



C.S.No.63 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.08.2023

Delivered on : 06.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No. 63 of 2017

Tradex Shipping Co. (P) Ltd.,
Rep. by its Managing Director
Capt., R.Venkatramanan
24, Bagawantham Street,
T.Nagar, Chennai – 600 017.

...Plaintiff

Vs

United India Insurance Co. Ltd.,
Rep. by its Regional Manager,
Corporate Cell,
98 – A, Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

...Defendant

Prayer: Suit filed under Order IV Rule 1, 2 and 3 of O.S. Rules read
with Order VII Rule 1 of CPC



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“(a) for a sum of Rs.2,99,36,653/- (Rupees Two Crores Ninety Nine Lakhs Thirty Six Thousand Six Hundred and Fifty Three only) together with further interest at 18% per annum on Rs. 2,00,31,216/- (Rupees Two Crores Thirty One Thousand Two Hundred and Sixteen only) from date of plaint till realization in full.

(b) for costs of the suit

(c) to grant further reliefs as this Hon’ble Court deems fit and proper in the circumstances and thus render justice.”

For Plaintiff : Mr. K.Krishnaswamy

For Defendant : Mr. S.Arunkumar.

JUDGMENT

The above suit is filed for recovery of a sum of Rs.2,99,36,653/- together with further interest at 18% per annum on Rs.2,00,31,216/- from the date of the plaint till the date of realisation.



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WEB COPY **Plaintiff's case:**

2.The plaintiff is a limited liability company carrying on business of providing services of management of ships, which includes repairing, providing cranes and operating them. The defendant is a limited company wholly owned by the Government of India engaged in the Insurance business.

3.It is the case of the plaintiff that the Government of India had provided a decommissioned submarine INS VAGLI to the Tamil Nadu Government to set up a museum for the purpose of promoting tourism. The authorities decided to install this submarine on the shores at Mahabalipuram. The submarine was handed over to the Tamil Nadu Government at Chennai and the Tamil Nadu Tourism Development Corporation had taken charge of the same. For this purpose, the submarine had to be prepared by execution of Husbandry Services at Chennai, towed to Mahabalipuram, hauled



and installed at the final site on the shores at Mahabalipuram.

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4.It is the plaintiff's case that the Tamil Nadu Tourism Development Corporation had floated a tender for the above project and the tender was broken down into different stages of work at Chennai and Mahabalipuram. The plaintiff was a successful bidder for the entire project and he had entered into an agreement with the TTDC dated 28.05.2013 for the project value of Rs.8,01,02,000/-. The present lis relates to the final stage of the project after the submarine was towed to Mahabalipuram and its shifting from the sea to the Pedestals on the seashore. This stage involved the execution of the following work:

(a)Construction of RCC Pedestals on the sea shores for resting the submarine.

(b)Building steel ramps from the sea to the Pedestals to create slope.



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*(c)Placing inflated rubber, air bags on the
ramps.*

*(d)Hauling the submarine on the steel ramp over
the air bags and bringing it out of see to the Pedestal.*

5. The plaintiff submits that in order to protect itself against any loss / damage during the execution of the project which includes the aforesaid final hauling and installation of the submarine, the plaintiff required policies of insurance for which purpose they were assisted by their Insurance broker Ms/.Aum Insurance Brokers. The negotiation with the Insurance Company was done by the said Insurance Broker. The plaintiff had entered into the contract of Insurance with the defendant herein for the final stage of hauling the submarine from the sea and installing it on Pedestal put up on the sea shore on Mahabalipuram.

6. The defendant had issued the plaintiff with a Contractors



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All Risk Policy (CAR Policy) dated 22.11.2013 covering the contract works for a total sum insured of Rs.5,00,01,000/- and the premium was fixed at Rs.50,460/-. The present suit herein is only confined to the CAR policy. The insurance policy was handed over by them in the name of the plaintiff as well as TTDC. That apart, the submarine was separately insured for the sum of Rs.1,00,00,000/- under Special Contingency Policy No. 50020/46/13/39/00000494 dated 24.02.2014.

7. It is the case of the plaintiff that on 06.04.2014, the submarine was towed to Mahabalipuram and it had reached the shores of Mahabalipuram. After the submarine had reached Mahabalipuram, the plaintiff had purchased steel materials including sheets, angles, etc., and fabricated steel ramps measuring 270 feet, which was to be placed in position between the submarine in the sea and the Pedestal on the shore with slope adjustments for the purpose of hauling.



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8. It is the case of the plaintiff that the submarine was at 150 feet away from the shore and the plaintiff awaited favourable weather and tide to place the ramp and haul the submarine. The plaintiff would submit that on 20.04.2014, the weather was conducive and it was therefore decided to place the ramps and haul the submarine. Accordingly, the ramps were extended to the submarine from the shore and slope adjustments were commenced for hauling. However, when the ramp was sought to be placed in position, a freak wave caused the steel ramps to collapse and sink. The air bags also got damaged in the process and the ramp related items were lost in the sea and could not be retrieved.

9. The plaintiff would submit that they had immediately taken steps to salvage and retrieve the steel ramps which had gone under water. However, on account of sand conditions underwater at the location and the weather, the efforts had to be given up as it posed



danger to the lives of the crew and labourers.

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10. The plaintiff would submit that they had suffered huge loss of material. Thereafter, in order to protect the submarine from any danger, it was towed back to Chennai after obtaining permission from the authorities. The proposed plan of installing INS VAGLI was therefore abandoned.

11. Since the steel ramp and the other related materials which were used in the process was lost / damaged, the plaintiff had immediately reported the loss to the defendant. The defendant appointed a Surveyor who had visited the site on 22.04.2014. The plaintiff had prepared a detailed statement of their loss and had also submitted a claim form together with claim bill dated 02.06.2014 for a sum of Rs.1,42,68,309/-. The Surveyor visited the site once more on 23.12.2014, by this time, the steel ramps and other materials were buried in the sand beneath the water.



WEB COPY 12. The plaintiff would submit that the Surveyor had not sought or engaged the help of the labour for under water examination. The plaintiff, however substantiated its claim by submitting invoices, bills and other documents as confirmed by various letters, such as letters dated 02.06.2014, 22.09.2014 and 07.03.2015. The actual loss was fixed at Rs.1,96,46,419/-, which is subsequently enhanced to Rs.2,00,31,216/-.

13. It is the case of the plaintiff that each and every claim was supported by documents. Despite this, the defendant sent a communication dated 15.07.2016, nearly two years after the loss rejecting the plaintiff's claim for improper, illegal and erroneous reasons.

14. In paragraph No.20 of the plaint, the plaintiff has set out why the reasons given by the defendant for repudiating their liability



was wrong:

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“(a)The claim pertained to uninsured items.

There is no basis for the same. The claim pertained to items used by the Plaintiff as contractor for implementing the contract and such contract works are insured under the Policy.

(b)It is shocking that the Defendant treated the loss as a “inherent peril of the sea” and that it could not be classified as “accidental loss”. It is not known under what provision of the Policy such interpretations were made by the Plaintiff. There is no such exclusion in the Policy. The Plaintiff states that the freak wave which damaged the ramp and caused it to sink is an unexpected, unforeseen and fortuitous event and the Defendant is liable to pay for the loss.



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(c)The Plaintiff has incurred the cost of steel ramps which was fabricated and which has been completely lost. The Plaintiff has provided all proof for the same to the Surveyors and the Defendant in support of the claim. When the Plaintiff's loss has thus been proved, it is shocking that the defendant is relying upon an irrelevant and inapplicable clause in the contract for property which has been completely lost to reject the claim of the Plaintiff as if it is claiming in respect of property of TTDC.

(d)The Policy is taken for the entire project value which includes all property used in the contract works. The purpose of the Contractors All Risks insurance is to cover against risk of loss/damage to



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all such property used in the contract. The steel plates and ramp form substantial cost of the project in the event of any loss as has occurred. Hence the purpose of insurance is defeated by such wrongful interpretation of the Policy to exclude these items as not insured by reference to “temporary works” etc., which have no relevance to the Policy. The Defendant construed the Policy by reading clauses from the contract between TTDC and the Plaintiff. The scope, object and wording of each contract is entirely different and the Plaintiff cannot import wordings from agreement with TTDC into the Policy. Hence the attempt to treat the steel ramps as “temporary works” and that they are therefore not insured under the Policy is a wrongful interpretation of the Policy made arbitrarily to suit the Defendant’s convenience.



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(e)The non-completion of the contract is immaterial to the Defendant. The Plaintiff states that the loss happened at a time when the Policy was in force and when the project was being implemented. At the time of loss there was no breach of the contract with TTDC or the Policy. If TTDC or the Government subsequently decided against going ahead with the project of installing the Submarine onshore, after the Plaintiff had suffered the loss, the Defendant cannot cite the same as a reason or take advantage of the same to deny liability under the Policy after a covered loss has occurred.”

15. The plaintiff had sent a detailed letter dated 11.08.2016, against this wrongful repudiation of the claim. They had also requested for another copy of the survey report. However, the



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defendant chose to ignore this request. The plaintiff would submit that they are not bound by the report of the Surveyor and the defendant cannot rely upon the surveyor's report.

16. The plaintiff would further submit that against this wrongful repudiation, they are entitled to a sum of Rs.1,96,46,419/- which presently aggregates to a sum of Rs.2,00,31,216/-, under the Contractors All Risks Policy. The defendant has unduly delayed the claim and ultimately rejected it wrongfully. Therefore, the plaintiff is entitled to an interest as well.

17. The plaintiff would further submit that though the policy conditions provides for arbitration, however, for the reasons best known to the defendant, the claim of the plaintiff has been rejected. Therefore, there is no arbitral dispute between the parties except to lodge a complaint before the Civil Court.



Defendant's Case:

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18. The defendant would at the outset would state that the suit is based on totally false averments and the same is not maintainable either in law or in facts. The defendant would submit that the plaintiff who had obtained the coverage through their insurance broker, M/s.Aum Insurance Brokers by their e-mail dated 19.06.2013 had initially expressed their requirements as follows:

*“1.Cover on the decommissioned Submarine Ship
– from alongside in Chennai port till she sits on the
final blocks at Mahabalipuram.*

*2. Cover for Wreck Removal, Pollution etc, At all
times — Chennai alongside while under tow-while
being hauled up till completion.*

*3. Cover for Chennai port
property/personnel/third party property. At all times
from alongside to sitting on blocks.*



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4. Cover for crew/personnel, if any on board the Sub. Not required as there will be no crew onboard ever

5. Cover on the foundation - Not required under the Marine Hulls — as it is not marine related and as we can take out a CAR for this or cover that civil work separately - we will need CAR and GPA sparetely for this.

19. Thereafter, they had modified the coverage under the e-mails dated 06.11.2013, 07.11.2013 and 22.11.2013 for CAR policy as follows:

“ For the contract works - Submarine resting Pedestal - 9 Nos, submarine Hauling Winches platform - 11 nos, Adjusting the slop for preparking the ramps for Submarine hauling — 1 no. for INS — VAGALI - Decommissioned Submarine - Contractors All Risk Insurance Policy No.500200/44/13/03/600000032 was*



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issued.

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** Special contingency Insurance Policy was issued vide Policy No.500200/46/13/39/00000494 - Sum Insured - Rs. 1,00,00,000/-. Towards - fire & allied Perils, EQ, Burglary, TPL (Rs.50 lakhs), Accidental damage & Owners surrounding properties (Rs.10 Lakhs) at the location site Mahabalipuram.”*

20. The defendant would submit that the plaintiff had requested for a CAR policy covering the contract works and special contingency policies to put the submarine on the concrete Pedestal to be built on the land. Further, the plaintiff had also taken a separate policy with the New India Assurance Company for wet risk. It is the defendant's case that irrespective of the amount that has been mentioned in the policy, the plaintiff was entitled to claim only in



respect of the risk that has been specified in the CAR policy. The special contingency policy had been taken to cover the risk that could occur during the process of taking out the Submarine from the sea. The defendant would submit that in the instant case, the submarine had never been lifted out of the sea.

21. It is the specific case of the defendant that the CAR policy was issued to cover the RCC construction for the submarine resting pedestal – 9 Nos, submarine hauling winches platform – 11 nos, adjusting the slope for preparing for submarine hauling. All of these were concrete works. Nowhere in the policy did the defendant undertake to cover loss to steel ramps as a steel structure was never contemplated in the contract either during the negotiations or prior to the issue of the CAR policy.

22. The defendant would submit that now the plaintiff seeks to be compensated for the damage and loss of the steel structures. The



Insurance Surveyor had visited the site on 22.04.2004 and submitted a detailed report. The Surveyor has also been in contact with the plaintiff and had replied to various queries which has been raised by the plaintiff. It is only after receiving the survey report dated 27.12.2014 and addendum dated 23.02.2015, as also the clarification to the query of the Surveyor that the defendant had repudiated their claim.

23. The defendant had set out the reasons for repudiating their claim in paragraph No.9 of the written statement, which is briefly stated herein.

(a) Floating bridge, air backs and associated expenses not covered under the scope of the policy.

(b) Video shared by the plaintiff to the Surveyor and defendant regarding the submarine at Vizakapattinam does not use any ramp or metal sheet.

(c) The photo copies of the documents which were shared with the Surveyor relates only to uninsured



items and uninsured expenses as set out by the Surveyor.

(d)The loss or damage not covered under the CAR or special contingency policies.

(e)The manner in which the plaintiff had attempted to execute the hauling poor technical knowhow and expertise on the part of the plaintiff.

(f)Temporary works do not fall within the scope of the two policies.

(g)Submarine had not been hauled at all and was 500 metres away at the sea.

(h)TTDC has terminated the project for non – completion of work and a sum of Rs.3.43 Crores has been paid for the work done and there are arbitration proceedings pending between the TTDC and the plaintiff. The CAG audit report states that the plaintiff



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has not followed the precautionary recommendation made by the Academy for Marine Education and Training University and the Indian Maritime University. The plaintiff has no experience in bringing the submarine to the shore under open sea conditions.

24. The defendant therefore submits that they are in no way liable under the contract to indemnify the plaintiff.

Issues Framed:

25. This Court on perusing the pleadings and documents had framed the following issues by order dated 26.06.2019.

“1.Whether the claim of the plaintiff is not admissible under the Contractor's All Risks Policy issued by the Defendant ?

2.Whether the Rejection of claim by Defendant is based on valid reasons ?



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3. Whether the plaintiff is entitled to claim loss caused due to inherent peril in the sea and not due to accidental loss ?

4. Whether the plaintiff is entitled to claim for the alleged loss occurred in the sea and in the absence of wet risk obtained from the defendant ?

5. Whether the plaintiff is entitled to claim suit amount when the project with the contractor has not been fulfilled under contract of construction ?

6. Whether the plaintiff having received Rs.3.43 crores from Tamil Nadu Tourism Development Corporation Limited include the suit claim?

7. Whether the plaintiff is entitled to Rs.2,99,36,653/- with interest as claimed ?

8. To what relief ?



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Evidence:-

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26. On the side of the plaintiff, the Managing Director and Authorised Signatory of the plaintiff had deposed as P.W.1 and one Gaurav G.Jetha was examined as P.W.2. The plaintiff has marked Ex.P.1 to Ex.P.52. The Manager of the defendant Mr.K.L.Ananthanarayanan was examined as D.W.1 and one G.M.J.Kamalakumar was examined as D.W.2 and Ex.D.1 to Ex.D.17 were marked on the side of the defendant.

Submissions:-

27. Mr. K. Krishnaswamy, learned counsel appearing on behalf of the plaintiff would submit that Ex.P.2 is the agreement that was entered into between TTDC and the plaintiff for a price of Rs.8,01,02,000/-. The scope of the work has been set out in Schedule A of the agreement. The learned counsel would submit that the policy issued by the defendant is with reference to S.Nos.3 and 4 of Phase – D to the schedule.



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28. The policy that had been taken by the plaintiff is the Contractors All Risk Insurance policy and the same which is marked as Ex.P.3 is for the period 22.11.2013 to 21.05.2014. Section I therein set outs the agreement that was entered into by the defendant with the plaintiff with regard to material damage. The learned counsel would submit that as per this undertaking, the defendant had agreed that subject to the exclusions and conditions, if at any time during the subsistence of the insurance policy or any period of extension thereof the property except packing materials of any kind or any part thereof described in the schedule be lost, damaged or destroyed by any cause other than the exclusions the defendant would indemnify the plaintiff for such loss.

29. The learned counsel would next draw the attention of the Court to Ex.P.48, which is the letter dated 15.07.2016 of the defendant to the plaintiff. He would submit that under this letter,



the defendant has clearly stated that the plaintiff has claimed under the special contingency policy / CAR policy with reference to uninsured items, namely, contractors plant and machinery / temporary works and expense. The loss is also on account of inherent peril in the sea and not on account of an accidental loss. Further, the project had not been completed by the contractor, namely, the plaintiff and the CAR policy is subject to exclusion to Section 1 – (d), (h) and (i).

30. The learned counsel would further argue that the termination of the contract between the plaintiff and the TTDC has no bearing on the contract entered into between the plaintiff and the defendant. The inherent peril is not an exclusion clause under the policy. He would submit that the contract could be terminated on any of the following grounds:

(a)The loss / damage due to faulty design.

(b)Any damage or penalties on account of insured's non



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fulfillment of the terms of delivery of construction under his contract of construction or of any obligations assumed there under or lack of performance including consequential loss of any kind or description or for any aesthetic defects or operational deficiencies;

(c) Loss of or damage to vehicles licensed for general road use or water borne vessels or Machinery / Equipment mounted or operated or fixed on floating vessels / craft / barges or aircraft.

However, none of these contingencies had occurred in the instant case.

31. He would submit that the contents of the written statement is contrary to the repudiation letter, Ex.P.48. He would rely upon the Judgement reported in **2019 (19) SCC 70 – Saurashtra Chemicals Limited Vs. National Insurance Company Limited**, in support of his argument that the Insurance Company cannot travel beyond the ground mentioned in the letter of repudiation.



32. The learned counsel would draw the Court's attention to the cross examination of the defendant and the answer to the question no.63, wherein, the witness has admitted that under Ex.D.13, the Surveyor was fully aware that the submarine was to be hauled from the sea to the land and therefore under Ex.P.3, hauling is a procedure that is covered under the policy and therefore the defendant is liable to make good the plaintiff's loss.

33. The learned counsel would submit that they had decided to use steel ramps after the CRZ clearance on 17.10.2013 and it is only thereafter that the hauling had begun. He would submit that the policy was entered into only after all these points were brought to the notice of the defendant herein. He would submit that nowhere in the repudiation letter has the Insurance company taken the defense that the policy would not cover steel ramps. He would further argue that since the Insurance Company is pleading exclusion, it is for them to prove this exclusion and in support of this, he would submit



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the following Judgements:

WEB COPY (i) **2007 (4) SCC 105** – *National Insurance Co., Vs. Ishar Das madan Lal.*

(ii) **2022 SCC Online 509** with specific reference to paragraph no.26. -

(iii) **AIR 1966 SC 1644** – *General Insurance Society Ltd., Vs. Chandumull Jain and Another.*

34. The learned counsel has also submitted the written arguments in which he has set out the arguments issue wise. With reference to the first issue as to, *whether the plaintiff's claim is admissible under the contractor's all risk policy issued by the defendant?*, he would argue that the loss has occurred on account of insured peril and therefore the claim was admissible. The plaintiff would submit that the submarine was towed to Mahabalipuram and was stationed 150 feet away from the shore. He would submit that



the loss had occurred only on account of the freak wave, which led to the sinking of the steel ramp. This heavy wave causing the loss is covered under Section 1 which deals with loss due to any cause and therefore it is not excluded.

35. The learned counsel would submit that the entire exercise of hauling had started only on 20.04.2014 after receiving positive report about the weather. Therefore, according to the plaintiff the claim is admissible under the CAR policy.

36. With reference to the next issue as to *whether the rejection of the claim by the defendant is based on valid reasons?*, the plaintiff would submit that CAR policy covers all risks except the excluded risk and it is for the Insurance Company to prove the exclusion which they have failed to prove. It is the plaintiff's contention that the repudiation is not on the basis of any valid ground. He would submit that none of the ingredients which is



contained in Section 1 of the Schedule to the Insurance Policy would apply in the instant case. He would further submit that the issue of fair and foul weather would not apply in the instant case since what was being supplied is the submarine which requires sea navigation.

37. He would rely on the Judgement of the Hon'ble Supreme Court reported in **2007 (4) SCC 105 - *National Insurance Co., Vs. Ishar Das madan Lal.*** and **2019 (19) SCC 70 - *Saurashtra Chemicals Limited Vs. National Insurance Company Limited.***, wherein it has been held that the Insurance Company cannot take the defense which is not found in the repudiation letter. He would therefore submit that this issue should also be answered in favour of the plaintiff.

38. As regards the issue as to *whether the plaintiff is entitled to claim loss caused due to inherent peril in the sea and not due to accidental loss?* it is the contention of the learned counsel that the



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loss was on account of freak wave which caused the steel ramps to collapse. One of the grounds for repudiating the claim is seen in Ex.P.48 is the inherent peril in sea and not accidental loss. It is his contention that inherent peril is covered under policy under Memo No.8, which is applicable to Section 1. According to him, Memo No.8 (f) covers water damage for wet risks. Therefore, the damage by sea is a covered risk. In these circumstances, the defendant is wrong in contending that inherent peril of the sea is excluded. Further, such a plea has not been raised in the written statement. The loss is an accidental loss caused due to action of waves and in the absence of specific exclusion clause, the defendant cannot deny coverage. Therefore, the issue no.3 has to be answered against the defendant.

39. The fourth issue has been framed as to *whether the plaintiff is entitled to claim for the alleged loss occurred in sea and in the absence of wet risk obtained from the defendant?* The



arguments for this issue overlaps with the arguments made with reference to issue no.3 and therefore the plaintiff would submit that under Ex.P.3, wet risk is expressly covered.

40. The plaintiff would also rely upon the e-mail which is sent by the plaintiff to the defendant prior to the policy, namely, Ex.D.3, wherein the plaintiff has referred to EAR (Equipment All Risk) policy and tries to apply it to CAR policy, which is totally irrelevant. Therefore, it is the contention of the plaintiff that the defendant having undertaken to cover the risk is estopped from contending otherwise. He would also rely upon the evidence of D.W.2 in this regard from question Nos.75 to 79. In answer to question No.79, where the question was asked was *whether in Ex.P.3 wet risk has been mentioned?*, the witness had answered, *It is mentioned. Witness adds, only properties mentioned in the schedule of the policy is covered.* Once again the plaintiff would submit that the repudiation by the defendant is not on this ground. It is argued that



the defendant cannot go beyond the letter of repudiation for which the plaintiff has relied upon the Judgement reported in **2019 (19)**

SCC 70 – Saurashtra Chemicals Limited Vs. National Insurance Company Limited and **2022 SCC Online SC 1451 – JSK Industries Private Limited Vs. Oriental Insurance Company Limited.**

41. The fifth issue is *whether the plaintiff is entitled to claim the suit amount when the project with the contractor has not been fulfilled (Terminated) under the contract of construction?*. For this issue the plaintiff would submit that there is no terms in the policy that the insurance policy has come to an end once the contract comes to an end either by termination or non fulfillment. Therefore, this issue also has to be held in favour of the plaintiff.

42. The sixth issue is *Whether the plaintiff has received Rs.3.43 Crores from Tamil Nadu Tourism Development Corporation*



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Limited include the suit claim?. The plaintiff would submit that the sum of Rs.3.43 crores that has been received is towards the insured's contracted works. Further, this ground has not been raised in the letter of repudiation and in support of this argument the plaintiff would rely upon the Judgement reported in **2022 SCC Online SC 1451 – JSK Industries Private Limited Vs. Oriental Insurance Company Limited.**

43. The seventh issue is *Whether the plaintiff is entitled to the sum Rs.2,99,36,653/- with interest as claimed?* The plaintiff would contend that the Insurance Company has not disputed the quantum in the notice of repudiation, Ex.P.48 and therefore it cannot be now disputed in the suit. Once again the plaintiff would rely upon the Judgement reported in **2022 SCC Online SC 1451 – JSK Industries Private Limited Vs. Oriental Insurance Company Limited.** The plaintiff would therefore submit that they are entitled to the suit



claim and the break up of the claim has been given in the Tabular column in the written arguments and further they are entitled to interest as well.

44. The defendant on their side have reduced their oral arguments into written arguments, wherein, they once again reiterated that initially the insurance were expressed by the plaintiff's broker M/s.Aum Insurance vide their e-mail dated 19.06.2013, which has been marked as Ex.D.11, wherein their requirements were different. The cover that was sought for was

“1.Cover on the decommissioned Submarine Ship – from alongside in Chennai port till she sits on the final blocks at Mahabalipuram.

2. Cover for Wreck Removal, Pollution etc, At all times — Chennai alongside while under tow-while being hauled up till completion.



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3. *Cover for Chennai port property/personnel/third party property. At all times from alongside to sitting on blocks.*

4. *Cover for crew/personnel, if any on board the Sub. Not required as there will be no crew onboard ever*

5. *Cover on the foundation - Not required under the Marine Hulls — as it is not marine related and as we can take out a CAR for this or cover that civil work separately - we will need CAR and GPA sparetely for this.*

45. Thereafter, it was modified by subsequent request and the cover had undergone changes, which is evident from Ex.D.3, e-mail dated 06.11.2013, 07.11.2013 and 22.11.2013. The defendant would contend that under the CAR policy and special contingency



policy what was undertaken and agreed was to put the submarine on a concrete Pedestal to be put up on the shore.

46. It is also the case of the defendant that with reference to wet risk, the plaintiff has obtained separate policy with New India Assurance, which is evident from a perusal of the e-mail dated 19.06.2013, Ex.D.11, in serial No.5 of the said mail. The plaintiff on 20.04.2014 decided to bring the submarine from the sea to the shore. However, they had failed to bring the submarine out of the sea. The CAR policy issued does not cover the steel ramp and this is clearly evident from the fact that the plaintiff would state that it was on 20.04.2014 that it was decided to place ramps and haul the submarine by building steel ramps of 270 feet. Further, the plaintiff has undertaken this exercise when the foul weather had set in. The Government Authorities had abandoned the project which is confirmed by the oral evidence of P.W.1 himself. It is the contention of the defendant that the compensation that was claimed is highly



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exorbitant and fanciful.

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47. The defendant would reiterate the risks for repudiation as set out in the policy. It is their contention that TTDC has terminated the contract on account of non-completion of the project. The policy only covers RCC construction and not steel ramps. The defendant would submit that the policy being one for the RCC construction and having stated that the steel ramp were only temporary, the repudiation for the defendant corporation is in order. The plaintiff nowhere has sought cover for installation of temporary steel ramps. Even in the contract that had been submitted by the plaintiff to the TTDC under the heading “*site preparation*” the plaintiff has talked about preparing the road surface for hauling on environment friendly temporary slipway. Nowhere has it been indicated that the same would be in the form of steel ramps.



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48. Further, the photographic representation given clearly indicates that the road surface preparation for hauling is on the land area. Therefore, the temporary works like floating bridge, air bags and associated expenses are not covered. That the steel ramps were not contemplated at the time of insurance and the issue of the policy is evident from Ex.P.9, letter dated 22.04.2014, wherein, the plaintiff has admitted the fact that only at the time of preparing to haul the submarine after 13.04.2014. In the said letter it has been clearly stated that it was only thereafter that the plaintiff after consulting the experts from China, decided to extend the length of the hauling steel platform by further extent of 40 metres at a considerable cost and efforts. The platform was thereafter extend by 100 metres to avoid any accidental running aground of the submarine during positioning.

49. The defendant would further draw attention of this Court



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to the cross examination of P.W.2. wherein he has admitted in answer to Q.No.29 that in the quote slip the word “works on sea” has not been mentioned. P.W.2 has also admitted that the wet risk is covered by New India Assurance Company limited and Ex.D.3 further fortifies the fact that coverage given by the defendant is not for wet risk.

50. The defendant would submit that the fabrication of steel ramp from the sea was decided only at the time of pulling the submarine from the sea and not at the time of taking the policy. The learned counsel would rely upon the Judgement reported in **2009 (5) SCC 599 – Vikram Greentek (I) Ltd., Vs. New India Assurance Company Ltd.**, wherein it has been held that an Insurance contract has to be considered in the same manner a commercial transaction would be construed, on the terms contained therein.

51. The defendant would further submit that the Insured



cannot claim anything more than what is covered. He has relied upon the following Judgements in support of this contention:

(i) **AIR 1966 SC 1644** – *General Assurance Society Ltd., Vs. Chandumull Jain and another.*

(ii) **1999 (6) SCC 451** – *Oriental Insurance Co., Ltd., Vs. Sony Cheriyan.*

(iii) **2004 (8) SCC 644** – *United India Insurance Co., Ltd., Vs. Harchand Rai Chandan Lal.*

52. The learned counsel for the defendant would summarise his argument by stating that

(a) The plaintiff had only intended to cover RCC construction work done in the land as described in the policy.

(b) The alleged loss is pertaining to temporary works, wrong design i.e., digging passage in the sea.

(c) Usage of steel ramps method / design to push the submarine from sea to the land which decision was taken only at the time when the submarine was to be brought to the shore.



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(d)The project was abandoned and temporary works were not included .

53. Therefore, considering the fact that the policy insured is a CAR policy, the plaintiff is not entitled to coverage. The plaintiff would rely upon the Judgement reported in *2014 (1) SCC 686 – Export Credit Guarantee Vs. M/s. Garg Sons International* in support of his contention that the insured cannot seek more than what was agreed under the policy and the intention of the parties have to be looked into.

Discussion:

54. The entire dispute revolves around the terms of the policy and the coverage prescribed therein. Ex.P.3 which is a CAR policy describes the contract works as follows:

“RCC Construction:



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Submarine Resting Pedestal – 9 Nos, Submarine Hauling winches platform – 11 Nos, Adjusting the slop for preparking the ramps for submarine hauling – 1 Nos. For INS VAGLI decommissioned submarine.”

55. P.W.1 in response to question no.19, as to *What policies and from which Insurance companies you have taken coverage for the project. It is on behalf of TTDC?*, has submitted as follows:

“TTDC directly obtained Insurance cover by calling for quotation from various Nationalized Insurance Companies for the submarine under hull policy. We obtained contractors all risk policy (CAR), and workmen compensation policy from the defendant. The 3rd policy was obtained from National Insurance Company for covering work men at Chennai harbour. The 4th policy is a special contingency policy covering



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marine passage of the submarine from Chennai to Mahaballipuram from New India Assurance Company”

56. In response to question No.42 which reads as follows:- *In the said quote slip (Ex.D3), it is stated that in the Detailed project description - civil and structural works on land — submarine, resting pedestal — nine numbers hauling winches platform - 11 numbers, adjusting the slope for pre-parking the ramps for submarine, hauling-1 Nos for INS-VAGLI-Decommissioned, submarine 1952 model-950 GRT?* the answer was in the affirmative and in response to the question No.43, P.W.1 has admitted that based on quote slip, Ex.P.3 policy has been taken.

57. In response to question No.66 as to *whether the plant and machinery had been covered under Ex.P.3*, the witness has answered



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in the negative. The witness has also admitted in response to the question No.85 that the steel ramps were temporary works.

58. The broker who had negotiated with the Insurance company had been examined as P.W.2. The witness would submit that the job of the broker is to understand the project and take suitable coverages, policy, to cover risks that would occur in the course of its execution.

59. To a question as to whether they have forwarded the said mail to the defendant informing them about the type of risk that they required to be covered and which does not require cover, the witness would answer that it was sent along with the tender document. The witness has categorically admitted that what was sought was only a CAR and special contingency policy.

60. P.W.2 has also specified as to what is the permanent



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structure in answer to question no.42 as follows:

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“11 numbers of hauling platform of RCC and other civil structure supporting the platform (RCC)”.

61. As per Clause 18.5 of the agreement, all drawings prepared by the contractor for execution of temporary or permanent works are subject to the prior approval of the TTDC before their use. The agreement further detailed the agreement between TTDC and the plaintiff. Part I of the agreement which deals with the towing procedure discusses the fair weather season and foul weather season in respect of the Arabian sea as well as Bay of Bengal. In the case of Bay of Bengal, the foul weather season is between 1st May and 30th November and it has been clearly mandated that when the towing operation is undertaken the owner / manager / operator / Master of the vessel has to determine the level of risk involved and one of the factors that has to be taken care of is the weather including measures for its continuous monitoring. Admittedly, in this case just 10 days



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prior to the start of the foul weather the towing operation had commenced.

62. Be that as it may, it has to be analysed if the terms of the policy covers the most important factor, i.e; whether the defendant is liable to compensate the plaintiff for the loss. As discussed earlier the coverage is only with respect to RCC construction which involves the submarine resting Pedestals, Submarine hauling winches platform and adjusting the slope for preparking the ramps for submarine hauling. Nowhere in the policy has the Insurance Company undertaken to make good the loss that would be caused to steel ramp since steel ramps were not contemplated or described in the policy Ex.P.3.

63. A perusal of Ex.D.3 would show that the three quote slips have been issued in respect of CAR, EAR and WC policy. The quote slip for the CAR policy discusses the project as civil and



structural works on land – submarine resting pedestals – 9 Nos.

submarine hauling winches platform – 11 Nos. Adjusting the slop for preparking the ramps for submarine hauling – 1 Nos. For INS VAGLI, whereas quote slip for EAR policy relates to the erection and engineering works on land, which also discuss the very same items as in CAR policy. Both the policies do not describe the erection of the slope for preparking the ramp to be of steel. On the contrary, it is described as a civil and structural work in the quote slip and in Ex.P.3 has been described as RCC construction. In none of the communications preceeding the policy Ex.P.3 there is a reference to the laying of steel ramps for hauling the submarine.

64. Ex.D.12 is the e-mail addressed by P.W.2 to the defendant, wherein they have forwarded the requirements specified by the plaintiff. The requirements specified in the e-mail from the plaintiff to P.W.2 were as follows:

““1.Cover on the decommissioned Submarine



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Ship – from alongside in Chennai port till she sits on the final blocks at Mahabalipuram.

2. Cover for Wreck Removal, Pollution etc, At all times — Chennai alongside while under tow-while being hauled up till completion.

3. Cover for Chennai port property/personnel/third party property. At all times from alongside to sitting on blocks.

4. Cover for crew/personnel, if any on board the Sub. Not required as there will be no crew onboard ever

5. Cover on the foundation - Not required under the Marine Hulls — as it is not marine related and as we can take out a CAR for this or cover that civil work separately - we will need CAR and GPA separately for this”.



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While forwarding the mail, P.W.2 had also enclosed the tender document so as to enable the Insurance Company to understand the contract.

65. Further, a power point presentation had also been forwarded and this power point presentation titled as the Procedures Involved In Hauling and Installation of INS VAGLI Submarine in Mahabalipuram, describes the manner in which the hauling was proposed to be done. In their site preparation they have described in as follows: Prepare Road surface for hauling on environment friendly temporary slipway, RCC work for Dock Blocks and Logistics Support. The sketch for road surface preparation for hauling was also attached.

66. With reference to the towing requirements it had been stated that the towing requirements would be Tug, Barge, Support Boats, preparation of rope, hawser, towing gear etc., Technicians



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and Emergency equipments.

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67. A sketch of the hauling plan was also prepared, which indicated that it would be done using a Tug with two support boats. The diagram contemplated that the hauling to be done with air bags which was to be fitted on the sides of the submarine. This can be deduced from the photos of the power point presentation. The submarine is thereafter sought to be put on the Pedestal, which is RCC construction which has also been indicated there.

68. In fact, in the details regarding precautionary measures in this power point the plaintiff has stated that accident could happen due to , (a)parting of ropes, (b)Airbag bursting and (3)Any other accidents, which clearly indicated that the use of steel ramps was not contemplated at that point in time. These are the details which have been provided to the defendant to enable them to prepare the policy.



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69. Further, Ex.P.3 policy has been issued on the basis of Ex.D.12 letter. This has been confirmed by P.W.2 during his cross examination.

70. The Plaintiff has contended that the contents of the written statement and the contents of the repudiation letter, Ex.P.48 are at variance and therefore, the plaintiff cannot rely on the written statement. Under Ex.P48, the defendant in a nutshell has repudiated its liability on the following grounds:

- (a) The loss is on account of an inherent peril in the sea.
- (b) Insurable interest is not with petitioner as the materials are the submarine, plant, equipment, temporary works and works are deemed to be the properties of TTDC.
- (c) Temporary works as per agreement between plaintiff and TTAC are works designed, constructed, installed and removed by the contractor and the design of these temporary works is the responsibility of the Plaintiff.



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(d) The loss falls with the CAR exclusion to section 1(d) (h)

and (i)

(e) Insured's claim pertains to uninsured items viz. contractors Plant and machinery/temporary works and expenditure incurred by them.

71. In the written statement the defendant has expanded on the grounds of repudiation. The main fulcrum of the defense is that the equipment, whose loss the plaintiff seeks to get reimbursed, does not form part of the equipment that has been insured. The reference to the judgment of **2019 (19) SCC 70 – Saurashtra Chemicals Limited Vs. National Insurance Company Limited** and **National Insurance Co., Vs. Ishar Das madan Lal - 2007 (4) SCC 105** may not come to the aid of the plaintiff.

72. In the judgment of the Hon'ble Supreme Court, referred to by the learned counsel for the defendant reported in **2009 (5) SCC**



page 599 as Vikram Greentech India Ltd. and Another vs. New India Assurance Co. Ltd. the Hon'ble Supreme Court has observed

as follows:-

16. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberimma fides i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract.

17. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered



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by the insured on account of risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer.

18. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. [General Assurance Society Ltd. Vs. Chandumull Jain and another 1, Oriental Insurance Co. Ltd. Vs. Sony Cheriyan and United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal]



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19.A document like proposal form is a commercial document and being an integral part of policy, reference to the proposal form may not only be appropriate but rather essential. However, the surveyors' report cannot be taken aid of nor can it furnished the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible.

Further in the case of ***Export Credit Guarantee Vs. M/s. Garg Sons International - 2014 (1) SCC 686*** The Hon'ble Supreme Court has reiterated these principles as follows:

10. It is a settled legal proposition that
: “26.... [while] construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also



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well settled, that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed [in order] to determine the extent of the liability of the insurer.”

Therefore, the endeavour of the Court should always be to interpret the words used in the contract in the manner that will best express the intention of the parties. (Vide: Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd., (2010) 10 SCC 567 para 26.).

13. Thus, it is not permissible for the court to substitute the terms of the contract itself, under the garb of construing terms incorporated in the agreement of insurance. No exceptions can be made on



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the ground of equity. The liberal attitude adopted by the court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement.

73. Therefore, considering the admission of P.W.2 that D.12 formed the basis for the preparation of Ex.P.3 Insurance Policy and a reading of Ex.P.3 would clearly show that the defendant is under no obligation to indemnify the plaintiff and the goods for whose loss the claim is made is not covered under the policy.

74. Therefore, the claim of the plaintiff is not covered under the CAR policy issued by the defendant and the rejection of the claim is based on valid reasons. Issue nos.1 and 2 is therefore answered against the plaintiff.



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75. The plaintiff's contention that they are liable to be indemnified since it is a loss which has been caused due to inherent peril in the sea in the light of the terms of Memo No.8 of the Insurance Company policy, Ex.P.3. Memo No.8 of the policy would read as follows:

“The major peril / acts of god claims shall mean claims arising out of:

(a)Earthquake – Fire and shock.

(b)Landslide/Rockslide/Subsidence.

(c)Flood / Inundation.

(d)Storm / Tempest / Hurricane / Typhoon / Cyclone / Lightning or other atmospheric disturbances.

(e)Collapse.

(f)Water damage for 'wet' risks i.e., contract involving works in rivers, canals, lakes or sea.



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76. The plaintiff would claim under Memo 8 (f), namely, Water damage for 'wet' risks i.e., contract involving works in rivers, canals, lakes or sea. It is admitted that the wet risk is not covered under the CAR policy and further clauses (d), (h) and (i) in Section I would exclude the liability of the defendant to cover this loss. Memo 8 would apply only subject to the above exclusions. Therefore issues 3 and 4 are answered against the plaintiff.

77. The contract between the plaintiff and TTDC and the policy of insurance taken are independent of each other. Issue Nos. 5 and 6 are therefore answered in favour of the plaintiff. In the light of the above discussion the other judgments relied upon by the plaintiff would not apply to the facts of this case.

78. In the light of the findings regarding issue Nos.1 to 4, the plaintiff is not entitled to claim a sum of Rs.2,99,36,653/- with interest. Therefore, Issue No.7 is answered against the plaintiff.



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WEB COPY 79. In the result, the suit is dismissed. with costs.

06.12.2023

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
kan/shr



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List of witness on the side of the Plaintiff:

P.W.1 - Mr. R.Venkatramanan

P.W.2 - Mr. Gourav G.Jetha.

List of Exhibits marked on the plaintiff's side:

Ex.P.1 - Letter of Acceptance dated 22.05.2013

Ex.P.2 - Agreement for bidding dated 28.05.2013

Ex.P.3 - Contractors all risk Insurance Policy dated 22.11.2013.

Ex.P.4 - Copy of Quotation dated 18.01.2014.

Ex.P.5 - Special Contingency Policy dated 11.03.2014.

Ex.P.6 - Letter granting permission to move INS VAGLI submarine to Chennai Port dated 22.04.2014.

Ex.P.7 - Letter granting permission to berth the submarine dated 22.04.2014.

Ex.P.8 - Letter regarding movement of Ex. INS VAGLI to JD6 from sea dated 22.04.2014.

Ex.P.9 - Letter regarding report on submarine hauling not possible at Mamallapuram and seeking to berth at Chennai port dated 22.04.2014.



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Ex.P.10 - Statement of Account of Bharat Marine Services dated 29.04.2014.

Ex.P11 - Letter seeking to send the insurance claim documents dated 02.05.2014.

Ex.P12 - Claim Form sent by Defendant dated 17.05.2014.

Ex.P13 - Reply dated 02.06.2014.

Ex.P14 - Letter pertaining to the claim for the loss of hauling ramps dated 22.09.2014

Ex.P15 - Letter regarding offer to purchase the scrap of steel ramp recovered and Quotation dated 06.10.2014.

Ex.P16 - Letter of acceptance for Quotation dated 08.10.2014.

Ex.P.17 - E-mail Copy regarding the claim dated 14.10.2014.

Ex.P.18 - E-mail Copy regarding the claim dated 03.12.2014.

Ex.P.19 - Survey Report dated 27.12.2014.

Ex.P.20 - Revised claim bill from 19.03.2014 to 27.02.2015 for Rs.20031216/- enclosing documents from 21 to 38 dated 19.01.2015.

Ex.P.21 - Placement of Platform Rs.10,67,420/- dated 19.03.2014.



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Ex.P.22 - Steel Procurement - Rs. 2,54,651/- dated
25.03.2014.

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Ex.P.23 - Steel Procurement - Rs.38,33,940/- dated
28.03.2014.

Ex.P.24 - Steel Procurement - Rs.22,63,956/- dated
01.04.2014.

Ex.P.25 - Pulley Work - Rs.50,000/- dated 02.04.2014.

Ex.P.26 - Steel Wire Rope - Rs.6,61,677/- dated 17.04.2014.

Ex.P.27 - Fabricated Steel Platform - Labour - Air
Compressor - Rs.25,16,400/- dated 25.04.2014.

Ex.P.28 - Provide 50T Winch Hire charges - Rs.3,85,395/-
dated 09.04.2014.

Ex. P29 - Diesel for Generator from 10.03.2014 to
14.04.2014 - Rs.3,00,000/- dated 15.04.2014.

Ex. P30 - Diesel for Crane & Poclain - 10.03.2014 to
14.04.2014 - Rs.1,80,000 /- dated 15.04.2014.

Ex.P31 - Underwater Diving - Part - Rs.2,00,000/- dated
25.04.201.

Ex.P.32 - Providing Heavy Duty 50 ton Winch Charges -
Rs.4,67,795/- dated 05.05.2014.

Ex.P33 - Hire charges for Crawler with Lattice -
Rs.12,85,174/- dated 05.05.2016.



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Ex.P34 - Genset Hire - 31.03.2014 to 28.04.2014 -
Rs.3,29,034 dated 08.05.2014.

Ex.P35 - Poclain Labour Work -Rs.1,75,000 dated
19.05.2014.

Ex.P36 - Air Bagas — 2 Nos. - Rs.2,97,867 dated
19.05.2014.

Ex.P37 - Salvage Steel Ramp Surfaced at Site – Rs.3,84,800
dated 24.11.2014.

Ex.P38 - Expenses for INS Vagli – Rs.53,78,107 dated
27.02.2015.

Ex.P39 - Copy of letter dated 28.01.2015.

Ex.P40 - Reply dated 07.03.2015.

ExP.41 - Notice (Copy) dated 01.06.2015.

Ex.P.42 - E-mail rejecting the claim of the surveyor and
seeking for settlement of the claim dated 13.08.2015

Ex.P43 - Reminder sent by Email dated 12.01.2016.

Ex.P44 - Reminder to settle the claim dated 12.01.2016.

Ex.P45 - Notice (Copy) dated 06.02.2016.

Ex.P46 - Notice (Copy) dated 09.02.2016.



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Ex.P47 - E-mail copy regarding expenses for submarine project by EWPL till 24.04.2014

Ex.P48 - Repudiation of claim dated 15.07.2016.

Ex.P49 - Reply by Plaintiff to Defendant (Copy) dated 11.08.2016

Ex.P50 - Photographs showing work-in-progress and damages caused to Steel ramps and other equipments.

Ex.P51 - Resolution passed by the plaintiff in board of Directors meeting dated 04.11.2016.

Ex.P.52 - Proceedings of the Member Secretary, TN State Coastal Zone Management dated 17.10.2023.

List of witness on the side of the Defendants:

D.W.1 - Mr. K.L.Ananthanarayanan.

D.W.2 - Mr.G.M.J.Kamalakumar.

List of Exhibits marked on the defendants' side:

Ex.D.1 - Letter dated 27.07.2018.

Ex.D.2 - Letter enclosing Arbitration dated 10.08.2019.



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Ex.D.3 - E-mail attaching CAR, EAR and WC quote Slip dated 06.11.2013.

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Ex.D.4 - Survey Report dated 27.12.2014.

Ex.D.5 - Affidavit dated 04.11.2016.

Ex.D.6 - Letter of Acceptance dated 31.01.2015.

Ex.D.7 - Letter dated 23.02.2015.

Ex.D.8 - Addendum dated 23.02.2015.

Ex.D.9 - Statement of Defense dated 01.05.2017.

Ex.D.10 - Final Award dated 08.03.2019.

Ex.D.11 - Email dated 19.06.2013.

Ex.D.12 - Email dated 19.06.2013

Ex.D.13 - Power Point presentation dated 05.03.2021.

Ex.D.14 - Letter dated 06.12.2017.

Ex.D.15 - Letter dated 14.11.2019.

Ex.D.16 - Certificate under Section 65 B of the Evidence Act.

Ex.D.17 - Email dated 18.08.2021.



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P.T. ASHA. J,

kan/shr

Pre-delivery Judgment in
C.S.No. 63 of 2017

06.12.2023