

**IN THE HIGH COURT AT CALCUTTA  
(Ordinary Original Civil Jurisdiction)  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**IA No: GA 4 of 2021**

**In CS 112 of 2020**

**Evergreen Dealer Private Limited**

**Versus**

**Gujarat Eco Textile Park Limited**

Mr. Suman Dutt

Ms. Manju Dutta

Mr. Rajesh Upadhyay

Ms. Surabita Biswas

... For the Plaintiff.

Mr. Shuvasish Dasgupta

Mr. Balarko Sen

Mr. Soumyajit Mishra

... For the Defendant.

Hearing Concluded On : 07.08.2023

Judgment on : 31.08.2023

**Krishna Rao, J.:**

1. The defendant has filed the instant application being G.A No. 4 of 2021 for dismissal of the suit or for rejection of the plaint. The plaintiff has filed the suit praying for decree for a sum of Rs. 96,02,719/- along with consequential reliefs.
2. The defendant contended that as per the claim of the plaintiff, the dispute is arising out of transaction of financiers and borrowers and therefore, the suit filed by the plaintiff falls under “commercial dispute” as defined under Section 2(1)(c) of the Commercial Courts Act, 2015.
3. Mr. Shuvasish Sengupta, learned Advocate representing the defendant submitted that as per Section 7 of the Commercial Courts Act, 2015, all the suits and applications relating to commercial disputes of a specified value filed in a High Court having Ordinary Original Civil Jurisdiction shall be heard and disposed of by the Commercial Division of the High Court.
4. Mr. Sengupta submitted that as per Section 2(1)(i) of the Commercial Courts Act, 2015, the ‘*Specified Value*’ in relation to commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with Section 12 which shall not be less than three lakh rupees or such higher value, as may be notified by the Central Government.

5. Mr. Sengupta submitted that by a Notification dated 20<sup>th</sup> March, 2020, the Government of West Bengal in terms of Sub-Section (1A) of Section 3 of the Act of 2015 has specified the pecuniary jurisdiction, with immediate effect and as per the Notification, the value of the commercial disputes in case of Commercial Division of the High Court, Calcutta is amounting to a sum exceeding Rs. 10,00,000/-.
6. Mr. Sengupta submitted that the instant suit is related to a commercial dispute and is arising out of a transaction as mentioned in Section 2(1)(c) of the Commercial Courts Act, 2015 having specified value of Rs. 96,02,719/-.
7. Mr. Suman Dutt, learned Advocate representing the plaintiff submits that the application filed by the defendant is misconceived and is liable to be dismissed.
8. Mr. Dutt submitted that it is the specific case of the plaintiff that as per the request of the defendant company, the plaintiff lent an advance amount of Rs. 36,00,000/- to the defendant by way of RTGS on 30<sup>th</sup> December, 2011 and the defendant agreed to repay the loan amount to the plaintiff with interest at the rate of 12% per annum.
9. Mr. Dutt submitted that on 13<sup>th</sup> December, 2012, the defendant had paid an interest amount of Rs. 48,865/- after deducting TDS. He submits that the defendant has also issued balance confirmation for the financial year 2011-2012, 2013-2014, 2015-2016 and 2016-2017 confirming the said amount.

- 10.** Mr. Dutt submits that the plaintiff has filed an application for summary judgment and only to delay the hearing of the said application, the defendant has filed the present application. He further submits that the transaction between the plaintiff and the defendant is not covered under any of the clauses of the Section 2 (c) of the Act of 2015.
- 11.** Mr. Dutt submits that there are no mercantile documents entered between the parties and the transaction between the parties is not with respect of any commercial transaction and the loan provided by the plaintiff to the defendant is simple money lent and advance given by the plaintiff to the defendant.
- 12.** Section 2 (1) (c) (i) of the Commercial Courts Act,2015 reads as follows :
- “2(c) “commercial dispute” means a dispute arising out of— (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.”*
- 13.** As per the case of the plaintiff, the plaintiff is a company registered under the provisions of the Companies Act, 1956 and is engaged in the trading business and the defendant company carries the business of construction of sewerage and water treatment project. The specific case of the plaintiff is that as per the request of the principal officers and representative of the defendant company, the plaintiff had lent an advanced amount of Rs. 36,00,000/- to the defendant.

14. The defendant has relied upon the judgments reported in **2023 SCC Online Del 1808 (Amanpreet Kohli -vs- Pankaj Dayal)**, **2022 SCC Online Cal 126 (Padma Logistics and Khanij Pvt. Ltd -vs- Ideal Unique Realtors Pvt. Ltd.)** and **2023 SCC OnLine Cal 165 (Subrata Kumar Ghose -vs- Rites Limited and Another)** but in all the cases there is a written contract between the parties and the courts held that the dispute is of commercial nature and thus the fact and circumstances of the cases referred by the defendant and the present case is distinguishable as in the present case there is no contract or any written documents executed between the parties for the loan paid by the plaintiff to the defendant and the transaction between the plaintiff and the defendant is simple money lent and advanced.
15. The plaintiff has relied upon the judgment reported in **MANU/WB/0547/2021 (Ladymoon Towers Private Limited -vs- Mahendra Investment Advisors Private Limited)** wherein the Coordinate Bench of this Court held that:

*“The definition section of the 2015 Act only contemplates a "commercial dispute" and not any other form of dispute where the basis of disagreement between the parties has a non-commercial cause. The gradation of disputes in Section 2(1)(c) taking into account all possible forms of agreements from which a "commercial dispute" may arise, makes it clear that the framers of the statute gave emphasis on the commercial flavour of the transaction as opposed to agreements entered into between parties without a commercial purpose. The qualification of the person being a Merchant, Banker, Trader or Financier imparts an unimpeachable commercial flavour to the transaction and the resulting dispute. The Insolvency and Bankruptcy Code,*

*2016, for example, defines a dispute from a broader perspective as any suit or arbitration proceedings relating to an existing debt - Section 5(6)(a). The commercial purpose would generally mean a transaction by which a person's commercial or economic interests may be advanced and would result in an economic benefit to that person. It would not include an agreement where profit-making is an incidental outcome of the transaction or may happen by accident. Although, a "hand loan", for example, is given by a person or entity to another with the expected outcome of the principal sum being returned with interest, the essential commercial flavour in such a loan may be lost by reason of the informal terms under which the money is lent and advanced and the consequent uncertainty which may result therefrom. The requirement of fixing the transaction within the ambit of Section 2(1)(c)(i), namely, between the named classes of persons can be construed being in aid of what the Act intends to cut down, namely, unnecessary wastage of time on ascertaining whether a dispute is a commercial dispute. The exhaustive categories of agreements in 2(1)(c)(i) - (xxii) leaves no doubt that the 2015 Act seeks to bring within its fold an inclusive range of disputes where the underlying purpose of the transaction is a commercial interest of the parties."*

- 16.** As to what would constitute a "commercial dispute" under the option contemplated in Section 2(1)(c) of the Act is important since courts generally tend to accept the listing of the matters before the Commercial Division or Commercial Appellate Division of the High Court, as correct. The categorisation of the matter before these benches are usually done by the concerned department or by the occasional assessment by the concern court where a party takes objection to such classification. The two indices which form the basis of the decision as to the classification of a matter are (a) whether the dispute is a

“*commercial dispute*” and if held to be in affirmative (b) whether the Specified Value of the subject matter of the commercial dispute, the suit is to be heard by Commercial Dispute. Since 2015 Act prescribes a different procedural regime for adjudication of commercial matters in line with the statement of Objects and Reasons of the Act, it is only desirable that a court undertakes an enquiry in a fit cases as to whether the matter should be listed before the Commercial Division before going into the merits of the case.

17. In the present case, it has been found that the plaintiff has rightly filed the suit before this Court as none of the criteria mentioned in Section 2(1)(c)(i) of the Act has been full filled and thus the C.S. No. 112 of 2020 cannot be rejected.
18. **G.A No. 4 of 2021** is thus **dismissed**.

**(Krishna Rao, J.)**