

GHANA / JUDGMENT

B5 PLUS LTD. VRS. SPECIAL STEEL LTD. AND OTHERS (CM/RPC/0687/2018) [2025] GHAHC 28 (27 January 2025) [2025] GHAHC 28

COURT
High Court

CASE / FILE NUMBER
CM/RPC/0687/2018

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE COMMERCIAL DIVISION (COURT 1) OF THE HIGH COURT OF JUSTICE ACCRA, HELD ON MONDAY THE 27TH DAY OF JANUARY, 2025 BEFORE HER LADYSHIP JUSTICE SHEILA MINTA SUIT NO. CM/RPC/0687/2018 B5 PLUS LTD. - PLAINTIFF VRS.

1. SPECIAL STEEL LTD.
2. ALEX ASIEDU
3. ERNST & YOUNG ADVISORY SERVICES - DEFENDANTS

JUDGMENT

BRIEF SUMMARY OF FACTS The Plaintiff a company in the business of trading and selling steel products has had to issue a Writ of Summons and Statement of Claim on 10th October, 2018 against the 1st Defendant and 2nd Defendant the Chairman of the 1st Defendant Company. The 1st Defendant Company is also a manufacturer in the steel products business. Their relationship as seller and buyer was carried out in a manner of credit sale agreements and sometimes loans repayable in goods or funds. The Plaintiff has sued the Defendants for the payment of various sums of money for the supply of steel billets, monies advanced to it to pay 1st Defendant's indebtedness to Electricity Company of Ghana (ECG) and for payment of scraps as well as monies advance for the payment of salaries of 1st Defendant's workers. Page 1 | 22 SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & ANOR. The Defendants denied the claim of the Plaintiff. In the course of the trial certain matters came up which revealed that the 1st Defendant Company was in liquidation/receivership but nothing was done to amend the title of the suit to reflect the 1st Defendant Company's name as (In Liquidation/Receivership) as required by the Bodied Corporate Official Liquidations Act, 1963 (Act 180) or the Corporate Insolvency & Restructuring Act, 2020 (Act 1015). **PLAINTIFF'S CASE** The Plaintiff's narrative is that 1st Defendant is one of the companies from which it procured iron rods for onward supply to

its customers. That on some occasions it supplied steel billet (raw materials for the production of iron rods) on credit to 1st Defendant for the production of iron rods. That sometime in October 2013, 1st Defendant's factory was shut down by Electricity Company of Ghana (ECG). This shut down necessitated 1st Defendant to make requests to Plaintiff for a loan to pay off its indebtedness to the Electricity Company of Ghana (ECG) and also for the payment for scraps and salaries of 1st Defendant's workers. The 1st Defendant again requested Plaintiff to import and supply it with steel billets to enable them produce iron rods for Plaintiff. According to the Plaintiff it acceded to the 1st Defendant's requests on certain conditions, some of which were that 1st Defendant was to provide Plaintiff with exclusive supply of iron rods produced from the imported billets supplied, as well as the value of iron rods in the sums advanced to 1st Defendant to include agreed interest thereon. Plaintiff averred that pursuant to an agreement on 1st November, 2013, it imported and supplied to Defendants steel billets valued at US\$4,200,000.00 on credit at a certain interest rate and payment was to be made by Defendant by the supply of iron rods to be sold to Plaintiff at the prevailing market price. That on 27th November, 2013 it again granted the Defendant a further sum of US\$600,000.00 to enable it commence manufacturing of iron rods from the steel billets supplied to enable 1st Defendant discharge its obligations towards Plaintiff. Plaintiff's story is that the said sum was "used to pay for electricity, salaries and other expenses in the manufacturing process." Apart from the above, the Plaintiff states that some other forms of payments and assistance were made or rendered to the Defendants for which they have failed to reimburse Plaintiff by the supply of iron rods. The 1st Defendant having received the products and monies advanced it have failed to supply the agreed quantities of iron rods to Plaintiff and that as at June 2018 Defendants' indebtedness to it stood at US\$1,376,894.06 in respect of imported steel billets and other various sums due it as contained in the endorsement to the Writ claiming the following reliefs from the Defendants:-

- a. An order for Defendants to pay to Plaintiff the sum of US\$1,376,894.06 or its Ghana Cedi equivalent being the outstanding balance for Defendants' purchase of imported steel billets from Plaintiff in 2013.
- b. Interest on the sum of US\$1,376,894.06 or its Ghana Cedi equivalent from the 4th day of July, 2018 until the date of final payment.
- c. An order for Defendants to pay to Plaintiff the sum of GHS45,045,466.31 being the outstanding balance of various materials and financial assistance given to Defendants by Plaintiff.
- d. Interest on the sum of GHS45,045,466.31 from the 4th day of July, 2018 until date of final payment.
- e. An order for Defendants to pay to Plaintiff the sum of GHS176,806.00 being the outstanding sum due the Plaintiff for goods purchased by Defendants for refitting the maintenance of Defendants' plant.

- f. Interest on the sum of GHS176,806.00 from the 4th day of July, 2018 until the date of final payment.
- g. An order for Defendants to pay to Plaintiff the sum of GHS2,346,804.00 being the cost of the outstanding quantity of 6717.58MT of steel billets owed by Defendants to Plaintiff. P a g e 3 | 22 SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & ANOR.
- h. Interest on the sum of GHS2,346,804.00 from the 4th day of July 2018 until date of final payment.
- i. An order for Defendants to pay to Plaintiff the sum of GHS2,000,000.00 being cost of Customs duties paid by Plaintiff for and on behalf of the Defendants for 3,915.99MT (Metric Tons) of steel billets brought from the bonded warehouse. j. Interest of the sum of GHS2,000,000.00 from the 4th day of July, 2018 until the date of final payment.
- k. An order for Defendants to pay to Plaintiff the sum of GHS1,500,000.00 being the sum advanced to Defendants for the restart of production of Defendants factory. l. Interest on the sum of GHS1,500,000.00 from 1st day of August, 2018 until the date of final payment.
- m. Cost inclusive of legal fees. In support of Plaintiff's claims, it attached various documents; Memorandum of Understanding, loan agreements, payment vouchers issued by Plaintiff, request for financial assistance letters by 1st Defendant to Plaintiff, VAT Invoices, summary of payments among others. DEFENDANTS CASE The 1st Defendant denied that the Plaintiff purchased iron rods from it in the manner alleged in Plaintiff's Statement of Claim and also denied that it had credit arrangements with Plaintiff. By the 1st Defendant's assertion, the business relationship that existed between it and the Plaintiff was that 1st Defendant would take steel billets from Plaintiff at predetermined prices which were to be discounted from the price at which Plaintiff purchased 1st Defendant's iron rods when same is manufactured but not on any credit basis as alleged. That indeed whenever Plaintiff made advance payment for the purchase of 1st Defendant's iron rods, for any such 5-day advance payment, Plaintiff enjoyed 25% reduction on the wholesale price of iron rods as sold by other manufacturers of the same product. According to 1st Defendant there are times that it purchases steel billets from P a g e 4 | 22 SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & ANOR. Plaintiff for production of irons rods and sold same to Plaintiff. 1st Defendant averred that occasionally, it supplied iron rods to Plaintiff without advance payment to it, thus supplies were made by it to Plaintiff on credit. In denial to the Plaintiff's claim that the 1st Defendant had to shut down its operations as a result of 1st Defendant's inability to honour its obligations to ECG, scrap dealers or for other payments as alleged by Plaintiff, 1st Defendant explains that its decision to shut down the manufacturing process sometime in October 2013 was to enable it undertake some maintenance, repair and replacement works on equipment and machinery used in the production chain. The Defendants also deny the Plaintiff's assertion that the shut down of 1st Defendant's factory adversely affected it for the reasons that the said shutdown was only for forty (40) days. That by the Plaintiff's own admission it has other companies who supply it with iron rods apart

from the 1st Defendant and could have procured iron rods from those other companies during the said period. The 40 days shut down could in no way have affected the Plaintiff's business adversely per its own assertion as it has other suppliers. The Defendants further averred that it was rather the Plaintiff in its bid to increase the supply of iron rods by the 1st Defendant who made a request to 1st Defendant to supply it with more raw material (steel billets) for more supplies of iron rods by 1st Defendant to Plaintiff in accordance with pre-arranged business engagements. Defendants also stated that 1st Defendant never requested for any facility in the form of raw materials from the Plaintiff and never agreed to give Plaintiff exclusive supply of its iron rods. Again, it is the Defendants' case that in their line of business the use of steel billets formed only 25% of its raw materials with scrap metal forming the large portion of its raw materials and therefore could not have needed US\$4,200,000.00 worth of steel billets from Plaintiff on credit basis and therefore deny same. The Defendants posited that it is highly improbable for the Plaintiff to deliver US\$4,200,000.00 worth of steel billets to 1st Defendant between 1st November, 2013 and 27th November, 2013 as alleged. They further averred that P a g e 5 | 22 SUI NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & ANOR. the Plaintiff failed to adduce evidence on the importation of the said raw materials allegedly supplied to 1st Defendant by it. According to the Defendants the arrangement between the Plaintiff and 1st Defendant was for Plaintiff to exchange its steel billets for 1st Defendant's high-quality iron rods at discounted prices. That the Defendants never requested for any further sum of US\$600,000.00 from Plaintiff to enable them commence manufacturing and or discharge their obligations with Plaintiff. Besides the above, the Defendants maintained that no such debt of US\$1,376,894.00 existed between the Plaintiff and Defendants when at all material times to the events leading to this action the supply of steel billets from Plaintiff to Defendants were done on Plaintiff's own volition and with the expectation of receiving a discount on iron rods supplied it. That by Plaintiff's own pleading there is uncertainty as to the debt allegedly owed it by 1st Defendant. In response to the alleged financial assistance of GHS1,500,000.00 offered the 1st Defendant by the Plaintiff it is their case that the said sum was unilaterally/voluntarily released to 1st Defendant as advance payment for the supply of iron rods which had since been supplied to Plaintiff in the full value of the sums claimed. The Defendants again submitted that the 1st Defendant had supplied to Plaintiff all the agreed quantities of iron rods which were subject matter of an exchange between it and Plaintiff "for steel billets and/or advance payments for same all of which Plaintiff took and enjoyed at a 25% discount less the actual market price for any such supply of 1st Defendant's product." A denial of entering into loan transactions with the Plaintiff was also made as they submitted, no money lender-borrower relationship existed between the parties for which interest was to be calculated. They said again that it was rather the Plaintiff who voluntarily made advance payments for supplies of 1st Defendant's iron rods. According to the Defendants any such purported money lender-borrower relationship was manifestly illegal upon which no cause of action can be founded by the Plaintiff against the Defendants. P a g e 6 | 22 SUI NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & ANOR. By the Defendants' pleadings, 2nd Defendant never held himself up as the Managing Director of

the 1st Defendant nor had any dealings with Plaintiff personally. Additionally, it is stated that 2nd Defendant did not have personal shares in 1st Defendant Company which is rather owned by two (2) other entities; Atlantic Steel Limited and CDH Engineering Limited with 50% shares each. It is therefore the case of the 2nd Defendant that the action against him is unfounded. Finally, they stated that the board and management never receive any notice of displeasure in the dealing between the parties in the nature expressed by the Plaintiff in this suit. In support of the Defendants' case no documents were tendered. 2nd Defendant sought to explain this situation during his cross-examination by Counsel for the Plaintiff on 27th February, 2024 where he stated; "... 1st Defendant did not even have access to the Plant, because it was under receivership. Two, the Managing Director of the 1st Defendant Company unfortunately succumbed to Covid and died. So that is why I am in the witness both under oath to provide answers in a truth full manner." ISSUES FOR TRIAL At the close of pleadings and settlement having failed at pre-trial conference, the following issues were set down for trial:-

1. Whether or not 1st Defendant is indebted to the Plaintiff in the sum of US\$1,376,894.06 or its Ghana Cedi equivalent being the outstanding balance for Defendants' purchase of imported steel billets from Plaintiff in 2013?
2. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS45,045,466.31 being the outstanding balance of various material and financial assistance given to Defendants by Plaintiff?
3. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS176,806.00 being the outstanding sum due to Plaintiff for goods purchased by Defendants for refitting and maintenance of Defendants' plant? P a g e 7 | 22 SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & ANOR.
4. Whether or not 1st Defendant is indebted to Plaintiff the sum of GH2,346,804.00 being the cost of the outstanding quantity of 617.58MT of steel billets owed by Defendants to Plaintiff?
5. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS2,000,000.00 being the cost of Customs duties paid by Plaintiff for and on behalf of Defendants for 3,915.991MT of steel billets brought from the bonded warehouse?
6. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS1,500,000.00 being the sum advanced to Defendants for the restart of production at Defendants' factory?
7. Whether or not Plaintiff is entitled to interests on all the sums owed by 1st Defendant?
8. Whether or not 2nd Defendant can be held liable for the indebtedness of 1st Defendant to Plaintiff?
9. Whether or not Plaintiff is entitled to its (Plaintiffs) claims against 1st and 2nd Defendants jointly and severally? BURDEN AND STANDARD OF PROOF Before discussing the issues set down for trial, I will start with the general rules of evidence that is likely to guide the Court

in reaching a conclusion on which of the party's case, upon the evaluation of all the evidence adduced at trial, would help persuade the Court on whose story is more probable than the other to warrant a judgment in that party's favour. The position of the law is that the standard of proof (burden of persuasion) in all civil cases or matters is by preponderance of probabilities. And the general rule is that a party whose pleadings raises an issue essential to the success of the case assumes the burden of proving that issue. There are several cases on this position of the law. In the case of *Takoradi Flour Mills vrs. Samir Fans* [2005-200] SCGLR 882, the Supreme Court held that:- "It is sufficient to state that this being a civil suit, the rules of evidence require that the Plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities as defined in Section 12 (2) of the NRCD 323. In assessing the balance of probabilities, all the evidence, be it that of the Plaintiff or the Defendant, must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the rival versions and is deserving of a favourable verdict" See also *Zabrama vrs. Segbedzi* [1991] 2 GLR 221 where Kpegah JSC (as he then was) stated: - "a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts, can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden." In *Okudzeto Ablakwa (No. 2) vrs. Attorney General & Another* [2012] 2 SCLR 845 the apex Court again held at p. 867 that: "If a person goes to Court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish. This rule is further buttressed by section 17 (b) which, emphasizes on the party on whom lies the duty to start leading evidence..." In *Adjete Agbosu & Ors vrs. Kotey & Ors* [2003-2004] SCGLR 420, Brobby JSC as he then was explained the obligation of a Defendant in defence to a claim as follows:- "A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to Court has to prove what he claims he is entitled to from the Defendant. At the same time, if the Court has to make a determination of a fact or of an issue and that determination depends on evaluation of facts and evidence the Defendant must realize that the determination cannot be made on nothing. If the Defendant desire the determination to be made in his favour then he has a duty to help his own cause or case by adducing before the Court such facts or evidence that will induce the determination to be made in his favour." Page 8 | 22 SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & ANOR. It is again trite that the burden of producing evidence is not static, but shifts from one party at various stages of the trial and so if a Defendant also desires a determination to be made in his favour, he also has a duty to help his own cause by adducing evidence that will induce the Court to make a determination on his favour.

ANALYSIS

The Court notes that the parties are ad idem on their trading relationship taking the form of credit sale sometimes and some form of barter at other times. They are however diametrically opposed regarding borrower/lender relationship. Whilst the Plaintiff maintains that such a relationship existed the Defendants assert that no such relationship ever existed between the parties. The Plaintiff's claims against the Defendants is for various sums of money as endorsed and which have been set out in the issues or trial. The job of this Court is very simple, that is to find out whether the Plaintiff has been able to establish its claims for the various sums against the Defendants. I will discuss Issue 8 first and proceed to merge Issues 1 – 6 for discussion and in doing so I will analyze the reliefs set out by the Plaintiff and make a determination on whether or not it is entitled to those reliefs. I believe the discussion on these merged Issues 1 - 6 and 8 will completely resolve the dispute between the parties as it is within the Court's power to make a determination on what issues are relevant to the resolution of the disputes between parties as stated in *Fidelity Investment Advisors vrs. Aboagye Atta* [2003-2004] 2 GLR 188. **ISSUE 8** Whether or not 2nd Defendant can be held liable for the indebtedness of 1st Defendant to Plaintiff? The Plaintiff claim against the 1st Defendant for the various sums endorsed on the Writ and also against the 2nd Defendant as a Director to the 1st Defendant Company. It is the 2nd Defendant's case that he is a Director of the 1st Defendant Company and cannot be held personally liable for any indebtedness of 1st Defendant. He averred that he did not incorporate the 1st Defendant Company and that 1st Defendant Company was incorporated P a g e 10 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & long before a company called Atlantic Trust Holdings Limited acquired shares in 1st Defendant and therefore he is not a direct shareholder of the 1st Defendant Company. According to the 2nd Defendant the 1st Defendant being a going concern had its own Officers/Managers/Directors apart from 2nd Defendant who saw to the day-to-day running of 1st Defendant's business contrary to the assertion by Plaintiff that 2nd Defendant run 1st Defendant as a sole proprietorship. And indeed, Vinod Kumar Rajan was running the affairs of the Company and incidentally his name featured in most of the agreements allegedly executed between the parties as well as correspondences. On 27th February, 2024 when 2nd Defendant was being cross-examined, the following were recorded: - Q It is your testimony that you are not a necessary party to the suit and that you have wrongly been joined, is that not so? A: Q. A. Q. Yes, my Lady. I, Alex Asiedu have never owned shares directly in 1st Defendant Company. Take a look at the attachment to Exhibit "B", which is a loan agreement dated 27th day of November, 2013 and confirm at page 7 if you signed as the Director of 1st Defendant. I signed as a director of the 1st Defendant and not as a shareholder. Also, from the attachment to Exhibit "B", confirm from page 1 under the "whereas clauses iii" that by this said agreement you were to give a personal guarantee to serve as a security for the full payment of the sum, the subject matter of the loan agreement. A. It clearly states I was to have given a personal guarantee. Ultimately, the said personal guarantee was never provided. Q. Apart from signing the loan agreement attached to Exhibit "B" in the course of 1st Defendant's dealings with the Plaintiff, you signed various documents, is that not so? A. Yes, my Lady. I might have signed various documents, but in my capacity as a Director of the 1st Defendant Company. Q. I am suggesting to

you that by the said loan agreement attached to Exhibit 'B' there is a basis for which you have been joined to the suit as a party. P a g e 11 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & A. That is utterly false, because I am not even a shareholder of the 1st Defendant Company, let alone providing a personal guarantee. There wouldn't have been any basis for me to have provided said personal guarantee. Q. In the course of 1st Defendant's dealings with Plaintiff, one Vinod Kumar Rajan was one of the authorised signatories to documentations in respect of this said dealings. Is that not so? A. Q. A. Q. Yes, my Lady. For most of the documents in respect of 1st Defendant's dealings with Plaintiff, you signed as the Director and sometimes the said Vinod Kumar Rajan also signs as the authorized signatory. Is that not so? If I could be pointed to the relevant document or documents in question. For the documents that you signed, have a look at Exhibit "A", the loan agreement attached to Exhibit 'B, C and E'. Is that not so? A. Yes, I can see that some of the documents were signed by Vinod Kumar Rajan as an authorized signatory. Q. Also, for some of the documents including Exhibits "AM, AM2 and AM3" were signed by the said authorized signatory, Vinod Kumar Rajan for and on behalf of Chairman of 1st Defendant Company. Is that not so? A. A categorical no. The reason is, there would have been no way he would have signed for me as the Chairman of the Board. Simply because he had the express authority to sign in his capacity as the Managing Director. Q. Have a look at Exhibits 'AM, AM2 and AM3' and confirm to this Court who signed for Alex Asiedu (Chairman) as indicated on the face of these Exhibits. A. I think I have already stated that he wouldn't have had authority to sign as Chairman of the 1st Defendant Company, because he had the authority to sign on behalf of the company as the Managing Director. Q. So, you are telling the Court that when on Exhibits 'AM, AM2 and AM3' the said Rajan Vinod Kumar signed in furtherance of this authority as the Managing Director, even though it is clearly on the face of these exhibits that he signed for and on behalf as Chairman. P a g e 12 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & A. My Lady, such an authorization was never given to Mr. Vinod Rajan to execute as Chairman of the 1st Defendant Company. If that has been the case, the Board would have resolved accordingly, but there was never such a thing. Q. And that by the said notes on Exhibits "AM2" and "AM3", the said Vinod Kumar Rajan signed these documents because you were out of the country at the time, is that not so? A. My Lady, as we can see from the exhibits, these are handwritten statements not from me and not by me. So, to answer your question, it is a categorical no. The Company by law is enjoined to act through its members in general meeting, the board of directors or other officers or agents appointed by or under authority derived from the members in general meeting or the board of directors. See Section 144 of the Companies Act 992 of 2019 as stated by Counsel for the 1st and 2nd Defendants. Counsel also referred the Court to the case of Bousiako Co., Ltd. vrs. Ghana Cocoa Marketing Board; Kwabo- Osekyere Construction Works Ltd. vrs. Ghana Cocoa Marketing Board (Consolidated) [1982-83] GLR 824 the Court rightly stated the principle of law as follows; "... Section 140 also provides for situations when the acts of any officer or agent of a company shall be deemed to be acts of the company. These are, for instance, when the company, acting through its board of directors, or managing director, shall have expressly or indirectly authorised such officer or agent to act in the matter or shall have represented the officer or agent as having its authority to act in the matter. In any of these events the company shall be civilly liable therefore to the same

extent as if it were a natural person. The company shall, however, not incur civil liability to any person if that person had actual knowledge at that time of the transaction in question that the board of directors, or managing director as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with, or relationship to the company, he ought to have known of the absence of power or of the irregularity.” P a g e 13 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & From the evidence before the Court the Plaintiff did not challenge the testimony of the 2nd Defendant that he is not a direct shareholder of the 1st Defendant Company and did not respond to same or cross examination by Plaintiff. Defendants did not have to lead evidence in proof of this assertion. See Hammond vrs. Amuah [1991] 1 GLR 89 and Quagrainie vrs. Adams [1981] GLR 599. There is no evidence of any executed personal guarantee by the 2nd Defendant for the liability of the 1st Defendant Company as alleged by the Plaintiff. The 2nd Defendant can therefore not be held liable for any debts of 1st Defendant for the reason that he is the Chief Executive Officer of the 1st Defendant Company. Indeed, no personal liability has been established against 2nd Defendant and the veil of incorporation cannot be lifted in this case. See Monkor vrs Kuma [1999] DSLC497. This issue cannot be resolved in favour of the Plaintiff. ISSUES 1 - 6

1. Whether or not 1st Defendant is indebted to the Plaintiff in the sum of US\$1,376,894.06 or its Ghana Cedi equivalent being the outstanding balance for Defendants’ purchase of imported steel billets from Plaintiff in 2013?
2. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS45,045,466.31 being the outstanding balance of various material and financial assistance given to Defendants by Plaintiff?
3. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS176,806.00 being the outstanding sum due to Plaintiff for goods purchased by Defendants for refitting and maintenance of Defendants’ plant?
4. Whether or not 1st Defendant is indebted to Plaintiff the sum of GH2,346,804.00 being the cost of the outstanding quantity of 617.58MT of steel billets owed by Defendants to Plaintiff?
5. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS2,000,000.00 being the cost of Customs duties paid by Plaintiff for and on behalf of Defendants for 3,915.991MT of steel billets brought from the bonded warehouse? P a g e 14 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. &
6. Whether or not 1st Defendant is indebted to Plaintiff in the sum of GHS1,500,000.00 being the sum advanced to Defendants for the restart of production at Defendants’ factory? The Plaintiff’s case is that the 1st Defendant would make a request for assistance in the form of a loan for which raw materials were supplied or for payments to be made to 1st Defendant or its nominated persons. These arrangements are covered by request letters, loan agreements among others. So, for the Plaintiff, loans were granted to 1st Defendant for which repayment was for the supply of iron rods produced by 1st Defendant. On the other hand, the Defendants deny totally any loan arrangements. By its batter trade- only position, the

Plaintiff supplied what the 1st Defendant's needs are at any given time, for the production and supply of iron rods to Plaintiff at agreed discounted rates and no more. According to the 1st Defendant Plaintiff has been supplied with the iron rods in accordance with the arrangement between the parties and therefore did not owe the debt alleged by the Plaintiff. In my attempt to reconcile these two theories, inference can only be made by the documents submitted by the Plaintiff. Sadly, apart from the testimony of the 2nd Defendant there was no documentary evidence tendered by the Defendants with the explanation that the 1st Defendant Company at the time was under liquidation. The testimony of the 2nd Defendant therefore stands uncorroborated. Using the tools of trial i.e., pleadings, witness statement and testimony, cross-examination and rules of evidence including legal inferences, I proceed to analyse the Plaintiff's claim against the 1st Defendant. By the Plaintiff's relief (a) and (b) a claim is being made for the sum of US\$1,376,894.06 and interest thereon from 4th July, 2018. The Plaintiff's case is that 1st Defendant took from Plaintiff various quantities of steel billets at various times from 2013 for the production of iron rods and as at 31st June, 2018 and having failed to supply Plaintiff with the requisite P a g e 15 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & iron rods owed it, the outstanding balance of stood at US\$1,376,894.06. That this said sum according to the testimony of the Plaintiff's witness included various forms of financial assistance granted the 1st Defendant. The Plaintiff's witness stated in paragraph 16 of his witness statement as follows:- "As at the 31st June, 2018, 1st Defendant, due to its failure, refusal or neglect to supply the agreed quantities of iron rods to Plaintiff, was indebted to Plaintiff in the sum of USD\$1,376,894.06. The said sum is the outstanding balance various forms of assistance given to 1st Defendant and for 1st Defendant's purchase of imported steel billets from Plaintiff in 2013." The Defendants denied owing the Plaintiff this said sum and averred that it did not request for any purported credit facility in the form of raw materials from the Plaintiff and further stated that it supplied all the iron rods it agreed to supply to Plaintiff. This claim cannot be granted if the Plaintiff cannot show proforma invoice, waybill of supply and accounts of payment. Has the Plaintiff been able to produce before this Court any documentary evidence in support of its claim in respect of this relief? In support of this claim the Plaintiff tendered Exhibit "AM" and "AM3". Exhibit "AM" is a letter written by the 1st Defendant, Special Steels Limited dated 6th July, 2018 to Plaintiff Company and signed by an officer of the 1st Defendant Company. For clarity I will reproduce the said letter. "Dear Sir, SUB: CONFIRMATION OF OUTSTANDING BALANCE AND PAYMENT PLAN We hereby confirm that Special Steels Limited owes amounts and goods to B5 Plus as on 04/07/2018.

1. GHS45,045,660.31 (Balance of various loans given by B5 Plus Limited on various dates).
2. GHS176,806.00 (Goods bought by Special Steels Limited from B5 Plus Limited).
3. GHS1,500,000.00 (New loan given by B5 Plus Limited in July, 2018). P a g e 16 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. &
4. US\$1,376,894.06 (Balance remain out of first loan of US\$4,800,000.00).

5. 617.58 MT Goods to be supplied (Out of 3,915.991MT) Billets bought from B5 Plus Limited.
6. Customs Duties on 3,915.991MT Billets by B5 Plus Limited from their Bonded Warehouse. We have requested for a new loan of GHS1,500,000.00 (as per above Point 3) so we can make our factory running and start paying off the various loans and outstanding. We also appreciate and thank you for patience and understanding for too much delayed payment. Counting on your usual co-operation. Signed by Rajan Vinod Kumar For Alex Asiedu (Chairman)." Exhibit "AM3" is also an account, summary of payables by 1st Defendant dated 4th July, 2018 and allegedly signed by the said Rajan Vinod Kumar for Alex Asiedu (Chairman) with some notations. These are 1st Defendant's documents tendered in evidence by Plaintiff but 2nd Defendant alleged that he never authorized same. At the time these documents were allegedly prepared Rajan Vinod Kumar (now deceased) was the Managing Director of 1st Defendant Company. The Defendants have not demonstrated to the Court that these documents are not authentic and did not object to the tendering of same. For this relief, I am minded to grant same as from the evidence before the Court the testimony of the Plaintiff is more probable than that of the Defendants, having seen from the Exhibits above referred to that the said claim have been admitted to be owed the Plaintiff by the 1st Defendant. Page 17 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & For reliefs (c) and (d) the Plaintiff's claim is for GHS45,045,466.31 being 1st Defendant's default for the repayment of various sums advanced to it by Plaintiff between 2013 and
2017. There is evidence that various loan agreements were signed by Plaintiff and 1st Defendants; Exhibits C, (dated 20th May, 2015 for the sum of GHS1,500,000.00); Exhibit "E" (dated 30th July, 2015 for the sum of GHS1,800,000.00 at an interest rate of 4% per month); Exhibit "G" (dated 23rd November, 2015 for the sum of GHS1,000,000.00 at an interest rate of 5% per month). Also in evidence are various letters of the 1st Defendant to Plaintiff making various requests for financial assistance in the form of a loan, See Exhibit "J" (1st Defendant's letter to Plaintiff dated 7th December, 2015 for a loan of GHS550,000.00 at a stated rate of 5% per month); Exhibit "L" (1st Defendant's letter to Plaintiff requesting for an "advance of GHS1,000,000.00 for payment to be made to Electricity Company of Ghana at simple interest of 5% per month"); Exhibit "N"; Exhibit "Q", Exhibit "T", Exhibit "Y" etc. and in Exhibit "AM" referred above. What the 1st Defendant had to do was to provide evidence that for all the advance payments and raw materials supplied the corresponding iron rods had been supplied to Plaintiff. Unfortunately, there is no such evidence before the Court as 1st Defendant Company was at the time in liquidation/receivership and did not have access to its office and books. To make the case of the 1st Defendant worse is Exhibits "AM" and "AM3" which constitutes an admission of the 1st Defendants debt. But for this admission I would be looking out for the evidence of the Plaintiff relating to the supply of the materials at which price and how much has been paid as well as the Plaintiff's statement of account duly signed. For Plaintiff's reliefs (e) and (f) a demand is being made for the payment of the sum of GHS176,806.00 and interest thereon being outstanding sum due Plaintiff for goods purchased by the 1st Defendant for refitting and maintenance of Defendants' plant. For this

claim the Plaintiff must show evidence of the proforma invoice, the waybill of supply and statement of accounts. There is an account statement for relief (e), Exhibit AG” but same was however not signed and could have best been described as self-serving. However, in Page 18 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & Exhibit “AM” this figure was also admitted by the 1st Defendant’s representative as debt owed. In Plaintiff’s reliefs (g) and (h) the claim is for the sum of GHS2,346,804.00 for outstanding quantity of 617.58MT of steel billets owed to the Plaintiff by the Defendants. For this relief also, I would have required from the Plaintiff in support of its claim evidence of waybills showing how much of the quantities in the way bill was supposed to be supplied and statement of accounts. But I see from Exhibits “AM” and “AM3” the 1st Defendant has admitted to the outstanding steel billets of 617.58MT as at July 2018. The Plaintiff has however failed to show how it arrived at the sum claimed for the value of those 617.58MT of steel billets and therefore I can only order that the Plaintiff is entitled to the value of 617.58MT of steel billets from the 1st Defendant. Per reliefs (i) and (j) the claim is for the sum of GHS2,000,000.00 and interest thereon for custom duties paid on behalf of 1st Defendants of steel billets brought from bonded warehouse. There must be evidence of the contract between Plaintiff and Defendants requesting the Plaintiff to pay the Defendants’ customs duties on its behalf and also evidence of the customs duties actually paid. This evidence the Plaintiff failed to produce before the Court and so for this relief, I am unable to grant same. Reliefs (k) and (l) is for the sum GHS1,500,000.00 and interest thereon from 1st August, 2018 for advancement for restart of production. From the evidence before the Court, a request was made by the 1st Defendant for the sum of GHS1,500,000.00 in addition to its outstanding indebtedness per Exhibit “AM” but there is no evidence of the actual payment of this amount to the 1st Defendant subsequent to the request being made. There is no evidence of a loan contract like the other facilities and admissible statement of accounts. This relief against the 1st Defendant therefore fails.

CONCLUSION

Page 19 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & I am not persuaded by the 1st Defendant’s story that it did not enter into any loan agreements with the Plaintiff when there are glaring documentary evidence of loan transactions signed by authorized representatives of 1st Defendant including the 2nd Defendant. Some even stating interest rates to be charged. The evasive denials by the 2nd Defendant did not help 1st Defendant’s case. With no evidence from 1st Defendant to corroborate its testimony its evidence stands unproven. I find the evidence of the Plaintiff more probable than that of the 1st Defendant. I therefore enter judgment in favour of the Plaintiff against the 1st Defendant for the following reliefs:-

1. Recovery of the sum of US\$1,376,894.06 and interest thereon at simple interest per annum from 4th July, 2018 at the United States rate till date of judgment.

2. For the recovery of GHS45,045,466.31 and interest thereon from 4th July, 2018 at the prevailing commercial bank at simple interest till date of judgment.
3. For the recovery of GHS176,806.00 and interest thereon from 4th July, 2018 at the prevailing commercial bank rate calculated at simple interest till date of judgment.
4. For the recovery of 617.58MT of steel billets or current value thereof.
5. The other claims of the Plaintiff against 1st Defendant have been denied.
6. The Plaintiff's claim against the 2nd Defendant fails. COST I award cost of Seventy Thousand Ghana Cedis (GHS70,000.00) in favour of the Plaintiff against 1st Defendant and cost of Ten Thousand Ghana Cedis (GHS10,000.00) in favour of the 2nd Defendant against the Plaintiff. (SGD.) SHEILA MINTA, J. JUSTICE OF THE HIGH COURT P a g e 20 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & REPRESENTATIONS PARTIES: ABSENT COUNSEL: ANITA DABI, ESQ., WITH JOSHUA BOOWURU, ESQ., HOLDING BRIEF FOR SAMUEL CODJOE, ESQ., FOR PLAINTIFF – PRESENT COUNSEL FOR 1ST AND 2ND DEFENDANTS – ABSENT AUTHORITIES: 1. TAKORADI FLOUR MILLS VRS. SAMIR FANS [2005-200] SCGLR 882 2. ZABRAMA VRS. SEGBEDZI [1991] 2 GLR 221 3. OKUDZETO ABLAKWA (NO. 2) VRS. ATTORNEY GENERAL & ANOTHER [2012] 2 SCLR 845 4. ADJETEY AGBOSU & ORS VRS. KOTEY & ORS [2003-2004] SCGLR 420 5. FIDELITY INVESTMENT ADVISORS VRS. ABOAGYE ATTA [2003-2004] 2 GLR 6. BOUSIAKO CO., LTD. VRS. GHANA COCOA MARKETING BOARD P a g e 21 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. & 7. KWABO-OSEKYERE CONSTRUCTION WORKS LTD. VRS. GHANA COCOA MARKETING BOARD (CONSOLIDATED) [1982-83] GLR 824 8. HAMMOND VRS. AMUAH [1991] 1 GLR 89 9. QUAGRAINE VRS. ADAMS [1981] GLR 599
10. MONKOR VRS KUMA [1999] DSLC497 11. SECTION 144 OF THE COMPANIES ACT 992 OF 2019 P a g e 22 | 22 ANOR. SUIT NO. CM/RPC/0687/2018 – B5 PLUS LTD. VS. SPECIAL STEELS LTD. &

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