

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.04.2018

PRONOUNCED ON: 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.126 of 2014

1. The Bharat Sanchar Nigam Limited, Tamil Nadu Circle
represented by its DGM (Enterprises Business)
Office of the Chief General Manager, Telecom BSNL
Tamil Nadu Circle, Ethiraj Salai, Chennai-8

2. The General Manager Telecom BSNL,
South Bypass Road, Vannarapettai
Tirunelveli 627003

Plaintiff

Vs

1. M/s.Infoplus Technology Private Limited
represented by its Director, R.Siva, Chennai 96

2. Anna University, represented by its Registrar
Guindy, Chennai-32

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC, for the reliefs as stated therein.

For Plaintiffs : Mr.M.S.Velusamy

For Defendants : Set Exparte

JUDGEMENT

This Civil Suit is filed, seeking a Judgement and Decree against the Defendants, (i) directing the Defendants to pay the outstanding amount of Rs.1,09,66,382/- together with interest at 18% p.a. from the date of bill date

(i.e.) 18.02.2012 up to 30.11.2013, amounting to Rs.35,20,659/- and in total a sum of Rs.1,44,87,041/- to the Plaintiffs and (ii) for costs of the suit.

2. The case of the Plaintiff is as follows:-

a. The Plaintiff Company is incorporated under the Companies Act, 1956, owned by the Government of India, providing all telecom services. The 1st Defendant is a software Company providing software technologies in educational sector and their activities were totally controlled by the Chief General Manager, BSNL, Tamil Nadu Circle. The 2nd Defendant University is affiliated under the UGC Act and established by the Government of Tamil Nadu in order to have control and supervision of all technical institutions within the State of Tamil Nadu. The branches of the 2nd Defendant University were opened in Tamil Nadu and one such branch was established at Tirunelveli as Anna University Branch at Tirunelveli, which controlled all the Engineering Colleges and other technical institutions.

b. In order to conduct e-Governance examination of the said Engineering Colleges within the control of Regional Anna University, Tirunelveli, tenders were called from the eligible persons by providing all e-connectivity and other services and facilities to conduct the e-Governance examinations of the various affiliated colleges, which are 74 in number. The 1st Defendant was the successful bidder and the 1st Defendant was given the said contract, by communication, dated 10.05.2010. Before that, the 1st Defendant had approached the Plaintiff at Chennai and requested to provide e-connection so as to complete the said examination as proposed by the Anna University in the said Engineering Colleges. Subsequently, a Memorandum of

Understanding was entered into between BSNL and the 1st Defendant. In pursuance to the said Memorandum of Understanding, the 2nd Defendant had also awarded the said contract in favour of the 1st Defendant and it was communicated to the affiliated colleges by the 2nd Defendant on 10.05.2010 and all the colleges had availed the facilities of Multiprotocol Label Switching (MPLS)-Virtual Private Networks (VPN), e-connection from 8.6.2010 from BSNL. On 14.5.2010, a provisional demand note was also placed by BSNL before the 1st Defendant, which contains the volume and value of the work and its corresponding amounts as stipulated therein. The 1st Defendant had also accepted the same. After accepting the demand note to the value of Rs.1,31,11,940/-, the 1st Defendant had placed purchase order dated 14.5.2010 for an amount of Rs.1,18,87,525/- (exclusive of service tax) and if the service tax is added, it would come to Rs.1,31,11,940/-.

c. In pursuance of the demand note, the 1st Defendant had also paid a sum of Rs.55 lakhs by way of a cheque dated 20.05.2010 drawn on ICICI Bank, Chennai. The BSNL, Tirunelveli represented by its General Manager was nominated and appointed as Nodal Agency for all works by letter dated 28.12.2010. In order to effectively execute the above said service, various meetings and other things had been held in the presence of the parties, which had been established by letter dated 26.4.2010 of the 2nd Defendant. All circuits are activated by installing all facilities and equipments in 62 colleges out of 74 colleges, in which the said work was done by the Plaintiffs in accordance with above Memorandum of Understanding, demand note and tender conditions and activated all services from 8.6.2010 and the 1st Defendant had

also availed the services from 8.6.2010 by conducting e-governance examinations conducted by the 2nd Defendant.

d. After completion of all services as provided by the Plaintiff, the 1st Defendant requested the Plaintiffs to discontinue the above said service by letter dated 30.1.2012, in which it was stated that in view of the freezing of accounts of Anna University, Tirunelveli by the Chairman, Technical education, the payments were not effected and the 1st Defendant undertook to pay the same as soon as they receive payments from the Anna University. It shall be paid on or before February 2012 and hence, the circuits were closed and billed upto 17.2.2012. However, the 1st Defendant had failed to pay the balance amount of Rs.1,29,66,382/- and after persuasion, the 1st Defendant had paid Rs.20,00,000/- by way of cheque dated 30.1.2012 of Indian Bank.

e. The 1st Defendant had availed the services from 8.6.2010 from BSNL and even after receipt of the entire payment from the 2nd Defendant, the 1st Defendant had failed to discharge the balance bill amount of Rs.1,09,66,382/-. Hence, a legal notice was issued on 21.5.2012, demanding the said amount and a reply dated 11.6.2012 was sent by the 1st Defendant, containing false and frivolous allegations and claiming that the services were commenced only from December 2010 and not from 8.6.2010. The Plaintiff had also issued rejoinders dated 26.7.2012 and 29.8.2012. The communication dated 28.6.2013 of the Anna University clearly established that all the amounts were duly paid to the 1st Defendant. Apart from the said amount, the Plaintiff Company is also entitled for interest at the rate of 18% since it was a commercial transaction. In such circumstances, this civil suit has been filed,

seeking the reliefs as stated above.

3. After service of notice, the Defendants had entered appearance through a counsel. However, there was no representation for the Defendants on several occasions and hence, the matter was listed under the caption, 'Undefended Board. Further, no written statement had been filed by the Defendants. Hence, the Defendants were set exparte by order dated 28.02.2018 and recording of exparte evidence was ordered.

4. One Malathi Seshadri, DGM (Enterprise Business) of the Plaintiff Company has filed the proof affidavit for her chief examination and receipt of 23 documents as documentary evidence to prove the suit claim. In the Exparte Evidence, she was examined as PW.1 and she marked Exs.P1 to P23 as documentary evidence in order to prove the suit claim.

5. A perusal of the documents filed shows that a Memorandum of Understanding had been entered into by the parties, pursuant to which purchase order and demand note had been issued. Ex.P5 is the copy of cheque issued by the 1st Defendant. Ex.P8, Ex.P9, Ex.P10 and Ex.P11 are the bills and revised bills raised by the Plaintiffs. Ex.P15, Ex.P16 and Ex.P17 are the legal notices exchanged.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P23 adduced by PW.1, this Court is of the view that the plaintiffs have proved the suit claim and hence, the Plaintiffs are entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for, with costs. Time for payment is three months.

.06.2018

Index:Yes/No

Web:Yes/No

Srcm

1. List of Witnesses Examined on the side of the Plaintiffs:-

1. P.W.1 - Malathi Seshadri

2. List of Exhibits Marked on the side of the Plaintiffs:-

1. Ex.P1 is the copy of Memorandum of Understanding dated 19.03.2010.
2. Ex.P2 is the copy of the purchase order dated 14.5.2010.
3. Ex.P3 is the original demand note issued by the 1st Plaintiff to the 1st Defendant dated 14.5.2010.
4. Ex.P4 is the copy of letter issued by the 2nd Defendant to all the affiliated colleges to conduct the examination dated 10.5.2010.
5. Ex.P5 is the copy of cheques issued by the 1st Defendant to the Plaintiff dated 20.5.2010.
6. Ex.P6 is the copy of circular issued by the 1st Plaintiff for providing connection dated 14.5.2010.
7. Ex.P7 is the original letter of the 1st Plaintiff to the 2nd Plaintiff dated 28.12.2010.
8. Ex.P8 is the original bill raised by the 2nd Plaintiff dated 30.8.2011.
9. Ex.P9 is the original revised bill raised by the 2nd Plaintiff
- 10.Ex.P10 is the original revised bill raised by the 2nd Plaintiff dated 19.3.2012.
- 11.Ex.P11 is the original bill raised by the 2nd Plaintiff dated 21.8.2012.
- 12.Ex.P12 is the copy of reminder letter issued by the 1st Plaintiff to the 1st Defendant dated 7.2.2012.
- 13.Ex.P13 is the original communication sent by the 1st Defendant to the 1st Plaintiff to disconnect the service dated

30.1.2012.

14.Ex.P14 is the copy of the cheque issued by the 1st Defendant to the 1st Plaintiff dated 30.1.2012.

15.Ex.P15 is the original legal notice issued by the Plaintiff to the 1st Defendant dated 21.5.2012.

16.Ex.P16 is the original reply notice issued on behalf of the 1st Defendant dated 11.6.2012.

17. Ex.P17 is the copy of rejoinder on behalf of the Plaintiff dated 26.7.2012.

18. Ex.P18 is the original second rejoinder of the Plaintiff dated 29.8.2012.

19. Ex.P19 is the original communication of the 2nd Defendant to the 2nd Plaintiff dated 28.6.2013.

20. Ex.P20 (series (5 nos)) is the original letters issued by the 2nd Defendant's affiliated colleges to the 2nd Plaintiff.

21. Ex.P21 is the original details of payment of service tax paid by the 2nd Plaintiff.

22. Ex.P22 is the copy of calculation of 2nd year rent for the connectivity considering the date of provision.

23. Ex.P23 is the copy of communication of meeting of 2nd Defendant by email, dated 29.4.2010.

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

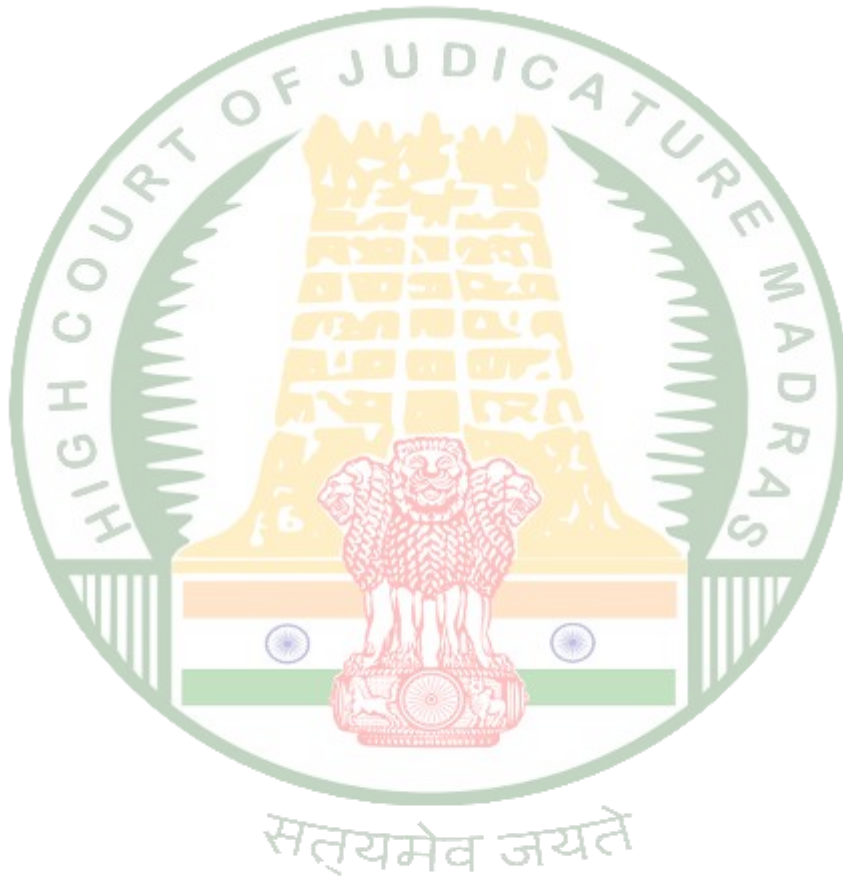
06.06.2018

Srcm

Note to Office:-

Issue on 06.06.2018

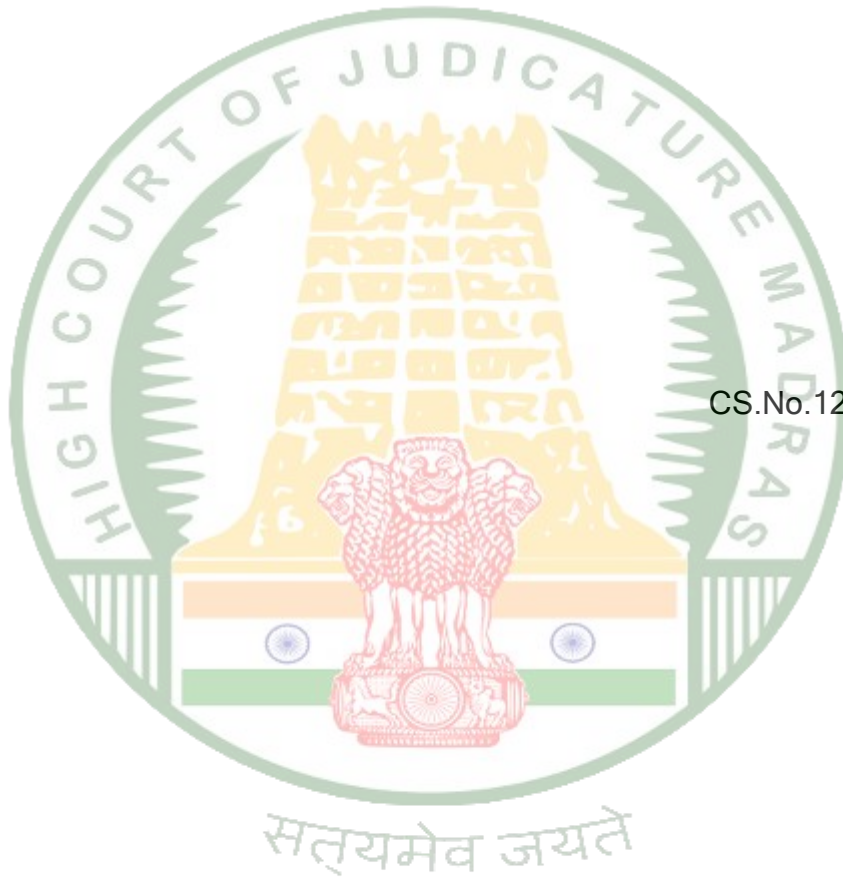
Srcm



WEB COPY

C.V.KARTHIKEYAN, J.

Srcm



CS.No.126 of 2014

WEB COPY 06.06.2018