



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 06th DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.401 OF 2017

and

A.Nos.1429 and 4500 of 2018

and

A.No.3680 of 2017 in A.No.2919 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

Vs

M/s. Ind Barath Thermal Power Ltd.,
Rep. By its Managing Director,
having 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.34,94,04,036/-

(Rupees Thirty Four Crores Ninety Four Lakhs Four Thousand and Thirty



principal sum of Rs.23,70,95,643/- from the date of plaint till the date of payment in full to the plaintiff.

b) the costs.

A.No.1429 of 2018:-

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.

... Applicant/Plaintiff

Vs

1. Ind Barath Thermal Power Ltd.,
Rep. By its Managing Director,
No.20, Chamiers Road,
Nandanam, Chennai – 600 035.

... 1st Respondent/Defendant

02.M/s The Tamil Nadu Generation &
Distribution Corporation (TANGEDCO) Ltd.
Rep by its Chairman & Managing Director,
144, Anna Salai, Chennai – 600 002.

... 2nd Respondent/Garnishee

Application praying that this Hon'ble Court be pleased to direct the 2nd respondent/Garnishee/TANGEDCO to deposit Rs.47,25,00,000/- (Rupees Forty Seven Crores and Twenty Five Lakhs only) i.e the amount sum which was wrongly paid to M/s.Adani Enterprises Ltd and in violation of the prohibitory orders of this Hon'ble court, to the credit of the suit.



WEB COPY **A.No.4500 of 2018:-**

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.

... Applicant/Plaintiff

Vs

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

... Respondent/Defendant

02.M/s IL & FS Financial Services Ltd,
No.498, Karumuttu Centre,
3rd Floor, South Wing,
Anna Salai, Nandanam,
Chennai – 600 035.

... 2nd Respondent/Third Party Intervenor

Application praying that this Hon'ble Court be pleased to allow the Applicant to withdraw a sum of Rs.34,94,04,036/- (Rupees Thirty Four Crores Ninety Four Lakhs Four Thousand and Thirty Six only) or such other sums lying to the credit of C.S.No.401 of 2017.

A.No.3680 of 2017 in A.No.2919 of 2017:-

A.No.2919 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.

... Applicant/Plaintiff



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Vs

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1. Ind Barath Thermal Power Ltd.,
Rep. By its Managing Director,
No.20, Chamiers Road,
Nandanam, Chennai – 600 035.

... 1st Respondent/Defendant

02.M/s The Tamil Nadu Generation &
Distribution Corporation (TANGEDCO) Ltd.
Rep by its Chairman & Managing Director,
144, Anna Salai, Chennai – 600 002.

... 2nd Respondent/Garnishee

A.No.3680 of 2017:-

M/s IL & FS Financial Services Ltd,
The IL & FS Centre,
Plot No.C-22, G Block,
Bandrakurla Complex, Bandra (East),
Mumbai 400 051.

... Applicant/Third Party Intervenor

Vs

1.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.

... 1st Respondent/Plaintiff

2.M/s Ind Barath Thermal Power Ltd.,
Rep. By its Managing Director,
No.20, Chamiers Road,
Nandanam, Chennai – 600 035.

... 2nd Respondent/Defendant

3.M/s The Tamil Nadu Generation and
Distribution Corporation (TANGEDCO) Ltd.
Rep by its Chairman & Managing Director,
144, Anna Salai, Chennai – 600 002.

... 3rd Respondent/Garnishee

<https://hcservices.ecourts.gov.in/hcservices/> Application praying that this Hon'ble Court be pleased to

exclude the Receivables secured to the Applicant, by the 2nd Respondent /



Defendant, payable by the 3rd Respondent /Garnishee as set out in the Schedule to the Judge's Summons from any prohibitory Order sought by the 1st Respondent/Plaintiff in C.S.No.401 of 2017.

This civil suit along with these applications having been heard on 02.08.2021 through video conferencing in the presence of Mr.Abdul Hameed for M/s AAV Partners, Advocates for the plaintiff in C.S.No.401 of 2017 and for the applicant in A.Nos.1429 and 4500 of 2018 and for the 1st respondent in A.No.3680 of 2017 and Mr.Aniruth Krishnan, advocate for the defendant in C.S.No.401 of 2017 and for the 1st respondent in A.Nos.1429 and 4500 of 2018 and for the 2nd respondent in A.No.3680 of 2017 and upon reading the plaint filed in C.S.No.401 of 2017 and the Judge's Summons and the affidavit of B.S.Hemaprasad filed in A.No.3680 of 2017 and the Judge's Summons and the affidavit of D.Hari Prasad Reddy filed in A.Nos.1429 and 4500 of 2018 and the order dated 15.12.2020 made in C.S.No.401 of 2017 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



Thousand Six Hundred and Nine and paise Seventy Eight only) with further interest at the rate of 10.50% on the sum of Rs.33,05,02,000/- (Rupees Thirty Three Crores Five Lakhs Two Thousand 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.3680 of 2017, 1429 and 4500 of 2018 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
06th 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/Decrees in this format.



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28.09.2021

C.S.No.401 OF 2017
and
A.Nos.1429 and 4500 of 2018
and
A.No.3680 of 2017 in A.No.2919 of 2017

DECREE

DATED: 06.08.2021

THE HON'BLE DR. JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 28.09.2021

APPROVED ON : 28.09.2021

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

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Reserved on : 02/08/2021

Pronounced on : 06/08/2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRANC.S.No.401 of 2017andA.Nos.3680/2017, 1429 and 4500/2018

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 Thermal Power 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., praying to pass a judgment and decree against the defendant: (a)directing the defendant to pay a sum of Rs.34,94,04,036/- (Rupees Thirty Four Crores Ninety Four Lakhs Four Thousand and Thirty Six Only) as on 31.05.2017 with interest at the rate of 18% per annum on the principal sum of Rs.23,70,95,643/- from the date of ~~plaint till the day of payment in full to the plaintiff and~~ (b) the costs.



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For Plaintiff

:Mr.Abdul Hameed for
M/s AAV Partners

For Defendant

:Mr.Anirudh Krishnan

JUDGMENT

(This case has been heard through Video Conferencing)

Suit filed for recovery of money due towards 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 Section 2(1)(c)(ii) of the Commercial Courts Act, 2015 and tried by the Commercial Division of the High Court, Madras.

2.Case of the plaintiff in short:

The plaintiff having its office at Chennai, is in the business of iron ore, coal, barytes, bentonite and other minerals. The defendant through M/s Smart Gen Infra Private Limited approached the plaintiff at its office and expressed its desire to buy Non-coking Coal of Indonesian Origin (herein after called as the 'goods') and the same was agreed by the plaintiff. Pursuant to this, the defendant placed its purchase order on 10/01/2014 . Later, the plaintiff and the defendant themselves and through M/s Smart Gen, entered into High Seas Agreement on 16/12/2014 for selling 55750 MTs of goods at the rate of Rs.3131.88/- per MT to be transshipped through



MV PORTHOS. On the same day, the plaintiff raised its invoice for a total price of Rs.17,46,02,310/-. After price adjustment and conversion of exchange value, the defendant confirmed the money payable by it will be Rs.17,55,65,563/-.

3.The defendant subsequently wanted additional 3 shipments of coal each 50,000 MTS as per the same specifications agreed between the parties. Accordingly, purchase order dated 29/12/2014 for supply of 3 shipments of coal each 50,000 MTs at the rate of 49.50 USD was placed by the defendant. The High Seas agreement dated 22/01/2015 was entered upon by the plaintiff and the defendant to supply 56,800 MTs of coal from Indonesia by vessel MV EVANGELIA. The invoice dated 22/01/2015 was raised by the plaintiff for Rs.17,51,62,680/-. The defendant, after price adjustment and conversion of exchange value, confirmed the money payable by it will be Rs.14,66,06,723/-.

4.The vessels MV PORTHOS and MV EVANGELIA completely discharged the goods at Tuticorin Port on 17/12/2014 and on 04/02/2015. As per the terms of the High Seas Sale Agreement and the purchase order dated 10/01/2014, , the defendant is supposed to pay the invoice amount by

RTGS or LC on usance basis on the 45th day and as per the terms of the



High Seas Sale Agreement and the purchase order dated 29/12/2014, the defendant is supposed to pay the due within 60 days. However, the defendant failed to pay the due in full within the time agreed. After giving credit to various payments (running account) made by the defendant to the plaintiff, as on 31/05/2017, a sum of Rs.23,70,95,643/- is due and payable by the defendant. Several meetings between the parties for settlement of the due not yielded result and several promises given by the defendant is not kept. The defendant informed the plaintiff that they have filed petition before the Regulatory Commission (TNERC) against TANGEDCO for realisation of huge arrears pending with TANGEDCO towards the price for the energy supplied and soon they will settled the dues. Thereafter, 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 their promise. The plaintiff came to know that the defendant received more than 100 crores from TANGEDCO, the same was rather not disclosed to the plaintiff nor they did not settle the plaintiff dues. As on 31/05/2017, the balance outstanding due and payable by the defendant to the plaintiff is Rs.23,70,95,643/- towards principle and Rs.11,23,08,3393/- towards interest.

5. Case of the defendant in short:



1956 and it is a Special Purpose Vehicle, which owns a power generating station at Swaminatham Village, Tuticorin with a capacity of 180 MW. The power generation station is set up by the defendant primarily for the purpose of generating electricity for the use of its shareholders. The defendant has never purchased any coal from the plaintiff. There is no privity of contract between the plaintiff and the defendant. No payment due and payable by the defendant to the plaintiff and as a consequence, no cause of action arises against the defendant.

6. From perusal of the plaint, the alleged cause of action in the present suit arose outside the jurisdiction of this Court. The goods allegedly delivered only at Tuticorin, where the defendant plant is located. Therefore, the 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. The Court in Tuticorin alone have territorial jurisdiction over the subject matter. The suit should also be dismissed in limine for non-joinder of necessary parties to the present suit. M/s Smart Gen Infra Pvt. Ltd, through which the defendant alleged to have approached the plaintiff for purchase of the coal, had played major role in the dealing. The defendant had issued the purchase order dated 10/01/2014 only to M/s Smart Gen Infra Pvt Ltd. Therefore, M/s Smart Gen is a necessary party to the suit without whom the suit cannot be properly adjudicated. The present



suit is a case of abuse of law and forum shopping. After causing notice dated 12/07/2017 with a view to initiate Corporate Insolvency Proceedings before the NCLT, Hyderabad, the present suit is filed for the same claim. The threat of multiple legal proceedings for same claim is abuse of law.

7.The suit is barred by limitation. According to the plaintiff, the first purchase order was placed on 10/01/2014, any claim based on this purchase order. The plaint presented in 2017 is beyond 3 years period. Hence, the suit is barred by limitation. To get over the point of limitation, the plaintiff has clubbed two purchase orders under one claim to show as if the suit is within the period of limitation. The nature of transactions are separate and individual. They both cannot be clubbed under one claim/suit.

8.Based on the pleadings, this Court 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 plaintiff is entitled to file and maintain the present suit on account of having initiating Corporate Insolvency Proceedings before National Company Law Tribunal, Hyderabad under the Insolvency Bankruptcy Code Rules, 2016?

(iii)Whether the suit is liable to be dismissed for non-joinder of necessary party i.e., M/s Smart Gen Infra Pvt. Ltd on whom the defendant had placed the Purchase Orders dated 10/01/2014 &



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29/01/2014?

(iv) Whether the plaintiff has supplied goods (Coal) to the defendant under the High Seas Sale Agreement dated 16.12.2014 & 22.01.2015 and whether the plaintiff and the defendant had entered into the above Agreement dated 22.01.2015?

(v) Whether the claim of the plaintiff is barred by limitation?

(vi) Whether the plaintiff is entitled to a sum of Rs.34,94,04,036/- as on 31.05.2017 with interest at the rate of 18% on the principal sum of Rs.23,70,95,643?

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

9. On behalf of the plaintiff, Mr.D.Hari Prasad Reddy, the Authorised signatory of the plaintiff company was examined and 21 documents (Ex.P-1 to Ex.P-21) were marked. On behalf of defendant, its former employee Mr.Prakash Manian examined as DW-1 and Mr.T.S.Das examined as DW-2. During the cross examination of Defence witnesses, the plaintiff has marked Ex.P-22 to Ex.P-26 .

10. Issue No.(i):

As per the plaint, in long cause title, the place of business of the defendant is mentioned as Registered Office at No.20, Chamiers Road, Nandanam, Chennai-600 035. In respect of this assertion, there is no specific denial in the written statement. However, the records and other



relevant exhibits, without any doubt, discloses the corporate office of the defendant is at Plot No.30A, Road No.1, Film Nagar, Jubilee Hills, Huderabad-500 096 and the defendant is having its plant at Tuticorin. Based on the facts that the defendant's company is at Hyderabad and the subject goods was delivered at Tuticorin Port, it is contended that no transaction took place at Chennai within the territory of this Court jurisdiction. Since the defendant carrying on business outside Chennai, even if part cause of action has arisen within the jurisdiction of this Court, leave under Clause 12 of Letters Patent, ought to have obtained.

11.The following judgments are relied by the learned counsel for the defendant to emphasis, the term “carrying on business” means not acting as a post office but business in true sense.

(i)In *C.Govindarajulu Naidu v. The Secretary of State for India in Council reported at 1927 26 LW 588*, this Court has held as below:

“The next contention is that even so he can sue by reason of the latter part of Clause 12 of the Letters Patent, which is:

“or if the defendant shall dwell or carry on business or personally work for gain within those limits”.

9. It is contended that the defendant both dwelt and carried on business here at the commencement of the suit and in support of this contention the plaintiff has cited the decision of a Bench of this Court in *Subbaraya Mudali v. The*



Government and Cunliffe (1863) 1 MHCR 286. In that case it was held that under Clause 12 of the Letters Patent the Government must be considered as carrying on business at the place where its members exercise all the functions of Government, that is, in Madras. But even in that case the word "dwell" was considered inapplicable to the Government. On the other hand in *Daya Narain Ternary v. The Secretary of State for India* (1887) ILR 14 C 256, it was held by a Bench that the words "carrying on business or personally work for gain" are inapplicable to the Secretary of State for India in Council. At page 273 in the course of this judgment Mitter, J., says:

"that the word 'business' in Clause 12 of the Letters Patent was used in a restricted sense is also indicated by the words 'personally work for gain' to be found in the same section. The latter words would be unnecessary if the word 'business' had been intended to be used in an unrestricted sense."

(ii) In *J.D. John and Ors., v. Oriental Government Security Life*

Assurance Co. Ltd., reported in 1928 SCC Online Mad. 347, this Court has held as below:

"7. The other objection depends upon the question whether the Oriental Government Security Life Assurance Co. Ltd., carries on business in Madras. It is no doubt true that the company has got an agency in Madras, but it is not stated that this agency has any directors here or any persons who form a kind of controlling Board in Madras or at least have some direction as regards the policies. The affidavit filed on behalf of the company is to the effect that so far as the Madras office is concerned, it has no independent discretion in the matter, but simply acts as a post office which receives applications or moneys and passes them to the Head office in Bombay, and that



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is the Head Office that issues all orders there being no vestige of discretion in the local office here to do anything. These facts are not contradicted and the question is whether it can be said that the Oriental Government Security Life Assurance Co. Ltd., carries on business in Madras. I think this question is really concluded by the judgment of Beasley, J., in [Bombay Co. Ltd. v. Municipal Council Dindigul](#) A.I.R. 1929 Mad. 146 which was a suit filed by the Bombay Co. Ltd., Madras, against the Municipal Council of Dindigul. It was there shown that the representatives of the Bombay Company in Dindigul had no discretion except receiving orders and sending them on. The question was whether they carried on business in Dindigul to be taxed. It was held that they were not, and Beasley, J., in an elaborate review of the authorities states that there is no difference in principle between residence for purposes of either the [Income-tax Act](#), or the Municipal Act, or for purposes of jurisdiction. This judgment was affirmed by the Chief Justice and Madhavan Nair, J., in O.S. Appeal No 6 of 1928 where all the authorities have been discussed by the learned Judges. I think that the facts disclosed in the present case in the affidavit, namely, that the agency in Madras does nothing, but acts as a post office forwarding proposal and sending moneys and not having any discretion in the matter either to conclude contracts or to vary them or to enter into them, the Oriental Government Security Life Assurance Company does not carry on business in Madras. It was stated that a suit may lie under Section 12 of the Letters Patent if the money is not paid. That may be so not on the ground that there is business carried on in Madras, but because the proposal was made in Madras and forwarded and part of the cause of action arose in Madras and on that ground leave may be given. I do not think we can confuse the fact of jurisdiction arising out of a part of the cause of action with jurisdiction arising out of the carrying on of business.

Unfortunately, our rules do not provide for garnishee proceedings in cases where a part of the cause of the action



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arises in respect of a debt sought to be enforced by garnishee proceedings.”

(iii) In *The Clan Line Steamers Ltd., v. Gordon Woodroffe and Co.(Madras) (Pte.) Ltd., reported at 92 LW 541*, this Court has held as 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 Rampratap v. Bhikamchand Ganeshlal*, AIR 1929 Bom 468; *Motilal Tribhovandas v. Shankarlal Chaganlal*, AIR 1939 Bom 345; *Bimal Singh Kothari v. Muir Mills Ltd.*, , *Kshitish Kumar v. State of Bihar* and *Laliteswar Singh v. Rameswar Singh* (1907) ILR 34 Cal 619)).

(iv) In *Urooj Ahmed, Lords Enterprises (India) v. Preethi Kitchen Appliances Pvt. Ltd., reported in (2013) 6 CTC 247*, this Court has held 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



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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 Madras 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.”

12. On considering the evidence and the dictum of this Court, regarding the expression “carrying on business”, in the context of Letters Patent, this Court finds that based on the purchase orders Ex.P2 and Ex.P6, the High Seas Sales Agreement Ex.P3 and Ex.P7 were executed. Ex.P3 and Ex.P7 are the foundational documents for the suit transaction. In this document, at serial No.15, the parties have agreed to subject themselves to Chennai Jurisdiction. DW-1 in his deposition, admits that the defendant is having office at Chennai and he is the signatory in Ex.P3. Thus, from the documentary and oral evidence, it could be seen that the defendant has business operation at Chennai and in view of conferment of jurisdiction to Court at Chennai, the defendant is estopped from pleading forum shopping against the plaintiff. More specifically, the defendant office at Chennai not functioning as just post office, but the facts elucidated during the cross



examination of DW1 and DW2 indicates, Senior Officials of the Defendant company Mr.Prakash Manian and Mr.Jerad Kishore used to sit at Chennai Office and function. Ex.P24 and Ex.P25 sworn by Mr.Prakash Manian. The Chennai office is given as his office address. Therefore, when both the parties have business operation at Chennai and the transaction were executed in Chennai, it satisfies the expression “carrying on business”. Hence, this Court has the territorial jurisdiction to entertain and decide the suit. In case where defendant is carrying on business, leave under Clause 12 is not required. Accordingly, issue No.(i) is answered in affirmative.

13.Issue No.(ii):

The National Company Law Tribunal (in short "NCLT") proceedings referred in the written statement, later disposed as withdrawn. Hence, the learned counsels on both side did not press for a finding on this issue.

14.Issue No.(iii):

In the plaint, there is reference about M/s Smart Gen Infra Pvt. Ltd, which stood as go between. The defendant in the written statement has averred that they placed purchase order only with M/s Smart Gen Infra Pvt. Ltd. This averment is not correct and contrary to the documentary evidences



not place any material evidence to show M/s Smart Gen Infra Pvt Ltd was party or signatory to the documents connected with the sale of coal to the defendant. Particularly, the purchase orders Ex.P-2 and Ex.P-6 were placed by the defendant and not by M/s Smart Gen Pvt.Ltd. DW-1 in the cross examination, admits that the purchase order was signed by Mr.Seetharaman, the Joint Managing Director of the defendant company. The acknowledgement of liability Ex.P-10 and Ex.P-11 are signed by Mr.Seetharaman. The HSS agreement is also only between the plaintiff and the defendant. The role of M/s Smart Gen Infra Pvt Ltd as mediator in the transaction, no way make it a necessary party to the suit, when the transactions is only between the parties in this suit. Accordingly, Issue No.(iii) is answered in negative.

15.Issue No.(iv)

The transaction between the plaintiff and the defendant initiated through the purchase orders Ex.P2 dated 10.01.2014 and Ex.P6 dated 29.12.2014. In the cross examination of DW1-Prakash Manian, he admits that the purchase order of his company marked as Ex.P2 and Ex.P6 were signed by Mr.Seetharaman, the Joint Managing Director. Similarly, he also admits the HSS Agreement Ex.P3 dated 16.12.2014 was signed by him on behalf of the defendants. Later, the defendant company has acknowledged

the money payable for these two consignments and those acknowledges of



liability Ex.P10 and Ex.P11 is signed by Mr.Seetharaman, Joint Managing Director. From all these documentary and oral evidence this Court find, the averments made in the written statement are not true. A bald denial of the suit transaction has been put forth in the written statement. Whereas the HSS agreements, Invoices, purchase orders, acknowledgement of debts all put together proves the fact that there was valid agreement between the parties and acted upon. Without any reason, the defendant has failed to pay the plaintiff the money due and payable. The denial of HSS agreements dated 16.12.2014 and 22.01.2015 is only an afterthought for the sake of the suit. Whereas in the witness box, the defendant side witnesses have conceded the factum of purchase and failure to pay the goods value. Therefore, Issue No.(iv) is held in affirmative.

16.Issue No.(v)

The defendant harp on the point of limitation, based on the date of first purchase order. The plaint averment indicates that consequent to the first purchase order Ex.P-2, the plaintiff and the defendant entered into HSS agreement on 16/12/2014, (Ex.P-3), the coal was discharged at Tuticorin Port from the vessel MV PORTHOS on 17/12/2014. The price of the goods is due and payable within 45 days as per the terms of the HSS Agreement.

Likewise, for the goods supplied under the second purchase order, the money due and payable on the expiry of 60 days from delivery, the vessel



MV Evangelia discharged the goods on 04.02.2015 60 days time to pay expired on 04.04.2015. Later, the parties have consolidated the money payable under these two transactions and in the MOU Ex.P-10 and Ex.P-11 agreed for a settlement. Since the defendant failed to pay the money agreed, this suit is filed on 01.06.2017. Therefore, this Court does not see any malafide in clubbing the claim under the two transaction and even if it was not clubbed, the first transaction under purchase order Ex.P-2 will not be barred by limitation, as the cause of action for the suit for goods sold and delivery will arise only on the date of delivery and not earlier i.e. from 17/12/2014 and not earlier. Therefore, this Court holds that the suit is not barred by limitation. Issue No.(iv) is answered accordingly.

17. Issue No.(vi)

Regarding the quantum of liability, Ex.P10 and Ex.P11, the letter of the defendant indicates, the value of the goods sold under HSS agreement dated 16.12.2014 and delivered through the vessel MV PORTHOS is Rs.17,55,65,563/- . Likewise, the value of the goods sold and delivered through vessel M.V. EVANGETIA M is Rs.14,66,06,723/-. The defendant admits delivery of these goods but a plea of lack of privity of contract pleaded in vein. In the MOU dated 09.11.2018 between the plaintiff and the defendant, the due as the date of the MOU was ascertained and confirmed as



defendant liability to pay the plaintiff as on 09.11.2018 is Rs.33,05,02,000/- and for that sum, the plaintiff is entitled for a decree. As far as interest is concerned, under the HSS agreement, the defendant has agreed to pay (max.) 10.5% interest. Therefore, the plaintiff is entitled for interest at the rate of 10.5% from 09.11.2018 till the date of realisation for the sum of Rs.33,05,02,000/-.

18. In the result, the Civil Suit for recovery of money is allowed as above with costs. Consequently, connected Applications are closed.

Sd/-G.J.J.

06.08.2021

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

Mr.D.Hari Prasad Reddy (PW1)

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

1.Mr.Prakash Manian (DW-1)

2.T.S.Das(DW-2)

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	The original Board Resolution
2.	Ex.P.2	10.01.2014	The Notarised copy of purchase order issued by the plaintiff dated 10.01.2014
3.	Ex.P.3	16.12.2014	The notarised copy of high seas sale agreement entered between the plaintiff and the defendant
4.	Ex.P.4	16.12.2014	The notarised copy of invoice issued by the plaintiff
5.	Ex.P.5	17.12.2014	(2 notes) are the notarised copy of bill of entry



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6.	Ex.P.6	29.12.2014	The Notarised copy of purchase order issued by the defendant
7.	Ex.P.7	22.01.2015	The notarised copy of high seas sale agreement entered between the plaintiff and the defendant
8.	Ex.P.8	22.01.2015	The notarised copy of invoice issued by the plaintiff
9.	Ex.P.9	30.01.2015	(2 nos.) the notarised copy of bill of entry
10.	Ex.P.10	28.02.2015	The notarised copy of certificate issued by the defendant along with alalysis report
11.	Ex.P.11	31.12.2015	The notarised copy of certificate issued by the defendant along with analysis report
12.	Ex.P.12		The notarised copy of credit note issued by the plaintiff
13.	Ex.P13		(10 in nos.) are the Notarised copy of debit notes issued by the plaintiff
14.	Ex.P14		The Notarised copy of statement showing amount due by the defendant towards goods
15.	Ex.P15	17.07.2019	The original notarial certificate issued by the notary public
16.	Ex.P16	19.07.2019	(series 2 in nos.) are the photocopies of complaints given by the plaintiff to the Inspector of Police, Egmore.
17.	Ex.P17	24.07.2019	Is the photocopy of Receipt in C.S.R.No.401/2019 issued by the Police Authority
18.	Ex.P18	22.11.2019	The original non-traceable certificate issued by the Police Authority
19.	Ex.P19	05.12.2019	The original notice to production of documents given by the plaintiff to the Custom Authorities
20.	Ex.P20	09.11.2018	The photocopy of Memorandum of understanding
21.	Ex.P21	13.12.2018	The photocopy of Memorandum of understanding
22.	Ex.P22	12.07.2017	The office copy of notice dated 12.07.2017 issued by the plaintiff
23.	Ex.P23	21.07.2017	The original reply notice dated 21.07.2017 issued by the learned counsel for the defendant to the plaintiff company.
24.	Ex.P24		The photocopy of counter affidavit filed in A.No.1662/2017 in C.S.No.188 of 2017.
25.	Ex.P25		The photocopy of counter affidavit filed in



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			A.No.1663/2017 in C.S.No.189 of 2017
26	Ex.P26		The photocopy of written statement filed by the defendant in C.S.No.403 of 2017 with objection on the side of the defendant.

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

No documents marked on the side of the defendant

Sd./-G.J.J.
06.08.2021

//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.