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C.S.(Comm. Div.)No.63 of 2022 and C.S.No.128 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2024

Pronounced on : 19.02.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**C.S.(Comm. Div.)No.63 of 2022
and
C.S.No.128 of 2021**

PERS Enterprises Private Ltd.,
Rep. by its Chief Executive / Director
Mr.K.Ravikumar,
No.3, Veerasamy Street,
West Mambalam,
Chennai - 600 033.

... Plaintiff
In C.S.(Comm. Div.)No.63 of 2022
and
... Defendant
In C.S.No.128 of 2021

Vs.

Aavanor Systems LLP,
Rep. by its partner Mr.M.Vennimalai,
S-60, 20th Street, Anna Nagar,
Chennai - 600 040.
(Amended as per order dated 21.12.2021
in A.No.3148 of 2021
in C.S.(Comm. Div.) No.128 of 2021)

... Defendant
In C.S.(Comm. Div.)No.63 of 2022
and



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... Plaintiff

In C.S.No.128 of 2021

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Prayer in C.S.(Comm. Div.)No.63 of 2022: Complaint filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the C.P.C. for the following reliefs:

a) Direct the defendant to pay a sum of Rs.37,45,000/- paid by the plaintiff based on the work order dated 18.03.2017, together with interest @ 18% p.a. on Rs.37,45,000/- from the date of complaint till the date of realisation;

b) Direct the defendant to pay a sum of Rs.25,00,000/- towards damages to the plaintiff;

c) Direct the defendant to pay cost of the suit.

Prayer in C.S.No.128 of 2021: Complaint filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the C.P.C. and Section 2 (1) (c) (xviii) of the Commercial Courts Act, 2015 (Act 4 of 2016) for the following reliefs:

a) Direct the defendant to pay a sum of Rs.1,04,52,423/- (Rupees Once Crore Four Lakhs Fifty-Two Thousand Four Hundred and Twenty Three Only);

b) Direct the defendant to pay future interest on the sum of



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Rs.61,28,320/- (Rupees Sixty One Lakhs Twenty Eight Thousand Three Hundred and Twenty Only) @ 18% from the date of filing of the suit i.e., 05.01.2021 till the date of realisation;

c) Cost of the suit.

For Plaintiff

In C.S.(Comm. Div.)No.63 of 2022

and

Defendant

In C.S.No.128 of 2021

:

Mr.Sathish Parasaran

Senior Counsel

for Mr.Vijayan Subramanian

For Defendant

In C.S.(Comm. Div.)No.63 of 2022

and

Plaintiff

In C.S.No.128 of 2021

:

Mr.Karthik Seshadri

Assisted by

Mr.C.Suraj

for M/s.Iyer and Thomas

COMMON JUDGMENT

C.S.(Comm. Div.)No.63 of 2022 has been filed by PERS Enterprises Private Ltd. (*In short **PERS***) against Aavanor Systems Pvt. Ltd. (*In short **Aavanor***) seeking for recovery of a sum of Rs.37,45,000/- together with interest @ 18% p.a. from the date of plaint till the date of



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realisation. Originally, the said suit was filed by PERS before the City Civil Court, Chennai as O.S.No.2545 of 2019 and was transferred thereafter to the file of the Commercial Division of this Court and re-numbered as Tr.C.S.(Comm. Div.)No.63 of 2022. PERS also claimed a sum of Rs.25,00,000/- as damages from Aavanor.

2. C.S.No.128 of 2021 has been filed by Aavanor against PERS, seeking for recovery of a sum of Rs.1,04,52,423/- together with interest on a sum of Rs.61,28,320/- @ 18% p.a. from the date of filing of the suit i.e., 05.01.2021 till the date of realisation.

3. Both the suits were tried together, pursuant to an order passed by this Court on 08.03.2022 in A.Nos.1414 and 3149 of 2021 in C.S.No.128 of 2021.

4. Aavanor is a software developer. PERS is running a Hospital under the name and style of SRM Institutes for Medical Science (SIMS) Hospital.

5. A work order dated 18.03.2017 was placed by PERS with Aavanor for the following:



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a) Towards purchase of "Doc 99" software for its SIMS Hospital

for a sum of Rs.40,00,000/-;

b) A sum of Rs.9,90,000/- towards implementation, training and customization of software for 330 man-days (At the rate of Rs.3,000/- per man-day).

6. Under the work order, PERS will have to make payment to Aavanor in the following manner:

- a) 50% as advance payment;
- b) 25% of payment after 60 days of contract;
- c) Balance 25% after 120 days.

7. It is an admitted fact that PERS has paid the first and second instalments equivalent to 75% of the total sum payable to Aavanor as per the work order dated 18.03.2017.

8. PERS claims that despite the expiry of 120 days on 16.07.2017, Aavanor has not even completed one module out of 28 modules as committed by Aavanor. According to PERS, "Doc 99" software was not



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installed by Aavanor and they did not go live. According to PERS, Aavanor did not fulfil the terms and conditions of the work order and therefore, they are entitled for refund of the advance payments made under the work order from Aavanor. According to them, they also suffered losses on account of the non fulfilment of the work order by Aavanor. In such circumstances, PERS has filed the suit in Tr. C.S.(Comm. Div.)No.63 of 2022 against Aavanor, seeking for refund of the advance payments together with interest and also seeking for damages of Rs.25,00,000/-.

9. However, the contentions of PERS has been denied by Aavanor, who claims that "Doc 99" software was installed and went live on 06.06.2017. According to them, pursuant to a joint discussion between Aavanor and PERS, there was a modification to the scope of work by e-mail dated 07.04.2017 and 10.04.2017, wherein, PERS agreed to pay an additional sum of Rs.6,00,000/- to Aavanor for the purpose of customizing the "Doc 99" software to run it on PostgreSQL database.

10. According to Aavanor, the payment terms stood revised in the following manner:



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a) Payment of 2nd tranche of an amount equivalent to 25% of the work order upon installation of "Doc 99" software on the servers of SIMS Hospital;

b) Rs.6,00,000/- as an additional payment for customizing "Doc 99" software to run it on the PostgreSQL database along with final payment of an amount equivalent to 25% of the work order.

11. According to Aavanor, they started working on the customization of "Doc 99" software in order to enable it to run on the PostgreSQL database and on the other hand, Aavanor was also simultaneously working on the process of collating and feeding the inputs provided by PERS into "Doc 99" software in order to go live on the servers of PERS. According to Aavanor, by 06.06.2017, initial mandate of 330 man-days provided under the work order had come to an end.

12. According to Aavanor, as soon as PostgreSQL database was installed on the servers of SIMS Hospital on 06.06.2017, Aavanor's "Doc 99" software was installed on the servers of SIMS Hospital on 07.06.2017 and on the same date, "Doc 99" software went live. Therefore, Aavanor categorically denies PERS's statement that the



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software was not installed on the servers of SIMS Hospital and did not go live.

13. Aavanor also contends that the initial mandate of 330 man-days came to an end on 06.06.2017. But, PERS agreed that any further implementation, training and customization to be done by Aavanor would be paid at Rs.3,000/- per man day from 07.06.2017 onwards. According to Aavanor, the e-mail correspondences exchanged with PERS between June, 2017 and January, 2018 would establish that various additional customization works were being carried out by Aavanor at the instance of PERS. According to them, not once there was any issue of delay raised by PERS on the quality of service rendered by Aavanor. According to Aavanor, they carried out further customization work for the benefit of PERS on the request made through e-mail dated 11.09.2017. Aavanor raised an invoice on PERS with respect to further customization work carried out by them between June, 2017 and August, 2018 and they sought payment from PERS for the additional services rendered at the request of PERS. According to Aavanor, the invoice, which was despatched for the additional customization work, was merged with the invoice dated 11.09.2017.



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14. Later on the invoices dated 11.09.2017 and 13.01.2018 raised by Aavanor were also sent to PERS for the additional customization work carried out by them. According to Aavanor, PERS has not paid the balance money as per the work order and also for the additional customization work carried out by them for which invoices dated 11.09.2017 and 13.01.2018 were raised by Aavanor. Aavanor has also raised another invoice dated 30.04.2018 along with their legal notice dated 30.04.2017 with respect to customization work carried out by them for PERS between 07.01.2018 and 18.01.2018.

15. The details of the invoices raised by Aavanor on PERS for the additional customization work carried out by them and payments to be received by Aavanor from PERS are detailed hereunder:

<i>Sl. No.</i>	<i>Reference</i>	<i>Amount to be paid in Rs.</i>
1.	Invoice No.PERS/4a dated 11.09.2017 towards customization charges for work done from 07.06.2017 till 07.09.2017	22,65,000
2.	Invoice No.PERS/5 dated 13.01.2018 towards customisation	26,62,080



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Sl. No.	Reference	Amount to be paid in Rs.
	charges for work done from 08.09.2017 till 06.01.2018	
3.	Balance towards License fee	2,95,000
4.	Email dated 07.04.2017 (For conversion of Doc 99 software to integrate it into PostgreSQL database	7,08,000
5.	Invoice No.PERS/6a dated 30.04.2018 enclosed along with legal notice for customisation for work done from 07.01.2018 till 19.01.2018	1,98,240
Total		61,28,320

16. According to Aavanor, since the outstanding payments were not made by PERS, they terminated the contract with PERS by their e-mails dated 19.01.2018 and 10.02.2018. According to Aavanor, since PERS failed to make payments despite various demands made by them towards invoices, Aavanor issued a legal notice dated 30.04.2018 to PERS, claiming the outstanding payable by PERS to Aavanor. According to Aavanor, PERS by its reply dated 05.05.2018 issued a vague reply, denying its liability by raising frivolous disputes as an afterthought.

17. Aavanor on 18.06.2018, issued a statutory notice under Section 8 of the Insolvency and Bankruptcy Code , 2016 (In short **IBC**), to initiate corporate insolvency resolution process against PERS. PERS by its letter dated 28.06.2018 replied to the aforesaid statutory notice issued



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by Aavanor by its reply notice dated 05.05.2018.

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18. According to Aavanor, only as a counter blast to the statutory notice issued under Section 8 of the IBC, 2016, PERS filed a suit before the City Civil Court, Chennai in O.S.No.2545 of 2019 which was transferred to the file of this Court later and the suit was re-numbered as C.S.(Comm. Div.)No.63 of 2022.

19. PERS has filed the suit against Aavanor in Tr.C.S.(Comm. Div.)No.63 of 2022, seeking for the following reliefs:

a) Direct the defendant to pay a sum of Rs.37,45,000/- paid by the plaintiff based on the work order dated 18.03.2017, together with interest @ 18% p.a. on Rs.37,45,000/- from the date of plaint till the date of realisation;

b) Direct the defendant to pay a sum of Rs.25,00,000/- towards damages to the plaintiff;

c) Direct the defendant to pay cost of the suit.

20. Aavanor has filed the suit against PERS in C.S.No.128 of 2021, seeking for the following reliefs:



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a) Direct the defendant to pay a sum of Rs.1,04,52,423/- (Rupees Once Crore Four Lakhs Fifty-Two Thousand Four Hundred and Twenty Three Only);

b) Direct the defendant to pay future interest on the sum of Rs.61,28,320/- (Rupees Sixty One Lakhs Twenty Eight Thousand Three Hundred and Twenty Only) @ 18% from the date of filing of the suit i.e., 05.01.2021 till the date of realisation;

c) Cost of the suit.

21. Based on the pleadings of PERS and Aavanor, the following issues were framed by the III Additional City Civil Court, Chennai in O.S.No.2545 of 2019 which has now been re-numbered as Tr. C.S.(Comm. Div.)No.63 of 2022 by this Court:

"a) Whether PERS is entitled to recover the suit amount with interest as prayed for?;

b) Whether PERS is entitled to recover damages as prayed for?"

22. The following issues were also framed separately by this Court



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in C.S.No.128 of 2021 on 19.04.2022:

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"a) Whether the suit is barred by limitation?;

b) Whether Aavanor completed 28 modules as per the work order dated 18.03.2017?;

c) Whether the invoices dated 11.09.2017, 13.01.2018, 30.04.2018 pertain to work carried out by Aavanor for PERS?;

d) Whether Aavanor was required to obtain the consent of PERS in respect of deploying resources for the installation and customization of the "DOC 99" software and, if so, whether such consent was obtained?;

e) Whether Aavanor has established that manpower corresponding to 2000 man days was deployed?;

f) Whether there was delay in provision of services by Aavanor to PERS and if so, whether such delay is attributable to Aavanor?;

g) Whether Aavanor is entitled to the balance license fee?;

h) Whether Aavanor is entitled to the amount claimed in the suit?;

i) Whether the parties are entitled to any other relief?"

23. Before the City Civil Court, Chennai in O.S.No.2545 of 2019, PERS, the plaintiff in the said suit, examined its witness Mr.B.Anandakrishnan, who is its Authorized Signatory, as PW1.



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Mr.B.Anandakrishnan (PW1), has also filed his proof affidavit in O.S.No.2545 of 2019, reiterating the contents of the plaint filed in O.S.No.2545 of 2019 before the City Civil Court, Chennai. Through, Mr.B.Anandakrishnan (PW1), the following documents were marked as exhibits:

<i>Date</i>	<i>Documents</i>	<i>Exhibit No.</i>
18.03.2017	Work Order	P1
30.04.2018	Legal Notice sent on behalf of Defendant	P2
05.05.2018	Legal Notice sent on behalf of Plaintiff along with acknowledgement	P3
13.07.2021	General Power of Attorney / Authorisation	P4

24. Aavanor's counsel also cross examined Mr.B.Anandakrishnan (PW1) before the City Civil Court, Chennai in O.S.No.2545 of 2019. O.S.No.2545 of 2019 filed by PERS against Aavanor before the City Civil Court, Chennai was transferred to the file of this Court and re-numbered as Tr. C.S.(Comm. Div.)No.63 of 2022 and both the suits in C.S.No.128 of 2021 and Tr. C.S.(Comm. Div.)No.63 of 2022 were ordered to be tried together by this Court. C.S.No.128 of 2021 has been filed by Aavanor against PERS in respect of the same subject matter.

25. Before the learned Additional Master - II, Aavanor's Managing



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Partner, Mr.M.Vennimalai was examined as a witness (DW1) on behalf of Aavanor in C.S.No.128 of 2021. A proof affidavit was also filed by Mr.M.Vennimalai, (DW1), reiterating the contents of the plaint in C.S.No.128 of 2021. Mr.M.Vennimalai (DW1) was also cross examined by the counsel for PERS. Through Mr.M.Vennimalai (DW1), the following documents were marked as exhibits on the side of Aavanor.

"Ex.D1 is the online print out copy of Various email correspondence exchanged by the plaintiff and the defendant prior to issuance of Work Order between 01.03.2017 06.03.2017.

Ex.D2 is the photocopy of the Work Order placed by the defendant dated 18.03.2017.

Ex.D3 is the online print out copy of the Invoice No.PERS/1 dated 18.3.2017 issued by the plaintiff and dispatched to the defendant by email dated 18.03.2017.

Ex.D4 is the email issued by the plaintiff by which the defendant was informed of the cost involved in customization dated 04.04.2017.



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Ex.D5 is the Print out copy of the correspondences dated 07.04.2017 & 10.04.2017.

Ex.D6 is the print out copy of the correspondences between the plaintiff and the defendant dated 21.04.2017 - 06.06.2017.

Ex.D7 is the print out copy of the Email dated 08.08.2017

Ex.D8 is the print out copy of Email Invoice No.PERS/4a dated 11.09.2017 raised by the plaintiff and dispatched to the defendant by email dated 11.09.2017.

Ex.D9 is the print out copy of Email correspondences between the plaintiff and defendant on various dates which evidences the fact that implementation customization and training work was being proceeded with at the instructions of the defendant at its workplace dated 16.06.2017 18.01.2018.

Ex.D10 is the Email print out Invoice No.PERS/5 dated 13.01.2018 raised by the plaintiff and



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dispatched to the defendant email dated 14.01.2018.

Ex.D11 is the emails correspondence letters issued by the plaintiff to the defendant requesting to clear the outstanding dues dated 19.01.2018, 10.02.2018.

Ex.D12 is the office copy of the Legal Notice issued by the plaintiff to the defendant dated 30.04.2018

Ex.D13 is the service copy of the Reply Notice dated 05.05.2018.

Ex.D14 is the photocopy of demand Notice vide FORM IV issued by the plaintiff to the defendant under IBC 2016 dated 19.06.2018.

Ex.D15 is the photocopy of the Dispute notice issued by the defendant dated 28.06.2018

Ex.D16 is the photocopy of the plaint filed by the defendant vide CS 563/2018 before the Hon'ble High court of Madras (Currently stands



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transferred to III Additional City Civil Court and has been renumbered as OS 2545 of 2019.

Ex.D17 is the photocopy of the Application filed by the plaintiff under S.9 of IBC, 2016 before the NCLT Chennai Bench dated 02.12.2019.

Ex.D18 is the photocopy of the Counter affidavit dated 29.01.2020 filed by PERS in IBA/1427/2019 before the NCLT Chennai Bench.

Ex.D19 is the photocopy of the Order passed by the NCLT Chennai Bench in IBA/1427/2019 dated 05.05.2020.

Ex.D20 is the photocopy of the Appeal filed by the plaintiff before the Hon'ble National Company Appellate Law Tribunal vide Company Appeal (AT) No. 1024 of 2020 against the order passed by the NCLT, Chennai Bench in IBA/142/2019.

Ex.D21 is the photocopy of the Pre Suit Mediation Notice issued to the defendant dated 30.12.2020.



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Ex.D22 is the Board Resolution in favour of Mr.Vennimalai dated 25.08.2022 marked with subject to objection (The counsel for plaintiff in C.S.No.63/2022 the objected mark the document on the ground that this document was not filed along with plaint)"

The counsel for PERS also cross examined Aavanor's witness Mr.M.Vennimalai (DW1).

26. In C.S.No.128 of 2021, PERS, the defendant in the said suit was represented by its witness Mr.B.Anandakrishnan. Through him, the following documents were marked as exhibits on the side of PERS in C.S.No.128 of 2021:

"Ex.D1 is the photocopy of Work order dated 18.3.2017.

Ex.D2 is the photocopy of email sent by the plaintiff to defendant dated 10.04.2017. (Affidavit of under Section 65 B certificate is filed)

Ex.D3 is the photocopy of Written Statement filed by the plaintiff herein in C.S. No.563 of 2018



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*renumbered as O.S.No.2545 of 2019 dated -
05.12.2019.*

*Ex.D4 is the photocopy of General Power of
Attorney/authorization dated 13.07.2021."*

The counsel for Aavanor also cross examined PERS's witness Mr.B.Anandakrishnan in C.S.No.128 of 2021.

27. Heard, Mr.Sathish Parasaran, learned Senior Counsel for Mr.Vijayan Subramanian for PERS and Mr.Karthik Seshadri, learned Counsel Assisted by Mr.C.Suraj, learned counsel for M/s.Iyer and Thomas for Aavanor.

28. Mr.Sathish Parasaran, learned Senior Counsel for PERS after drawing the attention of this Court to the pleadings, documents marked as exhibits and the depositions would submit as follows:

a) Aavanor agreed to do 28 modules as explained in paragraph Nos.12 to 20 of the written statement filed by PERS in C.S.No.128 of 2021;

b) PERS agreed to pay Rs.9,90,000/- towards implementation,



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training and customization. The fee was fixed at Rs.9,90,000/- for implementation, training and customization work and further committed that the product in full will be handed over in 120 days and at that time, PERS agreed to pay the remaining 25% of the agreed payment;

c) Eventhough, 120 days period expired on 16.07.2017, Aavanor has not even completed one module out of 28 modules as committed by Aavanor under the work order dated 18.03.2017;

d) It is false to state that Aavanor used:

i) Eight resources for 80 days from 07.06.2017 to 07.09.2017;

ii) Eight resources for 94 days from 08.09.2017 to 06.01.2018; and

iii) Additional Customization was done for the period between 07.01.2018 and 18.01.2018.

f) It is submitted that except for one person nobody worked for Aavanor and PERS has already paid 75% of work order totalling a sum of Rs.41,81,750/- including service tax. PERS has paid Rs.9,90,000/- out of Rs.41,81,750/- towards implementation, training and customization (Rs.3,000/- per man days x 330 days). The said one person did not work for more than 30 days.



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g) Aavanor had not deployed 2,000 man days. Further, it is submitted that there was no evidence to show that Aavanor had requested for deployment of using 2,000 man days from PERS and not even a single e-mail to that effect has been produced. PERS has never agreed for such deployment. The invoices raised by Aavanor is totally false and the same has been created only to illegally extract money from PERS.

29. After drawing the attention of this Court to the pleadings and the exhibits marked on the side of Aavanor, Mr.Karthik Seshadri, learned counsel for Aavanor would submit as follows:

a) As seen from the e-mail dated 07.04.2017 and 10.04.2017 (Ex.D5), there was a modification to the scope of work. As per the modification, PERS agreed to pay an additional sum of Rs.6,00,000/- for the purpose of customizing the "Doc 99" software to run it on PostgreSQL data base;

b) As per Ex.D5 referred to supra, the payment terms stood revised in the following manner:

i) Payment of 2nd tranche of an amount equivalent to 25% of the work order upon installation of "Doc 99" software on the servers of SIMS Hospital;



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ii) Rs.6,00,000/- as an additional payment for customizing

"Doc 99" software to run it on the PostgreSQL data base along with final payment of an amount equivalent to 25% of the work order.

c) Pursuant to the above undertaking, on one hand, Aavanor started working on the customization of "Doc 99" software in order to enable it to run on PostgreSQL data base and on the other hand, Aavanor was also simultaneously working on the process of collating and feeding the inputs provided by PERS into the "Doc 99" software in order to go live on the servers of PERS;

d) By 06.06.2017, the initial mandate of 330 man days had come to an end. Thereafter, as soon as PostgreSQL data base was installed on the servers of SIMS Hospital on 06.06.2017, Aavanor's "Doc 99" software was installed on the servers of SIMS Hospital on 07.06.2017 and on the same date "Doc 99" went live;

e) E-mail correspondence between Aavanor and PERS dated 05.06.2017 and 06.06.2017 (Ex.D6 concerning the installation of "Doc 99" software);

f) PW1 during cross examination admits that one Mr.Parthiban, an employee of PERS has sent an email dated 03.07.2017, which shows the



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various modules which were running on the "Doc 99" software were installed by Aavanor on the servers of SIMS Hospital;

g) Further, PERS in its written statement in paragraph No.21 and 26, has unambiguously admitted that the converted software was installed by Aavanor on its servers in June 2017;

h) Therefore, the allegations made by PERS that the software was not installed on the servers of SIMS Hospital is false;

i) As the initial mandate of 330 man days came to an end on 06.06.2017, PERS agreed that any further implementation, training and customization to be done by Aavanor would be paid at Rs.3,000/- per man day from 07.06.2017 onwards;

j) E-mail correspondence exchanged between June 2017 and January 2018 would establish that various customization works were being carried at the instance of PERS and not once there was any issue of delay raised by PERS or quality of service rendered by Aavanor (Ex.D9);

k) In view of the additional customization work carried out by Aavanor, e-mail dated 08.08.2017 (Ex.D7) was sent by Aavanor to PERS along with an invoice with respect to further customization work to be carried out between June 2017 and August 2018. Later on, the aforesaid invoice which was despatched was merged with the invoice dated



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11.09.2017 as seen from the e-mail dated 11.09.2017;

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l) Later on, invoices dated 11.09.2017 and 13.01.2018, were also despatched by Aavanor by their e-mails dated 11.09.2017 and 14.01.2018;

m) The additional invoices were raised by Aavanor on PERS for the additional customization work carried out on behalf of PERS;

n) During the cross examination, PW1 had admitted the receipt of e-mail dated 08.08.2017 and also invoices dated 11.09.2017 and 13.01.2018 despatched by Aavanor through e-mail dated 11.09.2017 and 14.01.2018. PW1 has also admitted that no supporting documents were submitted by PERS to show that the invoices have been disputed. The aforesaid admission by PW1 can be seen as a response to question Nos.1 and 5 during the cross examination of PW1 on 22.06.2022 and also during the cross examination on 16.12.2021;

o) Further in the statement of admission or denial filed by PERS in C.S.No.128 of 2021, PERS had not denied the receipt of the aforesaid e-mails / invoices;

p) Neither in the pleadings nor has any evidence been placed to show that PERS had repudiated its invoices at the relevant point of time nor have they raised any dispute regarding the aforesaid invoices or



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service rendered by Aavanor;

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q) Invoice dated 30.04.2018 was also raised along with legal notice dated 30.04.2017 with respect to the customization work carried out between 07.01.2018 and 18.01.2018 (Ex.D12);

r) Frivolous allegation of delay has been raised by PERS by suppressing the factum of extension. PW1 has admitted that there has been no evidence placed to show that there was any delay on the part of Aavanor (Response by PW1 to question No.20 during the cross examination on 23.06.2022). E-mail correspondences exchanged between June, 2017 and January, 2018 would establish that various customization works were being carried out at the instance of PERS and not once there was any issue of delay raised by PERS on the quality of service rendered by Aavanor;

s) On 15.01.2018, PERS provided for revised completion dates in respect of various modules taking into account the fact that the additional customization request provided by PERS to Aavanor. On the very same date, i.e., on 15.01.2018, it was indicated by Aavanor that there was revised change request received from the representatives of PERS and it is likely to impact the delivery schedule and had provided its estimate for completion of different modules for the project(Ex.D9). Thereafter, on



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17.01.2018, PERS taking note of the contents of the email dated

15.01.2018 sent by Aavanor, agreed to the revised estimated date of completion (Ex.D9);

t) PW1 during the cross examination had admitted regarding the emails sent on 15.01.2018 and 17.01.2018 exchanged by the parties by which PERS, inter alia, extended the time due to various customization work sought for. It is clear that the extension of time by PERS to complete the customization due to various changes was sought for by the representatives of PERS. The evidence available on record would establish that PERS did not raise any issue of delay at any point of time, as at all times, customization was being carried out by Aavanor at the request of PERS;

u) By email dated 19.01.2018, Aavanor had made it clear that it would not be in a position to proceed with any customization work in respect of the software installed, unless and until, the outstanding owed to it is paid in full by PERS. Aavanor yet again by email and letter dated 10.02.2018 reiterated its stand taken on 19.01.2018. There was no reply to these mails as well. (Ex.D11);

v) PW1 has admitted the receipt of the email dated 19.01.2018 sent by Aavanor to PERS and has admitted that PERS has not denied the



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contents of the said email. However, with respect to the email dated 10.02.2018, PW1 states that the contents of the email dated 10.02.2018 were allegedly denied, but no document whatsoever has been placed by PERS to show that it has been denied;

w) Even at this stage, when Aavanor terminated the contract by emails dated 19.01.2018 and 10.02.2018 admittedly there was no response issued by PERS to emails dated 19.01.2018 and 10.02.2018;

x) Therefore, apart from various oral reminders to clear outstanding payments, inter alia, payments for further customization work were at least demanded on five occasions by way of the following emails:

i) Email dated 08.08.2017 requesting to clear outstanding payments;

ii) Email dated 13.09.2017 along with invoice dated 13.09.2017;

iii) Email dated 14.01.2018 along with invoice dated 13.01.2018;

iv) Email dated 19.01.2018 by Aavanor to PERS;

v) Email dated 10.02.2018 by Aavanor to PERS.

The receipt of the aforesaid emails and invoices is admitted by PERS



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during cross examination of PW1 and in the statement of admission and denial filed by PERS in C.S.No.128 of 2021. However, none of the invoices raised through the above emails were repudiated nor did PERS deny its liability upon receipt of the said emails;

y) As PERS failed to make payment despite various demands being made, Aavanor issued legal notice dated 30.04.2018 to PERS claiming the outstanding payable by PERS to Aavanor (Ex.D12);

z) It is at this stage after receipt of legal notice dated 30.04.2018, PERS by its reply dated 05.05.2018 issued a vague reply denying its liability by raising frivolous disputes as an afterthought;

aa) Thereafter, Aavanor on 18.06.2018 issued a statutory notice under Section 8 of the IBC, 2016 to initiate corporate insolvency resolution process against PERS;

ab) PERS by letter dated 28.06.2018 replied to the said statutory notice issued by Aavanor and referred to its reply notice dated 05.05.2018 (Ex.D12);

ac) As a counter blast to the statutory notice dated 18.06.2018, PERS filed a civil suit in O.S.No.2545 of 2019 before the City Civil Court, Chennai to project as if there is some pre-existing dispute. O.S.No.2545 of 2019 was subsequently transferred to the file of this



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Court and re-numbered as C.S.(Comm. Div.)No.63 of 2022. The said suit filed by PERS was to pre-empt Aavanor from filing a petition for corporate insolvency resolution process against PERS.

30. In support of his contentions that Aavanor is entitled for payment towards the additional invoices dated 11.09.2017 and 13.01.2018, the learned counsel for Aavanor relied upon the following decisions:

a) A decision of the Honourable Supreme Court in the case of ***Food Corporation of India and Others Vs. Vikas Majdoor Kamdar Sahkari Mandli Limited reported in 2007 (13) SCC 544;***

b) A decision of the Honourable Supreme Court in the case of ***State of West Bengal Vs. B.K. Mondal and Sons reported in AIR 1962 SC 779;***

c) A decision of a learned Single Judge of the Delhi High Court in the case of ***S.N.Nandy and Co. Vs. Nicco Corporation Ltd. reported in ILR (2011) Delhi II 795;***

d) A Division Bench Judgment of the Delhi High Court upholding the aforesaid decision of the Delhi High Court in the case of ***S.N.Nandy***



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and Co. Vs. Nicco Corporation Ltd., reported in 2011 SCC Online Del

4656.

Discussion:

31. As seen from the pleadings and the exhibits, the following facts are noticed by this Court:

a) "Doc 99" software of Aavanor runs only on Oracle database by default. As PERS felt that it was not economically feasible for them to install Oracle software on their server, Aavanor suggested a cost effective option available to it vide email dated 04.04.2017 which involved customization of "Doc 99" to run it on PostgreSQL database;

b) By email dated 07.04.2017, PERS had also requested Aavanor to customize "Doc 99" software to run it on the PostgreSQL database and the payment terms stood revised in the following terms:

i. Payment of 2nd tranche of an amount equivalent to 25% of the work order upon installation of "Doc 99" software on the servers of SIMS Hospital by Aavanor;

ii. Rs.6,00,000/- as an additional payment for customising "Doc 99" software to run it on PostgreSQL database, along with final



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payment of an amount equivalent to 25% of the work order (Ex.D5).;

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c) Aavanor by reply dated 10.04.2017 has accepted and acknowledged the terms agreed by both parties (Ex.D5);

d) Aavanor claims that "Doc 99" software was installed and it went live in SIMS Hospital on 07.06.2017. PERS in its written statement in C.S.No.128 of 2021 in paragraph No.21 and 26 has admitted that the converted software was installed in June 2017. Paragraph Nos.21 and 26 of the written statement is extracted hereunder:

"21) The Defendant states that the Plaintiff's program was in Oracle, it was agreed that the same would be converted to Postgre open source language for which an additional cost of Rs.6,00,000/- (Rupees Six Lakhs) was quoted vide their Email date 10.4.2017 and the same shall be released along with the final payment of 25% on completion. The converted program was installed in the month of June only and the next payment due 60 days from installation but still the Defendant paid 25% of cost plus customization and



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installation second payment is good faith without waiting for 60 days from Installation.

26) The Defendant sent a reply notice dated 05.05.2018 stating that the conversion of the module/product to a POSTGRE SQL was completed only in June 2017 and the same was admitted by Plaintiff in their legal notice and therefore the question of commencement of work on 20/03/2017, as stated in their legal notice is totally false and misleading."

e) The witness of PERS (PW1) is B.Anandakrishnan. He has himself admitted in his deposition that he had no personal knowledge about the contract and that he is deposing only based on the documents. He is also not a technical person having knowledge about the technical features of "Doc 99" software. Excepting for examining PW1, PERS has not examined any other witness to establish their case that "Doc 99" software supplied by the defendant did not go live.

f) On the contrary, Aavanor has examined Mr.M.Vennimalai, its Managing Partner to whom the work order placed by PERS was



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personally addressed on behalf of Aavanor. When Aavanor categorically contends that "Doc 99" software has been installed in the servers of PERS, it is the bounden duty of PERS to prove through oral and documentary evidence through the aid of witness(s) who were personally involved in the customisation of "Doc 99" software in the servers of PERS but they failed to examine any such witness;

g) The additional claim through the two invoices made by Aavanor against PERS is only at the rate disclosed in the work order dated 18.03.2017 (Ex.D2);

h) As seen from one of the emails dated 03.07.2017 found in Ex.D9, Mr. Parthiban, an employee of PERS, has sent an email to Aavanor which shows that various modules were running on "Doc 99" software installed by Aavanor on the servers of SIMS Hospital which disproves the claim of PERS that "Doc 99" software was not installed by Aavanor in the servers of SIMS Hospital. Through, Ex.D7, an email dated 08.08.2017, Aavanor has requested PERS to make payment for database migration to PostgreSQL database which PERS agreed to pay as per the email dated 07.04.2017 and also raised an invoice No.PERS/4 dated



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08.08.2017 requesting to make payment in respect of the customisation work done for various modules from 07.06.2017 till 07.08.2017. Another invoice dated 11.09.2017 (Ex.D8) was also raised by Aavanor on PERS towards customisation done by them for the period from 07.06.2017 to 07.09.2017 which consolidates earlier invoice (Ex.D7) dated 08.08.2017. In the said email dated 11.09.2017, Aavanor requested PERS to treat the earlier invoice dated 08.08.2017 as cancelled as it got merged with the invoice dated 11.09.2017;

i) As seen from various email correspondences between Aavanor and PERS placed on record between June 2017 and June 2018 it confirms the fact that implementation, customisation and training work was being carried out by Aavanor at the instance of PERS and with their knowledge;

j) Through email dated 14.01.2018, Aavanor raised another invoice dated 13.01.2018 (Ex.D10) for customisation for the period from 08.09.2017 to 06.01.2018 and reminded PERS to clear the outstanding dues (Ex.D10);



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k) By email dated 15.01.2018, PERS has agreed for revised completion dates in respect of various modules taking into account the fact their additional customisation requests made to Aavanor (Ex.D9). On the very same date, i.e., on 15.01.2018, it was indicated by Aavanor as there were several change requests received from PERS with respect to various modules, it is likely to impact the delivery schedule and provided its estimate for completion of different modules for the project (Ex.D9);

l) By email dated 17.01.2018 (Ex.D9), PERS taking note of the contents of the email dated 15.01.2018 sent by Aavanor, PERS agreed for the revised estimated date of completion. Aavanor by email dated 19.01.2018 (Ex.D11) requested PERS to clear outstanding dues as it has become economically not feasible for Aavanor due to non payment by PERS and indicated that in the event of failure to clear the outstanding dues, it requested PERS to treat the contract as terminated. Though PERS has denied the receipt of the aforesaid mails from Aavanor they have not produced any documentary evidence to disprove the claim of Aavanor;

m) As seen from the documents marked as exhibits as well as from the oral evidence of PERS (PW1) it is clear that PERS never repudiated



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the claim of Aavanor at the first instance despite having received the additional invoices raised by Aavanor on PERS dated 11.09.2017 (Ex.D8) and 13.01.2018 (Ex.D10). As rightly contended by the learned counsel for Aavanor, there was no contemporaneous repudiation for Aavanor's additional invoices dated 11.09.2017 and 13.01.2018 by PERS. PW1 (witness of PERS) has also admitted through his cross examination, the receipt of additional invoices from Aavanor and he has also admitted that PERS did not repudiate at the first instance the sums of money claimed by Aavanor under the additional invoices dated 11.09.2017 and 13.01.2018;

n) Aavanor by reminder email dated 10.02.2018 (Ex.D11) requested PERS to clear the unpaid amount under the additional invoices on or before 20.02.2018 until 10.02.2018. As seen from the evidence available on record, PERS has not raised any dispute whatsoever in respect of additional customisation work done by Aavanor at the request of PERS;

o) Aavanor has also issued a legal notice dated 30.04.2018 to PERS, calling upon PERS to pay the outstanding dues of Rs.61,28,920/-



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with interest at 24% per annum (Ex.D12). Only for the first time, through their reply dated 05.05.2018 (Ex.D13) PERS has raised a dispute and has also made a counter claim against Aavanor which is not supported by any documentary evidence. Aavanor had also issued a statutory demand notice dated 19.06.2018 to PERS under Section 8 of the IBC, 2016 (Ex.D14). A reply dated 28.06.2018 (Ex.D15) was also sent by PERS to the demand notice dated 19.06.2018 (Ex.D14) issued by Aavanor. Only after the receipt of the statutory demand notice dated 19.06.2018 issued under Section 8 of the IBC, 2016 by Aavanor, PERS has instituted a Civil Suit in O.S.No.2545 of 2019 on the file of the City Civil Court, Chennai against Aavanor on 18.07.2018 (Ex.D16). It is clear that the said civil suit was filed by PERS only to pre-empt any legal action being instituted by Aavanor against PERS before the National Company Law Tribunal (NCLT), Chennai. The Civil Suit in O.S.No.2545 of 2019 on the file of the City Civil Court, Chennai was later transferred to the file of this Court and later renumbered as Tr. C.S.(Comm. Div.)No.63 of 2022;

p) Application vide No.IBA.1427 of 2019 was filed by Aavanor before the NCLT, Chennai on 02.12.2019 against PERS and they initiated Corporate Insolvency Resolution Process (Ex.D17). A counter



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was also filed in the said application by PERS and in the said counter as well, PERS has not disputed the receipt of various invoices received by Aavanor. However, in view of the dispute raised by PERS, by order dated 05.05.2020, Application vide No.IBA.1427 of 2019 came to be dismissed by the NCLT, Chennai on 05.05.2020. An Appeal filed by Aavanor also got dismissed by the National Company Law Appellate Tribunal (NCLAT) vide its order dated 17.11.2020 passed in Company Appeal (AT) No.1024 of 2020. Thereafter, pre suit mediation notice was issued to PERS by Aavanor on 30.12.2020 (Ex.D21). Only thereafter, the suit C.S.No.128 of 2021 came to be filed by Aavanor against PERS on 05.01.2021 before the Commercial Division of this Court. PERS has also expressed its unwillingness to participate in the pre suit mediation through its reply dated 29.01.2021;

q) This Court in A.No.1414 of 2021 in C.S.No.128 of 2021 directed PERS to furnish security to the tune of Rs.51,50,000/- by its order dated 12.08.2021. The appeal preferred by PERS against the order dated 12.08.2021 passed by a learned Single Judge of this Court was disposed of by the Division Bench of this Court by directing PERS to deposit a sum of Rs.25,00,000/- to the credit of C.S.No.128 of 2021



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instead of furnishing security for a sum of Rs.51,50,000/- as directed by the learned Single Judge of this Court. PERS has also deposited the sum of Rs.25,00,000/- to the credit of C.S.No.128 of 2021 in compliance with the directions given by the Division Bench of this Court;

r) By order dated 08.03.2022, this Court directed both the suits C.S.No.128 of 2021 and Tr. C.S.(Comm. Div.)No.63 of 2022 to be tried jointly;

s) The appeal filed by Aavanor before the NCLAT, Chennai Bench vide Company T.A.No.26 of 2021 against the order dated 05.05.2020 passed by NCLT, Chennai in IBA.1427 of 2019 was also dismissed as withdrawn;

32. Unjust enrichment is dealt with in Sections 68 to 72 of the Contract Act. Unjust can be defined as something which is not in accordance with the accepted standards of fairness or justice and which is also unfair. When a person gains something from another, then it is said that the person is enriched. This enrichment can be both just and unjust.

When a person benefited from the services of another, has done those



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services non gratuitously then the person who has enjoyed the benefit of the additional services must compensate the person who has rendered the additional services for and on behalf of the other person who has also made request for the same. A person who has been unjustly benefited by another is required to compensate the other. Therefore, if a person has gained a benefit from the other person, thereby causing loss to another person, then the person who has gained is required to reimburse the plaintiff equal to the amount of benefit received by the defendant;

33. According to Black's Law Dictionary, unjust enrichment is defined as:

i. The retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected;

ii. A benefit obtained from another, not intended as a gift and not legally justifiable for which the beneficiary must make restitution or recompense;

iii. The area of law dealing with unjustifiable benefits of this kind.



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34. The invoices raised by Aavanor were not repudiated at the first instance during the contemporaneous time and were repudiated by PERS only after Aavanor issued a legal notice to PERS through notice dated 30.04.2018 (Ex.D12). Therefore, it is clear that having got the benefit of the additional customisation services from Aavanor, PERS is duty bound to pay for the same. The additional invoices raised by Aavanor are dated 11.09.2017 (Ex.D8), 13.01.2018 (Ex.D10) and 30.04.2018 (Ex.D12) which was attached to the legal notice dated 30.04.2018 (Ex.D12). The said invoices had also been raised by Aavanor only as per the rates fixed under the work order dated 18.03.2017 (Ex.D2) at Rs.3,000/- per man day;

35. The total claim for 2,000 man days by Aavanor under the invoices dated 11.09.2017 (Ex.D8), 13.01.2018 (Ex.D10) and 30.04.2018 (Ex.D12) which was attached to the legal notice dated 30.04.2018 (Ex.D12) for 2,000 man days is also established by Aavanor, considering the nature of the additional customisation work done by them for the benefit of PERS. No contra evidence has also been produced by PERS to disprove the claim of Aavanor for the 2,000 man days. When PERS has not disputed the invoices raised by Aavanor till the issuance of



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the legal notice dated 30.04.2018, this Court necessarily has to accept the statement of Aavanor that they have employed additional resources and they are entitled for 2,000 man days as claimed in the additional invoices dated 11.09.2017 (Ex.D8), 13.01.2018 (Ex.D10) and 30.04.2018 (Ex.D12) which was attached to the legal notice dated 30.04.2018 (Ex.D12). The Managing Partner of Aavanor has been examined as a witness, on behalf of Aavanor, whereas, a person who does not have personal knowledge of the contract has been examined as a witness on behalf of PERS. The weight of evidence, both oral and documentary evidence, placed on record by Aavanor, far out weighs the weight of evidence produced through a person who does not have personal knowledge of the contractual relationship between Aavanor and PERS. The details of payments payable to Aavanor by PERS are set out hereunder:

<i>Sl. No.</i>	<i>Reference</i>	<i>Amount to be paid in Rs.</i>
1.	Invoice No.PERS/4a dated 11.09.2017 towards customization charges for work done from 07.06.2017 till 07.09.2017	22,65,000
2.	Invoice No.PERS/5 dated 13.01.2018 towards customisation charges for work done from 08.09.2017 till 06.01.2018	26,62,080
3.	Balance towards License fee	2,95,000



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Sl. No.	Reference	Amount to be paid in Rs.
4.	Email dated 07.04.2017 (For conversion of Doc 99 software to integrate it into PostgreSQL database)	7,08,000
5.	Invoice No.PERS/6a dated 30.04.2018 enclosed along with legal notice for customisation for work done from 07.01.2018 till 19.01.2018	1,98,240
Total		61,28,320

36. Based on the oral and documentary evidence available on record, it is clear that PERS has committed breach of contract and they have also got benefit of the additional customisation work from Aavanor for which they have failed to pay Aavanor towards invoices raised by them dated 11.09.2017 (Ex.D8), 13.01.2018 (Ex.D10) and 30.04.2018 (Ex.D12) which was attached to the legal notice dated 30.04.2018 (Ex.D12).

37. Though, learned counsel for Aavanor pleads that Section 70 of the Indian Contract Act dealing with the principle of Quantum Meruit applies to the facts of the instant case, this Court is of the considered view that the said principle does not apply as there is a valid contract in the form of work order between the parties. In the case on hand, though Quantum Meruit principle does not apply, the common law principle of



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unjust Enrichment applies. Both the principles of Quantum Meruit and unjust Enrichment discuss the aim of preventing one party performing the contract and the person preventing the other takes advantage of the services received without paying for the same. The difference between the two concepts is that the unjust enrichment principle deals with issues where there is a failure to pay for the services and quantum meruit principle deals with such issues where the fair or reasonable amount should be paid. To be successful in a suit upon quantum meruit, the service provided i.e., the plaintiff must prove that the receiver of the services i.e., the defendant, agreed to the provided services, knowing that he has to pay the plaintiff for the services provided and that the defendant has unjustly enriched, that he has received something for nothing. In simpler terms, it means that he received for the services but did not pay in return, which was not the agreement. The amount given in a suit upon quantum meruit, especially where there is no written contract specifying an amount, is generally based on the fair market value for the services rendered.

38. There is a subtle difference between quantum meruit principle and unjust enrichment principle.



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39. The theory of unjust enrichment means that when a person is benefitted at the expense of another person, it causes loss to one party and unjust gain to another party. This theory came from English Law. In India, the remedy for unjust enrichment is that the court directs the unfairly benefitted person to give back all the benefits which he/she acquired unfairly or to give compensation. The defendant is obliged by the fundamental principles of natural justice and equity to pay back the money.

40. Aavanor is entitled to the payment of conversion which PERS assured to pay by email dated 07.04.2017 along with the balance 25% balance payment as per the work order dated 18.03.2017 (Ex.P1). Aavanor is also entitled to the payment of the invoices dated 11.09.2017 (Ex.D8), 13.01.2018 (Ex.D10) and 30.04.2018 (Ex.D12) which was attached to the legal notice dated 30.04.2018 (Ex.D12) for the additional customization work by applying the principle of unjust enrichment for the following reasons:

a) Aavanor has lawfully extended its service even after the lapse of 330 man days on 06.06.2017 which can be seen by virtue of email



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correspondences between June 2017 and January, 2018 exchanged by the parties;

b) Aavanor had rendered those services not intending to do gratuitously and invoices dated 11.09.2017 (Ex.D8), 13.01.2018 (Ex.D10) and 30.04.2018 (Ex.D12) which was attached to the legal notice dated 30.04.2018 (Ex.D12) towards additional customization work were shared during the relevant point of time between June 2017 and January, 2018. In furtherance to that even by emails dated 19.01.2018 and 10.02.2018, Aavanor called upon PERS to pay the outstanding dues;

c) PERS has availed benefit of the additional customization service during the aforesaid period. When PERS despite receipt of invoices dated 11.09.2017 and 13.01.2018 and also emails dated 19.01.2018 and 10.02.2018 did not repudiate any of the aforesaid demands made by Aavanor despite having multiple opportunity to do so, it is all clear that PERS was only particular about enjoying the benefits without making any payment;

d) Aavanor has made a claim for the additional work under the invoices dated 11.09.2017 (Ex.D8) and 13.01.2018 (Ex.D10) only as per the rates for the man days fixed under the work order dated 18.03.2017 issued by PERS. The number of man days at 2,000 has also been arrived



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at by Aavanor for the additional customisation work which cannot be held to be in excess as no contra evidence has been produced by PERS.

The nature of the additional work and the time consumed also make this Court to believe that 2,000 man days would have been used by Aavanor.

41. Admittedly, even as late as on 17.01.2018, PERS without any demur has extended the time to Aavanor for customization. Even at the relevant point of time, when demands were made through emails dated 19.01.2018 and 10.02.2018 by Aavanor for payments, there was neither any repudiation nor any response to the aforesaid emails by PERS. All these would go to show that Aavanor delivered additional customization services to PERS not intending to do gratuitously and PERS also enjoyed the benefit of the said work.

42. The Honourable Supreme Court in the case of ***Food Corporation of India and Others Vs. Vikas Majdoor Kamdar Sahkari Mandli Limited reported in 2007 (13) SCC 544*** by applying the principles enumerated under Section 70 of the Contract Act, 1872 has



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held that when a party has done additional work for another, not intending to do so gratuitously and when the other party has availed the benefits of such services, then in such a case even when the oral agreement between the parties is not proved, the party which has availed the benefits / services is bound to compensate for the additional work. Section 70 of the Contract Act, 1872 which follows the quantum meruit principle, in stricto sensu, it does not apply to the facts of the instant case since there is a contract in the form of work order, but, based on unjust enrichment, which is a common law remedy, PERS is liable to compensate Aavanor for the additional customisation work done by them on behalf of PERS as per the additional invoices raised by them.

43. The above principles have also been discussed by the Honourable Supreme Court in the case of ***State of West Bengal Vs. B.K. Mondal and Sons reported in AIR 1962 SC 779*** and also by the Honourable Calcutta High Court in ***Food Corporation of India Vs. Gopal Chandra Mukherjee reported in 2016 SCC Online Cal 4955***.

44. A learned Single Judge of the Delhi High Court in the case of



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Delhi II 795 has also applied Section 70 of the Indian Contract Act and held the defendant liable. A Division Bench of the Delhi High Court in the case of ***Nicco Corporation Ltd. Vs. S.N.Nandy reported in 2011 SCC Online Del 4656*** upheld the judgment passed by the learned Single Judge in ***S.N.Nandy and Co. Vs. Nicco Corporation Ltd.*** As discussed earlier, even though Section 70 of the Indian Contract Act does not apply to the case on hand in view of there being a contract in the form of work order, unjust enrichment remedy which is a common law remedy, which is also based on quantum meruit principle as per Section 70 of the Indian Contract Act applies to the facts of the instant case and therefore, PERS is liable to compensate Aavanor as per the suit claim made in C.S.No.128 of 2021.

45. Being a commercial transaction, Aavanor is also entitled for interest from PERS for the delayed payment. Though Aavanor has claimed 18% per annum in the plaint filed in C.S.No.128 of 2021, this Court is of the considered view considering the fact that under the contract, interest has not been fixed, this Court is fixing the rate of



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interest payable by PERS for the delayed payment period at 6% per annum, considering the present bank rate of interest. The claim for damages as well as for the refund of the amounts paid by PERS to Aavanor pursuant to the work order is unsustainable as it is seen from the oral and documentary evidence available on record, the said claim has been made by PERS only as a pre-emptive action to pre-empt Aavanor from seeking legal action for recovering the legitimate dues from PERS. There is no merit in the suit filed by PERS in Tr.C.S.(Comm. Div.)No.63 of 2022 , whereas, the suit claim in C.S.No.128 of 2021 has been proved by Aavanor against PERS and therefore, the suit claim as prayed for in C.S.No.128 of 2021 has to be decreed in favour of Aavanor and the suit filed by PERS in C.S.(Comm. Div.)No.63 of 2022 has to be dismissed.

46.The issues framed by this Court in both the suits are answered in the following manner:

Tr.C.S.(Comm. Div.)No.63 of 2022 :

a) Whether PERS is entitled to recover the suit amount with interest as prayed for?

Since the breach of contract has been committed only by PERS and PERS has also not paid for the additional customisation service done



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by Aavanor on their request, PERS is not entitled for the suit claim.

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b) Whether PERS is entitled to recover damages as prayed for?

Since the breach of contract has been committed only by PERS, they are not entitled for any damages from Aavanor, more so, the admitted claim of Rs.25,00,000/- claimed in Tr.C.S.(Comm. Div.)No.63 of 2022.

C.S. No.128 of 2021:

a) Whether the suit is barred by limitation?

The suit filed by Aavanor is well within the period of limitation. The last invoice raised by Aavanor on PERS was on 30.04.2018 and only for the first time in its reply dated 05.05.2018, PERS had denied its liability to Aavanor by raising frivolous dispute as an afterthought. C.S. No.128 of 2021 having been filed before this Court on 05.01.2021 is well within the three year period from the date when the cause of action arose and hence, the suit is within the period of limitation.

b) Whether Aavanor completed 28 modules as per the work order dated 18.03.2017?



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As seen from the evidence available on record, Aavanor has proved that as per the Work Order, 28 modules were completed. The disputes raised by PERS are all afterthoughts to deprive payment of the legitimate dues of Aavanor.

c) Whether the invoices dated 11.09.2017, 13.01.2018, 30.04.2018 pertain to work carried out by Aavanor for PERS?

As seen from the oral and documentary evidence, Aavanor has proved that the invoices dated 11.09.2017, 13.01.2018, 30.04.2018 pertain to the work carried out by Aavanor for PERS.

d) Whether Aavanor was required to obtain the consent of PERS in respect of deploying resources for the installation and customization of the "DOC 99" software and, if so, whether such consent was obtained?

As seen from the oral and documentary evidence available on record, PERS has given its implied consent for the deployment of additional resources of Aavanor for the installation and customisation of the "DOC 99" software and only at the request of PERS, Aavanor did the additional customisation works.

e) Whether Aavanor has established that manpower corresponding



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to 2000 man days was deployed?

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Aavanor has proved through oral and documentary evidence that 2000 man days are required to be deployed and were indeed deployed for completing the additional customisation work given by PERS.

f) Whether there was delay in provision of services by Aavanor to PERS and if so, whether such delay is attributable to Aavanor?

As seen from the evidence available on record, the delay is attributable only on account of PERS and only due to their frequent request for change of their requirements, there was a delay and the delay was not on the part of Aavanor.

g) Whether Aavanor is entitled to the balance license fee?

Having not committed any breach of contract, Aavanor is certainly entitled to the balance license fee as claimed in the plaint.

h) Whether Aavanor is entitled to the amount claimed in the suit?

Yes, Aavanor is entitled to the amount claimed in the suit minus 18% interest, which is on the higher side and instead the same is reduced by this Court to 6% per annum, considering the present banking rate of



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interest.

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47.In the result,

a)the suit filed by Aavanor in C.S. No.128 of 2021 is decreed by directing PERS to pay Aavanor a sum of Rs.61,28,320/- together with interest at 6% per annum from 19.01.2018, being the date when Aavanor demanded the outstanding payments due to them in writing through their email dated 19.01.2018 sent to PERS, till the date of realisation.

b)The suit filed by PERS against Aavanor in Tr. C.S.(Comm. Div.)No.63 of 2022 is dismissed.

c)PERS is directed to pay costs of both the suits to Aavanor.

48. Since PERS has deposited a sum of Rs.25,00,000/- to the credit of C.S.No.128 of 2021 pursuant to directions given by the Division Bench of this Court, Aavanor is permitted to file appropriate application for payment out of the said sum in their favour together with accrued



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interest if any as they have succeeded in proving their claim in
C.S.No.128 of 2021.

19.02.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
ab



C.S.(Comm. Div.)No.63 of 2022 and C.S.No.128 of 2021

List of Witness examined on the side of the Plaintiff (PERS) in Tr.C.S.(Comm. Div.)No.63 of 2022 (O.S.No.2545 of 2019):-

Mr.B.Anandakrishnan (PW1)

List of the Exhibits marked on the side of the Plaintiff (PERS) in Tr.C.S.(Comm. Div.)No.63 of 2022 (O.S.No.2545 of 2019):-

<i>Date</i>	<i>Documents</i>	<i>Exhibit No.</i>
18.03.2017	Work Order	P1
30.04.2018	Legal Notice sent on behalf of Defendant	P2
05.05.2018	Legal Notice sent on behalf of Plaintiff along with acknowledgement	P3
13.07.2021	General Power of Attorney / Authorisation	P4

List of Witness examined on the side of the Plaintiff (Aavanor) in C.S.No.128 of 2021:-

Mr.M.Vennimalai (DW1)

List of the Exhibits marked on the side of the Plaintiff (Aavanor) in C.S.No.128 of 2021:-

"Ex.D1 is the online print out copy of Various email correspondence exchanged by the plaintiff and the defendant prior to issuance of Work Order between 01.03.2017 06.03.2017.



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Ex.D2 is the photocopy of the Work Order placed by the defendant dated 18.03.2017.

Ex.D3 is the online print out copy of the Invoice No.PERS/1 dated 18.3.2017 issued by the plaintiff and dispatched to the defendant by email dated 18.03.2017.

Ex.D4 is the email issued by the plaintiff by which the defendant was informed of the cost involved in customization dated 04.04.2017.

Ex.D5 is the Print out copy of the correspondences dated 07.04.2017 & 10.04.2017.

Ex.D6 is the print out copy of the correspondences between the plaintiff and the defendant dated 21.04.2017 - 06.06.2017.

Ex.D7 is the print out copy of the Email dated 08.08.2017

Ex.D8 is the print out copy of Email Invoice No.PERS/4a dated 11.09.2017 raised by the



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plaintiff and dispatched to the defendant by email dated 11.09.2017.

Ex.D9 is the print out copy of Email correspondences between the plaintiff and defendant on various dates which evidences the fact that implementation customization and training work was being proceeded with at the instructions of the defendant at its workplace dated 16.06.2017 18.01.2018.

Ex.D10 is the Email print out Invoice No.PERS/5 dated 13.01.2018 raised by the plaintiff and dispatched to the defendant email dated 14.01.2018.

Ex.D11 is the emails correspondence letters issued by the plaintiff to the defendant requesting to clear the outstanding dues dated 19.01.2018, 10.02.2018.

Ex.D12 is the office copy of the Legal Notice issued by the plaintiff to the defendant dated 30.04.2018



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C.S.(Comm. Div.)No.63 of 2022 and C.S.No.128 of 2021

Ex.D13 is the service copy of the Reply Notice dated 05.05.2018.

Ex.D14 is the photocopy of demand Notice vide FORM IV issued by the plaintiff to the defendant under IBC 2016 dated 19.06.2018.

Ex.D15 is the photocopy of the Dispute notice issued by the defendant dated 28.06.2018

Ex.D16 is the photocopy of the plaint filed by the defendant vide CS 563/2018 before the Hon'ble High court of Madras (Currently stands transferred to III Additional City Civil Court and has been renumbered as OS 2545 of 2019.

Ex.D17 is the photocopy of the Application filed by the plaintiff under S.9 of IBC, 2016 before the NCLT Chennai Bench dated 02.12.2019.

Ex.D18 is the photocopy of the Counter affidavit dated 29.01.2020 filed by PERS in IBA/1427/2019 before the NCLT Chennai Bench.



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Ex.D19 is the photocopy of the Order passed by the NCLT Chennai Bench in IBA/1427/2019 dated 05.05.2020.

Ex.D20 is the photocopy of the Appeal filed by the plaintiff before the Hon'ble National Company Appellate Law Tribunal vide Company Appeal (AT) No. 1024 of 2020 against the order passed by the NCLT, Chennai Bench in IBA/142/2019.

Ex.D21 is the photocopy of the Pre Suit Mediation Notice issued to the defendant dated 30.12.2020.

Ex.D22 is the Board Resolution in favour of Mr.Vennimalai dated 25.08.2022 marked with subject to objection (The counsel for plaintiff in C.S.No.63/2022 the objected mark the document on the ground that this document was not filed along with plaint)"

List of Witness examined on the side of the Defendant (PERS) in C.S.No.128 of 2021:-

Mr.B.Anandakrishnan (PW1)

List of the Exhibits marked on the side of the Defendant (PERS) in C.S.No.128 of 2021:-



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C.S.(Comm. Div.)No.63 of 2022 and C.S.No.128 of 2021

"Ex.D1 is the photocopy of Work order dated 18.3.2017.

Ex.D2 is the photocopy of email sent by the plaintiff to defendant dated 10.04.2017. (Affidavit of under Section 65 B certificate is filed)

Ex.D3 is the photocopy of Written Statement filed by the plaintiff herein in C.S. No.563 of 2018 renumbered as O.S.No.2545 of 2019 dated - 05.12.2019.

Ex.D4 is the photocopy of General Power of Attorney/authorization dated 13.07.2021."

19.02.2024

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ABDUL QUDDHOSE, J.

ab

Pre-delivery judgment in
C.S.(Comm. Div.)No.63 of 2022
and
C.S.No.128 of 2021

19.02.2024