintiff firm.

20. The **Defendant, namely, Mr. Christopher Pacheco** examined **himself** as **DW-1** and deposed in support of his case.

21. The **Ld. Trial Court**, while deciding the issue pertaining to maintainability of the Suit and the authority of Mr. Rajiv Kakkar to institute the proceedings on behalf of the Plaintiff firm, relied upon the registration documents of the Plaintiff firm i.e. Form A and Form C Ex.PW1/1 (colly),



which reflected that the Plaintiff was a duly registered partnership firm and that Mr. Rajiv Kakkar was one of its partners. Reliance was further placed upon Sections 18 and 19 of the Indian Partnership Act, 1932, Order III Rule 1 and Order XXX Rule 1 CPC, as well as the judgment of the Hon'ble Supreme Court in Purushottam Umedbhai & Co. v. Manilal & Sons AIR 1961 SC 325 to hold that a partner, being an agent of the firm, is competent to institute proceedings on behalf of the partnership firm.

22. While **deciding limitation**, the Ld. Trial Court examined whether the accounts between the parties constituted a "**mutual, open and current account**" within the meaning of Article 1 of the Limitation Act, 1963. Reliance was placed upon the judgments in Era Constructions (India) Ltd. v. D.K. Sharma 2008 (100) DRJ 712, Bharat Skins Corporation v. Taneja Skins Company Pvt. Ltd. 2011 SCC OnLine Del 5517, Kesharichand Jaisukhlal v. The Shillong Banking Corporation Ltd. AIR 1965 SC 1711 and Manish Garg v. East India Udyog Ltd. 2001 III AD DELHI 493 to hold that although there were no reciprocal demands so as to constitute a "mutual account", the dealings between the parties reflected a *running and current non-mutual account between buyer and seller*. The statements of account Ex.PW1/4 and Ex.DW1/1 (colly) reflected that the payments had been made on different dates and not as per Invoice.

23. The Ld. Trial Court also relied upon the Defendant's own ledger account Ex.DW1/1 (colly), wherein entries dated 12.05.2011 were made debiting an amount of Rs.9,09,622/- on account of alleged rejection of goods supplied under Invoice nos.113, 114 and 116 dated 09.12.2008, 11.12.2008 and 15.12.2008 respectively. According to the Ld. Trial Court, had the goods actually been rejected in December 2008 itself, corresponding entries



would have been contemporaneously reflected in the accounts for the financial year 2008-09.

24. On the aforesaid basis, relying upon Bharat Skins Corporation (supra), the Ld. Trial Court held that the claim was governed by Article 113 of the Limitation Act and that limitation would commence from the legal notice dated 03.09.2011. **Accordingly, the Suit filed on 20.12.2011 was held to be within limitation.**

25. Regarding entitlement of recovery, the Ld. Trial Court rejected the defence of the Defendant that the goods covered under Invoice nos.113, 114 and 116 corresponding to Purchase Order dated 08.11.2008, had been rejected on account of delayed supply. The Ld. Trial Court relied upon the admissions made by DW1 during cross-examination that the Defendant had placed the Orders, the goods had been supplied by the Plaintiff, the original Invoices and road permits/challans were in possession of the Defendant and that the goods had been accepted at site. He further stated that no written communication regarding rejection of goods, had ever been issued by the Defendant to the Plaintiff. Relying upon Sections 41 and 42 of the Sale of Goods Act, 1930 and the judgment in Lohmann Rauscher GmbH v. Medisphere Marketing Pvt. Ltd., **the Ld. Trial Court held that the goods stood deemed to have been accepted by the Defendant.**

26. The Ld. Trial Court further relied upon the plaint filed by the Defendant in the Suit against M/s Rockman Breweries Ltd., wherein the Defendant had pleaded that the contracted work had been duly executed and commissioned, and held that the Defendant was estopped from contending that the work had been delayed on account of delayed supply by the Plaintiff.



27. The Ld. Trial Court further rejected the Defendant's plea regarding alleged cash payment of Rs.2,00,000/- by observing that no receipt or documentary proof had been produced in support thereof except for a self-serving ledger entry. However, the Ld. Trial Court accepted the Defendant's objection *qua* Invoice no.144 to the limited extent of Rs.9,948/- in view of the admission made by **PW1**, during cross-examination regarding calculation error in the said Invoice.

28. Consequently, after deducting the said amount from the principal claim of Rs.10,99,681/-, the Ld. Trial Court *vide* Judgment and Decree dated 18.05.2023, decreed the Suit of the Plaintiff, ***for a sum of Rs.10,89,733/- along with the interest @10% p.a. from the date of legal Notice dated 03.09.2011 till the date of realisation of the amount.***

29. **Aggrieved** by the said Judgment and decree, the Defendant/Appellant filed the present Appeal.

30. The ***grounds of challenge*** are that it has not been appreciated that though the Plaint was signed by Mr. Rajiv Kakkar, but he admittedly possessed no authority letter or Power of Attorney from the other partner(s) of the Respondent firm, authorizing institution of the Suit. Though Mr. Rajiv Kakkar alleged in his examination-in-chief that he was conversant with the facts and circumstances of the case, he admitted during cross-examination that he was not aware of the Accounts, Consent Letter and Certificate of Registration.

31. It has not been appreciated that the Appellant used to issue separate Purchase Orders depending upon the requirements of its clients. Each Purchase Order contained independent terms and conditions, thereby constituting separate and independent contracts between the parties.



Pursuant thereto, the Respondent used to manufacture the electrical control panels and supply the same, in accordance with the terms and conditions contained in the respective Purchase Orders.

32. Out of the five Purchase Orders relied upon by the Respondent, one Purchase Order dated 08.11.2008 for a value of Rs.9,09,622/- pertained to Rockman Beer Garden, Gurgaon. However, as per the terms and conditions of the said Purchase Order, neither was any advance payment made by the Appellant, nor were the deliveries effected immediately, in terms thereof.

33. It has not been appreciated that the Respondent had failed to supply the panels within the stipulated delivery schedule. FORM VAT D3 was merely a dispatch form and did not constitute any acknowledgment of delivery or acceptance by the Appellant.

34. It is further claimed that the Respondent also failed to submit the requisite forms/intimate the tax authorities regarding the concerned Tax Invoices.

35. Moreover, it was the specific case of the Appellant that FORM VAT D3 was a false and manipulated document, inasmuch as the date therein had been repeatedly mentioned as 09.11.2008, whereas the corresponding Tax Invoices bear the date 09.12.2008. The tax Invoices of the declined Transaction contained the Value Added Tax “VAT in Short” component and as per the VAT law, the supplier ought to furnish the details specifying the said Tax Invoices, having been reported before the tax authorities.

36. It has further been contended that due to non-delivery/delayed delivery of the panels within the stipulated time, the work assigned to the Appellant by M/s Rockman Breweries Ltd. for its Rockman Beer Garden



site got delayed, on account of which M/s Rockman Breweries Ltd. refused to accept the panels.

37. It has also been claimed that because of non-payment of the dues by M/s Rockman Breweries Limited, the Appellant was compelled to file CS(OS) 1577/2010 against M/s Rockman Breweries Limited, for Recovery of money.

38. *The Winding up Petition No. CO. PET. No.159/2010 was filed under Section 433 (e) read with Section 434 of the Companies Act, 1956, against M/s Rockman Breweries Ltd. and this Court vide Order dated 02.05.2013 appointed the Provisional Liquidator.*

39. The Appellant further claimed that there were wrong calculations in the Tax Invoice No. 144 dated 27.11.2019. At Serial No. 2, the Respondent had mentioned the rate as Rs.4,974/- and the quantity is 2, but the amount is shown as Rs.19,986/- when it should have been Rs.9,948/-. The calculation of amount has thus, been wrongly made in Tax Invoice No. 144.

40. It has further been contended that the learned Trial Court erred in treating the Account between the parties as a “*mutual, open and current account*” within the meaning of Article 1 of the Limitation Act, 1963. It is submitted that for applicability of Article 1, two essential conditions were required to be satisfied, namely: (i) *existence of a mutual, open and current account*; and (ii) *reciprocity of demands between the parties*. According to the Appellant, neither of the said conditions stood satisfied, in the facts of the present case. Reliance in this regard, has been placed upon the judgment of the Hon’ble Supreme Court in *Kesharichand Jaisukhlal v. Shillong Banking Corporation Ltd.*



41. Furthermore, the Suit of the Respondent could not have been brought within the ambit of *Article 1 of the Limitation Act, 1963* on the basis of an alleged mutual, open and current account, inasmuch as the alleged claim was founded primarily upon Invoices pertaining to the Rockman Beer Garden, Gurgaon.

42. It is submitted that the Tax Invoices in respect of Rockman Beer Garden was prepared on 09.12.2008, 11.12.2008 and 15.12.2008 respectively, whereas respondent filed/instituted the suit on 20 .12.2011. Hence, claim of the respondent *is barred by limitation as it is beyond years even from the date of last Tax Invoice i.e., 15.12.2008.*

43. Moreover, this Court *had no territorial jurisdiction as admittedly, the goods were manufactured at the factory of the Respondent at Faridabad and the goods were delivered at Gurgaon.*

44. It is claimed that the evidence of the witnesses, has not been rightly appreciated and the Suit and decree of the Plaintiff, is liable to be set-aside.

45. ***Written Synopsis have been filed on behalf of the Respondent*** wherein they have reiterated their assertions as made in the Plaint and has stated that the learned District Judge has rightly appreciated the evidence and there is no merit in the Appeal.

Submissions heard and the record perused.

46. Essentially, the controversy in the present Appeal pertains to the following aspects:

I. *Whether the Suit had been validly instituted on behalf of the Respondent firm by a competent and authorized person;*



II. Whether the claim of the Respondent/Plaintiff was within limitation and whether the dealings between the parties constituted a running and current account;

III. Whether the Appellant had established delayed supply and rejection of goods supplied under invoice nos.113, 114 and 116 pertaining to the Rockman Beer Garden transaction;

IV. Whether the oral and documentary evidence had been correctly appreciated by the Ld. Trial Court; and lastly

V. Whether the Ld. Trial Court lacked territorial jurisdiction to entertain the Suit.

I. Whether the Suit had been validly instituted by a competent and authorized person on behalf of the Respondent Firm:

47. The **first** ground of challenge raised on behalf of the Appellant is that the Suit had not been validly instituted on behalf of the Respondent Firm inasmuch as no *Authority Letter or Power of Attorney* had been executed by the other partner(s) in favour of Mr. Rajiv Kakkar, authorizing him for institution of the Suit.

48. Order XXX Rule 1 CPC provides who can file a Suit on behalf of Partnership Firm. Its relevant part reads as under:

***“1. Suing of partners in name of firm.—(1) Any two or more persons claiming or being liable as partners and carrying on business in, [India] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.*”**



(2) Where persons sue or are sued partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff of the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.”

49. A plain reading of the aforesaid provision shows that where a Suit is instituted in the name of a Partnership Firm, it is sufficient if the pleadings or documents are signed, verified or certified by any one of the partners. Thus, the institution of a Suit by a partner on behalf of the Firm does not require a separate Authority Letter or Power of Attorney from the remaining partners.

50. In the present case, the Plaintiff/Respondent had placed on record Form A and Form C issued by the Registrar of Firms, Ex.PW1/1 (colly). The said documents reflected that the Respondent was a duly *registered partnership firm* and that Mr. Rajiv Kakkar was one of its partners. The Suit has been duly instituted by one of the partners of a registered partnership firm, acting on behalf of the firm.

51. Merely because PW1, during cross-examination, expressed lack of knowledge regarding certain accounting or registration details, is not material, in the light of the Certificate of Registration of the Partnership Firm.

52. Therefore, the institution of the Suit by Mr. Rajiv Kakkar on behalf of the Respondent Firm is in conformity with Order XXX Rule 1 CPC. The challenge laid by the Appellant to the maintainability of the Suit on the ground of lack of authorization is therefore, devoid of merit.



II. Whether the claim of the Respondent/Plaintiff was within limitation:

53. The principal controversy in the present case pertains to limitation. The determination of the said issue would essentially depend upon three things, **firstly**, the nature of the account maintained between the parties; **secondly**, whether Article 1, Article 14, or Article 113 of the Limitation Act, 1963 would apply; and **thirdly**, the actual computation of limitation, in the facts and circumstances of the present case.

54. The Appellant has contended that each Purchase Order constituted an independent contract and limitation was therefore, required to be computed Invoice-wise, from the respective dates of supply. According to the Appellant, the Invoices dated 09.12.2008, 11.12.2008 and 15.12.2008 having formed the basis of the present claim, was barred by limitation, as the Suit instituted on 20.12.2011.

55. *Per contra*, the Respondent has contended that the parties were maintaining a *running and current account* in the ordinary course of business, in which supplies made and payments released from time to time, as were regularly reflected and the Account had never been settled or closed; thus Article 1 of Schedule to the Limitation Act would be attracted.

56. Article 1 of the Schedule to the Limitation Act applies to suits relating to “**mutual, open and current accounts**” where there are **reciprocal demands** between the parties. The same is reproduced as under:

1.	<i>For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.</i>	<i>Three years.</i>	<i>The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.</i>
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57. The law relating to “*mutual, open and current account*” is well settled. In Kesharichand Jaisukhlal v. Shillong Banking Corporation Ltd., AIR 1965 SC 1711 the Supreme Court explained that for an account to qualify as a “***mutual account***”, there must be reciprocal demands between the parties, meaning thereby that both parties must independently stand in the position of debtor and creditor against each other, at different points of time. Mere supply of goods by one party and payments made by the other, would not by itself constitute a *mutual account*.

58. Similar principles were reiterated in Hindustan Forest Company v. Lal Chand AIR 1959 SC 1349 and followed in Era Constructions (India) Ltd. v. D.K. Sharma 2008 (100) DRJ 712 and Bharat Skins Corporation v. Taneja Skins Company Pvt. Ltd. 2011 SCC OnLine Del 5527.

59. In the present case, it is undisputed that the Plaintiff/ Respondent used to supply goods/ *Electrical Control Panels*, as per Invoices and payments were made from time to time, towards the outstanding dues by the Defendant/ Appellant. There was no mutuality as there existed no reciprocal cross-demands between the parties, as explained in the case of Kesharichand Jaisukhlal (supra).

60. The perusal of Ledger Account Ex.PW1/4 and ex. DW1/1, further reflects that the payments were not being made against each Invoice, but was made on account, towards the running outstanding balance, to be adjusted and accounted subsequently, making it an “***Open, Current and Running Account***”.

61. ***The account between the parties, therefore, though running and current in nature, but cannot be construed as a “mutual account”, within the meaning of Article 1 of the Schedule to the Limitation Act.***



62. The question then is whether such running and current, but non-mutual, account would be governed by Article 14 or by the residuary Article 113 of the Limitation Act.

63. Article 14 and Article 113 of the Schedule to the Limitation Act read as under:

14.	<i>For the price of goods sold and delivered where no fixed period of credit is agreed upon.</i>	<i>Three years.</i>	<i>The date of the delivery of the goods.</i>
113.	<i>Any suit for which no period of limitation is provided elsewhere in this Schedule.</i>	<i>Three years.</i>	<i>When the right to sue accrues.</i>

64. In Bharath Skins Corporation v. Taneja Skins Company Pvt. Ltd., 2011 SCC OnLine Del 5523, the Division Bench of this Court, after considering the law laid down in Kesharichand Jaisukhlal (supra) and Hindustan Forest Company (supra), held that in cases of *running and current but non-mutual accounts* between buyer and seller, Article 1 of the Limitation Act would not apply, *for want of mutuality*. It was further held that such claims are not governed by Article 14 relating to price of goods sold and delivered, since the claim is essentially for recovery of the balance due at the foot of a running Account. *Consequently, such claims would fall within the ambit of the residuary Article 113 of the Limitation Act.*

65. The question of how limitation may be computed in the present case, also stands answered in Bharath Skins (supra), wherein, it was observed that there being no Article in the Schedule to the Limitation Act, dealing with *suits for recovery of money due on running and current but non-mutual*



accounts, the residual Article 113, would be attracted. Paragraphs 24 and 25 of the decision stand reproduced, thus:

“24. There being no Article in the Schedule to the Limitation Act, 1963 dealing with suits for recovery of money due on running and current but non-mutual accounts, in such circumstances, the residual article viz. Article 113 applies to such suits.

25. Under Article 113, the period for limitation for filing a suit is three years and the same begins to run when the right to sue would accrue when claim was denied in response to the legal notice dated 26.06.1985 on 13.07.1985 but since Rs. 7,000/- was paid on 13.07.1985 and 24.07.1985 (Rs. 2,000/- on the former date and Rs. 5,000/- on the latter date), limitation would commence from 24.07.1985. The suit being filed on 02.09.1985, governed for purposes of limitation by Article 113 the suit would be within limitation.”

66. Coming to the invoices principally disputed by the Appellant are Invoice No.113 dated 09.12.2008 for Rs.2,79,537/-; Invoice No.114 dated 11.12.2008 for Rs.64,631/- and Invoice No.116 dated 15.12.2008 for Rs.5,65,724/-, aggregating to Rs.9,09,622. However, the Defendant’s own Ledger Account Ex.DW1/1 (colly) reflects entry dated 12.05.2011, whereby the amount of Rs.9,09,622/- corresponding to Invoice nos.113, 114 and 116 was debited, on account of alleged rejection of goods.

67. The record further reflects that payments continued to be made by the Appellant even subsequent thereto, and the last payment of Rs.2,97,628/- was admittedly made on 08.03.2010, towards the running account maintained between the parties. The aforesaid entries clearly demonstrate that the Account between the parties continued to remain subsisting and under reconciliation, even subsequent to December 2008, and had not attained final settlement.



68. The subsequent Legal Notice dated 03.09.2011 issued by the Respondent demanding clearance of outstanding dues, further demonstrates that the account had not attained final settlement.

69. In view of the continuous running transactions, subsequent payments, subsisting ledger entries and unsettled state of accounts between the parties, the cause of action ***cannot be artificially truncated to December, 2008 alone***, as sought to be contended by the Appellant. It has to be calculated from the date when last payment was made on 08.03.2010 and when Legal Notice dated 03.09.2011 was issued, as held in the case of Bharath Skins (supra).

70. The learned District judge, therefore, rightly held that the Suit instituted on 20.12.2011, was within limitation.

III. Whether the Appellant had established delayed supply and rejection of goods supplied under Invoice nos.113, 114 and 116 pertaining to the Rockman Beer Garden transaction:

71. The Appellant has contended that the goods supplied under Invoices **No.113** dated 09.12.2008, **114** dated 11.12.2008, and **116** dated 15.12.2008, pertaining to the Rockman Beer Garden site, were not supplied within the stipulated period and consequently stood rejected.

72. It is contended that as per the terms of the Purchase Order dated 08.11.2008, the supplies were required to be effected within 10 days. However, the Respondent allegedly failed to adhere to the delivery schedule, on account of which the work entrusted to the Appellant by M/s Rockman Breweries Ltd. got delayed and the *Panels/Goods* were ultimately not accepted.



73. The Appellant, **DW1**, during cross-examination, admitted that the Purchase Orders had been placed upon the Respondent and that the goods covered under the disputed invoices, had been supplied. It was further admitted that the original Invoices and road permits/challans, were in possession of the Appellant and that no written communication rejecting the goods, had ever been issued to the Respondent. The relevant portion is reproduced as under:

“Q. Whether the goods were left by the plaintiff at the site even though the defendant did not accept the same?

*Ans. Yes. **The goods are still lying there since the plaintiff did not take them back.** Again said I am not sure whether the goods are still lying there since the place is locked.*

....

Q. Since you are in possession of the original challans/road permit, is it correct to say that you accepted the goods at the site alongwith the road permit since the goods could not have been delivered without the road permit/challan being handed over to you (defendant)?

*Ans. Yes. **The goods were accepted at the site along with the road permit.** It is wrong to suggest that the goods delivered by the plaintiff were not only delivered at the site but also installed on the 4th floor of Ambience MaII (site).**No written notice was sent to the plaintiff informing that their goods have been rejected.** However, they were verbally informed, It is wrong to suggest that the plaintiff was never informed verbally about the rejection of the goods”*

74. Sections 41 and 42 of the Sale of Goods Act, 1930, being relevant, are reproduced as under:



“41. Buyer’s right of examining the goods.—(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

42. Acceptance.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.”

75. A conjoint reading of the aforesaid Sections makes it evident that a buyer is not deemed to have accepted the goods merely upon their delivery, but must be afforded a reasonable opportunity to examine them for ascertaining whether they are in conformity with the contract. However, the goods are deemed to have been accepted ,when the buyer either intimates the seller that he has accepted them or does any act in relation to the goods which is inconsistent with the ownership of the seller, or retains the goods for a reasonable period without intimating to the seller that he has rejected them.

76. Applying the aforesaid principles to the facts of the present case, it is established from the evidence on record, that the goods covered under the Invoices, were duly delivered to and received by the Appellant. Despite having sufficient opportunity to inspect the goods, the Appellant (buyer)



neither rejected the goods nor gave any Notice or intimation of rejection to the Respondent.

77. It is an admitted fact that the goods were received at site; the original challans and road permits remained in the possession of the Appellant; no written communication rejecting the goods was ever issued and the goods were never returned to the Respondent. The conduct of the Appellant in retaining the goods and the accompanying documents, is wholly inconsistent with that of a person who has rejected the goods, on account of delayed supply.

78. Moreover, the alleged debit entries regarding rejection of goods, were made only on 12.05.2011 and not contemporaneously in December, 2008. Had the goods actually been rejected in December 2008, the corresponding entries would have found reflection in the Accounts maintained during the financial year 2008-09 and not for the first time in May, 2011.

79. Significantly, *no documentary evidence* has been placed on record, to establish that *the goods were either rejected at site or returned to the Respondent*. In the absence of any contemporaneous act evidencing rejection and the continued retention of the goods, *the conduct of the Appellant clearly constitutes acceptance of the goods within the meaning of Section 42 of the Sale of Goods Act, 1930.*

80. Furthermore, in the proceedings instituted by the Appellant against M/s Rockman Breweries Ltd., the Appellant had itself pleaded that the contracted work, had been executed and commissioned. These admissions clearly defy the assertions of goods being defective or their rejection by the Appellant. It also weakens the defence that the Project suffered, on account of delayed supply by the Respondent.



81. The plea regarding FORM VAT D3 being manipulated or not constituting acknowledgment of delivery, also does not materially advance the case of the Appellant, once supply and receipt of goods stood substantially admitted, during evidence.

82. There is thus, no infirmity in the finding of the Ld. Trial Court that the Appellant had failed to establish either valid rejection of goods or such delayed supply, as would disentitle the Respondent from recovery of the Suit amount.

IV. Whether the oral and documentary evidence had been correctly appreciated by the Ld. Trial Court:

83. The Appellant has further contended that the oral and documentary evidence led by the parties had not been correctly appreciated by the Ld. Trial Court.

84. However, the record reflects that the findings returned by the Ld. Trial Court are based upon a proper appreciation of the evidence led by both parties. The admissions made by DW1 during cross-examination, the invoices, statements of account and ledger entries collectively established the continuous commercial dealings between the parties and the outstanding liability of the Appellant.

85. Insofar as the alleged cash payment of Rs.2,00,000/- is concerned, no receipt, acknowledgment or independent documentary material was produced by the Appellant in support thereof, except for self-serving ledger entries. The Ld. Trial Court therefore, rightly declined to accept the said plea.



86. At the same time, the Ld. Trial Court also correctly noticed the calculation error in Invoice no.144 dated 27.11.2009, ***which stood admitted by PW1 during cross-examination***, and accordingly granted deduction of Rs.9,948/- from the principal claim amount.

87. The appreciation of evidence by the Ld. Trial Court thus, cannot be said to suffer from perversity, illegality or misreading of record, warranting interference in the present Appeal.

V. Whether the Ld. Trial Court lacked territorial jurisdiction to entertain the Suit.

88. The Appellant has ***lastly contended*** that the learned Trial Court lacked territorial jurisdiction to entertain the present Suit inasmuch as the goods were manufactured at Faridabad and were supplied at Gurgaon and, therefore, no part of the cause of action arose within Delhi.

89. This objection of territorial jurisdiction was not taken in the pleadings and there was no specific issue framed in this regard, but this contention was raised for the first time, during the course of final arguments.

90. The territorial jurisdiction in a Suit for Recovery is governed by Section 20 CPC, which provides that a Suit may be instituted within the local limits of whose jurisdiction the Defendant resides, carries on business or personally works for gain.

91. In the present case, the documents placed on record clearly reflect that the Appellant/Defendant was operating from its Office in GK-1, Pamposh Enclave, New Delhi. The Legal Notice dated 03.09.2011 had been sent by the Plaintiff/Respondent from its Faridabad Office, to the Defendant at GK-1, Pamposh Enclave, New Delhi. The Appellant/defendant is admittedly



carrying on business and working for gain, within the territorial jurisdiction of Delhi Courts.

92. The documents relied upon by the parties clearly establish that the Defendant/Appellant was residing within the territorial jurisdiction of Delhi. Although the Plaintiff may have been operating from Faridabad and the Invoices may have been generated from its Faridabad office for supply of goods to various locations, but the Purchase Orders reflect that they had been issued by the Appellant, from its Office situated in G.K., Delhi.

93. The suit for recovery of money, in terms of S. 20 CPC, is maintainable in Delhi as the Defendant carries on business, in Delhi.

94. Therefore, there is no merit in the contention of the Appellant that the Delhi Courts had no territorial jurisdiction, as has been rightly held by the learned District Judge.

Conclusion:

95. In view of the foregoing discussion, there is no merit in the Appeal, which is hereby dismissed.

96. Pending Applications, if any, also stand disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 29, 2026/RS