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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.No.362 of 2018

And

A.Nos.7968 & 7969 of 2019

C.S.No.362 of 2018:-

M/s.Agarwal Coal Corporation Pvt Ltd.,

Rep. by its Authorised Signatory,

Mr.Shailendra Singh,

Shop No.5, 2nd Floor,

Linghi Chetty Street,

Old No.195, New No.254,

Chennai – 600 001.

Also At

5/158, Aruna Nagar,

Caldwel Colony,

Tuticorin – 628 008 (TN)

...Plaintiff

Vs

M/s.Ind Barath Thermal Power Ltd.,

Rep.by its Managing Director,

having 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.21,86,88,966/-



and Nine Hundred and Sixty Six Only) as on 31.05.18 on the Principal sum of Rs.16,77,17,100/- (Rupees Sixteen Crores Seventy Seven Lakhs Seventeen Thousand and One Hundred Only) together with interest at the rate of 18% per annum from the date of Complaint till the days of payment in full to the Plaintiff.

(b) the costs;

A.Nos.7968 & 7969 of 2019:-

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

...Applicant/Defendant
in A.No.1969 of 2019

Vs

M/s.Agarwal Coal Corporation Pvt. Ltd.,
Rep. by its authorised signatory
Mr.Shailendra Singh,
Shop No.5, 2nd Floor,
Linghi chetty Street,
Old No.195, New No.254,
Chennai – 600 001.

Also At:
5/158, Aruna Nagar,
Caldwel Colony,
Tuticorin – 628 008(TN)

...Respondent/Plaintiff
in A.No.1969 of 2019

A.No.7968 of 2019:-

Application praying that this Hon'ble Court be pleased to refer the instant dispute to arbitration in terms of Section 8 of the Arbitration and Conciliation Act, 1996.

**A.No.7969 of 2019:-**

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Application praying that this Hon'ble Court be pleased to allow the instant application and reject the plaint filed by the Respondent/Plaintiff under Order VII, Rule 11 of the Code of the Civil Procedure, 1908.

This Civil Suit along with these applications having been heard on 04/08/2021 in the presence of Mr.Abdul Hameed for M/s. AAV Partners, advocates for the plaintiff in C.S.No.362 of 2018 and for the respondent in A.Nos.7968&7969 of 2019 and Mr.Adarsh Subramaniam for Mr.Anirudh Krishnan, advocates for the defendant in C.S.No.362 of 2018 and for the applicant in A.Nos.7968&7969 of 2019 and upon reading the plaint filed in C.S.No.362 of 2018 and the order herein dated 27/11/2020 and the order dated 15/12/2020 made in C.S.No.362 of 2018 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 plain reading of the provisions of law regarding jurisdiction is suffice to hold that failure to obtain leave to sue when only part cause of action arisen within the limits of this Court and the exclusion of jurisdiction in the HSS agreements as well as the invoices conferring exclusive jurisdiction to Indore Court and for failure to prove the suit transaction took place at the defendant's Chennai Office, the plaintiff is to be de-suited, for the false



statement that the entire cause of action arose within the territorial limits of this Court to avoid seeking leave to sue and **it is ordered as follows:-**

That the suit in C.S.No.362 of 2018 be and is hereby dismissed.

2. That these A.Nos.7968 & 7969 of 2019 do stand closed.

3. That the Plaintiff herein do pay to the defendant 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 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.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments.



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17/09/2021

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C.S.No.362 of 2018

And

A.Nos.7968 & 7969 of 2019

ORDER

DATED : 11.08.2021

THE HON'BLE DR. JUSTICE

G.JAYACHANDRAN

FOR APPROVAL:22/10/2021

APPROVED ON:27/10/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :04/08/2021

Pronounced on :11.08.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.S.No.362 of 2018

and

A.Nos.7968 and 7969 of 2019

M/s Agarwal Coal Corporation Pvt.Ltd.,
Rep.by its Authorised Signatory,
Mr.Shailendra Singh,
Shop No.5, 2nd Floor,
Linghi Chetty Street,
Old No.195, New No.254,
Chennai 600 001.

Also at
5/158, Aruna Nagar,
Caldwel Colony,
Tuticorin 628 008(TN).

.. Plaintiff

/versus/

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

..Defendant

Prayer: Civil Suit has been filed under Order IV, Rule 1 of O.S.

Rules Read with Order VII, Rule 1 of C.P.C., praying to pass a judgment
and decree against the defendants by:

(a)directing the defendant to pay a sum of Rs.21,86,88,966/- (Rupees

Twenty One Crores Eight Six Lakhs Eighty Eight Thousand and Nine



Hundred and Sixty Six Only) as on 31.05.18 on the Principal sum of Rs.16,77,17,100/- (Rupees Sixteen Crores Seventy Seven Lakhs Seventeen Thousand and One Hundred 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)the costs.

For Plaintiff :Mr.Abdul Hameed for
M/s AAV Partners

For Defendant :Mr.Adarsh Subramaniam for
Mr.Arnirudh Krishnan

J U D G M E N T

(The case has been heard through Video Conferencing)

The Suit before the Commercial Division of the High Court is filed on the premise that the subject matter of the present suit falls under the purview of Commercial Dispute as defined under Section 2(1)(c) (xviii) r/w proviso (1) of Section 7 of the Commercial Courts Act, 2015.

2.The gist of the plaint is that, the defendant approached the plaintiff at its office in Chennai and expressed desire to buy steaming, Non Coking Coal in bulk of Indonesian origin. Pursuant to that, the following 15 documents were entered between the parties at



Sl.No.	Parties	Description
01.	Defendant to Plaintiff	Purchase Order dated 01.08.13 for supply of 50000 MT +/- 10% of "Goods" on terms and conditions contained therein.
02.	Plaintiff and Defendant	High Seas Sale Agreement dated 05.08.13 for selling 54875 Mt of "Goods" at the price of Rs.3,393.50/- PMT on terms and conditions contained therein.
03.	Plaintiff to Defendant	Invoice No.TTC/HSS/AUG-13/01 dt.05.08.13, for a total quantity of 54875 MTS of "Goods" for a total price of Rs.18,62,18,312/-.
04.	Defendant to Plaintiff	Purchase Order dated 15.07.14 for supply of 55000 MT +/- 10% of "Goods" on terms and conditions contained therein.
05.	Plaintiff and Defendant	High Seas Sale Agreement dated 03.05.14 for selling 55000 MT of "Goods" at the price of Rs.3,213/- PMT on terms and conditions contained therein.
06.	Plaintiff to Defendant	Invoice No.TTC/HSS/MAY-14/01 dt.23.05.14, for a total quantity of 55000 MTS of "Goods" for a total price of Rs.17,67,15,000/-.
07.	Defendant to Plaintiff	Purchase order dated 15.07.14 for supply of 25000 MT +/-10% of "Goods" on terms and conditions contained therein.
08.	Plaintiff and Defendant	High Seas Sale Agreement dated 20.12.14 for selling 25000 MT of "Goods" at the price of Rs.3,051.60/- PMT on terms and conditions contained therein.
09.	Plaintiff to Defendant	Invoice No.TTC/HSS/DEC-14/02 dt.20.12.14, for a total quantity of 25000 MTS of "Goods" for a total price of Rs.7,62,90,000/-.
10.	Defendant to Plaintiff	Purchase Order dated 28.09.15 for supply of 25000 MT+/- 10% of "Goods" on terms and conditions contained therein.
11.	Plaintiff and Defendant	High Seas Sale Agreement dated 20.10.15 for selling 28820 Mt of "Goods" at the price of Rs.2485/- PMT on terms and conditions contained therein.
12.	Plaintiff to Defendant	Invoice No.TTC/HSS/OCT-15/11 dt.20.10.15, for a total quantity of 28820



Sl.No.	Parties	Description
		MTS of “Goods” for a total price of Rs.7,16,17,700/-.
13.	Defendant to Plaintiff	Purchase Order dated 27.06.15 for supply of 55000 MT +/- 10% of “Goods” on terms and conditions contained therein.
14.	Plaintiff and Defendant	High Seas Sale Agreement dated 16,07.15 for selling 30000 MT of “Goods” at the price of Rs.2700/- PMT on terms and conditions contained therein.
15.	Plaintiff to Defendant	Invoice No.TTC/HSS/JUL-15/01 dt.16.07.15, for a total quantity of 30000 MTS of “Goods” for a total price of Rs.8,10,00,000/-.
TOTAL		1,93,695 MTS

3.As per the trade practise, all the documents connected to the transactions were submitted in original to the Customs Department and the plaintiff is in possession of the photocopies of them. As per the High Seas Sales Agreement, the payments for the goods supplied should be made through RTGS or LC on usance basis on the dates mentioned in the respective purchase orders. In case of any failure in payment, the buyer is liable to pay interest.

4.As per the purchase orders, HSS agreements and Invoices mentioned above, 1,93,695 MTS of ‘Goods’ totally worth of Rs.67,63,30,244/-were completely discharged at Tuticorin Port through vessels MV Berks Halil, MV Four Mubami, MV Globe Trinco and MV Petrel Bullker between 17/08/2013 and 01/08/2015. After giving due



credits to various payments made by the defendant, as on 31/05/2018, a sum of Rs.16,77,17,100/- is due and payable to the plaintiff towards the principal besides interest. Several meetings between the plaintiff and defendant took place at its office in Chennai and Tuticorin did not yield any result. The defendant through letter dated 17/07/2017, promised to clear the dues, once the negotiation to sell the defendant company gets completed. Thereafter, a settlement agreement was entered between the defendant, plaintiff and one M/s Star Thermal Power Private Ltd (in short “STPPL”) on 28/09/2017, wherein on behalf of the defendant, M/s STPPL agreed to settle the plaintiff a sum of Rs.13,13,24,838/- as against the liability of Rs.16,41,56,048/- . However, M/s STPPL failed to pay the settled amount within the time fixed. Hence, due to efflux in time, the settlement agreement has come to end. The plaintiff is entitled to claim the entire monies due to it from the defendant.

5.The entire cause of action, according to the plaint, arose within the territorial jurisdiction of Chennai/Tuticorin, wherein the Defendant had placed the purchase orders on the plaintiff on various dates. HSS Agreement entered at the office of the plaintiff in Chennai on various dates. Invoices raised on the defendant at its office at Tuticorin, goods were delivered at Tuticorin Port and the defendant took delivery of the



goods at Tuticorin. All meetings regarding settlement of dues took place at Chennai, Coimbatore and Tuticorin, where the offices of the parties are situated at Chennai, when the settlement agreement entered between the plaintiff, defendant and STPPL.

6.It is pertinent to note, the defendant, who received the suit summons on 04/07/2018, did not file written statement within the time limit prescribed under the law. Much after the expiry of the period of limitation, the defendant filed Appln. No.7968/2019 and Appln.No.7969/2019 on 21/10/2019 to refer the matter to Arbitration and to reject the plaint, respectively :-

Application No. 7968/2019:- In supersession of the supply contract between the plaintiff and the defendant, the Settlement Agreement dated 28/09/2017 entered between the parties and M/s Star Thermal Power Pvt Ltd (STPPL). As per this agreement, STPPL has agreed to settle the dues of the defendant. As per Clause 21 of this agreement, any dispute under the agreement has to be resolved through Arbitration. Hence, principle of novation has to be applied and the instant dispute has to be referred to Arbitration in terms of Section 8 of the Arbitration Act, 1996.

Application No.7969/2019:- No clear disclosure of cause of action within the local limits of this Court. Entire cause of action arose outside



the jurisdiction of this Court. In view of Clause 14 of the HSS agreement, the parties have agreed that the sale contract in subject to INDORE jurisdiction. Even according to the plaint, whole cause of action not within the local limits of this Court's jurisdiction. In such case, leave to sue under Clause 12 of Letters Patent is mandatory and pre-requisite to maintain the suit before the ordinary original civil jurisdiction of this Court.

7. In response to these two applications, the plaintiff has filed it common counter. Pending these applications, the parties proceeded towards trial by filing the affidavit of admission and denial of documents.

8. On behalf of the plaintiff, Mr. Amresh Kumar Choudary was examined as PW-1. Totally 31 documents were marked as Ex.P-1 to Ex.P-31. PW-1 was cross examined extensively on behalf of the defendant.

9. The suit laid before this Court on the premise that the defendant having its office at Chennai and carrying on business. Entire cause of action arose within Chennai. The subsequent settlement agreement has



come to end due to efflux of time as well by explicit termination by the plaintiff. Hence, this Court has territorial jurisdiction to decide the case.

10. Contrarily, the defendant challenges the maintainability of the suit before this Court on two grounds. One is on the ground of exclusion of other Courts jurisdiction, except the Courts in Indore, based on the HSS agreement entered between the parties, which confers jurisdiction on the Courts at Indore. The other on the ground of ouster of civil Courts jurisdiction, in the light of the Arbitration clause in the settlement agreement dated 28/09/2017.

11. The learned counsel for the plaintiff submit that under Order VIII Rule 1 (i) of CPC as amended under the Commercial Courts Act, the defendant ought to have filed the written statement, within 30 days from the receipt of the suit summon. In case, there is any valid reasons, the time to file the written statement will be extended for further period of 90 days. In other words, the time limit to file written statement ends on the expiry of 120th day from the date of receipt of the summon. In this case, the defendant received the suit summon on 04/07/2018. Having forfeited the right to file the written statement on expiry of 120 days (30 + 90) i.e

on 03/11/2018, the applications under Section 8 of the Arbitration Act or



under Order VII Rule 11 of CPC is not maintainable. Even otherwise, having submitted to trial, the applications to refer the matter to arbitration have become redundant.

12.To be noted, no serious defence available to the defendant regarding the alleged suit transaction and the liability to pay. A sum of Rs.16,41,56,048 (actual dues) payable to the plaintiff by the defendant is shown in the Settlement Agreement entered between the plaintiff, defendant and the M/s Star Thermal Power Pvt Ltd (STPPL). However, the defendant seeks rejection of plaint, alleging that the plaint did not disclose any cause of action within the jurisdiction of this Court and according to the plaint documents namely, HSS agreement, any dispute between the parties has to be agitated only in the Courts at Indore, as an alternate relief, the defendant seeks reference to Arbitrator on the ground that the prior HSS Agreement got altered/substituted by the subsequent settlement agreement dated 28/07/2017. Principle of novation therefore applies. The plaintiff cannot file suit based on the prior contract. It can proceed only under the subsequent contract. Under Clause 12 of the subsequent contract, namely the settlement agreement, all the disputes, under this contract, has to be resolved through arbitration.



13. The submissions of the learned counsel appearing for the defendant are on three fold :-

First, the averment in the plaint that the entire cause of action for the suit arose within the local limit of this Court jurisdiction is contrary to other statements in the plaint. In fact, no cause of action arose within the jurisdiction of this Court. Second, Clause 14 of the HSS agreement confers exclusive jurisdiction with INDORE Courts. While so, the suit filed in Chennai is not maintainable. Third and last, the settlement agreement supersedes all other previous agreements. Doctrine of novation applies to the facts of this case, hence, the arbitration clause in the subsequent contract namely settlement agreement, squarely applies.

14. It is an admitted fact and proved through documents that the plaintiff's registered office is at Indore. The defendant's register office is at Hyderabad. The goods were delivered at Tuticorin. Also the fact that both plaintiff and defendant have office at Chennai is not denied. However, the defendant in the affidavit filed in support of the reject the plaint application or in alternate refer the dispute to arbitration, states that no transaction took place at the defendant's Chennai office.



15. In the plaint, the exact place, where the purchase orders were drawn or given is not stated. Where the HSS agreements executed and where the invoices were raised are also not specifically mentioned, except to say all these documents were executed at Chennai/Tuticorin. The plaintiff not certain about the place of execution of these documents, however, the concise statement on cause of action, the plaintiff states that the entire cause for the suit arose within the jurisdiction of this Court. It is appropriate at this juncture to note, under Clause 12 of the Letters Patent, unless the whole cause of action or the defendant dwell or carry on business or work for gain within the local limits of this Court's jurisdiction, leave to sue the defendant is mandatory. Since in the plaint, it is averred that the entire cause of action is within the territorial jurisdiction of this Court and the defendant carry on business within the territorial limits of this Court, the plaintiff has not obtained leave to sue the defendant.

16. A scrutiny of the purchase orders, HSS agreements and the invoices, referred at paragraph 6 of the plaint, which are documents later marked as Ex.P-2 to Ex.P-16, we find, the purchase orders Ex.P-2 to Ex.P-6 are addressed to the plaintiff's office at Indore. The HSS Agreements Ex.P-7 to Ex.P-11 does not disclose the place of its



execution. The stamp papers for the HSS agreements are purchased from vendors at Tuticorin or Palyamkottai. Clause 14 of the HSS agreement specifically confers jurisdiction to the Courts at Indore. The invoices Ex.P-12 to Ex.P-16 clearly mentions that it is “Subject to Indore jurisdiction”. The invoice drawn showing the Indore address of the defendant. It is also an admitted fact that the goods were delivered at Tuticorin. While so, the plaint averment at paragraph 18 that the entire cause of action for the suit arose within the jurisdiction of this Court is per-se incorrect.

17. The contention of the plaintiff that the defendant is carrying on business at Chennai, is not admitted by the defendant. There is no piece of evidence to show that the Chennai office had any role in this deal, mere an address at Chennai for the defendant will no confer jurisdiction to this Court more particularly, when the parties have pre decided the sites for resolving their dispute. That apart, even if assuming, part cause of action arisen within the local limits of this Court, if not the whole, then under Clause 12 of the Letters Patent, the plaintiff ought to have obtained leave to sue the defendant at Chennai. Such leave is a pre-requisite and mandatory. This view is fortified by the following two



(i) In *The Clan Line Steamers Ltd –vs- Gordon Woodroffe & Co*

reported in (*AIR 1980 Mad 73*), para 9 is extracted below:

“9. Where leave under Clause 12 is necessary, the granting of such leave is a condition precedent to the court having jurisdiction to entertain the suit; and therefore, such leave has to be obtained at the time of the institution of the suit (*Vide: Shamchandra Rampratab v. Bhikamchand Ganeshlal, Motilal Trithovandas Choksey v. Shankarlal Chaganlal, Bimal Singh Kothari v. Muir Mills Ltd., Khitish Kumar Som v. State of Bihar and Laliteswar Singh v. Rameshwar Singh*)”

(ii) In *Urooj Ahmed, Lords Enterprises (India) –vs- Preethi*

Kitchen Appliance Pvt Ltd reported in (*2013 (6) CTC 247*), para 5(b)

reads as below:-

“**5(b)** Clause 12 of the Letters Patent Act, 1970:

There is no difficulty in appreciating the submissions of the learned counsel appearing for the Appellant that when there is a part of cause of action having arisen outside the jurisdiction of the Court, a leave under Clause 12 of the Letters Patent is required mandatorily. Consequently, when such a leave has not been obtained already, the same cannot be cured subsequently, as held by this Court in *The Clan Line Steamers Ltd. v. Gordon Woodroffe & Co., AIR 1980 Mad. 73*. However, the said proposition of law on the interpretation of Clause 12 of the Letters Patent does not have any application to the present case. As discussed earlier, there are specific averments in the Plaint about the Defendants selling their infringing goods at Chennai and passed off their own goods as that of the plaintiff. In view of the said averments, we do not find that the plaint is liable to be rejected for not obtaining leave as the same is not required under law.”



18. In view of Clause 21 found in the Settlement Agreement Ex.P-26, application is filed to refer the matter to Arbitration. The recital of the agreement however, indicates, it is a contingent contract. M/s Star Thermal Power Pvt Ltd (STPPL) has agreed to settle the plaintiff the dues of the defendant, subject to completion of the arrangement between STPPL and the company (The defendant herein).

19. Under Clause 1 of this agreement, STPPL has agreed to pay Rs.13,13,24,838/- to the plaintiff within 8 weeks from the date of execution (28/07/2017). Clause 8 says, in case of failure to pay this money within the said period, notwithstanding anything contained in the agreement, STPPL will intimate the trade creditor (plaintiff herein) and thereafter, STPPL will not be liable to make any payment towards the outstanding dues. However, the company (Ind Bharat Thermal Power Ltd) shall become liable for making the payment of the actual dues in terms of the supply agreements.

20. For easy reference, the relevant recitals of the Settlement Agreement are extracted below:-

“**Clause 1:** STPPL hereby assures that it shall pay

the Outstanding Dues before the expiry of eight weeks from

<https://hcservices.ecourts.gov.in/hcservices> the Execution Date (“**Settlement Date**”)



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Clause 4: The Parties hereby agree that, subject to payment of the Outstanding Dues in the manner provided herein, as on Settlement Date:

(a) All arrangements including the Supply Agreement(s) (excepting this Agreement) in relation to the Outstanding Dues or supply of the Product shall stand terminated.

(b) The Parties further covenant that the rights, obligations and claims under the Supply Agreement(s) shall be terminated and cancelled and the Trade Creditor shall be deemed to have fully and completely discharged the Company and STPPL from the same.

(c) The Trade Creditor shall be deemed to have:

(i) Discharged the Company and STPPL from the obligation to make any further payments in relation to the Outstanding Dues, Supply Agreement(s), supply of Products or any document executed in connection therewith.

(ii) Relinquished all its right, interest or claims of whatsoever nature against the Company and STPPL in relation to the Outstanding Dues, Supply Agreement(s), supply of Products or any document executed in connection therewith.

(d) All and any documents, agreements, notices, letters, correspondences, etc., (excepting this Agreement) executed or signed between the parties (a) pursuant to or in

relation to the Supply Agreement(s) or in relation to the Product or Outstanding Dues; (b) to fulfil the obligations or

purpose of the Supply Agreement(s) for and on behalf or at the request of the Trade Creditor or the Company, shall stand cancelled with no further notice or act and no liability, disability, etc., shall accrue to the company or STPPL.

Clause 8: 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 is delayed beyond a period of 8 weeks 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.



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21. These Clauses, on combined reading, indicate that the said agreement is subject to completion of the prior agreement with the defendant and STPPL and in case of STPPL failure to honour the payment of the agreed amount in time, status quo ante will be restored. Therefore, in the absence of complete substitution, the principle of novation as envisaged under Section 62 of the Contracts Act, will not apply. The recitals in Clause 1, 4 and 8 are clear as crystal, that the settlement agreement between the parties in this suit and M/s Star Thermal Power Pvt Ltd is a contingent contract. The subsequent agreement never fructified, due to failure of the arrangement between the defendant and STPPL, which is a pre-condition for the enforcement of this settlement agreement. Hence, the settlement agreement is not a complete, valid and enforceable contract, for applying the principle of novation.

22. There is no material evidence to prove, the defendant is carrying on business at its Chennai office or the suit transaction took place at the Chennai office of the defendant. This suit is filed in contrary to the agreed terms namely, conferring the jurisdiction to Indore Courts and filed against the defendant, without obtaining leave to sue the



defendant, who is having its registered office at Indore and transaction or cause of action not wholly arisen at Chennai office of the defendant, to infer defendant carrying on business within the local limits of this Court jurisdiction.

23. Failure to obtain leave to sue the defendant, is not a curable defect. It is a mandatory pre-requisite to institute suit in the Ordinary Original Civil Jurisdiction of this Court, if part cause of action arisen outside the jurisdiction of this Court and the defendant does not carry on business within the jurisdiction of this Court. Even though written statement not filed, when the fact regarding the jurisdiction stated in the plaint found to be false, the Court cannot ignore it. Condoning the deliberate suppression of fact will amount to awarding the plaintiff for his wrong. The plaintiff either not to have chosen Chennai as Forum for agitating this case, or should have placed the complete facts in the plaint, without any suppression and ought to have obtained prior leave to sue the defendant.

24. The learned counsels on either side marshalled several judgments in the course of their arguments for this Court's benefit to know and understand the interpretations on Clause 12 of the Letters



Act. Nonetheless, this Court had quoted and relied only those citations very relevant for the instant case. Beside the judgments cited, the plain reading of the provisions of law regarding jurisdiction is suffice to hold that failure to obtain leave to sue when only part cause of action arisen within the limits of this Court and the exclusion of jurisdiction in the HSS agreements as well as the invoices conferring exclusive jurisdiction to Indore Court and for failure to prove the suit transaction took place at the defendant's Chennai Office, the plaintiff is to be de-suited, for the false statement that the entire cause of action arose within the territorial limits of this Court to avoid seeking leave to sue.

25. As a result, **the Civil Suit is dismissed 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.Amresh Kumar Choudhary(PW-1)

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

No one examined on the side of the defendant

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

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	04.07.2017 and 30.01.2020	Certified true copy of Board Resolution



Sl. Nos.	Exhibits	Dated	Description of documents
2.	Ex.P.2	01.08.2013	Photocopy of purchase order
3.	Ex.P.3	15.07.2014	Photocopy of purchase order
4.	Ex.P.4	06.01.2015	Photocopy of purchase order
5.	Ex.P.5	28.09.2015	Photocopy of purchase order
6.	Ex.P.6	27.06.2015	Photocopy of purchase order
7.	Ex.P.7	05.08.2013	Photocopy of HSS Agreement
8.	Ex.P.8	03.05.2014	Photocopy of HSS Agreement
9.	Ex.P.9	20.12.2014	Photocopy of HSS Agreement
10.	Ex.P.10	20.10.2015	Photocopy of HSS Agreement
11.	Ex.P.11	16.07.2015	Photocopy of HSS Agreement
12.	Ex.P.12	05.08.2013	Photocopy of High Seas Invoice
13.	Ex.P.13	23.05.2014	Photocopy of High Seas Invoice
14.	Ex.P.14	20.12.2014	Photocopy of High Seas Invoice
15.	Ex.P.15	20.10.2015	Photocopy of High Seas Invoice
16.	Ex.P.16	16.07.2015	Photocopy of High Seas Invoice
17.	Ex.P.17	07.04.2016	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
18.	Ex.P.18	06.05.2016	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
19.	Ex.P.19	11.05.2016	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
20.	Ex.P.20	18.05.2016	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
21.	Ex.P.21	25.05.2016	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
22.	Ex.P.22	15.04.2017	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
23.	Ex.P.23	20.06.2017	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
24.	Ex.P.24	04.07.2017	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
25.	Ex.P.25	17.07.2017	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate
26.	Ex.P.26	28.09.2017	Photocopy of Settlement Agreement
27.	Ex.P.27	04.12.2017	Printout copy of e-mail sent by the plaintiff to the defendant along with 65B Certificate



WEB COPY

Sl. Nos.	Exhibits	Dated	Description of documents
28	Ex.P28	From 01.04.2013 to 31.03.2014	Copy of the Ledger account of the plaintiff
29	Ex.P29		Copy of Statements showing amounts due to the plaintiff
30	Ex.30	19.10.2018	Printout copy of e-mail sent by the defendant to the plaintiff along with 65B Certificate
31	Ex.P31	26.10.2018	Printout copy of e-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
11.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.