

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA No. GA-COM/2/2021
[OLD NO. CS/66/2021]
In CS-COM/257/2024**

**MICKY METALS LIMITED
VS
NATIONAL STEEL AGENCY AND
ORS**

**For the plaintiff : Mr. Shuvasish Sengupta, Adv.
Mr. Bhaskar Diwedi, Adv.
Mr. Hareram Singh, Adv.
Mr. Saptarshi Rajan Chatterjee, Adv.
Mr. Arghodip Das, Adv.**

**For the defendant No. 2 : Mr. Shaswat Nayak, Adv.
Mr. Indradeep Basu, Adv.
Ms. Siddhi Agarwal, Adv.**

Heard on : February 25, 2026

**Judgment on : February 25, 2026
[In Court]**

ANIRUDDHA ROY, J :

FACTS:

1. This is a commercial suit.

2. The defendant No. 2 has taken out the instant application, *inter alia*, praying for rejection of plaint, alternatively dismissal of the suit along with other consequential reliefs.
3. The plaint case is that the plaintiff has sold and delivered goods to defendant No. 1, a registered partnership firm of which the defendant Nos. 2 and 3 are the partners. The other plaint case is that the defendants have accepted and received the goods but has not paid the total sale consideration, as agreed upon by and between the parties.
4. The plaint is available at **page 16** to the application. The plaint states that in or around 2014, the plaintiff commenced supply of goods to the defendants and payment on account of such supply was made by the defendants intermittently to the plaintiff. The plaintiff states that the parties maintained a mutual, open, current and running accounts. The defendant No. 1 received the goods without any protest and has consumed and utilized the same. No complaint was ever brought to the notice of the plaintiff with regard to the quality and quantity of the goods sold and supplied by the plaintiff. The tax invoices were raised, the same would appear at **page 28** to the application.
5. The plaint further states that the defendants delayed in making payment and after adjusting all amounts paid by the defendants from time to time, the plaintiff states a sum of **Rs.10,24,680/-** was due and payable by the defendants to the plaintiff on

account of the goods sold and delivered as on **December 19, 2015**. The statement in the plaint further shows in acknowledgement of its liability, the defendant No. 1 had tendered a cheque dated **July 27, 2020** for a sum of **Rs.10,24,680/-** in discharge of its obligation. The plaint states that issuance of the said cheque amounts to an admission of liability on the part of the defendants towards the plaintiff. Upon presentation of the said cheque was dishonored, the plaintiff has initiated the appropriate criminal case.

6. **Paragraph 15** of the plaint shows that the principal claim made by the plaintiff is for a sum of **Rs.9,99,680/-** along with interest.
7. In the premises, the plaintiff has filed the instant suit with the reliefs mentioned therein.
8. The defendant No. 2 being the applicant has applied for rejection of plaint on the ground that the claim of the plaintiff, *ex facie* is barred by law of limitation.

SUBMISSIONS:

9. Mr. Shaswat Nayak, learned Advocate appearing for the defendant No. 2/applicant has placed the plaint and drawn attention of this Court to diverse annexures appended thereto. Referring to the averments made in the plaint, learned Advocate appearing for the applicant submits that even if the statement in the plaint is taken to be true, the liability to

make payment by the defendants was within **30 days** from the date of invoices raised by the plaintiff.

10. He then refers to the date **December 19, 2015** mentioned in **paragraph 10** of the plaint where the plaintiff has pleaded that a sum of **Rs.10,24,680/-** was due and payable by the defendants to the plaintiff on account of the goods sold and delivered as on **December 19, 2015**.
11. Learned Advocate for the defendant no.2/applicant submits that even if the said **30 days** period is calculated then also the payment becomes due sometime in **January 2016** whereas the instant suit has been filed in **2021** much beyond the period of limitation. He further submits that according to the plaint case, the supply has commenced in **2014** and the goods were supplied in between **March 2014 to December 2015** and the invoices were raised contemporaneously. Therefore, in **2021** the plaintiff has filed the suit which is *ex facie* barred by limitation.
12. Referring to the statement made in **paragraph 11** to the plaint, learned Advocate for the applicant submits that period of limitation has been calculated by the plaintiff from the dishonour of cheque dated **July 27, 2020**, which according to the learned Advocate for the applicant is far beyond the period of limitation since the goods were supplied during the period **2014 and 2015**. Beyond the period of limitation even if an

admission and/or acknowledgement of dues comes allegedly from the defendants, the same cannot be considered for the purpose of enlargement of period of limitation.

13. In the light of the above, learned Advocate for the plaintiff prays for rejection of plaint summarily.
14. Mr. Subhasish Sengupta, learned Advocate appearing for the plaintiff submits that at the threshold, he denies that the plaint and/or claims of the plaintiff is barred by law of limitation.

DECISION:

15. After hearing the rival contentions of the parties and on perusal of the materials on record, this Court at the threshold, reiterates the settled principles of law while adjudicating the application for rejection of plaint, the statement made in the plaint has to be taken as true, correct and sacrosanct.
16. When point of limitation has been taken up as the point of demurer in a suit at the threshold, by way of summary application, meaningful reading of plaint must, *ex facie*, show that the suit is barred by limitation.
17. **Paragraphs 10 and 11** on which much reliance has been placed by the defendant are quoted below:-

“10. However, the business with the defendants dwindled over a period of time and the said

defendants also started delaying in making timely payments in respect of the supplies already effected by the plaintiff and after adjustment of all amounts made by the defendants from time to time, a sum of Rs.10,24,680/- (Rupees ten lakhs twenty four thousand six hundred eighty only) was due and payable by the defendants to the plaintiff on account of such goods sold and delivered as on 19th December, 2015. The plaintiff has repeatedly requested the defendant to pay the said sum along with accrued interest.

11. In acknowledgement of its liability the Defendant No. 1 had tendered a cheque bearing no. 022542 dated 27th July, 2020 drawn on State Bank of India, Nager Bazar Branch Kolkata for a sum of Rs.10,24,680/- in discharged of its obligation. Therefore, the outstanding dues of the defendants liable to be paid to the Plaintiff is clearly admitted.”

18. On a meaningful reading of the plaint as a whole and the said two paragraphs quoted above, it appears to this Court that, statement made in the plaint would show that the defendants have made part payment from time to time and after giving an adjustment thereto, the plaintiff has made its claim in the plaint, which according to the plaintiff was due and payable by the defendants. The goods might have been delivered, as contended in the plaint during **2014 and 2015** but the plaint

does not show that when the last part payment has been made.

19. The plaint further shows that the plaintiff pleaded that a cheque for sum of **Rs.10,24,680/-** issued by the defendants dated **July 27, 2020** had been dishonoured.
20. Though such submission has been denied on behalf of the defendant No. 2/applicant but in any event, the defence of the defendant No. 2 would appear from the written statement, which has already been filed.
21. Be that as it may, on a meaningful reading of the statements from the plaint, in the light of the plea taken by the defendant No. 2 in its application for rejection of plaint, it appears to this Court that, the issue of limitation in this case is definitely not, *ex facie*, clear from the plaint and is a mixed question of law of facts, which cannot be decided summarily, at this stage, in an application for rejection of plaint.
22. However, it is made clear that this Court has not gone into the merits of the defence taken by the defendant No. 2 on the score of limitation, neither this Court has expressed any opinion on the merits of the same.
23. The point shall remain open for the defendants to take at the time of trial, if the suit travels up to the stage of trial.

24. In view of foregoing discussions and reasons, this application being **IA No. GA/2/2021** stands **dismissed**, without any orders as to costs.

(ANIRUDDHA ROY, J.)

Sbghosh