IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:13/08/2021	Pronounced on:17.08.2021

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Civil Suit No.403 of 2017

M/s Black Burn Fuels Private Limited,
Formerly Known as M.s Maheswari Brothers Coal limited,
Rep.by its Director/Authorised Signatory,
Mr.D.hari Prasad Reddy,
No.7, Temple Street,
New Avadi Road,
Kilpauk, Chennai 600 010. .. Plaintiff

/versus/

M/s Ind Barath Thermal Power Limited,
Rep.by its Managing Director,
having registered 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 defendant by: (a)directing the defendant to pay a sum of Rs.24,45,38,095/- (Rupees Twenty Four Crores Forty Five Laksh Thirty Eight Thousand and Ninety Five Only) as on 31.05.17 with interest at the rate of 18% per annum on the Principal sum of Rs.14,85,60,336/- from the date of plaint till the day of payment in full to the plaintiff; (b)directing the defendant to pay a sum of Rs.1,77,34,473/-

(Rupees One Crore Seventy Seven Laksh Thirty Four Thousand Four Hundred and Seventy Two only) as on 31.05.2017 due to the loss incurred on exchange of goods with interest at the rate of 18% per annum from the date of plaint till the day of payment in full to the plaintiff; (c)the costs.

For Plaintiff : Mr.Abdul Hameed for Mr.AAV Partners

For Defendant : Mr.Anirudh Krishnan

JUDGMENT

(The case has been heard through video conferencing)

Money suit for recovery of Rs.24,45,38,095/-as on 31/05/2017 with interest at the rate of 18% per annum on the principal sum of Rs.14,85,60,336/- towards goods sold and delivered.

2.The suit dispute is in respect of coal imported from foreign and delivered at Tuticorin Port at India. The suit claim is above the specified value. Hence, dispute was determined as Commercial dispute falling under Section 2(1)(c)(ii) of the Commercial Courts Act, 2015 and tried by the Commercial Division of the High Court, Madras.

3.Plaint averment in short:

The plaintiff Private Limited Company M/s Black Burn Fuels Pvt Limited is formerly known as M/s Maheswari Brothers Coal Limited. It is carrying on business in iron ore, coal, barytes, bentonite and other minerals for several years. It is operating in the States of Tamil Nadu, Andhra Pradesh, Karnataka etc. During the course of the business the defendant approached the plaintiff at its office at Chennai and evinced interest to buy Non-coking Coal of Indonesian Origin (herein after called as the 'goods') and the same was agreed by the plaintiff.

4.Pursuant thereto, on the three following dates, the goods were sold and delivered to the defendant.

First, on 20/12/2013, the plaintiff and the defendant executed High Seas Sale Agreement for selling 55,500 MT of goods at the rate of Rs. 3364.20/- PMT. The plaintiff raised invoice on the same date for Rs.13,67,13,100/- The goods were discharged at Tuticorin port through the vessel M.V.Nighthawk on 23/12/2013.

Second, on 21/03/2014 plaintiff and the defendant executed High Seas Sale Agreement for selling 55,000 MTS of goods at the rate of Rs.3388.19/- PMT. The plaintiff raised invoice on the same date for Rs.18,08,50,450/-. The goods were discharged at Tuticorin Port through the vessel M.V. HE HE on 24/03/2014.

Third, on 30/01/2014, the plaintiff and the defendant executed High Seas Sale Agreement for selling 50,000 MTS of goods at the rate of Rs.3173.62/- PMT. The plaintiff raised invoice on the same date for Rs.17,91,50,849/-. The goods were discharged at Tuticorin Port through the vessel M.V. VIOLA on 24/08/2014.

5.As per the terms of the High Seas Sale Agreements and the invoices, the defendant is supposed to pay the invoice amount by RTGS or LC on usance basis on the 60th day. 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.14,85,60,336/- towards principal is due and payable by the defendant, besides interest. Apart from the above due, the plaintiff also lost Rs.1,77,34,472/- towards difference in foreign exchange rate, which the plaintiff is legally entitled to claim as against the defendant. Several meetings between the parties for settlement of the due at the office of the defendant at Chennai did not yield result and several promises given by the defendant were not kept. The defendant informed the plaintiff that they have filed a petition before the Regulatory Commission (TNERC) against TANGEDCO for realization of huge arrears pending with TANGEDCO towards the price for the energy supplied and as soon as, they get it, the plaintiff's due will be settled. Thereafter, a meeting was held at the office of the defendant at Chennai between the plaintiff and the defendant, wherein the Defendant undertook to clear the dues on or 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 neither disclosed to the plaintiff nor the dues of the plaintiff was settled.

6.Written statement averment in short:

In the plaint, No. 20, Chamiers Road, Nandanam, Chennai, is mentioned as the registered office of the defendant. However, it was the defendant's office at Hyderabad, which involved in the transaction with the plaintiff. The plaint averments are denied as false and frivolous. The entire cause of action in the present suit arose outside the jurisdiction of this Court. The defendant carries on business at Tuticorin and it was the Tuticorin plant and the office of the defendant that was engaged in the transaction. The contract concluded at Tuticorin, the goods were delivered at Tuticorin and the payments were made through bank, situated outside the jurisdiction of this Court. Even assuming part cause of action arose within the jurisdiction of this Court, the plaintiff cannot rely on the fact that the defendant has office in Chennai to sue the defendant without obtaining leave to sue under Clause 12 of the Letters Patent, since the entire cause of action arose outside the jurisdiction of this Court.

7.The defendant is a Special Purpose Vehicle, in the business of producing electricity and selling it to its shareholders and TANGEDCO. The coal based thermal power plant is located at Tuticorin. Even according to the plaint, the first two transactions dated 20/12/2013 and 21/03/2014, the claim is barred by limitation, since the suit is filed only on 01/06/2017. The third transaction was never entered by the defendant. The allegation of discharge of coal denied. No pending dues to be paid to the plaintiff by the defendant and any claim whatsoever is barred by limitation. Merely by mentioning the defendant's registered office address, when no part of the transaction was negotiated or dealt with by the defendant's Chennai Office, the plaintiff has no cause of action to file the suit with the jurisdiction of this Court.

8.After receiving the affidavit of admission and denial of documents, 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 amounts due to plaintiff by the defendant under High Seas Sale Agreements dated 20.12.2013 and 21.03.2014 have been paid in full by the plaintiff to the defendant?

(iii)Whether the claim of the plaintiff is barred by limitation or not?

(iv)Whether the defendant had entered into the High Seas Sale Agreement dated 23.06.2014?

(v)Whether the plaintiff is entitled to a sum of Rs.24,45,38,095/- as on 31.05.2017 with interest at the rate of 18% on the principal sum of Rs.14,85,60,336/-?

(vi)Whether the plaintiff is entitled to a sum of Rs.1,77,34,472/- as on 31.05.2017 with interest at the rate of 18% on account of foreign exchange loss?

(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. 24 documents through PW-1 and 6 documents in the course of cross examination of DW-1 were marked. They are Ex P-1 to Ex P-30. On behalf of defendant, its former employee Mr.Prakash Manian examined as DW-1 and Mr. T.S.Dass as DW-2.

10.**Issue No.(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 ?

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. In respect of this assertion, there is a vague denial in the written statement. However, there is no contra document placed by the defendant to show that their registered office is not at Chennai. The perusal of the deposition of DW-1 and exhibits like the purchase orders marked as Ex.P-9, affidavits Ex.P-29 and Ex P-30 filed on behalf of the defendant's, without any doubt, discloses the defendant is carrying on its business also at Chennai.

11.Referring the corporate office address at Plot No.30A, Road No.1, Film Nagar, Jubilee Hills, Hyderabad-500 096 and their plant at Tuticorin, it is contended by the defendant 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.

12.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) *C.Govindarajulu Naidu v. The Secretary of State for India in Council reported at 1927 (26) LW 558;*

(ii) *J.D.John and Ors., v. Oriental Government Security Life Assurance Co. Ltd., reported in 1928 SCC Online Mad. 347; and*

13.The following judgments are relied for the preposition, if only part of the cause of action arisen within the jurisdiction of this Court, leave to sue the defendant is mandatory.

(i)*The Clan Line, Streamers Ltd –vs- Gordon Woodroffe and Co., (Madras) and Ors. reported in 1992 LW 541*

(ii)*Urooj Ahmed, Lords Enterprises (India) –vs- Preeti Kitchen Appliances Pvt Ltd, reported in 2013 (6) CTC 247.*

14.As far the facts of this case shows, the office of the defendant at Chennai had not acted just as a post office but dealing and decisions were taken by the Management of the Defendant from its Chennai office. Their own documents like letter of purchase and affidavits and the cross examination of DW-1, it is admitted that T.S. Das (DW-2) is the authorized signatory through whom the defendant company has filed the written statement in this case sits at Chennai office. Same is corroborated from the proof affidavit in lieu of the chief examination filed by T.S.Das where his office address is shown as No. 20,Old No. 129, Chamiers Road, Nadanam, Chennai. In the cross examination, to the question do he sit at Chennai, he affirms that he always sit at Chennai and he is the authorized person of M/s Ind Bharat Thermal Power Pvt. Ltd. Therefore, without any doubt, it is well proved that the defendant is carrying on business at Chennai and the dictum laid in the judgements cited by the learned counsel for the defendant does not apply to the facts of this case.

15.Leave to sue under Clause 12 of the Letters Patent will arise, if the part of the cause of action arisen within the jurisdiction of this Court and if the defendant not carrying on business within the jurisdiction of this Court. The evidence pointed above is a clear admission of the fact that the defendant is carrying on business within the jurisdiction of this Court.

16.The point emphasized by the learned counsel for the defendant that the transaction pertaining to the suit never took place in the office of the defendant at Chennai not established by the defendant. Contrarily, the admissions of the defendant's side witnesses, regarding the presence of senior officers of the defendant company (DW-2-T.S.Das) and the President of the company Mr. Jerad Kishore sit at Chennai office, disproves the defendant’s contention regarding cause of action not within the jurisdiction of this court. Therefore, it is held that this Court has jurisdiction to entertain this suit. Issue No.1 is answered in affirmative.

17.**<u>Issue No. (iii):</u>** Whether the claim of the plaintiff is barred by limitation ?

As per the plaint, the plaintiff and the defendant were maintaining running account for the goods supplied. For the supply of around 1,60,000 MTS of coal under the three transactions, which are mentioned in Ex.P-3 to Ex.P-12, the defendant had not paid in full. The bank statement of accounts is filed as Ex.P-18 to show the account between the parties is a running account. Though in the written statement, it is pleaded by the defendant that, they have cleared the dues as against the first two transactions dated 20/12/2013 and 21/03/2014 and even otherwise they are barred by limitation, the defendant had not come forward with evidence to show that the account was not a running account or no payment was made after 21/03/2014 to the plaintiff for the goods supplied. The claim of the defendant regarding the limitation gets demolished through Ex.P-18 in which the Court could find payment by the defendant into the plaintiff account a sum of Rs.1,00,00,000/- (One Crore of rupees) on 15/04/2015. In case of running account, the limitation starts from the date of last payment. Through Ex.P-18 the plaintiff has proved, the money suit filed on 01/06/2017 is well within the limitation. Accordingly , issue No 3 answered in negative.

18.**Issue No.(ii):** Whether the amounts due to plaintiff by the defendant under the High Seas Sales Agreement dated 20/12/2013 and 21/03/2014 have been paid in full by the plaintiff to the defendant?

The defendant assertion in the written statement is that the outstanding in respect of the first two transactions were paid in full even otherwise, it is hopelessly barred by limitation. This Court to the issue No.3, has held that the suit is not barred by limitation for the reasons stated. Hence, whether the money due was paid by the defendant has to be examined.

19.DW-1, in the cross examination admits that under the three HSS agreements dated 20/12/2013, 21/03/2014 and 23/06/2014, the plaintiff supplied about 1,40,000 MTS of coal to the defendant. When the witness was confronted with Ex.P-17 (statement of account), the witness admits, he does not know the exact financial. DW-2 also says that he could not say how much the defendant is liable to pay for the supply of the coal. Therefore, the defendant, who denies the liability on the ground of discharge, the onus of proof shifts on the defendant. In this case the defendant has failed to discharge the said burden.

20.As already observed, the bank statement Ex.P-18 proves that the transactions between the parties is a running account for the goods sold and supplied. Apart from this plaintiff, several trade creditors had moved the NCLT, Hyderabad, against the defendant for its default in payment. Pending suit, in the NCLT proceedings, the plaintiff and the defendant had mutually entered into a Memorandum of Agreement Ex.P-25 and Ex.P-26. Though these two documents are subsequent to the suit and not given effect by the parties, the liability of the defendant to the plaintiff to a tune of Rs.12,42,27,000/- as on date of the document is an admitted fact and stands unassailed. The plaintiff and the defendant after reconciliation of their respective accounts, had arrived at a sum of Rs.12,42,27,000/- as money due and payable by the defendant. The plaintiff cannot lay suit for anything more than the admitted due receivable.

21.**Issue No. (iv):** Whether, the defendant had entered into the High Seas Sale agreement dated 23/06/2014?

Ex.P-10 is the High Seas Sales Agreement dated 23/06/2014. In this agreement, as pointed out by the learned counsel for the defendant, on behalf of the defendant, none had signed. The recital of this HSS agreement indicates that, it is in respect of 56,450 MTS of stream (non-coking) coal of Indonesian origin. The carrier name, bill of lading number and date are shown as M.V.Viola, 01/BJM – IND/VI/14 dated 15/06/2014. This document is not the original, but a photocopy. The defendant had not signed in this document. The plaintiff had given some explanations for not producing the original and to corroborate the transactions rely upon invoice Ex.P-11 and the bill of entry Ex.P-12. These documents are also photocopy. For multiple reasons, Ex.P-10 cannot be admitted into evidence and the objection raised by the defendant counsel during marking of Ex.P-10 has to be sustained. But then, the suit claim is not solely based on Ex.P-10 alone. The defendant, who admits the purchase of about 1,60,000 MTS of coal which obviously includes the third transaction covering Ex.P-10, failed to prove that they have paid the value of the goods purchased. Not a piece of evidence on their part to prove payments. Contrarily, they have admitted the liability to the extent of Rs.12,42,27,000/- subsequent to the filing of written statement in this suit. Therefore, this Court holds that, in a suit for recovery of money, based on running account, the sum due ultimately crystallize on reconciliation of an account by the transacting parties. In this case, the plaintiff documents does not provide sufficient data for the Court to reconcile the account. Neither the defendant, who pleads complete discharge of the due for the first two transactions and total denial of third transaction, which is covered under Ex.P-10 HSS Agreement, had placed before this Court evidence, to substantiate the claims. Under such circumstances, Ex.P-25 and Ex.P-26 and the oral evidence of the respective parties regarding the transactions becomes relevant.

22.On appreciation of document placed before this Court, Ex.P-10 if taken as an independent transaction, to be held as not proved. Accordingly, this issue is answered.

23.**<u>Issue No.(v):</u>** Whether the plaintiff is entitled to a sum of Rs.24,45,38,095/- as on 31/05/2017 with interest at the rate of 18% on the principal sum of Rs.14,85,60,336/- ?and

<u>Issue No.(vi):</u> Whether the plaintiff is entitled to a sum of Rs.1,77,34,472/- as on 31/05/2017 with interest at the rate of 18% on account of foreign exchange loss?

The liability of the defendant as on 31/05/2017 i.e till the date of filing the suit, though claimed to be **Rs.24,45,38,095/-,** the evidence placed by the plaintiff not sufficient to prove, how the said figure is arrived. Neither the plaint nor the documents relied by the plaintiff explain how the sum of **Rs.24,45,38,095/** arrived. Likewise, to substantiate the alleged loss due to foreign exchange difference, no documents placed by the plaintiff. The MoU entered between the parties, pending suit is the only document, which indicates the actual due (ie) Rs.12,42,27,000/-. In fact, the plaintiff had agreed to settled for Rs.6,83,25,000- towards full satisfaction as against the actual due of Rs.12,42,27,000/-. However this settlement did not fructified. But, then the actual due payable was reconciled between the parties and ascertained as only Rs.12,42,27,000/-. Which shall be the principal amount due as on the date of the suit ie 01/06/2017.

24.As far as interest for delayed payment, this Court finds in the purchase order Ex.P-9 issued by the defendant, it is agreed by the parties that the payment shall be by RTGS or LC on Usance basis within 60 days from the date of completion of vessel discharge at Tuticorin Port. In case of delay, the defendant shall reimburse to the plaintiff the actual usance interest paid, subject to a maximum of 11%.

25.In the light of this clause regarding payment of interest found in Ex.P19 and the actual sum payable as fixed under the MoU Ex.P25 and Ex.P26, though subsequent to the suit, this Court is of the view that the plaintiff shall be entitled for interest only at the rate of 11% for the principal sum of Rs.12,42,27,000/- from the date of suit till the date of its realization. Accordingly, Issue Nos.(v) and (vi) are answered as below:-

The principal sum due and payable by the defendant as on 31/05/2017 is Rs.12,42,27,000/- .This amount is inclusive of loss towards exchange rates, if any. The interest payable for the principal amount due shall be 11% p.a., from the date of suit till the date of realization.

26. In the result, ***this Civil Suit is partly allowed with costs as indicated above***.

17.08.2021

Index : Yes/No.
Speaking order/Non-Speaking order
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List of Witness examined on the side of the Plaintiff:-
Mr.D.Hari Prasad Reddy was examined as PW-1

List of Witness examined on the side of the Defendant :-
Mr.Prakah Maninan was examined as DW-1
Mr.T.S.Das was examined as 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	02.06.2016	The photocopies of Certificate of Incorporation pursuant to name change
3.	Ex.P3	20.12.2013	The notarised copy of high seas sale agreement entered between the plaintiff and the defendant
4.	Ex.P.4	20.12.2013	The notarised copy of invoice issued by the plaintiff
5.	Ex.P.5	23.12.2013	The notarised copy of bill of entry
6.	Ex.P.6	21.03.2014	The notarised copy of High Seas Sale Agreement

Sl. Nos.	Exhibits	Dated	Description of documents
			entered between the plaintiff and the defendant
7.	Ex.P.7	21.03.2014	The notarised copy of invoice issued by the plaintiff
8.	Ex.P.8	24.03.2014	The notarised copy of bill of entry
9.	Ex.P.9	30.01.2014	The notarised copy of purchase order issued by the defendant
10.	Ex.P.10	23.06.2014	The notarised copy of High Seas Sale Agreement entered between the plaintiff and the defendant
11.	Ex.P11	23.06.2014	The notarised copy of invoice issued by the plaintiff
12.	Ex.P12	24.06.2014	The notarised copy of bill of entry
13.	Ex.P13	15.04.2014	The notarised copy of LC issued by Punjab National Bank
14.	Ex.P14	25.06.2014	The notarised copy of LC issued by Bank of India
15	Ex.P15	03.12.2015	The notarised copy of Delivery Report issued by UCO Bank
16	Ex.P16	15.12.2015	The Notarised copy of Report issued by karur Vysya Bank
17	Ex.P17		The notarised copy of statement showing amount due by the defendant towards goods.
18	Ex.P18	01.04.2015 to 13.04.2015 and 22.04.2016	The notarised copy of account statement issued by SBI
19	Ex.P19		The notarised copy of statement showing amount due by the defendant on account of exchange rate fluctuation
20	Ex.P20	17.07.2019	The original notarial certificate issued by the notary publi
21	Ex.P21	19.07.2019	The photocopies of complaints given by the plaintiff to the Inspector of Police, Egmore.
22.	Ex.P22	24.07.2019	The photocopy of receipt in C.S.R.No.401/19 issued by the Police Authority
23.	Ex.P23	22.11.2019	The photocopy of Non-traceable certificate issued by the Police Authority
24.	Ex.P24	05.12.2019	The original notice to production of documents

Sl. Nos.	Exhibits	Dated	Description of documents
			given by the plaintiff to the Custom Authorities dated 05.12.2019 with postal receipt.
25	Ex.P25	08.11.2018	The photocopy of Memorandum of Understanding
26	Ex.P26	13.12.2018	The photocopy of Memorandum of Understanding
27	Ex.P27	12.07.2017	The Demand Notice sent by the plaintiff
28	Ex.P28	21.07.2017	The Reply notice sent by the defendant
29	Ex.P29	10.04.2017	The Counter Affidavit filed by the defendant in A.No.1662 of 2017 in C.S.No.188 of 2017
30	Ex.P30	10.04.2017	The Counter Affidavit filed by the defendant in A.No.1663 of 2017 in C.S.No.189 of 2017

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

Dr.G.Jayachandran,J.

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Pre-delivery judgment made in
C.S.No.403 of 2017

17.08.2021