



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 26TH DAY OF JULY, 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S. Nos. 319 of 2018

M/s.Sakthi Energy Pvt Limited
Represented by its Director,
Mr.G.Mahendran,
Clarion House,
1st Floor, S-8, Thiru-Vi-Ka Industrial Estate,
Guindy,
Chennai 600 032.

... Plaintiff

/versus/

M/s.Ind Barath Thermal Power Ltd.,
Rep.by its Managing Director,
Having its Registered Office at
No.20, Chamiers Road,
Nandanam,
Chennai 600 035.

... Defendant

Civil Suit praying that this Hon'ble Court be pleased to pass a judgement and decree against the defendants by:

a) directing the defendant to pay a sum of Rs.6,18,85,669/- (Rupees

Six crores eighteen lakhs eighty five thousand six hundred and sixty nine

only) as on 5.5.18 with interest at the rate of 18% per annum on the

principal sum of Rs.3,49,89,210/- (Rupees Three crores forty nine lakhs



eighty nine thousand two hundred and ten only) from the date of plaint till the day of payment in full to the plaintiff .

b) the costs.

This suit having been heard on 14/07/2021 in the presence of Mr. Abdul Hameed for Mr. A.A.V.Partners, Advocates for the plaintiff herein and Mr.Anirudh Krishnan, Advocate for the defendant herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court having observed that the plaintiff is entitled for the suit claim, it is ordered and decreed as follows:-

The the defendant herein, do pay to the plaintiff herein, a sum of Rs.8,20,36,578/- (Rupees Eight Crore Twenty Lakh Thirty Six Thousand Five Hundred and Seventy Eight Only) with further interest at the rate of 18% per annum on the sum of Rs.3,49,89,210/- (Rupees Three Crore Forty Nine Lakh Eighty Nine Thousand Two Hundred and Ten Only) from this date till the date of realisation.



of this suit, as and when taxed by the taxing officer of this Court, and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
26TH DAY OF JULY 2021.

Sd/-

ASSISTANT REGISTRAR (Comm. Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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EVK

17/08/2021

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C.S. Nos.319 of 2018

ORDER

DATED: 26.07.2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 19/08/2021

APPROVED ON: 19/08/2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on : 14.07.2021

Pronounced on : 26.07.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN**C.S.No.319 of 2018**

M/s.Sakthi Energy Pvt Limited,
Represented by its Director,
Mr.G.Mahendran,
Clarion House,
1st Floor, S-8,
Thiru-Vi-Ka Industrial Estate,
Chennai – 600 032.

... Plaintiff

/versus/

M/s.Ind Barath Thermal Power Ltd.,
Rep. by its Managing Director,
Having its Registered Office at
No.20, Chamiers Road,
Nandanam, Chennai – 600 035.

... Defendant

Prayer: Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of C.P.C.

(a). Directing the defendant to pay a sum of Rs.6,18,85,669/- (Rupees Six Crores Eighteen Lakhs Eighty Five Thousand Six Hundred and Sixty Nine Only) as on 05.05.2018 with interest at the rate of 18% per annum on the Principal sum of Rs.3,49,89,210/- (Rupees Three Crores Forty Nine Lakhs Eighty Nine Thousand Two Hundred and Ten only) from the date of Complaint till the day of payment in full to the plaintiff.

(b). The costs;

For Plaintiff

: Mr. Abdul Hameed,
for M/s.A.A.V.Partners



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For Defendant : Mr. Anirudh Krishnan

JUDGMENT

The Suit is against the defendant for recovery of Rs.6,18,85,669/- due payable as on 05.05.2018 for the goods sold and interest at the rate of 18% for the principal sum of Rs.3,49,89,210/- from the date of plaint till the date of realisation. The amount claimed is towards the cost of coal imported and sold to the defendant based on the High Seas Sales Agreement between the parties.

2. The subject matter of the suit has been determined as Commercial Dispute and the Commercial Division of this Court has determined the jurisdiction as Commercial Suit.

3. Case of the plaintiff in nutshell:-

The plaintiff is a Private Limited Company, carrying on business in Coal. In the course of their business, the defendant approached the plaintiff at its Office in Chennai for supply of Streaming (Non Coking) Coal in bulk of Indonesian Origin (referred as 'goods'). The plaintiff agreed and entered into the High Seas Sale agreement (HSS agreement)



rate of Rs.2855/- per MT on terms and conditions contained therein. On the same day, the plaintiff raised invoice for Rs.6,56,65,000/- being the value of 23,000 MTS of goods. The defendant issued purchased order dated 07.06.2014 for supply of 1 shipment of 23,000 MT. All these documents were executed in Chennai. Towards the reimbursement of charges on Port Wharfage, Stevedoring and Handling, the plaintiff raised Debit Note for Rs.50,91,031/- in the name of the Defendant on 27.06.2014. As per the trade practise, the originals of the above documents were handed over to the defendants for clearance of goods from Customs.

As per the terms of the agreement, the defendant is supposed to pay the invoice amount within 60 days from the date of discharge of the goods at Tuticorin Port. The goods was supplied through Vessel “MV OWL” between 19.06.2014 and 26.06.2014. Therefore, the payment for the goods supplied became due on 17.08.2014. However, the defendant failed to clear their dues in full within the time agreed. As on 05.05.2018, after giving credits to the various payments made by the defendant to the plaintiff, a sum of Rs.6,18,85,669/- (running account) fall due and payable to the plaintiff besides interest. Several meetings between the parties for settlement of the dues held at the Office in Chennai but it did not yielded result. Promises given by the defendant were not kept. Later, after discussions, a settlement was arrived between the plaintiff, the defendant



and M/s.Star Thermal Power Pvt Ltd., (STPPL) on 16.10.2017 whereby, STPPL had agreed to pay Rs.2,79,91,366/- towards full satisfaction as against the defendant's total liability of Rs.3,49,89,210/-. However, the said agreement was not acted upon. STPPL by its letter dated 12.12.2017 had expressed its inability to settle the dues of the defendant. While so, the defendant informed about the proceedings initiated by them against TANGEDCO before the Regulatory Commission (TNERC) and stated that they will settle the amounts due as early as possible. In the meeting held between the plaintiff and the defendant at Chennai, the defendant promised to clear the dues on or before March, 2018. However, the defendant failed to keep up the said promise. At the instants of the Defendant, TANGEDCO had paid Rs 47.25 crores to M/s.Adani Enterprises Ltd, but not cleared the dues payable to the plaintiff as promised. Still, TANGEDCO owes approximately 100 crores to the Defendant. As on 05.05.2018, the date of plaint, the defendant is liable to pay Rs.3,49,89,210/- towards principal and Rs.2,68,96,459/- towards interest.

4. Case of the defendant in nutshell:-

The defendant Company is a Special Purpose Vehicle, which has set up a power generation station for the purpose of generating electricity for the use of its shareholders. The coal powered energy generating plant is situated at Swaminatham Village, Tuticorin. The suit is



not maintainable since the plaint has not been verified as mandated under law. M/s.STPPL under the settlement agreement dated 16.10.2017 had agreed to pay the dues of the defendant within 8 weeks. But they failed to pay the dues within the time. Hence, M/s.STPPL is a necessary party to the suit. For non-joinder of the necessary party, the suit is to be dismissed. The suit for recovery of money towards goods sold and delivered ought to have been filed within 3 years from the date of money payable, even according to the plaint, the money payable became due on the expiry of 60 days i.e., 17.08.2014. The period of limitation expired on 16.08.2017, whereas the plaint is presented on 06/05/2018 after the expiry of the period of limitation. Hence the suit is barred by limitation. The amount claimed in the suit is wholly fictitious and inconsistent.

5. Based on the pleadings the court framed the following issues for consideration:

i). Whether the suit is liable to be dismissed on account of non-joinder of necessary party i.e., M/s.Star Thermal Power Pvt Ltd?

ii). Whether the claim is barred by limitation?

iii). Whether the plaintiff is entitled to a sum of Rs.6,18,85,669/- as on 05.05.2018 with interest at the rate of 18% on the Principal sum of Rs.3,49,89,210?



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iv). To what other reliefs, the plaintiff is entitled to?

6. On behalf of the plaintiff, Mr.G.Mahendran, the Authorised signatory of the Plaintiff's Company was examined and 9 documents (Ex.P-1 to Ex.P-9) were marked. On behalf of defendant, M.N.V.Sudhakar, the former employee of the defendant Company and Mr.T.S.Das the authorised representative of the defendant Company were examined as DW-1 and DW-2 respectively. Ex.P-10 and Ex.P-11 were marked in the cross examination of DW-1.

7. Issue No.1:

The defendant not disputing the purchase of the coal nor the value mentioned in the invoice. It also not denied the averment that the value not fully paid. The settlement Agreement (Ex.P-5) between the plaintiff, defendant and M/s.Star Thermal Power Pvt Ltd (STPPL) is an admitted fact by the parties. To consider the plea whether M/s.Star Thermal Power Pvt Ltd, is a necessary party to the suit, the recital of Ex.P-5 has to be examined. This document is signed G.Mahendran (PW-1) on behalf of the plaintiff, Mr.M.N.V.Sudhakar (DW-1) on behalf of the defendant and by one T.C.Ravindran on behalf of STPPL. As per the recital found in this



document, for the actual due of Rs.3,49,89,210/- payable to the plaintiff by the defendant towards the supply of product as on 15.10.2017, the plaintiff has agreed to receive a sum of Rs.2,79,91,368/- towards the full and final settlement of the actual dues. M/s.Star Thermal Power Pvt Ltd in a separate agreement with the defendant had agreed to discharge all the outstanding of the defendant. In terms of that separate agreement, M/s.Star Thermal Power Pvt Ltd had agreed to pay the plaintiff Rs.2,79,91,368/- within a period of 8 weeks from the date of execution of the settlement deed i.e.,16.10.2017. As per this settlement agreement, M/s.Star Thermal Power Pvt Ltd., did not pay the money as agreed. The plaintiff was informed by M/s.Star Thermal Power Pvt Ltd through notice dated 12.12.2017 (Ex.P-6) a copy marked to the defendant, that they are unable to settle the outstanding dues and will not be settling the dues. However, in view of the long standing trade relationship, they will co-ordinate with the company (the defendant herein) and will write back to the plaintiff about alternate settlement proposal. This notice is issued invoking Clause 9 of the settlement agreement Ex.P-5.

(ii). The terms found in Clause No.7 and 9 of Ex.P-5 are the crucial term which indicates that on failure of the settlement agreed under Ex.P-5, the *status quo ante* will be restored.



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(iii). For reference, clause 7 and 9 are extracted below:-

7. The Parties to this Agreement hereby agree that in case of failure on part of STTPL to settle and pay the Outstanding Dues to the Trade Creditor by the Settlement Date 8 weeks from the date of execution; or if the arrangement between the Company and STTPL fails to materialise as per clause 9; this Agreement shall cease to have effect and the Trade Creditor reserves its rights to take any legal action available to it for the Actual Dues against the “Company” and shall not be restricted or restrained in any manner to pursue the legal remedies available in law before it.

8.....

9. The parties agree that, in addition to any other right, in case the transaction as contemplated under the arrangement between STPPL and the Company or its shareholders does not materialise (for any reason and even if the same is under dispute) or in the event of any dispute between the Trade Creditor, the Company and STPPL, then notwithstanding anything contained in this Agreement:

a. STPPL shall intimate the Trade Creditor in writing about the termination or non-materialisation of the said arrangement, with a copy too the Company. The Parties agree that the decision of STPPL on termination or non-materialisation of the said arrangement shall be final and binding.

b. STPPL shall not be liable to make any payment towards Outstanding Dues.



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c. The Company shall become liable for making the payment of the Actual Dues in terms of the Supply Agreement(s) to the Trade Creditor.

d. The Trade Creditor shall have no recourse to STPPL for any claim in relation to the Actual Dues or any other payment from the date of receipt of the intimation. (Emphasis added)

8. Thus, from the above recital it is obvious, the parties have agreed, in case the transaction is delayed beyond 8 weeks, M/s.Star Thermal Power Pvt Ltd., (STPPL) may terminate the arrangement. Under such circumstances, only the Company (M/s.Ind Barath Thermal Power Ltd – Defendant herein) shall become liable for making the payment of the Actual Dues in terms of the supply agreement(s) and STPPL shall not be liable for making any payment. The Trade Creditor (M/s.Sakthi Energy Pvt Ltd – Plaintiff herein) shall not have no recourse to STPPL for any claim in relation to actual dues or any other payment from the date of intimation. Having so agreed, the defendant is estopped to plead that M/s.Star Thermal Power Pvt Ltd., (STPPL) is a necessary party. In view of Clause 7 and 9, due to failure to pay the plaintiff, the settlement agreement dated 16.10.2017 cease to have any effect. The plaintiff had reserved its right to take legal action against the defendant for recovery of actual dues. STPPL shall not be liable to make any payment and the plaintiff shall have no recourse against



M/s.Star Thermal Power Plant Pvt Ltd. Hence, STPPL is not a necessary party to this suit. Issue No.1 is answered accordingly.

9. Issue No 2:-

The cause of action for the suit commenced when the defendant approached the plaintiff on 15.03.2014 for supply of coal. On that date, the plaintiff and the defendant had entered into High Seas Sale Agreement and the plaintiff had raised invoice (Ex.P-2 series). This agreement is in respect of 23,000 MTs Steaming (Non-Coking) coal of Indonesia Origin. In the HSS agreement, the parties have conferred exclusive jurisdiction to Chennai. The goods has been transshipped through the Vessel “MV OWL.” The Port of discharge is Tuticorin Port. In the HSS agreement, in serial No. 8, “Payment” it is stated, “as mutually agreed.” When the defendant failed to pay the dues, the parties have engaged in correspondence for payment and in Ex.P-4, the email dated 08.02.2016, one Amarnath Reddy of Ind-Bharath Group had confirmed the outstanding dues to the plaintiff and agreed to pay it before February, if the plaintiff decide to supply a vessel to them. That apart, in the settlement agreement dated 16.10.2017 Ex P-5, the actual due payable by the defendant to the plaintiff is mentioned as Rs.3,49,89,210/-. The execution of this settlement agreement is an admitted fact. The Authorised Signatory of the defendant Company Mr.M.N.V. Sudhakar (DW-1) is one of the signatory in Ex.P-5. He admits the execution of



Ex.P.5. The suit is presented in the High Court Registry on 14.05.2018. The confirmation of debt through e-mail Ex.P-4 dated 08.02.2016 and the acknowledgement of the actual due of Rs.3,49,89,210/- as on 15th October 2017 clearly establishes the fact that suit is within the period of limitation. The transaction between the parties is for goods sold and suit is for recovery of money based on a running account. After making partial payment, the defendant failed to pay the balance. On 15th October 2017, when the settlement agreement entered between the plaintiff, defendant and STPPL, the actual due payable has been ascertained and acknowledged. Hence, the limitation commences from that day. Since, the suit is filed within the period of limitation. It is not barred by limitation. Accordingly, Issue No.2 is held against the defendant.

10. Issue No 3:-

Regarding the suit claim, the plaintiff rely upon the Purchase order Ex.P-10, HSS agreement and invoice (Ex.P-2) series, Bill of Entries (Ex.P-11) series, the Settlement Agreement (Ex.P-5), their statement of accounts (Ex.P-7) and the memorandum of understanding Ex.P-8 and Ex.P-9. The defendant has not produced evidence to disprove these documents, except objecting the admissibility of the document on the ground that they are not the originals or documents after suit. In the affidavit of admission and denial filed by the defendant, the prime denial was about the non



production of primary evidence. During the examination of the witness, the plaintiff has produced the original HSS agreement (Ex.P-2), Original Settlement agreement (Ex.P-5) and the original letter of M/s.Star Thermal Power Pvt Ltd (Ex.P-6). During the cross examination of D.W-1, Ex.P-10 the purchase order and Ex.P-11 Bill of entries were marked. The witness for the defendant admits the transaction and the documents.

(ii). As per Ex.P-10, in continuation of the earlier agreement, the defendant had placed purchase order for 23,000 MTS coal on the HSS basis at the rate of Rs.3,076/- Per MT. The HSS agreement (Ex.P-2), indicates the vessel name, bill of lading numbers and the dates. The invoice dated 15.03.2014 (Ex.P-2 series) indicates the value of the goods (23,000 MTS of coal) is Rs.6,56,65,000/-. The Bill of entries (Ex.P-11 series) proves the delivery of 23,000 MT of coal showing the defendant as the importer. Thus, delivery and the value of the goods delivered is proved by the plaintiff beyond doubt. The statement of accounts (Ex.P-7) indicates the part payment made by the defendant and the balance amount due and payable. The defendant has not placed document to controvert these facts. Beside, in the settlement agreement which is very crucial document in this case, the defendant has agreed that as on 15th October 2017, the actual dues payable to the plaintiff is Rs.3,49,89,210/-. Out of the total value of the



goods i.e., Rs.6,56,65,000/-, after giving credit to the money paid by the defendant, for the balance and interest the suit claim is made. No evidence from the defendant to show this amount was discharged. Hence, the plaintiff is entitled for the suit claim. Accordingly, issue No.3 is answered in affirmative.

11. In the result, the Suit is Allowed as prayed with costs.

Sd./-G.J.J.

26/07/2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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List of Witness examined on the side of the Plaintiff:-

G.Mahendran (PW.1)

List of Witness examined on the side of the Defendant :-

1. M.N.V.Sudhakar (D.W.1)
2. T.S.Das (D.W.2)

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	02.05.2018	Original of Board Resolution
2.	Ex.P.2	15.03.2014	Original of HSS Agreement



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3.	Ex.P.3	22.11.201 6	True copy of e-mail from the defendant to the plaintiff along with 65B Certificate under Evidence Act.
4.	Ex.P.4	08.02.201 6	True copy of e-mail from the defendant to the plaintiff along with 65B Certificate under Evidence Act.
5.	Ex.P.5	16.10.201 7	Original Settlement Agreement.
6.	Ex.P.6	12.12.201 7	Original of Letter.
7.	Ex.P.7	---	True copy of statements of Accounts.
8.	Ex.P.8	08.11.201 8	Photocopy of Memorandum of Understanding.
9.	Ex.P.9	13.12.201 8	Photocopy of Memorandum of Understanding.

During cross examination of D.W.1

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.10	07.06.201 4	Purchase order issued by Defendant
2.	Ex.P.11	12.06.201 4	Bill of Entries (4 Nos.)

Sd./-G.J.J.

26/07/2021

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