

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Justice Md. Ashraful Kamal

Civil Revision No. 5029 of 2023

With

First Miscellaneous Appeal No. 216 of 2022

Designtex Knitware Limited

-----Petitioner.

-Versus-

The Edinburgh Woollen Mill (E.W.M.)

-----Opposite party

(In Civil Revision No. 5029 of 2023)

The Edinburgh Woollen Mill (E.W.M.)

-----Appellant

-Versus-

Designtex Knitware Limited and others

----- For the respondents

(In F.M.A. No. 216 of 2022)

Mr. Intiaz Moinul Islam, Advocate

-----For the petitioner

Mr. Faisal Al-Mahmud, Advocate with

Mr. Saddam Hossain, Advocate

-----For the opposite party No.01

Mr. Md. Tazul Islam, Advocate

-----For the opposite Party No. 5

Mr. Md. Monjur Alam, Deputy Attorney General

-----For the state

(In Civil Revision No. 5029 of 2023)

Mr. Faisal Al-Mahmud, Advocate with

Mr. Saddam Hossain, Advocate

-----For the appellant

Mr. Intiaz Moinul Islam, Advocate

-----For the respondents.

(In F.M.A. No. 216 of 2022)

**Heard on: 03.03.2024, 12.03.2024,
21.04.2024, 16.05.2024, 30.06.2024,
08.07.2024, and judgment on: 27.08.2024.**

Md. Ashraful Kamal, J:

The aforementioned Civil Revision and the First Miscellaneous Appeal were taken up together and disposed of by a single judgment as they involved common questions of fact and law.

Brief facts necessary for the disposal of the Civil Revision is as follows:

The case of the Petitioner is that the Petitioner, along with seven other Plaintiffs, received purchase orders (POs) amounting to a total valuation of approximately USD 2,636,661.28 from UK-based buyer, Respondent No. 3, Peacocks Stores Limited, to manufacture RMG goods for export. Upon receipt of the aforementioned purchase orders, the Petitioner immediately procured raw materials, such as yarn and accessories, from various suppliers by opening several Back-to-Back L/Cs from the Petitioner's lien bank, Southeast Bank Limited, Dhanmondi Branch, Dhaka, Bangladesh. Thereafter, the Petitioner and the other Plaintiffs manufactured the garments as per the instructions of Respondent No. 1 and shipped all the RMG products on time, receiving part payment. Meanwhile, Barclays Bank (Respondent No. 8) provided a payment guarantee, but in reality, no such guarantee was established as per international commercial transaction norms. Regrettably, Barclays Bank participated in this fraud by issuing a letter of maturity, delivered by post rather than by SWIFT messaging, the mandatory method of communication when a bank acts as the collecting bank under the Uniform Rules for Collections (URC) 522.

Barclays Bank PLC communicated acceptance by post to the banks of the Petitioner and other Plaintiffs, stating that the bill relating to the claim of the Petitioner and other Plaintiffs had been accepted for maturity on various dates. However, the Petitioner did not receive any payment from Respondent No. 3, Peacocks Stores Limited. Subsequently, the Petitioner and other Plaintiffs vigorously pursued payment from Respondent No. 1, the buyer's Dhaka Liaison Office. In all these instances, they were given assurances that

payment would be forthcoming. However, after waiting for a considerable period, these assurances ultimately proved fruitless.

The Petitioner and other Plaintiffs also pursued the matter over the phone with Peacocks' representatives at their UK office. At this stage, Mr. Karthic of Peacocks' Dhaka Liaison Office communicated with the Petitioner and other Plaintiffs via email, asking them to send the original shipping documents to the buyer's bank, Barclays Bank PLC, stating that Barclays Bank PLC, UK would take responsibility for the payment of the export bills. The Petitioner and other Plaintiffs, relying on this assurance, sent the shipping documents to Barclays Bank PLC, UK. After receiving the documents, Barclays Bank PLC, UK released them to Respondents No. 1 to 7, who took possession and ownership of the RMG goods without making any payment. All the payment due dates have since expired, the last being on 11.01.2021, but the Petitioner and the other Plaintiffs remain unpaid by Respondents No. 1 to 7.

In November 2020, EWM Group declared that Peacocks had entered "administration" due to its inability to pay its creditors. It is pertinent to note here that EWM Group reported a substantial profit of GBP 24.3 million (equivalent to BDT 3,685,850,000 at BDT 148.50 per GBP) as of 02.03.2019 and had a cash balance of GBP 117.8 million (equivalent to BDT 17,493,300,000 at BDT 148.50 per GBP), excluding its movable and immovable assets and without any bank loans in 2019. Therefore, it is implausible for a subsidiary of EWM Group to go bankrupt. Moreover, it is evident from the Companies House records that EWM Group, through EWM (2011) Limited, had significant control over Respondents No. 1-5, with Mr. Philip Day and Mr. Steven Simpson being key persons and shareholders/directors of all these companies. Mr. Philip Day placed Peacocks into administration to avoid paying creditors, and surprisingly, the administrators were appointed by directors Mr. Philip Day and Mr. Simpson.

Most shockingly, EWM Group first placed Peacocks into administration without valid reason, and then used two of its dormant companies to bring Peacocks out of administration. To execute this fraudulent scheme, in early November 2020, EWM Group severed its ties with Respondents No. 4 and 5 (Anglo Global and Pure Pay), and on

16.11.2020, declared Peacocks to be in administration. Subsequently, Peacocks was brought out of administration through common director Mr. Simpson, using shell companies Respondents No. 4 and 5, creating the false impression that Peacocks was now owned by completely new entities.

In light of the above facts, 26 RMG factories, including the Petitioner and seven other Plaintiffs, lodged complaints with the Bangladesh Garments Manufacturers & Exporters Association (BGMEA). The BGMEA took the matter seriously, with both the past and immediate past presidents communicating with EWM and other relevant authorities via email and letters, expressing concern over the non-payment. The matter was also presented to the Governor of Bangladesh Bank, seeking assistance in securing payment. EWM Group and its subsidiaries responded by claiming that “Anglo Global/PurePay is a new company and the historical debt rests with Peacocks in administration,” which is untrue, as Anglo Global and PurePay are subsidiaries of EWM Group and are owned and controlled by the same shareholders and directors, Mr. Philip Day and Mr. Stephen Simpson.

Without settling its debts, EWM Group used the pre-planned administration process to avoid paying the full dues to the Petitioner and other victims. They now claim to be a completely new company, but in reality, they are part of the same group, owned by the same shareholders and directors. EWM Group is now asking for a discount to take further products through the so-called new company, while continuing to engage with innocent Bangladeshi RMG factories.

Previously, on 04.06.2021, Mr. Philip Day incorporated a new company, Banbury Street Holdings Limited, and divested his control and shareholding from EWM Group to disconnect from liabilities owed to victims of Peacocks. He also moved from Dubai to Switzerland to avoid legal consequences. However, Banbury’s filings with Companies House show that Banbury is also wholly owned and controlled by Mr. Philip Day and Mr. Simpson.

The Petitioner, along with three other Plaintiffs, decided to file a Representative Suit under Order 1 Rule 8 of the Code of Civil Procedure, 1908, initiating a class action on behalf of not only their own interests but

also on behalf of 22 other victims suffering from the frauds perpetrated by EWM Group. Accordingly, on 14.03.2022, the Petitioner, along with proforma Respondents No. 13 to 15, filed Title Suit No. 180 of 2022 in the Court of the Learned 1st Joint District Judge, Dhaka, as a representative suit against the Respondents, seeking a decree declaring that Respondents No. 1 to 8 are jointly and severally liable for the total outstanding payments due to the Petitioners for breach of contract, negligence, and fraudulent misrepresentation. The suit also sought to lift the corporate veils of Respondents No. 1 to 5 to hold the shareholders and directors personally liable for the losses of the Petitioners, and to declare that Respondents No. 1, 2, 3, 6, and 7's denial that the brand "Peacocks" is not owned by them but by Respondents No. 4 and 5 is fraudulent, unlawful, and detrimental to the national interest of Bangladesh, particularly posing a threat to the Bangladeshi RMG sector.

On 16.03.2022, the Petitioner filed an application under Order 1 Rule 8 of the Code of Civil Procedure, 1908, seeking an order to publish an advertisement in the newspapers to invite interested parties to join as co-plaintiffs, which the court granted. Following the publication, four other co-petitioners (Proforma Respondents No. 16 to 19) joined the representative suit, bringing the total number of Plaintiffs to eight.

The Petitioner subsequently obtained an injunction preventing all exports from Bangladesh under the name of "Peacocks." However, EWM Group violated the order, prompting the filing of Violation Miscellaneous Case No. 19 of 2022. Despite a contempt petition and the Hon'ble Appellate Division upholding the temporary injunction granted by the Learned 1st Joint District Judge, Dhaka, in CPLA 2872 of 2022, EWM Group continued to export under different brand names such as Bon Marche, James Pringle, Country Rose, and Ponden Home, without paying the dues owed to the 26 RMG factories. To prevent further damage, on 11.01.2023, the Petitioner filed an application under Section 151 of the Code of Civil Procedure, 1908, seeking an order to restrain all exports by EWM Group and its sister concerns, including Edinburgh Woollen Mills Limited, Anglo Global Property Limited, and Purepay Retail Limited, and to seal their Dhaka liaison office. On 09.08.2023, after hearing the application dated

11.01.2023, the Learned Joint District Judge, 1st Court, Dhaka, rejected the application. Against the order dated 09.08.2023, the Petitioner filed this Civil Revision Application, and on 09.10.2023, the present Rule was issued as follows:

“Records need not be called for.

Let a Rule be issued calling upon the opposite parties to show cause as to why the Order No. 39 dated 09.08.2023 passed by the learned Joint District Judge, Dhaka in Title Suit No. 180 of 2022 rejecting the application dated 11.01.2023 should not be set aside and/or pass such other order or orders as to this Court may seem fit and proper”

The Rule is made returnable within 1 (one) week from date.

Pending hearing of the Rule, the respondent Nos. 1-7 are hereby restrained by an order of temporary injunction from doing any business with any RMG factories in Bangladesh till 17.10.2023.

According to the Memo No. 03.219.344.00.00. 1587.2023-1079 dated 2609.2023 (Annexure-V-1) issued by the Bangladesh Investment Department Authority (BIDA) permission of the respondent No. 1’s Liaison office has been expired on 01.06.2022, therefore, Respondent No. 1 is hereby directed not to perform any function of its Liaison office till 17.10.2023.

The petitioner is directed to put in 2(two) sets of requisites within 3 (three) working days upon the respondents in usual course and through registered post.

The office is also directed to serve notices upon the respondent No. 1 by Special Messenger at the cost of the petitioner.

The matter will come up in the list on 17.10.2023 for order.”

The initial injunction was extended multiple times, most recently until the disposal of the Rule. Extension were granted on 17.10.2023, 15.11.2023, and 13.01.2024.

Opposite Party No.5 (a UK company) filed an affidavit claiming to be a renowned UK-based company engaged in the Ready Made Garments (RMG) sector in Bangladesh. They stated they have no connection with the defendants (Nos. 1-3) and don't place orders under the "Peacock" brand. They contribute to Bangladesh's foreign currency reserves by placing orders for other UK brand. They also filed a Civil Petition for Leave to Appeal (No.3283 of 2023) before the Appellate Division, challenging orders passed by the High Court Division.

The petitioner filed a second supplementary affidavit on 21.04.2024, stating that they received a mediation proposal on 10.04.2024 from Dr. Amina Khatoon, the advocate of the respondent No. 1's company, according to section 89A of the Code of Civil Procedure. Both parties discussed and agreed to settle the dispute amicably. The terms of the settlement were formalized in a deed of compromise dated 25.08.2024. The deed of compromise dated 25.08.2024 runs as follows:

DEED OF AGREEMENT/SOLENAMA

This Agreement/Solenama is made at Dhaka on this the 25th day of August, Two Thousand and twenty-four of the Christian era.

BETWEEN

*The Edinburgh Woollen Mill (EWM) Dhaka Liaison Office, represented by its Authorized representative of House: 32A, Road: 02, Sector: 03, Uttara, Dhaka-1230, Bangladesh (which expression where the context so admits shall include their heirs, successors, administrators, executor's legal representatives and assigns of the First part) hereinafter referred to as the **FIRST PARTY**.*

AND

1. Designtex Knitwear Limited, represented by its Managing Director, Braiderchala, Sreepur, Gazipur, Bangladesh 2. Designtex Fashions Limited, represented by its Managing Director, Zirabo, Savar, Dhaka-1341, Bangladesh 3. Knit Bazaar (Pvt) Limited, represented by its Managing Director, House No. 89, Road No. 28, Sector No.07, Uttara Model Town, Uttara, Dhaka-1230 and Bulbul Tower, Dighirchala, Mymensingh Road, Gazipur, Bangladesh 4. Bottoms Gallery (Pvt) Limited, represented by its Managing Director, House No. 89, Road No. 28, Sector No. 07, Uttara Model Town, Uttara, Dhaka-1230 and Bulbul Tower, Dighirchala, Mymensingh Road, Gazipur, Bangladesh 5. Sinha Knit

*and Denims Ltd. Sinha Knit and Denims Ltd., represented by its Managing Director, Address: House No. 06, Road No. 14, Sector: 04, Uttara, Dhaka-1230, Bangladesh 6. KAC Fashion Wear LTD., address: 12/13, Tetuli Bari, Sarabo, Gazipur 7. Green Life Knit Composite LTD., address: House: 16, Road: 19, Sector: 4, Uttara, Dhaka-1230 and 8. Southern Designer LTD., address: Tonga Bari, Ashulia, Savar (which expression where the context so admits shall include their respective heirs, successors, administrators, executor's legal representatives and assigns of the second part) hereinafter referred to as the **SECOND PARTY**.*

WHEREAS the FIRST PARTY has offered to pay and the SECOND PARTY has accepted as full and final settlement, an amount of BDT 14 (Fourteen) crore (hereinafter referred to as the "settlement amount") on 29.07.2024 by making a settlement before Hon'ble High Court Division on the following terms and conditions:

NOW THIS AGREEMENT WITNESSTH AND IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS CONTAINED HEREIN THE PARTIES HERETO AGREE AS FOLLOWS:

- 1. That, the SECOND PARTY is claiming an amount of USD 26,36,661.28/- with interest from the FIRST PARTY of which no admission of liability is made. The FIRST PARTY has offered in full and final settlement of the claimed amount by paying BDT 14,00,00,000/- (fourteen crore) and the SECOND PARTY has accepted to settle for BDT 14,00,00,000/- before the Hon'ble High Court Division at the time of hearing of Civil Revision No. 5029 of 2023 and F.M.A. 216 of 2022.*
- 2. That, the SECOND PARTY shall be paid the total BDT 14,00,00,000/- at one go by the FIRST PARTY after the signature, submission and approval of this agreement following court order. The FIRST PARTY shall remit BDT 14,00,00,000/- to an escrow account held by the FIRST PARTY lawyers which will be distributed, within 10 days of signing this agreement, in the following amount to the following members of the SECOND PARTY following the irrevocable undertaking that the SECOND PARTY shall satisfy all of the points 3,4,5,6,7,8.*

<i>Sl.No.</i>	<i>Name of Company</i>	<i>Amount to be remitted/transferred</i>
<i>01</i>	<i>Designtex Knitwear Limited</i>	<i>USD 2,00,000.00</i>
<i>02</i>	<i>Designtex Fashions Limited</i>	<i>USD 1,84,581.00</i>
<i>03</i>	<i>Knit Bazaar (Pvt) Limited</i>	<i>USD 58,000.00</i>
<i>04</i>	<i>Bottoms Gallery (Pvt) Limited</i>	<i>USD 91,000.00</i>
<i>05</i>	<i>Sinha Knit and Denims Limited</i>	<i>USD 43,000.00</i>

06	<i>Southern Designer Limited</i>	<i>USD 2,35,000.00</i>
07	<i>Green Life Knit Composite Ltd</i>	<i>USD 2,35,000.00</i>
08	<i>KAC Fashion Wear Limited</i>	<i>USD 1,50,000.00</i>
	Total :	USD 1,196,581.00 BDT 14,00,00,000 (Fourteen Crore) divided by 117 BDT export rate

3. That, after signing this agreement, the SECOND PARTY shall, jointly with the FIRST PARTY, obtain Order from Hon'ble High Court Division disposing of Civil Revision No. 5029 of 2023 and F.M.A. No. 216 of 2022 in terms of this agreement/solenama so that the Injunction is vacated. SECOND PARTY shall also, within 3 working days from getting full payment, apply to Court to withdraw Title Suit No. 180 of 2022 and Violation Misc. Case No. 19 of 2022 currently pending in the Court of Learned 1st Joint District Judge, Dhaka.

4. That, the FIRST PARTY including all the brands in its possession or brands for which it holds a license, affiliated companies, sister concerns, buying agents, Purepay Retail Limited, Anglo Global Property Limited, and any other company appointed by any brand owned or licensed by/to the FIRST PARTY or its affiliates, parent, shall be eligible to do business in Bangladesh upon full payment under this agreement/solenama and will have no obstacle to open Utilization Declaration (UD) from BGMEA as per law, obtain custom clearance for export, apply for residence and employment visas for any of its employees and generally have no barrier imposed upon its business by the SECOND PARTY or its affiliates, the BGMEA or any other Bangladesh RMG Organisation in relation to the contracts contemplated by this agreement.

5. That, all members of the SECOND PARTY will refrain from contacting any member of the FIRST PARTY or its affiliates in relation to this agreement. All communication will be through the FIRST PARTY Legal representatives.

6. That, each member of the SECOND PARTY fully agree and confirm to the representative of the FIRST PARTY by signing this agreement that full and final settlement of any amounts alleged to have been due from the FIRST PARTY in any of the suits filed by the SECOND PARTY.

7. That, SECOND PARTY shall specifically remove any

encumbrance on all members of the FIRST PARTY, in addition to remove any encumbrance against any staff member of the FIRST PARTY in Bangladesh, with, immigration, Police or any other Government body and refrain from imposing any further encumbrance at any point in the future in relation to the subject of the SECOND PARTY claim.

8. *That, this agreement/solenama is the full and final settlement between parties and the parties will have no claim regarding any past or present contracts or agreements between them either now or at any point in the future. However, the parties will be free, after complete execution of this agreement/solenama, to enter into new business arrangements if they so choose.*

9. *That, the Parties and their respective counsel represent and agree that, except for matters of public record as of the date of this Agreement, they will keep the terms and contents of this Agreement confidential, and that they will not hereinafter disclose the terms of this Agreement to other persons except as compelled by applicable law or to individuals who have a need to know about this Agreement and its contents, such as the Parties' legal counsel, tax advisors, or other retained professional representatives, all of whom shall be informed and bound by this confidentiality clause. In no event will any party make or cause to be made any comment, written statement, or press release to any member of the media concerning the fact of this agreement or the substance or terms of this agreement.*

10. *That, each party agrees to refrain from any disparagement, criticism, defamation, slander of the other, or tortious interference with the contracts and relationships of the other.*

11. *In the event that the SECOND PARTY is found to have breached any of the points above, the member of the SECOND PARTY who has committed the breach will be liable, without further intervention by the Court to pay to the FIRST PARTY an amount equal to 5 (five) times the amount received from the FIRST PARTY. If First Party breaches the agreement for payment, this will be applicable for them too.*

12. *That, this Agreement shall be signed in 3 original copies and each party shall be entitled to get 1 copy of this Agreement and one copy shall be submitted before the High Court of Bangladesh;*

IN WITNESS WHEREOF THE PARTIES HERETO SIGN AND EXECUTE THIS DEED OF AGREEMENT DATED 25th DAY OF AUGUST 2024 ON DATE, MONTH AND YEAR AFOREMENTIONED.

<i>For and on behalf of the FIRST PARTY</i>	<i>For and on behalf of the SECOND PARTY</i>
<p><i>Authorized representative of the FIRST PARTY</i></p> <p><i>SD/- Illegible</i> <i>Jean Paul Chan</i> <i>Authorized Representative</i> <i>Edinburgh Woollen Mill (EWM) Limited</i> <i>Dhaka Liaison Office.</i></p>	<p><i>1. DESIGNTEX KNITWEAR LTD.</i> <i>Sd/- Illegible</i> <i>KHANDOKER RAFIQU L ISLAM</i> <i>MANAGING DIRECTOR</i></p> <p><i>2. DESIGNTEX FASHIONS LIMITED</i> <i>Sd/- Illegible</i> <i>KHANDOKER RAFIQU L ISLAM</i> <i>MANAGING DIRECTOR</i></p> <p><i>3. Knit Bazaar (Pvt) Ltd.</i> <i>Sd/- Illegible</i> <i>Md. Rezaul Karim Reaz</i> <i>Managing Director</i></p> <p><i>4. Bottoms Gallery (Pvt) Ltd.</i> <i>Sd/- Illegible</i> <i>Rezaul Karim Reaz</i> <i>Managing Director</i></p> <p><i>5. SINHA KNIT & DENIM LTD</i> <i>Sd/- Illegible</i> <i>Amina Sinha</i> <i>Authorised Signatore</i></p> <p><i>6. Sd/- Illegible</i> <i>Ahmad Jan Chowdhury</i> <i>Director</i> <i>KAC Fashion Wear Limited</i></p> <p><i>7. Sd/- Illegible</i> <i>Hosne Ara Begum</i> <i>Chairman</i> <i>Southern Designers Ltd.</i></p> <p><i>8. Sd/- Illegible</i> <i>Hosne Ara Begum</i> <i>Chairman</i></p>
<i>Witness:</i>	<i>Witness:</i>
1.	<p><i>1. Sd/- Illegible</i> <i>President</i> <i>BGMEA</i></p> <p><i>Representative of BGMEA</i></p>
2.	2.

Based on the amicable settlement reached between the petitioner and the opposite party No. 1 as per the compromise deed dated 25.08.2024, the Civil Revision No. 5029/2023 has been disposed of accordingly.

Civil Revision No. 5029/2023 is disposed of in terms of the deed of compromise (solenama) dated 25.08.2024.

Bangladesh Bank (proforma respondent no. 11) is directed to settle and close all related overdue Export Proceeds (EXPs) and assist in bringing pending foreign currency remittances as per clause 2 of the deed of compromise.

Bangladesh Bank is also directed to permit the opening of an escrow account by the legal representative of EWM, Doulah & Doulah, represented by Advocate Dr. Amina Khatoon, to bring in foreign remittances. These funds will then be transferred in US Dollars to the eight RMG factories involved in Title Suit No. 180 of 2022, which is pending before the 1st Joint district Judge, Dhaka.

First Miscellaneous Appeal No. 216 of 2022 is also disposed of on the basis of the same deed of compromise.

The judgment further orders immediate communication of this decision to all concerned parties.