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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th APRIL, 2025

IN THE MATTER OF:

\+ **FAO(OS) (COMM) 73/2025**

SHREE BAHUBALI COAL AND COKE PRIVATE LIMITED PREVIOUSLY KNOWN AS SBCI PETROCHEM PRIVATE LIMITED & ORS. ....Appellants

Through: Mr. Srivats Kaushal and Mr. Girijapati Kaushal, Advocates.

versus

VNU COAL PRIVATE LIMITED .....Respondent

Through: Mr. Gaurav Vig, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

CM APPL. 24947/2025 (Exemption from filing certified copies)

1. Allowed, subject to all just exceptions.

CM APPL. 24946/2025 & CM APPL. 24949/2025

2. CM APPL. 24946/2025 has been filed by the Appellants seeking condonation of delay of 15 days in filing the present appeal and CM APPL. 24949/2025 has been filed by the Appellants seeking condonation of delay of 30 days in re-filing.

3. For the reasons stated in the application, the same are allowed.

4. The delay stands condoned.

5. The applications are disposed of.

FAO(OS) (COMM) 73/2025 & CM APPL. 24948/2025

6. The present Appeal has been filed by the Appellants challenging the Order dated 04.12.2024, passed by the learned Single Judge in I.A. No. 9735/2024, which was filed by the Plaintiff/Respondent herein under Order XI Rule 1(5) of the CPC seeking permission to place additional documents on record in CS(COMM) 812/2022.

7. Shorn of unnecessary details, the facts, leading to the present appeal are that CS(COMM) 812/2022 has been filed by the Plaintiff/Respondent herein seeking damages from the Defendants/Appellants herein for cancellation of the Contracts dated 03.08.2021 & 04.08.2021 for sale of 3500 MT coal. In the Suit, it is the case of the Plaintiff that it entered into two contracts dated 03.08.2021 & 01.10.2021 with the Defendant No.1 through an online portal for supply of 3500 MT of USA thermal coal @ 11,000/- per MT+CESS+GST+TCS to be delivered ex-port Tuna. It is stated that the lifting period for the contracted coal was between 01.10.2021 to 30.11.2021 and the total invoice value of the contracted coal was Rs.4,20,56,000/- (Rs.2,41,31,000/- for Contract dated 03.08.2021 & Rs.1,79,25,000/- for Contract dated 04.08.2021). It is the case of the Plaintiff/Respondent herein that the said contracts were terminated by the Defendants/Appellants herein and the Plaintiff had to enter into other contracts for purchase of the same coal at a higher price from a different vendor.

8. Summons in the suit were issued by the learned Single Judge. Written Statement was filed by the Defendants/Appellant herein. In the Written

Statement, the primary issue raised by the Defendants/Appellants herein was that the plaint does not reflect that the handling charges were paid by the Plaintiff apart from other contentions that the plaint does not reflect the correct data of supply of coal to Plaintiff from third party from whom the Plaintiff alleges to have purchased the coal. An application, being I.A. No. 9735/2024 under Order XI Rule 1(5) of the CPC was filed by the Plaintiff/Respondent herein seeking permission of the Court to file 15 invoices to substantiate its contention that it suffered loss on account of cancellation of the contracts by the Defendants/Appellants herein on account of the fact that the contracted price between the Plaintiff and the third party vendor was exclusive of the handling charges whereas in the contract between the Plaintiff and the Defendants the contracted price was inclusive of the handling charges. The said application was allowed by the learned Single Judge *vide* Order dated 04.12.2024 allowing the Plaintiff/Respondent herein to file those invoices. It is this Order which is under challenge in the present Appeal.

9. It is the case of the Defendants/Appellants herein that permitting these invoices to be taken on record would result in amending the original Plaint and no reason has been given by the Plaintiff/Respondent herein in I.A. No. 9735/2024 as to why these documents had not been filed along with the Plaint.

10. Heard the learned Counsels for the Appellants and the Respondent and perused the material on record.

11. I.A. No. 9735/2024, filed by the Plaintiff before the learned Single Judge is not one for amending the Plaint but for permission to file additional documents. The Suit is at a nascent stage. Even issues have not been framed.

The argument of the Appellants that allowing the application of the Plaintiff for bringing on record additional documents would change the nature of the Suit, cannot be accepted.

12. The case of the Plaintiff/Respondent herein is that the contract between the Plaintiff and the third party vendor, from whom the Plaintiff has purchased the coal, does not include the handling charges which were paid over and above the other charges while handling charges were included in the contract price between the Plaintiff and the Defendant and 15 invoices which are sought to be placed on record are to substantiate the claim of the Plaintiff/Respondent herein that it suffered loss on account of cancellation of the contract by the Defendants/Appellants herein. The arguments raised by the Appellants herein are qua an application seeking amendment of the Plaint. In the present case, the application filed by the Plaintiff/Respondent herein before the learned Single Judge was not for amending the Plaint but for placing on record certain additional documents.

13. The learned Single Judge has allowed the application by observing as under:-

> *"4. This Court has considered the submissions of the parties and perused the record.*
>
> *5. The plaintiff along with the plaint itself had filed 'Annexure P-12' and 'Annexure P-13', which records charges of Rs. 250 per MT payable as handling charges and this document indicates that the charges are payable towards the price for the goods. Thus, the claim of the plaintiff qua the handling charges incurred was inclusive in the claim raised in the original plaint and is not an afterthought as alleged by the defendant in its reply to the present application. The assertion of the defendant that the proof of*

handling charges and/or the claim of handling charges is beyond the claim in the original plaint is not borne out from the paper-book.

6. The plaintiff has filed the captioned suit for recovery of the losses suffered by it due to the defendant no. 1's non-performance of the contracts dated 03.08.2021 and 04.08.2021. To assess its claim for losses the plaintiff has provided details of the costs incurred by it for procuring 3500 MT from different vendors.

7. As per the plaintiff, the contract price between the parties includes handling charges of Rs. 250 per MT and the '15' invoices now sought to be placed on record as additional documents substantiate the said original claim of the plaintiff. The plaintiff has contended that the charges were incurred as per prevalent industry practice and the plaintiff verily believed that the defendant would not dispute the cost incurred in the written statement. The plaintiff has stated that since defendant disputed this component of the claim, the plaintiff has placed these additional documents on record to substantiate this cost.

8. The defendant has not disputed the assertions of the plaintiff that payment of handling charges is a prevalent industry practice."

14. In the opinion of this Court, no prejudice will be caused to the Defendants/Appellants herein by permitting the Plaintiff/Respondent in placing the additional invoices on record. More so, when the case is at a nascent stage. In the application, the Plaintiff/Respondent has properly explained the reason for not filing the invoices with the Plaint. In fact, it is only when the Defendants/Appellants herein raised objections qua handling charges, it became necessary for the Plaintiff/Respondent herein to place the

invoices on record.

15. The view taken by the learned Single Judge does not warrant any interference. In the opinion of this Court, the present appeal is devoid of merits and is accordingly dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

APRIL 28, 2025
Rahul