



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY THE 26th DAY OF APRIL 2021

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No. 240 of 2002

(*) M/s.Simplex Infrastructure Limited,

21, Casa Major Road,

Egmore,

Chennai – 600 008.

Plaintiff

**(* Amended as per order dated 24.09.2013
in A.No.4394 of 2013).**

...

Vs.

1.M/s.* Aban Offshore Ltd.,

“Janpriya Crest”,

96, Pantheon Road,

Egmore, Chennai – 600 008.

2.M/s.Aban Energies Limited,

“Janpriya Crest”,

96, Pantheon Road,

Egmore, Chennai – 600 008.

...

Defendants

**(* amended as per order dated 05.09.2014
in A.No.5239 of 2014).**

Civil suit praying that this Hon'ble Court be pleased to grant a judgment and decree jointly and severally against the first and second defendants:-

<https://hcservices.ecourts.gov.in/hcservices> *** a).To direct the defendants to perform in accordance with
the terms of the contract contained in Letter of Offer dated 15.12.1995,**



Letter of Acceptance dated 26.12.1995 and Order Acceptance Letter dated 28.12.1995 without varying the terms thereof and consequently pay a sum of * Rs.12,49,44,597/- being the compensation towards shortfall in generation for the period between 01.04.1996 to 31.03.2014, together with interest thereon at 24% per annum on Rs.1,61,17,223/- (Rupees One Crore Sixty One Lakhs Seventeen Thousand Two Hundred and Twenty Three only) from the date of plaint, on Rs.36,65,088/- (Rupees thirty six lakhs sixty five thousand and eighty eight only) from 01.04.2002, on Rs.33,67,300/- (Rupees thirty three lakhs sixty seven thousand and three hundred only) from 01.04.2003 and on Rs.41,55,494/- (Rupees forty one lakhs fifty five thousand four hundred and ninety four only) from 01.04.2004 and on ** Rs.4,06,97,153/- (Rupees four crore six lakhs ninety seven thousand one hundred and fifty three only) from 01.09.2013 and on Rs.48,60,000/- from 16.11.2014 till the date of repayment.

(* amended as per order dated 9.1.2015 in A.No.145/15)

(amended as per order dated 03.10.2013 in A.No. 4395 of 2013)**

*** b).For a permanent injunction restraining the defendants, their men, agents, servants or any person claiming through or under them, from varying the terms of the contract contained in the Letter of Offer dated 15.12.1995, Letter of Acceptance dated 26.12.1995 and Order Acceptance Letter dated 28.12.1995 during the tenure of the contract.**

*** c).In the alternative to prayers (a) and (b) to declare that the defendants have failed to perform as per the terms of the aforesaid contract and direct the defendants to pay to the plaintiff as sum of (***)**



Rs.8,84,90,895/- (Rupees Eight Crores Eighty Four Lakhs Ninety Thousand Eight hundred and Ninety Five only) together with interest at 24% per annum on Rs.3,53,69,544/- (Rupees Three Crores Fifty Three Lakhs Sixty Nine Thousand, Five Hundred and Forty Four only) from the date of plaint, on Rs.3,10,316/- from 01.04.2002, on Rs.2,23,302/- from 01.04.2003 and on Rs.2,53,629/- from 01.04.2004 ** and on Rs.23,37,922/- (Rupees twenty three lakhs thirty seven thousand nine hundred and twenty two only) from 01.09.2013 till the date of repayment.**

(amended as per order dated 03.10.2013 in A.No.4395/2013)

d). To pay the costs of the suit.

(* Prayer amended as per order dated 17.06.2006 in A.No. 8121 of 2006)

This suit having been heard on 02.03.2021 in the presence of Mr.Arun Karthick Mohan, Advocate for the Plaintiff herein and Mr.R.Venkatavaradan, Advocate for the defendants herein and upon reading the pleadings filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein, and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and this court having observed that the plaintiff can complain failure of performance and simultaneously seek consequential relief of compensation only till the

filing of the suit, and the contract stands repudiated thereafter and though



applications for amendment with respect to valuation of the suit had been allowed, and this court would negate relief for the periods subsequent to the filing of the suit and this court reject the alternate relief sought, and the suit is to be partly decreed with respect to the relief actually claimed at the time of filing of the suit with cost, **it is ordered and decreed as follows:-**

That the defendant herein do pay to the plaintiff herein a sum of Rs.6,29,19,012/- (Rupees six crores twenty nine lakhs nineteen thousand and twelve only) with further interest at the rate of 6% per annum on Rs.1,61,17,223/- (Rupees one crore sixty one lakhs seventeen thousand two hundred and twenty three only) from this date till the date of payment.

2. That the suit in C.S.No.240 of 2002, be and is hereby dismissed with respect to all other reliefs claimed.

3. That the plaintiff herein be and is hereby entitled to the fees and expenses of the witness, the legal fees and expenses incurred and for any other expenses incurred in connection with the judicial proceedings and also for recovery of the actual court fees paid into court, as and when taxed by the taxing officer of this court, and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
26th DAY OF APRIL 2021.

Sd./-

ASSISTANT REGISTRAR (COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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C.S. No.240 of 2002

ORDER :-

DATED : 26.04.2021

THE HON'BLE MR. JUSTICE
C.V.KARTHIKEYAN

FOR APPROVAL: 19.07.2021

APPROVED ON: 20.07.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2021

Pronounced on : 26.04.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.240 of 2002

M/s.Simplex Infrastructure Limited,
21, Casa Major Road,
Egmore,
Chennai – 600 008.
(Amended as per order dated 24.09.2013
in A.No.4394 of 2013).

... Plaintiff

Vs.

1.M/s.Aban Offshore Ltd.,
“Janpriya Crest”,
96, Pantheon Road,
Egmore, Chennai – 600 008.

2.M/s.Aban Energies Limited,
“Janpriya Crest”,
96, Pantheon Road,
Egmore, Chennai – 600 008.

... Defendants

(amended as per order dated 05.09.2014
in A.No.5239 of 2014).

Prayer:- This suit filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules, prayed for a judgment and decree against the defendants for,



terms of the contract contained in Letter of Offer dated 15.12.1995, Letter of Acceptance dated 26.12.1995 and Order Acceptance Letter dated 28.12.1995 without varying the terms thereof and consequently pay a sum of Rs.12,49,44,597/- being the compensation towards shortfall in generation for the period between 01.04.1996 to 31.03.2014, together with interest thereon at 24% per annum on Rs.1,61,17,223/- (Rupees One Crore Sixty One Lakhs Seventeen Thousand Two Hundred and Twenty Three only) from the date of plaint, on Rs.36,65,088/- from 01.04.2002, on Rs.33,67,300/- from 01.04.2003 and on Rs.41,55,494/- from 01.04.2004 and on Rs.4,06,97,153/- from 01.09.2013 and on Rs.48,60,000/- from 16.11.2014 till the date of repayment.

b).For a permanent injunction restraining the defendants, their men, agents, servants or any person claiming through or under them, from varying the terms of the contract contained in the Letter of Offer dated 15.12.1995, Letter of Acceptance dated 26.12.1995 and Order Acceptance Letter dated 28.12.1995 during the tenure of the contract.

c).In the alternative to prayers (a) and (b) to declare that the defendants have failed to perform as per the terms of the aforesaid contract and direct the defendants to pay to the plaintiff as sum of Rs.8,84,90,895/- (Rupees Eight Crores Eighty Four Lakhs Ninety Thousand Eight hundred and Ninety Five only) together with interest at 24% per annum on Rs.3,53,69,544/- (Rupees Three Crores Fifty Three Lakhs Sixty Nine Thousand, Five Hundred and Forty Four only) from the date of plaint, on Rs.3,10,316/- from 01.04.2002, on Rs.2,23,302/- from 01.04.2003 and on Rs.2,53,629/- from 01.04.2004 and on Rs.23,37,922/- from 01.09.2013 till the date of repayment.



d). To pay the costs of the suit.

(Prayer amended as per order dated 09.01.2015 in A.No.145 of 2015).

For Plaintiff : Mr.Arun Karthik Mohan

For Defendants : Mr.R.Venkatavaradan

JUDGMENT

The suit had been filed by the plaintiff, M/s.Simplex Infrastructure Limited, a Company incorporated under the Companies Act, 1956, against the defendants, M/s.Aban Offshore Ltd., and M/s.Aban Energies Ltd., both companies incorporated under the Companies Act, 1956 seeking a judgment and decree in the nature of a direction against the defendants to perform the contract as agreed between the parties and pay a sum of Rs.12,49,44,597/- as compensation towards shortfall in generation of electricity between the period 1996 to 2014 together with interest and for permanent injunction restraining the defendants from varying the terms of the contract or in the alternate to declare the defendants had failed to perform the contract and direct them to pay a sum of Rs.8,84,90,895/- together with interest and for costs of the suit.



2.The plaintiff was carrying on business as Engineers and Contractors. The defendants were carrying on business as manufacturers and suppliers of Wind Electric Generators. They also operated and maintained Wind Electric Generators. The plaintiff proposed to invest in a project which would be commercially viable. The 1st defendant offered to supply Wind Turbines to the plaintiff. The 1st defendant held out that if the plaintiff invested in Wind Turbines, they can draw electricity from the Tamil Nadu Electricity Board and alternatively also sell the electricity to the Tamil Nadu Electricity Board. The 1st defendant guaranteed the life of the Wind Turbines would be a maximum of 20 years. They agreed to operate and maintain the Wind Turbines free of cost for a period of two years from the date of commission and thereafter, at agreed rates for a further period of 18 years. The 1st defendant gave a Letter of Offer on 15.12.1995. They offered to commission, operate and maintain two numbers of Aban Kenetech 410 KW Wind Turbines Model KVS 33. The plaintiff claimed to be a novice in the field and further claimed to rely entirely on the assurances and representations made by the 1st defendant. The plaintiff conveyed their acceptance by letter dated 26.12.1995. The 1st defendant issued an Order of Acceptance, dated 28.12.1995. The 1st defendant agreed to select the site for installation of the Wind Turbines and selected Kaval Kinaru near



gave a warranty against defects in materials and in design. They also assured that the Wind Turbines would effectively produce 18 Lakhs units per annum subject to 95% grid availability. The plaintiff paid a sum of Rs.2,88,50,000/- towards the cost of the two Wind Turbines and Rs.52,20,000/- towards the turnkey project cost for the 33 KV Distribution Line, Sub Station infrastructure development etc., including the cost of the 14 acres of land at Kaval Kinaru. The plaintiff therefore claimed to have paid a total sum of Rs.3,40,070,000/- to the 1st defendant.

3.The Wind Turbines were commissioned by the 1st defendant on 31.03.1996. It is the grievance of the plaintiff that from the date of its commissioning, the Wind Turbines failed to generate the guaranteed output of 18 Lakhs units per annum. It was always much below the quantum. The following details had been given in the plaint:-

<i>SL.No.</i>	<i>Financial Year (April – March)</i>	<i>Actual Generation (Units)</i>
1	1996 – 1997	6,60,256
2	1997 – 1998	6,99,768
3	1998 – 1999	4,64,556
4	1999 – 2000	4,71,072
5	2000 – 2001	3,80,556
Total		26,76,208



The plaintiff stated that the shortfall in generation was 63,23,792 units during the above period. The plaintiff claimed that they suffered loss owing to the investment.

4. The 1st defendant incorporated the 2nd defendant as its subsidiary. The 2nd defendant issued a letter on 18.03.2000 seeking to increase the operation and maintenance charges. This was objected by the plaintiff. The plaintiff by letter dated 17.05.2000 disagreed with the 2nd defendant's demand. The plaintiff claimed that they had suffered loss and they continue to suffer loss owing to the guarantees held out by the 1st defendant regarding the electricity that could be generated by commissioning the Wind Turbines. The plaintiff claimed that the 1st defendant had deliberately suppressed the fact that the Wind Turbines could not have possibly generated 18 Lakhs units. As a matter of fact, the plaintiff was forced to suffer a demand raised by the Tamil Nadu Electricity Board for supply of electricity towards running the Wind Turbines.

5. The suit had been filed even when the contract was subsisting. The plaintiff had therefore filed the suit seeking a direction against the defendants to enforce the terms of the contract and later amended the relief



the entire period of the contract from 01.04.1996 to 31.03.2014 together with interest and for a permanent injunction restraining the defendants from varying the terms agreed between the parties. The plaintiff also sought an alternate relief for a declaration that the defendant had failed to perform the contract and for a direction to pay a sum of Rs.8,84,90,895/- together with interest at 24% per annum on the amount actually spent by the plaintiff. The plaintiff also sought the costs of the suit.

6.The 1st defendant filed written statement denying the allegations set out in the plaint. They claimed that the suit was filed on the basis of a contract which was entered in the year 1995 and they had fulfilled their obligations namely, to commission and to erect the Wind Turbines. It was therefore stated that the suit which had been filed in the year 2002 was barred by law of limitation. The 1st defendant also stated that it was not correct to allege that the 1st defendant had held out to the plaintiff that if the plaintiff were to invest on Wind Turbines the returns would be profitable. The defendants stated that it was a commercial decision taken by the plaintiff to invest in Wind Turbines. The plaintiff actually wanted to avail the benefits under the Income Tax Act, 1961.



Turbines depended on various factors like efficiency, grid availability, machine availability, air density and velocity of the wind. The 1st defendant carried out its obligation by commissioning the Wind Turbines. It was again repeatedly pointed out that the plaintiff had taken a considered decision to invest in Wind Turbines owing to Tax benefits that were available like 100% depreciation for plant and machinery, 10% subsidy on the cost of fixed assets subject to maximum of Rs.15,00,000/- tax holiday for the 1st five years etc. The 1st defendant claimed that they were not responsible for generation of profits. They were responsible for supplying, installing and commissioning the Wind Turbines. It was also pointed out that the plaintiff had not complained about the quality of the Wind Turbines supplied. It was pointed out that the plaintiff had not taken any step to terminate the contract at the earliest instance. The plaintiff was aware that the generation of electricity was dependent on the wind factor. The plaintiff had been paying maintenance and other charges. The default in generation of electricity was not owing to any act of commission or omission of the 1st defendant.

8.The 1st defendant also stated that they did not vary the terms of the contract. The maintenance charges were always subject to increase and also dependent on the value of spares parts used for running the Wind

Turbines. They also stated that they are not responsible for any charges



levied by the Tamil Nadu Electricity Board. The defendants stated that the plaintiff was not entitled to recover any amount as claimed and there was no question of paying any interest. The plaintiff had defaulted in making payments to the defendants. The defendants stated that the plaint should be dismissed.

9.The 2nd defendant filed a memo adopting the written statement of the 1st defendant.

10.An additional written statement had been filed by the defendants subsequent to an amendment made in the plaint with respect to extending the period of reliefs sought towards compensation for shortfall in generation. The averments were again denied and disputed and the defendants claimed that the plaintiff was not entitled for such shortfall in generation.

11.A further additional written statement was filed by the defendants again disputing entitlement of claim for further period on account of shortfall and generation. The defendants again stated that the suit should be dismissed.



12. On the basis of the above pleading, the following issues were

framed:-

(i)(a). Whether the plaintiff is entitled to specifically enforce the terms of the Contract contained in the Letter of Offer, dated 15.12.1995, Letter of Acceptance, dated 26.12.1995 and Order Acceptance Letter, dated 28.12.1995, jointly and severally, as against the defendants without variation of the terms thereof?

(b). If the answer to Issue No.(i)(a) is in the affirmative, whether the defendants have guaranteed to achieve an output of 18,00,000 units per annum for a period of 20 years?

(ii). Whether the defendants are, jointly and severally, liable to pay the plaintiff, a sum of Rs.12,49,44,597/- being the compensation towards shortfall between 01.04.1996 and 31.03.2014 together with interest thereon at 24% per annum on Rs.1,61,17,223/- from the date of the plaint; on Rs.36,65,088/- from 01.04.2002; on Rs.33,67,300/- from 01.04.2003; on Rs.41,55,494/- from 01.04.2004; on Rs.4,06,97,153/- from 01.09.2013 and on Rs.48,60,000/- from 16.11.2014 till the date of payment?

(iii). Whether the plaintiff is entitled in the alternative to reliefs (a) and (b) in the plaint, for a declaration that the defendants have failed to perform as per the terms of the aforesaid contract and direct the defendants, jointly and severally, to pay the plaintiff a sum



of Rs.8,84,90,895/- together with interest at 24% per annum on Rs.3,53,69,544/- from the date of the plaint; on Rs.3,10,316/- from 01.04.2002; on Rs.2,23,302/- from 01.04.2003; on Rs.2,53,629/- from 01.04.2004 and on Rs.23,37,922/- from 01.09.2013 till the date of payment?

(iv).Whether claims made in the suit are barred by limitation and consequently, whether the suit is liable to be dismissed?

(v).Whether the unviability of a commercial decision of the plaintiff would amount to a breach of contract on the part of the defendants?

(vi).Whether the factors such as wind velocity and grid availability are factors within the control of the defendants for alleging breach of contract by the defendants?

(vii).Whether the suit is liable to be dismissed for want of any cause of action as against the defendants?

(viii).Whether the plaintiff is entitled to seek permanent injunction to restrain the defendants from varying the terms of the contract?

(ix).Whether the plaintiff is entitled to maintain a prayer for specific performance and simultaneously seek a consequential prayer for compensation?

(x).Whether the plaintiff is entitled to seek an alternate relief for compensation when the relief sought is for the specific performance as well as injunction to restrain the defendants from varying the terms of the contract?



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(xi). *To what other reliefs, are the parties entitled to?*

13. The parties were then invited to adduce evidence. The plaintiff examined R. Swaminathan, Chief Manager (Commercial) as PW-1 and marked Exs.P1 to P325. Ex.P2 is the Offer Letter of the 1st defendant dated 01.12.1995. Ex.P3 is the Letter of Offer by the 1st defendant dated 15.12.1995 and Ex.P4 is the Letter of Acceptance by the plaintiff dated 26.12.1995 and Ex.P5 is the Order Acceptance Letter of the 1st defendant dated 28.12.1995. The letters of the defendant along with the invoices raised on Tamil Nadu Electricity Board on various dates showing the details of electricity generated by the Wind Turbines and sold to Tamil Nadu Electricity Board for the period from 01.04.1996 to 31.03.2001 were marked as Exs.P6 to P108. The letters of the plaintiff to the 2nd defendant dated 18.02.2000 and 18.03.2000 were marked as Exs.P109 and P110. The Statement of Power Generation for the period April 1996 to March 2001 was marked as Ex.P111. The Statement of Shortfall in generation of power for the period 01.04.1996 to 31.03.2001 was marked as Ex.P112. The Statement of Expenses incurred by the plaintiff during the same period was marked as Ex.P113 and the Statement of Compensation payable by the defendants for surrender / return of the Wind Turbines was marked as



Ex.P114. The letter of the 2nd defendant dated 18.03.2000 was marked as Ex.P115 and the replies sent by the plaintiff dated 24.03.2000 and 04.04.2000 were marked as Ex.P116 and P117. The letters by the 2nd defendant dated 11.04.2000 and 08.05.2000 were marked as Ex.P118 and P119 and the letters sent by the plaintiff dated 24.04.2000 and 17.05.2000 were marked as Exs.P120 and P121. The Legal notice issued by the plaintiff and the acknowledgement card were marked as Ex.P122 and the letters of the 1st defendant dated 21.07.2000 was marked as Ex.P123. A further Legal notice dated 12.10.2000 was issued by the plaintiff and it was marked as Ex.P124 and the Interim Reply dated 28.11.2000 issued by the counsel for the defendants was marked as Ex.P125. The letters of the defendant along with the invoices raised on Tamil Nadu Electricity Board on various dates showing the details of electricity generated by the Wind Turbines and sold to Tamil Nadu Electricity Board for the period from 01.04.2001 to 20.09.2010 were marked as Exs126 to P325.

14. On the side of the defendants, Solomon Sugumar, Consultant, was examined as DW-1. The defendants marked Exs.D1 to D62, which included the various authorizations passed by the Directors authorizing the witness to depose evidence. Exs.D7 to D10 and Exs.D12, D17, D19 to D53, D57 to D60 are correspondence between the plaintiff and the 1st and 2nd



defendants. Exs.D3 and D5 are letters addressed by Tamil Nadu Electricity Board to the plaintiff. Ex.D61 is the grid availability data.

15.Heard arguments advanced by Mr.Arun Karthik Mohan, learned counsel appearing for the plaintiff and Mr.R.Venkatavaradan, learned counsel appearing for the defendants.

16.Mr.Arun Karthik Mohan, learned counsel for the plaintiff, took the Court through the documents marked, particularly, the Offer Letter by the 1st defendant and the Acceptance Letter for the said Offer Letter and the Order Acceptance Letter by the 1st defendant. It is the contention of the learned counsel for the plaintiff that the plaintiff is a novice in the field of Wind Turbines and its viability and the plaintiff depended only on the advice given by the 1st defendant. The 1st defendant had projected that erection of Wind Turbines would be a profitable venture and assured that the erection of the two 410 KW Wind Turbines of the 1st defendant would certainly generate a minimum 18 Lakhs units of electricity and the plaintiff could inturn sell the same to the Tamil Nadu Electricity Board and earn a profit. The learned counsel stressed the fact that the plaintiff trusted the words of the 1st defendant. It was therefore stated that an obligation was



adhered to. The learned counsel pointed out that the plaintiff had paid all the monies demanded by the 1st defendant towards the cost of the Wind Turbines, its erection, its commission and its maintenance. There had been no default on the part of the plaintiff. The plaintiff had also purchased 14 acres of land at Kaval Kinaru in Tirunelveli District, which site was also chosen by the 1st defendant. The learned counsel thereafter took the Court through the actual units generated from the 1st year of the commission of the Wind Turbines. There was a continuous shortfall and the generation had never touched the target of 18 Lakhs units which was assured by the 1st defendant.

17. It was pointed out that as a matter of fact, the shortfall was nearly twice the units generated. The plaintiff suffered a loss, year after year. The plaintiff had also been called upon by the Electricity Board to pay their charges and the plaintiff was therefore left with a situation where instead of earning profits from selling electricity to the Electricity Board, they suffered loss by paying charges to the Electricity Board for the electricity consumed. The learned counsel further pointed out that the entire fault lay on the misrepresentations made by the 1st defendant and the fraud play by the 1st defendant in misguiding the plaintiff into accepting their proposal. The documents filed by the plaintiff were taken through by the

learned counsel. The evidence deposed by the witnesses were also read



through.

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18.The learned counsel relied on **2019 SCC OnLine Bom 554, Vestas Wind Technology India Private Limited Vs. Inox Renewable Limited and Others** and **Gujarat Flurochemicals Limited Vs. Vestas Wind Technology India Private Limited**. That was a judgment by a learned Single Judge of the Bombay High Court in a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The learned counsel laid stress on the point that the facts in that case were exactly similar to the facts of the present case. Even in that case, there was a promise held out for generation of electricity by way of commissioning and erecting Wind Turbines and there was a shortfall in generation leading to loss. The parties had move to arbitration and a petition was filed under Section 34 of the Arbitration and Conciliation Act, 1996 questioning the award passed. The learned counsel took the Court through the reasonings in the said judgment, wherein, after a very elaborate discussion the award granting compensation passed by the Arbitrator Tribunal was upheld.

19.The learned counsel also pointed out the appeal filed as against the said judgment in **Commercial Arbitration Appeal (L) No.300 of 2019, Vestas Wind Technology India Private Limited Vs. M/s.Inox Renewables Ltd. & Others**, wherein a learned Division Bench had set aside



the judgment but only on recording the consent terms entered into between the parties. The learned counsel however stated that the reasonings of the learned Single Judge can be referred to by this Court and that they would be quite instructive to determine the issues in the instant case.

20. With respect to the statements in the written argument of the defendants that the plaintiff should have repudiated the contract at the earliest point of time, the learned counsel stated that the contract had a lifetime of 20 years and the plaintiff had every right to claim the loss, which it had suffered owing to the default in generation of electricity for the entire period. The learned counsel justified the reliefs sought in the plaint and urged that the Court should decree the suit. The learned counsel stated that the plaintiff should be called upon to perform the contract and therefore the main relief should be granted. However, if it is found that the said relief could not be granted, the learned counsel fell back on the alternate relief and stated that the plaintiff should be compensated for the actual expenses incurred towards the purchase, commissioning and erection of the Wind Turbines.

21. Mr. R. Venkatavaradan, learned counsel for the defendants, on the other hand disputed the points put forth by the Mr. Arun Karthik Mohan.

The learned counsel stated that the contract had been entered into in the year



1996 and the primary obligation of the 1st defendant at that earliest point of time was to ensure seamless sale of the Wind Turbines, erection of the Wind Turbines and commission of the Wind Turbines. The 1st defendant had performed those parts of the agreement. Subsequent generation of the electricity was dependent on two primary factors namely, availability of grid power and the velocity of wind. Both these factors were beyond the control of the 1st defendant. There was generation of electricity by the Wind Turbines. The 1st defendant was not responsible for payments made to the Electricity Board for electricity consumed by the plaintiff towards the running of the Wind Turbines. The learned counsel also stated that the contract should have been repudiated by the plaintiff at the earliest point of time and claims for subsequent period cannot be laid on the door step of the defendants.

22. The learned counsel justified the maintenance charges claimed on the ground that since the Wind Turbines were functioning, and the defendants were maintaining them, charges will necessarily have to be paid by the plaintiff. The learned counsel expressed wonderment at the calculations with respect to the projected loss stating that they were arbitrary and there was no basis for the same.



23. In this connection, the learned counsel primarily relied on the decision of the *House of Lords in White and Carter (Councils) Ltd., Vs. McGregor* reported in *1962 AC 413* and drew specific reference to the observations that if a person has no legitimate interest in performing the contract rather a sole intention of claiming damages, then he ought not to be allowed to claim the same from the other party, with additional burden and with no benefit to himself.

24. The learned counsel therefore stated that the claim of compensation cannot be granted since the defendants have performed their part of the contract. They had erected the machines and they have maintained the machines. Generation of electricity was beyond the control of the defendants. Therefore, the claim for compensation of alleged loss can never be granted by the Court. Moreover, the plaintiff should not have continued with the contract, since the fact that it was of no benefit to them was known at the earliest stage and therefore, the learned counsel stated that the claim for compensation for loss till the year 2014 was impermissible.

25. The learned counsel also relied on *MSC Mediterranean Shipping Company SA Vs. Cottonex Anstalt* reported in *(2015) 2 All ER (Comm)*, for the principle that since there was no realistic prospect of there



being generation of electricity to the expected level, there was no reason for the plaintiff to keep the contract open in the hope of future performance.

The Wind Turbines had failed to generate electricity and this as a fact was evident within the first few years. The plaintiff should have taken necessary steps at the earliest and cannot claim damages for future loss. The learned counsel therefore stated that the Court should dismiss the suit.

26.I have carefully considered the materials on record and the arguments advanced.

The Issues Answered:

Issue No.(iv):-

27.This issue is whether the suit is barred by law of limitation. This issue has been framed primarily because, the defendants in their written statement had stated that the suit had been filed in the year 2002 on the basis of a contract which had been entered into in the year 1995 and therefore the suit was barred by the law of limitation. This stand of the defendants can be straight away rejected since, in Ex.P5, the Order of Acceptance dated 28.12.1995, the 1st defendant had undertaken the project on a turnkey basis, namely, the complete project for supplying, installing and commissioning of two Wind Turbines and had guaranteed that the life



of the Wind Turbines will be for a maximum of 20 years from the date of commissioning and had also sought maintenance and operation charges for the entire period of 20 years at various rates. Thus the agreement between the parties was to run for a period of atleast 20 years from the date of commissioning and therefore, when the suit was filed, the contract was still live and had not been terminated by either one of the two parties. The main relief in the suit is also for performance of the contract and an alternate relief has been claimed for a declaration that the defendants had failed to perform the contract. The plaintiff has not sought any relief to terminate the contract. Therefore, by no stretch of imagination, can it be stated that the suit is barred by law of limitation. This issue is answered against the defendants.

Issue No.(vii):-

28.This issue again arises owing to a very stray statement made in the written statement of the 1st defendant that there was no cause of action in the suit as against the defendants. In the plaint, it had been stated that the cause of action had originally arisen when the 1st defendant had issued a Letter of Offer on 26.12.1995 and the cause continued with the plaintiff making payments towards maintenance charges in the running of the Wind



claimed maintenance charges at a varied rate which claim the plaintiff had disputed and owing to the exchange of legal notices between the parties and since the plaintiff claimed that they continued to suffer loss owing to non-generation of electricity at the assured level which had forced them to institute the suit. I hold that the cause of action existed and survived on the date of institution of the suit. Therefore, the issue is answered in favour of the plaintiff.

Issue Nos.(i)(a), (i)(b), (ii), (iii), (v), (vi), (viii), (ix) and (x):-

29. Though it might be perceived that all the issues are taken up for consideration together rather than discussing them individually, I would still maintain discussing all the above issues together would be a proper approach.

30. Issue Nos.(i), (ii) and (iii) relates to the reliefs sought in the plaint. Issue Nos.(i) and (ii) relates to main relief sought in the plaint. Issue No.(iii) is the alternate relief sought in the plaint. To determine these discussions would naturally also revolve on issue No.(v) whether the unviability of a commercial decision of the plaintiff would amount to breach of contract and a discussion on issue No.(vi) whether the factors such as



defendants and also lead to a discussion on issue No.(viii) whether the plaintiff can seek a relief of permanent injunction against the defendants from varying the terms of the contract and also a discussion on issue No.(ix) whether the plaintiff is entitled for specific performance and seek compensation and finally a discussion on issue No.(x) which can be encompassed with the discussion of issue No.(ix) since it relates to examining whether the plaintiff is entitled to seek the alternate relief of compensation when a relief is also sought for specific performance. Since the discussion in all the above issues will overlap and documents have been marked relating to the issues now under consideration though it might be appear to be an omnibus exercise, all the issues are taken for discussion together.

31.The plaintiff M/s.Simplex Infrastructure Limited, a Company incorporated under the Companies Act, 1913 are Engineers and Contractors. They claimed that they have no knowledge about Wind Turbines or even whether venturing into such a business would be profitable or not. It is the claim of the plaintiff that they were led into believing by the 1st defendant that investment on erection of Wind Turbines would be a profitable venture, since the Wind Turbines would generate electricity which inturn could be sold to the Tamil Nadu Electricity Board for profit. This assumption of the



plaintiff must be balanced with the statement of the defendants that the plaintiff had taken such a decision to invest in Wind Turbines only owing to the concessions granted for such investment in among other laws, the Income Tax Act, 1961.

32. Be that as it may, so long the object is lawful, the Court cannot venture into any discussion on the reasons for the plaintiff having opted to invest in erection and maintenance of Wind Turbines as a profitable venture. The 1st defendant was an expert on erection and maintenance of Wind Turbines. That was their principal business. Naturally any representation made by them about future prospects should be a representation giving due weightage to the fact that the plaintiff was not aware of the entirety of the risks involved in such a venture.

33. There were exchanges of correspondences between the plaintiff and the 1st defendant in the year 1995. The first correspondence between the parties was on 01.12.1995 by the 1st defendant issuing a Letter of Offer. The 1st defendant offered to supply, erect and install two Wind Turbines. They further stated that if the plaintiff were to invest in the said Wind Turbines, the returns on such invest would be profitable, as the

plaintiff would be able to draw electricity to the extent of the electricity



generated by the Wind Turbines and meet its power requirements without depending on the electricity supplied by the Electricity Board or alternatively the plaintiff can also sell the electricity generated to the Tamil Nadu Electricity Board from time to time. The 1st defendant had guaranteed that minimum 18 Lakhs units per annum could be generated by the Wind Turbines each year. They also guaranteed that the lifespan of the Wind Turbines would be for a maximum of 20 years from the date of commissioning. They undertook the entire responsibility towards implementing the turnkey project namely, selecting the site for installation, commission, operation and maintenance of the Wind Turbines for a period of 20 years from the date of commissioning. The rates for charges of such maintenance were also indicated. It was free of cost for the 1st two years. Thereafter, it was at agreed rates for the subsequent period of 18 years. This letter dated 01.12.1995 was marked as Ex.P2. This letter has not been denied or disputed by the witness who spoke on behalf of the defendants.

34.It is however the claim of the defendants that the assurances were dependent on two major factors namely, grid availability and velocity of wind. Both these factors could have been explained in more detail to the plaintiff particularly since the plaintiff claimed to be a raw entrant into this particular field empirical data could also have been generated and given to

the plaintiff. There could have been a strong element of open exchange of



expert knowledge in this particular field by the 1st defendant at the initial stage. Sadly all these elements were absent.

35. On the other hand there was a flowery offer without any restriction. A further letter dated 15.12.1995 was issued by the 1st defendant which was termed as Letter of Offer. The plaintiff replied by Ex.P3 dated 26.12.1995. Within two working days on 28.12.1995, the 1st defendant gave an Order of Acceptance letter. This would naturally mean that while the 1st defendant had placed an order on the table of the plaintiff, the letter dated 15.12.1995 termed as a Letter of Offer and the letter dated 26.12.1995 termed as a Letter of Acceptance did not culminate into an agreement between the parties. The actual agreement between the parties was reduced in terms by Ex.P5 namely, letter dated 28.12.1995 termed as Order Acceptance Letter.

36. The burden then shifted to the 1st defendant to adhere to the terms of Ex.P5. Even in Ex.P3, the 1st defendant had given an assurance that the Wind Turbines, commissioned and erected by them will produce 18 Lakhs units per annum. This was projected *“after considering the correction factors namely array of efficiency, grid availability, machine availability and air density”*. Therefore, as opposed to the claim in the



primarily on grid availability and air density, it is seen that they had offered 18 lakhs units per annum after considering the existing grid availability and after taking into consideration the air density in the site where the Wind Turbines were to be erected. The site was chosen entirely by the 1st defendant. It was at Kaval Kinaru in Tirunelveli District.

37. It is to be reiterated that the 1st defendant projected themselves as the experts in the field of marketing and commissioning of Wind Turbines which was their primary business. A higher degree of openness was required. A higher degree of openness can be expected by any person who places trust on the assurances since those assurances were given by an expert in the field. Those assurances cannot be simply brushed away by later falling back on factors like grid availability and air density. The 1st defendant had a responsibility to put forth an offer based on not just experience, but on actual field study. The project was of considerable value. The cost of the two Wind Turbines offered by the 1st defendant was more than Rs.2,50,00,000/-. Together with the cost of 14 acres of land and other incidental costs, the plaintiff had spent Rs.3,50,00,000/-. This amount in the year 1995 was a considerable amount and was paid by the plaintiff only on the basis of the representations made by the 1st defendant.

38. The plaintiff may have had an oblique motive in gaining concessions under the Income Tax Act, but that cannot be faulted because



investment in Wind Turbines were encouraged by the Government as a policy and the plaintiff was taking up a lawful project. If there were any pit falls which would arise to prevent electricity generation at 18 Lakhs units per annum then the 1st defendant was under an obligation to red flag them prominently. That they did not, effectively proves that they were only interested in marketing their Wind Turbines for their own profit, rather than viewing it as a mutually profitable enterprise. That they marketed Wind Turbines cannot be denied. That they erected the Wind Turbines cannot be denied. That they commissioned the Wind Turbines cannot be denied. But the fact which they must accept is that the erection and commission of the Wind Turbines were at a particular site chosen by them. It will not lie in the mouth of the 1st defendant to walk away from the assurance held out stating that there was no wind velocity at that particular site. They should have done necessary research. They could and should have invited the plaintiff to participate in such research.

39. A close analysis of the dates of Exs.P2 to P5 show that the 1st correspondence was on 01.12.1995 and the last correspondence was on 28.12.1995. Within a period of 28 days, the parties had come to an agreement regarding the terms. The 1st defendant had an obligation to place on the table not only the profitability of the enterprise, but also the risks involved. In Ex.P5, among other terms, there was a performance guarantee



clause which was as follows:-

WEB COPY “PERFORMANCE GUARANTEE:

The suit selection all equipment selection is being done by ABAN as it has considerable expertise in this field. After considering the correction factors namely array efficiency, grid availability, machine availability and air density, the 2 Nos of ABAN KENETECH 410 KW wind turbines will produce 18,00,000 units per annum (+ or – 5%), subject to 95% grid availability.

ABAN will guarantee the Power Curve based on which the above generation figures were given in the offer”.

40.The above very clearly shows that the 1st defendant had projected their considerable expertise in the field. This gave an impression that they had requisite skill and knowledge and also expertise to put such skill and knowledge to bring out a profitable venture. It had been further stated, as pointed out above, that the production of 18 Lakhs unit per annum subject to 95% grid availability was not subject to particularly air density. They had already considered that particular factor. Grid availability had not been complained of either by the plaintiff or by the defendants in the suit. If the defendants are to claim that the project failed owing to grid availability, then they had an obligation to establish that fact by calling for details from the Electricity Board and by summoning competent witnesses.

They had not even thought such steps should be taken. Therefore, it is very



clear that the plaintiff relied entirely on the assurances and sweet words of the 1st defendant. The issues under will have to be examined with the above facts as a premise.

41.It is the specific stand of the plaintiff that the Wind Turbines after erection never generated 18 Lakhs units per annum. The details of generation had been given earlier and they are repeated again:-

<i>SL.No.</i>	<i>Financial Year (April – March)</i>	<i>Actual Generation (Units)</i>
1	1996 – 1997	6,60,256
2	1997 – 1998	6,99,768
3	1998 – 1999	4,64,556
4	1999 – 2000	4,71,072
5	2000 – 2001	3,80,556
Total		26,76,208

42.It is seen that the electricity generation had fallen far, far shorter than the projected capacity as guaranteed by the 1st defendant. The 1st defendant cannot walk away from their responsibility by stating that the shortfall in performance was entirely due to external factors not under their direct control. The risk elements should have been pointed out very clearly at the very beginning. It was not done. There is no dispute that the plaintiff had actually paid the entire cost towards commissioning of the Wind



showing the actual power generation for the period between April 1996 and March 2001 in Ex.P111. Documents have been produced to show the Statement of Expenses incurred by the plaintiff between the year 1996 and 2001 in Ex.P113. Thereafter, to add salt to the wounds suffered by the plaintiff, the 2nd defendant had issued a letter, Ex.P115 demanding payment of increased maintenance charges by the plaintiff. This was objected by the plaintiff by Exs.P116 and P117.

43.However, the 2nd defendant reiterated the demands even for the periods subsequent to the year 2001, that the plaintiff will have to pay maintenance charges as stipulated by them by Ex.P119. The plaintiff then issued Letters of Protest marked as Exs.P120 to P121. A Legal notice was also issued under Ex.P122 dated 24.06.2000. The 1st defendant in their reply passed on the responsibility to the 2nd defendant by letter dated 21.07.2000 marked as Ex.P123. A further Legal notice was issued by the plaintiff on 12.10.2000 in Ex.P124. The defendants for some reasons issued only an Interim reply dated 28.11.2000 . This was marked as Ex.P125. They had never replied to the notice or demand of the plaintiff till the time they filed their written statements. This can also be interpreted, to mean that at that



plaintiff.

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44. Viewed from the background of the above facts, it will now however, has to be decided whether the defendants can be called upon to enforce the terms of the contract or whether the plaintiff is entitled for a declaration that the defendants had failed to perform the terms of the contract.

45. Even before, examining those two aspects, it would be appropriate that issue No.(v) is taken up. This related to the unviability of a commercial decision of the plaintiff. As a matter of fact, the witness for the plaintiff never answered any question directly.

Q11: The wind turbines itself suggest the reliance on wind velocity. Is it correct?

A: As stated earlier, the plaintiff being a novice in the field of generation of electricity by wind turbines, I am unable to reply to your suggestion.

Q14: Why did the plaintiff elect to continue with the contract despite being aware that the wind turbines did not generate the units of electricity as contracted between the parties?



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A:It was a commercial decision of the plaintiff.

Q19:With reference to Q.No.14 above, could you please elaborate on the reason to have continued with the project since it was a commercial decision taken by the plaintiff and you holding a position in the team as suggested above?

A:Since the originally contracted period was 20 years, the plaintiff took a commercial decision to continue with the contract.

Q20:With reference to Q.No.13, why is it that at any point of time the plaintiff never attempted to consider terminating the contract?

A:It has already been answered by me that it was a commercial decision of the plaintiff.”

46. In this case, the defendants complained that there was no wind velocity and therefore, the performance of the Wind Turbines dropped. It was not owing to any mechanical failure. It was not owing to the quality of the machine spare parts supplied.



were erected was selected only by the 1st defendant. Unviability of any commercial decision cannot be termed as a breach of contract. It can be stated to be an incidence of the contract. I would therefore give the defendants the benefit of this issue, however with a caveat that they had misled the plaintiff with respect to the specific area for the location of the Wind Turbines. There was no breach of their obligation, but there was a breach of their assurances given prior to the period finalizing the terms between them.

48.Issue No.(vi) related to the factors of wind velocity and grid availability and whether they are factors under the control of the defendants. Again normal prudence would indicate that they cannot be under the control of the defendants. But the expertise of the defendants was such that they should have carried out necessary research before giving an offer in the first instance to the plaintiff. They failed in that aspect. After having invited the plaintiff to participate in a commercial venture without carrying on research, the defendants cannot complaint that the factors of wind velocity and grid availability were predominant factors for the failure of the project and cannot try to wriggle away by stating that those factors were not under their control.



49. Those factors never be under their control by any stretch of imagination, but what was under their control was making necessary research in collecting empirical data before finalizing on the particular site for erection of the Wind Turbines.

50. In this connection, the following questions and answers during the cross-examination of PW-1 can again be referred to:-

Q10: Do you agree that the shortfall was only on account of the wind velocity for the year 1996 to 1999?

A: Plaintiff being a novice in the field of generation of electricity by wind turbines had relied entirely on the expertise of the 1st defendant and taking into account the fact that the plaintiff is a lay person, the plaintiff had no idea what so ever as to the reason for the shortfall in generation of electricity by the wind turbines.

Q11: The wind turbines itself suggest the reliance on wind velocity. Is it correct?

A: As stated earlier, the plaintiff being a novice in the field of generation of electricity by wind turbines, I am unable to reply to your suggestion.

Q12: When you were aware of the shortfall in the



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generation of power by the wind turbines, did you take any steps for terminating the contract on account of the failure to generate the contracted generation units?

A:Even though we did not take any steps for termination of contract, the plaintiff called upon the defendants to ensure that the wind turbines generated the guaranteed quantum of electricity.

Q13:Did the wind turbines at any point in time generate the contracted generation of units since the year 1996?

A:The wind turbines did not at any point in time generated the guaranteed quantum of electricity.

.....

.....

Q21:Till date have you ever complained about the location of the site in which the wind turbines were erected?

A.Since the 1st defendant under took to set up the project on a turn-key basis and since plaintiff was a novice in the filed of generation of electricity by wind turbines, the question of plaintiff complaining about the location of site



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does not arise.

.....

.....

Q24: The clause referred to above stipulated for an 'operation and maintenance fee' to be paid by the plaintiff regularly. Am I correct?

A: The contract contemplated payment of operation and maintenance charges by the plaintiff to the defendant.

Q25: Have the plaintiff paid the operation and maintenance charges as mentioned above?

A: Yes. As long as the wind turbines were operational.

Q26: The quality of the wind turbines is maintained with the operation and maintenance charge levied on the plaintiff. Is it correct?

A: It was incumbent on the defendants to operate and maintain the wind turbines as per the terms of the contract on payment by the plaintiff of the operation and maintenance charges stipulated in the contract.

Q27: Has the plaintiff paid the operation and



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maintenance charges till the year 2016 as contracted between the parties?

A:Plaintiff had paid the operation and maintenance charges to the defendants till the period upto which the wind turbines were functioning. I am unable to recollect the period upto which the payment was made by the plaintiff.

.....

.....

Q29:Did the defendants under the contract assure the plaintiff about the grid availability?

A:Plaintiff being a novice in the field of generation of electricity by the wind turbines was not aware of the nuances in that field and relied entirely on the expertise of the 1st defendant.

Q30:Do you agree that during certain periods in the year, the wind velocity is not enough for running the wind turbines?

A:The plaintiff being a lay person is not aware of the nuances in the field of generation of electricity by wind turbines.



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.....

.....

Q35:Can you please see Ex.P2 at page-15 of the list of exhibits filed with your proof affidavit. In order for the wind turbines to produce electricity as contemplated between the parties, the graph requires the wind velocity to be 12.5 m/s. Am I correct?

A:The plaintiff being a lay person is unable to respond on the intricacies / nuances associated with the field of generation of power by wind turbines.

Q36:I put it to you that since you know how to read a graph you cannot taken the stand that you are a novice and do not understand the intricacies involved in wind generation. Also this graph forms part and parcel of contract which is brought to your notice, based on which the contract was entered into between the parties?

A:I deny your suggestion.”

51.The questions were mainly focussed at laying the blame at the door step of the plaintiff's. The defendants should have stated that inspite of their research on this particular aspect with respect to either wind velocity or grid availability there was a shortfall and therefore the Wind Turbines did



not perform to their expected level.

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52. On the other hand, it would also be instructive to examine the cross-examination of DW-1.

“Q: Please refer to Para 7 of your proof affidavit you have stated therein that “The defendants reiterated that the guarantee was with respect to the site identification based on data received...”. What was this data purportedly received and from whom was the same received?

A: Wind velocity data on a daily, monthly and annual basis; Number of hours for the particular wind velocity details month wise and annually. These details were received by the defendant No.1 company from the CWET.

Q: Was the aforesaid data shared with the plaintiff? If so, please refer to the records in this respect?

A: I am not aware.

Q: Does this 'data received' find any reference in the contract between the parties?

A: No.



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Q:I put it to you that in the absence of any reference to such data in the contract the question of treating the contractual guarantee as conditional does not arise. What do you say?

A:Yes.

Q:What according to you was the need for Defendant No.1 to incorporate a performance guarantee clause in the contract between the parties?

A:I am not aware. Possibly the client / plaintiff sought for such performance guarantee.

.....

.....

Q3:Is it the defendants' case that a percentage drop in grid availability would cause a proportionate drop in electricity generation from the WTGs?

A:Yes.

Q4:Please refer para-3 of your proof affidavit you have stated therein that “The power curve that can be achieved is based on the array efficiency, grid availability, machine availability and air density”. Kindly refer to the power curve at page-15 of the plaintiff's list of exhibits



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(Ex.P5). Does the same bear reference to any of the above said factors?

A:Yes.

Q5:Please refer the power curve at page-15 of the plaintiff's list of exhibits (Ex.P5) the curve represent therein comprises two axis which pertain to wind velocity and kilo watt capacity respectively. Is it not?

A:Yes.

Q6: I therefore put it to you that your answer to question No.4 about is contrary to the record and hence untenable. What do you say?

A:There is no contradiction.”

53.It is thus seen with respect to the power curve, with respect to Exs.P2 to P5, questions regarding which have been put to both PW-1 and DW-1, both the witnesses avoided a direct answer. The onus was on the defendants to explain the same. The defendants failed. Even though wind velocity and grid availability are factors outside the control of the defendants still having made an offer, these factors should have been considered by the defendants before inviting the plaintiff into this commercial venture. To that extent there is a breach of promise by the



defendants.

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54. With respect to issue Nos.(viii), (ix) and (x), I would hold that the issue of varying the terms of contract has been framed as an issue only owing to the demand by the 2nd defendant for increased maintenance charges by Ex.P115. However, the plaintiff issued Exs.P116 and P117. Thereafter, by Ex.P119 letter dated 11.04.2000, the 2nd defendant informed that they would collect the operational maintenance charges at the agreed rates namely, at the rates as specified in the Order Acceptance letter dated 28.12.1995. In the year 2000-2001, however, they further stated that the plaintiff will have to pay maintenance charges at the enhanced rate. This was objected by the plaintiff by Exs.P120 and P121. The suit had been filed in the year 2002.

55. Therefore, I would state that the plaintiff had come to Court even before there had been actual variation of the terms of the contract. There was only a demand and I would hold that the plaintiff is entitled to seek permanent injunction to restrain the defendants from varying the terms of the contract.

56. The learned counsel for the defendants had relied on the fact



that the plaintiff should have repudiated the contract.

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57. In *House of Lords in White and Carter (Councils) Ltd., Vs.*

McGregor reported in *1962 AC 413*, it had been held as follows:

“.... It may well be that, if it can be shown that a person has no legitimate interest, financial, or otherwise, in performing the contract rather than claiming damages, he ought not to be allowed to saddle the other party with an additional burden with no benefit to himself. If a party has no interest to enforce a stipulation, he cannot in general enforce it: so it might be said that, if a party has no interest to insist on a particular remedy, he ought not to be allowed to insist on it. And, just as a party is not allowed to enforce a penalty, so he ought not to be allowed to penalize the other party by taking one course when another is equally advantageous to him. If I may revert to the example which I gave of a company engaging an expert to prepare an elaborate report and then repudiating before anything was done, it might be that the company could show that the expert had no substantial or legitimate interest in carrying out the work rather than accepting damages: I would think



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that the de minimis principle would apply in determining whether his interest was substantial, and that he might have a legitimate interest other than an immediate financial interest. But if the expert had no such interest then that might be regarded as a proper case for the exercise of the general equitable jurisdiction of the court.”

58. In ***MSC Mediterranean Shipping Company SA Vs. Cottonex Anstalt*** reported in (2015) 2 All ER (Comm), it had been held as follows:

“104. I have no doubt that the Carrier had a legitimate interest in keeping the contracts of carriage in force for as long as there was a realistic prospect that the Shipper would perform its remaining primary obligations under the contracts by procuring the collection of the goods and the redelivery of the containers. Once it was quite clear, however, that the Shipper was in repudiatory breach of these obligations and that there was no such prospect, the Carrier no longer had any reason to keep the contracts open in the hope of future performance.”

121. I accordingly find that the Carrier had no basis for claiming on 27 September 2011 that it was



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suffering any loss as a result of the Shipper's breach of contract. In these circumstances I conclude that the Carrier had no legitimate interest in keeping the contracts of carriage in force after that date in order to continue claiming demurrage. Its election to do so, and to go on doing so ever since, can in my view properly be described as wholly unreasonable. It is wholly unreasonable because the Carrier has not been keeping the contracts alive in order to invoke the demurrage clause for a proper purpose but in order, in effect, to seek to generate an unending stream of free income."

59.Placing reliance on the above observations, the learned counsel for the defendants stated that the contract should have been repudiated at the earliest instance and the plaintiff has ventured into seeking a windfall by claiming compensation for the entire period of the contract. To the extent that failure had been indicated by the plaintiff even in the year 2000, the suit had also been filed in the year 2002, I would hold that the plaintiff is not entitled for compensation for the entire period of contract but only upto the date of filing of the suit.



“19. Voidability of agreements without free consent.—*When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.*

A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.”

61. Reliance was placed by the learned Counsel for the plaintiff on

<https://hcservices.ecourts.gov.in/hcservices/>

the judgment of a learned Single Judge of the Bombay High Court passed in



Petitions filed under Section 34 of the Arbitration and Conciliation Act,

1996 namely, *Vestas Wind Technology India Private Limited Vs. Inox Renewable Limited and Others and Gujarat Flurochemicals Limited Vs. Vestas Wind Technology India Private Limited*, reported in **2019 SCC OnLine Bom 554**. Though well reasoned and on practically the same facts, on the facts of the present case, I would hold that the plaintiff can complain failure of performance and simultaneously seek consequential relief of compensation only till the filing of the suit. The contract stands repudiated thereafter and though applications for amendment with respect to valuation of the suit had been allowed, I would negate relief for the periods subsequent to the filing of the suit.

62. This discussion now brings us back to Issue Nos.(i), (ii) and (iii).

63. Answer to Issue No.(i)(a):-

I hold that the plaintiff is entitled to enforce the terms of the contract till the filing of the suit and therefore Issue No. (i)(a) is answered in favour of the plaintiff however, only till the filing of the suit.

64. Answer to Issue No.(i)(b):-

I hold that it is a fact that the defendants had guaranteed an output of 18 Lakhs units per annum for a period of 20 years as stated in the issue



No.i(b), but by filing of the suit, the contract has been avoided by the plaintiff.

65. Answer to Issue No.(ii):-

I hold that the plaintiff is entitled for a direction against the defendant to pay a sum of Rs.2,55,00,561/- (Rupees Two Crores Fifty Five Lakhs Five Hundred and Sixty One Only) together with interest at 12% per annum on Rs.1,61,17,223/- (Rupees One Crore Sixty One Lakhs Seventeen Thousand Two Hundred and Twenty Three Only) from the date of the plaint till this date and at 6% per annum till date of payment.

66. Answer to Issue No.(iii):-

In view of the answers given in Issue Nos.(i)(a), (i)(b) and (ii), I reject the alternate relief sought and as framed in issue No.(iii).

Issue No.(xi):-

67.For the reasons stated above, I would hold that the suit is to be partly decreed with respect to the relief actually claimed at the time of filing of the suit with costs.

68.I would also hold that the plaintiff is entitled for interest at the



rate of 12% per annum from the date of filing of the suit till this date, and thereafter at 6% per annum till date of realisation.

69. In the result,

(i) The plaintiff is entitled for a direction against the defendant to pay a sum of Rs.2,55,00,561/- (Rupees Two Crores Fifty Five Lakhs Five Hundred and Sixty One Only) together with interest at 12% per annum on Rs.1,61,17,223/- (Rupees One Crore Sixty One Lakhs Seventeen Thousand Two Hundred and Twenty Three Only) from the date of the plaint till this date and at 6% per annum till date of payment.

(ii) The suit is dismissed with respect to all other reliefs claimed.

(iii) The suit is partly decreed. With costs.

70. The Registry is directed and delegated by the Court to determine the costs as per the Bill of Costs submitted by the plaintiff in accordance with Section 35 of C.P.C., as amended by the Commercial Courts Act, 2015. The plaintiff is specifically entitled to the fees and expenses of the witness, the legal fees and expenses incurred and for any other expenses incurred in connection with the judicial proceedings and also for recovery of the actual Court Fees paid into Court.

Sd./-(C.V.K.J.,)

26.04.2021



Dated at Madras this the day of 2021.

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COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

List of Witnesses in C.S.No.240 of 2002 :-

P.W.1 – Mr.R.Swaminathan

D.W.1 – Mr.Solomon Sugumar

List of Exhibits on the side of Plaintiff:

Ex.No.	Date	Parties	Documents	Remarks
1	12.01.2018	Plaintiff	Power of Attorney	Copy
2	01.12.1995	First Defendant to the Plaintiff	Office Letter	Photocopy
3	15.12.1995	First Defendant to the Plaintiff	Letter of Offer	Photocopy
4	26.12.1995	Plaintiff to First Defendant	Letter of Acceptance	Photocopy
5	28.12.1995	First Defendant to Plaintiff	Order Acceptance Letter	Photocopy
6	May 1996	Plaintiff	Invoice	Photocopy
7	17.06.1996	Plaintiff	Invoice No.2	Photocopy
8	20.08.1996	Plaintiff	Invoice	Photocopy
9	18.09.1996	Plaintiff	Invoice	Photocopy
10	15.10.1996	Plaintiff	Invoice	Photocopy
11	18.11.1996	Plaintiff	Invoice	Photocopy
12	16.12.1996	Plaintiff	Invoice	Photocopy
13	16.01.1997	Plaintiff	Invoice	Photocopy
14	24.02.1997	Plaintiff	Invoice	Photocopy
15	15.03.1997	Plaintiff	Invoice	Photocopy
16	10.09.1997	First Defendant to Plaintiff	Letter of Invoice	Original
17	18.09.1997	First Defendant to	Letter of Invoice	Original



Ex.No.	Date	Parties	Documents	Remarks
		Plaintiff		
18	29.10.1997	First Defendant to Plaintiff	Letter of Invoice	Original
19	21.11.1997	First Defendant to Plaintiff	Letter of Invoice	Original
20	30.12.1997	First Defendant to Plaintiff	Letter of Invoice	Original
21	03.02.1998	First Defendant to Plaintiff	Letter of Invoice	Original
22	12.03.1998	First Defendant to Plaintiff	Letter of Invoice	Original
23	23.03.1998	First Defendant to Plaintiff	Letter of Invoice	Original
24	28.05.1998	First Defendant to Plaintiff	Letter of Invoice	Original
25	08.08.1998	First Defendant to Plaintiff	Letter of Invoice	Original
26	03.09.1998	First Defendant to Plaintiff	Letter of Invoice	Original
27	29.09.1998	First Defendant to Plaintiff	Letter of Invoice	Original
28	23.11.1998	First Defendant to Plaintiff	Letter of Invoice	Original
29	12.01.1999	First Defendant to Plaintiff	Letter of Invoice	Original
30	27.02.1999	First Defendant to Plaintiff	Letter of Invoice	Original
31	27.03.1999	First Defendant to Plaintiff	Letter of Invoice	Original
32	30.04.1999	Second Defendant to Plaintiff	Letter of Invoice	Original
33	31.05.1999	Second Defendant to Plaintiff	Letter of Invoice	Original
34	29.06.1999	Second Defendant to Plaintiff	Letter of Invoice	Original
35	30.07.1999	Second Defendant to Plaintiff	Letter of Invoice	Original
36	06.12.1999	Second Defendant to Plaintiff	Letter of Invoice	Original



Ex.No.	Date	Parties	Documents	Remarks
37	14.01.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
38	02.02.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
39	07.03.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
40	03.04.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
41	31.05.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
42	03.07.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
43	31.07.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
44	04.09.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
45	07.10.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
46	03.11.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
47	09.12.2000	Second Defendant to Plaintiff	Letter of Invoice	Original
48	03.01.2001	Second Defendant to Plaintiff	Letter of Invoice	Original
49	02.02.2001	Second Defendant to Plaintiff	Letter of Invoice	Original
50	07.03.2001	Second Defendant to Plaintiff	Letter of Invoice	Original
51	04.04.2001	Second Defendant to Plaintiff	Letter of Invoice	Original
52	23.05.1996	First Defendant to Plaintiff	Letter with Generation details	Original
53	20.06.1996	First Defendant to Plaintiff	Letter with Generation details	Original
54	21.08.1996	First Defendant to Plaintiff	Letter with Generation details	Original
55	19.09.1996	First Defendant to Plaintiff	Letter with Generation details	Original
56	29.09.1996	First Defendant to Plaintiff	Letter enclosing details	Original



Ex.No.	Date	Parties	Documents	Remarks
		Plaintiff	of amount due to the Plaintiff from TNEB	
57	17.10.1996	First Defendant to Plaintiff	Letter with Generation details	Original
58	21.11.1996	First Defendant to Plaintiff	Letter with Generation details	Original
59	17.12.1996	First Defendant to Plaintiff	Letter with Generation details	Original
60	20.01.1996	First Defendant to Plaintiff	Letter with Generation details	Original
61	19.02.1997	First Defendant to Plaintiff	Letter with Generation details	Original
62	24.03.1997	First Defendant to Plaintiff	Letter with Generation details	Original
63	17.04.1997	First Defendant to Plaintiff	Letter with Generation details	Original
64	24.05.1997	First Defendant to Plaintiff	Letter with Generation details	Original
65	17.06.1997	First Defendant to Plaintiff	Letter with Generation details	Original
66	15.07.1997	First Defendant to Plaintiff	Letter with Generation details	Original
67	18.08.1997	First Defendant to Plaintiff	Letter with Generation details	Original
68	15.09.1997	First Defendant to Plaintiff	Letter with Generation details	Original
69	17.10.1997	First Defendant to Plaintiff	Letter with Generation details	Original
70	24.11.1997	First Defendant to Plaintiff	Letter with Generation details	Original
71	19.12.1997	First Defendant to Plaintiff	Letter with Generation details	Original
72	22.01.1998	First Defendant to Plaintiff	Letter with Generation details	Original
73	11.03.1998	First Defendant to Plaintiff	Letter with Generation details	Original
74	20.03.1998	First Defendant to Plaintiff	Letter with Generation details	Original
75	20.04.1998	First Defendant to Plaintiff	Letter with Generation details	Original



Ex.No.	Date	Parties	Documents	Remarks
		Plaintiff	details	
76	20.05.1998	First Defendant to Plaintiff	Letter with Generation details	Original
77	18.06.1998	First Defendant to Plaintiff	Letter with Generation details	Original
78	20.07.1998	First Defendant to Plaintiff	Letter with Generation details	Original
79	19.08.1998	First Defendant to Plaintiff	Letter with Generation details	Original
80	22.10.1998	First Defendant to Plaintiff	Letter with Generation details	Original
81	11.11.1998	First Defendant to Plaintiff	Letter with Generation details	Original
82	12.01.1999	First Defendant to Plaintiff	Letter with Generation details	Original
83	21.01.1999	First Defendant to Plaintiff	Letter with Generation details	Original
84	10.03.1999	First Defendant to Plaintiff	Letter with Generation details	Original
85	20.04.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
86	22.05.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
87	09.06.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
88	02.08.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
89	10.08.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
90	11.09.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
91	15.09.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
92	15.10.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
93	17.11.1999	Second Defendant to Plaintiff	Letter with Generation details	Original
94	13.12.1999	Second Defendant to Plaintiff	Letter with Generation details	Original



Ex.No.	Date	Parties	Documents	Remarks
95	10.01.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
96	17.02.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
97	20.03.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
98	17.04.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
99	15.05.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
100	12.06.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
101	13.07.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
102	10.08.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
103	11.09.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
104	17.10.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
105	17.11.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
106	15.12.2000	Second Defendant to Plaintiff	Letter with Generation details	Original
107	20.02.2001	Second Defendant to Plaintiff	Letter with Generation details	Original
108	20.03.2001	Second Defendant to Plaintiff	Letter with Generation details	Original
109	18.02.2000	Plaintiff to Second Defendant	Letter	Photocopy
110	18.03.2000	Plaintiff to Second Defendant	Letter	Photocopy
111		Plaintiff	Statement of Power Generation for the period April to March 2001	
112		Plaintiff	Statement showing shortfall in generation of power and compensation payable	



Ex.No.	Date	Parties	Documents	Remarks
			by the defendants for such shortfall in generation for the period 01.04.1996 to 31.03.2001	
113		Plaintiff	Statement of Expenses incurred during the period 01.04.1996 to 31.03.2001	
114		Plaintiff	Statement of compensation payable by the defendants for the surrender / return of the Wind turbines	
115	18.03.2000	Second Defendant to Plaintiff	Letter	Photocopy
116	24.03.2000	Plaintiff to second defendant	Letter	Photocopy
117	04.04.2000	Plaintiff to second defendant	Letter	Photocopy
118	11.04.2000	Second Defendant to Plaintiff	Letter	Photocopy
119	08.05.2000	Second Defendant to Plaintiff	Letter	Photocopy
120	24.04.2000	Plaintiff to second defendant	Letter	Photocopy
121	17.05.2000	Plaintiff to second defendant	Letter	Photocopy
122	24.06.2000	Plaintiff's counsel to second defendant	Legal Notice	Photocopy
123	21.07.2000	First Defendant to Plaintiff	Letter	Photocopy
124	12.10.2000	Plaintiff's counsel to Defendants	Legal Notice	Photocopy
125	28.11.2000	Defendants' counsel to Plaintiff's counsel	Interim reply	Photocopy
126	28.04.2001	Second defendant to plaintiff	Letter with generation details	Original
127	04.05.2001	Plaintiff	Invoice	Photocopy
128	16.05.2001	Second defendant to	Letter with generation	Original



Ex.No.	Date	Parties	Documents	Remarks
		plaintiff	details	
129	31.05.2001	Plaintiff	Invoice	Photocopy
130	19.06.2001	Second defendant to plaintiff	Letter with generation details	Original
131	04.07.2001	Plaintiff	Invoice	Photocopy
132	24.07.2001	Second defendant to plaintiff	Letter with generation details	Original
133	03.08.2001	Plaintiff	Invoice	Photocopy
134	28.08.2001	Second defendant to plaintiff	Letter with generation details	Original
135	05.09.2001	Plaintiff	Invoice	Photocopy
136	17.09.2001	Second defendant to plaintiff	Letter with generation details	Original
137	01.10.2001	Plaintiff	Invoice	Photocopy
138	05.11.2001	Plaintiff	Invoice	Photocopy
139	16.11.2001	Second defendant to plaintiff	Letter with generation details	Original
140	06.12.2001	Plaintiff	Invoice	Photocopy
141	19.12.2001	Second defendant to plaintiff	Letter with generation details	Original
142	03.01.2002	Plaintiff	Invoice	Photocopy
143	15.01.2002	Second defendant to plaintiff	Letter with generation details	Original
144	30.01.2002	Plaintiff	Invoice	Photocopy
145	14.02.2002	Second defendant to plaintiff	Letter with generation details	Original
146	18.03.2002	Second defendant to plaintiff	Letter with generation details	Original
147	28.03.2002	Plaintiff	Invoice	Photocopy
148	18.04.2002	Second defendant to plaintiff	Letter with generation details	Original
149	02.05.2002	Plaintiff	Invoice	Photocopy
150	30.05.2002	Second defendant to plaintiff	Letter with generation details	Original
151	29.05.2002	Plaintiff	Invoice	Photocopy
152	19.06.2002	Second defendant to plaintiff	Letter with generation details	Original



Ex.No.	Date	Parties	Documents	Remarks
153	29.06.2002	Plaintiff	Invoice	Photocopy
154	16.07.2002	Second defendant to plaintiff	Letter with generation details	Original
155	30.07.2002	Plaintiff	Invoice	Photocopy
156	19.08.2002	Second defendant to plaintiff	Letter with generation details	Original
157	03.09.2002	Plaintiff	Invoice	Photocopy
158	19.09.2002	Second defendant to plaintiff	Letter with generation details	Original
159	02.10.2002	Plaintiff	Invoice	Photocopy
160	29.10.2002	Second defendant to plaintiff	Letter with generation details	Original
161	01.11.2002	Plaintiff	Invoice	Photocopy
162	18.11.2002	Second defendant to plaintiff	Letter with generation details	Original
163	30.11.2002	Plaintiff	Invoice	Photocopy
164	19.12.2002	Second defendant to plaintiff	Letter with generation details	Original
165	31.12.2002	Plaintiff	Invoice	Photocopy
166	18.01.2003	Second defendant to plaintiff	Letter with generation details	Original
167	01.02.2003	Plaintiff	Invoice	Photocopy
168	13.02.2003	Second defendant to plaintiff	Letter with generation details	Original
169	01.03.2003	Plaintiff	Invoice	Photocopy
170	17.03.2003	Second defendant to plaintiff	Letter with generation details	Original
171	31.03.2003	Plaintiff	Invoice	Photocopy
172	23.04.2003	Second defendant to plaintiff	Letter with generation details	Original
173	30.04.2003	Plaintiff	Invoice	Photocopy
174	21.05.2003	Second defendant to plaintiff	Letter with generation details	Original
175	28.05.2003	Plaintiff	Invoice	Photocopy
176	23.06.2003	Second defendant to plaintiff	Letter with generation details	Original
177	30.06.2003	Plaintiff	Invoice	Photocopy



Ex.No.	Date	Parties	Documents	Remarks
178	14.07.2003	Second defendant to plaintiff	Letter with generation details	Original
179	29.07.2003	Plaintiff	Invoice	Photocopy
180	19.08.2003	Second defendant to plaintiff	Letter with generation details	Original
181	03.09.2003	Plaintiff	Invoice	Photocopy
182	20.09.2003	Second defendant to plaintiff	Letter with generation details	Original
183	30.09.2003	Plaintiff	Invoice	Photocopy
184	20.10.2003	Second defendant to plaintiff	Letter with generation details	Original
185	01.11.2003	Plaintiff	Invoice	Photocopy
186	21.11.2003	Second defendant to plaintiff	Letter with generation details	Original
187	03.12.2003	Plaintiff	Invoice	Photocopy
188	22.12.2003	Second defendant to plaintiff	Letter with generation details	Original
189	02.01.2004	Plaintiff	Invoice	Photocopy
190	16.01.2004	Second defendant to plaintiff	Letter with generation details	Original
191	04.02.2004	Plaintiff	Invoice	Photocopy
192	18.02.2004	Second defendant to plaintiff	Letter with generation details	Original
193	02.03.2004	Plaintiff	Invoice	Photocopy
194	16.03.2004	Second defendant to plaintiff	Letter with generation details	Original
195	31.03.2004	Plaintiff	Invoice	Photocopy
196	22.04.2004	Second defendant to plaintiff	Letter with generation details	Original
197	04.05.2004	Plaintiff	Invoice	Photocopy
198	22.05.2004	Second defendant to plaintiff	Letter with generation details	Original
199	02.06.2004	Plaintiff	Invoice	Photocopy
200	28.06.2004	Second defendant to plaintiff	Letter with generation details	Original
201	02.07.2004	Plaintiff	Invoice	Photocopy
202	23.07.2004	Second defendant to plaintiff	Letter with generation details	Original



Ex.No.	Date	Parties	Documents	Remarks
		plaintiff	details	
203	02.08.2004	Plaintiff	Invoice	Photocopy
204	19.08.2004	Second defendant to plaintiff	Letter with generation details	Original
205	02.09.2004	Plaintiff	Invoice	Photocopy
206	23.09.2004	Second defendant to plaintiff	Letter with generation details	Original
207	01.10.2004	Plaintiff	Invoice	Photocopy
208	15.10.2004	Second defendant to plaintiff	Letter with generation details	Original
209	01.11.2004	Plaintiff	Invoice	Photocopy
210	15.11.2004	Second defendant to plaintiff	Letter with generation details	Original
211	01.12.2004	Plaintiff	Invoice	Photocopy
212	17.12.2004	Second defendant to plaintiff	Letter with generation details	Original
213	01.01.2005	Plaintiff	Invoice	Photocopy
214	18.01.2005	Second defendant to plaintiff	Letter with generation details	Original
215	01.02.2005	Plaintiff	Invoice	Photocopy
216	16.02.2005	Second defendant to plaintiff	Letter with generation details	Original
217	01.03.2005	Plaintiff	Invoice	Photocopy
218	19.03.2005	Second defendant to plaintiff	Letter with generation details	Original
219	31.03.2005	Plaintiff	Invoice	Photocopy
220	20.04.2005	Second defendant to plaintiff	Letter with generation details	Original
221	01.05.2005	Plaintiff	Invoice	Photocopy
222	01.06.2005	Second defendant to plaintiff	Letter with generation details	Original
223	01.06.2005	Plaintiff	Invoice	Photocopy
224	20.06.2005	Second defendant to plaintiff	Letter with generation details	Original
225	01.07.2005	Plaintiff	Invoice	Photocopy
226	19.07.2005	Second defendant to plaintiff	Letter with generation details	Original



Ex.No.	Date	Parties	Documents	Remarks
227	01.08.2005	Plaintiff	Invoice	Photocopy
228	18.08.2005	Second defendant to plaintiff	Letter with generation details	Original
229	01.09.2005	Plaintiff	Invoice	Photocopy
230	16.09.2005	Second defendant to plaintiff	Letter with generation details	Original
231	01.10.2005	Plaintiff	Invoice	Photocopy
232	14.10.2005	Second defendant to plaintiff	Letter with generation details	Original
233	02.11.2005	Plaintiff	Invoice	Photocopy
234	15.11.2005	Second defendant to plaintiff	Letter with generation details	Original
235	02.12.2005	Plaintiff	Invoice	Photocopy
236	19.12.2005	Second defendant to plaintiff	Letter with generation details	Original
237	02.01.2006	Plaintiff	Invoice	Photocopy
238	18.01.2006	Second defendant to plaintiff	Letter with generation details	Original
239	01.02.2006	Plaintiff	Invoice	Photocopy
240	20.02.2006	Second defendant to plaintiff	Letter with generation details	Original
241	01.03.2006	Plaintiff	Invoice	Photocopy
242	22.03.2006	Second defendant to plaintiff	Letter with generation details	Original
243	01.04.2006	Plaintiff	Invoice	Photocopy
244	19.04.2006	Second defendant to plaintiff	Letter with generation details	Original
245	02.05.2006	Plaintiff	Invoice	Photocopy
246	03.08.2006	Second defendant to plaintiff	Letter with generation details	Original
247	01.06.2006	Plaintiff	Invoice	Photocopy
248	01.07.2006	Plaintiff	Invoice	Photocopy
249	18.07.2006	Second defendant to plaintiff	Letter with generation details	Original
250	01.08.2006	Plaintiff	Invoice	Photocopy
251	21.08.2006	Second defendant to plaintiff	Letter with generation details	Original



Ex.No.	Date	Parties	Documents	Remarks
252	01.09.2006	Plaintiff	Invoice	Photocopy
253	18.09.2006	Second defendant to plaintiff	Letter with generation details	Original
254	01.10.2006	Plaintiff	Invoice	Photocopy
255	17.10.2006	Second defendant to plaintiff	Letter with generation details	Original
256	01.11.2006	Plaintiff	Invoice	Photocopy
257	01.12.2006	Plaintiff	Invoice	Photocopy
258	19.12.2006	Second defendant to plaintiff	Letter with generation details	Original
259	01.01.2007	Plaintiff	Invoice	Photocopy
260	23.01.2007	Second defendant to plaintiff	Letter with generation details	Original
261	01.02.2007	Plaintiff	Invoice	Photocopy
262	14.02.2007	Second defendant to plaintiff	Letter with generation details	Original
263	01.03.2007	Plaintiff	Invoice	Photocopy
264	14.03.2007	Second defendant to plaintiff	Letter with generation details	Original
265	01.04.2007	Plaintiff	Invoice	Photocopy
266	02.05.2007	Plaintiff	Invoice	Photocopy
267	22.05.2007	Second defendant to plaintiff	Letter with generation details	Original
268	04.06.2007	Plaintiff	Invoice	Photocopy
269	19.06.2007	Second defendant to plaintiff	Letter with generation details	Original
270	04.07.2007	Plaintiff	Invoice	Photocopy
271	18.07.2007	Second defendant to plaintiff	Letter with generation details	Original
272	07.08.2007	Plaintiff	Invoice	Photocopy
273	24.08.2007	Second defendant to plaintiff	Letter with generation details	Original
274	07.09.2007	Plaintiff	Invoice	Photocopy
275	19.09.2007	Second defendant to plaintiff	Letter with generation details	Original
276	04.10.2007	Plaintiff	Invoice	Photocopy
277	23.10.2007	Second defendant to plaintiff	Letter with generation details	Original



Ex.No.	Date	Parties	Documents	Remarks
		plaintiff	details	
278	07.11.2007	Plaintiff	Invoice	Photocopy
279	21.11.2007	Second defendant to plaintiff	Letter with generation details	Original
280	07.12.2007	Plaintiff	Invoice	Photocopy
281	17.12.2007	Second defendant to plaintiff	Letter with generation details	Original
282	01.08.2007	Plaintiff	Invoice	Photocopy
283	16.01.2008	Second defendant to plaintiff	Letter with generation details	Original
284	04.02.2008	Plaintiff	Invoice	Photocopy
285	27.02.2008	Second defendant to plaintiff	Letter with generation details	Original
286	04.03.2008	Plaintiff	Invoice	Photocopy
287	27.03.2008	Second defendant to plaintiff	Letter with generation details	Original
288	04.04.2008	Plaintiff	Invoice	Photocopy
289	05.05.2008	Second defendant to plaintiff	Letter with generation details	Original
290	04.09.2008	Plaintiff	Invoice	Photocopy
291	29.05.2008	Second defendant to plaintiff	Letter with generation details	Original
292	02.07.2008	Second defendant to plaintiff	Letter with generation details	Original
293	04.08.2008	Second defendant to plaintiff	Letter with generation details	Original
294	28.08.2008	Second defendant to plaintiff	Letter with generation details	Original
295	26.09.2008	Second defendant to plaintiff	Letter with generation details	Original
296	04.10.2008	Plaintiff	Invoice	Photocopy
297	27.10.2008	Second defendant to plaintiff	Letter with generation details	Original
298	04.11.2008	Plaintiff	Invoice	Photocopy
299	02.12.2008	Second defendant to plaintiff	Letter with generation details	Original
300	04.12.2008	Plaintiff	Invoice	Photocopy



Ex.No.	Date	Parties	Documents	Remarks
301	05.01.2009	Second defendant to plaintiff	Letter with generation details	Original
302	04.01.2009	Plaintiff	Invoice	Photocopy
303	02.02.2009	Second defendant to plaintiff	Letter with generation details	Original
304	04.05.2009	Plaintiff	Invoice	Photocopy
305	09.03.2009	Second defendant to plaintiff	Letter with generation details	Original
306	04.07.2009	Plaintiff	Invoice	Photocopy
307	31.03.2009	Second defendant to plaintiff	Letter with generation details	Original
308	04.07.2009	Plaintiff	Invoice	Photocopy
309	04.07.2009	Plaintiff	Invoice	Photocopy
310	03.06.2009	Second defendant to plaintiff	Letter with generation details	Original
311	04.07.2009	Plaintiff	Invoice	Photocopy
312	04.07.2009	Plaintiff	Invoice	Photocopy
313	04.08.2009	Plaintiff	Invoice	Photocopy
314	04.08.2009	Plaintiff	Invoice	Photocopy
315	04.10.2009	Plaintiff	Invoice	Photocopy
316	04.10.2010	Plaintiff	Invoice	Photocopy
317	04.02.2010	Plaintiff	Invoice	Photocopy
318	04.03.2010	Plaintiff	Invoice	Photocopy
319	04.04.2010	Plaintiff	Invoice	Photocopy
320	04.05.2010	Plaintiff	Invoice	Photocopy
321	04.06.2010	Plaintiff	Invoice	Photocopy
322	04.07.2010	Plaintiff	Invoice	Photocopy
323	04.08.2010	Plaintiff	Invoice	Photocopy
324	04.09.2010	Plaintiff	Invoice	Photocopy
325	04.10.2010	Plaintiff	Invoice	Photocopy

List of Exhibits on the side of Defendant:



Ex.No.	Date	Parties	Documents	Remarks
1		Defendant No.1	Technical Data -Aban Kenetech	Copy
2		Defendant and third parties	Certificate issued for Kenetech Windmill	Copy
3	29.03.96	Tamil Nadu Electricity Board to Plaintiff	Letter with annexure	Copy
4	30.03.96	Electrical Inspectorate to Plaintiff	Letter	Copy
5	03.04.96	Tamil Nadu Electricity Board to Plaintiff	Letter with form A & B	Copy
6	13.06.96	Government of India	Letter No.66/241/95-WE/PG with enclosure	Copy
7	29.01.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
8	25.03.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
9	31.03.97	Plaintiff to 1 st Defendant	Letter	Copy
10	23.05.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
11	09.06.97	Tamil Nadu Electricity Board to Wind Power Producers Association	Letter	Copy
12	19.06.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
13	16.07.97	1 st Defendant to Tamil Nadu Electricity Board	Letter	Copy
14	23.07.97	1 st Defendant to Wind Power Producers Association	Letter	Copy
15	01.08.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
16	07.08.97	Wind Power Producer Association to 1 st Defendant	Letter	Copy
17	07.08.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
18	08.08.97	1 st Defendant to Mr.R.Krishnachander, Hon.Secretary, Wind Power Producers Association	Letter with enclosures	Copy
19	04.09.97	1 st Defendant to Plaintiff	Letter	Copy
20	16.09.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
21	24.09.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy



Ex.No.	Date	Parties	Documents	Remarks
22	23.10.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
23	21.11.97	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
24	04.02.98	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
25	28.03.98	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
26	21.05.98	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
27	22.06.98	1 st Defendant to Plaintiff	Letter	Copy
28	07.07.98	Plaintiff to 1 st Defendant	Letter	Copy
29	22.07.98	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
30	20.08.98	1 st Defendant to Plaintiff	Letter	Copy
31	28.08.98	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
32	26.09.98	1 st Defendant to Plaintiff	Letter	Copy
33	29.10.98	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
34	02.02.99	1 st Defendant to Plaintiff	Letter	Copy
35	20.04.99	1 st Defendant to Plaintiff	Letter with Debit Note	Copy
36	20.04.99	2 nd Defendant to Plaintiff	Letter	Copy
37	22.07.99	2 nd Defendant to Plaintiff	Letter	Copy
38	11.08.99	2 nd Defendant to Plaintiff	Letter	Copy
39	21.09.99	2 nd Defendant to Plaintiff	Letter with enclosures	Copy
40	10.12.99	2 nd Defendant to Plaintiff	Letter	Copy
41	23.12.99	2 nd Defendant to Plaintiff	Letter	Copy
42	18.01.2000	2 nd Defendant to Plaintiff	Letter	Copy
43	24.01.2000	Plaintiff to 2 nd Defendant	Letter	Copy
44	10.03.2000	Plaintiff to 2 nd Defendant	Letter	Copy
45	18.03.2000	2 nd Defendant to Plaintiff	Letter	Copy
46	24.03.2000	Plaintiff to 2 nd Defendant	Letter	Copy
47	04.04.2000	Plaintiff to 2 nd Defendant	Letter	Copy
48	11.04.2000	2 nd Defendant to Plaintiff	Letter	Copy
49	08.05.2000	2 nd Defendant to Plaintiff	Letter	Copy
50	17.05.2000	Plaintiff to 2 nd Defendant	Letter	Copy
51	05.06.2000	2 nd Defendant to Plaintiff	Letter	Copy
52	19.06.2000	Plaintiff to 2 nd Defendant	Letter	Copy
53	17.12.2000	Plaintiff to 2 nd Defendant	Letter	Copy
54	30.12.2000	Plaintiff	Invoice/Bill No.57	Copy
55	31.01.2001	Plaintiff	Invoice/Bill No.58	Copy



Ex.No.	Date	Parties	Documents	Remarks
56	06.03.2001	Plaintiff	Invoice/Bill No.59	Copy
57	03.01.2002	2 nd Defendant to Plaintiff	Letter	Copy
58	30.01.2002	2 nd Defendant to Plaintiff	Letter	Copy
59	20.02.2002	2 nd Defendant to Plaintiff	Letter	Copy
60	21.02.2002	Plaintiff to 2 nd Defendant	Letter	Copy
61		Defendants	Grid availability Data	Copy
62		Defendants	Resolution authorising Mr.Solomon Sugumar to appear on behalf of the Defendants	Copy

Sd./-(C.V.K.J.,)
26.04.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.