

**COMMERCIAL COURT AT ASANSOL**

**(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA BARDHAMAN,  
PASCHIM BARDHAMAN, PURULIA AND BANKURA)**

Present :- Shaikh Kamal Uddian.  
J.O Code :- WB01311

**Money Suit No :- 11 of 2023**  
**CNR No :- WBBD 17-000058-2023**

Plaintiff (s) ..... M/S Uddhav Udyog Private Limited

V/s.

Defendant (s) .....Saxena Marine-Tech Private Limited

**Order No.02**  
**Dated 11.12.2023**

The record is put up on the prayer of the plaintiff.

The Learned Advocate for the plaintiff moves the application for injunction with ad interim effect.

Seen the office note.

There is no caveat from the defendant.

Record is now taken up for hearing the ad interim injunction application.

Heard the Learned Advocate.

Perused the materials on record.

Plaintiff / petitioner has moved the application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure (I.A No.02 of 2023 dated 02/12/2023), seeking ad interim injunction in terms of the prayer made in the application.

Issue notice upon the defendant / OP to show cause within the next date as to why the temporary injunction as prayed for shall not be granted.

Learned Advocate for the plaintiff / petitioner prays for an ad interim injunction without notice.

Considered the plaint, application for injunction and the documents enclosed with the plaint as well as the injunction application.

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The suit is for recovery of money and damages.

The factual matrix of the suit in a nut shell that has led to the filing of the injunction application is narrated below in the following manner:-

1. The plaintiff / petitioner is a private limited company and has issued work order dated 22/11/2022 in favour of the defendant / OP.
2. The work order was bifurcated into two purchase orders.
3. The defendant / OP had agreed to the work regarding fabrication, erection, commissioning and final handling of non-residential pre-engineer building and under the agreement the defendant / OP was obliged to supply anchor bolt within 7 days from the date of advance and the first lot of 20MT of materials within 15 days from the approval of the drawing.
4. The entire structure was to be completed by the defendant / OP within 30<sup>th</sup> January, 2023.
5. In terms of the agreement the plaintiff / petitioner paid advance of a sum of Rs.52 lacks 25<sup>th</sup> November, 2022 and a further sum of Rs. 34 lacks on 28<sup>th</sup> December, 2022.
6. The defendant / OP furnished two corporate guarantee of Rs.34,06,800/- and Rs.17,26,050/-. The plaintiff / petitioner also paid a sum of Rs.11.0 lacks on 3<sup>rd</sup> April, 2023.
7. Despite receiving the aforesaid sum the defendant / OP did not dispatch any material to the project.
8. Several correspondences were exchanged but without any effect. Finally by a letter dated 16<sup>th</sup> June, 2023 the plaintiff / petitioner requested the defendant / OP to supply the remaining materials as per the terms of the contract within 30<sup>th</sup> of June, 2023. The letter failed to evoke any response from the defendant / OP and having no other alternative the plaintiff instituted the present suit.
9. The Learned Advocate for the plaintiff / petitioner submitted that there is extreme urgency in the matter and the defendant / OP is diverting its property and is withdrawing huge sums from its two bank accounts

maintained with Ghatkopar (East) Branch, Mumbai and 4 Navyug Market Gaziabad to render the execution of any decree likely to be passed by the Learned Court infructuous. He also submitted that the defendant / OP has also removed its men, servants and agents from the project site and has stopped visiting the project site and from the conduct of the defendant /OP it is clear that it intends to delay the plaintiff / petitioner in pursuing the reliefs. He also submitted that the defendant /OP has disposed of the whole or part of his assets and also intends to dispose of the remainder to delay the execution of any decree that may be passed against it. The Learned Advocate also submitted that a *prima facie* case has been made out by the plaintiff / petitioner so as to have an order of ad interim injunction. He also submitted that unless the defendant / OP is restrained from operating its bank account without setting aside a sum of Rs.6,07,78,464/-, the plaintiff / petitioner will suffer irreparable loss and injury.

10. I have heard the Learned Advocate and have also perused the injunction application and have also gone through the documents annexed with the plaint as well as the injunction application. The plaintiff / petitioner has prayed for an order for attaching the bank accounts of the OP / defendant. The prayer in my considered view is in essence in the nature of attachment before judgment. In a suit for recovery of money there is no scope of granting an order of ad interim injunction restraining the OP/ defendant from operating its bank account unless the requisite condition of obtaining an order of attachment before judgment in terms of Order 38 Rule 5 of the Civil Procedure Code are found to be present. *Prima facie* the plaintiff / petitioner has failed to satisfy the court that the requirements of Order 38 Rule 5 has been satisfied. That apart the suit is for recovery of money. In the event the plaintiff / petitioner succeed in the suit, it can be compensated in terms of money. No irreparable loss and injury will be caused to it on account thereof. Therefore at this stage I am not inclined to pass any ad interim injunction. The balance of

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convenience and inconvenience is against grant of such ad interim injunction.

Hence, It is,

**ORDERED**

That the prayer for ad interim injunction is rejected at this stage.

Issue notice upon the OP / defendant.

To date (17/01/2024).

Let a copy of this order sheet be sent to the Learned Advocate on record of the plaintiff / petitioner for necessary compliance.

**Dictated and Corrected by me:**

**Judge, Commercial Court  
At Asansol**

**Judge, Commercial Court  
At Asansol**