

OCD-19

ORDER SHEET

IA No.GA 2 of 2023

In

CS 68 of 2023

IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE  
(COMMERCIAL DIVISION)

SATBIR SINGH

VS.

SIMPLEX INFRASTRUCTURE LIMITED

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 19<sup>th</sup> February, 2024

Mr. Jayanta Sengupta, Mr. Ayan Dutta, Mr. Arnab Dutt, Ms. Labani Dey,  
Advocates for plaintiff/petitioner.  
Mr. Sanjoy Bose, Mr. P. B. Mullick, Advocates for defendant.

The Court : Affidavit-in-reply filed by the plaintiff in Court today is taken on record.

This is an application for judgment on admission. The admission which the plaintiff relies upon is a settlement agreement made on 11<sup>th</sup> January, 2020 which appears at page 98 of the petition. By the said agreement the defendant, namely, Simplex Infrastructure Limited admitted a sum of Rs.25,60,000/- to be due and payable by the defendant to the plaintiff. The agreement also reflects a promise to pay the said sum of Rs.25,60,000/- as full and final settlement of various work orders issued by the defendant for all sites under Eastern Zone and Delhi Zone as on 11<sup>th</sup> January, 2020. The plaintiff says that despite such settlement agreement

neither Rs.25,60,000/- nor any part thereof had been paid by the defendant to the plaintiff. The plaintiff, therefore, seeks a judgment on admission and a decree for the said sum of Rs.25,60,000/- along with interest at the rate of 18% per annum on and from 1<sup>st</sup> May, 2020 to 20<sup>th</sup> March, 2023.

On behalf of the defendant another agreement called 'Settlement Agreement' also dated 11<sup>th</sup> January, 2020 has been relied upon at page 36 of the affidavit-in-opposition filed by the defendant. In the said agreement after referring to the proceedings initiated by the plaintiff against the defendant before the National Company Law Tribunal ( in short 'NCLT') being case no. CP(IB) No.141/KB/2019 under the provisions of the Insolvency & Bankruptcy Code, 2016 (in short 'IBC') the defendant has agreed to pay a sum of Rs.1,01,01,189/- to the plaintiff by four instalments, the first of which is to start on 13<sup>th</sup> January, 2020 for a sum of Rs.25,25,000/- and the last one on 16<sup>th</sup> March, 2020 for a sum of Rs.25,26,189/-. The defendant says that this was the entire amount due and had been paid as recorded in the order of the NCLT dated 28<sup>th</sup> February, 2022. The plaintiff, therefore, is not entitled to any amount as claimed under the other agreement dated 11<sup>th</sup> January, 2020 as the entire amounts payable by the defendant to the plaintiff has been taken care of in the second agreement.

There appears to be an apparent falacy in the argument of the defendant. As appears from the agreement relied upon by the defendant as on 11<sup>th</sup> January, 2020 against the claim of the plaintiff before the NCLT, a sum of Rs.1,01,01,189/- was agreed to be liquidated in four instalments. On that date it could not have been contemplated by the parties that there

would be a default in making the agreed amount, the last of which was to be made on 16<sup>th</sup> March, 2020 for Rs.25,26,189/- for which a payment of Rs.25,60,000/- would be made on 6<sup>th</sup> April, 2020 as per the other agreement which is also dated 11<sup>th</sup> January, 2020. The figures in the two agreements also do not match. In the agreement relied upon by the plaintiff there is no reference to any proceedings before the NCLT though on that date an insolvency proceedings was pending against the defendant initiated by the plaintiff as will appear from the agreement relied upon by the defendant. Moreover, the notice on the basis whereof the insolvency proceedings was initiated by the plaintiff against the defendant which is also relied upon by the defendant in the affidavit-in-opposition clearly shows that the claim in terms of the said notice is of Rs.1,01,01,189/-. The said notice also states that the total claim as against the defendant was Rs.1,27,07,230/- which accrued between 16<sup>th</sup> January, 2016 and 12<sup>th</sup> June, 2017. Out of the said sum of Rs.1,27,07,230/-, a sum of Rs.26,06,041/- was paid from time to time which on being adjusted brought the balance outstanding sum of Rs. 1,01,01,189/-. It is, therefore, crystal clear that the plaintiff had two separate claims against the defendant. In respect of one claim the plaintiff has received the money as recorded in the order dated 28<sup>th</sup> February, 2022. So far as the other amount is concerned, nothing has been shown by the defendant to even prima facie suggest that the said amount may have been paid.

In the aforesaid facts and circumstances, the admission made by the defendant in the agreement dated 11<sup>th</sup> January, 2020 for a sum of Rs.25,60,000/- holds good. The admission is clear, unequivocal and in no

ambiguous terms. The admission also qualifies the tests laid down in 2011 (15) SCC 273 (Himani Alloys Ltd. vs. Tata Steel Ltd.). There is also no explanation to the admission made in the agreement dated 11<sup>th</sup> January, 2020 relied upon by the plaintiff from the side of the defendant.

In the aforesaid facts and circumstances, there shall be a judgment in favour of the plaintiff as against the defendant on admission for a sum of Rs.25,60,000/-. A decree for the said sum of Rs.25,60,000/-, therefore, follows and is passed in favour of the plaintiff against the defendant. So far as the interest claim of the plaintiff, there is no agreement for payment of interest in case of default as in the settlement agreement relied upon by the plaintiff. The interest quantum, therefore, shall stand to trial and the suit is kept pending only for that purpose.

The application being GA 2 of 2023 is accordingly disposed of.

(ARINDAM MUKHERJEE, J.)