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

Judgment (2)

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

**IA No. GA/2/2022**
**[OLD NO CS/223/2021]**
**In CS-COM/323/2024**

**M/S CONSOLIDATED INFRACON PRIVATE LIMITED**
**VS**
**LAKSHMAN PRASAD AGARWAL**

**For the plaintiff** : **Mr. Kumarjit Banerjee, Adv.**
**Ms. Sanchari Chakraborty, Adv.**
**Mr. Sourojit Dasgupta, Adv.**
**Ms. Sayari Barman, Adv.**

**For the defendant** : **Mr. Chayan Gupta, Adv.**
**Mr. Anujit Mookherji, Adv.**
**Mr. Rittick Chowdhury, Adv.**
**Mr. Prithish Chandra, Adv.**
**Ms. Arpita Dey, Adv.**
**Mr. Uday Sharma, Adv.**
**Ms. Kaushani Dey, Adv.**

**Heard on** : **October 6, 2026**

**Judgment on** : **October 6, 2026**
**[In Court]**

**ANIRUDDHA ROY, J :**

***FACTS:***

**1.** This is an application filed by the plaintiff praying for judgment upon admission.

**2.** The plaint case is that, the defendant is engaged in the business of trading dry fruits, dates, pulses and spices. In or around last week of **March 2018**, the defendant availed of a loan for a sum of **Rs.50,00,000/-** from the plaintiff. The loan was due to be repaid within a period of **61 days** which would carry interest at the rate of **9%** per annum. The amount was paid by the plaintiff to the defendant in tranches mentioned in **paragraph 3** of the plaint.

**3.** Receipt of the said loan was acknowledged by the defendant. The defendant further in acknowledgement and admission of its liability, issued a post dated cheque dated **June 1, 2018** in favour of the plaintiff in order to discharge the said liability. Subsequently, repayment period for the aforesaid period was extended by the parties on mutual agreement under a letter dated **June 1, 2018**. The repayment period was extended for **124 days** till the month of **October 2018**. In furtherance of the mutual agreement and in discharge of the aforesaid liability, as stated in the plaint, the defendant replaced previous post dated cheque by a subsequent cheque dated **October 3, 2018** in favour of the plaintiff. Subsequently, upon expiry of the aforesaid period, the plaintiff, at the request of the defendant, withheld the said post dated cheque till the month of **December 2018**. The plaintiff on **December 6, 2018** deposited cheque and the said cheque was

dishonored on presentation, for the reason *drawer's signature differs.* The plaintiff immediately communicated such fact to the defendant and demanded the disbursement of the admitted loan amount. The plaint states that despite assurance, no step was taken by the defendant in this regard. Plaintiff raised its demand by a letter dated **December 31, 2018** issued through its learned Advocate. The postal track report shows that the demand was received by the defendant.

**4.** Even after receipt of the said demand dated **December 31, 2018**, the defendant failed and neglected to pay a sum of **Rs.50,00,000/-**.

**5.** Ultimately, the plaintiff has filed the suit claiming a principal amount of **Rs.50,00,000/-** along with interest, as mentioned in **paragraph 14** of the plaint.

**6.** In the above circumstance, the plaintiff claims there is an unequivocal admission of the debt and accordingly, prays for decree/judgment upon admission.

**7.** Parties have filed and exchanged their respective affidavits. Parties have also filed their respective written notes.

***SUBMISSIONS:***

**8.** Mr. Kumarjit Banerjee, learned Advocate being ably assisted by Mr. Sourojit Dasgupta, learned Advocate appearing for the plaintiff, at the threshold, submits that the receipt of the said

sum of **Rs.50,00,000/-** has never been denied by the defendant and on the contrary, has been admitted repeatedly in an unequivocal manner. Referring to an undated letter of the defendant, **Annexure "A"** at **page 21** to the application, Mr. Banerjee submits that the receipt of the sum of **Rs.50,00,000/-** has been categorically and unequivocally admitted and the defendant in admission and acknowledgment and for the purpose of discharging its existing debt/liability towards the repayment of the said amount, had issued a post dated cheque dated **June 1, 2018**.

**9.** Since, the loan amount could not be repaid within the agreed tenure, as agreed by the defendant, a fresh repayment schedule was agreed upon mutually by and between the parties. Referring to a letter of the defendant dated **June 1, 2018, Annexure-"B"** at **page 22** to the application, Mr. Kumarjit Banerjee, learned Advocate appearing for the plaintiff submits that through the said letter, the defendant further unequivocally accepted the repayment schedule, as mutually agreed specifically and unequivocally its liability to pay a sum of **Rs.50,00,000/-** which was due for repayment by the defendant. It was further agreed that the defendant would pay interest **till May 31, 2018**. In an unequivocal admission of its liability and to secure the payment to be made to the plaintiff, the defendant further placed another

post dated cheque dated **October 3, 2018** for a sum of **Rs.50,00,000/-**, in discharge of its existing debt/liability towards the repayment of the said inter-corporate deposit of **Rs.50,00,000/-**. This cheque is available as **Annexure "C"** at **page 23** to the application. Upon presentation, this cheque was dishonoured and the dishonour memo issued by the bank is available as **Annexure "D"** at **page 24** to the application. The reason shown for the dishonour was that *drawer's signature differs*.

**10.** On December 31, 2018, the plaintiff through its Advocate had served a demand notice, **Annexure "E"** at **page 25** to the application. The defendant did not reply to the said demand notice.

**11.** Mr. Banerjee, learned Advocate appearing for the plaintiff submits that in the event, the plaintiff unimpeachably demonstrates that the claim of the plaintiff stands unequivocally admitted, without any qualification or objection of whatsoever nature, the Court in exercise of its discretion, shall pass a judgment and decree upon admission to the extent of the said admitted dues. In support, Mr. Banerjee, has placed reliance on two decisions of this Court which are:

***(i) In the matter of: Skipper Limited vs. Prabha Infrastructure Private Limited rendered in IA No.***

***GA-COM/1/2024 in CS-COM/712/2024 on March 12, 2026 and***

***(ii) In the matter of: Eastern Trade Centre vs. Macmet India Private Limited reported at 2026 SCC OnLine Cal 11388, decided on July 9, 2026.***

**12.** With reference to the said two judgments, referred above, Mr. Banerjee submits if the Court finds that the defendant has unequivocally and clearly admitted both the transaction between the parties and the quantum payable to the plaintiff, a judgment upon admission would automatically follow. In the instant case, the defendant has specifically admitted the transaction that it had received the loan for a sum of **Rs.50,00,000/-** from the plaintiff and by issuing the said post dated cheques and the relevant letter, the defendant had specifically admitted the quantum in due discharge and its liability. Even the defendant has also admitted that they mutually extended the period for repayment.

**13.** The defendant has not raised any objection or replied to the demand notice, issued by the plaintiff.

**14.** In the light of the above submissions, Mr. Banerjee, prays for judgment upon admission.

**15.** Mr. Chayan Gupta, learned Advocate appearing for the defendant, at the threshold, has taken the point of maintainability of the suit principally on the ground that the

transaction between the parties is not a *commercial transaction* and there is no *commercial dispute* within the meaning of **Section 2(1)(c)** of the **Commercial Courts Act, 2015** (hereinafter, "**CC Act**").

**16.** With specific reference to **paragraph 1** of the plaint, he submits that the plaint states that the plaintiff has been engaged in the business of warehousing and not in money lending.

**17.** Mr. Chayan Gupta, learned Advocate appearing for the defendant submits that none of the transactions described within the meaning of **Section 2(1)(c)(i)** of **CC Act** has been stated by the plaintiff under which the alleged loan was granted to the defendant. The plaintiff is neither a merchant nor a trader nor a banker nor a financier but carrying business of warehousing. Therefore, on plain reading of the plaint, it appears that the dispute between the parties cannot be defined as a ***commercial dispute*** as defined under the **CC Act** and hence, this commercial suit is not maintainable.

**18.** Mr. Chayan Gupta, then submits that if a trader or a merchant lends money, it is not its ordinary transaction and thus, it cannot be treated within the meaning of *commercial transaction* and a *commercial dispute* under CC Act.

**19.** The law is well settled that the provisions of CC Act shall be construed strictly and no liberal construction is permitted. In support, he has relied upon the following decisions:

**(i)** ***In the matter of: Ladymoon Towers Private Limited vs. Mahendra Investment Advisors Private Limited, reported at 2021 SCC OnLine Cal 4240;***

**(ii)** ***In the matter of: Santosh Kumar Bhadani vs. Om Prakash Agarwala, reported at AIR 2023 Cal 282;***

**(iii)** ***In the matter of: Meena Vohra vs. Master Hosts Pvt. Ltd. & Ors., reported at 2025 SCC OnLine Del 1758 and***

**(iv)** ***In the matter of: Y.K. Mohanrao and Ors. Vs. J. N. Jahath Ramjee and Ors., reported at MANU/TN/7392/2022.***

**20.** Mr. Chayan Gupta, learned Advocate appearing for the defendant on the maintainability of the suit within the meaning of *commercial suit*, has referred to the plaint and submits that the plaintiff itself has admitted that it is engaged in warehousing business and not in any financial business.

**21.** Referring to the supplementary affidavit filed by the plaintiff, Mr. Gupta submits that the Memorandum and Articles of Association of the plaintiff company has been disclosed, the Objects Clause whereof does not show that the plaintiff carries

on any business in relation to advancing finances. The supplementary Object Clause, though mentions that the plaintiff, *inter alia,* carries on business as a financier but since the main Object Clause does not mention the same, no cognizance can be taken into. He further submits that the provisions of the CC Act should be construed strictly and in the light of enactment of such Act, the amendment of **Civil Procedure Code, 1908 (**hereinafter, **CPC)** shall also have to be taken in its strict interpretation. In support he has relied upon two following judgments:

***(i) In the matter of: Commissioner of Customs, Bangalore vs. Spice Telecom Bangalore, reported at (2006) 10 SCC 704 and***

***(ii) In the matter of: Seksaria Biswas Sugar Factory Ltd. vs. Commissioner of Income-Tax, Bombay, reported at AIR 1950 Bom 200***

**22.** **Order XI of CPC**, as amended, deals with disclosure of documents by the parties. Such provision also provides that unless the defendant applies for disclosure of additional document showing the reasons why the same could not be disclosed at the time of filing of its written statement and unless, the Court is satisfied with such reasons shown by the defendant, such additional documents cannot be taken into record as part of the commercial suit. In the instant case, the

defendant has not even taken out any application under the provisions of **Order XI of CPC** seeking to disclose the said Memorandum and Articles of Association of the company as an additional document. Therefore, no cognizance can be taken thereupon. In support of the said proposition, he has relied upon the following judgments:

(i) ***In the matter of: Sudhir Kumar vs. Vinay Kumar G.B., reported at (2021) 13 SCC 71;***

(ii) ***In the matter of Khanna Rayon Industries Pvt. Ltd. vs. Swastik Associates and Others, reported at 2023 SCC OnLine Bom 1372***

(iii) ***In the matter of: Star Paper Mills vs. Eastern Coalfields Limited, reported at 2023 SCC OnLine 841;***

(iv) ***In the matter of: Levitate Mobile Technologies Private Limited vs. Standard Chartered Bank, reported at (2025) 1 HCC (Del) 442;***

(v) ***In the matter of: Levitate Mobile Technologies Private Limited vs. Standard Chartered Bank & Anr., reported at 2026 SCC OnLine SC 1300 and***

(vi) ***In the matter of: M/s. Sri Vishnu Constructions vs. The State of Telengana & Ors., dated November 14, 2025 rendered in Civil Revision Petition Nos. 2677 and 2572 of 2025.***

**23.** On maintainability of the suit, Mr. Gupta, learned Advocate on behalf of the defendant further submits that the suit is also barred under the provisions of the **Bengal Money Lenders Act, 1940** (hereinafter, **BML Act**). Since the plaintiff does not have the money lending licence within the meaning of **Section 13 of the BML Act** and in absence thereof, the plaintiff could not have carried money lending business, which operates as a statutory bar. Therefore, the plaint is barred by law under the provisions of **BML Act**. In support, he has relied upon the following decisions:

***(i) In the matter of: Dutta Vinimay Pvt. Ltd. vs. Dinesh Singh, Judgment and Order dated April 28, 2026 rendered in CS-COM 76 of 2025 and***

***(ii) In the matter of:Smt. Sudha Kankaria vs. Smt. Bhavya Bothra, judgment dated May 18, 2026 rendered in APDT/2/2026.***

**24.** On merits of the application, Mr. Chayan Gupta, learned Advocate for the defendant submits that there is no admission on the part of the defendant to pay any amount to the plaintiff. Referring to the dishonour memo at **page 24** of the application, he submits that the subject cheque which is dated **December 6, 2018**, was never issued by the defendant. In fact, the plaintiff has not shown any document on the basis whereof, the said cheque was issued. The cheque was

dishonoured not on the ground of insufficient fund but on the ground that the signature did not match. This cheque was not referred to either in the document at **page 21** or at **page 22** of the application and as such, the said cheque cannot be accepted as an admission of debt or liability in discharge of alleged obligation of the defendant. This is not the cheque at **page 23** of the application dated **October 3, 2018**.

**25.** The defendant states that the amount was not by way of any loan transaction that was paid by the plaintiff allegedly but as an investment of the plaintiff in the business of the defendant for clearing a shipment of dry fruits and pulses for sale to one RSP Agri Private Limited where the defendant was to act as the commission agent and to receive commission.

**26.** Mr. Gupta, further submits that the defendant No.1 did not reply to the demand letter of the plaintiff dated **December 31, 2019** at **page 25** of the application but the defendant immediately thereafter, filed a suit. Admissions can be explained and has been explained by the defendant prior to filing of the instant suit by the plaintiff, when the suit was filed by the defendant before the Learned City Civil Court at Calcutta being **Title Suit No. 1239 of 2019** (hereinafter, **City Civil Court suit**). By filing the said suit, the defendant had refuted the claim of the plaintiff. The positive case of the

defendant in the City Civil Court suit, is the defence of the defendant in the written statement filed in the instant suit.

**27.** Mr. Chayan Gupta, learned Advocate appearing for the defendant further submits that out of the total sum of **Rs.50,00,000/-** given by the plaintiff, **Rs.2,83,100/-** was agreed as the commission and the balance **Rs.47,46,900/-** was paid to RSP for purchasing dry fruits and pulses. The nature of actual transaction has not been stated by the plaintiff in its plaint but the same has been stated by the defendant in its written statement. Therefore, unless, a properly constituted trial is held in the suit, the alleged liability of the defendant, if any, cannot be ascertained. There is no clear, unequivocal or unambiguous admission on the part of the defendant, just because the money had flown from the account of the plaintiff to the account of the defendant. It is a fit case for trial. In support, he has relied upon the following decisions:

(i) ***In the matter of: B.L. Kashyap and Sons Limited vs. JMS Steels and Power Corporation and Another, reported at (2022) 3 Supreme Court Cases 294 and***

(ii) ***In the matter of: P.P.A. Impex Pvt. Ltd. vs. Mangal Sain Metal, reported at 2009 SCC OnLine Del 3866.***

**28.** He further submits that once there is no clear, unambiguous and unequivocal admission on the part of the defendant, with the conscious admission of liability, it is not a fit case for judgment upon admission. In support, he has relied upon the following decisions:

***(i) In the matter of: Vathsala Manickavasagam & Anr. Vs. N. Ganesan & Ors., reported at (2013) 9 SCC 152;***

***(ii) In the matter of: Geo Group Communications Inc. vs. IOL Broadband Limited, reported at (2010) 1 SCC 562;***

***(iii) In the matter of: Charanjit Lal Mehra & Ors. Vs. Kamal Saroj Mahajan & Anr., reported at (2005) 11 SCC 279;***

***(iv) In the matter of: Uttam Singh Duggal & Co. Ltd. vs. United Bank of India & Ors., reported at (2000) 7 SCC 120 and***

***(v) In the matter of: Rajesh Mitra alias Rajesh Kumar Mitra & Anr. Vs. Karnani Properties Ltd., reported at 2024 SCC OnLine 2607.***

**29.** Mr. Chayan Gupta, learned Advocate appearing for the defendant then submits that in the facts of this case, since the alleged liability of the defendant has been denied and disputed by the defendant and since there is no unambiguous and

clear admission of indebtedness by the defendant towards the plaintiff, neither the record shows that the claim raised by the plaintiff is admittedly payable by the defendant, the defendant cannot be directed to secure the claim of the plaintiff. He submits that an unsecured claim of the creditor cannot be converted into a secured claim. In support, he has relied upon the following decisions:

(i) ***In the matter of: Harleen Jairath vs. Prabha Surana & Ors., reported at (2019) 4 CHN 412 and***

(ii) ***In the matter of: Raman Tech & Process Engg. Co. & Anr. vs. Solanki Traders, reported at (2008) 2 SCC 302.***

**30.** **In reply**, Mr. Kumarjit Banerjee, learned Advocate appearing for the plaintiff has referred to the judgments relied upon on behalf of the defendant and submits that none of those judgments would apply in the facts and circumstances of this case. He submits that once, the defendant has issued cheque, upon presentation which had been dishonoured, in discharge of liability of the plaintiff, the indebtedness has been categorically and specifically admitted by the defendant. Hence, it is a fit case for judgment upon admission.

**31.** Mr. Banerjee, learned Advocate further submits that Memorandum and Articles of Association is a document available in the public domain which is not necessarily to be

disclosed by way of an additional disclosure and the Court can always look at it for complete adjudication of the dispute.

***DECISION:***

**32.** After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that a sum of **Rs.50,00,000/-** had flown from the account of the plaintiff to the account of the defendant. The nature of transaction, the plaintiff contends to be a loan and an advance of money to be repaid by the defendant, whereas the defendant contends on account of investment in a business for purchase on dry fruits. However, the letter dated **June 1, 2018** issued by the defendant, **Annexure-"B"** at **page 22** of the application shows that the said sum of **Rs.50,00,000/-** was advanced as **inter-corporate deposit** which is due for repayment by the defendant.

**33.** Before dealing with the rival contentions of the parties, at the threshold, this Court on reading of the provision under **Order XII Rule 6 of CPC** finds that unless there is a clear, undisputed and unambiguous admission, which can be accepted by the Court as an unimpeachable admission of indebtedness, no judgment or decree can be passed on admission. If the admission is qualified by some statements or by conduct of the parties or on the basis of existing materials

on records showing that the admissions are qualified, then it will not be a fit case for judgment upon admission. The law is well-settled that the provision under **Order XII Rule 6 of CPC** is not a mandate upon the Court. The power is discretionary and the provision is enabling by nature and character. Only upon exercise of judicious discretion, if the Court finds an unimpeachable and unqualified admission, on the part of the defendant, towards its indebtedness, then only, a judgment can be passed, summarily on admission of the defendant, otherwise the suit must stand for trial.

**34.** The defendant has raised the issue of maintainability of the suit principally on two counts, **firstly**, the dispute between the parties is not a *commercial dispute* within the meaning of CC Act and **secondly**, the suit is barred under the provision of **BML Act**. The issue relating to the commercial dispute whether the transaction is an ordinary transaction or not or whether there has been an existing contract between the parties for money lent and advanced and the transaction is covered within the meaning of commercial dispute, as defined under CC Act, in the facts and circumstances of this case, cannot be answered summarily and are required to be adjudicated on trial. It is a mixed question of law and facts.

**35.** A prior suit filed by the defendant being the said City Civil Court suit is also pending. Whether the contention of the

defendant in that prior City Civil Court suit is the defence of the defendant in the written statement filed in the instant suit are required to be gone into in detail, which can also not be adjudicated, at this summary stage.

**36.** In the affidavit in opposition filed by the defendant, specific case has been made out that the City Civil Court suit which was filed prior in point of time also involves the same issue and the plaintiff herein has been arrayed as defendant No. 25 therein. It is contended by the defendant that the issue in the instant suit is directly or substantially in issue in the City Civil Court suit. In the City Civil Court suit, the defendant on **September 18, 2019** had already obtained an interim order at **page 35** to the affidavit in opposition which was extended from time to time and is still subsisting. Under the said interim order passed in the City Civil Court suit, the defendants in that suit including the plaintiff herein were directed not to claim any amount from the plaintiff being the defendant herein in connection with the transaction of business, without due process of law. The plaintiff herein has not filed written statement in the City Civil Court suit. The record shows that the City Civil Court suit was of **2019** filed by the defendant, whereas the instant suit was filed by the plaintiff in **2021**, which was then renumbered and transferred before the Commercial Division of this Court. It, therefore,

appears to this Court that the plaintiff herein had allowed the interim order passed by the City Civil Court to continue. The scope and effect of both the suits are also required to be gone into in detail and the same can only be done during the trial of this suit.

**37.** In the facts of this case, it appears to this Court that the alleged admissions relied upon by the plaintiff at **pages 21, 22 and 23** including the demand notice dated **December 31, 2018** at **page 25** to the application, were all pre City Civil Court suit. When those documents were there in existence, the defendant had filed the City Civil Court suit. Thus, those documents cannot be taken without any qualification or as sacrosanct after the City Civil Court suit had been filed. In the facts of this case, the admissions alleged by the plaintiff as against the defendant are sufficiently qualified and accordingly, such an admission cannot be accepted as unambiguous and unequivocal by nature, within the meaning of Order XII Rule 6 of CPC.

**38.** The oral arrangement pleaded by the defendant whether is contrary to the written terms and the alleged letters of admission issued by the defendant, if admissible under **Sections 91 and 92 of the Evidence Act**, are *ex facie* mixed question of law and facts. Without holding a properly

constituted trial, such question cannot be decided, in a summary manner.

**39.** ***In the matter of: Skipper Limited (Supra)*** this Court held that admission of transaction of loan does not suffice and there must be a clear admission of the quantum of liability and an admission coupled with any qualifying statement will not be a clear or unambiguous admission, within the meaning of Order XII Rule 6 of CPC. Hence, the ratio of the judgment ***In the matter of: Skipper Limited (Supra)*** would not apply in the facts and circumstances of the instant case.

**40.** ***In the matter of*: *Eastern Trade Centre (Supra)*** this Court rejected the prayer for judgment upon admission but directed the defendant to secure the claim of the plaintiff. In that case, the defendant had received an arbitral award against a third party and the plaintiff contended that its claim in the suit was covered under that award and the defendant specifically agreed if the claim of the plaintiff is received by the defendant under the award, the defendant would pay the claim of the plaintiff. The instant case is not such and differs factually.

**41.** The relief being discretionary under **Order XII Rule 6 of CPC**, in the facts of this case, this Court is of the view that such discretion directing the defendant to secure the money, should also not be exercised, at this stage.

**42.** Insofar as, the Memorandum and Articles of Association of the Company is concerned, the same being a public document and is available in the public domain, this Court has every authority to look at it for complete justice on the issue. It is immaterial whether the document has been disclosed by the plaintiff or not or whether the plaintiff has applied for subsequent disclosure in compliance of **Order XI of CPC**, as amended. The Memorandum and Articles of Association is the constitution of a company. Law does not distinguish between the main object and ancillary object of a company. Therefore, if the Memorandum and Articles of Association permits a company to carry on business for lending and advancing money, it is sufficient for the company to carry on such business in due process of law.

**43.** Insofar as, the licence under **Section 13 of BML Act** is concerned, **Section 13 of the Act** specifically provides that the Court has a discretion to direct the company to carry on business for lending and advancing money by paying the necessary penalty as specified under this statute upon obtaining the necessary licence. In the facts of this case, whether the BML Act will apply on the plaintiff or not or the plaintiff has due licence under the BML Act are also **triable issue**.

**44.** In view of the foregoing discussions and reasons, this Court is of the view that no further and elaborate discussion is required on the judgments cited by the parties. The laws laid down therein are all settled propositions on the issue.

**45.** On the overall assessment of the facts and circumstances in the light of the existing materials on record, this Court is of the firm and considered view that it is not a fit case where a judgment shall be passed on admission against the defendant, at this summary stage or that the defendant shall be directed to secure the claim of the plaintiff, at this stage.

**46.** The suit **stands for trial.**

**47.** It is made clear that this Court has not gone into the merits of the rival contentions of the parties and all points are kept open to be urged, at the time of trial of the suit.

**48.** In view of the above, this application **IA NO. GA/2/2022** stands **dismissed,** without any order as to cost.

**(ANIRUDDHA ROY, J.)**

RS