

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

G.A. (Com) No. 5 of 2025

In

C.S. (Com) No. 378 of 2024

(Old No. C.S. 107 of 2022)

Manish Luharuka

Versus

N.C. Infracon Private Limited & Ors.

Mr. Shyamal Sarkar, Sr. Adv.

Mr. Kumar Gupta

Ms. Nibedita Pal

Mr. Ananda Gopal Mukherjee

Ms. Sonam Roy

Ms. N. Khatoon

... For the plaintiff.

Mr. Shibjit Mitra

Mr. Sudip Ghosh

Ms. Labony Ray

Ms. Bidisha Ghosh

... For the defendants.

Hearing Concluded On : 10.09.2025

Judgment on : 17.09.2025

Krishna Rao, J.:

1. The plaintiff has filed the present application being G.A. (Com) No. 5 of 2025 in C.S. (Com) No. 378 of 2024 praying for judgment upon admission. The plaintiff has filed the suit praying for a decree for a sum of Rs. 1,15,23,833/- along with interest pendente lite and interest upon Judgment at the rate of 18% per annum.
2. The plaintiff carries on business as supplier of various types of structural steel including channels and joists and other products required for fabrication and construction work. The defendants carry on business as civil contractors. The plaintiff was a supplier to one of ILFS Engineering Ltd. Some of the officers of the said ILFS Engineering Ltd. introduced the plaintiff to the defendants for supply of steel structures to the defendants, who was also a supplier of the said ILFS Engineering Ltd.
3. The plaintiff approached the defendants and after being satisfied that the rates of the plaintiff were competitive, the defendants issued a Purchase Order dated 27th September, 2017 and on receipt of the same, the plaintiff had supplied and delivered goods to the work site of the defendants at C/o SG Heavy Engineering Private Limited in between 3rd October, 2017 and 9th October, 2017. On delivery of materials, the plaintiff raised invoices upon the defendants. The

defendants accepted the goods sold and delivered and invoices raised by the plaintiff without any objection.

- 4.** Under some internal arrangements between the defendants and ILFS Engineering Ltd., some part payments were made by ILFS on behalf of the defendants. The last payment was made on 3rd April, 2018. The plaintiff has made several requests and demands to the defendants for payment of the balance amount but the defendants failed to pay the balance amount of Rs. 65,29,084.23/-. The plaintiff has sent notice to the defendants on 1st December, 2020 calling upon the defendants for payment of an amount of Rs.65,29,084/- along with interest at the rate of 18% from the date it becomes due.
- 5.** Even after receipt of notice, the defendants have neither paid the amount nor have sent any reply to the plaintiff. The plaintiff initiated Pre-institution Mediation process but the defendants had failed to settle the dispute, accordingly, a “Nonstarter Report” was served upon the plaintiff and thereafter the plaintiff has filed the present suit.
- 6.** Mr. Shyamal Sarkar, Learned Senior Advocate representing the plaintiff submits that the defendants have acknowledged and admitted in writing that the amount of Rs. 65,29,084/- is due and payable by the defendants to the plaintiff in its Annual Accounts for the financial year 2020-2021 ending on 31st March, 2021. He further submits that the defendants have further admitted the amount payable to the plaintiff in

the balance sheet for the financial year 2022-2023 ending on 31st March, 2023.

7. Mr. Sarkar submits that the defendants entered appearance in the suit and had filed written statement and in the written statement, the defendants admitted that the defendants had drafted and prepared the Purchase Order and also does not dispute with regard to receipt of goods sold and invoices. He submits that the defendants in its written statement also admitted that the goods supplied by the plaintiff was utilized by the defendants in connection with the work being executed by the defendants for IL&FS Engineering Limited.
8. Mr. Sarkar submits that the defendants have admitted the claim of the plaintiff and have no defence in the suit. He submits that the defendants have took plea that since part payments were made by ILFS Engineering Limited on behalf of the defendants, the plaintiff should seek balance payment from the said firm but there is no concluded contract or privity of contract with the ILFS Engineering Ltd., the plea taken by the defendants is baseless.
9. Mr. Sarkar in support of his submissions relied upon the judgment in the case of ***Usha Rectifier Corporation (India) Limited [Presently Known As M/s. Usha (India) Limited] Vs. Commissioner of Central Excise, New Delhi*** reported in ***(2011) 11 SCC 571*** and submits that once the defendants have themselves made admission in their own balance sheet, which was not rebutted and was further substantiated

in the Director's Report, the defendants now cannot deny for making payment.

10. Mr. Sarkar has further relied upon the judgment in the case of ***Ravi Udyog Private Limited Vs. S.G. Projects Ltd.*** reported in **2016 SCC OnLine Cal 4394** and submits that the defendants have not explained their admission in the written statement and the annual accounts including the accounts of financial year 2020-2021 ending on 31st March, 2021.
11. Mr. Sarkar relied upon the judgment in the case of ***Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Another*** reported in **(2021) 6 SCC 366** and submitted that in the said case, the Hon'ble Supreme Court relied upon the judgment of this Hon'ble Court in the case of ***Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff*** reported in **1961 SCC OnLine Cal 128** wherein the Hon'ble Court held that an acknowledgment of liability that is made in a balance sheet can amount to an acknowledgement of the debt.
12. Mr. Shibjit Mitra, Learned Advocate representing the defendants submits that the plaintiff has wilfully and deliberately suppressed the fact that M/s. Gopal Trading Company, being the plaintiff's business undertaking was a known and regular supplier to the IL&FS Engineering & Construction Company Ltd. but was a complete stranger to the defendants. He submits that the defendants under the instruction and pressure of its client, IL&FS Engineering Ltd. has

drafted and prepared the purchase order dated 27th September, 2017. He submits that the said purchase order was sent to IL&FS through email dated 27th September, 20217 and on further instruction again sent on 28th September, 2017. He submits that subsequently IL&FS Engineering Ltd. issued updated purchase order to the erstwhile plaintiff, thus there is no concluded contract between the plaintiff and the defendants.

- 13.** Mr. Mitra submits that there is no privity of contract between the plaintiff and the defendants. The plaintiff has never supplied any materials to the defendants and the defendants have never acknowledged the material supplied by the plaintiff. He submits that the plaintiff has supplied materials to SG Heavy Engineering Pvt. Ltd. who is the authorised fabricator of IL&FS Engineering Ltd.
- 14.** Mr. Mitra submits that the plaintiff received two payments i.e. Rs. 55 Lakhs and Rs. 15 Lakhs from the IL&FS Engineering Ltd., without any objection though the name of consignee of the supplied materials, delivery address and the entity sending money are all different. He submits that the plaintiff had the knowledge that the defendants were also sufferer like the plaintiff due to initiation of CIRP proceedings against IL&FS Engineering Ltd. After the resolution plan was approved by the Learned National Company Law Tribunal, a detailed list of creditors was published wherein the name of the plaintiff and the defendants were included.

15. Mr. Mitra submits that Section 28 of the Bharatiya Sakshya Adhiniyam, 2023, provides that entries in the books of account, including those maintained in an electronic form, regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. He submits that the plaintiff relied upon the annual account of the defendants and prayed for judgment upon admission but the plaintiff has to prove the said annual account by way of evidence. In support of his submissions, he has relied upon the judgment in the case of **Central Bureau of Investigation Vs. V.C. Shukla and Others** reported in **(1998) 3 SCC 410** and submits that from a plain reading of the section, it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. He submits that it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability.
16. Mr. Mitra, further relied upon the judgment in the case of **Sandeep Singh Vs. Hindustan Spirits Ltd. through its Chairman/ Managing Director/ CEO** reported in **2023 SCC OnLine Del 678** and submits that the books of accounts have been maintained regularly in the

course of business, would not be sufficient to draw any conclusion of concluded liability against the defendants.

- 17.** The plaintiff relied upon the Independent Auditors' Report of the defendants company issued by the Chartered Accountants of the defendants company dated 29th November, 2021, 29th August, 2022 and 4th September, 2023, consisting of balance sheets as on 31st March, 2021, 31st March, 2022, and 31st March, 2023, wherein the defendants have shown the current liabilities/trade payable of the plaintiff to the tune of Rs. 65,29,084/-.
- 18.** The defendants say that as per Section 28 of the Bharatiya Sakshya Adhiniyam, 2023, book of account shall not alone be sufficient to prove the case against the defendants. Section 28 of the Bharatiya Sakshya Adhiniyam, 2023, relates to entry in the book of accounts when relevant. The plaintiff has relied upon the balance sheet of the defendants prepared by the Chartered Accountants from year to year. Book of Accounts refer to comprehensive record of financial transactions and include various ledgers and journals that capture all financial dealing of an entry over a period. These include ledgers such as sales ledger, purchase ledger, cash book, journal etc. The books of accounts are used to record day today transactions and are essential for maintaining detailed financial record. Businesses are generally required by law to maintain accurate books of accounts to ensure transparency and accountability in financial reporting. Books of accounts are essentially the raw data that feed into the preparation of

financial statements like balance sheet. They capture every financial transaction, ensuring that all incomes and expenses are accurately recorded. The integrity of these records is crucial for accurate financial analysis and reporting.

19. Balance Sheet is a finance statement that provides a snapshot of a company's financial position at a specific point in time. It includes assets, liabilities and shareholder's equity reflecting what company owns and owes. The balance sheet is used to assess the financial health of an entity, showing its net worth and providing insight into its capital structure. Balance sheets are typically prepared annually or quarterly and are required for financial reporting and compliance purposes. Balance Sheet is a formal financial statement derived from the data recorded in the book of accounts. It does not reflect every transaction but rather a summary of the company's financial standing. The balance sheet helps stakeholders understand the company's liquidity position, operational efficiency and financial stability.
20. Section 28 of the Bharatiya Sakshya Adhiniyam, 2023, is about the books of account and not the balance sheet. The balance Sheet which the plaintiff relied upon is the part of the Independent Auditors' Report. The balance sheet attached with the Auditor's Report is duly signed by the directors of the defendants company. The judgments relied by the defendants in the case of ***Central Bureau of Investigation (supra)*** and ***Sandeep Singh (Supra)*** are not applicable in the facts and circumstances of the present case.

- 21.** Section 209 of the Companies Act deals with books of accounts of the company. Sub-section (3) thereof casts an obligation on the company to keep “proper books of accounts” as are necessary to give a “true and fair view of the state of affairs of the company” or its branch office and explained its transactions. Similarly, Section 211 of the Companies Act deals with “form and contents of balance sheet and profit and loss account of the company”. This Section again casts an obligation on every company that it shall give “true and fair view of the state of affairs of the company” at the end of the financial year. Sub-section (3B) provides that if the company does not comply with the accounting standard prescribed then they have to disclose the reason for not being able to do so. Non-compliance of these provisions renders the company to suffer penalty prescribed under Section 628 and other Sections of the said Act.
- 22.** The defendants have not denied with regard to the correctness of the balance sheet and also not explained why the defendants have shown the amount of Rs. 65,29,084/- as current liabilities in favour of the plaintiff. The defendants have shown the said liabilities continuous for three years. In the case of ***Ravi Udyog Private Limited (Supra)***, the Coordinate Bench of this Court relying upon two Supreme Courts’ judgments held that:

“34. The principle of law laid down in Razia Begum v. Sahebzadi Anwar Begum reported in AIR 1958 SC 886 and Balraj Taneja v. Sunil Madan reported in (1999) 8 SCC 396 cited by Mr. Saha are quite plain that a party should be given a

chance to explain his admission and that in certain cases the court may ask for additional clear evidence. Very regrettably, the defendants has been unable to explain the admission made in their balance sheets. Even if it has tried to explain this admission, the other evidence of corresponding entries in the plaintiff's balance sheets the actual receipt the money by the defendants in their account and the contradictions in their defence, as pointed out above do not disprove the facts admitted by them in their balance sheets."

- 23.** In the case of ***Usha Rectifier Corporation (India) Limited (supra)***, the Hon'ble Supreme Court held that:

"10. The aforesaid position is further corroborated by the Director's Report appearing at p. 2 of the annual report for the year ending December 1988, wherein it was mentioned that during the year the Company developed a large number of testing equipments on its own for using the same for the testing of semi-conductors. Once the appellants have themselves made admission in their own balance sheet, which was not rebutted and was further substantiated in the Director's Report, the appellant now cannot turn around and make submissions which are contrary to their own admissions."

- 24.** In the case of ***Bengal Silk Mills Co. (supra)***, the Hon'ble Supreme Court held that an acknowledgment of liability that is made in a balance sheet can amount to an acknowledgement of debt.
- 25.** The defendants have taken the plea that the defendants under instruction and pressure of its client i.e. IL&FS Engineering Ltd. have drafted and prepared the purchase order dated 27th September, 2017 but the purchase order reflects that the defendants in its letter head issued the purchase order address to the plaintiff and in the purchase

order, the defendants have categorically mentioned the address where the materials is to be delivered. The defendants have not denied with regard to the genuineness of the Purchase Order and receipt of the materials. In the communication dated 25th November, 2019, the defendants admitted that an amount of Rs. 65,29,083/- is due and payable to the plaintiff but the defendants requested the IL&FS Engineering Ltd. for payment to the plaintiff. The defendants have also taken a plea that the IL&FS Engineering Ltd. is the necessary party but the plaintiff has not made the said firm as party to the suit. This Court considered the plea taken by the defendants and finds that the purchase order issued by the defendants to the plaintiff and the address which the defendants have mentioned, the plaintiff has delivered the materials. The defendants have not denied with regard to the purchase order and delivery of materials. The defendants in its balance sheet continuous for three years declared liability of Rs. 65,29,083/- in favour of the plaintiff and the defendants have not explained about the said declaration in the Audit Report.

- 26.** This Court finds that the defendants have unequivocally admitted the claim of the plaintiff and nothing remains to determine in the present suit. In view of the above, the plaintiff is entitled to get decree for a sum of Rs. 65,29,084/- along with interest at the rate of 10% per annum from 4th April, 2018, till realization of the total amount. The defendants are directed to pay an amount of Rs. 65,29,084/- along with interest at

the rate of 10% per annum from 4th April, 2018, till realization of total amount.

27. G.A. (Com) No. 5 of 2025 is allowed. C.S. (Com) No. 378 of 2024 (Old No. C.S. 107 of 2022) is disposed of. Decree be drawn accordingly.

(Krishna Rao, J.)