IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 23RD DAY OF JULY 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.400 of 2017

C.S.No.400 of 2017:-

M/s.Millenium Steel India Pvt Ltd.,
Rep.by its Managing Director,
Mr.D.Hari Prasad Reddy,
No.98, Halls Road,3rd Floor,
Kilpauk,Chennai-600 010. ... Plaintiff

Versus

M/s.Ind Barath Energies (Thoothukudi) Ltd.,
Rep. by its Managing Director,
having registered Office at
No.20, Chamiers Road,
Nandanam,Chennai-600 035. ... Defendants

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. 1,08,02,877/- (Rupees One Crore Eight Lakhs Two Thousand Eight Hundred and Seventy Seven Only) as on 31.05.17 with interest at the rate of 18% per annum on the Principal sum of Rs.75,00,000/- from the date of Plaint till the day of payment in full to the Plaintiff.

(b) the Costs.

This Civil 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 reaching the plaint filed herein and the other exhibits therein referred hereto 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 has failed to produce evidence to show the defendant entered into a contract for supply of 3000 MT of iron worth Rs.75,00,000/- and the plaintiff also failed to prove that 3000MT's of Iron was delivered to the defendant as per the Invoice Ex.P-3 and the so called Bill of Entry marked as Ex.P-5 not fit for scrutiny, it cannot be taken as proof of delivery of goods to the defendant, Ex.P-4 letter extending time for payment is a self serving document, no evidence to show that the defendant sought for extension of time nor there is any evidence that the Ex.p-4 was received by the defendant and **it is ordered as follows:-**

That the suit in C.S.No.400 of 2017 be and is hereby dismissed.

2. 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 23RD 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.)

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

VSP
31/08/2021

C.S.No.400 of 2017

ORDER

DATED : 23.07.2021

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

FOR APPROVAL:17/11/2021

APPROVED ON:22/11/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.07.2021	Pronounced on : 23 .07.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.400 of 2017

M/s.Millenium Steel India Pvt Ltd.,
Rep. by its Managing Director,
Mr.D.Hari Prasad Reddy,
No.98, Halls Road, 3rd Floor,
Kilpauk, Chennai – 600 010. ... Plaintiff

/versus/

M/s.Ind Barath Energies (Thoothukudi) Ltd.,
Rep. by its Managing Director,
having 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.1,08,02,877/- (Rupees One Crore Eight Lakhs Two Thousand Eight Hundred and Seventy Seven only) as on 31.05.2017 with interest at the rate of 18% per annum on the Principal sum of Rs.75,00,000/- from the date of Plaint till the day of payment in full to the plaintiff.

(b). The costs; and

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

For Defendant : Mr.Anirudh Krishnan

JUDGMENT

The suit for recovery of money due for the goods sold and delivered. Since the suit is in respect of payment for the coal imported above the specified value, the nature of suit was determined as Commercial Suit falling under the Section 2(1)(c)(ii) of the Commercial Courts Act, 2015.

2. Case of the plaintiff in short:

The plaintiff is in the business of iron ore, coal, barite, bentonite and other minerals. Having Office at Chennai. The defendant is in the business of producing electricity. Having Office at Chennai and plant at Tuticorin. The defendant approached the plaintiff for supply of Non Coking Stream Coal of Indonesian Origin for its plant and the plaintiff agreed. The plaintiff and the defendant entered into an High Seas Sale agreement (HSS agreement) on 25.02.2014 for 3000 MTS of coal at the rate of Rs.2500/- per MT. On the same day, the plaintiff raised invoice for Rs.75,00,000/-. The defendant, who is supposed to pay the invoice amount within 60 days as per

the terms of agreement failed to effect payment. Several meetings between the parties for settlement of the due not yielded result and several promises given by the defendant not kept. The defendant promised to pay on receiving money from TANGEDCO against whom they have filed petition before the Tami Nadu Electricity Regulatory Commission (TNERC). In the meeting held between the plaintiff and the defendant at Chennai, the defendant promised to clear the dues before January 2017. However, the defendant failed to keep up the promise. Though, the defendant received more than Rs.100 crores from TANGEDCO, did not settle the plaintiff dues. On the date of plaint, the defendant is liable to pay Rs.75,00,000/- towards principal and Rs.33,02,877/- towards interest.

3. Case of the defendant in short:

The suit is not maintainable. The alleged cause of action for the suit claim arose outside the jurisdiction of this Court. The goods allegedly delivered only at Tuticorin where the defendant plant is located. Therefore, suit against defendant carrying on business outside the jurisdiction of this Court without obtaining leave under clause 12 of Letters Patent is liable to be rejected. Without prejudice to the defence on jurisdiction. The transaction alleged in the plaintiff is denied. The defendant never purchased

coal from the plaintiff consequentially no amount is payable to the defendant. The HSS relied by the plaintiff not signed by any authorised signatory of the defendant. Even assuming goods was sold to the defendant under invoice dated 26.02.2014, the suit filed on 01.06.2017 for recovery of money towards the goods sold and delivered is barred by limitation. There is no privity of contract between the plaintiff and the defendant. No goods supplied to the defendant by the plaintiff as claimed. The HSS document was not executed by the defendant. The alleged meeting for settling the dues is imaginary and false.

4. Based on the pleadings, this Court framed the following issues for consideration:

> (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 plaintiff has supplied any Goods(Coal) to the defendant in terms of the High Seas Sale Agreement dated 21.10.2014 and whether the plaintiff and defendant had entered into such agreement?
>
> (iii)Whether the claim of the plaintiff is barred by limitation or not?
>
> (iv)Whether the plaintiff is entitled to a sum of Rs.1,08,02,877/- as on 31.05.2017 with interest at the rate of 18% on the principal sum of Rs.75,00,000?

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

5. On behalf of the plaintiff, D.Hari Prasad Reddy (PW.1) was examined and 11 documents (Ex.P-1 to Ex.P-11) marked. On behalf of defendant, Prakash Manian (D.W.1) examined. During the cross examination of D.W-1, the plaintiffs marked Ex.P-12 to Ex.P-17.

(i). Issue No 1:

As per the plaint, the negotiation for the sale and purchase of coal took place at Chennai where the plaintiff and defendant is having their Office. The defendant deny the very transaction. The averments of the plaint that the defendant placed order for coal at Chennai and pursuant to the order, Coal was imported and the goods was cleared and taken delivery by the defendant under relevant Bill of Entry are all denied. However, the defendant admits that they have Office at Chennai but claim transactions regarding purchase of coal and payments used to be dealt only by the Tuticorin Office where the plant is located and for logistic reasons, coal used to be delivered at Tuticorin and not at Chennai.

(ii). For determination of jurisdiction, this Court taken into consideration the averment in the plaint which indicates that, the cause of action arose within the territorial jurisdiction of this Court where both the parties have their Office. Since, the defendant totally deny about the alleged transaction, this Court has jurisdiction to entertain the suit. Accordingly, Issue No.1 is answered in affirmative.

(iii). <u>Issue No.3:</u>

The plaint averment indicates that the defendant took delivery of the goods on 21.10.2014. As per the agreement payment should be made within 60 days from the date of delivery. i.e., on or before 21.12.2014. The suit for recovery of money is filed on 01.06.2017. The defendant's contention that the suit is barred by limitation on reckoning the limitation from the date of HSS Agreement i.e., 25.02.2014 appears to be incorrect. The learned counsel for the defendant also fairly conceded that he is not pressing this issue.

Accordingly issue No 3 held in negative.

(iv). <u>Issue Nos.2 and 4:</u>

Before adverting to the oral evidence of the respective witnesses, it is relevant to note that out of 11 documents relied by the plaintiff, except the Board Resolution Ex.P-1 and the original notice to produce document Ex.P-11 all other documents are photocopies and not the original. Particularly, in a suit for recovery of money, based on goods sold where the defendant totally deny the transaction, the burden is on the plaintiff who assert the factum of sales as well as delivery. The decree of proof requires more than preponderance of probability.

(v). The plaintiff base its case on Ex.P-2 which is the High Seas Agreement dated 25.02.2014. This is not original but a photocopy. The reasoning stated by P.W-1 during the cross examination for non availability of the original is contradictory and not convincing. Be it as it may, even if the evidence of P.W-1 is accepted that generally 2 copies of HSS will be prepared. One copy for the buyer and another copy for the seller. And even assuming the original was lost by the plaintiff after getting the photocopy attested by notary, the witness, who claims to have been present when Ex.P-2 was executed, is not able to say about who signed on behalf of the defendant in Ex.P-2. In the cross examination, the plaintiff witness P.W-1 admits prior to the execution of HSS agreement Ex.P-2, the parties entered into a contract known as purchase order, this document has not placed before this Court to believe that there was really any privity between the

contesting parties. P.W-1 had deposed that, he was present when Ex.P.2 was executed at the Office of the Defendant at Chennai. Whereas, in the plaint, at paragraph No.17, it is stated that Ex.P-2 was entered at the Office of the plaintiff at Chennai. Therefore, the trustworthy of Ex.P-2 document is highly doubtful.

(vi). The next document relied by the plaintiff to substantiate the transaction is the photocopy of the invoice. Unless, the invoice is supported by any evidence prior to it or subsequent to it, the invoice prepared by the plaintiff will fall under a category of self serving document. In this case, the plaintiff rely upon Ex.P-2 as the prior document and Ex.P-5 the Bill of entry as the subsequent document. There is no whisper about the Bill of Lading, which would have been prepared at the point of loading the goods. This Court, in the earlier paragraph had discussed about the trustworthiness of the Ex.P-2. On considering the bill of entry, a blurred unreadable photocopy is allowed to be marked as Ex.P-5. The Bill of entry is a document which contain wealth of details such as, the name of the importer, name of the exporter, the goods imported, its value, the name of the custom clearing agent and when the goods entered the Port.

(vii). Relying upon the order passed by this Court in A.No.548

and 549 of 2020 dated 14.02.2020, permitting the plaintiff to mark secondary evidence in respect of the Bill of Entry, the Learned Counsel submitted that Ex.P-5 which is photocopy of the Bill of Entry is admissible. In the said order, this Court has observed that,

> "7. For the said purpose, it is essential to look into the relevant documents connected with the HSS agreement, which is the subject matter of the suit. Therefore, these applications are allowed subject to proof and relevancy. In case of any dispute regarding the genuineness of the documents, it is open to the parties to take necessary application for production of the originals from the custody of the Customs department. It is also made clear that the secondary evidence sought to be introduced will be subject to Section 65 of the Evidence Act."

(viii). Now on seeing Ex P-5, this Court is of the opinion that this document is not a readable copy for the Court to look for evidence. The plaintiff, who rely upon this document ought to have taken necessary steps to call for the documents from the Customs Department. Having failed to do so, the plaintiff's case has to fall.

(ix). The plaintiff, who pleads a fact is bound to prove it. In the plaint, it is stated that, after the delivery of goods as per the invoice, several meetings were held between the plaintiff and the defendant for settlement of dues. It is also specifically pleaded that the defendant agreed to pay the money before January-2017 but failed. For all these pleadings, which are corroboratory in nature and 'relevant facts' for 'the fact in issue' viz., whether any goods sold by the plaintiff and taken delivery by the defendant?, the plaintiff has not produced any evidence. Certain lacunae in the defendant case and admission by witness in respect of Ex.P-13, is of no relevancy to the facts of present case and cannot be a sufficient ground to hold in favour of the plaintiff

(x). The plaintiff has failed to place before this Court the purchase order, which P.W-1 admits in his evidence that the parties entered prior to Ex.P-2. The plaintiff has failed to produce evidence to show the defendant entered into a contract for supply of 3000 MT of iron worth Rs.75,00,000/-. The plaintiff also failed to prove that 3000 MT's of Iron was delivered to the defendant as per the Invoice Ex.P-3. The so called Bill of Entry marked as Ex.P-5 not fit for scrutiny. It cannot be taken as proof of delivery of goods to the defendant. Ex.P-4 letter extending time for payment is a self serving document. No evidence to show that the defendant sought for extension of time nor there is any evidence that the Ex.P-4 was received by the defendant. For the above reasons, Issue No.2 and 4 is answered in

negative.

6. In the result, the ***Suit is dismissed.*** With costs.

Sd./-G.J.J
23.07.2021

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

Mr.Hari Prasad Reddy (P.W.1)

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

Prakash Manian (D.W.1)

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

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	03.05.2017	Original Board Resolution.
2.	Ex.P.2	25.02.2014	Copy of High Seas Sale Agreement entered between the plaintiff and the defendant.
3.	Ex.P.3	25.02.2014	Copy of the invoice issued by the plaintiff .
4.	Ex.P.4	10.04.2014	Letter addressed by the plaintiff.
5.	Ex.P.5	31.10.2014	Copy of Bill of Entry for 3000 MTS.
6.	Ex.P.6	---	Copy of Statement of amounts due to the plaintiff
7.	Ex.P.7	17.07.2019	Original Notarial Certificate issued by the Notary Public.
8.	Ex.P.8	19.07.2019	Photocopies of complaints given by the plaintiff to the Inspector of Police, Egmore.
9.	Ex.P.9	24.07.2019	Photocopy of Receipt in C.S.R.No.401/2019 issued by the Police Authority.
10.	Ex.P.10.	22.11.2019	Photocopy of Non-traceable Certificate issued by the Police Authority.
11.	Ex.P.11	05.12.2019	Original Notice to production of documents given by the plaintiff to the Custom Authorities.

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

During Cross Examination:-

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.12	12.07.2017	Office Copy of Notice.
2.	Ex.P.13	21.07.2017	Reply notice issued by the Counsel for the defendant to the plaintiff Company.
3.	Ex.P.14	---	True copy of plaint filed in C.S.No.401 of 2017.
4.	Ex.P.15	---	True Copy of plaint filed in C.S.No.402 of 2017.
5.	Ex.P.16	---	Photocopies of Counter affidavit in A.No.1662 of 2017 in C.S.No.188 of 2017.
6.	Ex.P.17	---	Photocopies of Counter affidavit in A.No.1663 of 2017 in C.S.No.189 of 2017.

Sd./-G.J.J
23.07.2021

//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.