

Jugnu Construction and Ors. Vs. Central Coalfields Ltd.

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Court : Jharkhand

Decided On : Jun-12-2017

Appellant : Jugnu Construction and Ors.

Respondent : Central Coalfields Ltd.

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI --- F.A. No.134 of 2005 With F.A.No.135 of 2005 Against the judgment and decree dated 15.09.2005 and 26.09.2005 respectively passed in Money Suit no.2/2000 by the learned Sub-Judge-I, Bermo at Tenughat. --- 1. Jugnu Construction, a partnership firm carrying on business at Naya Road, Phusro, P.S.Bermo, P.O. Phushro, District-Bokaro through its partner Shri Lalan Kumar Singh, S/o Shri Ramaslok Singh, r/o Phsro Bazar, P.S.Bsermo, P.O. Phsro, District-Bokaro.

2. Shri Lalan Kumar Singh, s/o Shri Ramaslok Singh, Partner, Jugnu Construction, P.O.Bermo, District-Bokaro, r/o of Phsro Bazar, P.S.Bermo, P.O.Phsro, District-Bokaro. 3. Sri Sudarshkan Tiwary, s/o lae ChamanTiwari, Partner, Jugnu Construction, r/o Phsro Bazar, P.S.Bermo, P.O.Phsro, District-Bokaro. Appellants. Versus Central Coalfields Limited, a Government Company within the meaning of Section 617 of Companies Act, 1956 being one of the Subsidiary Companies of Coal India Limited, having its Registered Office at Darbhanga house, Ranchi and its place of business at Sawang Washery, P.O.Sawang, District-Bokaro. --- Respondent. For the Appellants :M/s.V.Shivnath, Sr. Advocate & Vikash Pandey, Advocate. For the

Respondent:M/s. Jagdeep Dhankar, Sr.Advocate & Amit Kumar Das, ,Advocate.
--- Amitav K. Gupta,J These two appeals are directed against the common judgment and decree dated 15.09.2005 and 26.09.2005 respectively passed in Money Suit no.2/2000 passed by Sub-Judge- Ist, Bermo at Tenughat decreeing the plaintiff's suit and directing the defendants(appellants herein) to pay Rs.3,96,73,455.00 with interest at the rate of 12% per annum till realisation while dismissing the counter claim of the defendants/appellants. The defendants/appellants have preferred F.A.No.134 of 2005 impugning the dismissal of counter claim filed by the defendants and F.A.No.135 of 2005 impugning the money decree and recovery of the amount from the defendants.

2. The appellants in F.A.No.134 of 2005 and F.A.NO.135 of 2005 were the defendants in Money Suit no.2/2000 and the respondent, in both the appeals, was the plaintiff in the said Money Suit no.2/2000. For the sake of convenience they will be referred to as plaintiff and defendants.

3. The case of the plaintiff is that it is a government company under Section 617 of the Companies Act, 1956 having its registered office at Darbhanga House, Ranchi and having business at 2 Swang Washery, P.O.Swang, District-Bokaro. It is a subsidiary company of Coal India Ltd. The defendant no.1, Jugnu Construction, is a partnership firm comprising of defendants no.2 and 3 as the partners of the said firm. The defendants' firm is engaged in the manufacturing of briquettes from slurry. The plaintiff invited a tender for lifting of slurry for the purpose of manufacturing of briquettes. Defendants submitted their tender which was accepted in the year 1982. They were allowed to dispatch the slurry after converting into briquettes within the premises of the plaintiff on the terms that the conversion factor shall be 1 tonne of briquettes for 1.5 tonnes of slurry and the defendants had agreed to pay other charges including royalty, cess, sales taxes, excise duty, etc. on the slurry. It is pleaded that during the pendency of the contract, the Full Bench of Hon'ble High Court of Patna held that the slurry was not coal and therefore it was not subject to regulation under Mines & Minerals Act. The defendants filed a writ petition CWJC NO.1232/1998(R) before the Ranchi Bench, of Patna High Court, for issuance of writ of mandamus directing the plaintiff not to charge any cess, royalty, sale tax and excise duty on slurry supplied to

defendants. The writ was dismissed by order dated 11.10.1988 on the ground that defendants had agreed to pay such charges under the contract. In another decision in CWJC NO.1718/1987 the Hon'ble High Court held that slurry is coal and therefore the defendants and contractors were liable to pay aforesaid charges in terms of the agreement. The defendants filed a S.L.P(C) no.9365/89 in Supreme Court against the judgment/order dated 11.10.1988. The Supreme Court held slurry is coal and State of Bihar had no authority in law to exercise its authority in regulating the slurry[reported in (1990) 4 SCC557. After that, the defendants filed an I.A. NO.2, in the said SLP stating, inter alia, therein, that even though defendants had paid full price for slurry supplied to them under the contract but they were not being permitted to remove the ash/residue of the briquettes and slurry lying within the premises of plaintiff. The Hon'ble Supreme Court, vide order dated 25.04.1990, was pleased to permit the defendants to remove the ash subject to condition that all the removal would be accounted by measuring the quantity and by way of security, a cash amount of Rs.10,00,000/-(Rupees ten lakhs) or bank guarantee would be deposited within seven days in a nationalised bank. The Hon'ble Supreme Court found that there was serious controversy with regard to sale regarding the amount of slurry and remanded the case to the High Court of Patna, for 3 deciding the same. On remand, the Hon'ble Single Judge vide order dated 11.03.1998 held that the agreement of the defendants with the plaintiff had come to an end in the year 1988, but the defendants had removed ash for seven years since May, 1991 although they had no right to remove the ash. There was no whisper regarding the measurement of the removed ash and the defendants could not carry/remove the ash for an indefinite period. The above findings of the learned Single Judge was affirmed by the Division Bench. Being aggrieved the defendants preferred S.L.P.(C) No.312/1999 which was dismissed by the Supreme Court on 28.01.1999. It is stated that the Functional Directors of the plaintiff-Company took a decision fixing the price to be charged for the remains of the slurry lifted from June, 1990 to 1998 and held that the defendants were liable to pay a sum of Rs.3,96,73,455/- because the remains which are left after the burning of slurry and after manufacture of briquettes were also slurry and not ash. The defendants did not pay the outstanding amount, accordingly the Money Suit no.2/2000 was instituted.

4. The defendants filed their written statement pleading therein that the suit was not maintainable and they are not liable to pay the amount as claimed by the plaintiff. That Swang Washery is engaged in washing raw coal for its own use and in steel plants. In process of cleaning of coal some fine material and rejects flowing out of washery known as slurry is collected outside the washery. The slurry was sold by the management from time to time and payment was made to them at the rate fixed by the management. The purchasers engaged their own men for collecting the slurry and for preparation of briquettes on the land given on rent at the rate of Rs.0.37/- per sq/ft by the management of the plaintiff-company, hence the defendants were burning the slurry at the place taken on rent by them. It is averred that defendants are the owner of the remains of ash contents left at the site and plaintiff has no right over said ash contents. The defendants have also paid the excise duty, sale taxes etc., for the slurry, which were held to be illegal by Supreme Court of India in India Cement case. The Supreme Court allowed the defendants to remove the ash on the condition that defendants would deposit Rs.10,00,000/- (Ten lakhs rupees). That the plaintiff has filed the Money Suit for recovery of an imaginary figure of Rs.3,96,73,455/-(Rupees three crores ninety six lakhs seventy three thousand four hundred fifty five). It is pleaded that the 4 defendants are entitled for refund of the amount of Rs.10,00,000/- deposited in Supreme Court because they are the owners of ash contents and they are entitled to damages as well as cost in case of destruction of the ash.

5. The defendants also filed a counter claim under Order 8 Rule 6A C.P.C. In the counter claim the defendants have stated that they had an agreement with plaintiff for the purchase of the flowing slurry of Swang Washery from 1981 to 1989. The defendants no.2 and 3 are partners of Bharat Coal Products and also had executed an agreement with the plaintiff for the purchase and removal of the slurry from 1990 to 1999 and they were paying the price for 1.5 tonnes of slurry equivalent to the price of 1 tonne of briquettes manufactured by them. The defendants are paying the ground rent of Rs.37/- per sq/ft per annum. The ash contents remaining on the site are to be taken out by the defendants. It is stated that out of 80,000 MT of ash produced the defendants have removed 57,325.5 MT of ash and 22,675 MT of ash is lying at the site. The defendants being owners of the ash remains are entitled to remove or in the alternative are entitled to be paid

the value of the said ash remains. It is pleaded that the defendants no.2 and 3 had entered into a contract for transportation of coal from the mines through pay loaders and dumpers. It is averred that the pay loaders and dumpers were seized and confiscated by Range Forest Officer at the instance of plaintiff and Confiscation Appeals no.12,13 and 14 of 1996 filed before Deputy Commissioner, Bokaro were dismissed on 17.11.1998 by different orders. Thereafter, the defendants approached the High Court which directed the defendants to move the government for alternative remedy. In compliance of the direction of the High Court the defendant no.3 filed a separate Forest Confiscation Revision which is pending since 1988. The defendants demanded damage at the rate of 23,950/- (Rupees twenty three thousand nine hundred fifty) per day till the date of payment for the loss of income and sent a demand notice to the plaintiff for payment of Rs.5,37,65,268/- (Rupees five crore thirty seven lakhs sixty five thousand two hundred sixty eight) with interest. It is alleged that as on 31.02.2003, Rs.7,73,65,268/-(Rupees seven crore seventy three lakhs sixty five thousand two hundred sixty eight) is the outstanding amount to be paid as damages by the plaintiff.

6. Rejoinder was filed on behalf of the plaintiff by Dayanand Prasad s/o Basudeo Ram, the Area Sales Manager of the plaintiff- Company, wherein it was pleaded in para 6 that ownership of remains of briquettes(ash) has already been decided by the High 5 Court in CWJC NO.1232/1988 which has been confirmed by Supreme Court in SLP(C) no.312/1999. The suit was rightly registered as Money Suit. In para 13 it is stated that the essence of contract was that the defendants were allowed to lift the slurry only after converting the same into briquettes and they were not entitled to lift the remains of the ash left after manufacturing of briquettes. In paras 21 and 22 it is stated that the ash/remains has more use than the flowing slurry. That slurry is 'D' grade coal. In para 14 it is stated that the direction of Apex Court to deposit a sum of 10 lakhs was a security and not the price for the lifted quantity of the ash.

7. On the pleadings of the parties the court below framed as many as 14 issues. The issues germane for adjudication were:- Issue no.5- Whether ash/remains of slurry comes under slurry? Issue no.7- Whether the defendants are owner of ash

and entitled to remove the same? Issue no.9- Whether the plaintiff is entitled to the price of ash from slurry value of which is already paid by defendants? Issue no.11- Whether as per the counter claim the defendants are entitled to recover the value of 22,675 MT lying on the site? Issue no.12- Whether the plaintiff is liable to pay the damages mentioned in counter claim? 8. Documentary and oral evidence were adduced by the parties. On consideration of the material evidence on record the lower court decreed the suit by the impugned judgment and dismissed the counter claim of the defendants. Being aggrieved the defendants have preferred the above appeals.

9. The argument advanced by the learned senior counsels for the appellants/ defendants and plaintiff/respondent shall be discussed and referred to in course of appreciation of the material evidence on record. In view of the arguments advanced by the counsels the following points arise for determination for adjudication in the instant appeals:- (a) Whether in view of the stipulations and terms and conditions of the contract the appellants were entitled to remove the slurry/ash or remnants also or whether defendants/ appellants were entitled only to remove the briquettes manufactured from the slurry supplied? and (b) Whether defendants are liable to pay the money to the plaintiff-Company and what would be the price of the slurry/ash remains removed by the appellants/defendants? Since both the issues are interconnected hence, they are taken up together for adjudication. 6 10. Plaintiff has examined as many as 14 witnesses in this case. P.W.1, Chandrakant Tiwari; and P.W.2, Kedar Nath Tiwari; P.W.3, Ghuran Mian; P.W.4, Shiv Balak Ram; P.W.5, Ramchandra Mahto; P.W.6, Mahendra Prasad; P.W.7, Madan Dubey; P.W.8, Shiv Kumar Mishra; P.W.9, Krishna Kumar Singh; P.W.10, Sunil Kumar Dutta; P.W.11, Upendra Nath Nayak; P.W.12, Surendra Singh; P.W.13, Nawal Kishor Singh & P.W.14- Sanjay Kumar Choudhary. Plaintiff has adduced the following documentary evidence:- Ext.1 is the signature of Project Officer, Swang Washery on Ext.3/A- letter dated 11.12.1999. Ext.1/A is the signature of Project Officer, Swang Washery on Ext.3- letter dated 03.01.2000. Ext.1/B is the signature of partners of M/s. Jugnu Constructions on letter dated 20.12.1999. Ext.1/C to 1/E are also the signatures on letter No.26107 dated 16.09.1982. Ext.2 is the carbon copy of letter No.26107 dated 16.09.1982 issued by C.C.L to the defendants. Ext.2/A is the carbon copy of letter No.138 dated

09.03.1984 issued by C.C.L to the defendants. These two letters are with respect to award of work and award of contract work for sale of flowing slurry. Ext.3, the letter No.6395 dated 05.01.2000 issued by the plaintiff to the defendants is the claim of the plaintiff. Ext.3/A is letter No.5990 dated 11.12.1999 issued by the plaintiff to the defendants for payment of claimed amount against the Bill No.01 dated 24.10.1998 for lifting the remains of briquettes/ash for the period June, 1990 to March, 1998. Ext.4 is the bill for remains of briquettes lifted from Swang Washery for the period of June, 1990 to March, 1993 amounting to Rs.3,96,73,465.89/-. Ext.4/A is the carbon copy of the statement regarding lifting of remains of the briquettes. Ext.5, the additional terms and conditions with respect to contract for the sale of slurry issued by the plaintiff to the defendants. Ext.6 is the carbon copy of order dated 10.12.2002 of the High Court of Jharkhand, Ranchi passed in M.A. No.105/2002 in between the parties. Ext.6/A is the carbon copy of order dated 25.04.1990 passed in Civil Appeal No.3778/1989 in between the parties by the Supreme Court. Ext.6/D is the certified copy of order dated 11.03.1998 passed in CWJC No.1232/1988 (R) by the High Court of Patna, Ranchi Bench, Ranchi. Ext.6/E is the certified copy of order dated 25.09.1998 passed by the Patna High Court, Ranchi Bench, Ranchi in L.P.A No.153/1998 (R). Ext.7 is the attested photocopy of memorandum and articles of association of C.C.L. Exts.8 to 11 are the annexures of the plaint.

11. On behalf of defendants altogether eight witnesses have been examined. D.W.1 is Lalan Kumar Singh, D.W.2-Baban Kumar 7 Singh, D.W.3 -Sudarshan Tiwari, D.W.4- Jai Kumar Pandey, D.W.5 Ajit Kumar Mishra, D.W.6.-Suresh Kumar Ram, D.W.7-Upendra Kumar and D.W.8- Sunil Kumar Mandal. The documentary evidence adduced by the defendants/appellants are- Ext.A, the order of the Supreme Court in Civil Appeal No.3778/1989 dated 25.04.1990. Ext.A/1 is the order of Supreme Court in C.A. No.3778/1989 dated 04.05.1990. Ext.A/2 is the order of Supreme Court in C.A. No.3778/1989 dated 30.04.1991. Ext.A/3 is the order of Supreme Court in I.A. No.5 in Civil Appeal No.3778/1989 dated 18.08.1989. Ext.A/4 is the order of Supreme Court in I.A. No.5 in Civil Appeal No.3778/1989 dated 11.10.1999. Ext.A/6 is the order of Supreme Court in I.A. No.5 in Civil Appeal No.3778/1989 dated 11.10.1999. These documents are not disputed by either of the parties. Ext.8 is the carbon copy of the petition of the

plaintiff filed before Supreme Court dated 16.11.1999 in S.L.P. No.1939/1999. Ext.C to C/4 are the original gate passes of Swang Washery. Ext.D to D/3 are the original weight card of Swang Washery. Ext.E to E/8 are the dispatch receipts of Swang Washery. Ext.F to F/7 are also the original dispatch card of Swang Washery. Ext.1 is the copy of Bill No.6 for February and March, 1979. Ext.J to J/11 are the bills of slurry issued by the plaintiff from the office of Project Officer, Swang Washery. Ext.K is the letter No.50 dated 27.02.2004 of Project Officer-Incharge. Ext.L is the carbon copy of W/S-cum-rejoinder of the employers filed before the Central Government Industrial Tribunal No.01, Dhanbad in Reference No.58/1992. Three papers have also been marked as X, X/1 and X/2 for identification which are the test certificates and bills of Swang Washery.

12. It has been argued by the defendants/appellants while referring to the depositions of P.W.1, 4, 5, 6, 7, 8 and 10 that what has been removed was remnants of briquettes and not slurry and the remains are not slurry but ash which has no value. For appreciating the contentions of the learned counsel it will be pertinent to take note of the decision rendered in the case of Bharat Coking Coal Limited Vs. State of Bihar, reported in (1990) 4 SCC557 wherein the Supreme Court held:- Viewed in the light of the above meaning of slurry, there is no doubt that in the instant cases slurry is coal slurry, as admittedly small particles of coal escape from the washery plant alongwith water. After it overflows the storage pond the slurry flows into the river and is deposited on the river bed, which is later on collected and used as fuel after it is formed into briquettes. The deposit which is collected from the river bed continues to be carbonaceous in character having all the elements of coal. Thus, the slurry is coal in liquid form. A Division Bench of the Patna High Court in Kesari Mal Jain v. State of Bihar, AIR1985 Patna 114 placing reliance on Nelson's Dictionary of mining which defined 'slurry' as 'slurry' inter alia means fine carbonaceous discharge from a colliery washery held that the carbonaceous particles so discharged from the coal washery is used for producing energy or heat therefore it was coal. The Bench further held that coal particles which flow out with the water from the coal washeries are formed into balls or briquettes for sale in the market for the purpose of producing energy or heat, therefore slurry was coal. The Division Bench's view was not accepted by the full Bench of the Patna High Court as it held that the slurry deposit did not constitute a

mineral. We agree with the view taken by the Division Bench in Kesari Mal's case (supra) as in our opinion the slurry coal deposited in the river bed or land, in substance as well as in its character continues to be coal. It is evident that the Supreme Court has elaborately discussed the disputed question as to whether slurry is coal and remains of slurry also continue to possess the character of coal and categorically held that slurry was coal and as a corollary the remains of slurry continue to possess the character of coal.

13. Learned senior counsel has emphatically argued that the defendants have paid the price of slurry and thus were entitled to the remains of ash. The above contention is not acceptable for the simple reasons that as per the terms and conditions of the agreement/contract, the defendants/appellants were permitted to lift slurry and the price to be paid for the slurry was equivalent to one tonne of briquettes on the basis of conversion factor for every 1.5 tonne of slurry, 1(one) tonne of briquette was to be manufactured. This has been categorically and explicitly stated in the agreement entered into by the defendants. In this context it is pertinent to take note that Clause 8 of the agreement reads as hereinafter:- a) for slurry on as is where is basis and 9 b) on the basis of briquettes to be manufactured and lifted by them if the administration so allows in which case they shall quote mainly for the conversion factor for:- i) 1 tonne of briquettes is equivalent to 1.5 tonne of slurry and other conversion factor is also given below:- ii) 1 tonne of briquettes is equivalent to 1.52 tonne of slurry. iii) 1 tonne of briquettes is equivalent to 1.60 tonne of slurry. iv) 1 tonne of briquettes is equivalent to 1.67 tonne of slurry. v) 1 tonne of briquettes is equivalent to 1.73 tonne of slurry. The administration shall decide the conversion factor admissible at the time of awarding of work. There can be no dispute on the point that the payment of slurry was made by the appellants in terms of the conversion factor as stipulated in the agreement.

14. It is not in dispute that Hon'ble Supreme Court by order dated 25.04.1990 permitted the defendants to remove ash from the site subject to conditions that all such removal would be duly accounted for by measuring the quantity and by way of security the defendants were directed to deposit in cash an amount of Rs.10 lakhs within seven days which has been complied by the defendants. It is also

admitted position that on the basis of said order the defendants were permitted to remove the ash from plaintiff's premises and they started removing the said ash from the site. From perusal of the plaint, written statement (W.S), counter-claim and rejoinder filed by the plaintiff/C.C.L it also appears that on 11.03.1998 (Ext.6/D) an order was passed in C.W.J.C. No.1232 of 1988 in which the defendants filed an amendment petition in original writ petition with a prayer for direction upon C.C.L to allow the petitioner to carry the ash from premises of C.C.L. It appears from the contents of judgment that since amount was not specified hence, the court could not give unspecified and unlimited order of carrying/ lifting of ash fines of briquettes particularly when there was nothing on record regarding the quantity. The court observed that as agreement had come to an end in the year 1988 and ashes are being carried for long seven years since 1991 accordingly prayer of defendants was rejected 10 whereafter the defendants filed L.P.A. No.153/1998 which also stood dismissed vide order dated 25.09.1998.

15. Further it is admitted position from the order of Hon'ble Supreme Court, that since May 1991, as per admitted statement of the defendants, 57325.26 M.T. has already been removed and 22675 M.T. of the ash contents are lying at the site which is not disputed.

16. The disputed question is as to who is the owner of the ash remains. The emphasis and thrust of argument and the defence raised by the defendants is that they had paid the entire amount for the slurry and remains which are lying within the premises of C.C.L. Per contra, the plaintiff/respondent has contended that as per the terms of tender the defendants were allowed to dispatch slurry for manufacture of briquettes within the premises of plaintiff and the price to be paid was as per conversion factor which was 1.00 tonne of briquettes equivalent to 1.5 tonnes of slurry. It is the case of the plaintiff that the residuary left after manufacture of briquettes is not property of defendants because the defendants were entitled only to take away the briquettes manufactured from slurry. To reiterate, the price of 1 tonne of briquettes was equivalent to 1.50 tonnes of slurry and the price was fixed on the basis of the conversion table.

16. At this juncture it will be relevant to notice that the contract with regard to the supply of slurry, 1982-1988, contained the following stipulations:- a) Price. (i). The price shall be Rs.330/-(Rupees three hundred and thirty) per tonne of slurry net plus cess, excise duty, taxes, etc. which may be applicable and as may be levied during the period of contract. This will be subject to revision under Clause No.12 of Additional Terms and Conditions. b) Period.You will be allowed to dispatch slurry after converting into briquettes within the premises of Central Coalfields Limited and the conversion factor shall be taken as 1 tonne of briquettes equivalent to 1.5 tonne of slurry net. c) Clause 4 You shall be allowed to dispatch slurry after converting into briquettes within the premises of Central Coalfields Limited and the conversion factor shall be taken as 1.5 tonnes of slurry for one tonne of briquettes. d) Clause 8 The ground rent for the ground occupied by you shall be at 0.37 per sq. ft per annum during the validity period of the contract and you should get the land demarcated before using the 11 land and deposit the payable rent for period of one year in advance with the Project Officer, Sawang Washery by a Bank Draft payable on State bank of India, Kathara Branch in the name of the Central Coalfields Limited. e) Clause 12 After completion or termination of the contract, you shall take away all tools, implements, any manufactured Briquettes, etc, belonging to you within 15 days of such date of completion or termination. You shall be bound to give vacant possession of any land taken on lease by you for the purpose of contract failing which the Administration is free to dispose off such materials belonging to you in any manner as may be deemed fit and the value realized shall be frozen as penalty.

17. The contract for supply of slurry for the purpose of manufacturing briquettes came to an end on 28.02.1988. The stipulations and terms of the contract are categorical that the defendant- Jugnu Constructions is 'allowed to dispatch slurry after converting into briquettes.' In this context it is necessary to refer to the maxim expression *facit cessare tacitum* (when there is express mention of certain things, then anything not mentioned is excluded) which is applicable in the present case. The Supreme Court in the case of Union of India and Anr. Vs, Tulsiram Patel, reported in (1985) 3 SCC398 in para 70, has held:- The Maxim expression *facit cessare tacitum* (when there is express mention of certain things, then anything not mentioned is excluded) applies to the case. As pointed out by this Court in B.

Shankare Rao Badami v. State of Mysore, this well known maxim is a principle of logic and common sense and not merely a technical rule of construction. It is abundantly clear from the terms of agreement/ contract enumerated above that the defendants were permitted to lift only briquettes. It is not the case of the defendants that there was shortage in the quantity of briquettes lifted by them meaning thereby they had lifted the briquettes and paid the price of slurry on the basis of the conversion factor. Evidently the decree has been passed in relation to removal of 57,325,826 M.T of remnants of briquettes and the quantum of ash remains lifted by the defendants is not disputed by them. The quantum lifted by the defendant/ Jugnu Construction is available in Ext.4/A proved by P.W.14, Sanjay Kumar Chaudhary, the Accountant of C.C.L. Even D.W.1, Lallan Kumar Singh in his 12 deposition in cross-examination in para 13 has admitted that approximately 57,000 M.T. of remnants of briquettes has been removed by them. D.W. 3, Sudarshan Tiwari, at para 5, has stated that at the rate of Rs.10/- per tonne, the cost of the material removed comes out to be 5,70,000. He in fact corroborates that 57,000 M.T. has been removed. P.W.1, Chandrakant Tiwari has deposed at page 2 that around 57,000 tonnes of coke breeze was removed by Jugnu Construction i.e. the Defendant.

18. In the plaint, at para 19, the details of the remnants of briquettes have been given period wise from June 1990 to June 1998. In reply to the averments made in para 19, the defendants, in para 57 of the written statement, admitted that at the rate of Rs.10/- per tonne the value of the ash removed is only Rs.5,57,000/-. Thus, it is established that remains of ash quantity removed is 57,000 M.T. which is also admitted at page 4 in the counter claim wherein the defendants have admitted about removal of 57,325.5 M.T of ash remnants of briquettes. Therefore, the quantity indicated in Ext.4/A stands established as per evidence and admission of the appellant/ Jugnu Construction as enunciated above.

19. The question regarding the rate applicable finds mention in Clause 12 of the additional terms and conditions with respect to the contract for sale of slurry (Ext.5) and the same is as under:-

12. Should there be any upward revision of price of coal by the Government price of slurry shall be automatically increased from such date as the new price is applicable in the same proportion by which price of Grade 'D' coal is increased.

20. It is amply clear that the price is linked to 'Grade D' coal. It is evident from Exhibit 2/A that the price applicable will be as may be levied during the period of the contract and will be subject to revision under Clause 12 of the Additional Terms and Conditions. In Exhibit 4/A, the rate is indicated in column No.3 and that is relatable to 'Grade D' coal. Thus, the price aspect is determined by Ext.2/A and Ext.5. The evidence on record and the stipulations in the contract in terms of the agreement leave no room for doubt that the remains of the ash after manufacture of briquettes were the property of the plaintiff/respondent and was not the property of the 13 defendants/appellants. Ext.2/A i.e. the contract provides as under:- You shall be allowed to dispatch slurry after converting into briquettes within the premises of Central Coalfields Limited and the conversion factor shall be taken as one tonne of briquettes equivalent to 1.5 tonnes of slurry net.

22. Learned counsel for the plaintiff/respondent has contended that it is evident from Ext.6/D, wherein the learned Single Judge, vide order dated 11.03.1998, has observed :-

11. As per the conversion table , I find much force in the submission of Mr. Banerjee that the contractor is entitled only to take briquettes on being manufactured from slurry and the briquettes price towards 1 tonne is being fixed at price of 1.50 tonnes of slurry as the price of briquettes and not of slurry and only the price has been fixed by conversion table to that of slurry than that of briquettes. In that view of the matter, the petitioner is not entitled to take the ash or residuary.....

23. To reiterate, as discussed above, contractual stipulation peremptorily provides that the defendants /Jugnu Construction shall be allowed to dispatch slurry only after converting it into briquettes within the premises of C.C.L.

24. In this context, the Additional Terms and Conditions, in Ext.5, is categorical, which reads as under:- In case the Administration decides to allow conversion of

slurry into briquettes by the successful tenderer with his/their own arrangement, company's land may be allowed to be used at the prescribed rent for which the successful tenderer shall deposit the value of the rent for one year in advance. Thus, it is explicit from the plain reading of the said terms of contract that the defendant/appellant - Jugnu Construction has the right to despatch only the briquette prepared and the price is charged on the basis of the conversion factor i.e. price of one tonne of briquette would be equivalent to one and half tonne of slurry.

25. In the backdrop of the emergent broad features, the facts and the evidence on record, the contention of learned senior counsel for the respondent/plaintiff stands fortified that the remains of 14 briquettes is the remains of the slurry as the simple logic is that the remains of soil shall be remains of soil, remains of iron shall be of iron and remains of coal shall be of coal either in the form of dust or small pieces retaining the properties of coal. Thus it logically follows that the remains left over after manufacture of briquettes from slurry shall be remains of slurry retaining the properties of slurry or coal and the contention of the appellants that slurry/ash/remains left there, has no utility and no value is not acceptable. Had the remains no value then there is no plausible explanation as to why the appellants in such circumstances would have taken pains and invested money on transportation of 57,000/ M.T. of ash remains from the site. Moreover, the coal is the property of the C.C.L. and it has every right to decide the prices. In the Articles of Association of the plaintiffs there is provision for Functional Directors in Article 33 and Article 33 (i) (a) and (i) (e). The Learned Trial Court in the impugned judgment at internal page 33 rightly held that the assertion of D.W.1 in para 13 that the Functional Directors have no authority to fix the rate is not tenable which is evident from Ext.7, Memorandum and Articles of Association.

26. From the above discussion, it is held that ash/remnants of slurry left over after the preparation of briquettes from slurry are the property of plaintiff. The same is grade-D coal. The plaintiff is the rightful owner of the ash and not the defendants so they are not entitled to remove the same. Admittedly 5,73,255 MT of ash remains has been removed by the defendants, therefore, the plaintiff is entitled to receive the price of the said ash/remnants.

27. A strange and wholly untenable argument was raised that there has been an admission before Hon'ble Supreme Court by Central Coalfields Limited that price of slurry has been paid and thus on this count principles of resjudicata is applicable in this matter. The contention is bereft and farfetched both on contextual facts as also on settled principles of law.

28. It is noticeable from Ext.6/C, internal page 4, wherein the Hon'ble Supreme Court has observed as under:- On behalf of the respondent it is contended that the appellant is not entitled to remove the ash, as the appellant was entitled only to remove briquettes manufactured by it out of the slurry supplied to it. There is a serious controversy about the facts relating to the amount of sale of slurry 15 and also the residue of the briquettes and slurry. During the pendency of the appeal, appellant was permitted to remove part of the ash lying in the disputed premises on furnishing bank guarantee to the tune of Rs. 10 lacs which is lying with the Registry of this Court. We think that it would be appropriate that both the parties should appear before the High Court and the dispute relating to appellants' alleged right of removal of ash is determined after considering the contract and other relevant documents and after hearing the parties. We accordingly direct the High Court to consider and dispose off the dispute to this limited extent. The bank guarantee which is lying with the registry of this Court will be renewed by the appellant for a further period till the disposal of the dispute by the High Court, bank guarantee will be subject to the final decision of the High Court.

29. An argument was sought to be propounded by the appellants in reference to SLP (C) No.19391 of 1999, preferred before the Hon'ble Supreme Court by C.C.L (Annexure- B/Ext.D-14) contending that the stand of C.C.L is that once the slurry was purchased, C.C.L. had nothing to do with it. It is indeed surprising that such a contention came to be advanced on behalf of the appellants. Perusal of SLP (C) No.19391 of 1999 would go to show that it is not relatable to the appellants in any manner whatsoever. Furthermore, therein the issue involved was not the same or even similar.

30. After referring to para 5 of the plaint wherein clause 4 of the work order has been reproduced, it was argued that the price of slurry had already been fixed and

there was no doubt about it. This fixed price could not have been varied.

31. The above argument is not only fallacious but rather misplaced. It is evident that the price as referred to in the Clause is for two period slots and specific to that time period only. This clause is incorporated in Ext.2. This work order is for the period 01.03.1982 to 28.02.1983. The price in Ext.2/A wherein the work order is from 01.03.1984 to 28.02.1985 is Rs.330/- per tonne and this is much higher to the price of slurry for the earlier period. The work orders have been on yearly basis only and therein the price of slurry has been indicated as is evident from Ext.2, in the same year there have been different prices of slurry. The reason for change or 16 variance in price is reflected in Ext.5- Additional Terms and Conditions for sale of slurry. It will be seen from Ext.2/A that the price of slurry will be subject to revision as per Clause 12 of Ext.5- Additional Terms and Conditions for sale of slurry. Clause 12 of Ext.5 provides that the revision in the price will be in proportion to which Grade 'D' Coal price is increased. The price for different periods is reflected in Ext.4.

32. An argument was raised that the fixation of price is untenable and the 1993 rate is same as 1999. This is factually incorrect and not sustainable. Ext.4 will reveal that the price is specific as indicated in the table and the rates are not similar.

33. F.A.No.134/2005 has been preferred by the defendant-Jugnu Construction against the dismissal of counter claim filed by the appellants.

34. With respect to the counter claim made by the defendants, learned counsel appearing for the respondent/ plaintiff submitted that no document was proved by the defendants to substantiate their claim. It is further submitted that claim of the plaintiff and counter claim of the defendants do not relate to the same matter.

35. Defendants have claimed the amount in their counter claim on two counts:- a) for recovery of the value of the 22675 MT of ash/coke breeze lying at the site and (b) for recovery of Rs.7,73,65,268/- as being damages for the vehicles/dumpers seized by the forest department while the same were engaged in carrying out the contract that Jyoti Transport had with C.C.L. Further the defendant-Jugnu

Constructions sought interest at 18% with further interest at 18% from that date till the realisation of money from the plaintiff.

36. It appears that along with the counter claim, the defendants filed certain documents(Annexure-A to G). The annexures were not proved nor admitted by the court below, hence these documents have no evidentiary value. The appellants have thus failed to bring on record any documentary evidence to establish their claim. It is pertinent to notice that the counter claim is principally with respect to an agreement entered between Jyoti Transport Company and the CCL on 14.02.1996. 17 37. In para 42 of the agreement dated 14.02.1996(which is neither proved nor admitted) between CCL and Jyoti Transport Company it is stipulated, as under:- The company shall have no responsibility/ liability whatsoever for any accident/damage to the contractor's vehicle/equipments in transit while engaged in the work.

38. The appellants/defendants failed to establish how the plaintiff is liable for making good the loss caused to the defendants/appellants due to the seizure of vehicles by the forest department. Admittedly the forest department has confiscated vehicles of Jyoti Transport Company which has no concern with the plaintiff. The forest department has not released the vehicles and matter is still sub-judice in appeal even then, the plaintiff is not responsible or liable for the same in view of terms of contract. On perusal of the counter claim, in para 3 of page 5, it appears that the contract for the transportation was with the Jyoti Transport Company of which the defendants no.2 and 3 were the partners and they accepted and entered into an agreement dated 14.02.1996. If the transport business was with the Jyoti Transport Company then the business of the defendants/appellants has no connection with the business of slurry and making briquettes as they are entirely different businesses. The making of briquettes from slurry is the business between the plaintiff and Jugnu Construction i.e. the defendant and transportation of coal is contract between the plaintiff and Jyoti Transport Company, as such the counter claim of Jyoti Transport Company cannot be connected with the claim of Jugnu Construction. In the considered opinion of the court, the counter claim of the defendants is not maintainable as the subject matter, parties and cause of action are different moreover, Jyoti Transport

Company was not the party in the main suit. Jugnu Construction and Jyoti Transport Company are different juristic persons. Though the partners may be the same persons but legally they are distinct juristic persons. As noticed above, the terms of contract between Jyoti Transport Company and C.C.L. and Jugnu Construction are entirely of a different nature, hence the counter claim was not maintainable. The arguments by the learned senior counsel for Jyoti Transport Company is answered inter alia on the grounds that the loss or damages suffered by Jyoti Transport Company on account of seizure of the vehicle has no nexus to the subject matter of money 18 suit instituted by the respondent/plaintiff. The counter claim is arising out of contract dated 14.02.1996 between the plaintiff and Jyoti Transport Company while the money suit is in relation to the contract concerning the lifting of briquettes manufactured from the slurry and the lis in both the cases operate on facts which are of entirely different nature. The counter claim is premised on seizure of vehicles that came to be seized by the Forest Department and the seizure was on account of commission of forest offence.

39. To sum up, the preponderance of probabilities and evidence establish and prove the following facts:- a) The quantum of remnants of briquettes/ash lifted by Jugnu Constructions was 57,325.50 Metric Tonnes has been admitted by the appellant/defendant i.e. Jugnu Constructions. b) The price of the removed remnants of briquettes/ash is to be relatable to the price of Grade D coal as per Ext.5- Clause12 of the Additional Terms and Conditions. c) Jugnu Construction had no right or claim whatsoever on the remnants of briquettes/ash as according to Ext.2/A, Jugnu Construction was allowed to dispatch slurry after converting into briquettes within the premises of Central Coalfields Limited and the price was to be paid on the basis of conversion factor of one tonne of briquettes equivalent to 1.5 tonnes of slurry.

40. On the other hand, the counter claim lodged by the defendants is not maintainable and they are not entitled to recover the value of 22,675 metric tonnes ash/coke breeze, lying on the site of the plaintiff and the defendants were only entitled to remove the briquettes. Accordingly, it is held that the plaintiff is not liable to pay for the damages and price of payloaders and dumpers of the defendants which has been seized and confiscated by the forest department during the

transportation of coal.

41. In the result, the judgment of the trial court is hereby affirmed and the appeals stand dismissed with cost.

42. Office is directed to prepare decree accordingly. (Amitav K. Gupta, J)
Jharkhand High Court, Ranchi Dated, the 12th June, 2017 Biswas

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