IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	20.10.2023
Pronounced On	27.11.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

C.S.No.488 of 2019
(Comm. Div.)

M/s.Sri Bala Builders & Promoters (Pvt.)Ltd.,
Rep.by its Director G.Jayaraman ... Plaintiff

Vs.

1. Premila

2. Anitha ... Defendants

Prayer:- Civil Suit filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Section 7 of the Commercial Courts Act, 2015 praying to pass a Judgment and Decree against the defendants as follows:-

> (1) Directing the defendants 1 and 2 to pay a sum of Rs.**Rs.3,80,23,586.80/-**(Rupees three crores eighty lakhs twenty three thousand, five hundred and eighty six and eighty paise only) to the plaintiff to pay future interest at the rate of 24% per annum on Rs.3,48,13,723/- (Rupees

three crores forty eight lakhs thirteen thousand one hundred and forty paise only) from the date of plaint till the date of actual payment.

For Plaintiff	:	Mr. S.R.Rajagopal Senior Counsel for M/s.Selvi George
For Defendants	:	Mr.K.G.Vasudevan

JUDGMENT

The plaintiff, a Construction Company represented by its Director has filed this suit to recover an amount of **Rs.3,80,23,586.80/-** (Rupees Three Crores Eighty Lakhs Twenty Three Thousand Five Hundred and Eighty Six and Eighty Paise Only) together with future interest at the rate of 24% per annum from the date of plaint till the date of actual payment from the defendants herein.

2. The aforesaid amount of **Rs.3,80,23,586.80/-** (Rupees Three Crores Eighty Lakhs Twenty Three Thousand Five Hundred and Eighty Six and Eighty Paise Only) is the alleged balance amount due from the defendants

to the plaintiff for construction of a school complex for the defendant.

3. The aforesaid amount is the alleged due for the construction of a School Complex put up by the plaintiff measuring an extent of 24,439 sq.ft undertaken by the plaintiff for the defendants on a land measuring an extent of 24,644 ½ Sq.ft of land (10 grounds and 228 Sq.ft) out of total extent of 1 Acre and 9 Cents of land in S.No.51/1B3 in Seevaram Village, Perungudi, Chennai.

4. The facts in brief are that, the aforesaid land belonged to late Mr.S.Srinivasa Rao, the father of the defendants. Mr.S.Srinivasa Rao who died on 12.03.2018 by Ex.P.10 Settlement Deed dated 22.12.2016, late Mr.S.Srinivasa Rao had settled the land measuring an extent of 10 Grounds 228 Sq.ft equivalent to 24,644 ½ Sq.ft (56.46 Cents) in S.No.51/1B3 in Seevaram Village, Perungudi, Chennai in favour of the defendants, retaining life interest over the property with himself.

5. There was no written agreement between the plaintiff and late Mr.S.Sreenivasa Rao for the exact amount to be paid for putting up the construction of the School Complex. The plaintiff would contend that the terms of agreement were reduced in writing photocopy of which was marked as Ex.P5 agreement dated 07.11.2016. However, Ex.P5 was not signed by late Mr.S.Srinivasa Rao. The plaintiff claims to have charged amounts based on the Bill of Quantities (BOQ) in terms of Ex.P3 letter dated 20.09.2016 of Late Mr.S.Srinivasa Rao issued to the plaintiff.

6. Ex.P19 dated 31.07.2017 is the copy of letter of the plaintiff to first defendant and late Mr.S.Srinivasa Rao enclosing an revised estimate based on Bill of Quantity for a sum of Rs.9,90,38,727.46 After Ex.P19 dated 31.07.2017 the plaintiff had submitted the final bill for a sum of Rs.9,20,86,791.00 to the defendants herein.

7. The plaintiff is said to have already received a sum of Rs. 4,90,01,336/- (Rupees Four Crores Ninety Lakhs One Thousand Three Hundred and Thirty Six Only) during the course of construction from the

defendants and from their father late Mr.S.Sreenivasa Rao during his life time.

8. The plaintiff has demanded a further balance amount of Rs.3,80,23,586.80/- (Rupees Three Crores Eighty Lakhs Twenty Three Thousand Five Hundred and Eighty Six and Eighty Paisa Only) from the defendants for putting up a construction of School Complex measuring an extent of 24,439 sq.ft on 24,644 ½ Sq.ft of land (10 grounds and 228 Sq.ft) out of total extent of 1 Acre and 9 Cents of land in S.No.51/1B3. I shall narrate the facts in details in the ensuing paragraphs.

9. This Court had framed the following issues :-

1. *Whether the plaintiff is entitled for the relief of recovery of money claimed under various heads with interest?*
2. *Whether the defendants are liable to settle the final bill raised by the plaintiff based on the bill of quantity?*
3. *Whether the Director of the plaintiff company by virtue of his disqualification is legally entitled to continue to represent the company and prosecute the suit?*

4. *Whether the approval of the bills made by the Consultant from time to time binds the defendants and the claims made based on the same is sustainable?*
5. *Whether there was collusion between the plaintiff and the consultant and thereby, the cost was inflated to the benefit of the plaintiff and to the detriment of the defendants?*
6. *Whether the plaintiff is entitled to any other reliefs?*

10. On behalf of the plaintiff, proof affidavits were filed by PW1, PW2, PW3 and PW4 and these persons were also examined as witnesses:-

PW1	Mr.Jayaraman, Director of the Plaintiff.
PW2	Mr.P.K.Srinivasan, Site Engineer, who is said to have prepared Ex.P29 viz., Original Measurement Books.
PW3	Dr.Venugopal, Project consultant for Mr.Srinivasa Rao and the Director of M/s.M.S.G.S. Infrastructure and Hospitality.
PW4	Mr.M.Murali, Company Secretary.

11. On behalf of the plaintiff, following documents were marked as Exhibits:-

Date	Exhibits	Nature of Documents	Admitted/Denied
From 01.09.2016 to 31.08.2017	Ex.P1	Original Axis Bank Savings Account Statement of Mr.Jayaraman showing the entries for Financial Borrowings from private financiers for this project.	Denied
15.09.2016	Ex.P2	Photocopy of the Lease Deed between Mr.Srinivasa Rao & M/s.Vallimuthu Educational Trust.	Contents Denied
20.10.2016	Ex.P3	Original S.Srinivasan Rao given a letter to Sri Bala Builders.	Admitted
From 01.11.2016 to 31.12.2016	Ex.P4	Original Bank Statement of M/s.Sri Bala Constructions showing the cheque debit entry.	Denied
07.11.2016	Ex.P5	Photocopy of the agreement between S.Srinivasa Rao and Sri Bala Builders & Promotors Private Limited., along with abstract of quotation in MSGS Infrastructure & Hospitality Pvt.Ltd. The counsel for the defendant objected for marking of Document 5 on the ground that original not available with the defendants. Ex.P5 is marked with objection subject to proof and relevancy.	Denied
17.11.2016	Ex.P6	Photocopy of the Cheque issued in favour of Mr.Srinivasa Rao from M/s.Sri Bala Constructions, Chennai.	Contents denied

		The counsel for the defendant objected for marking of document 6 on the ground that original not available with the defendants. Ex.P6 is marked with objection subject to proof and relevancy.	
From 13.12.2016 to 30.06.2018	Ex.P7	Original Photographs taken at site on various dates from the very first day to till the end of the project. Photographs taken out from the computer for which Certificate under Section 65B Indian Evidence Act is filed.	Denied
21.12.2016	Ex.P8	A Letter of plaintiff Sri Bala Builders together with quotation to Mr.S.Srinivasa Rao. The counsel for the defendant objected for marking of Document 8 on the ground that original not available with the defendants. Ex.P8 is marked with objection subject to proof and relevancy.	Denied
From 18.01.2017 to 17.11.2017	Ex.P9	The Original Material Test Report from DAS Material Testing Private Limited for the materials like M-Sand, Steel, Cement, RMC Concrete.	Denied
22.12.2016	Ex.P10	Photocopy of the Certified copy of the Deed of Settlement in favour of Mrs.Premila. S & Mrs.Anitha Suri by Mr.Srinivasa Rao.	Denied
14.02.2017	Ex.P11	Original Email from Mr.Sathyanarayanan Architect with attachment showing the existing Ground level, excavation level and	

		Filling level. Email taken out from the computer for which Certificate under Section 65B Indian Evidence Act is filed.	Denied documents and contents
09.04.2017	Ex.P12	Photocopy of the Lease Deed between Mr.Srinivasa Rao & M/s.Sree Muragan Educational Trust.	Denied
20.05.2017	Ex.P13	Photocopy of the Valuation Report by Er.B.S.Ushadevi valuer for Federal Bank for the involvement of defendant.	Denied
05.06.2017	Ex.P14	Photocopy of the Letter from Mrs.S.Premila to The Manager, Federal Bank, Anna Nagar, Chennai-40. The counsel for the defendant objected for marking of Document 13 and 14 on the ground that the document has not come from the proper custody. Ex.P13 and Ex.P14 are marked with objection subject to proof, admissibility and relevancy.	Denied
From 09.06.2017 to 31.07.2018	Ex.P15	Original Whatsapp Chat between Mr.G.Jayaraman and Mrs.S.Premila Rao. Whatsapp Chat taken out from the i Phone for which Certificate under Section 65B Indian Evidence Act is filed.	Denied
11.07.2017	Ex.P16	Photocopy of the Rental Lease Deed between Mrs.Anitha Suri, Mrs.S.Premila Rao and M/s.Sree Muragan Educational Trust	Not disputed

		registered at Sub Registrar Office Neelangiri.	
14.07.2017	Ex.P17	Original Sri Bala Builders given a letter of Price variation to the M/s.MSGS Infrastructure & Hospitality Private Limited.	Denied
From 23.07.2017 to 12.01.2018	Ex.P18	The Original Concrete Cube Test Report from The India Cements Limited.	-
31.07.2017	Ex.P19	Original Letter by the plaintiff to the 1st defendant	Denied
05.12.2017	Ex.P20	Photocopy of the Planning Permit, Approval Letter from CMDA along with Sanctioned Plan dated 05.12.2017.	Not disputed
From 31.01.2018 to 19.02.2019	Ex.P21	Original Regular SMS Text Chats between Mr.G.Jayaraman and Mrs.S.Premila Rao. SMS Text Chats taken out from the i Phone for which Certificate under Section 65 B Indian Evidence Act is filed.	Denied
31.01.2018	Ex.P22	Photocopy of the Adhoc Running Bill by M/s.Sri Bala Builders The counsel for the defendant objected for marking of Document 22 on the ground that they ought to have been file at the time of filing the suit. It could have been prepared subsequently. Ex.P22 are marked with objection subject to proof and relevancy.	Denied
25.06.2018	Ex.P23	Original Final Certificate of MSGS Infrastructure & Hospitality Private Limited, Final Bill No.3 and	Denied

		supplementary final bill.	
05.09.2018	Ex.P24	Original Sri Bala Builders given a letter to the defendants. The counsel for the defendant objected for marking of Document 23 and 24 on the ground that the defendants have not received. Ex.P23 and Ex.P24 are marked with objection subject to proof, admissibility and relevancy.	Contents denied
09.09.2018	Ex.P25	Photocopy of the plaintiff given a mail to 1st defendant along with document. Email taken out from the computer for which Certificate under Section 65B Indian Evidence Act is filed. ● The counsel for the defendant submitted that Document 25 may be marked subject to proof and relevancy.	Contents denied
24.10.2018	Ex.P26	Photocopy of the Lawyers Notice given by the plaintiff	Admitted
08.01.2019	Ex.P27	Photocopy of the Reply Notice given by the defendants	Admitted
02.03.2019	Ex.P28	Photocopy of the complaint letter given to the Commissioner of Police by the plaintiff with acknowledgement.	Denied
-	Ex.P29	Original Measurement Books 3 Nos(Book 1, Book 2 and Book 3) maintained by Site Engineer of M/s.Sri Bala Builders for Civil Work & Steel Work.	Denied

		The counsel for the Defendant objected for marking of Document 29 on the ground that they ought to have been file at the time of filing the suit. It could have been prepared subsequently. Ex.P29 are marked with objection subject to proof and relevancy.	
	Ex.P30	Printout of the company master data sheet (since other side gave consent the document is marked)	-

12. On behalf of the defendants, proof affidavits were filed by DW1, DW2 and DW3 and these persons were also examined as witnesses:-

DW1	Mrs.Premila
DW2	Mr.Rajinikanth, Assistant General Manager of M/s.Sri Chaitanya Techno School, Perungudi
DW3	Mr.K.Natarajan, Former Chief Engineer of PWD and Chartered Engineer and approved valuer

13. On behalf of the defendants, the following documents were marked as Exhibits through DW3:-

Date	Exhibits	Nature of Documents
19.11.2018	D1	Valuation Report
11.10.2020	D2	The Valuation report (Comparative Study)

14. The plaintiff had filed A.No.5957 of 2019 before this Court to appoint an Advocate Commissioner and a Chartered Engineer to inspect the School Complex constructed by the plaintiff and to give a report.

15. By an order dated 07.11.2019, this Court appointed an Advocate Commissioner and a Chartered Engineer in A.No.5957 of 2019 to inspect the School Complex and to give a report. The reports of the Advocate Commissioner and the Chartered Engineer were marked as Ex.C1. Mr. Malarvannan was examined as Court witness (CW1).

16. The report of the Chartered Engineer dated 25.07.2020 appointed by the court however does not give the extent of the construction put by the plaintiff barring an oblique reference to construction of phase-I . As per the above report, the total value of construction arrived is Rs.8,19,37,351/- (Rupees Eight Crore Nineteen Lakh Thirty Seven Thousand Three Hundred

and Fifty One only)

I shall now narrate the facts in detail:-

17. It is the case of the plaintiff that the plaintiff is a builder-cum-promoter-cum-contractor and has been in the real estate business for the past 25 years. Due to the plaintiffs well established reputation, the Plaintiffs representatives were invited to meet late.Mr.S.SrinivasaRao, (the father of the Defendants) through their Consultant namely M/s.MSGS Infrastructure and Hospitality Pvt ltd on 18.102016 for the proposed construction of a School building in the property owned by late.Mr.S.SrinivasaRao situated at S.No.51/1B, Corporation Road, Seevaram village, Perungudi, Chennai. It was submitted that the 1st defendant was also present in the said meeting.

18. It was further submitted that in the aforesaid meeting, the plaintiff was informed by late Mr.Srinivasa Rao and the 1st defendant that an agreement was entered dated 15.09.2016 with M/s.Vallimuthu Educational Trust. Late Mr.Srinivasa Rao had further indicated that the total construction would be around 60,000 Sq.Ft., which would be required to be completed in

two phases, viz. The first phase being around 26000 Sq.ft., with a handing over date of May 2017 and Phase-II for approximately 34000 Sq.Ft., which was to be handed over by May 2018.

19. It was further submitted that it was stated by late Mr. SrinivasaRao that the advance received from M/s Vallimuthu Educational Trust was being used for other purpose and hence the plaintiff was requested to commence the construction on credit basis upto a sum of Rs.2.5 crores with the assurance that all pending bills will be paid after the approval of bank loan, which Mr. Srinivasa Rao had applied for was sanctioned with an undertaking to pay interest for delayed payments.

20. It was further submitted that accordingly after receiving Ex.P3 letter dated 20.10.2016 from late Mr. Srinivasa Rao, site was handed over to the plaintiff and the preliminary work was started after a Bhoomi Pooja. The plaintiff after completing the preliminary work submitted Ex.P8 quotation dated 21.12.2016 for Bill of Quantities for Phase I by including infrastructure development on the land area of 10 grounds and 228 square feet for a sum of

Rs.8,86,37,898/- on 21.12.2006.

21. It was submitted that the defendant specially mentioned that the construction of the building was to be of international standard and hence it was mutually decided to put up the construction based on Bill of Quantities and an item wise estimate was submitted. It was submitted that Ex.P5-Construction Agreement dated 07.11.2016 was also prepared between the plaintiff and Mr. Srinivasa Rao and was handed over to late Mr.Srinivasa Rao after plaintiff signing the agreement. It was submitted that the agreement was however never returned back with the signature of late Mr.Srinivasa Rao's who had informed that he would hand over the Ex.P.5 Construction agreement after signing it on an auspicious day once the loan was approved by the bank. It is submitted that based on such assurance, the plaintiff agreed to continue with the work, without any payment on account of faith and trust.

22. It was further submitted that during the month of February 2017, M/s. Vallimuthu Educational Trust withdrew from the proposal and the plaintiff was asked to stop the work till further instructions. A Bill for an

amount of Rs.80,91,336/- was raised and handed over to the first defendant and late Mr. Srinivasa Rao for the work done up to February 2017.

23. It was further submitted that in July 2017, nearly 6 months after the project was put on hold, it was informed to the plaintiff that another agreement was signed with M/s.Sri Chaitanya Schools of Hyderabad Out of the advance received from M/s.Chaitanya Schools of Hyderabad, the plaintiff was paid the aforesaid sum of Rs.80,91,336/-. The plaintiff also brought to the knowledge of late Mr. Srinivasa Rao and the first defendant about the increase in cost of material by 12% during the intervening period and as a result of which the cost had to be revised and Ex.P17- Letter dated 14.07.2017 was addressed by the plaintiff to M/s.MSGS Infrastructure and Hospitality Pvt. Ltd. in this regard. It was submitted that the plaintiff was asked to submit a fresh quotation at the prevailing market rate as on July 2017 and thus the plaintiff revised to Rs.9,90,30.727.46 vide Ex.P-19 dated 31.07.2017 which included the bill raised and the sum paid by the defendants for a sum of Rs.80,91,336/- with a discount of 5%.

24. It was submitted that the quotation was accepted by late Mr.

Srinivasa Rao and the first defendant and they requested the plaintiff to finish the structural work by the end of 2017, so that the site could be handed over for the school for M/s.Sri Chaitanya Schools of Hyderabad by 31.03.2018.

25. It was further submitted that the plaintiff proceeded with the work and submitted a bill dated 29.11.2017 for a sum of Rs.3,12,11,964 to which first defendant sought for an extension of time for payment. Later, the plaintiff was informed that the bank loan was sanctioned for only Rs.6.6 crores and made a payment of Rs.2,20,50,000/- to the plaintiff on 02.01.2018 with the assurance that in due course, the balance would be settled along with the final bill.

26. It was further submitted that on 07.02.2018, the first defendant made a payment of Rs.1,20,00,000/- and a further sum of Rs.68,60,000/- on 02.03.2018 and requested the plaintiff to complete the construction. Thereafter, a house warming ceremony was performed after completion of the works on 04.03.2018. It was submitted that on 10.03.2018 Mr.SrinivasaRao passed away and thus the property devolved on the first and second

defendants in terms of Ex.P.10- Deed of Settlement dated 22.12.2016 and the defendants involved themselves actively in managing the affairs of the School project.

27. It was further submitted that the plaintiff completed the entire work in all respects having a constructed area of 24,439 square feet with all facilities and amenities and raised a final bill on 15.06.2018 on the first and second defendants directly on their instructions for a sum of Rs.4,92,21,879 including GST with a rebate of 5%.

28. It was submitted that the final bill was also duly certified by the consultant of the defendant namely M/s.MSGS Infrastructure and Hospitality Private Limited on 25.06.2018 vide Ex.P-23 and as per the certification, a sum of Rs.4,63,92,105.35 was due after deduction of TDS and was payable by the defendants to plaintiff. It was submitted that the defendants did not pay the balance amount to the plaintiff despite the fact that they were receiving the rents from the school leased out for M/s.Sri Chaitanya Schools of Hyderabad

29. It was further submitted that the plaintiff allowed the defendant

to take possession even before full payment in good faith owing good relations the plaintiff had with late Mr.Srinivasa Rao and his family.

30. It was further submitted that the plaintiff never submitted bill for the area of 24,439 Sq.ft. Rather the Bill was submitted for the work executed as per site condition based on Bill of Quantity.

31. It was further submitted that though in Ex.P3 letter dated 20.10.2016 the project area is 10,228 sq.ft. the 1st defendant accepted during cross examination that the Construction was as per the approved plan and as per the CMDA rules the permissible construction was only in an extent of 24,665 sq.ft and the quotation was given based on Bill of Quantity only for this area and not for 40,000sq.ft and as per the FSI norms in an extent of 10,228 sq.ft of area only 24,644.5 sq.ft of construction can be put up.

32. It was further submitted that the defendants cannot convert the project cost to the square feet rate and this is totally untenable and that the infrastructures like 10 Feet filling of the entire land, sump, compound wall,

Overhead Tank, Septic Tank, Strom,Water trench, Drainage, TNEB Service line, Main Gate Arch, Play Area, Paving area, Borewell 2 nos, adjoin plot filling & Extra items cannot be calculated in square feet rate. It is submitted that so far the plaintiff has received only Rs.4,90,01,336/- (Rupees Four Crores Ninety Lakhs One Thousand Three Hundred and Thirty Six Only) from the defendants for the construction done.

33. It was further submitted that since the defendants failed to pay, the final bill was submitted after entire work was finished as per the agreement and the work done for the value of around Rs.2,39,000/- due to small pending works which was to be finished at the time of submitting the final bill was not included earlier. It was submitted that this Bill of Rs.2,39,000/- had been submitted as Supplementary final Bill along with the Final Certificate issued by the consultant directly to the defendants.

34. It was further submitted that the plaintiff issued Ex.P26 legal notice dated 24.10.2018 on the defendants for seeking payment for the bill amount claimed. Ex.P27 reply notice dated 08.01.2019 was issued by the

defendant denying the liability by leveling baseless allegation against the plaintiff company.

35. It was further submitted that the plaintiff had invested huge money to complete the construction by borrowing funds at high interest and that the defendants father late Mr. Srinivasa Rao had promised to pay interest due to delay in payments but the defendants failed to pay the balance amount despite several reminders.

36. It was further submitted that a police complaint was also lodged by the plaintiff against the defendants and later felt that the case be decided in a Civil Court and hence, the plaintiff approached this Court by filing this suit to recover a sum of Rs.3,80,23,586.80 together with interest at the rate of 24% p.a on the principle amount from the date of plaint till the date of actual payment.

37. It was submitted that the defendants 1 and 2 are liable to pay the

following sum to the plaintiff:

Certified Value	- Rs. 8,74,21,757.92
Less Rebate 5% on BOQ Rates	Rs. 38,92,226.15
Balance due after Rebate -	Rs. 8,35,29,53 1.77
Add supplementary Bill -	Rs. 2,39,951.46
Add Pooja expenses -	Rs.45,000.00
Total value -	Rs. 8,38, 14,483.23
Less payment received during Construction	Rs. 4,90,01,336.00
Balance amount to be paid	**Rs. 3,48, 13,147.23**

Interest at the rate of 9% on Rs.3,48, 13,147.23 from 25.6.2018 To 4-7-2019 - Rs. 32,10,439.82

Nett due inclusive of interest as on 4-7-2019 -	= **Rs. 3,80,23,586.80**
GST @ 18% on total value of	= Rs. 8,70,24,922.82
	= Rs. 1,56,64,486.10

38. It was submitted that the defendant is also liable to pay Goods

and Service Tax G.S.T for the billed amount and this present suit is only for Recovery of a sum of Rs. 3,80,23,586.80/- which is due to the plaintiff. It was submitted that the defendant is liable to pay a sum of Rs. 1,56,64,486.10/- towards GST for the bill amount separately and the plaintiff is obliged to recover this GST amount from the defendant separately and pay it to the Tax department and the payment of GST is the liability of the defendant and hence the plaintiff has not added this amount in this suit for recovery of the bill amount.

39. The learned counsel for the plaintiff has placed reliance on the following decisions:-

i) **Vimal Chand Ghevarchand Jain and Others vs. Ramakant Eknath Jadoo,** (2009) 5 SCC 713

ii) **Narayan Govid Gavate and Others vs. State of Maharashtra and Others,** (1977) 1 SCC 133

iii) **Anil Rishi vs. Gurbaksh Singh,** (2006) 5 SCC 558

<u>Case of the Defendants</u>:-

40. It was submitted that the plaintiff's allegation as if the plaintiff had several meetings with the defendants and there was a proper construction agreement signed between late Mr.S.Sreenivasa Rao and the plaintiff was false.

41. It was submitted that the plaintiff was appointed/recommended for the civil works contract by one Mr.Sunderrajan, director of M/s.MSGS Infrastructure & Hospitality Private Limited, a trusted friend and advisor of their father late Mr.S.Sreenivasa Rao.

42. It was submitted that late Mr.Srinivasa Rao, the defendant's father developed serious neuro related problems from the year 2008 and since then defendants father, Mr.S.Sreenivasa Rao had reposed immense trust on the advice of the said Mr. Sunderrajan, Director of M/s.MSGS Infrastructure & Hospitality Private Limited in all personal matters as well as business matters which carried a lot of weight. It was submitted that Mr.Sunderrajan was the one who brought in a proposal for a long term lease as per the requirement of M/s. Vallimuthu Educational Trust wherein the proposal was to construct a school building measuring 40,000 square feet and to let out the same to M/s.

Vallimuthu Educational Trust.

43. The defendants father late Mr.S.Sreenivasa Rao agreed to the suggestion of Mr.Sunderrajan and engaged the services of plaintiff company engaged on the recommendation of Mr. Sunderrajan to take up the civil construction work of the school building on the land measuring an extent of 10 grounds 228 Sq.ft in Survey No 51/1B.

44. It was submitted that the total extent of the land in Survey No.51/1B was l acre and 9 cents which was divided into two portions wherein one portion was settled in favour of the defendants in 2014 to an extent of 22,934 Sq.ft and the other portion was retained by the defendant's father Mr. Srinivasa Rao ,which measured an extent of 10 grounds and 228 Sq.ft in which the proposed construction was to take place pursuant to agreement with M/s. Vallimuthu Educational Trust.

45. It was submitted that as per Ex.P2 lease deed dated 15.09.2016 and Ex.P3 letter dated 20.10.2016 relied on by the plaintiff, the construction

requirement of M/s.Vallimuthu Educational Trust was a school building having a built up area of 40,000 Sq.ft built as a single unit with all facilities and amenities for the requirement of running a school and not 60,000 Sq.ft was alleged by the plaintiff.

46. It was submitted that during cross-examination, though PW-1 the Managing Director of the plaintiff was initially hesitant to admit the fact that the initial requirement was to construct a school building measuring an extent of 40,000 square feet. However, later was admitted to the same.

47. The defendants denied that the plaintiff submitted Ex.P8 Quotation on 21.12.2016 in bill of quantities form for Phase I of the project for a sum of Rs.8,86,32,898/-. It is submitted that there was no question of constructing the building in two phases in the initial stage when M/s. Vallimuthu Educational Trust came up with a proposal for the school building.

48. It was submitted that vide Ex.P3 letter dated 20.10.2016 signed

by late Mr.Srinivasa Rao, the plaintiff was given the civil construction of School meeting the requirement of M/s. Vallimuthu Educational Trust, subject to approval of quotation by Mr. Srinivasa Rao as and when submitted by the plaintiff also mentions the built up area to be 40.000 square feet only.

49. It was submitted that the alleged Ex.P5 Construction Agreement dated 07.11.2016 between the plaintiff and the defendants father, relied on by the plaintiff is not true and it is merely a document prepared on a plain sheet of paper bearing only the signature of the plaintiff and is an inadmissible piece of evidence.

50. It was submitted that the agreement with M/s. Vallimuthu Educational Trust could not be pursued as they opted and withdrew from the proposal. Mr.Sunderrajan later brought another offer from M/s.Muragan Educational Trust, Hyderabad, who offered to take on lease the land measuring 10 grounds and 228sq.ft, (which Mr.Srinivasa Rao retained in his ownership) together with a building to be constructed for running a school for their Sri Chai?anya Educational Institutions. The said school was to be managed by

M/s.Muragan Educational Trust. It was further submitted that the Ex.P.12 lease agreement dated 09.04.2017 was signed by the first defendant in her capacity as his power agent.

51. It was further submitted that the proposal was to construct a school building measuring 60,000 square feet of built up to cover the entire extent of 1 acre and 9 cents in two phases of 28,000 square feet during the first phase and 32,000 square feet during the second phase. It was submitted that the first phase of 28,000 square feet of buit up area was to be built on the land owned by late Mr. Srinivasa Rao which was subsequently settled in favour of the defendants vide Ex.P10 Settlement deed dated 22.12.2016. It was submitted that there was no quotation submitted by the plaintiff after M/s. Muragan Educational Trust came into the picture with a different proposal to construct a building in two phases and for an extended area.

52. It was submitted that in the month of July 2017, the work was

once again resumed by the plaintiff and the construction of the school building measuring an extent of 24,439 square feet was completed instead of 28,000 square feet according to the first phase.

53. It was submitted that the claim by the plaintiff that there was an escalation in the cost, due to the delay caused in resuming the construction work after it was stopped in the month of February 2017 and therefore a proposal for inflating the bill by 12% was made to and accepted by Mr.Srinivasa Rao as well as Mr.Sunderrajan of M/s.MSGS Infrastructure & Hospitality Private Limited and that Mr.Srinivasa Rao even promised to pay interest in case of any default in payments is not true. It was submitted that there was no such agreement for enhancement of cost in the case of escalation or for payment of interest.

54. It was submitted that Mr.Sunderrajan of M/s.MSGS Infrastructure & Hospitality Private Limited took a major role in the tie up with M/s.Muragan Educational Trust and was colluding with the plaintiff which was not suspected by the defendants. It was submitted that the first

defendant made payments from time to time to the plaintiff as she was instructed by her father, whenever any demand comes from him.

55. It was submitted that only after the death the defendants father on 10.03.2018 and when the defendants took over the management it was realized that Mr.Sunderrajan of M/s.MSGS Infrastructure & Hospitality Private Limited and had misused/ taken undue advantage of the trust reposed on him by late Mr.Srinivasa Rao and the defendants. It was submitted that effort was taken by the plaintiff in their pleadings as well as in the cross-examination to conceal this fact in order to shield Mr.Sunderrajan's much deeper involvement in the entire project and instead mentioned the name of M/s.MSGS Infrastructures and Hospitality Private limited in which Mr. Sunderrajan and Venugopal PW3 were Directors.

56. It was submitted that the plaintiff appears to have raised an adhoc bill for a sum of Rs.6,32,09,451.26 vide Ex.P22 dated 31.01.2018 and similarly, a final bill was also raised and was duly certified by M/s.MSGS Infrastructures and Hospitality private limited vide Ex.P23 dated 25.06.2018

assuming the role of consultant for the project. It was submitted that there was no written agreement, which would spell out the extent of authority of M/s.MSGS Infrastructures and Hospitality private limited as consultant and that no documents have been produced as proof for having received any remuneration for their alleged consultation work.

57. It was submitted that the plaintiff has been demanding money on the basis of certification issued by M/s.MSGS Infrastructures and Hospitality private limited for the final bill submitted by the plaintiff and thereafter the defendants also received a legal notice from the plaintiff to which a reply notice was also sent by the defendants agreeing to pay the remaining sum due after verifying the accounts and the estimate with the help of another civil engineer, by name Mr.Natarajan in good faith without knowing all the misdeeds of Mr.Sunderrajan and the plaintiff resulting in exorbitant escalation of prices.

58. It was submitted that M/s.MSGS Infrastructures and Hospitality private limited had approved the bills submitted by the plaintiff as a matter of

routine, without verifying the cost of materials, labour cost and other incidentals incurred by the plaintiff and that the plaintiff has not produced any supporting bills to justify the cost demanded by them. It was submitted that the alleged 12% hike in the overall cost during the period between February 2017 to July 2017 in a period of 6 months which is said to be accepted by M/s.MSGS Infrastructures and Hospitality private limited/ Mr. Sunderrajan was also without any supporting evidence from the plaintiff and that the so-called consultant, who claims that he was appointed by Mr.Srinivasa Rao has not also been cited as a witness on the side of the plaintiff and has not been examined.

59. It was submitted that the allegation of the plaintiff that the defendant and Mr.Srinivasa Rao was informed about the escalation in cost by 12% and about the proposal to raise bills at the enhanced rates is absolutely false . It is was also denied that the defendant was liable to pay the defendants based on the final Bill certified by the certified by M/s.MSGS Infrastructures and Hospitality private limited

60. It was submitted that all the payments made by the defendants to the plaintiff for the construction of the School Complex was only on the instructions of the defendants father Mr.Sreenivasa Rao to pay as per the demands made by Mr. Sunderrajan of M/s.MSGS Infrastructures and Hospitality private limited who was hand in glove with the plaintiff and having manipulated accounts claiming exorbitant sum in the present suit.

61. It was submitted that the defendants are not liable to pay the amount as demanded by the plaintiff and that the defendant is liable to pay only as per the quotation submitted at the initial stage working out the cost on the same rate for a building measuring a built up area of 24,439 sq. ft after giving credits to the payments already made by the defendants which hardly sums up to only Rs.30 to 40 lakhs as due and to that extent alone, the plaintiff will be entitled to the suit.

62. It was submitted that the plaintiff solely depends on the adhoc bills vide Ex.P22 dated 31.01.2018 and the final bill approved by M/s.MSGS vide Ex.P23 dated 25.06.2018 and no other document to support their claim.

So far as the certification by the alleged consultant in the absence of any agreement for having appointed M/s.MSGS Infrastructures and Hospitality private limited as consultant or even if they had been appointed as consultant, without knowing the extent of authority, they have been given, the unilateral approval, without even any consent from the defendants or Mr.Srinivasa Rao will not bind the defendants. It was submitted that the final bill or certification will have no legal consequence to enable the plaintiff to depend on the same to establish the suit claim.

63. It was submitted that no acknowledgment from Mr.Srinivasa Rao or the defendants was given for having given consent for approval of the bills, vide Ex.P22 and Ex.P23, which are the adhoc bills and final bill said to have been submitted to M/s.MSGS and that no notice were given when the bills were raised before it was certified by M/s.MSGS Infrastructures and Hospitality private limited which has been submitted before this Hon'ble Court to justify the plaintiff's claim for the suit claim or for enhancement in rates at the rate of 12% or for the payment of interest.

64. It was submitted that Ex P-29 M-Book has been prepared in a haphazard manner apparently after the suit was filed and if had it been available prior to the suit they ought to have filed along with the plaint, as it is a record maintained during the course of business in any civil construction project. It was submitted that no dates have been mentioned in the M-Book and in fact, M-Book should contain all the bills with dates disclosing the quantum of materials brought into the site, the amount of material consumed on each day, showing proper delivery challans, etc. and lacking details. It was submitted that M-Book should be prepared in such a manner that on seeing it anybody will be able to understand the value of construction, the day- to-day progress, time consumed etc. and therefore the Ex P-29 M-Book cannot be relied as a document to support the plaintiff's case.

65. It was submitted that in the absence of any concrete evidence to substantiate the plaintiff's claim, the plaintiff is seeking to depend on the report that is filed by the Chartered Engineer appointed by this Hon'ble Court while appointing an Advocate Commissioner to file a report, to assess the actual cost.

66. It was submitted that the Chartered Engineer's report Ex.C1 dated 25.07.2020 is more like a final bill submitted by the plaintiff and that the Chartered Engineer has not filed any written report analyzing the various aspects of the case like the cost of materials, labour cost, etc. and also has not even seen the Ex.P8 quotation dated 21.12.2016 that was originally submitted by the plaintiff and how the plaintiff claims 12% enhancement or had taken any effort to justify the enhancement sought for is reasonable and fair by taking into consideration the market value of materials and the increase in the cost of materials, labour cost, etc.

67. It was submitted that the Advocate Commissioner has not chosen to put the parties on notice before the visit of the Advocate Commissioner and his inspection.

68. It was submitted that the fact that the quotation given for 40,000 square feet by the plaintiff whether it be in square feet or bill of quantities rate cannot be the same for constructing a building having a built up area of 24,900 square feet.

69. It was submitted that as long as the plaintiff has not chosen to file any document, displaying the consent of the defendants or their father Mr. Srinivasa Rao to any of the bills raised by the plaintiff, to the plaintiff's claim for escalation in cost, interest, et., the plaintiff will fail in their case.

70. It was submitted that as per Ex.P.8 quotation dated 21.12.2016 the cost of construction worked out for 40,000 Sq.ft is Rs.8,86,32,898.60/- which will work out to Rs.5,41,52,485/- i.e Rs.2,215.82 per square feet for a built up area of 24,439 Sq.ft. It was submitted that the plaintiffs claim is Rs.3,48,13,147.23 after giving credits to all the payments made by the defendants for a building having a built up area of 40,000 Sq.ft. /-. It was submitted that the defendants will be liable to pay only Rs.51,51,149/- as per the calculations given under:-

Total cost worked out for a building having a built up area of 24,439	Rs.5,41,52,485/-
The defendants have paid a sum of	Rs.4,90,01,336/-
The defendants will be liable to pay only	Rs.51,51,149/-

71. I have considered the arguments advanced by the learned counsel for the plaintiff and the leaned counsel for the defendant. I have also perused the plaint, written statement and proof affidavit filed by the respective witnesses of the plaintiff and the defendants. I have also perused the deposition of the respective witnesses during the cross examination.

72. I have also perused the report given by CW1, the Court appointed witnesses namely the Chartered Engineer, pursuant to the order dated 07.11.2019 in I.A.No.5957 of 2019.

73. Earlier, the defendants father late Mr.S.Srinivasa Rao had entered into Ex.P2 unregistered Lease Agreement dated 15.09.2016 with M/s.Vallimuthu Educational Trust for leasing 10 Grounds and 228 Sq.ft (equivalent to 24,644 ½ Sq.ft) of land together with a proposed school building Complex to be constructed.

74. As per Ex.P2 Lease Deed dated 15.09.2016 the School building Complex was to measure an extent of 40,000 Sq.ft. for M/s.Vallimuthu Educational Trust for their Velammal New Gen School. The construction of the

School building Complex was to be completed by 01.05.2017 as per the specification of the said M/s.Vallimuthu Educational Trust in accordance with an approved planning permit by CMDA.

75. Ex.P2 Lease Deed dated 15.09.2016 with M/s.Vallimuthu Educational Trust further records that late Mr.S.Srinivasa Rao had received a sum of Rs.2 Crores as advance by way of four cheques drawn on Canara Bank, Pudur, Ambattur, Chennai – 600 053 of Rs.50,00,000/- each as Interest Free Deposit.

76. Under Ex.P2 Lease Deed dated 15.09.2016 signed with M/s.Vallimuthu Educational Trust, latter had also undertaken to pay an amount of Rs.1 Crore as additional Interest Free Deposit to late Mr.S.Srinivasa Rao refundable within a period of eight months from the date of Ex.P2 Lease Deed dated 15.09.2016 or on completion of the building measuring to an extent of **40,000** Sq.ft. whichever was earlier.

77. As per Ex.P2 Lease Deed dated 15.09.2016, the said

M/s.Vallimuthu Educational Trust was to also pay a lease rental to late Mr.Srinivasa Rao, the father of the defendants at the rate of Rs.29 per Sq.ft per month for the built up area measuring an extent of **40,000 Sq.ft.** from the date of occupation of the premises. The lease was to be for a period of 32 years.

78. Although Ex.P2 Lease Deed dated 15.09.2016 with M/s.Vallimuthu Educational Trust is under-stamped and is an unregistered document and is therefore in admissible, the defendant have not seriously contested its content. Ex.P2 Lease Deed dated 15.09.2016 is witnessed by the defendants and by Mr. Sunderrajan, the consultant from M/s. MSGS Infrastructure and Hospitality Pvt., Ltd. After Ex.P2 was executed Mr.S.Srinivasa Rao, the late father of the defendants issued Ex.P3 letter dated 20.10.2016 to the plaintiff.

79. By Ex.P3 letter dated 20.10.2016, late Mr.S.Srinivasa Rao, the father of the defendants authorized the plaintiff to start preliminary works for building the school for M/s.Vallimuthu Educational Trust. As per Ex.P3 letter dated 20.10.2016, the plaintiff was permitted to carry out only the preliminary

works viz., Borewell, Temporary Worker's Shed and obtain a Temporary EB Connection alone.

80. As per Ex.P3 letter dated 20.10.2016, Late Mr.S.Srinivasa Rao, the father of the defendants merely asked the plaintiff to give a quotation based on "Bill of Quantities" for the Project. The plaintiff was to proceed with the construction only after further mutual discussion and after submission of quotation on the drawings that were given to the plaintiff, for construction of **40,000 Sq ft.** of building and with the approval of late Mr.S.Srinivasa Rao.

81. Ex.P5 Agreement dated 07.11.2016 is an unsigned photocopy of an unregistered construction agreement that was to be signed between Late Mr.S.Srinivasa Rao and the plaintiff. Ex.P5 Agreement dated 07.11.2016 is also in admissible piece of evidence.

82. Ex.P5 Agreement dated 07.11.2016 details the scope of the work for constructing the School Complex. Ex.P5 was allegedly prepared by the plaintiff and handed over to late Mr.S.Srinivasa Rao for being signed. However, Ex.P5 Agreement dated 07.11.2016 was never signed by late

Mr.S.Srinivasa Rao. It is submitted that late.Mr.S.Srinivasa Rao had allegedly stated that he would sign Ex.P5 Agreement dated 07.11.2016 on an auspicious day and return the same to the plaintiff. However, there are no evidence forthcoming to substantiate the said claim of the plaintiff.

83. It is the specific case of the plaintiff that Ex.P5 Agreement dated 07.11.2016 was drafted based on mutual discussion between plaintiff and late Mr.S.Srinivasa Rao during his lifetime along with Mr.G. Sunderrajan, the consultant appointed by Mr.S.Srinivasa Rao of M/s.MSGS Infrastructure and Hospitality Pvt. Ltd.

84. According to the plaintiff, a part of the work was to be carried out by the plaintiff inconsonance with Ex.P5 agreement dated 07.11.2016 although it was not signed by late Mr.S.Srinivasa Rao.

85. Clause 5 and Clause 6 of Ex.P5 Agreement dated 07.11.2016 reads as under :-

Clause 5	**Clause 6**
The Scope of work is as per the Schedule given but not limited to the	The Scope of work includes Providing Borewell for temporary

same as there could be some additional related works that may be necessary or there could be some exclusions as per the discretion of the owner Mr.S.Srinivasa Rao and the Consultants M/s.MSGS Infrastructure & Hospitality Pvt. Ltd.	use during construction, obtaining temporary power connection, providing Site Office and Labour Sheds with facilities required by Statutory Authorities, appoint a full time Site Engineer to oversee the work, keep records of materials, labour and work done.

86. Ex.P5 Agreement dated 07.11.2016 does not contain the Schedule. Clause 6 merely states that the Scope of work includes providing Borewell for temporary use during construction, obtaining temporary power connection, providing Site Office and Labour Sheds with facilities required by Statutory Authorities, appointing a full time Site Engineer to oversee the work, keeping records of materials, labour and work done in tune with Ex.P3 letter dated 20.10.2016.

87. Since Ex.P5 Agreement dated 07.11.2016 was not signed by late Mr.S.Srinivasa Rao during his lifetime, it is an inadmissible piece of evidence and cannot be relied upon.

88. Ex.P7 are series photographs of the site from first day of commencement of the project till completion of the project to demonstrate the work carried out between 13.12.2016 and 30.06.2018 by the plaintiff.

89. By Ex.P8 letter dated 21.12.2016, the plaintiff claims to have sent a quotation to late Mr.S.Srinivasa Rao for carrying out the construction of a school building for M/s.Valliammal Educational Trust for their Velammal New Gen School based on the Architectural Drawings, Structural Designs and the Schedule of Quantities approved by the aforesaid consultant namely M/s.MSGS Infrastructure and Hospitality Pvt. Ltd. The defendants have denied as it was not countersigned by late Mr.S.Srinivasa Rao.

90. Copy of Architectural Drawings, Structural Designs and the Schedule of Quantities that was said to have been approved by the aforesaid consultant namely M/s.MSGS Infrastructure and Hospitality Pvt. Ltd. has not been filed by the plaintiff.

91. In Ex.P8 dated 21.12.2016, the plaintiff has quoted a sum of

Rs.8,86,32,898.60/- as the estimated cost of construction based on Bill of Quantities for the proposed construction of a Velammal New Gen School complex for M/s.Vallimuthu Educational Trust. In Ex.P8 letter dated 21.12.2016, there is also an endorsement by the Director of the plaintiff in writing agreeing for a 5% discount/rebate purportedly at the request of late Mr.S.Srinivasa Rao.

92. The plaintiff in Ex.P8 dated 21.12.2016 has given an estimate of Rs.8,86,32,898/- for 40,000 sq.ft. Thus, the cost of construction for 40,000 sq.ft would works out to Rs.8,86,32,898 ÷ 40,000/- = Rs.2,215.82/-.per sq.ft.

93. The Ex.P8 quotation dated 21.12.1016 refers to Velammal New Gen School. Thus, the Ex.P8 quotation of the plaintiff together with the discount of 5% was for putting up construction of 40,000 sq.ft of built up area for Velammal New Gen School of M/s.Velammal Educational Trust in accordance with Ex.P2 Lease Agreement dated 15.09.2016.

94. Ex.P9 documents are series of Material Test Reports regarding

the materials allegedly utilized by the plaintiff between 18.01.2017 to 07.11.2017 for putting up construction for late Mr.S.Srinivasa Rao, after Ex.P2 Lease Deed dated 15.09.2016 was signed between Mr.Srinivasa Rao and M/s.Vallimuthu Educational Trust for Velammal New Gen School and Ex.P.12 Lease Deed dated 09.04.2017 between Mr.Srinivasa Rao and M/s.Sri Muragan Educational Trust for their Sri Chaitanya Educational Institutions. Most of Ex.P9 Material Test Reports are after execution of Ex.P12 Lease Deed dated 09.04.2017 was signed. Although, Ex.P9 is disputed by the defendants, they are immaterial as the construction was completed by the plaintiff.

95. Although Ex.P2 Lease Deed dated 15.09.2016 is not registered and is an inadmissible piece of evidence, it has not been disputed either by the plaintiff and defendants. It can be relied upon to confirm that the arrangement between plaintiff and Late Mr.S.Srinivasa Rao was for putting up a construction of **40,000/- sq.ft.** of built up area and the estimate of Rs.8,86,32,898.60 in Ex.P8 dated 21.12..2016 was only for putting up a construction of 40,000/- sq.ft. of built up area. The amount quoted on sq.ft basis based on the details in Ex.P8 dated 21.12.2016 is Rs.2,215.82 per sq.ft.

96. There are 40 Items in Ex.P8 dated 21.12.2016. They correspondent with items A,B &C of Ex.P23 Final Certificate of Bills dated 25.06.2018 by aforesaid Consultant. The rate per sq.ft. on the 1 to 21 Items corresponding to Items A&B of Ex.P23 Final Certificate of Bills dated 25.06.2018 comes to Rs.1959.35 Per sq.ft. for putting up construction of 40,000 sq.ft of built up area for Velammal New Gen School of M/s.Velammal Educational Trust. I shall refer to Ex.P23 Final Certificate of Bills dated 25.06.2018 later in the course of this Judgment.

97. Ex.P.11 dated 14.02.2017 is a copy of the E-mail of Mr.R.Sathyanarayana, Architect to M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., the consultant of late Mr.S.Srinivasa Rao and to the representative of M/s.Vallimuthu Educational Trust including proposed level chart for the Perungudi site. However, the details have not been filed by the plaintiff.

98. For reasons not specified either by the plaintiff or the defendants, the arrangement in Ex.P2 Unregistered Lease Deed dated 15.09.2016 between

the M/s.Vallimuthu Educational Trust and late Mr.S.Srinivasa Rao for construction of Velammal New Gen School fell through. Thus, the work which was in progress was suspended.

99. In this background, a fresh lease arrangement vide Ex.P12 Lease Deed dated 09.04.2017 was signed between late Mr.S.Srinivasa Rao with M/s.Sree Muragan Educational Trust for their school Sri Chaitanya Educational Institutions.

100. Meanwhile, by Ex.P10 Settlement Deed dated 22.12.2016, late Mr.S.Srinivasa Rao, the father of the defendants settled the land measuring an extent of 10 Grounds and 228 Sq.ft [equivalent to 24,644 ½ Sq.ft. which land was earlier intended to be leased to M/s.Valliammal Educational Trust for putting up construction of a School Complex measuring 40,000 sq ft. of built up area for their Velammal New Gen School to the defendants vide Ex.P.2 Lease Deed dated 15.09.2016. In Ex.P.10 Settlement Deed dated 22.12.2016, late Mr.S.Srinivasa Rao, the father of the defendants, retained life interest in the aforesaid property with himself. The defendants could transfer or alienate

their rights over the aforesaid land settled in their favour in Ex.P.10 Settlement Deed dated 22.12.2016,only after the life time of late Mr.S.Srinivasa Rao.

101. Ex.P20 dated 05.12.2017 is a copy of Chennai Metropolitan Development Authority (CMDA) approval for ground floor + two floors for the Higher Secondary School Building at Perungudi response to application dated 14.11.2016 issued in the name of Late Mr.S.Srinivasa Rao.

102. However, Ex.P20 dated 05.12.2017 does not disclose the extent of the construction that was approved to be put up by the plaintiff over the land, measuring an extent of 10 Grounds and 228.Sq.ft [equivalent to 24,644 ½ Sq.ft in Ex.P10 settlement deed dated 22.12.2016]. However, it is evident that, when application dated 14.11.2016 was filed with CMDA, late Mr.S.Srinivasa Rao had an arrangement only with M/S Vallimuthu Educational Trust vide Ex.P2 dated 15.9.2016 for **40,000 Sq.ft.**

103. Ex.P10 Settlement Deed dated 22.12.2016 also made it clear that the property was free from all encumbrance and that late Mr.S.Srinivasa

Rao had a right to settle the property in favour of the defendants. Ex.P10 Settlement Deed dated 22.12.2016 was silent regarding the construction that was proposed or the on going construction over the land measuring an extent of 10 Grounds and 228 Sq.ft equivalent to 24,644 ½ Sq.ft.

104. Ex.P.10 Settlement Deed dated 22.12.2016 also reveals that earlier by a Settlement Deed dated 10.04.2014, an extent of 22,934 Sq.ft of land, out of 1 Acre and 9 Cents in S.No.51/1B3 had already been settled in favour of the defendants by their father late Mr.S.Srinivasa Rao. After, the death of late Mr.S.Srinivasa Rao on 12.03.2018, the defendants thus became owners of entire extent of 1 Acre and 9 Cents in S.No.51/1B3 in Perungudi Village.

105. Ex.P12 Lease Deed dated 09.04.2017 that was signed with the said Sri Murugan Educational Trust was for construction of a total extent of 60,000 sq.ft.built up area in two phases of 28000 sq.ft. and 32,000 sq.ft. over the entire extent of 1 Acre and 9 cents land in S.No.51/1B3 at Seevaram Village formerly Saidapet Taluk, Sholinganallur Taluk, Kancheepuram District.

106. In Phase-I 28,000 Sq.ft., a School complex was to be built on 24,644 ½ Sq.ft., land which was settled in favour of the defendants vide Ex.P10 Settlement Deed dated 22.12.2016. Thus, instead of 40,000 sq.ft of School Complex as was originally intended only 28,000 sq.ft. of School complex was to be built in the first phase for M/s.Sree Muragan Educational Trust for their school Sri Chaitanya Educational Institutions.

107. Ex.P12 Lease Agreement dated 09.04.2017 shows that late Mr.S.Srinivasa Rao had assured to complete the construction in Phase-I of 28000 sq.ft. and to hand over the same on 01.11.2017 in a fit condition for occupation together with amenities like electricity and water. The lease period in Ex.P12 Lease Agreement dated 09.04.2017 was to be for a period of thirty two years.

108. Ex.P.12 Lease Deed dated 09.04.2017 sets out the following timelines for putting up the construction:-

> *"Phase-I to be developed approximately* ***28000 Sq.ft.,*** *Building on* ***24644*** *½ sq.ft.*, land – to be*

delivered on 01.11.2017.

*Phase-II to be developed approximately 32000 Sq.ft., Building on **22934 Sq.ft.,** land – to be handed over on 31st March 2019.*

The Lease Agreement for Phase-I to be executed immediately i.e., this Agreement.

The Lease Agreement for Phase-II to be executed before 31st October 2017.

The Building to be handed over as per the Schedule above, which is more fully described in the schedule hereunder, on lease and in this connection the LESSOR and the LESSEE met several times and discussed the terms of the proposed lease and they have come to an understanding."

[* 10 grounds 228 sq.ft in Ex.P2,P3,P5]

109. Ex.P12 Lease Agreement dated 09.04.2017 also states that the said M/s.Muragan Educational Trust had also expressed its desire to take on lease the building for the upcoming Phase-II. The estimated time for completion of the building in Phase-II was March 2019.

110. The said M/s.Muragan Educational Trust also appears to have paid late Mr.S.Srinivasa Rao a lumpsum amount of Rs.3 Crores as an advance which was refundable in one lump sum at the expiry of the period provided in Ex.P12 Lease Agreement dated 09.04.2017.

111. As per Ex.P12 Lease Agreement dated 09.04.2017, M/s.Muragan Educational Trust also agreed to pay late Mr.S.Srinivasa Rao a rent at Rs.30 per Sq.ft. for Phase-I. Over and above Rs.3 Crores, M/s. Muragan Educational Trust also appears to have paid a sum of Rs.1 Crore 50 Lakh to late Mr.S.Srinivasa Rao as refundable deposit within six months from the date of execution of Ex.P12 Lease Agreement dated 09.04.2017.

112**.** Suffice to keep in mind that after the arrangement in Ex.P2 Lease Deed dated 15.09.2016 signed between Mr.Srinivasa Rao and M/s.Vallimuthu Educational Trust fell through, Ex.P.12 Lease Deed dated 09.04.2017 was signed between Mr.Srinivasa Rao and M/s.Sri Murugan Educational Trust and therefore a School Complex was to be constructed to suit the needs of the said M/s.Sri Murugan Educational Trust.

113. The work that commenced on 26.12.2016 was stopped some time in February 2017, as the arrangement in Ex.P2 Lease Deed dated 15.09.2016 signed between Mr.Srinivasa Rao and M/s.Vallimuthu Educational Trust fell through. At that point, the work that was completed was only upto foundation. It was resumed after Sri. Murugan Educational Trust evinced interest in taking the proposed School Complex on lease over the entire extent of 1.9 acres of land in S.No.51/1B3 in Perungudi Village and signed Ex.P12 Lease Agreement dated 09.04.2017 with late Mr.S.Srinivasa Rao.

114**.** The arrangement in Ex.P12 Lease Agreement dated 09.04.2017 was later formalized in Exhibit P.16 Rental Lease Deed dated 11.07.2017. Ex.P12 Lease Agreement dated 09.04.2017 was registered as Document No.4877 of 2017. Ex.P.16 Registered Rental Lease Deed dated 11.07.2017 is for a period of 30 years commencing from 01.06.2017 to 31.05.2047.

115. Thus, as per Ex.P12 Lease Deed dated 09.04.2017, the total

construction was to be for 60,000 sq.ft. of built up area and was Split into Phase-1 and Phase-II as detailed below :-

Sl.No.	Phases	Land	Built up Area	Delivery Date
1	I	24,644 ½ sq.ft.	28,000 Sq.ft.	01.11.2017
2	II	22,934 sq.ft.	32,000 sq.ft.	31.03.2019

116. As per Exhibit P.16 Rental Lease Deed dated 11.07.2017, land measuring an extent of 56.46 Cents (24,644 ½ Sq.ft. or 10 grounds 228 Sq.ft.) out of 1 Acre 9 Cents (47,578.5 Square Feet) alone was leased leased to M/s.Sree Muragan Educational Trust. In Exhibit P.16 Rental Lease Deed dated 11.07.2017, it was agreed that a separate lease agreement will be signed for leasing the school building. Relevant portion of the preamble to Ex.P16 reads as under:-

> *"WHEREAS the LESSOR shall first register the Land Less for Rental in favour of the Lessee for a period of 30 years, renewable every 10 years, more fully described in the Schedule. After completing the Construction of 60000 Sq.ft., approximately and as per the Specifications given by the Lessee and also the norms of the Statutory Authorities, the LESSOR wants to register a Separate Lease Deed for Leasing*

the School Building for Rental.”

117. Thus, the entire extent of land measuring 1 acre and 9 cents in S.No.51/1B3 in Seevaram Village, Perungudi, Chennai was to be developed in two phases for construction of 60,000 sq.ft. of built up area of School Complex.

118. After the said M/s.Valliammal Educational Trust exited from Ex.P2 Lease Agreement dated 15.09.2016, the plaintiff had raised Bill No.1 during the first week of March on late Mr.S.Srinivasa Rao. Meanwhile, the plaintiff has also been paid a sum of Rs.80,01,336/- against Bill No.1 for the work done up to February 2017 on 19.04.2017. Though Bill No.1 for the work done up to February 2017 on 19.04.2017 has not been filed, it is evident that it was for foundation work only. As per the plaintiff, the plaintiff has raised Bill No.2 on 29.11.2017 for Rs.3,12,11,964/-. As against Bill No.2 on 29.11.2017 for Rs.3,12,11,964/, the plaintiff has also paid a sum of Rs.2,20,50,000/- on 02.01.2018. This is after the construction resumed after Ex.P12 Lease Agreement dated 09.04.2017 was later formalized in Exhibit

P.16 Rental Lease Deed dated 11.07.2017.

119. These amounts for Bill No.1 and Bill No.2 appear to have been paid to the plaintiff only after Ex.P12 fresh Lease Deed dated 09.04.2017 was executed with M/s.Sree Muragan Educational Trust for their Sri Chaitanya Educational Institutions as is evident from Ex.P23 Final Certificate dated 25.06.2018. Certifying the Bills by the consultant appointed by late Mr.S.Srinivasa Rao namely M/s.MSGS Infrastructure and Hospitality Pvt. Ltd.

120. The Plaintiff has however for best reasons known to the plaintiff has neither filed nor marked copies of Bills/Invoices raised on late Mr.S.Srinivasa Rao for which the aforesaid amounts were paid. Bill No.1 for the work done up to February 2017 appears to for the work upto foundation as is evident from reading of Ex.P13 report dated 20.05.2017. Bill No.2 on 29.11.2017 for Rs.3,12,11,964/- appears to be for the work after Ex.P12 Lease Deed dated 09.04.2017 was signed.

121. Therefore, it has to be concluded that the quotation/estimate in

Ex.P8 dated 21.12.2016 based on Bill of Quantity was for construction of 40,000 sq.ft of built up area of School Complex to suit the needs of M/s.Vallimuthu Educational Trust for their Velammal New Gen School pursuant to Ex.P2 Lease Deed dated 15.09.2016 pursuant to which, land measuring an extent of 24,644 ½ sq.ft. was handed over to the plaintiff vide Ex.P3 letter dated 20.10.2016.

122. There was however a change. The construction was restricted to 28,000 sq.ft. of built up area in phase-I as per Ex.P12- Lease Deed dated 09.04.2017 over the land measuring an extent of 24,644 ½ sq.ft. with M/s.Sree Murugan Educational Trust for their Educational Institution namely M/s Sri.Chaitanya Educational Institutions over the land settled in favour of the defendants vide Ex.P10 settlement deed dated 22.12.2016.

123. At about the same time, the defendants had approached the Federal Bank, Anna Nagar and submitted Ex.P14 Letter dated 05.06.2017 enclosing Ex.P.13-Valuation Report dated 20.05.2017 of an Approved Valuer and a Chartered Engineer named, Er.B.S.Ushadhevi Ex.P.13-Valuation Report

dated 20.05.2017 was procured by the defendants from Er.B.S.Ushadhevi.

124. Ex.P.13 Valuation Report of Er.B.S.Ushadhevi dated 20.05.2017 was procured by the defendants from Er.B.S.Ushadhevi for obtaining loan for the on going proposed Institutional Building (Hr.Sec.School), at No.4, Corporation Road, Seevaram, Perungudi, Chennai – 600 096, which was under construction of the plaintiff before the death of late Mr.S.Srinivasa Rao. It pertains to the same land over which the plaintiff was putting construction for late Mr.S.Srinivasa Rao. It is after the land measuring 10 grounds a228 Sq.ft. [24,644 ½ Sq.ft] was settled in favour of the defendants vide Ex.P10 Settlement Deed dated 22.12.2016.

125. Ex.P.13 Valuation Report dated 20.05.2017 was procured from the said Approved Valuer/Chartered Engineer for construction of School for Sri Chaitanya School Project, on land measuring the same extent of 24,664 ½ sq.ft. As per Ex.P.13 Valuation Report, dated 20.05.2017, the extent of land as per document was 24,664 ½ sq.ft and as per Site Measurement was 24,153

sq.ft. However, in the covering letter to Ex.P.13, Valuation Report dated 20.05.2017, the extent of land is 24594 sq.ft. and 24,153 sq.ft. as per site measurement.

126. Ex.P13 Valuation Report dated 20.05.2017 also refers to Ex.P10 - Settlement Deed dated 22.12.2016. It also qualifies that foundation and basement work was completed as on 20.05.2017. Bill No.1 raised by the plaintiff was also for Rs.80,01,336/-. It thus corroborates the conclusion that Ex.P.8 estimate was for 40,000 sq.ft. The total extent of the proposed construction and the estimated value of the plot and proposed building in Ex.P13 - Valuation Report dated 20.05.2017 is extracted below :-

Plinth Area	As per Plan
F.S.I area	
G.Floor area	1748.28 sq.m
F.Floor area	1744.87 sq.m
S.Floor area	1744.87 sq.m
	5238.02sq.m = **56361.09 sqft.***
Non F.S.I area	
G.Floor area	85.13 sq.m

F.Floor area	64.45 sq.m
S.Floor area	64.45 sq.m
	214.03 sq.m
	= **2303 sq.ft.***
F.S.I	.19
Plot Coverage	39.73%

Plot Value : Rs.12,08,00,000/-

Estimated value for the proposed Construction of Hr.Sec.School : Rs.6,63,00,000/-

Total Value of the plot & building after completion of construction : Rs.18,71.00,000/-

Value of the Plot & building as present Inspection : Rs.12,74,10,000/-
(12,08,00,000+66,30,000)

*** Total area =58,664 sq.ft [56,361.09 sq.ft.**

F.S.I area +2,303 Non F.S.I area]

127. Ex.P13 Valuation Report dated 20.05.2017 records that only the foundation of basement level was completed. It also records an estimated value for the proposed construction of the building as Rs.6,63,00,000/- for 58,664 sq ft. and states that only ten percent of the work was complete and the

current value of construction was approximately Rs.66,30,000/-. Thus, the estimate in Ex.P13 Valuation Report dated 20.05.2017 records was for 58,664 sq ft. on 24,644.5 sq.ft of land i.e the land that was settled in favour of the defendant by late Srinivasarao to the defendant vide Ex.P10 Settlement Deed dated 22.12.2016. Ex.P13 – Valuation Report dated 20.05.2017 is after Ex.P12, Lease Deed dated 09.04.2017. Thus, Ex.P.13 Valuation Report dated 20.05.2017 was intended to maximize the loan.

128. Ex.P13 Valuation Report dated 20.05.2017, also stipulated that building value can be considered subject to approval from CMDA after Ex.P12 dated 09.04.2017 was signed with M/s.Sree Muragan Educational Trust.

129. In the Ex.P13 Valuation Report dated 20.05.2017, the plot area has been given as 0.5646 acres which is equivalent to 24644.5 sq.ft. which corresponds to the extent of land in Ex.P2 Lease Deed dated 15.09.2016 and the extent of land in Ex.P.12 – Lease Deed signed between late Mr.S.Srinivasa Rao and M/s.Sri Murugan Educational Trust dated 09.04.2017.

130. The extent of the land in Ex.P2 Lease Deed dated 15.09.2016, Ex.P12- Lease Deed dated 09.04.2017 and Ex.P16 Rental Lease Deed dated11.07.2017 are given in different units of measurement. However, they are same. The extent of land in sq.ft., cents and grounds are one and the same as detailed below:-

Exhibit	**Ex.P2**	**Ex.P12**	**Ex.P16**
Date	15.09.2016	09.04.2017	11.07.2017
Nature of Document	Lease Deed with Vallimuthu Educational Trust	Lease Deed with Sri Murugan Educational Trust	Rental Lease deed of Land
Extent of Land in Sq.ft	24,546 out of 1.09 acres	24,644 ½ out of 1.09 acres(47,578 ½ Sq.ft)	24,644 ½ out of 1.09 acres(47,578 ½ Sq.ft)
Extent in Grounds	10 G 228sq.ft	10 G 228sq.ft	-
Extent of Cent	-	-	56.46 out of 1.09 acres (47,578 ½ Sq.ft)
Extent of Built up area(sq.ft)	**40,000**	**28,000*** +32,000 =60000	-

*Schedule in Ex.P12 lease deed dated 09.04.2017 as First **Phase of Construction .**

131. Ex.P14 dated 05.06.2017, which is a copy of the Proposal submitted by the 1st defendant to the Federal Bank, Anna Nagar enclosing Ex.P.13 Valuation Report dated 20.05.2017 estimate of the plaintiff. Ex.P14 Proposal dated 05.06.2017 estimates the cost of construction as Rs.9,65,67,205/-. Though Ex.P.13 Valuation Report dated 20.05.2017 was secured by the defendants for being submitted to Federal Bank, the estimated cost of construction in Ex.P.13-Valuation Report dated 20.05.2017 given is only Rs.6,63,00,000/- whereas, the estimated cost of construction in Ex.P14 Proposal dated 05.06.2017 is Rs.9,65,67,205/- as detailed below:-

Project Estimate:-

Building & Amenities estimated as per **Sri Bala Builders & Promoters***	Rs.8,15,67,205.00
CMDA Planning Permit & Statutory Fees	Rs.1,50,00,000.00
Total Cost of the Project	**Rs.9,65,67,205.00**

(*The plaintiff)

132. The amount of Rs.8,15,67,205.00 in Ex.P14 Proposal dated

05.06.2017 has been matched with the estimate in Ex.P.8 dated 21.12.2016 for Rs.8,86,32,898.60. Ex.P14 Proposal dated 05.06.2017 is said to be based on an estimate of the plaintiff given to the defendants for putting up construction for a sum of Rs.9,65,67,205/- as detailed above. However, copy of estimate based on the Bill of Quantities which is said to have been enclosed by the defendant along with Ex. P14 letter dated 05.06.2017 addressed to Manager Federal Bank, Anna Nagar after fresh arrangements under Ex.P.16 Rental Lease Deed dated 11.07.2017 registered as Document No.4877 of 2017 formalizing the arrangement in Ex.P.12 Lease Agreement dated 09.04.2017 with M/s.Sree Murugan Educational Trust was signed have not been filed either by the plaintiff or the defendant. Thus, both plaintiff and defendants have not given full informations.

133. Ex.P17 dated 14.07.2017is a copy of letter of the plaintiff to M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., for price variation. It was addressed to the Director of M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., namely M.S.Venugopal (PW3) and Mr.G.Sundararajan.

134. Ex.P17 letter dated 14.07.2017 states that there was a delay in the commencement of the construction on account of various factors and that due to the delay, the cost of material had increased and that there was a corresponding increase in the labour charges.

135. Ex.P17 letter dated 14.07.2017 also confirms that the work was completed up to plinth level only. It is contrary to Ex.P13 report dated 20.05.2017 of approved valuer and Chartered Engineer that was complete only upto foundation. It also records that the tax component had also increased from 5% to 6% VAT to 12% GST etc., and therefore requested the said consultant to inform the owners to reconsider their prices and agreement in the light of the above.

136. In Ex.P17 letter dated 14.07.2017, the plaintiff stated that on hearing from the said consultant of the late Mr.S.Srinivasa Rao, the plaintiff will give the actual current pricing for the approval as per Srinivasa Rao's or Consultant's Bill of Quantities.

137. However, copy of Bill of Quantities which is said to have been given by late Srinivasa Rao or by their consultant namely M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., have not been filed by the plaintiff. A "Bill of Quantities" is also said to have been given by M/s.MSGS Infrastructure and Hospitality Pvt. Ltd, the consultant of late Mr.Srinivasa Rao to the plaintiff earlier after Ex.P2 lease agreement dated 15.09.2016 that was signed between late Mr.Srinivasa Rao and M/s.Vallimuthu Educational Trust for their Velammal New Gen School fell through. The plaintiff has also responded and had given a quotation vide Ex.P8 dated 21.12.2016 Vallimuthu Educational Trust for their Velammal New Gen School.

138. Ex.P.15 is a series of whatsapp messages exchanged between plaintiff and the first defendant from 09.06.2017 to 13.07.2018. Ex.P.15 whatsapp messages indicate that a Pooja was held on 29.09.2017. It also indicates a message by the defendant informing the plaintiff regarding passing away of late Mr.S.Srinivasa Rao by a whatsapp chat dated 12.03.2018.

139. Ex.P.15 also indicates a message from the Director of the

plaintiff company to the first defendant on 14.06.2018 regarding handing over of the bill and that by a reply, the first defendant appears to have requested that the meeting can be held in office of their late father Mr.S.Srinivasa Rao on 15.06.2018.

140. In one of the messages dated 22.09.2018 in Ex.P.15 series, the first defendant has stated that she had spoken to her auditor and that arrangements were being made for payments. It also states that after their father’s demise they have surrendered Service Tax Registration Number.

141. It is therefore clear that the estimate in Ex.P8 dated 21.12.2016 was for the Bill of Quantities for putting up construction of 40,000 sq.ft. of built up area for the Velammal New Gen School (later pulled out from the project) over the land measuring an extent of 10 Grounds and 228 Sq.ft [equivalent to 24,644 ½ Sq.ft.] which land was settled by the father of the defendants by Ex.P10 Settlement Deed dated 22.12.2016, in favour of the defendants. M/s.Vallimuthu Educational Trust however later pulled out from the project.

142. Ex.P19 dated 31.07.2017 is yet another letter of the plaintiff said to have been addressed to late Mr.S.Srinivasa Rao during his lifetime and to the first defendant in furtherance of Ex.P.17 letter dated 14.07.2017, stated that the plaintiff was submitting a revised estimate on Bill of Quantities on account of several factors of increased cost in construction material for a sum of Rs.9,90,38,727/- for putting up the construction of school on behalf of late.Srinivasa Rao based on the prevailing market Rate.

143. In Ex.P19 dated 31.07.2017, the plaintiff has however offered 5% discount. The defendants have denied the content and receipt of Ex.P19 letter dated 31.07.2017. Ex.P19 dated 31.07.2017 is for the same item of construction in Ex.P8 dated 22.12.2016. The rate in per Sq.ft. in Ex.P19 dated 31.07.2017 is Rs.4,052/- per sq.ft. [Rs.9,90,38,727/- ÷ 24439 sq.ft]

144. Ex.P19 dated 31.07.2017 is after the dimension of the

construction was reduced to 28,000 sq.ft. from 40,000 sq.ft. in the first phase for Sri Murugan Educational Trust for their Sri Chaitanya Educational Institutions vide Ex.P12 dated 09.04.2017 and Ex.P16 dated 11.07.2017.

145. Ex.P18 are the series of Concreted Cube Test Reports of The India Cements Limited for the period between 23.07.2017 and 12.01.2018. It overlaps with Ex.P9 Material Test Reports from between 18.01.2017 and 07.11.2017.

146. Ex.P21 is a series of SMS text chats messages allegedly exchanged between the plaintiff and the first defendant between 31.01.2018 to 19.02.2019 requesting for payments for the work done till then. Ex.P.21 also records that the first defendant had taken steps to initiate process for validation of the bills by the consultant M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., and that the first defendant would revert thereafter.

147. Ex.P22 dated 31.01.2018 is a copy of covering letter together with Adhoc Running Bill for the construction based on the Bill of Quantities by the plaintiff. In the Adhoc Bill, the plaintiffs has quantified a total sum of **Rs.6,32,09,451.26/-** and has extended 5% rebate as was agreed earlier vide Ex.P19 letter dated 31.07.2017 for a sum of Rs.9,90,38,727/-. There is no explanation as to why in Ex.P22 dated 31.01.2018 is a copy of covering letter together with Adhoc Running Bill for the construction based on the Bill of Quantities was reduced to **Rs.6,32,09,451.26/-.**

148. The Adhoc Bill enclosed along with Ex.P22 letter dated 31.01.2018 records the payment already made by the defendants and after adjusting the payments of Rs.3,01,41,336.00 and after giving the discount, quantified a sum of Rs.4,07,16,458.86/- as due from the defendants. The abstract of the Adhoc Bill in Ex.P.22 letter dated 31.01.2018 reads as under : -

TOTAL ABSTRACT	
TOTAL AMOUNT A+B+C+D	Rs.6,32,09,451.26/-
LESS REBATE 5%	Rs. 31,60,472.56/-

Total	Rs.6,00,48,978.70/-
ADD: GST 18% ON Rs.3,32,66,713.20/-	Rs.1,08,08,816.17/-
TOTAL	Rs.7,08,57,794.86/-
LESS: PAYMENT RECEIVED AS ON DATE	Rs.3,01,41,336.00
NET BALANCE DUE PAYABLE (RUPEES FOUR CRORES SEVEN LAKHS SIXTEEN THOUSAND FOUR HUNDRED FIFTY EIGHT AND PAISE EIGHTY SIX ONLY)	Rs.4,07,16,458.86/-

149. Ex.P23 dated 25.06.2018 is a copy of Final Certificate issued by the consultant of late Mr.S.Srinivasa Rao namely M/s.MSGS Infrastructure and Hospitality Pvt. Ltd. Ex.P23 dated 25.06.2018 certifies the amount payable against Ex.P23 Final Bill submitted by the plaintiff for the works done for construction of School meeting the requirement of Sri Chaitanya Schools. Ex.P23 dated 25.06.2018 is said to have been certified by the Directors of M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., namely Mr.M.S.Venugopal [PW3] and by Mr.G.Sundararajan on 25.06.2018 and handed over to the first defendant.

150. Ex.P23 Final Certificate dated 25.06.2018 states that the net

value of the contract after 5% discount for 26,000 sq,ft., as per revised Quotation was Rs.9,20,86,791. The amount certified in Ex.P23 Final Certificate dated 25.06.2018 is almost similar to the amount specified in Ex.P19 dated 31.07.2017. It records and states that the balance amount payable by the defendants was Rs.4,63,92,105.35/- after adjustment of payment. It also admits to the amounts paid by the defendant earlier. The details of the Final Certificate of M/s.MSGS Infrastructure and Hospitality Pvt. Ltd. in Ex.P23 dated 25.06.2018 reads as follows:-

FINAL CERTIFICATE

Certificate No.MSGS/KVSN/BALA/Chaitanya/02/25.06.2018

Name of the Client (As in Agreement)	*Mr.S.Srinivasa Rao*
Name of the Project	*Building for Sri Chaitanya Schools-Perungudi*
Name of the Contractor	*Sri Bala Builders & Promoters Pvt.Ltd*
Net Value of Contract, after 5% Discount for 26000 Sq.ft., as per Revised Quotation	*Rs.9,20,86,791.00*
Value of Bill submitted	*Rs.8,84,77,125.22*
Value Certified	***Rs.8,74,21,757.92***

Less: Rebate 5% on BOQ Rates	*Rs.38,92,226.15*
Net Value after Rebate	*Rs.8,35,29,531.77*
Less: Retention 2.5% on Rs.5,24,00,525.69 (Rs.8,35,29,531.77 Bill No.2 & Part Rs.3,11,29,006.08 = Rs.5,24,00,525.69)	*Rs.13,10,013.14*
Net after Retention	***Rs.8,22,19,518.63***
Add: GST 18% on Rs.8,22,19,518.63	*Rs.1,47,99,513.35*
Total Value including GST	*Rs.9,70,19,031.98*
Details of Payment Made: (Rs.80,91,336/- + Rs.2,20,50,000/- + Rs.1,20,00,000/- + Rs.68,60,000/-)	***Rs.4,90,01,336.00***
Amount now payable on Bill	*Rs.4,80,17,695.98*
Add: Pooja Expenses incurred on House warming ceremony	*Rs.45,000.00*
Amount payable as on date	*Rs.4,80,62,695.98*
TDS @ 2% on	*Rs.16,70,590.63*

Rs.8,35,29,531.77

Amount Now Payable after TDS	***Rs.4,63,92,105.35***

151. Ex.P23 dated 25.06.2018 also records that the Final Certificate was for the work done for Sri Chaitanya Schools as was required by the defendants. It also certifies the following note:-

> "***MSGS INFRASTRUCTURE & HOSPITALITY PVT LTD***
>
> ***B3, I Floor, "Srivastsam", Old No.43, New No.58, Thirumalai Pillai Road, T.Nagar, Chennai – 600 017. Tel: 28342693, Fax: 28342793.***
>
> *25/06/2018*
>
> ***NOTE:***
>
> *We have been asked by Mr.G.Jayaraman of M/s.Sri Bala Builders & Promoters Pvt. Ltd., for Final Certificate for the work done for* ***Sri Chaitanya Schools****, as required by you.*
>
> *The amount payable is apart from the Retention Amount.*
>
> *Any defects arising in the Construction work as above shall be attended to at their cost by M/s.Sri Bala Builders & Promoters Pvt.Ltd., for a period of*

one year.

Retention Amount shall be reimbursed to M/s.Sri Bala Builders & Promoters Pvt.Ltd., on completion of one year from the date of this Certificate.

The TDS Amount for the Total Bill Value of Rs.8,35,29,531.77, works out to Rs.16,70,590.63.

If you have already paid any amount out of the above, the same may be deducted and the balance remitted to the TDS A/c.

In such an event, TDS already so paid has to be credited to M/s.Sri Bala Builders & Promoters Pvt.Ltd., and the deduction of Rs.16,70,590.63 will correspondingly reduce."

152. Though in Ex.23 Final Certificate dated 25.06.2018 the consultant M/s.MSGS Infrastructure and Hospitality Pvt. Ltd. has certified the balance amount payable as Rs.4,63,92,105.35, the plaintiff has restricted the suit claim for a sum of Rs.3,80,23,586.80 without GST as detailed below:-

Certified Value -	Rs. 8,74,21,757.92
Less Rebate 5% on BOQ Rates	Rs.38,92,226.15
Balance due after Rebate-	Rs. 8,35,29,53 1.77

Add supplementary Bill-	Rs.2,39,951.46
Add Pooja expenses -	Rs.45,000.00
Total value -	Rs. 8,38, 14,483.23
Less payment received during Construction	Rs. 4,90,01,336.00
Balance amount to be paid	**Rs. 3,48, 13,147.23**
Interest at the rate of 9% on Rs.3,48, 13,147.23 from 25.6.2018 To 4-7-2019 -	Rs.32,10,439.82
Net due inclusive of interest as on 4-7-2019-	**Rs. 3,80,23,586.80**
GST @ 18% on total value of Rs. 8,70,24,922.82	= Rs.1,56,64,486.10

153. The certified amounts in Ex.P23 dated 25.06.2018 indicates that there is a huge escalation between Ex.P22 Adhoc Bill and Final Bills forming part of Ex.P23. In Ex.P23 dated 25.06.2018, there is a reference to a revised quotation of the plaintiff for Rs. 9,20,86,791/-. However, in Ex.P19 dated 21.07.2017, the plaintiff has estimated an amount of Rs.9,90,38,727.46 as payable. On the aforesaid amount a rebate of Rs.49,51,936.373/- at 5% was offered to arrive at an estimate of Rs.9,40,86,791.09. The amount in Ex.P22 Adhoc Bill dated 31.01.2018 and Final bills certified or payable in Ex.P23 dated 25.06.2018 by the said consultant are under five categories as detailed

below:-

Sl. No	Description of Items	Ex.P22 Adhoc Bill dt-21.01.2018 in Rupees	Ex.P23-Final Bill in Rupees refer to in Ex.P23	Ex.P23 - Certified Final Bill dated 25.06.2018 in Rupees
A	**General Builder Works**	5,49,32,433.71	5,68,89,824.01	5,60,08,108.16
B	**Services**	14,50,000.00	72,19,934.00	71,93,134.00
C	**External Works**	32,85,374.00	1,46,91,165.28	1,46,43,280.83
D	**Extra Items**	35,41,643.15	84,92,605.20	83,93,638.20
	Total A+B+C+D	**6,32,09,451.26**	**8,72,93,528.5**	**8,62,38,161.2**
E	**Bill for Adjoining Plot**	-	11,83,596.73	11,83,596.73
	Total A+B+C+D+E	**6,32,09,451.26**	**8,84,77,125.22**	**8,74,21,757.92**
After GST and Rebate				
	Description of Items	**Ex.P22 Adhoc Bill**	**Ex.P23-Final Bill**	**Ex.P23-Certified Final Bill**
	Total Abstract	**6,32,09,451.26**	**8,84,77,125.22**	**8,74,21,757.92**
	Total Amount Less: Rebate 5%	**6,00,48,978.70**	**39,40,046.16** **(A+B+C)**	**38,92,226.15** **(A+B+C)**
	ADD: GST 18%	1,08,08,816.17	-	-
	Total	**7,08,57,794.86**	**8,45,37,079.1**	**8,35,29,531.77**
	Less: Retention 2.5% on Rs.5,34,08,072.97*	-	*13,35,201.82	#13,10,013.14

	Rs.5,24,00,525.69#			
	Balance Due	-	8,32,01,877.23	8,22,19,518.63
	ADD: GST 18%	-	1,49,76,337.90	1,47,99,513.35
	Total	**-**	**9,81,78,215.13**	**9,70,19,031.98**
	Less: Payment Received	3,01,41,336.00	4,90,01,336	4,90,01,336
	Net Balance Due Payable	**4,07,16,458.86**	**4,91,76,879.13**	**4,80,17,695.98**

***5,34,08,072.97** [Rs.8,45,37,079.1 - 3,11,29,006.08 (Bill 2 & part)]

#**5,24,00,525.69** [Rs.8,35,29,531.77 - 3,11,29,006.08 (Bill 2 & part]

154. Ex.P24 dated 05.09.2018 is a reminder letter sent by the plaintiff to the first defendant tracing out the entire history with the request to the first defendant to settle the amounts. In Ex.P24 reminder dated 05.09.2018, the plaintiff has informed the defendants that the pending miscellaneous works were completed and a final bill was raised as was instructed by the first defendant on 15.06.2018 for as sum of Rs. 8,35,29,531 (excluding GST and after rebate of 5 percentage)

155. Ex.P24 dated 05.09.2018 further states that the first defendant had requested the bills to be certified by the said consultant namely M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., to ensure that the amounts specified in the bills raised were in order and the same was certified by the Directors of M/s.MSGS Infrastructure and Hospitality Pvt. Ltd on 25.06.2018 vide Ex.P23.

156. Ex.P25 is a copy of E-mail dated 05.09.2018 of the plaintiff addressed to the first defendant attaching the payment requests letter for necessary action from the defendants.

157. Ex.P26 dated 24.10.2018 is a legal notice sent on behalf of the plaintiff to the defendants calling upon the defendants to pay a sum of Rs.4,63,92,105.35/- (after TDS) along with interest at the rate of 15% p.a, with effect from 25.06.2018.

158. It further states that the Final Bill submitted was for the total constructed area of 24,439 Sq ft of the building and infrastructure facility over the total land area of 10 Grounds and 228 Sq ft being the Phase-I of the

project and the remaining 1561 Sq.ft was not constructed as per the instruction given by the first defendant and the school authority stating that the balance area of 1561 Sq.ft, could be utilized for constructing Phase-II.

159. Ex.P27 dated 08.01.2019 is a reply of the defendants. In Ex.P27 dated 08.01.2019 it is stated that the total cost of construction as per the standard rates by taking into account of the material used and their brands and the workmanship the final value of the entire construction was only **Rs.5,10,00,000/-** and not **Rs.9,70,19,031/-** as was certified in Ex.P23 dated 25.06.2018 including GST at 18% and after giving rebate of 5% and retention at 2.5%.

160. It further stated that the defendants were agreeable to settle the remaining balance after giving due credits to the amounts paid out of **Rs.5,10,00,000/-** and incase the plaintiff agreed, the same will be paid. In other words, the defendants were agreeable to pay a sum of Rs.19,98,664/- [Rs.5,10,00,000/- _ Rs.4,90,01,336/-].

161. In the above background, the plaintiff has issued Ex.P28 police complaint dated 02.03.2019 asking the Commissioner of Police, Greater Chennai to take action against the defendants for cheating the plaintiff.

162. Ex.P29 is the copy of the M Book maintained at the site by the plaintiff. It is submitted by the plaintiff that based on Ex.P29 M Book, the final bills submitted by the plaintiff was duly certified by the consultant namely MSG Infrastructure and Hospitality Private Limited vide Ex.P23 Final Certificate dated 25.06.2018.

163. Ex.P30 is the copy of the Master Data Sheet of the plaintiff company.

164. On behalf of defendants Ex.D1 valuation report dated 19.11.2018 was marked through DW3, a Chartered Engineer appointed by the defendant. In his report, DW3 has stated that though the sanctioned plan is 58,799 sq.ft., the total constructed area is 24,430 sq.ft. and value of work was arrived based on Sq.ft rate and not on Bill of Quantities. In Ex.D1 dated

19.11.2018, the Chartered Engineer of the defendant has estimated the total cost of construction as Rs.5,10,000/- (approximately working out Rs.2000 per sq.ft x 24430= Rs.4,88,60,000/-) which has been reiterated in Ex.P27 reply notice dated 08.01.2019 given to the plaintiff.

165. As mentioned above, this Court by an order dated 07.11.2019 in A.No.5957 of 2019 had appointed an Advocate Commissioner/Chartered Engineer. The Chartered Engineer deposed evidence as CW-1. CW-1 has given Ex.C1 Report dated 25.07.2020. On perusal of Ex.C1 indicates that the site was inspected on 15.03.2019 by CW-1, the Chartered Engineer. The Ex.C1 is addressed to the Advocate Commissioner. Contents of Ex.C1 dated 25.07.2020 is extracted below:-

> *It is hereby certified that I have personally visited and inspected the building for which the value of construction is being assessed. Physical measurements have been taken at all necessary locations. I have taken hold of the drawings and plans as prepared and approved for construction. The structural and detailed construction drawings have been used for estimation. It is noted that due to the depth of foundation from the finished floor level, at two levels the Tie beams are provided.*

Excavation quantities include the building plan areas.

Filling all ground and inside the plinth up to the required heights is considered. Also, the filling and development work on the vacant land on the South Eastern side is also included. That the compound wall has been raised by one extra foot is noted. Entrance arches in RCC FRAMES also been estimated. All underground and overhead water reservoirs/tanks are also accounted for. The bill of quantities has been systematically worked out. On the BOQ so arrived at, the schedule of rates has been applied to arrive at the value. The value so arrived is ***Rs.8,19,47,351/-*** *(Rupees Eight Crores Nineteen Lakhs Forty-Seven Thousand Three hundred and Fifty-One Only).*

Based on the physical site inspection and measurements taken during the inspection: Total land area for Phase-1 Constructions (As per Drawing) is 10 Grounds nd 228 sq.ft. Adjoining plot area on the rear side of the building provided children's play area, developed with compound wall and separate gate for the area measuring a total extent of 3 grounds. Height of the building and rooms are constructed as per the Government guidelines.

Based on the inspection and study of structural drawings, the foundation of the building structured and constructed towards provision for additional two more floors in the building.

166. As per Ex.C1, Report dated 25.07.2020, marked through PW-

1, the total cost of the construction arrived is **Rs.8,19,37,351/-(**Rupees Eight Crore Nineteen Lakh Thirty Seven Thousand Three Hundred and Fifty One only). The amount of Rs.8,19,37,351/- certified by CW1 in Ex.C1 dated 25.07.2020 almost mirrors with the amount of **Rs.8,22,19,518/-** certified in Ex.P23 Final Certificate dated 25.06.2017 without GST component of 18% and after giving rebate and deducting amounts towards retention.

167. The CW1 has not given the exact extent of construction put up by the plaintiff for the defendant in Ex.C1 Report dated 25.7.2020. It merely states that it is based on the inspection and study of structural drawings, the foundations of the building structure constructed towards provisions for additional two more floors in the building. The report of CW-1 cannot be relied upon as it has merely reiterated Ex.P23 certificate dated 25.06.2018 of the consultant and has merely extracted the amounts in Ex.P23 dated 25.06.2018. I shall deal with this later in detail.

168. Ex.D2 dated 11.10.2020 is another Valuation Report of D.W.3 Mr.K.Natarajan examined on behalf of the defendant. In Ex.D2 Valuation

Report dated 11.10.2020, D.W.3 has stated as follows:-

> *"I have worked out the cost of construction for the year 2018 on plinth Area rates of Rs.2000/sft. And cost of my valuation more or less tallies with the total value of* ***Rs.5,10,00,000/-*** *for the above work.*
>
> *The other valuer has estimated the cost of* ***Rs.8,20,00,000/-*** *for the area of 24430 sft constructed Area. The Plinth Area works out to Rs.3400/sft which is abnormal. The construction cost in the year 2020 as per Market rate is Rs.2500/sft only. It is evident the valuer boosted the rates in favour of contractor for all the items mentioned in the Abstract Estimate. As there is no construction Agreement between the Landlord and the contractor. The Rates have been boosted to suit the Advantage to the contractor. If the item rates and plinth Area rates are mentioned in the approved construction agreement the cost of valuation will be approximately same in both the valuation.*
>
> *A detailed comparative study enclosed shows that he has worked the cost of Rs.3,10,00,000/- above the actual cost of Construction Area."*

169. The said Valuer refers to CW1. In Ex.D2 dated 11.10.2020, DW3 has further stated that since there is no construction agreement between the land lords (defendants) and the contractor (plaintiff), the value in Ex.C1

Report dated 05.08.2020 of CW1, the Chartered Engineer appointed by the court who has estimated the amount for a sum of Rs.8,20,00,000/- and who deposed evidence as a Court witness for constructed area of 24,430 Sq.ft was abnormal and that the CW1 had boosted the rate abnormally in favour of the plaintiff. In Ex.D2, D.W3, Chartered Engineer appointed by the defendant has also made a comparison between the the amount that has been certified by Chartered Engineer in Ex.C1 and the amount arrived by him working out in Bill of Quantities.

170. Thus, before this Court there are different set of estimates of the plaintiff and the defendants at different point of time.

171. The first estimate of the plaintiff is in Ex.P8 dated 21.12.2016 was for a sum of **Rs.8,86,32,898.60/-.** This was for putting up a construction over the land in Ex.P10 Deed of Settlement dated 22.12.2016 executed by Late Srinivasa Rao in favour of the 1st and 2nd defendant measuring an extent of 56.46 cents or 24,644 ½ sq.ft.

172. The estimate in Ex.P8 dated 21.12.2016 is said to have been given by the plaintiff is immediately after execution of Ex.P2 Lease Agreement dated 14.11.2016 with M/s.Vallimuthu Educational Trust for their Velammal New Gen School. Therefore, the estimate was for putting up a construction of 40,000 sq.ft. over the land in Ex.P10 Deed of Settlement dated 22.12.2016.

173. This is evident from Ex.P.2-Lease Deed dated 15.09.2016 with Vallimuthu Educational Trust and Ex.P.3 – Letter dated 20.10.2016 issued to the plaintiff by late S.Srinivas Rao. Thereafter, application for planning approval /building permit was filed with the CMDA on 04.11.2016. This application was filed at the time when, the arrangement with the said Vallimuthu Educational Trust was still there under Ex.P2 Lease Agreement dated 14.11.2016.

174. However, the arrangement between late Mr.S.Srinivasa Rao and the said M/s.Vallimuthu Educational Trust fizzled out and thereafter a fresh Lease Deed was signed in Ex.P12 dated 09.04.2017 between late.Mr.S.Srinivasa Rao and M/s.Sree Muragan Educational Trust for

construction of Sri Chaitanya Educational Institutions in two phases measuring an extent of 60,000 sq.ft. as mentioned above.

175. Under Ex.P.12 Lease Deed dated 09.04.2017 construction over the land settled in favour of the defendant by late Mr.S.Srinivasa Rao vide Ex.P10 dated 22.12.2016 was reduced to 28,000 sq.ft. in the first phase.

176. It is not clear as to whether at the time of filing the application for building approval on 04.11.2016, the application was filed for construction of 40,000 sq.ft. of built up area as per Ex.P2 Lease Agreement dated 14.11.2016 or 60,000 sq.f.t as was contemplated later. On 04.11.2016, the proposal in the application dated 4.11.2016 was over an extent of land covered by Ex.P.10- Settlement Deed dated 22.12.2016 measuring an extent of 24,664 ½ sq.ft. out of total extent of 1 acre and 9 cents which was earlier proposed to be used for construction of School for 40,000 sq.ft. of built up area to suit the requirements of Vellammal New Gen School of M/s.Vallimuthu Educational Trust in terms of Ex.P.2 dated 14.11.2016.

177. In Ex.P13 Valuation Report dated 12.05.2017, of M/s.B.S.Ushadevi which was procured by the defendants for getting loan from Federal Bank, Anna Nagar Branch, the Valuer estimated the total cost of construction as **Rs.6,63,00,000/-**. This was after Ex.P12 dated 09.04.2017 was signed with M/s.Sree Muragan Educational Trust for construction of Sri Chaitanya Educational Institutions in two phases measuring an extent of 60,000 sq.ft.as mentioned above over the entire extent of land measuring 1 acres and 9 cents. In Ex.P.13 Valuation Report dated 12.05.2017, however, the said valuer has confirmed that only 10% of the work was completed up to the plinth level amounting to **Rs.66,30,000/-**. In Ex.P.13 – Valuation Report dated 12.05.2017, the extent of construction is 58,664 sq.ft., [56,361.09 sq.ft FSI + 2,303.00 sq.ft NON FSI]. The first defendant herself has however enclosed a copy of an estimate given by the plaintiff to the defendants in Ex.P.14 dated 05.06.2017 for **Rs.8,15,67,205.00.**

178. The defendant in Ex.P.14 dated 05.06.2017 has also submitted a revised estimate of the plaintiff for a sum of **Rs.9,65,67,205/-**

.[Rs.8,15,67,205/- + GST Rs.1,50,00,000/-]. However, neither the plaintiff nor the defendant have filed the copy of the estimates of the plaintiff which is said to have been given by the plaintiff to the defendant which was said to have been enclosed along with Ex.P14 dated 05.06.2017 addressed to The Manager, Federal Bank, Anna Nagar, Chennai.

179. In Ex.P19 dated 31.07.2019, the plaintiff has further increased the cost to **Rs.9,90,38,727.46** without GST content for the item specified in Ex.P8 Quotation dated 21.12.2016. On the aforesaid amount of **Rs.9,90,38,727.46** in Ex.P19 dated 31.07.2019, the plaintiff has given a rebate of **Rs.49,51,936.37** at 5% and had claimed a net amount to **Rs.9,40,86,791.09** (Rs.9,90,38,727.46 –Rs. 49,51,936.37). The defendant has not admitted to Ex.P.19 dated 31.07.2019. There is no proof it was received by the defendant.

180. In the Final Bill, that was submitted, the plaintiff reduced the estimated amount for **Rs.9,90,38,727.46** in Ex.P19 dated 31.07.2019 was reduced to **Rs.8,84,77,124.22/-.** It includes a sum of Rs.83,93,638.20 for the extra Items and Rs.11,83,596.75 for work carried out in the adjoining plot

which was not contemplated in the estimated amount of Rs.9,90,38,727.46 in Ex.P19 dated 31.07.2019. The consultant has approved the Final bills submitted by the plaintiff Vide Ex.P23 Final Certificate dated 25.06.2018 for **Rs.8,74,21,757.92/-** as stated above.

181. The report of the CW-1, Chartered Engineer appointed by the Court which was marked as Ex.C1 more or less corresponds to the amount in Ex.P.23 Final certificate dated 25.06.2018 of the consultant. There is however no discussion regarding the nature of work carried out by the plaintiff and a comparison between the estimate that was given by the plaintiff in Ex.P8 dated 21.12.2016 for 40,000/-Sq.ft of built up area that was proposed to be put up by the plaintiff and 28,000 sq.ft. under the changed circumstances after M/s.Vallimuthu Educational Trust exited and paved way for M/s.Sree Muragan Educational Trust to start a school complex measuring 60,000 Sq.ft of built up area to be constructed in two phase viz., 28,000 Sq.ft and 32,000 Sq.ft.

182. There is no dispute that the plaintiff is entitled to charge the defendants on the basis of "Bill of Quantities" for the construction in terms of

Ex.P3 letter dated 20.10.2016. As per Ex.P.3 dated 20.10.2016, the plaintiff was to give an estimate based on Bill of Quantities to late Mr.S.Srinivasa Rao. As per Ex.P.3 letter dated 20.10.2016 of late Mr.S.Srinivasa Rao the Director of plaintiff, Mr.G.Jayaraman, was to proceed with the construction after approval of the project estimates and after mutual discussions. As per Ex.P.3 letter dated 20.10.2016, the plaintiff was merely permitted to put up a Bore well, Temporary Workers Shed and obtain a temporary E.B.connection.

183. Whether estimate in Bill of Quantity (BOQ) was to be certified by the consultant namely M.S.G.Infrastructure & Hospitality Pvt. Ltd., appointed by late Mr.S.Srinivasa Rao or not is not clearly discernible. In any event, Bill of Quantity (BOQ) for putting up 28,000 sq.ft of building on 24,644 ½ sq.ft. of land is not available after the circumstances changed.

184. The admitted position is that the plaintiff has put up only 24,439 Sq ft of construction out of 28,000Sq.ft in the First Phase of construction as has been admitted in Ex.P26 legal notice dated 24.10.2018. This is confirmed by the plaintiff and the defendants. This extent more or less confirmed by Ex.D2 valuation report dated 11.10.2020 wherein it is stated that

the total constructed portion was 24,430 sq.ft.

185. A reading of Ex.P22 dated 31.12.2018 enclosing Adhoc Bill indicates that the aforesaid bill was for the construction of a School Building to suit the requirement of Chaitanya School of Sri Murugan Educational Trust in 1st phase. However, by Ex.P23 – Final certificate dated 25.06.2018, the plaintiffs consultation MSGS Infrastructure and Hospitality Pvt.Ltd., have certified the net amount payable as Rs.9,70,19,031.98/- inclusive of GST of Rs.1,47,99,513.35.

186. The final Certificate of the Consultant in Ex.P23 Final certificate dated 25.06.2018 was after the death of the father of the defendants, late S.Srinivasa Rao on 12.03.2018. In the suit claim, the plaintiff has not claimed GST and has included Rs.13,10,013.14 towards retention amount and TDS of Rs.16,70,590.63 at 2 % on Rs.8,35,29,531.77 as was certified in Ex.P23 Final certificate dated 25.06.2018.

187. In Ex.P23 dated 25.06.2023, the Consultant has itemised the

work into five categories as detailed below:-

SL.No	Work description	Sl.No	Amount (in Rs.)
A	General Builders Work	1 to 16*	5,60,08,108.16
B	Services	17 to 21*	71,93,134.00
C	External Work	22 to 40*	1,46,43,280.83
D	Extra Items	1 to 55	83,93,638.20
E	Adjoining Work	-	11,83,596.73

* Corresponds to Item No.1-40 in Ex.P8 Quotation dated 21.12.2016.

188. It is not clear how the amount of Rs.6,32,09,451.26 less rebate for a sum of Rs.31,60,472.56 amounting to Rs.6,00,48,978.70 + GST at 18% of Rs.1,08,08,816.17, totaling to Rs.7,08,57,794/-estimated in Ex.P22 Adhoc Bill dated 31.01.2018 was increased to Rs.9,70,19,031.98 in Ex.P23 dated 25.06.2018.

189. In Ex.P22 dated 31.08.2018, the total value of the Adhoc Bill as per the plaintiff was Rs.7,08,57,794/- including GST at 18% at 1,08,816.17. The total value of the Final bill submitted was for Rs.8,84,77,125/-. Out of the aforesaid amount, the consultant certified the value of Final bill at **Rs.8,74,21,757/-**. After giving 5% rebate and retention

and adding 18% GST the gross amount has been arrived at **Rs.9,70,19,031.98/-**.

190. After giving credit of the amounts of Rs.4,90,01,336/- paid by the defendant to the plaintiff, a sum of **Rs.4,80,17,695/-** was certified as due and payable by the said consultant in Ex.P23 dated 25.06.2018 after adding a sum of Rs.45,000/- towards the pooja expenses incurred on Warming Ceremony. Mis-expenses was added and TDS was deducted to arrive at Rs.4,63,92,105.35.

191. In Ex.D1 dated 19.11.2018 marked through DW3 on behalf of the defendants, DW3 has confirmed that as per sanctioned plan viz., E.P20 dated 05.12.2017, the area sanctioned by CMDA is 58,799 sq.ft. Ex.P20 dated 05.12.2017 was for construction of GF+2F (Ground Floor + 2 Floors). It more or less confirms and corresponds with the total extent of 60,000 sq.ft. GF+2F to the area that was proposed to be constructed in two phases of 28,000 and 32,000 sq.ft for M/s.Sri Murugan Educational Trust for their Sri Chaitanya Educational Institutions in terms of Ex.P12 lease deed dated

09.04.2017.

192. The CW1 Chartered Engineer appointed by this Court has worked out the cost of the construction based on Bill of Quantities in Ex.C1 dated 25.07.2020 as **Rs.8,19,37,351/-**(Eight Crore Nineteen Lakh Thirty Seven Thousand Three Hundred and Fifty One only). It works to **Rs.3,353**/- per sq.ft. (Rs.8,19,47,351÷24,439).

193**.** On the other hand, the defendant has worked out the cost at the rate of **Rs.2086/-** per sq.ft. (5,10,00,000 ÷ 24,439) in Ex.D1 dated 19.11.2018 marked through DW3. The consultant in Ex.P23 Final Certificate dated 25.06.2018 has certified the cost of construction at **Rs.3,577/-** per sq.ft.(Rs.8,74,21,757.92 ÷ 24,439).

194. During the cross examination, P.W3 has also stated that the plaintiff was one of the builder whose name was suggested by M/s.MSGS Infrastructure and Hospitality Pvt. Ltd. No documents have been produced by PW3 to show that amounts were paid by late Srinivasa Rao to them for the

work undertaken by them as consultant. Thus, there are sufficient indications that the amounts were inflated in Ex.P23.

195. There are also no records to show that M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., was formally authorized by late Srinivasa Rao for negotiating the rate with the plaintiff as their consultant which also stands admitted by P.W3. There are also no documents filed to substantiate that the said consultant was appointed or any letter was issued appointing them as consultant.

196. It thus emerges, no Bill of Quantity either of the consultant appointed by the defendants father late Mr.Srinivasa Rao or defendant for the changed work was arrived. Perhaps, the plaintiff expected the defendants to give the work for the construction of entire extent of 60,000 sq.ft of built up area on the entire land of 1 acre and 9 cents as per Ex.P.12 dated 09.04.2017 under the changed scenario. However, the defendant restricted the work of the plaintiff to 28,000 sq.ft in 1st phase of construction as per Ex.P12 dated 09.04.2017 and Ex.P16 dated 11.07.2017.

197. Though in the plaint, the plaintiff has stated that even when Ex.P.2 was signed on 15.09.2016, the arrangement was split into two phases of 26,000 sq.ft. and 34,000 sq.ft. totalling an extent of 60,000 sq.ft. However, there are no records to substantiate the same.

198. P.W.3 has also confirmed that the construction that was to be originally built for M/s. Velammal New Gen school was only 40,000 sq.f.t and that the construction did not proceded further after it commenced. P.W3 has also confirmed that the construction for M/s.Velammal Educational Trust in terms of Ex.P2 Lease Agreement datd 15.09.2016 for 40,000 sq.ft was to be constructed in a single phase and not in two phase. The deposition of PW3 reads as under:-

> Q.20. As per the lease deed requirement M/s Valliammal Educational Trust required a building measuring 40,000 sq.ft. Are you aware?
>
> A: am not aware of that 40,000 sq.ft. Now only after seeing the agreement I came to know that the 40,000 sq.ft.
>
> Q.21. The 40,000 sq.ft as per the Ex.P2 was to be constructed in single phase. Is it correct?

A: Yes

199. The revised quotation in Ex.P.19 dated 31.07.2017 for Rs.9,40,86,791/- without GST and Ex.P.23 dated 25.06.2018 are after Ex.P.12 dated 09.04.2017 was signed with Sri Murugan Educational Trust and later formalised in Ex.P16 dated 11.07.2017. Therefore, it has to be concluded that estimate of Ex.P.8 was for 40,000 sq.ft. and not an extent of 26,000 sq.ft. as has been alleged in the plaint.

200. When Ex.P.3 a letter dated 26.10.2018 was issued to the plaintiff by late S.Srinivasa Rao, late S.Srinivasa Rao had already entered into an unregistered lease deed for land in Ex.P2 dated 15.09.2016 with M/s.Vallimuthu Education Trust. In terms of the Ex.P2 Lease Agreement dated 15.09.2016, late Mr.S.Srinivasa Rao was to construct a school complex merely 40,000 Sq.ft for Velammal New Gen School of M/s.Vallimuthu Education Trust on the land measuring an extent of 10 grounds and 228 sq.ft situated at S.No.51/1B, Corporation Road, Seevaram village, Perungudi, Chennai which land was later settled in favour of the defendants by late Mr.S.Srinivasa Rao by Ex.P10 Settlement Deed dated 22.12.2016.

201. It is also not clear from the records as to when the construction started. However, Ex.P.17 dated 14.07.2017 records that the construction began some time in August/September 2016, though as per Ex.P3 letter dated 20.10.2016, the land was given only in late October 2016 for carrying preliminary work. Neither, the plaintiff nor the defendants have also reduced terms of contract in a document to that effect. Fact however remains that CMDA gave its approval for construction vide Ex.P20 dated 05.12.2017.

202. Although, the plaintiff would state that the amounts in Ex.P23 dated 25.6.2018 was duly certified by the consultant of the defendant namely M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., based on Ex.P29 M-Book maintained by P.W.2, the fact remains that the certificate in Ex.P.23 is based on Ex.P5 which is an unsigned photocopy of agreement dated 07.11.2016.

203. There is a drastic difference in amount specified in Ex.P22 Adhoc Bill dated 31.01.2018 and the amounts certified in Ex.P23 Final Certificate dated 25.06.2018. Ex.P22 adhoc bill dated 31.01.2018 for 24,439 sq.ft of built up area of Rs.7,08,57,794.86/- inclusive of GST of Rs.1,08,08,816.17/- appears improbable and shows the plaintiff has taken advantage of the situation on account of death of late.Mr.S.Srinivasa Rao.

Ex.P22 – Adhoc Bill is dated 31.01.2018. The death of late.Mr.S.Srinivasa Rao was on 12.3.2018.

204. The undated Bill No.3 and Final Bill of the plaintiff which has been certified by the aforesaid consultancy namely MSGS Infrastructure Hospitality and Private Limited on 25.06.2018 vide Ex.P23 is for the same extent of construction of 24,439 sq.ft. It is highly exaggerated and is not based on any contract based on any approved "Bill of Quantities" for construction of 24,439 sq.ft. It was perhaps exaggerated on account of refusal of the defendant to settle the amounts and refusal to hand over the work to the plaintiff for Phase-II.

205. The defendants perhaps gave an indication to the plaintiff that the plaintiff will be allowed to put construction of building in the second phase after completion of the first phase of 28,000Sq ft. of building in terms of Ex.P.12 Lease Deed dated 09.04.2017 with Srimurugan Educational Trust. The truth however lies hidden in between. Both the plaintiff and the defendants are silent.

206. Although, Ex.P23 Final Certificate dated 25.06.2018 is signed by P.W.3 and by Mr.G.Soundararajan, the said Mr.G.Soundarrajan who

appears to be the friend of defendant's father late Mr.S.Srinivasa Rao, he should have appeared and deposed as a witness before this Court. Therefore, adverse inference has to be drawn against plaintiff for not producing Mr.G.Soundarrajan as a witness. At the same time, there is no dispute that the plaintiff has done the construction work for the defendants.

207. Item wise, comparison between the amount specified in Adhoc bill in Ex.P22 dated 31.01.2018 and Final Bill-3 and corrections made by the consultant pursuant to which, Ex.P23 –Final Certificate dated 25.06.2018 are tabulated below:-

S.No.	Description of items	Ex.P.22 Adhoc Bill in Rupees	Final Bill No.3 Given for certificate in Ex.P.23 in Rupees	Ex.P.23- Certified Final Bill
A	**GENERAL BUILDER WORKS**			
1.00	Site Development	6,93,000.00	6,93,000.00	6,93,000.00
2.00	Earth Work Excavation	10,821,118.82	10,81,186.62	10,81,186.62
3.00	Sand Filling	-	-	

4.00	Plain Cement concrete (PCC)	4,90,586.25	8,67,994.05	8,67,994.05
5.00	Reinforced Cement concrete (RCC)	99,97,219.51	1,10,29,640.55	1,09,22,174.46
6.00	Shuttering (Form Work)	45,24,626.53	43,06,753.53	41,98,328.53
7.00	Super Structure Brick Work	49,24,997.79	50,97,678.58	50,10,464.21
8.00	Internal Vertical Masonry Surfacs-Wall Plastering, Ceiling Plastering & External wall plastering	65,11,063.00	57,54,065.75	55,42,764.63
9.00	Vetrified Floor tiling & wall Dado	37,05,950.00	48,30,407.49	48,31,099..14
10.00	Joineries-carpentry doors & windows	30,39,150.00	23,30,578.50	22,76,794.77
11.00	Reinforcement Steel work	1,12,93,128.00	1,06,52,019.84	1,06,52,019.84
12.00	Painting & Polishing	18,82,500.00	33,05,750.27	29,89,128.06
13.00	Basement filing inside and outside	67,88,093.73	52,94,657.52	52,94,657.52
14.00	Weathering Course and pressed tile work	-	-	16.48,496.32
	TOATL	5,49,32,433.7	5,68,89,824.01	5,60,08,108.16
B	**SERVICES**			

1.00	Electrical Works	7,00,000.00	36,23,551.00	36,23,551.00
2.00	Plumbing Works	7,50,000.00	35,96,383.00	35,69,583.00
	Total	14,50,00,000	72,19,934.00	71,93,134.00
C	**EXTERNAL WORKS**			
1.00	Interlock Paving		26,15,158.42	26,09,311.74
2.00	Compounding Wall & Gate	9,91,544.40	23,51,835.40	23,49,636.28
3.00	External Elevation Work	-	17,62,050.10	17,86,891.45
4.00	STP, UG Sump, Rain water soak pit & all other external works	20,05,080.00	60,48,351.04	59,83,671.04
5.00	Borewell Two Nos.	2,88,750.00	19,13,770.32	19,13,770.32
6.00	Solar System	-		
	Total Amount	32,85,374.40	1,46,91,165,28	1,46,43,280.83
	Total Amount A+B+C	5,96,67,808.01	7,88,00,923.29	7,78,44,522.99
D	Extra Items			
1.00	Extra Items	35,41,643.15	84,92,605.20	83,93,638.20
	Total Amount A+B+C+D	6,32,09,451.26	8,72,93,528.5	8,62,38,161.2
	Bill No.3 &		11,83,596.73	

	Final			
	Total Amount A+B+C+D+E		8,84,77,125.22	8,74,21,757.92

208. A comparison of Ex.P22 Adhoc Bill dated 31.01.2018 and the Final Bills Certified in Ex.P23 dated 25.06.2018 which were submitted by the plaintiff to the said consultant M/s.MSGS Infrastructure and Hospitality Pvt. Ltd., indicate that the amounts have increased manifold times for the items specified under the heading Services and External work as compared with Ex.P8 dated 31.12.2016 being the alleged estimate given by the petitioner for putting up construction for 40,000 sq.ft for M/s.Vallimuthu Educational Trust for which the plaintiff had quoted only a sum of Rs.8,86,32,898/- in Ex.P8 dated 31.12.2016.

209. The increase in Ex.P22 Adhoc Bill dated 31.01.2018 and the Final Bills certified in Ex.P23 dated 25.06.2018 is for a lesser area as compared to the area that was initially proposed to be constructed pursuant to Ex.P2 agreement dated 15.09.2016 with M/s.Vallimuthu Educational Trust. It shows that the plaintiff has exaggerated the cost of construction without a revised estimate for Bill of Quantities for lesser extent of 28,000 sq.ft of land

after Ex.P12 Lease Deed dated 09.04.2017 and Ex.P16 Rental Lease Deed dated 11.07.2017 were signed.

210. What is evident is that the Bill of Quantities may have been prepared for putting up a construction of a School Complex pursuant to Ex.P2 dated 15.09.2016 with M/s.Vallimuthu Educational Trust for their Velammal New Gen School. After the arrangement between the said M/s.Vallimuthu Educational Trust and late Mr.S.Srinivasa Rao, fell through, the work came to stand still. Only foundation work and work up to plinth level was completed after the said arrangement fell through under Ex.P2 Lease Deed dated 15.09.2016 as is evident from Ex.P13 Valuation Report dated 12.05.2017 and Ex.P14 Proposal dated 05.06.2017, there was hiatus in the construction.

211. Thereafter, a fresh arrangement was signed in Ex.P12 dated 09.04.2017 by late Mr.S.Srinivasa Rao with M/s.Sri Murugan Educational Trust for their Sri Chaitanya Educational Institutions, in Ex.P12 dated 09.04.2017, which split the construction into two phases for 28,000 sq.ft and 32,000 sq.ft.

212. The application on 14.11.2016 that was filed before CMDA for obtaining planning permit has to be construed and having filed for 40,000 sq.ft of built up area. The area of construction later altered to 60,000 sq.ft of area, in view of fresh arrangement vide Ex.P12 dated 09.04.2017 with M/s.Sri Murugan Educational Trust for their Sri Chaitanya Educational Institutions.

213. In Ex.P12 dated 09.04.2017, the splitting of construction into two phases of 28,000 sq.ft and 32,000 sq.ft on the land measuring extent of 24,644 ½ sq.ft that was later settled in favour of the defendants by late Mr.S.Srinivasa Rao, vide Ex.P10 dated 22.12.2016 and on the balance extent of 22,934 sq.ft of land, which was earlier settled in favour of the defendants herein by way of settlement deed dated 10.04.2014.

214. Thus, the approval that was secured in Ex.P20 planning permit dated 05.12.2017 was for 58,664 sq.ft. and the construction was confined to 28,000 sq.ft of built up area in the land measuring to an extent of 24,664 ½ sq.ft for 60,000 sq.ft. The construction in the first phase was however actually confined to only 24,439 sq.ft of built up area as has been admitted by both the

parties in Ex.P26 – legal notice dated 24.10.2018 and Ex.P27 / reply dated 03.01.2019.

215. Since, the copy of the Bill of Quantities for the revised schedule for 28,000 sq.ft of built up area was not given by defendant or on their behalf of the defendant to the plaintiff, it has to be construed that there was no concluded contract based on Bill of Quantities. In a construction based on a Bill of Quantity, the rate and estimate has to be given prior to the work. Later it has to be matched with actual. Thus, the amounts payable as certified vide Ex.P23 Final Certificate dated 25.06.2018 determined by the consultant appointed by late Mr.S.Srinivasa Rao based on the Ex.P22 Adhoc Bill dated 31.01.2018 cannot be the basis for awarding exaggerated amount towards suit claim.

216. The amounts arrived by the Court appointed Chartered Engineer CW1 and by the defendants witness D.W.3 - Mr.K.Natarajan, Former Chief Engineer of PWD and Chartered Engineer and Approved Valuer, indicate that the amounts can also be arrived on square feet basis. Ex.C.1 dated 25.07.2020 of CW1 has worked out the amounts at the rate specified in

last column.

217. The defendants have worked out the calculation at Rs.2,086/- per sq.ft in Exs.D1, D2 & P27. Later the defendants have come forward to work out the rate at Rs.2,215.82/-.per sq.ft in a memo filed as follows :-

> As per Ex.P.8 quotation dated 21.12.2016 the cost of construction worked out for 40,000 Sq.ft is Rs.8,86,32,898.60/- which will work out to Rs.2,215.82 per square feet for a built up area of 24,439 Sq.ft, and the amount will be Rs.5,41,52,485/-.

218. As mentioned elsewhere, there is no concluded contract on the rates quoted in Ex.P8 Quotation dated 22.12.2016 based on Bill of Quantities for 40,000 sq.ft. of built up area.

219. A Comparison of the value given in each Exhibits is also detailed below:-

Exhibits	Sl.No	Amounts	Area in Sq.ft.	Rate calculated per Sq.ft.
Ex.P8	1-21 (A&B)	Rs.7,83,75,343.00	40,000	Rs.1959.35 (Rs.7,83,75,343 ÷40,000)

Ex.P23	A&B(1-21)	Rs.6,32,01,242.00	24,439	Rs.2586 (Rs.6,32,01,242÷24,439)
Ex.D1	1-21	Rs.4,15,89,517.20	24.439	Rs.1701.7 (Rs.4,15,89,517.2÷24,439)

220. Since neither the plaintiff nor the defendant or the Court appointed Chartered Engineer who deposed evidence as C.W.1 whose report dated 25.07.2020 was marked as Ex.C1 have not given a clear picture, the Court arrived at the A-General Builders Work and the B-Services at Rs.2,500/- per sq.ft., based on the calculations and reasons detailed below.

221. In Ex.D2 dated 11.10.2020, DW1 has also indicated the market rate at Rs.2,500/- per sq.ft., in the year 2020.

222. The value was initially worked out at Rs.1959.35/- per sq.ft., based on the quotation in Ex.P8 dated 21.12.2016 for 40,000 sq.ft of the built up area for the Items listed in General Builders Work (A) and Services (B) as calculated in the table above.

223. The plaintiff would have been entitled to Rs.4,78,84,554.7 (Rs.1959.35 x 24439 = Rs.4,78,84,554.7) since the admitted position is that

the built up area was reduced to 28,000 sq.ft. in the first phase and the actual construction was confined to 24,439 sq.ft. However, on account of stoppage in the construction of School Complex from November 2016 to July 2017 due to change in circumstances and completion of school project only in May 2018, there could be escalation in the cost of Construction materials. That apart, the plaintiff has carried the initial construction without payment of any amount in advanced.

224. Therefore, the principle of "quantum meruit" has to be applied under the circumstances. The plaintiff deserves a reasonable amount towards compensation for the work carried out by the plaintiff for the defendants for putting up construction of 24,439 sq.ft of built up area on the land that was settled in favour of the defendants by their father Late Mr.Srinivasa Rao vide Ex.P10 dated 22.12.2016 without receiving advance.

225. In Final Certificate of Bills in Ex.P23, the plaintiff has claimed a Sum of **Rs.2,42,20,515/-** for the Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot.

226. The defendants have not categorically denied execution for the work in Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot. However, the defendant have categorically denied the rates adopted in Ex.P23 dated 25.06.2018 for the Super structure i.e School Complex built to suit the requirement of Sree Murugan Educational Trust for Shri Chaitanya Educational Institutions in the first phase for 28,000 sq.ft of built up area over the land settled in favour of the defendants vide Ex.P.10 dated 22.12.2016. The defendants have also disputed the rates adopted in Ex.P23 dated 25.06.2018 for Items C,D and E by the plaintiff.

227. Considering the fact that there was a delay in the project and reduction in the total built up area and taking note of the fact that the plaintiff would have borrowed money from third parties for executing work as the work was commenced without any payment of advance amount from the defendant's father late Mr.S.Srinivasa Rao during his life time which is admitted and considering the fact that the plaintiff would have spent money out of pocket, the plaintiff is entitled for a reasonable compensation for the work done in

advance to cover the interest on amounts deployed by the plaintiff for the project apart from the cost of construction. Therefore, for the Items A-General Builders Work and B-Services, which corresponds with item No.1 to 21 in Ex.P8 Quotation dated 22.12.2016, the cost of construction was fixed at Rs.2,500/- per sq.ft. This was indicated to both the plaintiff and defendant on 18.10.2023.

228. When the case was listed on 18.10.2023 and 20.10.2023, the counsels were called upon to assist the Court to arrive at the just and equitable amount to be paid for the items C, D & E namely External Work, Extra Items and Work for Adjoining Plot in Ex.P23. It was clearly indicated that the rate will be worked out at Rs.2,500/- per sq.ft for the Items Viz.,A-General Builders Work and Item B-Services for the construction of a School complex measuring to an extent of 24,439 sq.ft of 10 grounds and 228 sq.ft as settled in favour of the defendant vide Ex.P10 dated 22.12.2016.

229. Pursuant to the hearing held on 18.10.2023 and 20.10.2023, the plaintiff have given a detailed chart. However, the defendants have not

given any breakup to assist the Court to arrive at the just and equitable amount to be paid for the Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot in Ex.P23.

230. In the Chart given by the plaintiff, for the Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot of Ex.P23, the plaintiff has categorized it into seven major heads. The first 5 heads pertains to the External work 'C' of Ex.P23. The sixth head pertains to extra Items 'D' of Ex.P23 and the seventh head pertains to the work done in adjoining plot 'E' of Ex.P23.

231. In Ex.P23 dated 25.6.2018, a Sum of **Rs. 1,46,43,280.83** was certified against Items 'C' for the external work, the plaintiff has claimed the same amount of **Rs. 1,46,43,280.83** as certified in Ex.P23 .

232. For the extra Items 'D', the plaintiff has re-quantified a sum of **Rs.29,92,945/-** from Rs.83,93,638/-in the Chart. For the Work done in adjoining plot 'E' of Ex.P23 , the plaintiff has claimed the same amount of

Rs.11,83,596.73 as certified in Ex.P23.

233. Comparison of the rates and quantity quoted in Ex.P8 Quotation on Bill of quantity dated 21.12.2016 and the rates and quantity in Ex.P23 Final Ceritificate dated 25.06.2018 for the Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot and the chart furnished by the plaintiff indicates that the plaintiff has reduced the amount for Extra Items Viz., D to Rs.29,92,945/- from Rs.83,93,638/- as detailed below :-

Sl.No	Ex.P8	Material	Qnty	Unt	Rate	Amount I Rupees	Ex.P23 #	Material	Qnty	Unt	Rate	Amount in Rupees
6		Extra Items/ Extra works	Not contemplated				1-54	Extra Items				**29,92,945 ***

#Amounts in Ex.P23 dated 25.06.2018 as modified in the chart submitted by the plaintiff.

*Reduced from Rs.83,93,638.20 to Rs.29,92,945/- by reducing a sum of Rs.54.00,693.00

234. The plaintiff has explained the reasons for reducing the amount to **Rs.29,92,945/-** from **Rs.83,93,638/-** for the Extra Items 'D' of Ex.P23 dated

25.06.2018 as follows in the remarks in the Table to the Chart. It is extracted below:-

Extra Items Adhoc Bill amount was Rs.35,41,643/-. Final Work Done was Rs.83,93,638/. Normally Extra Items are the items which was not mentioned in the BOQ and it will be executed in site as necessity for the work to carry out and it will be billed according to the nature of work. **We have claimed Extra Items for Rs.29,92,945/- because based on Square Feet cost @ Rs.2,500/- an amount amounting to Rs.54,00,693 was included in square foot rate.**

235. In Ex.P8 Quotation dated 21.12.2016 for Sl.No.22 to 40, the plaintiff has quantified the amount as **Rs.1,02,57,555/-**. Sl.No.22 to 40 of Ex.P8 Quotation dated 21.12.2016 corresponds to Items C-External Work of Ex.P23. In Ex.P23 Final Certificate dated 22.12.2016, the plaintiff has quantified an amount of **Rs.1,46,43,281/-** . A comparison of the rates in Ex.P8 Quotation dated 21.12.2016 and Ex.P23 Final Certificate dated 22.12.2016 is detailed below:-

Ex.P8	Material	Qnty	Unt	Rate	Amount in Rupees	Ex.P23	Material	Qnty	Unt	Rate	Amount in Rupees
22	**Material**	180	m	5775	10,39,500	22 a	Compound wall - 1.5m high with pillasters, plinth beam, coping on the top and suitable foundations as	88.30	M	6,468	5,71,124.40

Ex.P8	**Material**	**Qnty**	**Unt**	**Rate**	**Amount in Rupees**	**Ex.P23**	**Material**	**Qnty**	**Unt**	**Rate**	**Amount in Rupees**
							per design				
						b	Compound wall - 1.5m high- Do	103.91		6,468	6,72,089.88
						c	0.6 m extra hight above 1.5 m with brick work,plastering and scaffolding as per design	81.50		2,600	2,11,900.00
						d	1.5 m extra hight	21.33		3,300	70,389.00
						e	1.5 m extra hight with extra beam, 2	34.20		7,500	2,56,500.00
						f	0.7m extra hight 230 mm brick plastering	57.35		**3,300**	1,89,255.00
							Total	**386.59**			**19,72,257.00**
23	**Gate as per design**	2	Mt	1,73,250	3,46,500	23	**Gate as per design**	1.95	**MT**	**1,94,040**	**3,78,378.00**
24	**Borewell 2 Nos**	2	no	1,44,375	2,88,750	24	**Borewell 2 Nos**	2	**No**	**1,44,375**	**2,88,750.00**
26	**OH Water Tank 63000 Litres**	40	Kl	23,100	9,24,000	26	**OH Water Tank 63000 Litres**	62.81	**Kl**	**25,872**	**16,25,020.32**
28 External elevation	**a-Elevation feature civil work**	LS			5,77,500	28 External elevation	**a-Elevation feature civil work Groove for walls**	29.93	**M**	**155**	**51,142.20**
	b-Elevation feature Aluminium paneling	2500	Sq.ft	404.	10,10,625		**b- Elevation feature Aluminium**	1917	**Sq.ft**	**452**	**8,66,529.20**

Ex.P8	Material	Qnty	Unt	Rate	Amount in Rupees	Ex.P23	Material	Qnty	Unt	Rate	Amount in Rupees
				25			paneling				
							c- Elevation feature Cera Board Work	1884.72	Sq.ft	375	7,06,770.03
							d-Elevation feature Pergola Plastering	171.00	Sq.m	950	1,62,450.00
29	Interlock Paving Blocks	1200	Sq.m	1,963.5	23,56,200			1187.13	Sqm	2,198	26,09,311.74
30	Genset Foundation work(for 2 Gensets in RCC to design.)	60	sqm	2,310	1,38,600	30	Genset Foundation work(for 2 Gensets in RCC to design.)	7.52	Sqm	2,587	19,454.24.00
31	UG Sump 70Kl in 3 compartments	70	kl	28,875	20,21,250	31	UG Sump 70 Kl in 3 compartments	67.28	Kl	32,340	21,75,835.00
32	STP (sewage treatment plaint)	LS		At execution		32	STP (sewage treatment plaint)	43,840	Kl	23	10,08,320.00
33	Staircase SS Handrail	60	m	4,735.50	2,84,130	33	Staircase SS Handrail	66.20	M	5,303	3,51,058.60
35	Rain Water Soak pit	LS		1,73,250	1,73,250	35	Rain water Harvesting	10	Nos	20,000	2,00,000.00
36	Storm water drainage				5,77,500	36	Storm water drainage	192.35	RM	8,500	16,34,975.00
37	Fire Fighting	LS				37	Fire Fighting system as	LS			1,50,000.00

Ex.P8	Material	Qnty	Unt	Rate	Amount in Rupees	Ex.P23	Material	Qnty	Unt	Rate	Amount in Rupees
	system as required						required				
38	External drainage work (4 change to 6 inch dia)	150	m	2,310	3,46,500	38	External drainage work (4 change to 6 inch dia)	75.20	M	3,500	2,63,200.00
39	Rain Water collection sump	1				39	Rain Water collection sump	1	No	45,000	45,000.00
Total					**1,02,57,555**						**1,46,43,280.83**

236. The defendants have also not questioned the quantum of work in Ex.P23 Final certificate dated 25.06.2018. In Ex.D1 dated 19.11.2018, the defendant have merely quoted a lesser rate as against each of the Items. A comparison of the Rates quoted in Ex.P23 certificate dated 25.06.2018 and the rate in Ex.D1 dated 19.11.2018 for the Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot of Ex.P23 are reproduced below for comparison :-

Ex.P23&	Material	COMMON	Ex.P23	Ex. D1

D1		Qnty	Unt	Rate	Amount in Rupees	Rate	Amount in Rupees
				Item-C			
22 a	Compound wall – 1.5m high with ilasters, plinth beam, coping on the top and suitable foundations as per design.	88.30	m	6,468	5,71,124.40	1,400	1,23,620.00
b	Compound wall – 1.5m high- Do	103.91		6,468	6,72,089.88	1,400	1,45,474.00
c	0.6 m extra hight above 1.5 m with brick work,plastering and scaffolding as per design	81.50		2,600	2,11,900.00	600	48,900.00
d	1.5 m extra hight	21.33		3,300	70,389.00	800	17,064.00
e	1.5 m extra hight with extra beam, 230 mm brick plastering	34.20		7,500	2,56,500.00	900	30,780.00
f	0.7m extra hight 230 mm brick Plastering	57.35		3,300	1,89,255.00	600	34,410.00
23	Gate as per design	1.95	MT	1,94,040	**3,78,378.00**	85,000	**1,65,750.00**
24	Borewell 2 Nos	2	no	1,44,375	2,88,750.00	90,000	1,80,000.00
26	OH Water Tank 63000 Litres	62.81	Kl	25,872	16,25,020.32	1,500	94,215.00*
28 External elevation	a-Elevation feature civil work Groove for walls	329.93	m	155	51,142.20	100	32,995.00
	b- Elevation feature Aluminium paneling	1917	Sq.ft	452	8,66,529.20	200	3,83,420.00
	c- Elevation feature Cera Board Work	1884.72	Sq.ft	375	7,06,770.03	100	1,88,472.00
	d-Elevation feature Pergola Plastering	171.00	Sq.m	950	1,62,450.00	400	68,400.00
29	Interlock Paving Blocks	1187.13	Sqm	2,198	26,09,311.74	700	8,30,991.00
30	Genset Foundation work(for 2 Gensets in	7.52	sqm	2,587	19,454.24	700	37,600.00

	RCC to design.)						
31	UG Sump 70 Kl in 3 compartments	60	kl	32,340	19,40,400.00	1100	66,000.00
	UG Sump	7.28	kl	32340	2,35,435.00	1,100	8,008.00
32	STP (sewage treatment plaint)	43,840	kl	23	10,08,320.00	1,200	5,26,080.00
33	Staircase SS Handrail	66.20	m	5,303	3,51,058.60	3,000	1,98,600.00
35	Rain water Harvesting system	10	Nos	20,000	2,00,000.00	7000	70,000.00
36	Storm water drainage	192.35	RM	8,500	16,34,975.00	300	57,705.00
37	Fire Fighting system as required	LS			1,50,000.00		-
38	External drainage work (4 change to 6 inch dia)	75.20	m	3,500	2,63,200.00	500	37,600.00
39	Rain Water collection sump	1	no	45,000	45,000.00	6,000	6,000.00
40	Earth pit for Electrical works (4m depth)	7	no	19,404	1,35,828.00	1,200	8,400.00
Total					**1,46,43,280.83**		**33,60,484.00**
Item-D							
1-54	Extra Items				**83,93,638.20**		**52,64,922.40**
Item-E							
1-13	Bill for Adjoining plot				11,83,596.00		7,91,348.60
Total					**2,42,20,515.00**		**94,16,754.4**

*The defendant has admitted a sum of Rs.10,42,150/- in D2 as against Rs.94,215 for OH Water Tank of 63,000 Liters capacity (Sl.No.26)

237. On the other hand CW1, the Court appointed Chartered Engineer

who prepared Ex.C1 dated 25.07.2020 on the other hand has certified an amount of **Rs. 2,20,65,377/-** for the Items C, D & E. The comparison between the amounts certified in Ex.P23 certificate dated 25.06.2018 and Ex.C1 dated 25.07.2020 of the Chartered Engineer appointed by this Court is reproduced below :-

Ex.P23& C1	**Material**	**COMMON**		**Ex.P23**		**Ex. C1**
		Qnty	**Unt**	**Rate**	**Amount in Rupees**	
			Item-C			
22 a	Compound wall – 1.5m high with pillasters, plinth beam, coping on the top and suitable foundations as per design.	88.30	m	6,468	5,71,124.40	
b	Compound wall – 1.5m high- Do	103.91		6,468	6,72,089.88	
c	0.6 m extra hight above 1.5 m with brick work,plastering and scaffolding as per design	81.50		2,600	2,11,900.00	
d	1.5 m extra hight	21.33		3,300	70,389.00	
e	1.5 m extra hight with extra beam, 230 mm brick plastering	34.20		7,500	2,56,500.00	
f	0.7m extra hight 230 mm brick Plastering	57.35		3,300	1,89,255.00	
	Total				19,72,257.00	**14,95,950**
23	Gate as per design	1.95	MT	1,94,040	**3,78,378.00**	
24	Borewell 2 Nos	2	no	1,44,375	2,88,750.00	
26	OH Water Tank 63000 Litres	62.81	Kl	25,872	16,25,020.32	15,70,250
28 External elevation	a-Elevation feature civil work Groove for walls	329.93	m	155	51,142.20	
	b- Elevation feature	1917	Sq.ft	452	8,66,529.20	

	Aluminium paneling					
	c- Elevation feature Cera Board Work	1884.72	Sq.ft	375	7,06,770.03	
	d-Elevation feature Pergola Plastering	171.00	Sq.m	950	1,62,450.00	
29	Interlock Paving Blocks	1187.13	Sqm	2,198	26,09,311.74	24,17,800
30	Genset Foundation work(for 2 Gensets in RCC to design.)	7.52	sqm	2,587	19,454.24	
31	UG Sump 70 Kl in 3 compartments	67.28	kl	32,340	21,75,835.00	
32	STP (sewage treatment plaint)	43,840	kl	23	10,08,320.00	10,96,000
33	Staircase SS Handrail	66.20	m	5,303	3,51,058.60	17,50,000
35	Rain water Harvesting system	10	Nos	20,000	2,00,000.00	
36	Storm water drainage	192.35	RM	8,500	16,34,975.00	16,36,675
37	Fire Fighting system as required	LS			1,50,000.00	
38	External drainage work (4 change to 6 inch dia)	75.20	m	3,500	2,63,200.00	
39	Rain Water collection sump	1	no	45,000	45,000.00	
40	Earth pit for Electrical works (4m depth)	7	no	19,404	1,35,828.00	
Total					**1,46,43,280.83**	**1,03,11,370**
Item-D						
	Extra Items				**83,93,638.20**	**1,17,53,957 ***
Item-E						
	Bill for Adjoining plot				11,83,596.00	
Total					**2,42,20,515.00**	**2,20,65,327 /-**

[#For 55 Items

*No Breakup or details given but has merely mentioned it for 68 Items]

238. The above comparison shows that Ex.C1 dated 25.07.2020 is superficial and does not deal with each of these items in detail. Not only there is no break up but CW1 has unilaterally increased the amounts and certified a sum of Rs. 1,17,53,957/- for 68 Items in Item-D as against Rs.83,93,638.20 certified in Ex. P23 Final Certificate dated 25.06.2018 in Item D for 55 Items. There is no explanation by CW1 in Ex.C1 dated 25.07.2020 as to why there is no breakup given for the items and the rates. Thus, the evidence of CW1 and Ex.C1 report dated 25.07.2020 are unreliable.

239. Thus, for the for the Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot respectively the amount in Ex.P23, D1 & C1 are in variance as detailed under under:-

Ex.P23	Ex.D1	Ex.C1	Chart
Rs.2,42,20,515	**Rs.94,16,754.4**	Rs.2,20,65,327 /-	**Rs.*1,88,19,822**

*** Rs.1,88,19,822 =[Rs.2,42,20,515 - Rs.**54,00,693] The plaintiff has restricted the claim to 29,92,945 for Item D- Extra Items.

240. The works in the Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot are not dependent on the area of construction of a School Complex measuring to an extent of 24,439 sq.ft. in

Item A&B. However, as mentioned above there is no dispute regarding the above work.

241. There is absence of truth in the claim of the plaintiff in Ex.P23 dated 25.06.2018. The rates quoted by D.W.1 in Ex.D1 dated 19.11.2018 also does not help the Court to come to a proper conclusion. Equally, there is also no truth in the admission of the Defendants in Ex.D1 dated 19.11.2018 for the works in Items C, D & E namely External Work, Extra Items and Work for Adjoining Plot.

242. The parties have also not given the correct rates of material by filing suitable invoices evidencing the rates that have been adopted in these exhibits.

243. Both the plaintiff and defendants have resorted to exaggeration and have hidden the truth on oath not only by themselves but also through their respective witnesses

244. The truth lies hidden in between. The only inference that can be drawn from the materials available and the evidence of the witnesses is that the plaintiff has completed the work by putting up construction of 24,439 sq.ft of built up area on the land measuring to an extent of 10 grounds and 228 sq.ft settled in favour of defendants in vide Ex.P10 dated 22.12.2016. There is also no point in either dismissing the claim of the plaintiff altogether by accepting the falsehood in Ex.D1 dated 19.11.2018 or accepting the inaccuracy in the evidence of C.W.1 in Ex.C1 dated 25.07.2020.

245. The Court has been forced to sift through each of the items in Exhibits mentioned above. However, no conclusion could be arrived based on rates quoted in Ex.P8 Quotation dated 22.12.2016 as there is no concluded contract for the rates quoted in Ex.P8 Quotation dated 22.12.2016 on Bill of Quantities for 24,439 Sq.ft. of built up area.

246. Thus, the work that was carried out in the form of superstructure as detailed in serial number 1 to 21 i.e Item A &B for a sum of Rs.7,83,75,343 in Ex.P8 dated 21.12.2016, was proportionately reduced to

Rs.4,78,84,554.7 (1959.35 x 24439=4,78,84,554.7) at Rs.1959.35 per square feet.

247. However, considering the reasons given elsewhere above, the rate of 1959.35 per sq.ft was increased to Rs.2,500/-per sq.ft for Item A&B [Sl.No.1 to 21] to factor interest on borrowed capital and escalation in cost of material and labour and reasonable compensation for reducing the construction. Therefore, to balance the interest of both plaintiff and defendants, a sum of Rs. 6,10,97,500/- [2500 x 24439] is quantified in Item A &B against a sum of Rs.7,78,44,523/- quantified in Ex.P23 dated 25.06.2018.

248. For Items C, D & E of Ex.P23 namely External Work, Extra Items and Work for Adjoining Plot, considering the fact that in Ex.D1 dated 19.11.2018, since the defendants have not disputed the quantum of work in respect of the work, amounts are quantified based on preponderance of probability.

249. For Item C [Sl.No 22 to 40 of Ex.P8 and Ex.P23] a sum of Rs.82,73,813.00 is quantified as below:-

Sl.No	Material	Qnty	Unt	Rate	Amount in Rupees
22 a	|Compound wall – 1.5m high with ilasters, plinth beam, coping on the top and suitable foundations as per design.	88.30	m	4500	3,97,350
b	Compound wall – 1.5m high-Do	103.91		4500	4,67,595
c	0.6 m extra hight above 1.5 m with brick work,plastering and scaffolding as per design	81.50		1250	1,01,875
d	1.5 m extra hight	21.33		2500	53,325
e	1.5 m extra hight with extra beam, 230 mm brick plastering	34.20		4000	1,36,800
f	0.7m extra hight 230 mm brick Plastering	57.35		1800	1,03,230
23	Gate as per design	1.95	MT	1,20,000	**2,34,000**
24	Borewell 2 Nos	2	no	1,44,375	2,88,750.00
26	OH Water Tank 63000 Litres	62.81	1	**16,5**92.10*	**10,42,150#**
28 External elevation	a-Elevation feature civil work Groove for walls	329.93	m	110	36,292.3
	b- Elevation feature Aluminium paneling	1917	Sq.ft	350	6,70,950
	c- Elevation feature Cera Board Work	1884.72	Sq.ft	200	3,76,944
	d-Elevation feature Pergola Plastering	171.00	Sq.m	750	1,28,250
29	Interlock Paving Blocks	1187.13	Sqm	975	**11,57,451.75**
30	Genset Foundation work(for 2 Gensets in RCC to design.)	7.52	sqm	2,587	19,454.24
31	UG Sump 70 Kl in 3	60,000	1	13*	7,80,000

	compartments				
	UG Sump	7,280	1	13*	94,640
32	STP (sewage treatment plaint)	43,840	1	15*	6,57,600
33	Staircase SS Handrail	66.20	m	3500	2,31,700
35	Rain water Harvesting system	10	Nos	15,000	1,50,000
36	Storm water drainage	192.35	RM	3000	5,77,050
37	Fire Fighting system as required	LS			1,50,000
38	External drainage work (4 change to 6 inch dia)	75.20	m	3,500	2,63,200
39	Rain Water collection sump	1	no	25000	25,000
40	Earth pit for Electrical works (4m depth)	7	no	18,600.85	1,30,206
Total					82,73,813.00

*Calculated Rate Per Litre

Rate for Sl.No 26(OH Water Tank)calculated from Ex.D2

250. For the Item D in Ex.P23 dated 25.6.2018, the plaintiff has quantified a sum of Rs.29,92,945/- in the chart as against Rs.83,93,638.20 certified in Ex.P23 dated 25.06.2018 for the reasons aforesaid in the Table. The same is accepted.

251. For the Item E in Ex.P23 dated 25.6.2018, the plaintiff has quantified a sum of Rs.11,83,596.73. As against the above, the defendant in Ex. D1 dated 19.11.2018 has admitted a liability of Rs.7,91,348.6. There is not much difference between Rs.11,83,596.73 and Rs.7,91,348.6. Therefore

Rs.11,83,596.73 is accepted.

252. Claim for Item C, D & E are awarded for a sum of Rs.1,24,50,354.70.

Exhibit	Ex.P8	Ex.P23	Ex.D1	Ex.C1	Amount Awarded
Item-C	Rs.1,02,57,555	Rs.1,46,43,280.83	Rs.33,60,484	Rs.1,03,11,370	Rs.82,73,813.00
Item-D	-	Rs.83,93,638.20 (Rs.29,92,945.00)*	Rs.52,64,922.4	Rs.1,17,53,957	Rs.29,92,945.00*
Item-E	-	Rs.11,83,596.73	Rs.7,91,348.6	-	Rs.11,83,596.73
Total		Rs.2,42,20,515.80 (Rs.1,88,19,822.6)*	Rs.94,16,755	Rs.2,20,65,327	Rs.1,24,50,354.70

*Defendants had limited their claim for the reasons aforesaid as stated in the chart filed.

253. Therefore, in all the following amounts are arrived for the work done.

Description	**Amounts in Rupees**
Item A &B	6,10,97,500.00
Item C	82,73,813.00
Item D	29,92,945.00
Item E	11,83,596.73
Add Supplementary Bill*	2,39,951.46
Add Pooja Expenses*	45,000.00
Total	7,38,32,806.20
Less payment Received during	4,90,01,336.00

Construction	
Balance Amount to be paid	**2,48,31,470.20**

(*No dispute raised by the defendant)

254. Therefore, the plaintiff is entitled to recover a sum of Rs.2,48,31,470/- from the defendant.

255. In the result, the issues framed by this Court are answered as follows:

a) Whether the plaintiff is entitled for the relief of recovery of money claimed under various heads with interest?

***Ans:** Yes, however the plaintiff is entitled for part of the amount as prayed for above for a sum of Rs.2,48,31,470/-.*

b) Whether the defendants are liable to settle the final bill raised by the plaintiff based on the Bill of Quantities?

***Ans:** No, in view of the answer to (a).*

c) Whether the Director of the plaintiff company by virtue of his disqualification is legally entitled to continue to represent the company and prosecute the suit?

***Ans:** Not a relevant issue. It was also not argued* *seriously.*

d) Whether the approval of the bills made by the Consultant from time to time binds the defendants and the claims made based on the same is sustainable?

Ans: *No, as no Bill of Quantities has been filed for putting up construction of 28,000 sq.ft of built up area pursuant to Ex.P12 dated 09.04.2017 after the arrangement in Ex.P2 dated 15.09.2016 with M/s.Vallimuthu Educational Trust for their New Gen Velammal New Gen School fell through. That apart, rates in Ex.P8 Bill of Quantities is not agreed.*

e)Whether there was collusion between the plaintiff and the consultant and thereby, the cost was inflated to the benefit of the plaintiff and to the detriment of the defendants?

Ans: Not relevant in the light of the answer to issues (a), (b), (c) & (d).

f) Whether the plaintiff is entitled to any other reliefs?

Ans: Yes, liberty to file a separate suit to recover the tax on the works contract entered on by the plaintiff with the defendant together with interest payable to the Authorities under the TNVAT act, 2006, Finance Act, 1994 and towards Central GST and State GST under the provisions of Central GST Act, 2017 and State GST Act, 2017 with interest.

256. Since, the plaintiff is bound to pay VAT, Service Tax and GST

at 18% on the total amount of Rs.7,38,32,806, right of the plaintiff to file a suit to recover the same is preserved.

257. The plaintiff is entitled to interest on **Rs.2,48,31,470/-** as follows:-

i. From 25.06.2018 i.e date of Ex.P23 Final Certificate to 25.07.2019 being the date of suit – 9%;
ii. From 26.07.2019 to 27.11.2023 during the pendency of the suit - 9%;
iii. From 28.11.2023 being the date of Decree still date of realization – 12%.

258. Considering the fact that neither the plaintiff nor the defendants have assisted the Court to arrive at a proper conclusion earlier by forcing the Court make calculations on the items C, D & E in Ex.P23 as mentioned above, Court is of the view that both plaintiff and defendants should be ordered to pay a cost for a sum of Rs.2,50,000/- each to Adyar Cancer Institute, Adyar, Chennai.

259. To obviate the practical difficulties in the remittance of the cost,

a sum of Rs.2,50,000/- to be paid by the defendants is added to the decree amount. It is to be recovered by the plaintiff from the defendants in accordance with law. The amount of Rs.5,00,000/- as ordered towards cost payable to Adyar Cancer Institute, Adyar, Chennai shall be paid by the plaintiff within a period of 30 days from the date of hosting of a copy of this Judgment in the website.

260. Only Subject to payment of the aforesaid cost of Rs.5,00,000/- to Adyar Cancer Institute, Adyar, Chennai as ordered and reporting compliance therefore before the Registry within a period of 30 days from the date of hosting of a copy of this Judgment in the website, the Registry shall draft the decree to enable the plaintiff to move Execution Petition to execute the Decree of this Court today.

261. If the plaintiff fails to pay a sum of Rs.5,00,000/- towards cost within time stipulated above, the Registry shall not draft the decree and this judgment shall not be available for execution by the plaintiff before the Execution Court under Order XXI of CPC, 1908.

262. In the result, suit is partly decreed for a sum of **Rs.2,50,81,470/- [Rs.2,48,31,470/- + Rs.2,50,000/-]** in favour of the plaintiff, together with interest as detailed above. Parties to bear their own cost.

27 **.11.2023**

Index : Yes/No
Neutral Citation : Yes/No
rgm/kkd

Plaintiff's side witness:

Mr.Jayaraman, : PW1

Mr.P.K.Srinivasan : PW2

Dr.Venugopal : PW3

Mr.M.Murali : PW4

Defendants' side witness:

Mrs.Premila : DW1
Mr.Rajinikanth, : DW2
Mr.K.Natarajan DW3

Court Witness:-

Mr.V.Malarvannan : CW1

***Documents exhibited by the Plaintiff*:**

Date	Exhibits	Nature of Documents	Admitted/Denied
From 01.09.2016 to 31.08.2017	Ex.P1	Original Axis Bank Savings Account Statement of Mr.Jayaraman showing the entries for Financial Borrowings from private financiers for this project.	Denied
15.09.2016	Ex.P2	Photocopy of the Lease Deed between Mr.Srinivasa Rao & M/s.Vallimuthu Educational Trust.	Contents Denied
20.10.2016	Ex.P3	Original S.Srinivasan Rao given a letter to Sri Bala Builders.	Admitted
From 01.11.2016 to 31.12.2016	Ex.P4	Original Bank Statement of M/s.Sri Bala Constructions showing the cheque debit entry.	Denied
07.11.2016	Ex.P5	Photocopy of the agreement between S.Srinivasa Rao and Sri Bala Builders & Promotors Private Limited., along with abstract of quotation in MSGS Infrastructure & Hospitality Pvt.Ltd. The counsel for the defendant objected for marking of Document 5 on the ground that original not available with the defendants. Ex.P5 is marked with objection subject to proof and relevancy.	Denied

17.11.2016	Ex.P6	Photocopy of the Cheque issued in favour of Mr.Srinivasa Rao from M/s.Sri Bala Constructions, Chennai. The counsel for the defendant objected for marking of document 6 on the ground that original not available with the defendants. Ex.P6 is marked with objection subject to proof and relevancy.	Contents denied
From 13.12.2016 to 30.06.2018	Ex.P7	Original Photographs taken at site on various dates from the very first day to till the end of the project. Photographs taken out from the computer for which Certificate under Section 65B Indian Evidence Act is filed.	Denied
21.12.2016	Ex.P8	A Letter of plaintiff Sri Bala Builders together with quotation to Mr.S.Srinivasa Rao. The counsel for the defendant objected for marking of Document 8 on the ground that original not available with the defendants. Ex.P8 is marked with objection subject to proof and relevancy.	Denied
From 18.01.2017 to 17.11.2017	Ex.P9	The Original Material Test Report from DAS Material Testing Private Limited for the materials like M-Sand, Steel, Cement, RMC Concrete.	Denied
22.12.2016	Ex.P10	Photocopy of the Certified copy of the Deed of Settlement in favour of Mrs.Premila. S & Mrs.Anitha Suri by Mr.Srinivasa Rao.	Denied

14.02.2017	Ex.P11	Original Email from Mr.Sathyanarayanan Architect with attachment showing the existing Ground level, excavation level and Filling level. Email taken out from the computer for which Certificate under Section 65B Indian Evidence Act is filed.	Denied documents and contents
09.04.2017	Ex.P12	Photocopy of the Lease Deed between Mr.Srinivasa Rao & M/s.Sree Muragan Educational Trust.	Denied
20.05.2017	Ex.P13	Photocopy of the Valuation Report by Er.B.S.Ushadevi valuer for Federal Bank for the involvement of defendant.	Denied
05.06.2017	Ex.P14	Photocopy of the Letter from Mrs.S.Premila to The Manager, Federal Bank, Anna Nagar, Chennai-40. The counsel for the defendant objected for marking of Document 13 and 14 on the ground that the document has not come from the proper custody. Ex.P13 and Ex.P14 are marked with objection subject to proof, admissibility and relevancy.	Denied
From 09.06.2017 to 31.07.2018	Ex.P15	Original Whatsapp Chat between Mr.G.Jayaraman and Mrs.S.Premila Rao. Whatsapp Chat taken out from the i Phone for which Certificate under Section 65B Indian Evidence Act is filed.	Denied

11.07.2017	Ex.P16	Photocopy of the Rental Lease Deed between Mrs.Anitha Suri, Mrs.S.Premila Rao and M/s.Sree Muragan Educational Trust registered at Sub Registrar Office Neelangiri.	Not disputed
14.07.2017	Ex.P17	Original Sri Bala Builders given a letter of Price variation to the M/s.MSGS Infrastructure & Hospitality Private Limited.	Denied
From 23.07.2017 to 12.01.2018	Ex.P18	The Original Concrete Cube Test Report from The India Cements Limited.	-
31.07.2017	Ex.P19	Original Letter by the plaintiff to the 1st defendant	Denied
05.12.2017	Ex.P20	Photocopy of the Planning Permit, Approval Letter from CMDA along with Sanctioned Plan dated 05.12.2017.	Not disputed
From 31.01.2018 to 19.02.2019	Ex.P21	Original Regular SMS Text Chats between Mr.G.Jayaraman and Mrs.S.Premila Rao. SMS Text Chats taken out from the i Phone for which Certificate under Section 65 B Indian Evidence Act is filed.	Denied
31.01.2018	Ex.P22	Photocopy of the Adhoc Running Bill by M/s.Sri Bala Builders The counsel for the defendant objected for marking of Document 22 on the ground that they ought to have been file at the time of filing the suit. It could have been prepared subsequently. Ex.P22 are marked with objection subject to proof and	Denied

		relevancy.	
25.06.2018	Ex.P23	Original Final Certificate of MSGS Infrastructure & Hospitality Private Limited, Final Bill No.3 and supplementary final bill.	Denied
05.09.2018	Ex.P24	Original Sri Bala Builders given a letter to the defendants The counsel for the defendant objected for marking of Document 23 and 24 on the ground that the defendants have not received. Ex.P23 and Ex.P24 are marked with objection subject to proof, admissibility and relevancy.	Contents denied
09.09.2018	Ex.P25	Photocopy of the plaintiff given a mail to 1st defendant along with document. Email taken out from the computer for which Certificate under Section 65B Indian Evidence Act is filed. ● The counsel for the defendant submitted that Document 25 may be marked subject to proof and relevancy.	Contents denied
24.10.2018	Ex.P26	Photocopy of the Lawyers Notice given by the plaintiff	Admitted
08.01.2019	Ex.P27	Photocopy of the Reply Notice given by the defendants	Admitted
02.03.2019	Ex.P28	Photocopy of the complaint letter given to the Commissioner of Police by the plaintiff with acknowledgement.	Denied
-	Ex.P29	Original Measurement Books 3 Nos(Book 1, Book 2 and Book 3)	

		maintained by Site Engineer of M/s.Sri Bala Builders for Civil Work & Steel Work. The counsel for the Defendant objected for marking of Document 29 on the ground that they ought to have been file at the time of filing the suit. It could have been prepared subsequently. Ex.P29 are marked with objection subject to proof and relevancy.	Denied
	Ex.P30	Printout of the company master data sheet (since other side gave consent the document is marked)	-

Documents exhibited by the Defendants:

Date	Exhibits	Nature of Documents
19.11.2018	D1	Valuation Report
11.10.2020	D2	The Valuation report (Comparative Study)

Documents exhibited by the Court witness :-

Date	Exhibits	Nature of Documents
25.07.2020	C1	Commissioner Report
07.02.2020	C2	Letter

CSNJ

C.SARAVANAN, J.

rgm/kkd

Pre-Delivery Judgment
in
C.S.(Comm.Div.)No.488 of 2019

27.11.2023