IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY THE 11TH DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S.(COMM.DIV.)No. 355 of 2018
and
A.Nos.7970 & 7971 of 2019

M/s.Cetex Petrochemicals Limited,
Represented by its Chief Financial Officer,
Mr.S.Somasundaram,
Having Registered Office at Manali,
Chennai – 600 068. ... 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 judgment and decree against the defendants:-

a). Directing the defendant to pay a sum of Rs.11,10,28,317/- (Rupees Eleven Crores Ten Lakhs Twenty Eight Thousand Three Hundred and Seventeen Only) as on 08.05.2018 on the Principal sum of Rs.5,68,15,877/- (Rupees Five Crores Sixty Eight Lakhs Fifteen Thousand Eight Hundred and Seventy Seven only) together with interest at the rate of

18% per annum from the date of plaint till the day of payment in full to the plaintiff.

b). For the Costs of the suit.

A.Nos.7970 & 7971 of 2019:-

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. .. Applicant/Defendant

/versus/

M/s.Cetex Petrochemicals Limited,
Represented by its Chief Financial Officer,
Mr.S.Somasundaram,
Having Registered Office at Manali,
Chennai – 600 068. ..Respondent/Plaintiff

A.No.7970 of 2019:-

Application praying that this Hon'ble court be pleased to reject the plaint filed by the plaintiff in C.S.No.(Comm.Div) No.355 of 2018.

A.No.7971 of 2019:-

Application praying that this Hon'ble court be pleased to refer this suit bearing C.S.No.(Comm.Div) No.355 of 2018 to arbitration in accordance with Section 8 of the Arbitration and Conciliation Act, 1996.

This Civil suit alongwith these Applications having been heard on

05.08.2021 in the presence of Mr.Abdul Hameed for M/s. AAV Partners, Advocates for the Plaintiff in C.S.(Comm.Div) No.355 of 2018 and for the respondent in A.Nos. 7970 and 7971 of 2019 and Mr.K.Shiva for Mr.Anirudh Krishnan, Advocates for the defendant in C.S.(Comm.Div) No.355 of 2018 and for the applicant in A.Nos. 7970 and 7971 of 2019 and upon reading the plaint filed in C.S.(Comm.Div) No.355 of 2018 and the judges summons and the affidavit of T.S.Das filed in A.Nos. 7970 and 7971 of 2019 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 **it is ordered and decreed as follows**:-

That the defendant herein do pay to the plaintiff herein a sum of Rs.14,36,09,498.41/- (Rupees fourteen crores thirty six lakhs nine thousand four hundred and ninety eight and paise forty one only) with further interest at the rate of 18% per annum on the sum of Rs.5,68,15,877/- (Rupees five crores sixty eight lakhs fifteen thousand eight hundred and seventy seven only) from this date till the date of realization.

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.

3. That these A.Nos. 7970 & 7971 of 2021 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 11th DAY OF AUGUST 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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SK-31.08.2021

C.S.(Comm.Div) No. 355 of 2018
and
A.Nos.7970 & 7971 of 2019

ORDER :-
DATED : 11.08.2021

THE HON'BLE DR. JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 02/09/2021

APPROVED ON: 03/09/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.08.2021	Pronounced on : 11.08.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.(Comm.Div).No.355 of 2018
and A.Nos.7970 & 7971 of 2019

M/s.Cetex Petrochemicals Limited,
Represented by its Chief Financial Officer,
Mr.S.Somasundaram,
Having Registered Office at Manali,
Chennai – 600 068. ... 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 Rule read with Order VII Rule 1 of C.P.C.,

a). Directing the defendant to pay a sum of Rs.11,10,28,317/- (Rupees Eleven Crores Ten Lakhs Twenty Eight Thousand Three Hundred and Seventeen Only) as on 08.05.2018 on the Principal sum of Rs.5,68,15,877/- (Rupees Five Crores Sixty Eight Lakhs Fifteen Thousand Eight Hundred and Seventy Seven only) together with interest at the rate of 18% per annum from the date of plaint till the day of payment in full to the plaintiff.

b). For the Costs of the suit.

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

For Defendant : Mr. Anirudh Krishnan

JUDGMENT

The plaintiff is a Private Limited Company having its registered Office at Chennai. According to the plaintiff, it is trading in coal for past several years and during the month of October – 2014, the defendant approached the plaintiff for supply of Steaming, Non Coking Coal in bulk of Indonesian Origin. Pursuant to that, the plaintiff and defendant executed the following documents at Chennai.

S.No.	PARTIES	DESCRIPTION
1.	Defendant to Plaintiff	Purchase Order dated 10.10.2014 for supply of 55,000 MT +/- 10% of "Goods" on terms and conditions contained therein.
2.	Plaintiff and Defendant	High Seas Sale Agreement dated 10.10.2014 for selling 54,900 MT of "Goods" at the price of Rs.3058.12/- PMT on terms and conditions therein.
3.	Plaintiff to Defendant	High Seas Invoice No.14210001 dated 14.10.2014 for a total quantity of 54,900.00 MTS of "Goods" for a total price of Rs.16,78,90,788.00

2. As per trade practice, the High Seas Sale agreement and connected documents in original were handover to the defendant for

Custom Clearance. As per the terms of the High Seas Sale agreement and purchase order, the invoice amount should be paid within 60 days. In the instant case, the coal was discharged on 16.10.2014 at Tuticorin Port, from the vessel MV. LMZ PLUTO. The plaintiff raised debit notes for the difference in foreign exchange and interest on Letter of Credit discounting charges. On 02.06.2016, the plaintiff sent a e-mail to the defendant enclosing the statement of accounts and sought for confirmation of balance. The defendant confirmed the balance of Rs.7,18,07,342/- payable to the plaintiff. After giving credits to various payments made by the defendant as on 08.05.2018, the sum due is Rs.11,10,28,317/-. Several meetings took place between the plaintiff and the defendant at Chennai Office, for payment, but did not yield any result. The settlement agreement dated 16.10.2017 was entered between the defendant, plaintiff and M/s.Star Thermal Power Private Limited., as against the total liability of Rs.5,68,15,877/-. The plaintiff agreed for a sum of Rs.4,54,52,701/- towards the full satisfaction. M/s.Star Thermal Power Private Limited, had agreed to pay the said amount on or before 25.12.2017, but failed to settle the amount and therefore, by efflux of time, the settlement agreement has come to an end. Hence, suit for recovery of Rs.11,10,28,317/- due as on 08.05.2018 and 18% interest on the Principal sum of Rs.5,68,15,877/- and costs.

3. The defendant has not filed any written statement. However, two applications (A.Nos.7970 of 2019 & 7971 of 2019) filed for rejecting the plaint and refer the matter to arbitrator.

4. Pending these two applications, the plaintiff witness was examined. 12 Exhibits were marked. The defendant cross examined the plaintiff witness.

5. The Learned Counsel appearing for the plaintiff would submitted that the suit transactions took place within the jurisdiction of this Court where the defendant having its Office. The coal was delivered to the defendant at Tuticorin as per the High Seas Invoice (Ex.P.2). The defendant confirmed the balance of Rs.17,19,07,342/- as on 31.12.2014 and same is marked as Ex.P.3. Thereafter, various payments were made by the defendant and statement of accounts (Ex.P.9) indicates that a sum of Rs.11,10,28,317/- as on 08th May 2018 is due and payable by the defendant.

6. The parties entered into a settlement of agreement (Ex.P.6) dated 16.10.2017, wherein, M/s.Star Thermal Power Private Limited agreed to settle the plaintiff a sum of Rs.4,54,52,701/- towards full and final settlement on or before 25th December 2017. This settlement agreement

(Ex.P.6) did not materialised.

7. Pending suit, the parties entered into a Memorandum of Understanding (Ex.P.11 and Ex.P.12), wherein, the plaintiff agreed to settle the dues for Rs.3,12,44,000/- as against the claim of Rs.5,68,07,000/-. However, this memorandum of understanding did not fructify.

8. Relying upon the copy of the Bank statement (Ex.P.10), the settlement agreement (Ex.P.6) and admission of liability (Ex.P.4), the Learned Counsel for the plaintiff seeks for money decree as prayed for.

9. Per contra, the Learned Counsel appearing for the defendant would submit that the suit itself is not maintainable before this Court since the plaintiff did not disclose any cause of action within jurisdiction of this Court. Further, after the settlement agreement (Ex.P.6) dated 16.10.2017, entered between the plaintiff, defendant and M/s.Star Thermal Power Private Limited, the plaintiff cannot revert back on the contract of supply of goods. Applying the "*Principle of Novation*", the terms of the subsequent agreement alone can be enforced. As per clause 22, of the Settlement agreement "*Any dispute arising out of or in connection with this settlement*

agreement shall be referred to arbitration". Having agreed for alternate dispute resolution, the plaintiff cannot resort to Civil proceedings, more so, when no cause of action arose within the jurisdiction of this Court.

10. As far as cause of action is concerned, the specific case of the plaintiff is that the entire cause of action for the present suit arose at Manali, Chennai, within jurisdiction of this Court. Asserts the defendant approached the plaintiff in its Office at Chennai. There is no denial of this assertion on the part of the defendant. Further, the case of the plaintiff is that the High Seas Sale agreement and the purchase order were placed by the defendant on the plaintiff at Chennai Office and invoice was raised by the plaintiff on the defendant pursuant to the purchase order. Even for this assertion there is no denial or effective cross examination of P.W.1, to disprove this assertion. There is not even a suggestion that the defendant have no Office at Chennai.

11. As far as liability is concern, the defendant having admitted the liability has no serious defence to the suit claim. The defendant, though not filed written statement, had availed opportunity of cross examine P.W.1 (Mr.S.Somasundaram), the authorised signatory of the plaintiff's Company. The cross examination to impeach this witness regarding the *situs* of the agreement and the genuineness of the document did not anyway impeached the case of the plaintiff. Regarding the *situs* of receiving the High Seas Sale invoice (Ex.P.2) at Defendant's Chennai Office, there is no denial. Regarding (Ex.P.3), it is suggested to the witness that, it is a fake document. Examining Ex.P.3, the Letter of Confirmation of balance, this Court finds that the Office seal of the defendant is affixed and signed by its Authorised Signatory. The letter of communication through e-mail between the parties suggested to be false and fake, which the plaintiff witness has denied. Excluding the secondary evidence, the plaintiff has filed the copy of High Seas Invoice (Ex.P.2) in original, the copy of the settlement agreement (Ex.P.6) in original and statement of accounts by State Bank of India (Ex.P.10) in original. As far as the settlement agreement is concerned, the terms of agreement could not be materialised and therefore, neither of the parties have perused it after 25.12.2017, the date on which M/s.Star Thermal Power Private Limited agreed to settle the plaintiff on behalf of the defendant.

(i). Clause 7 of this settlement agreement reads as below:-

> "*7. Except to the extent of Outstanding Dues, the Trade Creditor confirms that there are no claims against the Company or STPPL, which fact neither Party shall dispute in future. The Trade Creditor further confirms that it shall not raise any dispute with the Company under the Supply*

Agreement(s) till the payment of the entire outstanding Dues, in the manner set out in this Agreement, if the payment is made within the stipulated time. However if the payment is not made within the stipulate time the trade creditor reserves its right to take appropriate steps as may be necessary to recover the amount due from the Company."

(ii). Clause 11 of the settlement agreement, reads as below:-

> "*11. This Agreement supersedes all arrangements and supply agreements in relation to supply of Product and settlement of Outstanding Dues and shall prevail provided the payment is made within the stipulated time. However if the payment is not made within the stipulate time all the previous agreements documents and correspondences between the company and trade creditor shall prevail and the trade creditor reserves its right to take appropriate steps as may be necessary to recover the amount due from the Company."*

(iii). Clause 15 of the Settlement Agreement, reads as below:-

> "*15. If the payment is not made within the stipulate time this agreement shall stand terminated without any notice and the trade creditor shall be free to take steps against the company to recover the original amount due to them by the Company as per their respective supply agreements. Any clause in the*

agreement prohibiting the trade creditor or any clause superseding the earlier agreements, document and/or correspondence between the Company and trade creditor shall stand terminated, cancelled and void."

12. On holistic reading of the settlement agreement and particularly the above three clauses, the defendant has agreed to settle the dues of the plaintiff through M/s.Star Thermal Power Private Limited on or before 25.12.2017. It is specifically agreed by the parties that all arrangements including supply agreements (except the settlement agreement) in relation to the outstanding dues or supply of the product shall stand terminated. If payment is not made by 25.12.2017, clause 11 shall stands cancelled and void. Thus, the parties conscious of the fact that if the payment agreed by M/s.Star Thermal Power Private Limited not made on or before 25.12.2017, the supersession clause as found in clause 4(a) and 11 will stand cancelled and void. Under clause 15 of settlement agreement, the said intention is expressed more specifically in other words.

13. In these circumstances, the plea of the defendant that this settlement agreement to be treated as subsequent agreement superseding the earlier supply agreement has no force.

14. The plaintiff has relied 12 documents as pointed out earlier, most of them are secondary evidence. However, the plaintiff has given plausible explanation for not producing the originals. Further, the transactions between the plaintiff and the defendant is not denied. The plaintiff claim it is a running account between the parties and for the goods supplied during the month of November – 2014 and the defendant was making partial payments periodically on various dates.

15. To prove the same, the plaintiff has relied upon Ex.P.10, the copy of the Bank Statement. In this document, the Court is able to see the payments from the defendant through RTGS upto 22.04.2016. The said extract is annexed along with Ex.P.10, reveals that the defendant's last payment of Rs.1,50,00,000/- into the account of the plaintiff was on 22.04.2016.

16. Therefore, on considering the overall evidence, it is clear that the defendant is carrying on business at Chennai. The suit transactions took place at Chennai. The defendant has acknowledged their liability on more than one occasion. The compromise deed in view of the failure to

materialise, though entered subsequently did not supersede the earlier supply contract. Therefore, the defendant is liable to pay the plaintiff for the coal supplied as per the invoice (Ex.P.2). Being a Commercial transactions, the plaintiff claims 18% interest. There is an agreement contrary regarding interest for delayed payment. Hence, this Court holds that the plaintiff is entitled for the relief sought. Accordingly, the ***Suit is Allowed with costs.*** Consequently, connected Applications are closed.

Sd./-G.J.J.
11.08.2021

List of Witness examined on the side of the Plaintiff:-
Mr.S.Somasundaram (PW.1)
List of Witness examined on the side of the Defendant :-
Nil
List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	16.11.2017	Original Board Resolution
2.	Ex.P.2	14.10.2014	Original High Seas Invoice
3.	Ex.P.3	01.01.2015	Original Letter sent by the plaintiff to the defendant.
4.	Ex.P.4	02.06.2016	Original e-mail sent by the plaintiff to the defendant along with 65B certificate.
5.	Ex.P.5	07.06.2016	Original of Reply e-mail by the defendant along with 65B certificate.
6.	Ex.P.6	16.10.2017	Original of Settlement Agreement
7.	Ex.P.7	15.12.2015	Original of Debit Note
8.	Ex.P.8	27.08.2015	Original of Debit Note
9.	Ex.P.9	01.04.2007 to 08.05.2018	True copy of Statement of Accounts (Marked with objections by the defendant's Counsel).

10.	Ex.P.10	03.06.2015 to 22.04.2016	Original Statement of State Bank of India.
11.	Ex.P.11	08.11.2018	Photocopy of Memorandum of Understanding
12.	Ex.P.12	13.12.2018	Photocopy of Memorandum of Understanding

No documents marked on the side of the defendant

Sd./-G.J.J.
11.08.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

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