WITNESS CALLED AND DULY SWORN ON 01.07.2023.

FURTHER CROSS EXAMINATION BY SENIOR COUNSEL SRI.PROMOD N.KHANTAVI, FOR THE PLAINTIFF:-

18. **Question:** How is the communication and notification made regarding short supply and excess quantity carried by CTA made ?

Answer: By the way of weighment sheets and they are shared with CTA.

Question: Why have you not placed any weighment sheets on record of this case, to show that, such communication was made to CTA ?

Answer: We have not produced since the documents are voluminous.

It is false to suggest that, we have withheld the weighment sheets because said documents goes against our defense.

19. **Question:** Why have you not produced the demands made by railways from KPCL for payment of alleged penalties for over-loading, under-loading and idle freight charges ?

Answer: We have not produced since the documents are voluminous.

Question : You have also not produced the proof of payment of the penalties mentioned above ?

Answer: We have not produced because the CTA collects the railways receipts from the railways and the CTA is the first person to know about all these things and because they are voluminous.

It is not true to suggest that, Railways have not levied any penalties and we have not paid any penalty, but we have effected recoveries from CTA illegally. It is not true to suggest that, CTA is not responsible to pay any penalty to KPCL.

Question: How has KPCL dealt with the claims of plaintiff as contained in Ex.P.166 (pg no.265 to 376) ?

Answer: KPCL has the practice of payment after considering all the penalties and if payment is more than the penalties payments will be made, otherwise no payments will be made.

It is not true to suggest that, the determination of entitlement of liability of CTA either for its charges or alleged penalty arises only after reconciliation of both accounts and materials. It is false to suggest that, claims made by the plaintiff at Ex.P.162 is not been disputed by the KPCL, because there is no reconciliation of accounts or materials.

Question: Can you show any document on record that shows that such penalties were effected after reconciliation of accounts and materials ?

Answer: No.

Question: Has the KPCL communicated to CTA in writing about alleged shortage in quantity of coal transported by it ?

Answer: As they are self explanatory from the RR’s and weighment sheets shared with the CTA, communication in this respect does not arise.

Question: On what basis you say that CTA is responsible for penalties for alleged shortage levied by the railways ?

Answer: This is as per Ex.P.172.

Question: Have you at any point of time called for any explanation from CTA regarding short supply, over-loading and under-loading ?

Answer: I do not know.

It is not true to suggest that, for the extra coal than the contracted quantity carried by it the CTA is entitled for transportation charges under the subject contract.

Question: A demand is made by CTA for amount towards carrying the extra coal carried, have you or have you not disputed in writing such demand ?

Answer: I do not know.

20. **Question:** Why has KPCL not placed entire record before the court in support of defense taken by KPCL in the present case ?

Answer: Because of voluminous record.

It is not true to suggest that, KPCL has not produced the records not because they are voluminous but, because they go against the defense taken by KPCL in the present case. The KPCL has taken appropriate action on the complaints made by the CTA in Ex.P.108 to 110.

Question: What action KPCL has taken on the complaints made by CTA in Ex.P.108 to 110 ?

Answer: KPCL has communicated with area general managers to avoid such irregularities.

Question: Have you placed any documents before this court to show that KPCL has taken such remedial action against the complaints made by CTA in Ex.P.108 to 110 ?

Answer: I do not know.

I can produce those communications. It is false to suggest that, there are no such communications, so I have not produced.

Question: Do you know that, the loading in Rebbena and Yellandu sidings was being done manually by coal company or by its agents ?

Answer: I do not know.

Question: Who in KPCL can speak about these aspects of subject contract ?

Answer: The Superintendent Engineer (Mines).

Question: The alleged short supply especially from Rebbena and Yellandu sidings were due to reasons beyond the control of CTA ?

Answer: I do not know.

I do not know if KPCL has disputed the correctness of dispatch statement attached to Ex.P.110 to 116, 143 to 147.

Question: Is it the duty of CTA under the contract to carry whatever quantity of coal loaded on to the rakes ?

Answer: It is the duty of CTA to liaison with agency appointed by coal company for loading of coal into the wagons for proper loading of coal into the wagons as per the contract agreement.

Question: Have the contents of any of the letters at Ex.P.105 to 119, 121 to 127, 129 to 135 been disputed by the KPCL ?

Answer: I do not know.

Question: Who else can in KPCL has to answer above these questions ?

Answer: Superintendent Engineer (Mines) and Chief Engineer (F.M.).

I do not know the KPCL did not deal with irregularities pointed out by CTA in Rebbena and Yallandu sidings in the matter of loading the coal. I do not know that Ex.D.10 pertains only to Yellandu siding where manual loading is undertaking. Again witness denied the aforesaid suggestion. The RR mentioned in Ex.D.10 relates to various siding and not to any one siding. It is false to suggest that, the contents of Ex.D.10 relates only to Yellandu sidings. It is true to suggest that, the CTA has carried more quantity than what is mentioned at Sl.No.81,82,86,90,92 and 93 of Ex.D.10. It is false to suggest that, since, CTA is carried more quantity than the RR quantity, therefore CTA entitled to charges for transportation and management of extra coal carried by it. It is false to suggest that, Ex.D.10 does not indicate what is chargeable quantity. Again witness stated in Ex.D.10 chart does not discloses chargeable quantity. It is true to suggest that, the system of weighment is not the same at loading point as it is at the unloading point. It is not true to suggest that, the difference in weighment at these two points is because of this reason. It is not true to suggest that, the weighment at unloading point recorded were manually corrected by KPCL officers to cover up the mistakes in their own weighing system.

Question: Did the KPCL informs in writing the CTA about the defects in weighing system at unloading point and that they would effect manual corrections to the weighment sheets either at the time of entering into contract or any time during the contract period ?

Answer: Not informed in writing.

It is not true to suggest that, CTA cannot be saddled with coal cost, penal freight charges, idle freight charges or any penalties under any head of accounts.

FURTHER CROSS EXAMINATION: DEFERRED AT THE REQUEST OF COUNSEL FOR PLAINTIFF.

(Typed to my dictation in open court.)

R.O.I & A.C.,

(SUMANGALA S. BASAVANNOUR)
LXXXII ADDL. CITY CIVIL &SESSIONS JUDGE,
BENGALURU.