

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMARY SUIT NO. 502 OF 2016

Amax Holdings Pvt.Ltd.

... Plaintiff

Versus

Tamil Nadu Generation & Distribution

Corporation Limited (TANGEDCO) & Ors.

... Defendants

Mr. Mehul Shah for the Plaintiff.

None for the Defendants.

CORAM : S.J. KATHAWALLA, J.
DATED : 24TH JANUARY, 2017

JUDGMENT :

1. The above Summary Suit is filed by the Plaintiff under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for an Order and Decree against the Defendants to pay to the Plaintiff a sum of Rs. 6,25,78,463/- with further interest on Rs.5,23,66,914/- at the rate of 18% per annum or at such other rate as this Court may deem fit, from the date of the Suit till payment and / or realization and for costs of the present Summary Suit.

2. The Receivable Factoring Agreement dated 6th December, 2011, executed between the Plaintiff and Defendant No. 3, under which the Plaintiff agreed to provide receivable factoring services for the receivables from sale of power by Defendant No. 3 to Defendant No. 1 for outstanding invoices for the period 20th November, 2010 to 1st November, 2011 aggregating to Rs. 5,23,66,914/- . Defendant No. 3 had also furnished a copy of the letter dated

December, 2011 addressed by Defendant Nos. 2 and 3 confirming that the outstanding arrears payable to Defendant No. 3 for sale of power to Defendant No. 1 through Wind Energy Generators (WEG) for the period from 20th November, 2010 to 1st November, 2011 was Rs. 5,23,66,914/-.

3. The Plaintiff in good faith believed the assurances of Defendant No. 3 and on the basis of the said letter dated December, 2011 of Defendant No. 2 certifying and confirming outstanding payable to Defendant No. 3, accepted the above proposal of Defendant No. 3 and agreed to provide receivable factoring services to Defendant No. 3.

4. After the said amount of Rs.5,23,66,914/- Defendant Nos. 1 and 2 were to collect the outstanding invoices and pay the amount directly to the Plaintiff. This fact was informed by Defendant No. 3 to Defendant Nos. 1 and 2 by their letter dated 8th December, 2011. The Defendants failed to make payments as agreed. In view thereof, the Advocate for the Plaintiff by his letter dated 4th March, 2015 called upon Defendants Nos. 1 and 2 to pay the sum of Rs.5,23,66,914/- with interest at the rate of 18% per annum to the Plaintiff from the date of receipt of the said notice till payment and / or realization. The Defendants failed and neglected to make any payments to the Plaintiff, because of which the Plaintiff filed the above Summary Suit against the Defendants to realize its claim as per the Particulars of Claim annexed and marked as Exhibit-T to the Plaint. After filing of the Summary Suit, the Plaintiff sought to serve the Writ of Summons on the Defendants. However, despite having received the same, as can be seen from the Affidavit proving service dated 23rd August, 2016 filed by the Advocate

for the Plaintiff, the Defendants have not entered their appearance. The Plaintiff is therefore entitled to a Decree and Order as prayed. The Plaintiff has tendered the original documents before the Court. In view of Sub Clause (3) of Rule 2 of Order XXXVII of the Code of Civil Procedure, 1908, the Plaintiff is forthwith entitled to a Decree against the Defendants. However, from the date of filing of the Suit, the Plaintiff is allowed to recover interest from the Defendants at the rate of 18% per annum on the said sum of Rs. 5,23,66,914/- . Hence the following order :

- i. The Defendants are ordered and decreed to pay to the Plaintiff, a sum of Rs.6,25,78,463/- with further interest on Rs.5,23,66,914/- at the rate of 18% per annum from the date of the Summary Suit till payment and / or realization.
- ii. The Defendants shall pay to the Plaintiff the costs of this Suit.
- iii. A copy of this Judgment shall be served on the Defendants by Registered Post A.D. at the address shown in the Plaint, by the Advocate for the Plaintiff.
- iv. The office shall return the original documents to the Advocate for the Plaintiff upon the Advocate for the Plaintiff handing over photostat copies of the said documents duly certified by him as true copies.
- v. The Suit is accordingly disposed of. Refund of Court Fees, if any as per Rules.
- vi. Refund of Court Fees, if any, as per Rules.

(S.J.KATHAWALLA, J.)