



C.S. No.638 of 2002

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

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RRB Energy Ltd.,
No.17, Vembuliamman Koil Street,
K.K. Nagar (West),
Chennai – 600 078. *

.... Plaintiff

* Amended as per order dated 24.08.2023
in Appl. No.4414 of 2023.

Vs

Das Lagerwey Wind Turbines Ltd.,
Wescare Towers,
Cenotaph Road,
Teynampet,
Chennai – 600 018.

... Defendant

Prayer : PLAINT FILED UNDER ORDER IV RULE I OF O.S. RULES READ WITH ORDER VII RULE I OF C.P.C. prays for a judgment decree against the defendant a) for a sum of Rs.1,16,71,956.00 together with interest at the rate of 24% per annum, from the date of filing the plaint till the date of realisation and b) for costs of this suit.

For Plaintiff	: M/s.Harshit S. Jain for M/s.Rank Associates
For Defendant	: Set exparte



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JUDGEMENT

This suit has been filed for recovery of a sum of Rs.1,16,71,956.00 together with interest at the rate of 24% per annum, from the date of filing the plaint till the date of realisation together with costs.

2. The plaintiff is a Windmill manufacturer. They have supplied and installed Wind Electrical Generators (hereinafter referred to as WEGs) to the defendant based on a Purchase Order dated 25.02.1999 placed by the defendant. The defendant placed the Purchase Order with the plaintiff for the purchase of 12 Nos. of WEGs. The total value of the Purchase Order is Rs.9.30 crores. The Purchase Order included the costs of civil works and other works which were mentioned in the Purchase Order itself. The terms of the payment were also disclosed in the Purchase Order. The specifications of the WEGs were also disclosed in the Purchase Order itself. The Purchase Order dated 25.02.1999 was amended on 13.07.1999 by an amended Purchase Order. By the amended Purchase Order, the defendant has modified the number of WEGs to 8 instead of 12. There were also certain changes in the payments of instalments. The rate of each Wind Electric Generators was confirmed at Rs.80.50 lakhs. The amended Purchase Order dated 13.07.1999 had also given the details of payments to be made by the



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defendant. The defendant under the amended Purchase Order has agreed

to pay at Rs.18.5 lakhs per WEGs for a period of 48 months in equal

instalments, after the plaintiff completes the installation work.

According to the plaintiff, this payment of monthly instalments was in

addition to the initial payments made by the defendant. According to the

plaintiff, they had executed and completed the order placed by the

defendant. On completion of the project, the plaintiff has also demanded

the payment of the outstanding amount as per the agreed terms. As per

the agreed terms, the defendant had to pay a sum of Rs.2.35 crores to the

plaintiff, during the course of the project, Rs.2.61 crores within 30 days

from the date of commissioning of the WEGs. The balance amount of

Rs.148 lakhs was to be paid at Rs.4 lakhs at the time of commissioning

and Rs.3 lakhs per month in 48 monthly installments commencing from

November 1999. According to the plaintiff they have completed the

project work to the full satisfaction of the defendant. But the defendant

had not honoured the payment commitments as per the agreed terms.

According to the plaintiff as on 30.06.2002, the defendant had paid only

a sum of Rs.4.96 crores, that too, belatedly. It is also the case of the

plaintiff that the monthly instalments payable by the defendant from

November 1999 at Rs.3 lakhs per month was also not paid in time and as



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on 30.06.2002, 18 monthly instalments were outstanding inspite of the plaintiff's repeated reminders and demands. The plaintiff has issued a notice through its counsel to the defendant on 06.05.2002 demanding the outstanding amount of Rs.148 lakhs which was the outstanding instalments payable by the defendant to the plaintiff. According to the plaintiff despite receipt of the said legal notice, the defendant failed to pay the outstanding instalments payable to the plaintiff. Thereafter, another notice was sent by the plaintiff to the defendant on 21.05.2002 demanding the entire outstanding amount of Rs.1,14,07,035.62 together with interest at the rate of 24% per annum after adjusting the part payment made by the defendant.

3. Since the outstanding amount has not been paid, the suit has been filed for recovery of money together with interest and costs. The defendant has already been set exparte by this Court and they have chosen not to defend the suit. The plaintiff has let in oral and documentary evidence before the learned Additional Master - II. The Plaintiff's Vice President (Marketing & Projects) by name Mr.K. Kumar has been examined as a witness (PW1) before the learned Additional Master - II. Before the learned Additional Master - II, the following documents were marked as Exhibits :



1.	Ex.P1 is the original letter of authorization dated 30.11.2021.
2.	Ex.P2 is the photocopy of the purchase order dated 25.02.1999.
3.	Ex.P3 is the photocopy of the amended purchase order dated 13.07.1999.
4.	Ex.P4 is the office copy of the invoice dated 13.09.1999
5.	Ex.P5 is the office copy of the letter issued by the plaintiff to the defendant dated 19.01.2000.
6.	Ex.P6 is the office copy of the legal notice issued by the plaintiff to the defendant dated 06.05.2002.
7.	Ex.P7 is the original acknowledgment card dated 08.05.2002.
8.	Ex.P8 is the office copy of the legal notice issued by the plaintiff to the defendant dated 21.05.2002.
9.	Ex.P9 is the original postal acknowledgement card dated 22.05.2002.
10.	Ex.P10 is the original of the statement of accounts dated 17.07.2002.

4. As seen from the Exhibits the plaintiff has proved the suit claim for the following reasons :-

a) Purchase Order placed by the defendant on the plaintiff dated 25.02.1999 has been marked as Ex.P2

b) The amended Purchase Order dated 13.07.1999 issued by the defendant favouring the plaintiff has been marked as Ex.P3.

c) The Invoice dated 13.09.1999 raised by the plaintiff against the defendant in terms of the amended Purchase Order dated 13.07.1999 has been marked as Ex.P4.

d) The plaintiff has also sent a legal notice dated 06.05.2002



through its counsel to the defendant demanding the defendant to pay the outstanding amount, which has been marked as Ex.P6.

e) The defendant has also received the aforesaid legal notice dated 06.05.2002 which is confirmed by the acknowledgment card dated 08.05.2002, which is marked as Ex.P7.

f) The plaintiff has also sent one more legal notice to the defendant on 21.05.2002, which is marked as Ex.P8.

g) The defendant has also acknowledged the aforesaid notice dated 21.05.2002 as confirmed by the acknowledgement card dated 22.05.2002, which is marked as Ex.P9

h) The statement of account dated 17.07.2002 has also been filed by the plaintiff, which is marked as Ex.P10, which will reveal that a sum of Rs.1,16,71,956, which is the suit claim is liable to be paid by the defendant to the plaintiff. The suit claim of Rs.1,16,71,956/- has been arrived at as seen from the statement of account (Ex.P10) after adjustment of the part payments made by the defendant to the plaintiff. The defendant has also chosen not to reply to any of the notices sent by the plaintiff as seen from the documents available on record. The plaintiff has claimed interest at the rate of 24% per annum though the contract viz., Purchase Order does not stipulate such a rate of interest in



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case, the defendant fails to adhere to the terms and conditions of the

Purchase Order by making the payments to the plaintiff on time. The interest claimed by the plaintiff is on the higher side and that too when there is no contract for payment of such a rate of interest, this Court cannot grant 24% interest as claimed in the plaint. This Court can only grant as per the banking rate of interest, that is prevalent today. This Court therefore fixes the interest payable by the defendant to the plaintiff for the belated payment at 6% per annum instead of 24% per annum as claimed in the plaint.

5. By virtue of the oral and documentary evidence placed on record by the plaintiff, which has been referred to supra by this Court, the suit claim has been proved. Accordingly, the suit is partly decreed as prayed for by directing the defendant to pay a sum of Rs.1,16,71,956/- together with interest at the rate of 6% per annum, from the date of filing the plaint till the date of realisation and also by directing the defendant to pay the cost of the suit.

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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APPENDIX

List of Witness Examined on the side of the Plaintiff:

1. P.W.1 – Mr.K. Kumar

S. No.	Exhibits	Description of documents
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ABDUL QUDDHOSE, J.

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