

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-11-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.991 of 2009

ABT Limited
 represented by its Chief Executive
 Officer Shanmugasundaram
 180, Race Course Road, Coimbatore 18 ... Plaintiff

vs

1.Vitta Zeus Energy Pvt Ltd.,
 represented by its Chief Executive Officer
 J.Jeyakumar
 33/2, Saraswathi Apartments
 10th Avenue, Ashok Nagar, Chennai 600 083

2.Wegtech
 represented by its General Manager
 R.M.Sekar
 33/2, Swathi Apartments
 10th Avenue, Ashok Nagar, Chennai 600 083

3.Wind Power India Ltd.,
 represented by Sanjay Rajani
 A-801, Nirman Complex
 Opposite Havmor Restaurant Navrangpura
 Ahmedabad 380 009

.. Defendants

Civil Suit filed under Order IV Rule 1 and 2 of
 Original Side Rules read with Order VII Rule 1 of Civil
 Procedure Code praying for the relief of damages,
 compensation, permanent injunction and for costs as
 stated therein.

For Plaintiff : Mr.K.Govi Ganesan

For Defendants : Set ex-parte

JUDGMENT

A perusal of the plaint averments would
 disclose among other things, that on 16.7.2007, the first
 defendant offered to install 6 Wind Electric Generators
 (WEG) and the plaintiff has also confirmed the said

order, and it was to be installed at the rate of Rs.1,25,00,000/- per WEG, under turn key basis vide letter of intent dated 2.8.2007, and the first defendant made a promise to commission all the 6 WEGs before September, 2007. The payments made by the plaintiff in this regard, were also accounted and acknowledged by the defendants 1 and 2. The plaintiff-company has also permitted it's Manager viz. Mr.Paulraj, to help the defendants. However, on 14.9.2007, the installation of 6 WEGs was revised to 4 WEGs on account of the said delay. It is the specific case of the plaintiff that it was due to the incompetence on the part of the defendants 1 and 2 and as a consequence, the plaintiff suffered loss of money and generation of electricity and also other consequential loss in availing tax benefits over the depreciation and that apart, it has to settle the loans obtained for installation of WEGs. It is also the case of the plaintiff that the third defendant and their men/agents/servants did not in any manner, guide the plaintiff for the smooth running of the installed WEGs and due to lack of service and other backups, the plaintiff was left with no other option except to take effective and appropriate measures to run the WEGs themselves to avoid further consequential loss and was also constrained to replace the consumables and spares under the instructions of the in-charge official of the first defendant. The plaintiff would further state that

adding fuel to the fire, the third defendant sent an e-mail on 2.10.2008, to the plaintiff and it was suitably replied by it vide e-mail dated 3.10.2008, and as a consequence, the plaintiff has suffered heavy loss and hence, came forward to file the suit for recovery of damages and compensation and also for permanent injunction and other consequential relief.

2. Though the defendants were served, they have not chosen to enter appearance and hence the third defendant was set ex-parte on 3.9.2014, and the defendants 1 and 2 were set ex-parte on 17.9.2014.

3. The following issues are framed for adjudication:-

(i) Whether there was an agreement entered into between the plaintiff and the defendants for installation of 6 WEGs?

(ii) Whether the payments made by the plaintiff, are for the installation of the said WEGs?

(iii) Whether on account of lapses on the part of the defendants, the plaintiff has suffered any damages and thereby, it is entitled to recover damages and compensation?

(iv) Whether the plaintiff is entitled for the decree for permanent

injunction?

(v) To what relief, the plaintiff is entitled to?

4.The Legal Officer of the plaintiff-company has filed his proof affidavit marking Exs.P1 to P36, and also examined himself as P.W.1.

5.The learned Counsel appearing for the plaintiff, has drawn the attention of this Court to the plaint averments, oral evidence of P.W.1 and the documentary evidence viz. Exs.P1 to P36, as well as the written arguments and would submit that the pleadings coupled with the oral and documentary evidence, have probablised the case of the plaintiff and on account of deliberate inaction and lapses on the part of the defendants, the plaintiff has suffered loss and consequently, it is entitled to claim damages and compensation as well as the relief of permanent injunction and prays for decreeing the suit with costs.

6.This Court has considered the submissions of the learned Counsel appearing for the plaintiff, and also perused the materials placed before it in the form of pleadings, oral and documentary evidence.

7. ISSUE No. (i) :-

7(i) A perusal of Ex.P4 letter, dated 2.8.2007, would disclose that based on the quotation sent by the first defendant, a letter of intent has been issued and as per the same, the Wind Electric Generators have to be

commissioned before September, 2007 and the plaintiff has also issued cheques for a sum of Rs.75,00,000/- towards advance on 2.8.2007, and a deposit of Rs.1,00,00,000/- was made in the bank account of the first defendant on 9.8.2007, and a further deposit of Rs.1,00,00,000/- was made on 14.8.2007, in the very same bank account and thus, a sum of Rs.2,75,00,000/- more than 35% of the advance payment, was paid by the plaintiff as evidenced by Ex.P5. Necessary lease agreements have also been entered into and the foundation work was also in progress as evidenced by Ex.P6, and pursuant to the demand made by the first defendant, a sum of Rs.1,50,00,000/- was credited to the first defendant's bank account on 5.9.2007, and all of a sudden, the first defendant vide Ex.P7 letter, dated 12.9.2007, has intimated that only 4 locations were registered, whereas in the earlier communication dated 3.9.2007, the first defendant has intimated that the foundation work was in progress in respect of 6 locations.

7(ii) A perusal of Ex.P8 letter, dated 13.9.2007, would disclose that the plaintiff has indicated that as against 6 locations, the project work may not be completed on or before 30.9.2007, and has also raised a query how it was possible to complete the project by installation of 6 WEGs on time i.e., on or before 30.9.2007, and in response to the same, the first defendant sent a letter under Ex.P9 dated 14.9.2007,

alleging that the demands were not met by the plaintiff.

7(iii) Under Ex.P10 letter, dated 20.9.2007, the first defendant claimed a sum of Rs.65,00,000/- for installation of 6 WEGs and under Ex.P11, the plaintiff has drawn the attention of the first defendant with regard to the revised terms and clauses, and altered the installation to 4 WEGs and the first defendant has also raised a demand under Ex.P12 letter, dated 22.9.2007, claiming a sum of Rs.62.50 lakhs for commissioning 4 WEGs, for which, under Ex.P13, the second defendant, being the associate company of the first defendant, made a request to release the said sum.

7(iv) It is the specific case of the plaintiff, as already pointed out, that the first defendant did not complete the project as per schedule i.e., before 30.9.2007, and it was also pointed out in the series of letters marked as Ex.P15, and a meeting was also convened to discuss the project progress and the minutes of the meeting were marked as Ex.P16, wherein, it has been recorded that 3 wind mills have to be commissioned before 2.11.2007, and only after receipt of the certificates regarding the installation, the schedule for payment of Rs.50 lakhs for 4 WEGs could be decided and it has been further recorded that the first defendant is responsible for the commissioning and the plaintiff has no further

role to play.

7(v) Under Ex.P17 letter, dated 26.11.2007, the installation of 4 WEGs as against 6 WEGs, has been agreed upon and a copy of the calculation of loss generation was also marked as Ex.P18.

7(vi) In view of the above, this Court holds that there was an agreement entered into between the plaintiff and the defendants for installation of 6 WEGs and later on, it was modified to 4 WEGs. Therefore, issue No.(i) is answered in affirmative in favour of the plaintiff.

8. ISSUE No.(ii):- In view of the above said discussion and exhibits, this Court is of the view that the payments have been effected by the plaintiff in favour of the first defendant for the installation of 4 WEGs. This issue is answered affirmatively.

9. ISSUE No.(iii):- A careful scrutiny of the documentary evidence marked as Exs.P3 to P36, would disclose that the plaintiff has suffered loss of power generation on account of the lapses on the part of the defendants in delaying the commissioning of the WEGs and it has also to settle the debts by paying interest. Therefore, this issue is answered in affirmative in favour of the plaintiff.

10. ISSUE No.(iv) and (v):-

In the result, the suit is decreed as prayed

for, with costs. The plaintiff is entitled to damages of

Rs.74,52,000/- (Rupees seventy-four lakhs fifty-two

thousand only) from the defendants 1 to 3 jointly and severally. The plaintiff is also entitled to the compensation of a sum of Rs.10,31,000/- (ten lakhs thirty-one thousand only) from the defendants 1 to 3 jointly and severally and there shall be a decree for permanent injunction restraining the defendants, their men, agents and servants from in any way interfering with the possession and enjoyment of the plaintiff's installed WEGs.

List of Witnesses:-

P.W.1 Mr.C.S.Ramakanth

List of Exhibits:-

- P1 1.9.2014 Attested true copy of the proceedings of the meeting of the Board of Directors
- P2 Photocopy of the certificate of incorporation
- P3 16.7.2007 Original letter sent by the first defendant to the plaintiff
- P4 2.8.2007 Office copy of the letter of intent sent by the plaintiff to the defendant
- P5 Photocopy of the statement of accounts of the plaintiff maintained in the banks pertaining to wind mill transaction
- P6 3.9.2007 Original letter sent by the first defendant to the plaintiff
- P7 12.9.2007 Original letter sent by the first defendant to the plaintiff
- P8 13.9.2007 Copy of the letter sent by the plaintiff to the defendant
- P9 14.9.2007 Original letter sent by the first defendant to the plaintiff
- P10 20.9.2007 Original letter sent by the first

defendant to the plaintiff

- P11 22.9.2007 Office copy of the letter sent by the plaintiff to the first defendant
- P12 22.9.2007 Original letter sent by the first defendant to the plaintiff
- P13 24.9.2007 Original letter sent by the second defendant to the plaintiff
- P14 28.9.2007 Photocopy of the letter sent by the Chief Electrical Inspector to Government, Guindy, to the plaintiff
- P15 3.10.2007 Original letter sent by the first defendant to the plaintiff
- P16 29.10.2007 Minutes of the meeting held between the plaintiff and the first defendant
- P17 26.11.2007 Original letter sent by the first defendant to the plaintiff
- P18 Copy of calculation of loss generation
- P19 19.9.2007 Certified copy of sale deed executed in favour of the plaintiff registered as Doc.No.1351/2007 at SRO, Thovalai
- P20 19.9.2007 Certified copy of sale deed executed in favour of the plaintiff registered as Doc.No.1354/2007 at SRO, Thovalai
- P21 19.9.2007 Certified copy of sale deed executed in favour of the plaintiff registered as Doc.No.1355/2007 at SRO, Thovalai
- P22 14.8.2007 Photocopy of the purchase order issued by the first defendant to one Aerorotronixs
- P23 20.9.2007 Photocopy of the advance payment receipt issued by M/s.Aeorrotronixs
- P24 19.9.2007 Photocopy of the receipt
- P25 19.9.2007 Photocopy of the receipt
- P26 19.9.2007 Photocopy of the receipt

- P27 2.1.2008 Photocopy of the receipt
- P28 3.1.2008 Photocopy of the receipt
- P29 11.6.2008 Photocopy of the receipt
- P30 11.6.2008 Photocopy of the receipt
- P31 3.1.2008 Photocopy of the letter sent by the third defendant to the plaintiff
- P32 11.9.2008 Photocopy of the letter sent by the plaintiff to the third defendant
- P33 2.10.2008 Copy of e-mail sent by the third defendant to the plaintiff
- P34 3.10.2008 E-mail sent by the plaintiff to the third defendant
- P35 Photocopies of the invoices and bills (13nos)
(series)
- P36 Statement showing the energy generated through
(series) wind mill for the period from October 2007 to
December 2008

Sd/M.S.N.J
19.11.2015

//Certified to be a true copy//

Dated this the day of सत्यमेव जयते 2016

S.s/.14.06.2016 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies
of the Order/Judgment Decree in this format.