

**In the Court of LXXXIV Additional City Civil and Sessions
Judge (CCH-85) (Commercial Court), Bengaluru**

Dated this the 11th day of April 2022

Present: Smt.H.R.Radha B.A.L., LL.M.
LXXXIV Addl. City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru

Com.O.S.No.1269/2019

Plaintiffs:	1. M/s Vishal Ply, Head Office at No.142/1, Ground Floor, Pipeline West, Kasturbanagar, NTY Layout, Mysore Road, Bengaluru-560 026, Rep. by its Branch Office at No.101/1, Renuka Complex, New Timber Yard Layout, Mysore Road, Bangalore-560 026, Proprietor, Sh.Ritesh Singhvi 2. Sh.Ritesh Singhvi Proprietor, M/s Vishal Ply, Head Office at No.142/1, Ground Floor, Pipeline West, Kasturbanagar, NTY Layout, Mysore Road, Bengaluru-560 026 Branch Office at No.108/1, Renuka Complex, New Timber Yard Layout, Mysore Road, Bangalore-560 026. (By Sri.P.Prasanna Kumar, Advocate)
--------------------	--

Vs

Defendants:	1. Al-Fara'a Infra Projects Pvt. Limited, Reg. Office at No.102, 1st floor, Baba House Bldg., No.86, M.V. Road, Near Western Express Highway, Andheri East, Mumbai City, maharashtra-400 093 Rep. by its Managing Director, Mr. Nitesh Gangaramani Having Branch Office at No.20, Inner Ring Road, EG Pura, Koramangala, Bengaluru-560 047. 2. Mr. Nitesh Gangaramani, Managing Director, M/s Al-Fara'a Infra Projects Pvt. Limited, Reg. Office at No.102, 1st Floor,
--------------------	---

	Baba House Bldg., No.86, M.V. Road, Near Western Express Highway, Andheri East, Mumbai City, Maharashtra-400 093 Having Branch Office at No.20, Inner Ring Road, EG Pura, Koramangala, Bengaluru-560 047. 3. Mr. Murari Rajagopalan Bharatham, Additional Director, M/s. Al-Fara'a Infra Projects Pvt. Limited, No.432, 12th Main Road, Banashankari 1st Stage, 1st Block, Bengaluru-560 050. 4. Mr. Vinod Newandram Ashwani, Additional Director, M/s. Al-Fara'a Infra Projects Pvt. Limited, No.66/B, 1st Floor, Padma Nivas, Collectors Colony, Mahul Road, Chembur East, Mumbai, Maharashtra-400 074. 5. Mr. Shiju Nambiar, Executive (Purchase), M/s. Al-Fara'a Infra Projects Pvt. Limited, KYK ARR IVY Bldg., No.692, Behind BDA Complex, Koramangala, Bengaluru-560 034. (D3 by Sri.Narayan Shenoy, Advocate & D1, 2, 4 and 5 - Exparte)		
Date of Institution	15.02.2019		
Nature of the suit	Recovery of money towards supply of goods		
Date of Commencement of recording of evidence	06.04.2022		
Date on which judgment pronounced	11.04.2022		
Total Duration	Years	Months	Days
	03	01	25

LXXXIV Addl. City Civil & Sessions Judge
(CCH-85 Commercial Court) Bengaluru

JUDGMENT

This is a suit for recovery of Rs.7,31,071/- from the defendants together with interest at 24% p.a. from the date of suit till the date of realization.

2. The plaintiff's case in brief is that the 1st plaintiff is a proprietary concern doing the business of supply of Ply wood and allied materials and represented by its Proprietor, the 2nd plaintiff. The 1st defendant is a company, 2nd defendant is a Managing Director, 3rd and 4th defendants are Executive Directors and 5th defendant is the Executive (purchase) who placed the quotation for supply of shuttering Ply wood of 8x4x12ft.x12mm on 05.12.2017 for the project by name Nitesh Melbourne Park at Byraati Village in Bidarahalli Hobli, Bengaluru. The defendants placed confirmation order on 06.12.2017 for supply of 350 Ply woods worth Rs.6,44,280/-, after negotiation and the payment term was agreed to be 120 days open credit. Accordingly 350 Ply wood sheets were sent to defendants' project site. Out of the same, the project in-charge returned 23 Ply wood sheets by accepting only 327 sheets. After deducting the cost of returned 23 sheets, invoice dated 07.12.2017 was raised for Rs.6,01,942/-. In spite of the same and also sending emails and demand notice dated 10.11.2018.

The defendants have failed to pay the amount due. The transaction is commercial in nature and though entitled to interest at 24% p.a, the same is restricted to 18% p.a. It works out to Rs.1,29,129/- on the principal amount from 07.12.2017 till the date of suit and the defendants are liable to pay the same.

3. Even after service of suit summons the defendants 1, 2, 4 and 5 have remained absent and therefore placed exparte. The 3rd defendant has not filed the written statement.

4. The 2nd plaintiff has filed affidavit in lieu of examination in chief, examined himself as Pw1 and got marked Ex.P1 to P24.

5. Heard arguments and perused the records.

6. The points that arise for my consideration are:

1. Whether the plaintiffs are entitled for recovery of Rs.7,31,071/- with interest from the defendants as prayed?

2. What order?

7. My findings on the above points are:

Point No.1: Partly in the Affirmative

Point No.2: As per final order for the following

REASONS

8. Point No.1: Pw1 has filed affidavit reiterating the position

held by defendants 2 to 5 in the 1st defendant company and stating that orders for supply of 350 Ply wood sheets was placed through 5th defendant for their project called Nitesh Melbourne Park at Bidarahalli. After negotiating the price and other terms, he supplied the same to the project site, but the Project in charge accepted only 327 Ply wood sheets under invoice dated 07.12.2017. After deducting the cost of 23 returned Ply wood sheets, the defendants have to pay Rs.6,01,942/-. Despite receiving the invoice dated 07.12.2017 and his emails and demand notice, they have failed to pay the amount.

9. Ex.P1 and P2, P4 to P6 are electronic documents. Pw1 has produced certificate U/Sec.65B(4)(c) of the Indian Evidence Act, stating that Ex.P1 and P2 are the emails sent by the defendants from the mail ID purchase.bangalore@alfaraainfrapr.com to him at sales@vishalply.com placing purchase order and confirming and confirming it. He has also sent emails at Ex.P5 demanding payment from the defendants to their mail ID purchase.bangalore@alfaraainfrapr.com. The computer output contains the information produced by the system during the period over which the computer was regularly used to store/process information relating to activities carried on during that period.

10. Ex.P1 and P2 show that a request for quotation dated 05.12.2017 captioned as the reminder-1 was sent by Alfara's Group Purchase Department for 750 shuttering Ply Wood stating that the material was urgently required. This is followed by confirmation order dated 06.12.2017 requiring the plaintiffs to supply 350 shuttering Ply wood sheets worth Rs.6,44,280/- including GST, SGST, transportation and loading charges at Nitesh Melbourne Park, Bidarahalli Hobli.

11. Ex.P3, the tax invoice dated 07.12.2017 speaks to the effect that the plaintiffs sent 350 sheets of Ply wood as per the purchase and confirmation order out of which only 327 were accepted and remaining 23 sheets were rejected. This document would show that the payment was to be made on 07.03.2018 failing which interest at 24% would be charged for the delay. Ex.P4 is the credit note dated 07.12.2017 for Rs.42,338/- in respect of 23 Ply woods rejected and returned from the project site of the 1st defendant. Ex.P6 ledger account entries reflect the outstanding liability of the defendant as on 31.03.2018 and Ex.P7 is the bill outstanding as on 31.10.2018.

12. Ex.P5 are a series of emails sent by the 2nd plaintiff from his mail ID ritesh@vishalply.com to the defendants' mail ID as also Nitesh Melbourne demanding the due. Ex.P8 is the office

copy of the legal notice dated 10.11.2018 issued by the plaintiff. Ex.P9 to P15 show that it was sent through RPAD on the same day. Ex.P16, P18, and P19 are the postal acknowledgments evidencing due service of Ex.P8 on defendants 1 to 3. Ex.P23 are the unserved postal covers.

13. As discussed earlier, the 1st defendant company, defendants 2, 4 and 5 have remained exparte and the 3rd defendant has not chosen to contest the suit by filing the written statement or to cross examine Pw1. Thus, in the absence of contest I do not have reasons to disbelieve the plaintiff's claim or the evidence of Pw1 that a sum of Rs.6,01,942/- has remained unpaid even to this day and that the transaction is commercial in nature.

14. The plaintiff though entitled to interest at the rate mentioned in the invoice from the due date i.e., 07.03.2018, the same is restricted to 18% in the suit. However, the same calculated from 07.12.2017 is not permissible in view of the terms of invoice. Interest at 18% p.a. as claimed in para No.11 of the plaint, for a period of 11 months 08 days i.e., from due date to the date of filing of suit works out to Rs.1,01,727/- and not Rs.1,29,129/-. Admittedly the 1st defendant is a private company limited and therefore, defendants 2 to 5, the

Managing Director, Executive Directors and the Executive (Purchase) cannot be held responsible for its liabilities.

15. Under the above circumstances, I am of the opinion that the plaintiffs are entitled to recover Rs.7,03,669/- (Rs.6,01,942/- + Rs.1,01,727/- towards 18% interest) from the 1st defendant together with current and future interest at 10% p.a., cost of the suit and notice charges of Rs.25,000/-; and the suit against the defendants 2 to 5 is liable to be dismissed. Accordingly, the point for consideration is answered partly in the affirmative.

16. Point No.2: In the result, I pass the following

ORDER

Suit of the plaintiff is decreed in part with cost.

The plaintiff is entitled for Rs.7,03,669/- from the 1st defendant together with current and future interest with 10% p.a. and notice charges of Rs.25,000/-.

The suit against defendants 2 to 5 is hereby dismissed.

Draw decree accordingly.

Issue copy of the judgment to the parties through e-mail as provided U/o XX Rule 1 of CPC if mail ID is furnished.

(Dictated to the Stenographer, typed by her directly on the computer, corrected and then pronounced by me in the open court on this the **11th** day of **April 2022**)

(H.R.Radha)

LXXXIV Addl.City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru

ANNEXURE

List of witnesses examined for the Plaintiff:

Pw1 Ritesh Singvi

List of documents marked for the plaintiff:

Ex.P1	Request for quotation received from the defendant through email.
Ex.P2	Order confirmation received from the defendant through email dated 06.12.2017.
Ex.P3	Tax invoice dated 07.12.2017 with the defendant's acknowledgment for having accepted 327 sheets of plywood and rejecting 23.
Ex.P4	Credit note dated 07.12.2017.
Ex.P5	Email dated 26.12.2017, 08.01.2018, 22.02.2018, 08.03.2018, 29.03.2018, 21.04.2018 and 22.10.2018 sent by me demanding the amount due.

Ex.P6	Ledger account extract from 01.04.2017 to 31.03.2018.
Ex.P7	Outstanding bill dated 31.10.2018.
Ex.P8	Office copy of notice dated 10.11.2018.
Ex.P9 to P15	Seven postal receipts.
Ex.P16,	Postal acknowledgment.
Ex.P17	Nil.
Ex.P18	Postal acknowledgment.
Ex.P19	Postal acknowledgment.
Ex.P19 to P22	Four unserved postal covers.
Ex.P24	Certificate U/Sec.65B of the Indian Evidence Act in proof of the emails, request for quotation, order confirmation and the ledger account extract.

List of witnesses examined for the defendants: NIL

List of documents marked for the defendants: NIL

(H.R.Radha)

LXXXIV Addl.City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru.