



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. No.321 of 2018

M/s. SP Coal Resources Pvt. Limited,
Represented by its Manager,
Mr. N.Jagadeesh,
Old No. 28, New No. 12, Door No. 4B,
4th Floor, 2nd Line Beach Road,
Chennai - 600 001.

... 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

C.S.No. 321 of 2018

Civil Suit praying that this Hon'ble Court be pleased to pass a
Judgement and Decree against the Defendant by:

- a) Directing the Defendant to pay a sum of Rs. 7,19,76,121/- (Rupees
Seven Crores Nineteen Lakhs Seventy Six Thousand One Hundred
and Twenty One Only) as on 02.05.18 with interest at the rate of 18%

<https://hcservices.ecourts.gov.in> per annum on the Principal sum of Rs. 5,52,73,594/- (Rupees Five



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Crores Fifty Two Lakhs Seventy Three Thousand Five Hundred and Ninety Four 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 M/s. 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 date before this court for orders in the presence of said advocates for the parties hereto, and this court having observed that the plaintiff has proved the suit claim, **it is ordered and decreed as follows:-**

That the defendant herein, do pay to the plaintiff herein, a sum of Rs. 10,38,09,167 /- (Rupees Ten Crores thirty eight Lakhs nine thousand one hundred sixty seven only) with further interest at the rate of 18% per annum on the sum of Rs. 5,52,73,594/- (Rupees Five Crores Fifty Two lakhs Seventy Three Thousand Five Hundred and Ninety Four only) from this date till the date of full payment.



2) That the defendant herein, do pay to the plaintiff herein, the costs 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 OF MADRAS AFORESAID, THIS THE
26TH DAY OF JULY 2021

Sd/-
ASSISTANT REGISTRAR (O.S-I)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
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C.S.No. 321 of 2018

DECREE
DATED 26/07/2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 17/02/2022

APPROVED ON: 21/02/2022

**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.321 of 2018**

M/s.SP Coal Resource Pvt Limited,
Represented by its Director,
Mr.N.Jagadeesh,
Old No.28, New No.12, Door No.4B,
4th Floor, 2nd Line Beach Road,
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.7,19,76,121/- (Rupees Seven Crores Nineteen Lakhs Seventy Six Thousand One Hundred and Twenty One) as on 02.05.2018 with interest at the rate of 18% per annum on the Principal sum of Rs.5,52,73,594/- (Rupees Five Crores Fifty Two lakhs Seventy Three Thousand Five Hundred and Ninety Four only) from the date of Plaint till the day of payment in full to the plaintiff.

(b). The costs;



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For Defendant : Mr. Anirudh Krishnan

JUDGMENT

The suit is for recovery of Rs.7,19,76,121/- and interest at the rate of 18% from 02.05.2018 till the date of payment for the principal sum of Rs.5,52,73,594/- and costs.

2. The subject suit is determined as Commercial Dispute since it relates to non payment of consideration for the coal imported from UAE and delivered to the defendant.

3. The case of the plaintiff :-

(i). The plaintiff Company, is engaged in the business of trading in coal. For buying Non Coking Coal of Indonesian Origin in bulk, (herein after referred as 'goods') the defendant approached the plaintiff and placed purchase order dated 20.08.2015. The plaintiff and defendant entered into an High Seas Sale (HSS) Agreement on 21.09.2015, for selling 29,753.00 MT of goods at the price of Rs.2698/- per MT on terms and conditions contained therein. The plaintiff raised invoice on 21.09.2015 for a total quantity of 29,753.00 MTS of coal for a total price of Rs.8,02,73,594/-. As per the trade practise, the originals of the HSS Agreement and connected



documents necessary for clearing the 'goods' were given to the defendant and to the Customs Authorities. As per the terms of the HSS agreement and purchase order, the payment for the 'goods' sold is to be made by RTGS or LC on usance basis on the 60th day from the date of completion of the vessel discharge at the Tuticorin port and interest shall be levied for the delay beyond 60 days.

(ii). The vessel “MV Anna Dorothea” completely discharged the 'goods' on 23.09.2015. The payment for the 'goods' supplied by the plaintiff fell due on 22.11.2015 within the said period the defendant failed to pay the dues in full. After giving credit to various payments made by the defendant, a sum of Rs.7,19,76,121/- was due and payable to the plaintiff by the defendant. After several meeting and discussions, a tripartite settlement was arrived between the plaintiff, defendant and Star Thermal Power Pvt. Ltd., whereby, Star Thermal Power Pvt Limited agreed to pay Rs.4,22,43,133/- as against the total liability of Rs.5,28,03,917/- payable by the defendant to the Plaintiff towards full satisfaction. However, Star Thermal Power Pvt. Ltd, through its letter dated 12.12.2017 had expressed its inability to settle the dues of the defendant. While so, the defendant promised to pay the due once it realises the arrears from TNGEDCO through “TNERC”. In the meeting held at the Office of the Defendant in Chennai, the defendant



undertook to settle the dues before March-2018. However, the defendant failed to keep up their promise. TANGEDCO owes more than Rs.100 crores to the defendant. As on 02.05.2018, the outstanding due payable by the defendant to the plaintiff is Rs.5,52,73,594/- towards principal and Rs.1,67,02,527/- towards interest.

4. The case of the defendant:-

The defendant is a Special Purpose Vehicle, which owns a power generation station at Swaminatham Village, Tuticorin primarily for the purpose of generating electricity for the use of its shareholders. The suit suffers from lack of cause of action within the jurisdiction of this Court. No dues are outstanding and to be paid to the plaintiff. On the date of initiating the suit, no acknowledgement of liability or any document to prove that there was debt due on the part of the Defendant. The purchase of coal from the plaintiff as per the purchase order is admitted. The coal was used by the defendant to produce electricity for the sale to its consumers which includes TANGEDCO. The tripartite settlement dated 16.10.2017 admitted. As per the said settlement, M/s.Star Thermal Power Pvt Ltd., had agreed to fulfil the payment obligations of the defendant to the plaintiff. In the light of the



against the defendant does not hold good as the original agreement stands novated. The suit is liable to be dismissed for non-joinder of necessary party, as M/s.Star Thermal has not been made a party to the present suit. M/s.Star Thermal Power Pvt Ltd., agreed to settle the alleged dues, and later backtracked, without whom the present suit cannot be properly adjudicated. Secondly, the alleged cause of action for this suit arose outside the jurisdiction of this Court. The defendant, carry on business at Hyderabad. The purchase order was placed from the defendant's Hyderabad Office. The transaction concluded at the Office of the defendant at Hyderabad. The goods was delivered at Tuticorin. No cause of action arose within the territorial jurisdiction of this Court.

4. After receipt of the affidavit of admission and denial from the parties, this Court based on the pleadings framed the following issues:-

(i) Whether the Hon'ble High Court, Madras has got territorial jurisdiction to entertain and decide the suit filed by the plaintiff against the defendant?

(ii) 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?

(iii) Whether on account of the Settlement Agreement dated 16.10.2017 entered between plaintiff, defendant and M/s.Star Thermal Power Ltd., the High Seas Sale Agreement dated 21.09.2015 stood novated?



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(iv) Whether the defendant had cleared all the outstanding amount due under the High Seas Sale Agreement dated 21.09.2015?

(v) Whether the plaintiff is entitled to a sum of Rs.7,19,76,121/- as on 02.05.2018 with interest at the rate of 18% on the principal sum of Rs.5,52,73,594?

(vi) To what other reliefs, the plaintiff is entitled to?

5. For the plaintiff, its authorised signatory Mr.N.Jagadeesh had deposed as PW-1. For the defendant its former employee Mr.M.N.V.Sudhakar and the authorised representative of the defendant Mr.T.S.Das had deposed as DW-1 and DW-2 respectively. On behalf of the plaintiff, 12 documents were marked as Ex.P-1 to Ex.P-12. No documents marked on the side of the defendant.

(i). Issue No.1:-

The defendant plea regarding lack of jurisdiction to entertain the suit by this Court is based on the facts that the defendant's Company is at Hyderabad, the subject goods was delivered at Tutucorin port, no transaction took place within the territory of this Court jurisdiction.

However to the questions put to P.W-1 in the cross examination to suggest



that the transactions took place either at Hyderabad or at Tuticorin were denied. The defendant admits that based on their purchase order Ex.P-2, the High Seas Sales Agreement (Ex.P.3) dated 21.09.2015 was executed. This is the foundational document for the suit transaction. In this document, at serial No.15, the parties have agreed to subject themselves to Chennai Jurisdiction. Further, the Original settlement agreement Ex.P-6 dated 16.10.2017, is entered into at Chennai, in which, the defendant is one of the signatory and party. D.W-1, in his deposition admits that, the defendant is having office at Chennai. In Ex.P-2, the original purchase order issued by the defendant, the Chennai office address is provided. Thus, from the documentary and oral evidence, it could be seen that the defendant has business operation at Chennai. Further, all documents between the parties and pleadings of the defendant were executed only at Chennai. Therefore, when both the parties have business operation at Chennai and the transactions were executed in Chennai, this Court have the territorial jurisdiction to entertain and decide the suit. Accordingly, issue No.1 is answered in affirmative.

(ii). Issue No.2 and Issue No.3:-



along with the plaintiff and defendant in the settlement agreement (Ex.P.6)

dated 16.10.2017. As per the recital found in this document, for the due of Rs.5,28,03,917/- 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.4,22,43,133/- 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.4,22,43,133/- 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, but informed plaintiff through notice dated 12.12.2017 (Ex.P-7), that they are unable to settle the outstanding dues and will not be settling the dues. They will write back to the plaintiff after consulting the defendant about alternate settlement proposal. This notice is issued invoking clause 8 of the settlement agreement Ex P-6. A copy of this notice is marked to the defendant.

Clause 8 in Ex.P-6., reads as below:-

The parties agree that, in addition to any
<https://hcservices.ecourts.gov.in/hcservices/> other right, in case the transaction as contemplated
under the arrangement between STPPL and the



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Company or its shareholders delayed beyond 8 weeks from the date of execution for the payment of Outstanding Dues or 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 consequences of the delay or termination or non-materialisation or delay of the said arrangement, with a copy to the Company. The parties agree that the decision of STPPL on termination or non-materialisation or delay of the said arrangement shall be final and binding.

b. STPPL shall not be liable to make any payment towards outstanding dues.

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

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.

Under this clause, the parties have agreed that in case, the



(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.SP Coal Resources 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 8 (a) to (d) of the settlement agreement dated 16.10.2017, M/s Star Thermal Power Plant Pvt Ltd., is not a necessary party to this suit. Likewise, for the same reason, since the settlement agreement stood terminated under Ex.P-7, the *status quo ante* gets restored. Therefore, the principle of novation is inapplicable to the facts of this case. Accordingly issues No. 2 and 3 are held against the defendant.

(iii). Issue (iv) and (v):-

The case of the plaintiff is that the value of the goods supplied under invoice Ex.P-4 dated 21.09.2015 is Rs.8,02,73,594/-. This amount was supposed to be paid within 60 days from the date of delivery, but the defendant did not pay the full amount for months even after expiry of 60



days. These facts are wholly accepted by the defendant. As on 16.10.2017 when the plaintiff as trade creditor, the defendant as first party and M/s.Star Thermal Power Pvt Ltd as second party entered into tripartite agreement, the defendant has accepted that the due as on that day was Rs.5,28,03,917/-. In addition, pending suit, in Company Appeal (AT) (Insolvency) No.552 of 2018, Ragu Rama Krishna Raju on behalf of the defendant Company had admitted the due payable to the plaintiff is Rs.528.04 lakhs. two memorandum of understanding been entered with the plaintiff on 08.11.2018 (Ex.P-9) and 13.12.2018 (Ex.P-10) confirming the due of Rs.528.04 lakhs and same is part of the order passed by the NCLT.

The plaintiff has placed documentary evidence and proof by way of written admission regarding the amount due. Whereas, the defendant has not placed any contra evidence to disprove these evidence. The suit laid on 14.05.2018 for Rs.7,19,76,121/- which is including of 18% interest till the date of suit. Further, interest is prayed at the rate of 18% for the principal sum of Rs.5,52,73,594/- as on the date of filing the suit. Accordingly, issues (iv) and (v) are held in affirmative.

6. For the above said reasons, this Court holds that the plaintiff

has proved the suit claim through oral and documentary evidence and



entitled for judgment and decree as prayed.

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7. In the result, Suit is Allowed as prayed. With costs.

Sd/- G.J.J.
26/07/2021

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

N.Jagadeesh (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	Certified copy of Board Resolution.
2.	Ex.P.2	20.08.2015	Original Purchase Order.
3.	Ex.P.3	21.09.2015	Photocopy of HSS Agreement.
4.	Ex.P.4	21.09.2015	Original of Invoice.
5.	Ex.P.5	---	Original Bill of Lading.
6.	Ex.P.6	16.10.2017	Original of Settlement Agreement.
7.	Ex.P.7	12.12.2017	Original Copy of Letter.
8.	Ex.P.8	---	True copy of Statement of Accounts.
9.	Ex.P.9	08.11.2018	Photocopy of Memorandum of Understanding.
10.	Ex.P.10	13.12.2018	Photocopy of Memorandum of Understanding.
11.	Ex.P.11	26.12.2018	E-mail sent by the plaintiff to the defendant along with 65B Certificate.
12.	Ex.P.12	27.12.2018	Reply to the mail sent by the defendant to the plaintiff along with 65B Certificate.



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

No documents marked on the side of the defendant

Sd/- G.J.J.
26/07/2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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