

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 211 OF 2025

BETWEEN:

PRAKASH PARCEL SERVICES LIMITED
HAVING ITS REGD OFFICE AT NO.18/3,
1ST MAIN, 2ND FLOOR,
MISSION ROAD,
SAMPANGIRAMA NAGAR,
BANGALORE-560027
REPRESENTED BY ITS
EXECUTIVE DIRECTOR
MR.PRAKASH PANDEY

...APPELLANT

(BY SRI. A S GUPTA, ADVOCATE)

AND:

BEML LIMITED
(REGD CORPORATE BODY)
CORPORATE MATERIALS
BEML SOUDHA, 23/1, 4TH MAIN,
S.R.NAGAR, BANGALORE-560027
REPRESENTED BY ITS
MANAGING DIRECTOR

...RESPONDENT

(BY SRI. VIKRAM HUILGOL, SENIOR ADVOCATE A/W
SRI. ISMAIL MUNEEB MUSBA, ADVOCATE)



THIS COMAP IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT 2015, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE PASSED IN COM. OS NO.25714/2017 ON DATED 30.01.2025 IN COMMERCIAL COURT BY LXXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-83) MARKED AS ANNEXURE - C AND ALLOW THE APPEAL.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present appeal is filed by the plaintiff under Section 13(1A) of the Commercial Courts and Commercial Divisions Act, 2015 [**CC Act**] calling in question the judgment and decree dated 30.01.2025 passed in O.S. No.25714/2017 [**impugned judgment**] by the LXXXII Additional City Civil And Sessions Judge , Bengaluru (CCH-83) [**Commercial Court**] whereunder the suit for recovery of money filed by the plaintiff was dismissed.

2. For the sake of convenience, the parties herein are referred as per their rank before the Commercial Court.

3. The relevant facts are that the defendant had issued a tender for providing transportation services for spares and steel plates from Chennai Port to the defendant's works at Bengaluru, Mysuru and KGF for period of three years from 01.06.2008 to 31.05.2011. The plaintiff was the successful tenderer consequent to which the parties had entered into an Agreement dated 25.06.2008 [**said agreement**]. The plaintiff claims that the agreement was extended up to 31.07.2011. The defendant alleged that the plaintiff had breached several terms of the contract and did not render the services as required under the agreement.

4. Due to the disputes that arose between the parties with respect to the said agreement, the plaintiff filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 [**A&C Act**] before this Court in CMP No.132/2012. A learned Single Judge by order dated 14.12.2012, allowed the said application and appointed an arbitrator [**arbitral tribunal**]. The plaintiff filed a claim petition claiming a sum of ₹60,83,990/- together with interest @ 21% per annum. However, the arbitral tribunal vide order dated 07.11.2016, terminated the arbitration proceedings. Subsequently, the plaintiff filed the suit [O.S.No.25714/2017] on 24.06.2017 whereunder, the plaintiff sought for recovery of a sum of

₹1,18,70,115/- from the defendant together with interest @ 21% per annum from date of suit till date of payment.

5. It was contended by the plaintiff in the plaint that the arbitration proceedings commenced on 14.12.2012 and continued up to 07.11.2016 i.e., for a period of 1432 days. That said period of 1432 days is required to be excluded in computing the period of limitation while filing the suit. Hence, it was contended that the suit filed is within time.

6. With regard to the claims made by the plaintiff, it was contended that the defendant was liable to a sum of ₹52,17,110/- being the freight charges along with bank guarantee amount of ₹10,00,000/- and illegally forfeited Earnest Money Deposit [EMD] of ₹2,10,000/- aggregating a sum of ₹64,27,110/-; which included the admitted liability of ₹29,61,000/-. Further, it was stated that since the defendant made a claim of ₹3,63,120/- being the excess freight charges paid, the said amount was deducted and the plaintiff claimed ₹60,63,990/- in the arbitration proceedings along with ₹20,000/- towards the cost of the legal notice issued in the arbitration proceedings. The plaintiff also claimed interest at the rate of 21% p.a. The said interest was calculated for the period

14.12.2012 to 24.06.2017, which amounted to ₹57,86,125/-. Hence, the plaintiff claimed a sum of ₹1,18,70,115/- in the suit together with interest at 21% p.a., from the date of suit till date of payment.

7. The defendant entered appearance in the suit and filed its written statement contesting the said suit. Firstly it was contended that the suit was barred by limitation. In this regard it was stated that as per Article 18 of the Limitation Act, 1963 [**Act of 1963**] the period of limitation prescribed was 3 years from the date of work done. That the agreement was from 01.06.2008 for a period of 3 years. Hence, it was contended that assuming without admitting that cause of action arose on 30.06.2012 i.e., the last date of payment, the suit was barred by time.

8. The defendant admitted the execution of the agreement dated 25.06.2008 and that it was valid for a period of 3 years from 01.06.2008. However, it was contended that during the pendency of the agreement, the plaintiff breached several terms of the agreement including, *inter alia*, not placing trailers for lifting steel plates at the designated time from Chennai Port. That the plaintiff, despite various communications from the defendant, did not place

trailers on many occasions for lifting steel plates at the designated places as was required to be done. That the defendant had deployed gangmen along with cranes and had made necessary arrangements required for loading the steel plates on to the trailers through an agency M/s Sanco, Chennai. That since the plaintiff failed in its obligations, the defendant had to also hire another transporter M/s. All India Carriers (P) Ltd., for the purpose of lifting and transporting the steel plates from Chennai Port. Hence, it was contended that the difference freight charges of ₹3,38,221/- which was incurred by the defendant was recovered from the plaintiff from pending bills of the defendant in accordance with terms and conditions of the agreement. It was further contended that the defendant was imposed with demurrage charges by Chennai Port Authorities, which was in a sum of ₹26,23,000/-. Hence, the defendant had recovered a sum of ₹29,61,000/- from the plaintiff towards the actual damages suffered. The said amount was recovered in the following manner:

- (i) ₹10 lakh by encashment of bank guarantee;
- (ii) ₹5 lakh from EMD;
- (iii) ₹14,61,000/- from pending bills of KGF;

9. Accordingly, the defendant sought for dismissal of the suit.

10. Consequent to the pleadings of the parties, the Commercial Court framed the following issues:

- "1. Whether the plaintiff proves that the defendant is liable to pay sum of Rs.1,18,70,115/-?
2. Whether the plaintiff proves that the defendant is liable to pay interest at the rate of 21% per annum from the date of the suit till realization?
3. Whether the plaintiff is entitled relief as prayed for?
4. What Decree or Order? "

11. The Director of the plaintiff was examined as PW.1. Exs.P1 to P4 were marked on behalf of the plaintiff. The representative of the defendant was examined as DW.1. Exs.D1 to D30 were marked on behalf of the defendant. The Commercial Court by its judgment and decree dated 30.01.2025 dismissed the suit. Being aggrieved, the present appeal is filed.

12. The Commercial Court held that the plaint lacked the essential material particulars which gave rise to the cause of action to the plaintiff. It was further noticed that although the plaintiff has produced the agreement/contract as Ex.P1, there is no averment in the plaint regarding Ex.P1. That PW1 in the affidavit by way of examination of chief has deposed regarding the tender and the agreement executed between the parties; however, since there

was no plea regarding the agreement dated 25.06.2008, the Commercial Court dismissed the suit.

13. In the plaint, the plaintiff has averred in detail primarily with regard to the aspect of limitation and the details/particulars regarding the arbitration proceedings commenced by it and the termination thereof. The relevant dates from which the cause of action commenced and period of pendency of the arbitration proceedings, which were to be excluded has been set out elaborately. The Commercial Court, on the aspect of limitation, has held in favour of the plaintiff which has not been challenged by the defendant. Hence, the aspect with regard to the limitation is not required to be considered in the present appeal.

14. With regard to the details/particulars as to the suit claimed amount, the relevant averments are contained in paragraph Nos.6 and 7 of the plaint, which are as under:

"6. The claim of Rs.60,83,990/- (Rupees Sixty Lakh Eighty Three Thousand Nine Hundred Ninety Only) is capital amount which carries interest @21% per annum - The interest will be calculated and added in the capital amount of Rs.60,83,990/- (Rupees Sixty Lakh Eighty Three Thousand Nine Hundred Ninety Only). The suit claimed includes to transport materials of the KGF and MYSORE the materials are detail in agreement bearing no.CPC/ROAD TRANSPORT/2008-09 for the period covering which was subsequently extended upto 31-07-2011. Transportation charges.

7. It is submitted that the defendant is liable to pay a sum of Rs.52,17,110(Rupees Fifty Two Lakhs Seventeen Thousand One Hundred and Ten Only) being the freight charges along with Bank Guarantee amount of 10,00,000/- (Rupees Ten Lakh Only) and illegally forfeited EMD amount of Rs.2,10,000/- (Rupees Two Lakh Ten Thousand Only) aggregating to a sum of Rs.64,27,110/- (Rupees Sixty Four Lakhs Twenty Seven Thousand One Hundred and Ten Only), which is inclusive of the admitted liability of Rs.29,61,000/- (Rupees Twenty Nine Lakh Sixty One Thousand Only) and on these sum, the defendant made a claim of Rs.3,63,120/- (Rupee Three Lakh Sixty Three Thousand One Hundred Twenty Only) the same was deducted from the total claim after deducting the excess freight charges Rs.3,63,120/- the plaintiff claims the sum of Rs.60,63,990/-(Rupees Sixty Lakh Sixty Three Thousand Nine hundred Ninty along with sum of Rs.20,000/- Rupees Twenty Thousand only) being the cost towards the legal notice issued in the Arbitration proceedings. The interest is calculated on the capital amount of Rs.60,63,990/-(Rupees Sixty Lakh Sixty Three Thousand Nine hundred Ninty only) at the rate 21% per annum, is calculated with effect from 14-12-2012 to 24-06-2017-works out to Rs.57,86,125/- (Rupees Fifty Seven Lakh Eighty Six Thousand One Hundred Twenty Five Only).

The interest calculated is subject to E & OE. "

15. With regard to the claim made by the plaintiff on merits, the defendant in the written statement has set out various instances of the breach committed by the plaintiff. Subsequently, the defendant has stated that the difference freight charges that it had incurred as a result of employing a separate transporter to transport the items/goods which the plaintiff was required to transport under the subject agreement was a sum of ₹3,38,221/-, which was recovered

from the pending bills. Further, it has stated that the defendant was imposed with demurrage charges of ₹26,23,000/- by the Chennai Port Authorities. Hence, the defendant stated that it had recovered a sum of ₹29,61,000/-. The said amounts were recovered by encashing the bank guarantee of ₹10 lakhs; by retaining EMD of ₹5 lakhs; and ₹14,61,000/- from the pending bills.

16. It was further specifically contended by the defendant that the plaintiff had claimed a sum of ₹52,17,110/- from the defendant in the arbitration proceedings. The details of the said arbitration proceedings have been set out in the written statement. It is further stated that the remedy available to the plaintiff was to seek for substitution of the arbitrator.

17. It is relevant to notice that the plaintiff examined its Executive Director (Sri Prakash Pandey) as PW.1. Apart from agreement dated 25.06.2008 (Ex.P1) and the order passed under Section 16 of the A&C Act (Ex.P2), the plaintiff has produced its accounts statement (Ex.P3) and a letter dated 26.07.2014 (Ex.P4) written by it to the defendant claiming a sum of ₹60,83,990/- from the defendant.

18. The defendant examined its Senior Manager as DW.1 and marked Exs.D1 to D30. The invoices raised by the Chennai Port Authorities on the defendant (88 numbers) have been collectively marked as Ex.D28. The defendant has produced a letter dated 14.02.2011 (Ex.D27) whereunder, it has communicated to the plaintiff that since the consignments have not been lifted by the plaintiff as requested by the defendant, it has been intimated that the defendant is incurring huge demurrage charges at the port and that the Port Authorities had intimated the defendant that the material will be auctioned if not cleared immediately. Hence, the defendant has indicated to the plaintiff that the demurrage charges will be on the account of the plaintiff. Vide letter dated 4.10.2011 (Ex.D29) the defendant has intimated the plaintiff that the amount to be recovered from the plaintiff is a sum of ₹29,61,000/- and the same has been recovered from pending bills (₹14.61 lakhs) from EMD (₹5 lakhs) and from bank guarantee (₹10 lakhs).

19. The claim made by the plaintiff was a sum of ₹60,83,990/- as principal amount and a sum of ₹57,86,125/- being the interest at the rate of 21% p.a., up to the date of the suit.

20. With regard to the principal amount of ₹60,83,990/-, the plaintiff has not averred the details/particulars as to the basis of the said claim. Further, apart from the statement of accounts (Ex.P3), the plaintiff has not produced any other document to demonstrate/prove the basis of its claim. No documents like invoices, etc., have been produced in support of the amounts claimed vide the statement of accounts (Ex.P3).

21. The defendant has stated that it has recovered a sum of ₹29,61,000/- from the pending bills, EMD and bank guarantee. Hence, the defendant had admitted that the said sum(₹29,61,000/-) was due and payable to the plaintiff. In justification of the expenses incurred, the defendant has produced the bills/invoices raised by the Chennai Port Authorities as also the invoices raised by the clearing agent (M/s Sanco, Chennai) on the defendant, which bills have been collectively marked as Ex.D28.

22. A perusal of Ex.D28 indicates that 88 bills have been produced. 73 bills have been issued by the Chennai Port Trust/Madras Port Trust, which cumulatively amount to ₹26,92,329/-. 15 number of bills are of the agency hired for

lifting/loading at the Port, which are for a cumulative sum of ₹10,25,519/-.

23. The agreement (Ex.P1) specifically stipulates that, in the event, the vehicles are not deployed within the stipulated time, the defendant will have a right to transport the goods through another carrier and is entitled to recover the excess freight charges incurred. The relevant clause in Ex.P1 in this regard is as under:

"In the event the carrier fails to deploy vehicles within stipulated time, BEML or BEML's supplier will have right to transport goods through alternate carriers at the sole risk and cost of contracted carrier. The excess freight charge incurred (if any). In making alternate arrangement shall be debited to carrier's account or will be recovered from their pending / subsequent bills."

24. Further, the agreement also stipulates the penalty for delayed delivery, which is as under:

"PENALTY FOR DELAYED DELIVERY:

> The maximum period of delivery of all material entrusted to the carrier for carriage shall be as mentioned in "Transit Time" above. If the carrier fails to deliver the goods within the stipulated time, a penalty of 1% per day of the total freight charges, subject to a maximum of 15% will be levied.

> Penalty for late delivery beyond the stipulated period for LCVS will be 10% of the freight charges per day for 2 days and beyond this, freight charges will be forfeited.

Even If the goods are delayed-en-route for any valid reasons beyond the carriers control and the goods are

not delivered at the destination within 30 days from the date of dispatch, the carriers bill will not be paid."

25. PW1 in his affidavit by way of examination-in-chief has stated that the defendant company did not pay freight charges to the plaintiff in a sum of ₹60,83,990/-. Further, it has averred that the damages claimed by the defendant from the plaintiff, which has been recovered from the amounts due and payable to the plaintiff are of a total sum of ₹55,18,256/-. The averment regarding the same is made at para 7 of the affidavit by way of examination-in-chief, which is as under:

"7. The defendant company for the reasons best known to them defrauded the plaintiff company by concocting fast claims of damages as follows:

- i) Rs. 10,00,000/- by encasing the bank guarantee:
- ii) Rs. 5,00,000/- from Earnest Money Deposit:
- iii) Rs.14,61,000/- from the pending bills:
- iv) Rs.22,19,035/- and further claimed adjustment on damages.
- v) Rs.3,38,221/- towards a breach of agreement by way of additional freight charges.

= Rs.55,18,256/- the total damages claimed and adjusted by the Defendant on the strength of the agreement dt 25.06.2008."

26. However, PW1 has not enumerated the details/particulars/ basis of the claim of ₹60,83,990/- or the sum of ₹55,18,256/- as stated in the affidavit by way of examination-in-chief. In the cross-examination, PW1 admits that as per the agreement, the plaintiff has to raise separate bill for each transaction. However, no such bills have been raised. PW1 admits the suggestion made by the defendant that the plaintiff is liable to make good the damages/losses caused to the defendant and that the agreement also contemplates penalty for delayed delivery. PW1 admits at paragraph 7 of the cross-examination that it had made a claim of ₹60,83,990/- along with interest at 21% p.a., before the arbitral tribunal. It is further admitted that the plaintiff filed a memo before the arbitral tribunal restricting the claim for a sum of ₹44,19,490/- after deducting ₹16,64,500/- from the claim amount of ₹60,83,990/- since the said sum arose from a different contract.

27. PW1 has stated that on the basis of Ex.P4, a sum of ₹52,17,110/- was claimed. Ex.P4 is a letter dated 26.07.2014 written by the plaintiff to the defendant seeking for the following amounts:

"1. An amount of Rs. 44,19,490/- principal amount of freight charges + interest approximately Rs.12.10 lacs is pending for finalization through Arbitration process.

2. An amount of Rs. 16,64,500/- is towards detention charges + interest of Rs. 7.50 lacs which is to be treated for separate Contract.

3. We have given a Bank Guarantee of 10 lacs for which we have lost Rs. 4.95 lacs towards interest as the BG was revoked as per your letter reference No. CM/PPS/2011-12 dated 04.10.2011.

4. An amount of Rs. 5 lacs EMD against which we have lost interest of 2.45 lacs as it was revoked as per your letter reference No. CM/PPS/2011-12 dated 04.10.2011."

28. However, no documents have been produced in the present suit with regard to the basis of the said claim. To a question as to whether the suit claim amount is shown in the income tax returns of the plaintiff, PW.1 has stated that he needs to verify the same.

29. DW.1 has filed the affidavit by way of examination-in-chief wherein, the averments made in the written statement have been reiterated. Various clauses in the agreement with regard to the forfeiture of security deposit, termination of contract, etc., have been extracted. The communications issued by the defendant to the plaintiff, calling upon it to lift the material from Chennai Port and transport the same, have been produced as Exs.D5 to D23. It is pertinent to notice that in the said communications, the defendant had clearly stated that the plaintiff had breached the terms of the contract several times and the plaintiff was put to notice to set right

the breach. The plaintiff was also informed that due to delay in lifting the material from Chennai Port, production in the defendant company was held up. The plaintiff was also notified that if it continued such delay, the defendant would have no other option but to hire another transporter on account of the plaintiff.

30. The bills issued by the Chennai Port Trust/Madras Port Trust and the clearing agent were collectively marked as Ex.D28. It is noticed that the same were marked subject to objection. However, the nature of objection is not stated. In the bills/particulars of charges issued by the Chennai Port Trust/Madras Port Trust, there is a seal of the Chennai Port Trust, which indicates that the amount is paid by debiting the current account. The date of the said debit is also mentioned. The dates of the bills marked as Ex.D28 are during the period of agreement. DW.1 has not been cross-examined regarding any of the documents, which have been collectively marked as Ex.D28.

31. DW.1, in the cross-examination has admitted that it had not floated any tender for transport services during the period of subject agreement. It is also admitted that, in case of emergency, the defendant has a right to engage other transport vehicles. It is also admitted that the plaintiff is providing services at other places

to the defendant. There is no other statement of DW.1 in the cross-examination that impeaches his testimony.

32. It is clear from the aforementioned that the defendant has adequately proved that it had incurred expenses towards freight charges and demurrage and hence, was justified in deducting the sum of ₹29,61,000/-. On the other hand, as already noticed above, the plaintiff has not either specifically averred as to the basis of its claim made in the suit nor produced any material on record to justify the suit claim amount.

33. The Commercial Court was justified in coming to the conclusion that the plaintiff has not proved the amount due and payable by it. Further, the defendant having averred it was due and payable in a sum of ₹29,61,000/- by the plaintiff, it has produced adequate material to demonstrate that the amounts were due and payable by the plaintiff. Hence, the defendant was justified in deducting the said amount from the amounts due and payable to the plaintiff.

34. In view of the aforementioned, the plaintiff has failed to demonstrate the judgment and decree passed by the Commercial

Court is in any manner erroneous and liable to be interfered with by this Court in the present appeal.

35. Accordingly, the above appeal is dismissed as being devoid of merit with costs.

36. All pending applications are also disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

nd/vmb