

IN THE COURT OF THE ADDITIONAL CHIEF JUDGE, CITY CIVIL COURTS,
AT SECUNDERABAD

O.S. No. 76 of 2019

Between:

M/s Buildmate Projects Pvt. Ltd..
rep by its Chief Executive Officer.

Plaintiff

and

1) M/s Maxwell Worldwide Express Pvt. Ltd,
rep by its Managing Director.

Defendants

PLAINT FILED UNDER SECTION 26 READ WITH ORDER VII RULES 1 AND 2
OF CIVIL PROCEDURE CODE FOR RECOVERY OF RS.1,14,82,206/-

I) DESCRIPTION OF THE PLAINTIFF:

M/s Buildmate Pvt. Ltd., a duly incorporated company under the companies Act, having its registered office at sy. no 60-62, NH-7, Gandlapochampally village, Medchal Mandal and District, represented by its Chief Executive Officer and authorized signatory Sri N. Venkata Ratnam, s/o late Sri Venikatadasu, aged 56 years.

The address for service of all notices processes and summons on the Plaintiff is that of his counsel Sri D Srinivas Prasad, Plot No. 115, Ground Floor, Shobana Colony, West Marredpally, Secunderabad.

II) DESCRIPTION OF THE DEFENDANT:

1) M/s Maxwell Worldwide Express Pvt. Ltd., a duly incorporated company, having its office at 7th Floor, Surya Towers, S P Road, Secunderabad - 500 003, represented by its Managing Director.

2) M/s Sarjak Container Lines Pvt Ltd, a duly incorporated company, having its office at DLF Plaza, 8th Floor, Cosmos Building, Opp. Shoppers Stop, S.V. Road, Andheri West, Mumbai - 400058, represented by its Managing Director.

The address for service of all notices processes and summons on the Defendants is as stated above.

GJ JV

for BUILDIMATE PROJECTS PVT. LTD.

REMO *[Signature]*

Chief Executive Officer

III

1) The Plaintiff is a duly incorporated company under the provisions of the Companies Act, 1956, and is engaged in the business of manufacturing of machinery for building materials, stone crushers, PEB erection and commissioning, Machinery and Plants, etc. The Plaintiff's Company is duly represented by Sri M. Venkata Ratnam, who is its Chief Executive Officer, and is authorized to represent the Plaintiff company under a resolution of the Board of Directors in the meeting held on 13-4-2019. The Defendants are also duly incorporated companies with the Defendant No.1 having its office at S.P. Road, Secunderabad and the Defendant No.2 is having its office in Mumbai, India. The Defendant No.1 is engaged in the business of transportation and trans-shipment of materials, machinery, equipments etc. by rail, road and sea, they also supplies various types of containers. The Defendant No.2 is engaged in business of transportation of goods, machinery, equipments etc. by sea through ships and is having its office at Mumbai. The Defendant are also engaged in supply of containers for stuffing goods, machinery, etc.

2) The Plaintiff submits that it had approached Defendant No.1 Company for the purpose of transport of its plant and machinery, equipments, spare parts, etc. from Hyderabad to Mumbai and for onward shipment from Nhava Sheva, Mumbai, India to Damman Port, Saudi Arabia, to its customer M/S. Saudi AAC Block Factory., K.S.A.

3) The Plaintiff and the Defendant No.1 exchanged mails for finalisation of the contract and the terms were negotiated by one Mr. Sastry Sivalenka on behalf of the Defendant No.1 Company in respect of the terms and conditions including the rate and the time. The Defendant No.1 gave its quotation to the Plaintiff by e-mail dated 2-12-2015. After deliberation with Defendant No. 1, the Plaintiff asked Defendant No. 1 to give revised and better offer. The Defendant No. 1 revised its offer by e-mail dated 27-12-2015 and there was followed by further negotiations leading to Defendant No. 1 giving a further revised quotation by e-mail dated 10-2-2016. All the terms and conditions were mutually agreed and accepted at Secunderabad (Hyderabad District). Upon the assurance by the Defendant No. 1 including the rate and time, the Plaintiff had issued a work order bearing no. WO No.BPPL/KMP/0025/15-16, dated 28-2-2016, in favour of the Defendant No.1 and accepted by the Defendant No.1. The total value of the work as per the work order was Rs.51.02,120/- inclusive of all taxes, which in affect would mean that the total price payable by the Plaintiff to the Defendant No.1 for transportation of its plant and machinery, equipments, spare parts, etc., from Hyderabad to Mumbai and for onward shipment from Nhava Sheva, Mumbai, India to Damman Port, Saudi Arabia, was Rs.

GIJ PROJECTS
FOR BUILDUMATE PROJECTS PVT. LTD.

Switchover Plan

Chief Executive Officer

51,02 | 20/- inclusive of all taxes. It was agreed between the parties that time was essence of the agreement and all the containers would be shipped in one lot through the Defendant no.2 and delivered in one lot to the Plaintiff's customer at Damman Port.

4) The Plaintiff further submits that the Defendants were to provide the original Bill of Lading upon receipt of the Ocean Freight charges against the invoice raised by the Defendant No.1 in terms of the work order dated 28-02-2016.

5) The Plaintiff had conveyed to the Defendant No.1 that it will require 26 nos. of 40' HQ(closed) containers, 2 nos 8 x 40' FR (Flat Rack) Containers and 8 nos. of 8 X 40' OT (Open Top) Containers. On 2-12-2015, the Defendant No. 1 had sent an email to the Plaintiff stating that the containers will be shipped in two lots i.e., first lot will be in 25-26 nos. of 8 X 40' HQ & FR containers and balance to be shipped after one month. However, the Plaintiff did not agree for the same and had clearly instructed the Defendant No.1 that the entire shipment had to be sent in one lot, under a single of Bill of Lading to be issued by the Defendant No.2, to be received by the customer of the Plaintiff all at once at Damman Port keeping in view the custom clearance formalities at Damman Port in Saudi Arabia. In this regard the representative of the Defendant No.1, Mr. Sastri, had also spoken to the Plaintiff's customer at Saudi Arabia several times and the customer was very particular about raising of only a single Bill of Lading and receipt of all containers in one lot. The Defendant No.1 had agreed to the said conditions and had accordingly accepted the work order. The charges for the containers were given as follows by the Defendant No.1:

40' HQ Container	Rs.96,000/- (All inclusive) + USD 50 towards GRI
40' OT Container	Rs. 1,80,000/- (All inclusive) + USD 50 towards GRI
40' FR Container	Rs.2,86,000/- (All inclusive) + USD 50 towards GRI

(i) The Plaintiff submits that on 2-12-2015, the Defendant No.1 had agreed initially to provide two free working days for loading/stuffing vehicle per day. This free period was later increased to fourteen days. The Defendants were to provide the Original Bill of Lading upon receipt of the Ocean Freight to be paid against the invoice raised by the Defendants, which invoice was to be raised in terms of the work order dated 28-2-2016 issued by Plaintiff. The

For BUILDMADE PROJECTS PVT.LTD.

Chief Executive Officer

*True
Not True
Dated*

Defendants had also initially offered to provide a three day detention free period at Dammam and this was later revised to 14 (fourteen) days vide email dated 10.02.2016.

- 7) It is submitted that on 10-2-2016, the Defendant No.1 had informed the Plaintiff that the shipment will be done through the Liner MAERSK and that all the containers will be transshipped in one lot with a Single Bill of Lading. Further, the Defendant No.1 had also agreed that the Plaintiff will be provided with 14 (fourteen) days free detention period each at Hyderabad/Mumbai and 14 (fourteen) days free detention period at Dammam for all the containers for destuffing and also agreed to give single Bill of Lading for all the containers. On 20-2-2016, the Defendant No.1 had informed the Plaintiff about applicable detention charges beyond fourteen days i.e., USD 130 per day for 40' HQ, USD 195 per day for 40' FR (in India) and USD 100 per day for 40' HQ/FR in Dammam. On 14-3-2016, the Defendants had sent a request for confirmation of payment i.e., 25% advance to be paid after pick up of empty containers from ICD HYD and the remaining 75% was to be paid upon submission of bill/invoice in terms of work order of the Plaintiff. The Plaintiff was to remit the payment before issuing RR at ICD Hyderabad and the Plaintiff had confirmed the same on 15-3-2016.
- 8) The Defendant No.1 had reverted again on 17-3-2016 stating that the 25% advance payment is applicable for Ocean Freight, THC, BL, CONCOR Freight and handling and Sales tax, and had added additional charges that were to be paid in advance in addition to the above mentioned 25% i.e., Liner detention charges (All OT & FR containers detention would be charged up to RR issue date and that FR container detention will be calculated upto gate in JNPT port) & Ground rent charges. The Defendant No.1 had further stated that even GRI, which was not included in the work order accepted by the Defendants, was to be paid at the rate of USD 50 per 40' HQ in case shipment leaves from JNPT before 31-3-2016 and if it leaves thereafter, GRI will be applicable at the rate of USD 100 per 40' HC for shipments.
- 9) The Plaintiff submits that the above unilateral alteration of terms agreed came as utter shock to the Plaintiff. The Defendants later informed the Plaintiff that there was disruption of cargo operation work at GTI Mumbai and that there will be delay in delivery of shipment. The said allegation is not correct and the same is created with an attempt to cover up the deliberate

*True
Not True
Dated*

S. J. CHILDKAR PROJECT MANAGER

Chief Executive Officer

delay on their part. The Defendant No.1 had then sent an email dated 7-4-2016 informing the Plaintiff that the shipment has sailed from Nhava Sheva on 6-4-2016 enclosing details of a single container. The Plaintiff had to then immediately respond under an email dated 7-4-2016 requesting the Defendants to provide details of the remaining 37 containers and also requested the Defendants to provide booking number to enable the Plaintiff to track the same. Unfortunately, the Defendant No.1 had showed complete lack of professionalism and responded stating that all offices in Maharashtra were closed on account of Gudi Padwa festival and that it will not provide any details until the 11th evening or 12th of April, 2016.

- 10) The Plaintiff had immediately again responded to the email of the Defendant No.1 on 7-4-2016 since it was clear to the Plaintiff that the Defendants were charging the Plaintiff with additional amounts than what has been agreed upon for no fault on part of the Plaintiff. The Defendants had tried to cover up the deficiencies in their services & breach of the terms agreed on some ground or the other by making false allegations. The Plaintiff had made it clear that the delay on the part of the Defendants and the complete lack of adherence to the terms agreed upon was causing the Plaintiff to lose the 14 days free detention period thereby passing on the costs for their breach of terms agreed upon, on to the Plaintiff. This further exposed the Plaintiff to claim of damages from the consignee (the Plaintiff's customer) of the shipment as well on account of delay on the Defendants part.

- 11) It is submitted that the Defendants had not only delayed the shipment in complete breach of the terms agreed upon, but had also disrupted the container lots and instead of sending them as one lot, the Defendants claimed that they had sent 10 containers in MAERSK GANGIIS V-1606 from Mumbai to Jabel Ali on 6-4-2016 and 28 containers as a separate lot on 11-4-2016 by MAERSK KINLOSS/1604 from Mumbai to Salalah Port inspite of the Defendant 10.2 issuing a single Bill of Lading. The Defendants had also informed the Plaintiff that the same is on account of congestion and misplacement by their agents. The Defendants deliberately sent the containers in separate lots from Mumbai to levy additional charges upon the Plaintiff. As if the above delays and disruptions were not sufficient, the Defendants had refused to issue the

Original Bill of Lading and LC Copy to the Plaintiff, which would enable the Plaintiff's customer to claim the shipment, unless the invoices raised by the Defendant No.1 covering the amounts fixed under the work order issued by the Plaintiff including the excess charges, were first cleared. This was nothing but pure blackmail to make the Plaintiff yield to their illegal demands in respect of excess payments. The Defendant No.1 in its email dated 12-4-2016 had raised invoices claiming additional amounts that were not liable to be paid by the Plaintiff Apart from the 75% that was to be originally paid by the Plaintiff as per the terms agreed, the Defendants had wrongfully claimed charges towards Transport bills to two companies, container Detention charges at origin, over dimensional charges and other miscellaneous charges, which the Plaintiff never agreed to pay and so also not liable to pay wrongfully raised an invoice for an additional sum of Rs.22,58,262/-.

- 12) The Plaintiff submits that in view of the inordinate delay from the Defendants and also breach of terms by the Defendant No.1 for excess and bogus billing, the Plaintiff made it very clear that it is not liable to pay the additional charges or any other charges as claimed by the Defendants. However, as the Defendants had refused to issue the original Bill of Lading unless full payment in terms of their invoice including the excess billing was made, the Plaintiff was left with no choice but to remit the amounts to the Defendant No.1 under protest, as otherwise the Plaintiff would have not only exposed itself to risk of huge claims by way of damages for delay from the consignee but also incur additional detention charges. The Plaintiff addressed email dated 19-4-2016 in respect of its objections with regard to the Bill of Lading as well. An invoice dated 30/3/2016 for Rs.73,60,384.00/- was raised as against the actual amount of Rs.51,02,120.00/- agreed to by the Defendants. In view of the situation that the Plaintiff was in at the time when such invoice was raised, the Defendant No.1, hand in glove with the Defendant No.2, had arm-twisted the Plaintiff into clearing the entire and additional amount by withholding the Original Bill of Lading and took undue advantage with malafide and dishonest intention to make wrongful gain and to cause wrongful loss to the Plaintiff. It became clear to the Plaintiff that the intention of the Defendants was dishonest to extract more money by illegal methods from the Plaintiff and to cause wrongful loss to the Plaintiff and to make wrongful gain

* For BUILDIMATE PROJECTS PVT.LTD.

H. S. Gaur
Chief Executive Officer

by the Defendants was from the beginning of the transaction. The Plaintiff had no choice but to pay the amount under protest to the Defendants. The invoice dated 31-3-2016 is not correct and the Defendants are liable to pay the Plaintiff the sum of Rs. 22,58,262/- with interest.

You have paid a bill which
is not justified & you have
not given any bill of lading. This
bill of lading is submitted that on 27-4-2016, the Defendant No.1 had acknowledged the receipt of
the excess amount and had falsely claimed that it was the actual amount incurred. Even if it were
the actual amount incurred, the Plaintiff was under no obligation to pay the same since the work
order clearly discloses the amounts finalized. The said excess amount of Rs.22,58,262/- was paid
to the Defendant No.1 on account of the Defendants' arm twisting & blackmailing tactics
adopted at the time of remittance by withholding the OBL.

- (4) The Plaintiff further states that the Defendants have failed to adhere to the terms and conditions agreed upon particularly in respect of time, which was the essence of the contract.
Since the Plaintiff was time bound for delivery of machinery and equipment sent through the Defendants. It was stated very clearly to the Defendants that all the containers should reach Dammam Port in time as per the schedule and in one lot with a single Bill of Lading. Both the terms were grossly violated by the Defendants and committed breach of the terms agreed upon since admittedly the containers were sent in different lots as mentioned above. As per the report sent by the Defendant No.2, two containers reached Dammam Port on 15-4-2016, five containers on 22-4-2016, four containers on 23-4-2016, one container on 29-4-2016 and twenty six containers on 6-5-2016. The Plaintiff's customer refused to take the shipment in instalments since the terms agreed between the Plaintiff and its customer was delivery of all the containers in one lot with a single Bill of Lading and so was also the Plaintiff's terms the Defendants for delivery of all the containers in one lot and under a single Bill of Lading. It was only for this reason that the Plaintiff went ahead with the transactions with the Defendants and the Defendants were fully aware of the consequences for the delay in the shipment reaching Dammam Port and in different lots.

For BUILDMATE PROJECTS PVT. LTD.

Chief Executive Officer

(With P.S.)
M/s. *XXXXXXXXXX*

The Plaintiff submits that as if the inordinate delay and failure to deliver all the containers in one lot was not sufficient, the Defendants No. 2 in collusion with the Defendant Extraidum No. 1 levied empty containers detention charges, clearing & repair charges for containers, etc besides the levy of demurrges charges at Dammam Port and the Plaintiff's customer was compelled to pay the same through its clearing agent Al Hobail Group, which in turn raised an invoice for the above charges besides other ones. A total sum of SAR 254,997/- (Saudi Arab Riyals) equivalent of US\$ 67,997/- was levied and the Plaintiff's customer was compelled to pay the same towards demurrges, empty containers retention charges and cleaning and repair charges of containers and the same worked out to Rs.44,87,802/- in Indian Currency. The said amount of Rs.44,87,802/- was debited to the Plaintiff's account by the Plaintiff's customer in addition to the excess amount, these excess and unaccounted charges was paid to the Defendant Extraidum No. 1 amounting to Rs.22,58,262/- This was purely on account of the inordinate delay in sending in advance almost all the containers and sending the same in different lots. The Defendants cannot levy additional charges which was not agreed nor can they levy empty containers retention & other charges due to their own breach of terms agreed. The Plaintiff's customer deducted the above said sum of Rs.44,87,802/- from out of the invoice amounts payable by it to the Plaintiff on account of the supply of machinery and equipment. Thus, the Plaintiff suffered loss to an extent of Rs.44,87,802/- as mentioned above on this ground, which was purely on account of your breach (Copy of waybill) of the terms and conditions agreed upon and the Defendants' utter failure to deliver the consignment in one lot and in time, though the Defendants have issued a Single Bill of Lading.

What ever said charges to be paid by the Defendants are therefore, liable to pay the Plaintiff the above sum of Rs.44,87,802/- also and they are bound to pay the same with interest at the rate of 24% per annum from 31-5-2016 till the date of payment. The interest on the same comes to Rs.28,73,926/- from 31-5-2016 till 31-1-2019.

(15 points)

16) As stated earlier, the Defendants are also liable to pay the Plaintiff the excess amount of Rs. 22,58,262/- extracted from the Plaintiff, which the Plaintiff was compelled to pay and which was in excess of the amount agreed between the Plaintiff and the Defendant No.1 by deliberately withholding the original Bill of Lading and L.C. copy and their refusal to deliver

For BUILDIMATE PROJECTS PVT. LTD.

Chief Executive Officer
M. S. Khan

the same unless the excess amount shown in the invoice was paid by the Plaintiff. The Defendants are therefore bound and liable to return the above amount of Rs. 22,58,262/- together with interest at the rate of 24% per annum. Thus, the total amount payable to the Plaintiff on this count is Rs.22,58,262/- and the interest thereon comes to Rs.14,99,735/- at the rate of 24% pa from 26-4-2016 till 31-1-2019, aggregating to Rs37,57,999/-. The prevailing rate of interest in similar business is more than 24% per annum, but however, the Plaintiff is claiming interest only 24 % per annum from the respective due dates till the date of payment by the Defendants. The details of the claim of the Plaintiff is as follows with interest as on 31-1-2019:

PARTICULARS	AMOUNT (INR)
A) Excess sum paid by Buildmate Projects Pvt Ltd	22,58,262
Interest on above @24% 26-4-2016 till 31-1-2019	14,99,735
SUB TOTAL (A)	37,57,999
B) Amount paid by client's customer & deducted from the amount payable to Plaintiff	44,87,802
Interest on above @ 24% 31-5-2016 till 31-1-2019	28,73,926
SUB TOTAL (B)	73,61,728
GRAND TOTAL (A+B)	1,11,19,727

17) The Plaintiff submits that inspite of repeated requests by the Plaintiff to pay the amounts due to it as mentioned above, the Defendants failed to do so and the Plaintiff was constrained to issue a notice dated 17-3-2019 to the Defendants calling upon them to pay the amount of Rs.1,11,19,727/- along with interest at the rate of 24% per annum from 1-2-2019 together with the notice charges of Rs. 50,000/- within one week from the date of receipt of this notice. failing which the Plaintiff will be compelled to initiate all such steps as are open to it under law. The Defendant No.1 received the notice on 20-3-2019 and the Defendant No.2 received the same on 22-3-2019. The Defendant No.1 gave a reply falsely alleging that the Plaintiff was negligent in loading/stuffing the containers resulting in damage to the containers and that the same was detected at the destination port and that the Plaintiff was charged accordingly and that it delayed in providing the important documents like export invoices, packing list, and also detained the containers at its factory beyond the permitted period resulting in delay on the part of the Plaintiff and that there is no delay on part of the Defendant No.1 and that there is no excess billing and that the employees who dealt with the matter have left the company and that the Plaintiff having knowledge of the same issued the notice. It is important to note that there are no specific denial of the claims made by the Plaintiff except an omnibus denial. It is submitted that the Plaintiff was not negligent in stuffing/loading the containers at its

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For BUILDIMATE PROJECTS PVT.LTD.

Chief Executive Officer

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factory and did not cause any damage to any container. The stuffing of the containers was done in perfect manner by the Plaintiff. The said allegations are absolutely false. Even the allegation that the alleged damage to the containers were detected at the destination port, is also false. The Plaintiff also provided also the documents to the Defendants in time and the Plaintiff did not delay in providing the export invoices, packing lists, etc., to the Defendants and did not detain the containers beyond the free detention period.

18) The Plaintiff submits that in the notice dated 17-3-2019, the word 'Express' was by mistake omitted from the name of the Defendant No.1 and the same was a typist's devil and hence the Plaintiff, to avoid all controversies, issued one more notice dated 15-4-2019 to the Defendants by including the word 'Express' in the name of the Defendant No.1 and the same was sent under speed post. The notice dated 15-4-2019 was delivered to the Defendants. The said notice was also sent by e mail to the Defendants and the same was delivered to the Defendants. Inspite of the notices dated 17-3-2019 and 15-4-2019, the Defendants did not pay the amounts due to the Plaintiff, and the Plaintiff is therefore constrained to file this suit for recovery of Rs 22,58,262/- towards the principal, Rs.16,20,009/- towards interest from 26-4-2016 till 31-1-2019 on Rs.22,58,262/- and Rs. 44,87,802/- towards Principal, Rs. 31,16,133/- towards interest from 31-5-2016 till 22-4-2019 at the rate of 24% pa and notice charges of Rs.50,000/-, aggregating to Rs.1,14,82,206/-

IV) CAUSE OF ACTION:

The cause of action for the suit arose on 28-2-2016, the date on which the Plaintiff issued the Work Order bearing No. W.O.No.BPPL/KMP/0025/15-16 in favour of the Defendant No.1 for Rs. 51,02,120/- inclusive of all taxes on which there was exchange of several e-mails between Plaintiff and the Defendant No.1 prior to 28-2-2016; on 2-12-2016, the date on which the Defendant No.1 send the e-mail to the Plaintiff offering to send the all the containers in 2 lots with 25-26 containers in first lot and the balance in second lot to be shipped after one month; and the date on which the Defendant initially agreed to provide "2" working days to load the containers at the Plaintiff's premises beyond which the Defendant No.1 would levy detention charges and free three days detention period at Dammam Port; on the date on which the Plaintiff imposed condition that all containers should be send to Dammam Port in one single lot and in a single bill of lading to be raised by the Defendant No.2, otherwise the Plaintiff was not interested in entrusting the work to the Defendants; 10-2-2016 the date on which the Defendant No.1 agreed to ship all containers in one single lot from Mumbai Port to Dammam Port at Saudi under a single Bill of Lading; on 10-2-2016 the date on which the Defendant No.1

GT JVQ (Gulf Joint Venture)
For BULLUMAHIL TRS PVT.LTD.

Witnessed and Verified

Chief Examiner



revised the free detention period to 14 (fourteen) days in lieu of 3 days and confirmed the same in e-mail, and on which date the Defendant No.1 confirmed that shipment will be done by the Liner MEARSK belonging to the Defendant No.2 and that all the containers would be shipped in one lot and under a single bill of lading; on 20-2-2016, the date on which the Defendant No.1 informed the Plaintiff about the levying of detention charges beyond the free detention period of 14 days at Dammam Port; on 14-2-2016, the date on which the Defendant No.1 sent e-mail to the Plaintiff for confirmation of advance payment of 25% and the balance 75% upon submission of bills; on 15-3-2016, the date on which the Plaintiff agreed and confirmed the advance payment and the payment of balance amount; on 17-3-2016, the date on which the Defendant No.1 send e-mail stating that 25% of advance payment is applicable for Ocean Freight, THC, BL handling charges as well as taxes, and further added additional charges to be paid in advance besides the 25% charges and were raised unilaterally by Defendant No. 1 against the terms agreed; the date on which the Defendant No.1 informed the Plaintiff by e-mail that there was a delay in delivery of shipment due to disruption of cargo operation work at GTA Mumbai and on which date the Plaintiff called the Defendant No.1 that the same is not correct; on 6-4-2016, the date on which Defendant No.2 raised the bill of lading; on 7-4-2016, the date on which the Defendant No.1 sent e-mail to the Plaintiff that shipment has sailed from Nhava Sheva Mumbai in respect of one container; on 7-4-2016, the date on which the Plaintiff replied to the Defendant No.1 seeking details of shipment of remaining 37 containers and directed the Defendant No.1 to provide the booking nos. to track the shipment movement till Dammam Port; on 7-4-2016, the date on which the Defendant expressed their inability to provide immediately the details of shipment of remaining 37 containers; on 7-4-2016 the date on which the Plaintiff made it clear that excessive billing was levied by Defendants than what has been contracted for; on all the dates on which the Defendant did not send all the containers in one lot and sent the same through Defendant No.2 in different lots and at different times and on different dates leading a huge delay and loss of free detention period; on 6-4-2016 the date on which the Defendant informed that they have sent 10 containers in MEARSK Ganges from Nhava Sheva to Jabel Ali and 28 containers separately on 11-4-2016 from Mumbai to Salala Port; the dates on which the Defendants sent e-mail stating that delay in shipment and inability to send the containers in one lot is on account of congestion and misplacement of containers; the date on which the Defendant No.1 refused to issue the original Bill of Lading unless the invoice amounts, including the excess amounts, are paid; the date on which the Defendant wrongly claimed additional sum of Rs. 22,58,262/-

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For BUILDIMATE PROJECTS PVT. LTD.


Chief Executive Officer

the date on which the Plaintiff was compelled to pay excess amount of Rs.22,58,262/- under protest to avoid delay, damages on account of delay, additional detention charges, etc; on 19-4-2016, the date on which the Plaintiff raised objection in respect of bill of lading, excess charges, etc; on 27-4-2016, the date on which the Defendant No.1 admitted receipt of excess amount and wrongly claimed that it was the actual amount incurred; on 15-4-2016, the date on which two containers reached the Damman port; on 22-4-2016, the date on which the date on which five containers reached the Damman port; on 23-4-2016 , the date on which another four containers reached Damman port; on 29-4-2016 the date on which only one container reached Damman Port; on 6-5-2016, the date on which twenty six containers reached Damman port; on all the above dates the consignee (Plaintiff customer) refused to take the shipment in installments since as per the terms agreed the shipment should have been in one lot and under one single bill of lading; the dates on which the demurrages and other charges were levied at Damman Port by the Defendants and the Plaintiff customer M/s.Saudi AAC Block Factory., paid the same which amounts to SAR 2,54,997 equivalent to Rs. 44,87,802/-; and the date on which the same was debited to the Plaintiff's account and the Plaintiff suffered loss to the said extent which was purely on account of breach of terms and condition by the Defendants; the date on which the Defendant become liable for the excess amount collected from the Plaintiff by Defendant No.1 and wrongfully retained the same by the Defendant No.1 and charges of Rs. 44,87,802/- (SAR 2,54,997) was levied at Damman Port by way of demurrages and other charges leading to the payment of the same by Plaintiff's customer and deduction of Plaintiff by debiting Plaintiff's account leading to loss of Rs. 44,87,802/- to the Plaintiff and the Defendants become jointly and severally liable to pay the above amounts to the Plaintiff with interest of 24% per annum from 31-5-2016; on 11-3-2019, the date on which the Plaintiff issued notice to the Defendant calling upon the Defendants to pay the Plaintiff the total sum of Rs. 1,11,19,725/- which was inclusive of interest at 24% per annum from 26-4-2016 till 31-1-2019 and thereafter at the same rate from 1-2-2019 till the date of payment of amount and along with the notice charges of Rs. 50.000/- within one week from the date of receipt of notice; on 20-3-2019 the date on which the Defendant No.1 received the notice; on 20-3-2019 the date on which the Defendant No.2 received the said notice; on 15-4-2019, the date on which the Plaintiff issued another notice correcting the typing mistake in the earlier notice in respect of the name of the Defendant No.1 by speed post and by email; on 18-4-2019 and 20-4-2019, the dates on which the Defendant no.2 and the Defendant No.1 received the notice respectively, and

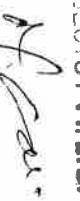
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For Business & Trade

Regd. Office

124-A

Chief Executive Officer



subsequently on all the dates as the Defendants failed to pay the amounts due to the Plaintiff.

V) VALUATION AND COURT FEES:

The Plaintiff valued the suit at Rs. 1,14,82,206/- and pays ad valorem Court fees of Rs. under section 20 of the A.P. Court Fees & Suits Valuation Act.

VI) JURISDICTION:

The Principal place of the office of the Defendant No.1 is located at Secunderabad and all the payments to Defendant No.1 for itself and on behalf of the Defendant No.2 were made at Secunderabad and hence this Hon'ble Court has got territorial jurisdiction to try the suit. The Plaintiff valued the suit at Rs.1,14,82,206/- and hence this Hon'ble Court has got pecuniary jurisdiction as well.

VII) LIMITATION:

The suit is within time in view of the last lot of the containers reaching Dammam Port on 6/5/2016 and on which date the consignee was entitled to clear the said last lot of containers along with other containers in one lot as per the terms agreed upon and from which date the Plaintiff's customer (Consignee) was entitled to a fourteen days free period to destuff the containers, which period would end on 20/5/2016. The suit is therefore well within time.

VIII) UNDERTAKING:

The Plaintiff has not filed any suit earlier based on the same relief and based on the same cause of action against the Defendants and no suit is pending between the Plaintiff and the Defendant in any court of law for similar relief.

PRAYER:

The Plaintiff therefore prays for a judgement and decree in its favour and against the Defendants

- a) directing the Defendants to jointly and severally pay the Plaintiff a sum of Rs.1,14,82,206/-,
- b) directing the Defendants to jointly and severally pay the Plaintiff interest at the rate of 24 % pa on Rs.1,14,82,206/- from the date of suit till realisation

C-

For BUILD-MATE PROJECTS PVT. LTD.


H. J. Suresh

c) directing the Defendants to pay costs of the suit, and

d) grant such other relief or reliefs as this Hon'ble Court deems fit and proper.

Hyderabad

PLAINTIFF
through its Chief Executive Officer

Dt: 29-04-2019

VERIFICATION

I, Venkata Ratnam M, the CEO and authorized signatory of the Plaintiff, do hereby declare that what has been stated above are true to my knowledge and belief and based on information believed to be true and correct and hence verified on this the day of April, 2019, at Hyderabad.

PLAINTIFF
through Chief Executive Officer

LIST OF DOCUMENTS FILED ALONG WITH THE PLAINT

S.No	Date	Parties	Description
1.	18-7-1991	Plaintiff	Xerox copy of Certificate of Incorporation of the Plaintiff's company.
2.	2-12-2015	Defendant-1 & Plaintiff	Quotation by D1 to Plaintiff for trans-shipment of consignment of Plaintiff.
3.	25-12-2015	Plaintiff & Defendant	E-mail by Plaintiff to D-1 asking D-1 to give revised better offer to proceed further.
4.	27-12-2015	Defendant-1 & Plaintiff	Revised offer given by D-1 to Plaintiff.
5	10-2-2016	Defendant-1 to Plaintiff	Email by D-1 to Plaintiff giving revised quotation towards charges for containers and 14 days free detention period each at Hyderabad and at Damman Port with the Linear being MAERSK a under single bill of lading for all containers.
6	12-2-2016	Defendant-1 & Plaintiff	Email by D-1 to Plaintiff asking Plaintiff to issue work order and Plan.
7.	20-2-2016	Defendant-1 & Plaintiff	Email by D-1 to Plaintiff giving a details of detention charges beyond free detention period
8.	28-2-2016	Plaintiff to Defendant-1	Office copy of the work order raised by Plaintiff on D-1.
9.	14-3-2016	Defendant-1 & Plaintiff	Email by D-1 to Plaintiff with regard to local transportation and confirmation from Plaintiff with regard to 25% advance payment and the balance 75% payment.
10	16-3-2016	Plaintiff & Defendant-1	Email to D-1 with regard to transportation of containers from Hyderabad to Mumbai and to dispatch containers as per schedule.
11.	16-3-2016	Defendant-1 & Plaintiff	Email addressed by D-1 to Plaintiff requesting Plaintiff to certify bills of the transportation and

RECEIVED STAMPS

For BULLION INTERNATIONAL PVT. LTD.

RECEIVED
29/04/2019

Chief Executive Officer

			for reimbursement of the same by Plaintiff to D-1.
12.	17-3-2016	Defendant-1 & Plaintiff	Email by D-1 with regard to 25% advance for Ocean freight + THC etc. besides demand for other charges.
13	6-4-2016	Defendant-2 & Third Party	A copy of OBL raised by D-2.
14	7-4-2016	Defendant-1 & Plaintiff	Email by D-1 informing Plaintiff that the shipment of Plaintiff sailed from Nhava Sheva through liner MEARSK Ganges Voy 2.1606
15	7-4-2016	Plaintiff to Defendant-1	Email by Plaintiff informing D-1 that the confirmation is only for one container shipped on 6-4-2016 from Nhava Sheva and as to the status of remaining 37 containers, whether loaded or not.
16	7-4-2016	Defendant-1 & Plaintiff	Email by D-1 informing Plaintiff that all offices in Maharashtra closed in view of Gudipadawa and D-1 can furnish details only on 11 th Evening or 12 th .
17	7-4-2016	Plaintiff & defendant-1	Email by Plaintiff asking D-1 to furnish details without delay and also to hand over original bill of lading. as delay would cause further financial strain on Plaintiff besides customer paying huge detention charges.
18	11-4-2016	Defendant-1 & Plaintiff	Email by D-1 alleging disruption of activities at terminals at Mumbai leading to changing of Plan and issuing of OBL.
19	11-4-2016	Defendant-1 & Plaintiff	Email by D-1 assuring Plaintiff that all containers are being moved in a single lot to Damman Port and will issue a single OBL with attached mail of D-2.
20	12-4-2016	Defendant-1 & Plaintiff	Email by D-1 asking Plaintiff to remit balance of 75% while admitting that Plaintiff has to pay 75% on submission of OBL only.
21	18-4-2016	Defendant-1 & Plaintiff	Email by D-1 asking Plaintiff to keep funds ready and to take CBL from D-1 on 20/21-4-16.
22	27-4-2016	Defendant-1 & Plaintiff	Copy of letter by D-1 admitting to excess payment by Plaintiff to D-1 and claim towards alleged additional charges.
23	30-3-16 to 30-4-2016	Plaintiff to Defendant-1	True extract of account of D-1 maintained by Plaintiff in its system in regular course of business without there being any break down in the system..
24		Plaintiff to Defendant-1	True extract of interest account of the D-1 maintained in the system of Plaintiff in regular course of business without there being any break down, showing interest due w.e.f 26-4-2016 to 22-4-2019.
25.	17-3-2019	Plaintiff & Defendant	Office copy of the notice issued by Plaintiff to Defendants asking Defendants to pay the amounts due to the Plaintiff.

26	19-3-2019	IIrd Party.	Original postal receipts bearing Nos EN409495 066IN and EN409495@70IN, showing sending of notice under speed post to defendants.
27		IIrd Party	Postal track report showing the delivery of notice sent under speed post to Defendant-1
28		IIrd Party	Postal track report showing the delivery of notice under speed post to Defendant-2, along with postal ack. of Defendant no.2.
29	9-4-2019	Defendant-1 & Plaintiff	Reply given by Defendant-1 to Plaintiff.(original)
30	15-4-2019	Plaintiff & defendants	Office copy of the notice issued by Plaintiff to the Defendants demanding amounts due to Plaintiff while correcting the typographical error in the name of D-1.
31	16-4-2019	IIrd Party	Original Postal receipts bearing No. EN 409193 613IN and EN 409193627IN for sending notice to Defendants by speed post.
32		IIrd Party	Postal track report taken from website of Postal Department showing delivery of post to D-1 on 20-4-2019
33		IIrd Party	Postal track report taken from website of Postal Department showing delivery of post to D-2 on 18-4-2019, along with postal ack. of D2
34	18-4-2019	Plaintiff to IIrd Party.	Letter with statement issued by SBI showing two payments by RTGS and all other payments by banker cheques payable at Secunderabad.
35	13-4-2019	Plaintiff	True extract of minutes of the meeting by the Board of Directors held on 13-4-2019 authorizing CEO Mr. M. Venkataraman to initiate proceedings against the Defendants.

FBI DOCUMENTARY PHOTOCOPY IS PVT. LTD.

M. Venkata Ramam
Chief Executive Officer

PLAINTIFF
through Chief Executive Officer.

Hyderabad

Date: 29-4-2019

IN THE COURT OF THE ADDL. JUDGE,
JUDGE, CITY CIVIL COURTS,
AT HYDERABAD

O S No. of 2019

Between:

Buildmate Projects Pvt Ltd Plaintiff

and

M/s Maxwell Worldwide Express
Pvt. Ltd, rep by its M/o & another Defendant

PLAINT FILED UNDER SECTION 26(1)(A)
WITH ORDER VII RULES 1 AND 2 OF THE
PROCEDURE CODE FOR RECOVERY OF
RS.1,14,82,206.

Filed on: 29-4-2019

Filed by:

D SRINIVAS PRASAD,
Advocate for Plaintiff,
Plot no.15, Ramsai, Ground Floor,
Shobana Colony, West Marredpally,
Secunderabad-26.
(Enrol No. : 1095/1986
Enrol dt : (01-10-1986)
E-Mail :

B CIF (Cost, Int. & Freight)

consignee is not in the scope of
CIF terms. Hence it is
not applicable.

(ii)

Over-dimensional & Dangerous Goods