

Assam Schedule VII: Form No. 132

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

**IN THE COURT OF THE CIVIL JUDGE, TEZPUR, SONITPUR**

*Present: Nabajit Bhatta. AJS. MA, LL.B.*

*Civil Judge, Tezpur, Sonitpur.*

**8<sup>th</sup> Day of July, 2020**

**MONEY SUIT NO. 34/2019**

**T & I Pvt. Ltd,**

A company registered under the Companies Act 1956

having Head Office at 19, R. N. Mukherjee Road,

Kolkata – 700001, West Bengal, India

Also at – Mission Chariali, Tezpur-784001

District – Sonitpur, Assam

Represented by -

One of the Directors Sri Gauravh Bagaria

Son of Sri Vijay Bagaria

-- Plaintiff

**-Vs.-**

**M/s Ankur Tea Industries**

Represented by Sri Manish Sharma,

2 No Chotta Hapjan, Makum Junction, Longswal,

District – Tinsukia, PIN -786170, Assam.

----- Defendant

The suit is coming for final hearing on 24.06.2020 in the presence of:

Mr. N. Sarma : Advocate for plaintiff.

None : Advocate for Defendant.

and having stood for consideration to this day, the court delivered the following Judgment.

### **JUDGMENT**

( A suit for recovery of money)

1. The plaintiff's case in a nutshell is that the plaintiff T & I Pvt. Ltd. is engaged in manufacturing of Tea Processing Machineries and Plant such as Vibro Sifters, Rotorvanes, CTCs, Googies, CFMs, Dryers, Heaters, Sharpening Machines, Industrial Fans etc.
2. That the defendant M/s Ankur Tea Industries is the manufacturer of CTC teas, represented by Manish Sharma, having the principal place of Business at 2 No. Chotta Hapjan, Makum Junction, Longswal, District-Tinsukia, PIN-786170, Assam.
3. That on 10-10-2009 the defendant company had placed an order for supply of CONTINUS FERMENTING MACHINE (CFM) and accordingly the plaintiff company had supplied the said machine worth Rs.9,58,654/- only vide its Invoice No.U9041.
4. That the defendant again on 10-10-2009 had placed an order for supply of KAIZEN 36" x 13" x 3 CUT (TRIPLEX) CTC, and accordingly the plaintiff company supplied the said machine worth Rs.1297859/-vide its Invoice No.U9042. The defendant had also placed order on 10-10-2009 for SIFTEA VIBRO SIFTER for Rs.87000/-, TIVANE 15" ROTORVANE for Rs.3,05,700/-, ELECTRICAL MOTORS FOR CTC MACHINE for Rs.1,27,400/-, GOOGIE GRANULATOR for Rs.97,500/-, ASSAM ROAD TRAVELS (FREIGHT FOR ROTORVANE) Rs.15000/- and finally on 27-09-2019 for HUMIDIFICATION FAN & PVC FILLS for Rs.1,29,259/- for a total amount of Rs.30,18,372/-, for supply for different machineries, plant and other related components from the plaintiff company and the plaintiff has been delivering the same to the defendant as and when placed the orders, to the full satisfaction of the defendant with written invoice.
5. That the defendant finally on 27-09-2019 has placed the demand order for the supply of HUMIDIFICATION FAN & PVC FILLS and as per demand of the defendant, the plaintiff immediately supplied the said HUMIDIFICATION FAN & PVC FILLS with Invoice No.G9224 worth Rs.1,29,259/-.
6. That the defendant on 27-09-2019 made a payment of Rs.1,29,259/- for the HUMIDIFICATION FAN & PVC FILLS through NEFT and the same was acknowledged by the plaintiff vide e-mail dated 07-10-2019 to the

defendant, and further the plaintiff reminded the defendant through the same e-mail that defendant is further liable to pay the overdue outstanding Rs.3,89,113/- only. That in this context the plaintiff has also sent a letter through registered speed post on 07-10-2019 to the defendant for clearing overdue outstanding.

7. That the defendant after much persuasion, since the year 2009 has made a payment of Rs.26,29,259/- out of Rs.30,18,372/- till 27-09-2019. That the last transaction had taken place on 27-09-2019. That as per transaction, books of account and from the ledger book, it is appeared that the defendant is liable to pay the sum of Rs.3,89,113/- only to the plaintiff as on date.
8. That after receipt of the e-mail dated 07-10-2019 of the plaintiff, one of the directors of the defendant company Sri Manish Sharma replied through e-mail dated 08-10-2019 that they have sent a registered reply-cum-notice regarding payment shown in the ledger and also requested the plaintiff to clear the matter from one Shiv Sankar Dutta etc. Thereby the defendant company acknowledged the liability towards the plaintiff by sending the e-mail dated 08-10-2019 to the plaintiff. However, the plaintiff company has not received any letter from the defendant as stated in the said e-mail so far, as such the plaintiff prays the Hon'ble court to direct the defendant to produce the said letter during the time of proceeding of the suit.
9. That under the above circumstances, the defendant has been trying to embezzle the said amount of Rs. 3,89,113/- to which the plaintiff is legally entitled. Thus, the defendant is liable to pay of Rs.3,89,113/- to the plaintiff. So, the plaintiff filed the suit for a money decree for realization of a sum of Rs. 3,89,113/- along with Rs.50,000/- as compensation for breach of contract amounting total of Rs.4,39,113/- only.
10. That the summons was held duly served on the defendant. As the defendant has failed to appeared, the suit has been ordered to be proceeded as ex-parte.
11. Thereafter the Director of the Plaintiffs company Sri Gauravh Bagaria as PW-1 has filed his evidence on Affidavit and stated that on 10-10-2009 the defendant company had placed an order for supply of CONTINUS FERMENTING MACHINE (CFM) and accordingly the plaintiff company had supplied the said machine worth Rs.9,58,654/- only vide its Invoice No.U9041. That the defendant again on 10-10-2009 had placed an order for supply of KAIZEN 36" x 13" x 3 CUT (TRIPLEX) CTC, and accordingly the plaintiff company supplied the said machine worth

Rs.1297859/-vide its Invoice No.U9042. The defendant had also placed order on 10-10-2009 for SIFTEA VIBRO SIFTER for Rs.87000/-, TIVANE 15" ROTORVANE for Rs.3,05,700/-, ELECTRICAL MOTORS FOR CTC MACHINE for Rs.1,27,400/-, GOOGIE GRANULATOR for Rs.97,500/-, ASSAM ROAD TRAVELS (FREIGHT FOR ROTORVANE) Rs.15000/- and finally on 27-09-2019 for HUMIDIFICATION FAN & PVC FILLS for Rs.1,29,259/- for a total amount of Rs.30,18,372/-, for supply for different machineries, plant and other related components from the plaintiff company and the plaintiff has been delivering the same to the defendant as and when placed the orders, to the full satisfaction of the defendant with written invoice. That the defendant finally on 27-09-2019 has placed the demand order for the supply of HUMIDIFICATION FAN & PVC FILLS and as per demand of the defendant, the plaintiff immediately supplied the said HUMIDIFICATION FAN & PVC FILLS with Invoice No.G9224 worth Rs.1,29,259/-. That the defendant on 27-09-2019 made a payment of Rs.1,29,259/- for the HUMIDIFICATION FAN & PVC FILLS through NEFT and the same was acknowledged by the plaintiff vide e-mail dated 07-10-2019 to the defendant, and further the plaintiff reminded the defendant through the same e-mail that defendant is further liable to pay the overdue outstanding Rs.3,89,113/- only. That in this context the plaintiff has also sent a letter through registered speed post on 07-10-2019 to the defendant for clearing overdue outstanding. That the defendant after much persuasion, since the year 2009 has made a payment of Rs.26,29,259/- out of Rs.30,18,372/- till 27-09-2019. That the last transaction had taken place on 27-09-2019. That as per transaction, books of account and from the ledger book, it is appeared that the defendant is liable to pay the sum of Rs.3,89,113/- only to the plaintiff as on date. That after receipt of the e-mail dated 07-10-2019 of the plaintiff, one of the directors of the defendant company Sri Manish Sharma replied through e-mail dated 08-10-2019 that they have sent a registered reply-cum-notice regarding payment shown in the ledger and also requested the plaintiff to clear the matter from one Shiv Sankar Dutta etc. Thereby the defendant company acknowledged the liability towards the plaintiff by sending the e-mail dated 08-10-2019 to the plaintiff. However, the plaintiff company has not received any letter from the defendant as stated in the said e-mail so far, as such the plaintiff prays the Hon'ble court to direct the defendant to produce the said letter during the time of proceeding of the suit.

12. The PW-1 has also stated that under the above circumstances, the defendant has been trying to embezzle the said amount of Rs. 3,89,113/- to which the plaintiff is legally entitled. Thus, the defendant is liable to pay of Rs.3,89,113/- to the plaintiff. So, the plaintiff filed the

suit for a money decree for realization of a sum of Rs. 3,89,113/- along with Rs.50,000/- as compensation for breach of contract amounting total of Rs.4,39,113/- only.

13. The PW-1 has exhibited some Documents.

- Ext.1 : Memorandum & Article of Association
- Ext.2 : Resolution of partners of T & I Pvt. Ltd. dated 10-10-2019
- Ext.3 : Account statement of Ankur Tea Industry dated 23-10-2019
- Ext.4 : Debtor Ledger T & I Pvt. Ltd. (2017-2018) dated 01-04-2017 - 10-10-2019
- Ext.5 : Notice to M/s Ankur Tea Industry through registered post A/D dated 07-10-2019
- Ext.6 : Reply of Notice though e-mail dated 08-10-2019
- Ext.7 : Invoice G9224 dated 04-10-2019
- Ext.8 : Advocate Notice dated 16-11-2013
- Ext.9 : Reply of defendant dated 30-11-2013
- Ext.10 : Debtor Ledger T & I Pvt. Ltd (2010-2011) dated 01-04-2010 - 31-03-2011
- Ext.11 : Debtor Ledger T & I Pvt. Ltd (2009-2010) dated 01-04-2009 - 31-03-2010
- Ext.12 : Requisition of Balance statement dated 04-12-2012
- Ext.13 : Final Reminder dated 11-03-2013
- Ext.14 : Invoice U1003 dated 16-04-2010
- Ext.15 : Invoice S/09/070 dated 02-03-2010
- Ext.16 : Invoice U9060 dated 16-02-2010
- Ext.17 : Invoice U9042 dated 28-12-2009
- Ext.18 : Invoice U9041 dated 25-12-2009
- Ext.19: Invoice U9079 dated 13-03-2010

14. The evidence given by the PW-1 as aforesaid oral and documentary has remained totally un rebutted. The defendant has failed to file Written Statement nor adduce evidence for denying to repay the balance amount. The defendant also failed to cross- examined the PWs. From the evidence oral and documentary adduced by the PW-1 it appears that the defendant purchased some materials from the plaintiff's company but failed to pay the balance outstanding amount in due time. So, the fact that the defendant is a defaulter in payment of the balance outstanding amount of Rs.3,89,113/- to the plaintiff and the claim of the plaintiff for recovery of balance outstanding amount of Rs.3,89,113/- as prayed for from the defendant are well established. However I have not considered for passing order for paying Rs.50,000/- as compensation amount to the plaintiff for breach of contract by the defendant as the plaintiff could not furnish evidence regarding any execution of deed of contract between them for supplying goods.

**ORDER**

The suit is accordingly decreed on ex-parte with cost.

The defendant is liable to pay the balance outstanding amount of Rs.3,89,113/- to the plaintiff. Hence, the plaintiff is entitled to realize the balance amount of Rs.3,89,113/- from the defendant.

Prepare the decree accordingly.

Given under my hand and seal of this court on the 8<sup>th</sup> day of July, 2020.

*Nabajit Bhatta.*  
*Civil Judge, Tezpur, Sonitpur,*

**APPENDIX.**

Exhibits of the Plaintiff.

- Ext.1 : Memorandum & Article of Association
- Ext.2 : Resolution of partners of T & I Pvt. Ltd. dated 10-10-2019
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- Ext.19 : Invoice U9079 dated 13-03-2010

Exhibits of the defendants :

Nil

WITNESSES

Plaintiff's witnesses:

PW-1: Sri Gauravh Bagaria.

Defendant's witnesses

None.

CIVIL JUDGE  
TEZPUR: SONITPUR