

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1364 OF 2018
IN
EXECUTION APPLICATION NO.240 OF 2011**

Global Coal Ventures Pvt Ltd.	Applicant
In the matter between	
Asian Natural Resources (India) Ltd.	..Claimant
Vs.	
Vitol S. A.	Respondent
And	
Bhatia Industries & Infrastructure Ltd & Anr	...Respondents

Mr. Prashant Pratap Senior Advocate, with Mr. Aditya Krishnamurthy a/w Mr. Ruchir Goenka I/b Bose & Mitra & Co. for Applicant/original award holder

**CORAM : K.R.SHRIRAM, J.
DATE : 10th JANUARY, 2019**

P.C.:

1 The Applicant has taken out chamber summons seeking refund of Rs.79,00,055/-, which Mr. Pratap, states is more than actual to be refunded. Mr. Pratap states that the correct figure is Rs.78,63,758/-.

2 Respondent No.1 is a Judgment Debtor. Various decrees and awards have been passed. Respondent no.1 was the owner of various cargos of coal which was imported into India and some of which were lying at port of Tuticorin, namely V. O. Chidambaranar Port Trust.

3 Pursuant to the execution application taken out by the

judgment creditor, the cargos of 17000 MT of coal available at the said port, was put up for auction. Division Bench in its order dated 26th October, 2015 in Notice of Motion (L) No.2993 of 215 in Appeal (L) No.794 of 2015, appointed court receiver of this court as receiver to take possession of the 17000 MT of coal and to sell the coal in public auction. As no bidders came forward, applicant in this chamber summons, made an offer to the court receiver to purchase the 17000 MT of coal at Rs.1850 per MT ex-plot Tuticorin Port, as per its letter dated 14th December, 2016. Based on the offer, court receiver place the report before the Division Bench in which, court receiver sought directions to confirm the sale in favour of the applicant. The sale was confirmed by order dated 15th February, 2017 and the Applicant paid a sum of Rs.3,14,50,000/- for 17000 MT of coal. It is stated that on 27th March, 2017, port permitted applicant and applicant cleared 5000 MT of coal. In its letter dated 31st March, 2017, the port has informed applicant that out 17000 MT of coal that was imported in Tuticorin Port Trust, the original importer, viz; the judgment debtor/party that has filed bill of entry No.718/11.12.2014, had cleared 4250.68 MT of coal. The port informed the applicant that after the clearance of 5000 MT of coal on 27th March, 2017, there remained a balance of only 7749.32 MT of coal, which Applicant has cleared.

4 Therefore, it is applicant's case that applicant had paid for

17000 MT but got delivery of only 12,749.32 MT and therefore the applicant has paid for 4250.680 MT coal which it has not received. Applicant states that it has paid in excess, a sum of Rs.78,63,758/- to the court receiver and therefore that amount has to be refunded.

Applicant also relied upon certain correspondence exchanged with port authorities and the advocate for port authorities has informed the applicant by communication dated 23rd September, 2017 (Exhibit L to the affidavit in support) of the delivery of 4250.680 MT was given much prior to any order being passed appointing the receiver. It is also stated in the said letter that the receiver was also informed about the delivery of 4250.680 MT of coal.

5 None of the Respondent including the receiver have filed any affidavit in reply. Receiver is also not present in court, though this chamber summons is listed.

6 I have perused the documents and I am also satisfied that the applicant had purchased the coal on the basis that 17000 MT of coal was available in the possession of the court receiver. Actual what was available was only 12749.32 MT of coal. Therefore the applicant has certainly paid a sum of Rs.78,63,758/- (4250.68 x 1850) in excess. Had the applicant been made aware that only 12749.32 MT of coal was available, the applicant

would have paid Rs.78,63,758/- less.

7 In the circumstances, applicant is entitled to be refunded this amount of Rs.78,63,758/- . Prothonotary and Senior Master, with whom the amount is deposited, shall refund to the applicant a sum of Rs.78,63,758/-.

8 Chamber Summons accordingly stands disposed.

9 All to act upon authenticated copy of this order.

(K.R. SHRIRAM, J.)