Form J(2)
Sl.No. 01

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present: The Hon'ble Justice Aniruddha Roy

C.S. (COM) 13 of 2024

PRIVI EXPORTS PVT. LTD.
-VERSUS-
RATAN LADHA

For the plaintiff:	**Mr. K. C. Garg, Adv.** **Ms. Sunita Agarwal, Adv.**
Reserved on :	**22.07.2026**
Judgment on :	**15.09.2026**

ANIRUDDHA ROY, J.:

Facts:

1. This is an **Undefended Commercial Suit** where the defendant has not filed its written statement and has forfeited its right to file written statement under the amended provision of Order VIII of CPC, as amended after promulgation of The Commercial Courts Act, 2015.

Plaint Case:

2. The defendant agreed to purchase and the plaintiff agreed to sell LLDPE Reprocessed Granules, Plastic Granules, Mixed Plastic Floor Sweepings, PP

Floor Sweeps, LLDPE Floor Sweeps, PP Regrind etc., on high-sea sales as well as from go-down of the Plaintiff at Park Street.

3. The terms and conditions agreed by and between the parties were:-

> "a. *Defendant would place orders with plaintiff NO. 91A/1, Park Street, Ground Floor, Office No. 2, Kolkata – 700 016 and plaintiff would deliver the goods to the defendant on high-sea sales as well as from go-down at No. 1/4C, Khagendra Chatterjee Road, Cossipore, Kolkata- 700 002 and at Polypark, Plot NO. PPF-12, Dhulagarh, Howrah-711 302 outside the jurisdiction aforesaid.*
>
> *b. Plaintiff would raise its bills to the defendant and defendant would pay price of goods within 30 days; in default defendant would pay interest @ 12% per annum.*
>
> *c. An open, running and continuous account would be maintained by and between the parties and if any amount remains due and payable by the defendant to the plaintiff as on 31st March of English Calendar year, the same would be brought forward on the 1st day of April of each succeeding English Calendar year."*

4. Pursuant to the aforesaid terms and conditions, the defendant placed diverse orders with plaintiff and in compliance of the said orders, the plaintiff during the period between April 1, 2016 and March 31, 2017 sold and delivered the goods on high-sea sales for a total sum of Rs.41,43,688.00/-. The particulars of the relevant bills are stated and tabulated in paragraph 4 of the plaint.

5. The defendant failed and neglected to pay said sum of Rs.41,43,688.00/- and the amount became due and payable by the defendant to the plaintiff. The said four numbers of bills have been marked as **PD- 2 at pages 7-10** of the Judges-brief.

6. Between April 1, 2016 till March 31, 2017 defendant did not pay the plaintiff and the said total sum of Rs. 41,43,688.00/- became due and payable to the plaintiff, which was brought forward by the plaintiff in its balance-sheet on April 1, 2017.

7. Between April 1, 2017 to March 31, 2018 defendant placed diverse orders on the plaintiff and in compliance of the said orders, plaintiff sold and delivered goods to the defendant for a total sum of Rs. 2,70,19,328.00/-. The particulars of the bills are mentioned in **paragraph 6** of the plaint and disclosed as **PD -3 at pages 11-27** of the Judges-brief.

8. Between April 1, 2017 to March 31, 2018 defendant paid a sum of Rs.1,89,11,768.00/- towards the part-payment of the price of goods sold and delivered by the plaintiff leaving a balance a sum of Rs. 1,22,51,248.00/- as on March 31, 2018. The said outstanding was brought forward in the balance-sheet of the plaintiff on April 1, 2018. Particulars of the part-payments are stated in paragraph 7 of the plaint.

9. Between April 1, 2018 to March 31, 2019, the defendant placed diverse orders upon the plaintiff and in terms of such orders placed by the defendant, plaintiff sold and delivered goods for a total sum of Rs. 6,75,47,119.00/-. The particulars of the bills are mentioned in paragraph 8 of the plaint and disclosed as **PD - 4 at pages 28-60** of the Judges-brief.

10. The defendant accepted the goods and consumed the same without any objection. Plaintiff generated e-way bills for the purpose of payment of GST.

11. Between April 1, 2018 till March 31, 2019 the defendant made further part-payment for a sum of Rs. 4,65,00,000.00/- leaving a balance a sum of Rs. 3.32,98,367.00/- as on March 31, 2019. The plaintiff had brought forward the said sum in its balance-sheet April 1, 2019. Particulars of the part payment are stated in paragraph 10 of the plaint.

12. The defendant confirmed the said sum of Rs. 3,32,98,367.00 for the period between April 1, 2018 to March 31, 2019 under the confirmation of account dated April 1, 2019. The balance confirmation is disclosed and marked as **PD – 6 at pages 88 & 89** of the Judges-brief.

13. Between April 1, 2019 and March 31, 2020 defendant placed diverse orders with plaintiff and the plaintiff sold and delivered goods to the defendant in terms thereof amounting to Rs. 52,83,168.00.

14. The particulars of bills are stated in paragraph 12 of the plaint. The bills are disclosed as **PD – 7 at pages 90 – 96** of the Judges-brief.

15. Plaintiff generated relevant e-way bills as mentioned in paragraph 13 of the plaint.

16. Between April 1, 2019 to March 31, 2020 defendant paid a sum of Rs. 77,25,000.00 leaving a balance a sum of Rs. 3,08,56,535.00 as on March 31, 2020. The said outstanding amount was brought forward by the plaintiff in its balance-sheet on April 1, 2020.

17. The defendant confirmed the said balance of Rs.3,08,56,535.00 by way of written balance of confirmation dated **April 1, 2020, PD – 9 at page 104** of the Judges-brief, dated April 1, 2021 the balance was confirmed till March 31, 2021 **PD – 10 at page 105** of the Judges-brief, balance confirmation dated April 1, 2022, **PD – 11 at page 106** of the Judges-brief, balance confirmation dated April 1, 2023, **PD – 12 at page 107** of the Judges-brief.

18. The plaintiff had served a demand notice through its advocate's letter dated June 7, 2023, **PD – 13 at page 108** of the Judges-brief. On September, 21, 2023 the plaintiff applied for pre-institution Mediation before the Conciliation Committee, High Court, Calcutta where the defendant did not participate.

19. In view of the above, the plaintiff claimed interest at the rate of 12% per annum under the provisions of Interest Act and/or Sale of Goods Act and/or Code of Civil Procedure, as the transactions are commercial in nature.

20. The principal claimed in the plaint is for a sum of **Rs. 3,98,53,500.00** along with interest from August 5, 2021 till February 4, 2024 @ 12% per annum amounting to Rs.91,96,965.00/-, aggregating a total sum of **Rs. 3,98,53,500.00.**

Records of the Proceeding:

21. There was one witness who deposed on behalf of the plaintiff. The witness of the plaintiff (PW – 1) has filed evidence on affidavit which was affirmed on January 30, 2025. In addition, to prove the documents there was examination-in-chief of the witness of the plaintiff before the co-ordinate bench held on January 31, 2025 and May 5, 2025.

22. Though the suit was classified and marked as undefended one and the defendant had a limited and restricted right of cross-examination, but the record shows that the witness of the plaintiff was not cross-examined by the defendant.

23. Original document relied upon by the plaintiff had duly been tendered in course of the examination-in-chief of the witness of the plaintiff, which had been marked as exhibits with their respective markings, as are available on records. The plaintiff has also filed necessary affidavit under **Section 65B of Evidence Act** presently treated to be an affidavit under **Section 63 of The Bharatiya Sakshya Adhiniyam, 2023**.

24. Plaintiff has filed its brief notes on argument, the same is also on record.

Submissions:-

25. Mr. K. C. Garg, learned Adv. appearing for the plaintiff submits pursuant to the order placed by the defendant, the plaintiff had sold and delivered the goods. It was agreed that the defendant would place orders with the plaintiff and the plaintiff would deliver the goods to the defendant on high-sea sales. Learned Advocate for the plaintiff has referred to the several bills marked as PD – 2, PD – 3 and PD -4 from the Judges-brief and with reference to the statement made in the evidence on affidavit (hereinafter, EOA) and the examination-in-chief held in court (hereinafter referred to as the, examination-in-chief). The record shows that the plaintiff had proved the documents. Record and the evidence of the plaintiff shows that the said bills were proved in accordance with the relevant provisions of the **Evidence Act** and the corresponding provisions of **Bharatiya Sakshya Adhiniyam, 2023** (hereinafter referred to as, **BSA, 2023**).

26. Mr. K. C. Garg, then has referred to several e-way bills, PD – 5 from the Judges-brief showing that the goods were duly delivered and accepted by the defendant. E-way bills have also been tendered by the plaintiff in its evidence under the provisions of the Evidence Act and the BSA**.**

27. From time to time in three trunches the defendant had placed orders and the defendant had supplied the goods.

28. In respect of all the three trunches, learned advocate for the plaintiff had cited the bills and the corresponding e-way bills which are also included in PD – 7 and PD – 8 of the Judges-brief and have duly been proved by the plaintiff in its evidence and the examination-in-chief under the provisions of the Evidence Act and the BSA.

29. Mr. Garg further submits that the plaintiff would raise its bill upon the defendant and the defendant would pay price of goods within 30 days, in default the defendant would pay interest @ 12% per annum. It is submitted that an open, running and continuous account was maintained between the parties. It was also agreed between the parties that after any amount is due and payable by the defendant to the plaintiff as on March 31, of every English Calendar Year, the same would be brought forward on the 1st April of the succeeding English Calendar Year and likewise a continuous account would be maintained.

30. Mr. Garg submits that at no point of time the defendant had raised any objection with regard to the quality and quantity of goods and the defendant had accepted and consumed the goods supplied by the plaintiff from time to time.

31. Mr. Garg further submits that during April 1, 2017 till March 31, 2018 the defendant made part payment for a sum of Rs. 1,89,11,768.00 as and by way of part payment towards the dues of the plaintiff, leaving a balance sum of Rs. 1,22,51,248.00 as on March 31, 2018 which was brought forward of April 1, 2019.

32. Mr. Garg further submits that during April 1, 2018 to March 31, 2019 the defendant paid a sum of Rs.4,65,00,000 leaving a sum of Rs. 3,32,98,367 as on March 31, 2019 as part payment and the said due as on March 31, 2019 was brought forward as on April 1, 2020.

33. Learned Advocate for the plaintiff, drew attention of this court to the document dated April 1, 2019 PD – 6 of the Judges-brief as part of the exhibit and submits that the defendant had confirmed the said sum of Rs. 3,32,98.367.00 as principal due and payable towards the plaintiff during the period April 1, 2018 to March 31, 2019. The said document dated April 1, 2019 has been proved under the provisions of the Evidence Act and BSA.

34. Mr. Garg then submits that between April 1, 2019 till March 31, 2020 the defendant made a part payment for a sum of Rs. 77,25,000.00 leaving a balance sum of Rs. 3,08,56,535.00 as on March 31, 2020 and the same was brought forward as on April 1, 2020.

35. By a written confirmation dated April 1, 2020 PD – 9 of the Judges-brief. Part of the exhibit the defendant confirmed that a sum of Rs. 3,08,56,535.00 was due and payable till March 31, 2020. The said document has been proved by the plaintiff in its evidence under the provisions of Evidence Act and BSA.

36. Mr. Garg then submits that on August 4, 2021 the defendant had paid a further sum of Rs. 2,00,000.00 as part payment leaving a balance sum of Rs. 3,06,56,535.00 due and payable to the plaintiff. By a document dated April 1, 2022, PD – 11 of the Judges-brief and part of exhibit the defendant had confirmed the said balance. The document has been proved in the evidence of the plaintiff in accordance with the provisions under the Evidence Act and the BSA.

37. Mr. Garg further submits that the defendant had confirmed the amount of Rs. 3,06,56,535.00 being the outstanding towards the plaintiff till March 31, 2023 under written confirmation dated April 1, 2023, PD – 12 of the Judges-brief and also part of the exhibit and has been proved in the evidence of the plaintiff under the provisions of the Evidence Act and the BSA.

38. The plaintiff then demanded through its demand letter dated June 7, 2023, PD – 13 of the Judges-brief and part of the exhibit. The demand was received by the plaintiff o June 10, 2023. The postal receipt is PD – 14 and the postal track report is PD- 15 of Judges-brief are part of the exhibit. The said letter of demand along with its service upon the defendant has duly been proved in the evidence of the plaintiff under the provisions of Evidence Act and the BSA.

39. The plaintiff claims interest @ 12% per annum.

40. Mr. Garg further submits that the pre-institutions mediation had failed as would be evidence from the non-starter report dated November 17, 2023 since the defendant had not participated in the mediation process. The document is PD – 16 of the Judges-brief and part of the exhibit and has been proved in the evidence of the plaintiff and under the provisions of the Evidence Act and the BSA.

41. In as much as, it is a matter of record that the defendants choose not to be represented in the mediation process.

Decision :

42. Upon hearing the learned Advocate for the plaintiff and on perusal on record, at the threshold it appears to this court that, the pre-institutions mediation had failed between the parties. The defendant had not filed its written statement and hence the suit has been marked as undefended suit.

43. The defendant has not cross-examined the witness of the plaintiff.

44. On reading of the case made out in the plaint and on perusal and scrutiny of the documents disclosed in the Judges-brief and the exhibits, this court finds the parties' at all material time maintained mutual, current and continuous accounts. The written confirmation from time to time issued by the defendant have duly been proved showing that the defendant had agreed for such mutual running and continuous transactions and as a result the balance outstanding payable by the defendant to the plaintiff as on March 31st of every preceding year was carried and brought forward as on 1st April of every succeeding calendar year.

45. On reading of the evidence on affidavit filed by the plaintiff in the light of the oral examination in chief held before the co-ordinate bench of the witness of the plaintiff, this court further finds without any hesitation that the plaintiff has been able to prove its case as it was required to be proved under the provisions of the Evidence Act and the corresponding provision of BSA. The documents are proved. The final and the last balance confirmation issued by the defendant on April 1, 2023, PD – 12 further shows and had proved that the plaintiff as on April 1, 2023 was entitled to the principal claim of **Rs. 3,06,56,535.00**. The plaintiff has proved its principal claim.

46. In so far as the claim of the plaintiff on account of interest as claimed to be 12% per annum, this court, on a careful scrutiny of the documents/exhibits and the evidence led by the plaintiff, is of the considered view that the rate of interest was never agreed upon by and between the parties.

47. Even in a commercial transaction, the law is well settled that, in absence of an agreed rate of interest, it is left open at the discretion of the court at what rate the interest will be granted. It is true that interest on a delayed point in a commercial transaction is an essential requirement.

48. In view of the above, the defendant shall pay interest @ 8% per annum on the principal claim, claimed by the plaintiff, on and from **April 1, 2023** (the last balance confirmation being PD – 12 at page 107 of the Judges-brief) until the entire amount is tendered to the plaintiff.

49. In view of foregoing reasons and discussions there shall be a decree for ***principal sum of Rs. 3,06,56,536.00*** along with interest @ ***8% per annum*** since **April 1, 2023** until realization/the payment is actually tendered to the plaintiff.

50. The decree shall be drawn up and completed expeditious by the department concerned.

51. There shall be no order as to costs.

52. Accordingly, **C.S. (Com) 13/2024** with all connected applications, if any, stand **disposed of**.

(Aniruddha Roy, J.)