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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.07.2024
Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
C.S. No.931 of 2002

Chennai Power Generation Limited
No.168, Avvai Shanmugam Salai,
Chennai – 600 086.
Rep. By its President Finance and
duly authorised representative ... Plaintiff

Vs.

1. Surana Real Builders Pvt. Ltd.,
   rep. By its Director
2. R.Muthukrishnan (deceased)
3. Hirachand Surana
4. Subhashini.M
5. Deepak Muthukrishnan
6. Sree Deepthi Muthukrishnan ... Defendants

(D4 to D6 brought on record as LRs of deceased D2 as per order dated 24.01.2024 made in A.Nos.6532 to 6534 of 2023)

Prayer: Plaint filed under Order IV Rule 1 of the Madras High Court Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, praying to pass judgment and decree against the defendants jointly and severally as follows:

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a. to pay the plaintiff a sum of Rs.4,35,00,000/- (Rupees Four Crores and Thirty Five Lakhs only) together with future interest at 18% per annum on Rs.3,00,00,000/- (Rupees Three Crores only) from the date of plaint till date of payment;

d. to pay costs of the suit.

For Plaintiff : Mrs.Dakshayani Reddy, Senior Counsel assisted by Mrs.Sharanya Vaidiyanathan

For Defendants : Mr.M.L.Sripathy

JUDGMENT

This suit is filed to direct the defendants to pay a sum of Rs.4,35,00,000/- together with future interest at 18% per annum on Rs.3,00,00,000/- from the date of plaint till date of payment and for costs of the suit.

2 The averments made in plaint are as follows;

2.1 On 18.02.1995, a Memorandum of Understanding was entered into between G.V.K.Enterprises (hereinafter called as GVK) and

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the Tamil Nadu Electricity Board, wherein GVK was permitted to build own and operate a 1000 MW Power Project. As per the terms of the MoU, GVK shall form and incorporate a Company under the Companies Act. Accordingly, a Company called GVK Generation Limited was formed and incorporated under the Companies Act, 1956. In or about 1996, GVK Generation Limited was taken over by the House of Kedia's and General Mediterranean Holdings SA (GMH) as a Joint Venture Company with the House of Kedia holding to 50% of the share capital and GMH and its nominees holding the balance 50% of the share capital. Thereafter the name GVK Generation Limited was changed to Chennai Power Generation Limited the Plaintiff herein. In August 1997, the share holding pattern was changed and the House of Kedia's holding was reduced to 40% of the share capital and GMH and its nominees holding was increased to 60% of the share capital.

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2.2 In order to put up the plant, the plaintiff needed about 600 and odd acres of land approximately. The Government of Tamil Nadu had accorded sanction for acquisition/alienation of lands in Kattupalli, Kalanji and other Villages in Ponneri Taluk in favour of State Industries Promotion Corporation of Tamilnadu Ltd. (SIPCOT) for ,, establishment of a Petrochem Park and other industries. Subsequently, the Government of Tamil Nadu ordered the lands to be acquired for the Tamil Nadu Industrial Development Corporation Limited (TIDCO), instead of SIPCOT. The plaintiff approached the said TIDCO for allotment of the land to set up its plant. TIDCO had agreed to allot the land to the plaintiff, by their letter dated 19.12.1997. However, the plaintiff subsequently felt that the acquisition of the land by TIDCO would take considerable time and hence they sought permission to acquire the land by private negotiation and the same was permitted by TIDCO by its letter dated 23.12.1997 subject to certain conditions laid down in the said letter. Government Order No.47

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dated 05.02.1998 was also issued by the Government of Tamilnadu for deletion of the land required by plaintiff for their Power Project from the lands to be acquired in favour of TIDCO for their Petrochem Park and other industries.

2.3 The first defendant approached the plaintiff and represented that they would be in a position to make all arrangements for purchase of the land by the plaintiff. The first defendant assured that they would undertake to identify the lands, verify title and have the sale deeds registered in the plaintiff's name. On 17.11.1997 the plaintiff and the first defendant entered into an agreement (hereinafter called as the first agreement) and as per which the first defendant had to procure 620 acres of land for the plaintiff for a sum of Rs.20 Crores. They agreed to pay the first defendant a lump sum fee of Rs.20 Crores for completing all the formalities of sale and in the event of any payment in excess of Rs.20 Crores was to be met by the first defendant company themselves. The first

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defendant had to complete the entire transaction within a period of 6 months from the date of the first Agreement. The plaintiff paid a sum of Rs.1,00,00,000/- to the first defendant by Demand Draft favouring the Karur Vysya Bank Limited, Chennai Account No. 1617 Surana Real Builders (P) Ltd. Dated 22.11.1997. The second and third defendants who are the Directors of the first defendant also executed a personal guarantee, guaranteeing the due repayment of Rs.1,00,00,000/- in the event of the first defendant committing default in complying with the terms of the agreement.

2.4 Certain disputes arose between the shareholders of the plaintiff which had resulted in filing of the suits before this Court. On account of such suits, plaintiff company which was functioning came to stand still. Thereafter the Shareholders agreed to mutually settle the matter out of Court. A Memorandum of Compromise was filed before this Court and a Compromise Decree was also passed on 23.03.1999, by which,

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House of Kedias agreed to give up all their rights in the Power Project being set up by the plaintiff. The time fixed for completing the transaction under the First Agreement had expired. Since the plaintiff required the land for their project it became necessary to enter into a fresh Agreement for purchase of the land. Accordingly, after negotiation, a fresh Agreement was entered into between the plaintiff and the first defendant on 15.04.1999 (hereinafter called as the second agreement) in place of the first agreement, whereby the first defendant had to acquire land for the plaintiff of an extent of 500 acres for a total sum Rs.17 Crores. The first defendant was also required to carry out certain obligations under the Second Agreement.

2.5 When TIDCO permitted the plaintiff to acquire the land by private negotiation by their letter dated 23.12.1997 they laid down certain conditions, in which Clause (f) & (9) of Para 5 are relevant for the instant suit and the same are as follows:-

(f) the M/s.Kedia Castle Delleon Industries Ltd. (KCDIL) the current

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promoters of CPG shall continue to be the lead developers of the Power Plant Project.

(g) In case KCDIL withdraws from the project or change their status as lead developers or within a period of 3 years, financial closure for the Power Project is not achieved, CPG should offer the first right to acquire the land to TIDCO or any other agency designated by Government for acquisition for TIDCO's Petrochem Park. The rate at which such acquisition will take place will be based on the actual purchase price of CPG plus interest charges at 15% but in any case not exceeding TIDCO's acquisition price plus the cost of funds to TIDCO.

2.6 The first defendant apart from ensuring the purchase of the land by the plaintiff had undertaken to make proper representation to the authorities to have Clause 5 (f) and (g) contained in TIDCO's letter dated 23.12.1997 deleted within period of 6 months. Such condition was treated 'condition precedent' for performance of the Second Agreement. The

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defendant also agreed to acquire the lands for a total sum of a Rs.17 Crores and the plaintiff also paid a further sum of Rs.2 Crores to the first defendant by Cheque No.001556 dated 15.04.1999 payable at ANZ Grindlays Bank, Chennai. The plaintiff has thus paid a total sum of Rs.3 Crores to the first defendant. It was specifically agreed that if the first defendant is unable to comply with the conditions precedent, the Second Agreement shall stand terminated and the first defendant will be liable to refund the sum of Rs.3 Crores on expiry of six months i.e. on 15.10.1999.

2.7 The second and the third defendants who are the Directors of the first defendant agreed to guarantee the payment of nominees in the event of the first defendant becoming due and liable to pay the sum of Rs.3 Crores. The second defendant executed a personal guarantee, guaranteeing payment of the sum of Rs.3 Crores in the event of the first defendant being unable to perform any of their obligations and on the termination of the said Agreement.

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2.8 The first defendant failed to comply with the conditions precedent within the time specified in the Second Agreement. In fact the first defendant did not take any steps to delete the conditions in the letter of TIDCO dated 23.12.1997. Despite several requests, the first defendant placed untenable pleas for non compliance of the terms and conditions of the Second Agreement. In fact, on 27.08.1999, the plaintiff informed the first defendant that the TNEB had imposed a condition that 50% of the land should be acquired by the plaintiff. Such deadline was imposed by the TNEB threatening cancellation of the contract. Even then, steps were not taken by the first defendant.

2.9 The plaintiff company by their letter dated 01.08.2000, addressed to the defendant terminated the Second Agreement and they were called upon to refund of Rs.3 Crores together with interest. The first defendant by its letter dated 21.08.2000 denied their liability to the plaintiff by raising untenable pleas. Thereafter by letter dated 28.09.2000 again the

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plaintiff demanded payment of Rs.3 Crores and the first defendant once again denied their liability on 17.10.2000. Admittedly the first defendant has been paid a sum of Rs.3 Crores for carrying out certain obligations. The first defendant had admittedly not complied with the terms of the Second Agreement nor the 'conditions precedent' contained in the Second Agreement dated 15.04.1999 and hence the first defendant is liable to return the money. As per the terms of the Second Agreement the first defendant has agreed that if they are unable to comply with the condition precedent within the specified time the Agreement shall automatically stand terminated and they are liable to forthwith to repay the sum of Rs.3,00,00,000/- (Rupees Three Crores only). The first defendant is therefore liable, contractually as well as in equity, to pay the sum of Rs.3,00,00,000/- (Rupees Three Crores only) to the plaintiff as agreed by them in Clause (3) of the Second Agreement. The second and third defendants, having guaranteed the payment of the the said sun by the first

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defendant, are also liable to pay such sums.

2.10 The plaintiff issued a legal notice to all the defendants on 11.03.2002 which was returned as unserved by the Postal Authorities. Obviously the defendants knowing about the liability to refund the money had caused the notice to be returned undelivered. The plaintiff is therefore constrained to file the suit for recovery of the monies paid to the first defendant. The defendants are liable to pay a sum of Rs.3 Crores together with interest at 18% per annum from 15.10.1999 and as on date a total sum of Rs.4,35,00,000/- (Rupees Four Crores Thirty five Lacs) is due and payable by the defendants. The cause of action for the suit arose in Chennai within the jurisdiction of this Court where the first defendant is carrying on business and the second defendant is residing at Chennai and the corresponding documents in Chennai. Hence, the present plaint is filed.

3 The first defendant has filed the written statement denying the allegations made in the plaint stating that an agreement was entered into

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between the plaintiff and the first defendant on 17.11.1997 and terms of the same have been set out in the plaint and the only representation made by the first defendant was what has been set out in the preamble to the said agreement and not any of the other matters set out in the plaint. In pursuance of the said agreement, the plaintiff advanced a sum of Rs.1 Crore to the first defendant in order to enable the first defendant to pay advances to the land owners from whom the lands were to be acquired for the plaintiff.

3.1 The first defendant duly utilized such funds for payment of advances and other related expenses and also confirmed this position to the plaintiff by their letter dated 06.02.1998 and there has been no response or demur to the contents of the said letter by the plaintiff. However, and before sale deeds could be executed in favour of the plaintiff, it was incumbent on the part of the plaintiff to obtain clearance from the Government of Tamil Nadu for holding excess land which the plaintiff has

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not obtained. In the meanwhile due to the internal problems among the shareholders of the plaintiff, no further progress could be achieved until a compromise reached between such shareholders.

3.2 Thereafter a further agreement dated 15.4.99 was entered into between the plaintiff and the fist defendant. The said agreement refers to the factum of the 1st Agreement having been entered into and the further fact that the purchase of the land under such agreement could not be completed by virtue of the disputes between the shareholders of the plaintiff. It was further set out therein that a Memo of Compromise was entered into and a compromise decree was passed under which Kedia Castle Dellion Industries Ltd., (KCDIL) withdrew from the project and were replaced by General Mediterranean Holdings (GMH) as the 100% shareholder of the plaintiff. Further reference was made in this agreement to the fact of TIDCO having issued a letter on 23.12.97 granting permission to the plaintiff to acquire 500 acres of land through private

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negotiations subject to the conditions set out therein. Two of the conditions set out in clauses 5(f) and 5(g) of the letter *inter alia* required KCDIL to continue to be the lead developers of the project and in the event of their withdrawing from the project or changing their status as lead developers or if financial closure is not achieved within 3 years, the plaintiff should offer the first right to TIDCO to acquire the land at a rate based on the actual purchase price of the plaintiff plus interest at 15% but in any case not exceeding TIDCO's acquisition price plus cost of funds. The said agreement therefore provides that as KCDIL have withdrawn from the project, it was necessary to modify the said two conditions by substituting GMH in the place of KCDIL. Accordingly, in terms of Clause 3 it was provided that as a condition precedent to the agreement, the 1st defendant would have conditions 5(f) and (g) of TIDCO's letter dated 23.12.97, modified by substituting the name of GMH in the place of KCDIL.

3.3 It was further provided that if the first defendant was unable

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to comply with the above conditions within the time specified in the agreement, or any extended time, the agreement would stand terminated and 1st defendant would be liable to repay Rs.1 crore paid under the earlier agreement and the sum of Rs.2 crores being paid under the present agreement. It can thus be seen that the purport of the clause was that the first defendant would co-ordinate with TIDCO in substituting the name of KCDIL with GMH and therefore it necessarily follows that the plaintiff would have to accept the letter dated 23.12.1997 with the conditions set out therein after which alone a modification of the conditions could be sought. Further, it can be seen that the letter in question is a letter from TIDCO to the plaintiff. Therefore in order for the first defendant to approach TIDCO it was essential for the plaintiff to provide specific authorization to the first defendant to deal with TIDCO on the plaintiff's behalf.

3.4 While the agreement provides for 30 days period to achieve,

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such period became otiose as it was only on 26.06.1999 that the Tamil Nadu Government accepted GMH as the promoter of the Project and this was an activity which the plaintiff had exclusively accomplished and unless the Government accepted GMH as a promoter, the question of approaching TIDCO for the same could never arise. Thereafter the plaintiff addressed an undated letter to TIDCO referring to the Government's letter 26.06.1999 stating that as GMH had been termed as a promoter of the power project being established by the plaintiff, TIDCO were requested to issue an amendment to clause 5 (f) and (g) of TIDCO's letter dated 23.12.1997. Under the agreement dated 15.04.1999 this activity was to be carried out by 1st defendant. However the plaintiff had chosen to deal directly with TIDCO in this regard and consequently the plaintiff having chosen to take it upon themselves to secure an amendment to these clauses and having thus given a go-by to the terms of the agreement, have absolved the first defendant from carrying out this function. The plaintiff

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cannot therefore complain of any alleged failure by the first defendant. Be that as it may, it was only after 26.06.1999 that any effective steps could be taken by the first defendant in relation to clause 3 of the said agreement. Thereafter, on 22.7.1999 the plaintiff addressed TIDCO purporting to accept the conditions in TIDCO's letter dated 23.12.1997 subject to the modification of GMH being termed as promoter of the project. The said letter also contains a nebulous statement to the effect that the plaintiff had a contract with the first defendant for land acquisition and that the second defendant would clarify regarding registration and other acquisition matters. Even at this stage the plaintiff were directly addressing TIDCO on the modification of clauses 5 (f) and (g) and further pointed out to TIDCO that the first and second defendants would clarify the other matters. In other words, the plaintiff company was taking up the issue of Clauses 5 (f) and (g) by themselves and were confining the first defendant's role to the other matters. This was followed up by a further letter dated 23.7.1999

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where again the plaintiff directly sought from TIDCO about the modifications to clause 5 (f) and (g) and it was only in respect of the other matters that 1st and 2nd defendants were to clarify matters with TIDCO. It is thus abundantly clear that the plaintiff did not require the first defendant to perform any function in relation to TIDCO with regard to the modification of clauses 5 (f) and (g) and had represented to TIDCO that the 1st and 2nd defendant's function would be to clarify regarding registration and other acquisition matters. Further in the letter of 23.7.1999 the plaintiff had made it clear that they would be writing further on the matter of the rest of the contents of TIDCO's letter dated 23.12.1997. In the circumstances the 1st defendant addressed the Chairman of GMH on 29.7.1999 pointing out that they had been entrusted with the work of modifying clauses 5 (f) and (g) of TIDCO's letter dated 23.12.1997 for which purpose they were requiring a proper authorization letter from the plaintiff but were still to get one. It was further pointed out in the said

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letter that the employees of the plaintiff had been raising doubts about the bonafides of the defendants with TIDCO and that the plaintiff was thus acting at cross purposes. This was preventing the 1st defendant from proceeding any further and under the agreement there was a time frame of 30 days which had expired on 15.05.1999. However as the Government Order approving GMH as promoters of the plaintiff had been approved only after the expiry of the 30 days period, the 1st defendant had been asking for an extension of time which had not been responded to and this was again making difficult for the 1st defendant to deal with TIDCO. The plaintiff however, neither gave an authorization nor did they extend time as requested by the 1st defendant. TIDCO thereafter addressed a letter on 9.8.1999 to the plaintiff wherein reference was made to the plaintiff's letter dated 23.07.1999 addressed to TNEB to the effect that Mr.N.K.Gupta and S.Balakrishnan were the persons authorized to deal with TNEB with regard to the plaintiff. TIDCO stated that they require a similar letter from the

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Board of Directors of the plaintiff. In pursuance thereof the plaintiff by letter dated 26.08.1999 addressed TIDCO stating that only Mr.N.K.Gupta who was their President (Finance) and Mr.S.Balakrishnan, their General Manager (Projects) were authorized to represent the plaintiff with TIDCO on matters related to projects. They also stated therein that no other persons had been granted the authority to represent the plaintiff with TIDCO. Therefore it can be seen that not only did the plaintiff fail to give specific authorization to the first defendant to represent them before TIDCO as was required but in order to enable 1st defendant to comply with clause 3 of the agreement, but had in fact made it clear that except their two employees no one else was authorized to represent them. Thus the plaintiff have by their actions clearly prevented the 1st defendant from complying with Clause 3 of the agreement dated 15.04.1999 and therefore the plaintiff cannot be heard to complain of any non-compliance in this regard. Further, the plaintiff having thus sabotaged the performance by the

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first defendant, had the temerity to address the 1st defendant on 27.08.1999 purporting to state that a period of one month had been given to the 1st defendant to fulfill the conditions stipulated in the contract and that a considerable time had elapsed and that the conditions had not been fulfilled. While writing this letter the plaintiff had deliberately not chosen to address the several issues which had been raised by the 1st defendant, which position also continues in the plaint. No explanation has been provided as to why the plaintiff chose to directly deal with TIDCO on clauses 5 (f) and (g), as to why they did not accept the letter of 3.12.1997 as required by TIDCO, why they did not give specific authorisation to the first defendant to deal with TIDCO and on the contrary excluded the first defendant from such dealings and why an extension of time was not granted though even the change of the promoter was achieved long after the 30 days period which had expired. The first defendant was therefore constrained to address the plaintiff on 01.09.1999, wherein the first

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defendant had at great length pointed out several defaults of the plaintiff including the matters set out above. But, after pointing out the defaults of the plaintiff, the defendants submitted that they were willing to follow up with TIDCO regarding the requisite amendments subject to the plaintiff issuing a letter to TIDCO authorizing the first defendant to represent them with TIDCO for completing the said letter which have been refuted. However the letter of authorization was even then not forthcoming.

3.5 Even thereafter the plaintiff and the first defendant were directly corresponding with each other with regard to clauses 5 (f) and (g), but TIDCO had asked for certain clarifications relating to clause 5 (g) by their letter dated 03.09.1999, which was responded by the plaintiff on 24.09.1999. Therefore while on the one side the plaintiff was complaining about alleged non compliance by the first defendant on the other hand they were requiring to exclude the first defendant independently liaising with TIDCO right from the inception with regard to clauses 5 (f) and (g) and

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this apparently proves as to why they refused to even provide an authorization in this regard to the first defendant. Thereafter by further letter dated 7.10.1999 TIDCO addressed the plaintiff providing certain comments regarding clause 5 (g) and further stated therein that TIDCO was agreeable to confirm GMH as a promoter in the place of KCDIL subject to the conditions set out therein. It can thus be seen that the above correspondence will establish the manner in which the matter has been proceeded with. The plaintiff having chosen to directly deal with TIDCO on these aspects, they are necessarily responsible for the consequences thereof, which culminated in TIDCO's letter of 7.10.1999 wherein they had indicated their willingness to confirm GMH as promoter in place of KCDIL subject to the conditions contained therein. Therefore by this letter TIDCO have accepted that GMH can be a promoter in place of KCDIL, which is what is contemplated in clause 3 of the 15.04.99 agreement and the plaintiff cannot have any further complaint on this score. It can be seen

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that the entire line of correspondence referred to above has been completely suppressed in the plaint and it is made to appear as if nothing happened until the plaintiff addressed a letter to the 1st defendant on 1.8.2000. In fact the plaintiff having secured TIDCO's acceptance of GMH 's status as promoters chose to address a misleading letter to the 1st defendant on 1.8.2000 purporting to contend that under clause 3 of the agreement the 1st defendant was required to delete the conditions set out by TIDCO in their letter dated 23.12.1997. First of all, the agreement does not require the 1st defendant to delete any conditions but only to substitute KCDIL with GMH in the respective clauses. That apart the plaintiff by letter dated 20.10.1999 instructed the 1st defendant to get permission for doing soil investigation work and by the letter dated 1.8.2000 have treated the agreement as subsisting. However, and since the plaintiff had chosen to address a totally unjustifiable letter, the 1st defendant responded thereto on 21.8.2000 setting out the correct position and pointing out the several

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defaults of the plaintiff which had been brought to the notice of the plaintiff at the several meetings and followed up by the 1st defendant's several letters. It was also pointed out that inspite of the 1st defendant's repeated insistence, the plaintiff refused to give any authorization to the 1st defendant and also refused to confirm and accept the letter of 23.12.1997. The 1st defendant therefore concluded by calling upon the plaintiff to comply with the above requirements and also conditions 4 (1) and (2) of TIDCO's letter dated 7.10.1999. The plaintiff thereafter on 28.9.2000 sought to reply thereto raising the same untenable_contentions and merely denied the contents of the 1st defendant's letter dated 21.8.2000 without seeking to substantiate the same. By the said letter, the plaintiff called upon 1st defendant to return the sum of Rs.3 crores, for which the 1st defendant replied on 17.10.2000 pointing out *interalia* that the plaintiff's interpretation of clause 3 was neither correct nor warranted, that the letter of authorization was not given as requested and this was compounded by

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the plaintiff's letter to TIDCO to the effect that only Mr.N.K.Gupta and Mr. S.Balakrishnan were authorized to represent the plaintiff with TIDCO, by which the 1st defendant had effectively prevented from performing their obligations. It is also pointed out that the sum of Rs.3 crores had been deployed in paying advances for acquisition of the land and therefore the question of returning the same could never arise.

3.6 The guarantee is intended to be a joint guarantee of the second and third defendants. However, only the second defendant has signed the guarantee and not the third defendant and hence the same is incomplete, inchoate instrument. Therefore there is no concluded contract of guarantee and hence no rights can be claimed by the plaintiff on the basis of such incomplete instrument. Further even such guarantee would become operable only if the first defendant was unable to perform its obligation, and on the termination of the agreement. However, as there has been no failure on the part of the first defendant to fulfill any of its obligations as

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stated earlier, no recourse can be had to the guarantee. Further and in any event, the third defendant has not signed the instrument and it is not known how he is being proceeded against. Therefore it is obvious that the plaintiff who have for some reason not proceeded with their power project are seeking unjustifiably to secure a refund of the sum of Rs.3 crores, which they are clearly not entitled to do.

4 Upon considering the pleading, the following issues have been framed by this Court on 06.08.2019.

1. Whether this Court has jurisdiction to entertain this suit since cause of action arose outside the jurisdiction of this Court?
2. Whether the suit is barred by limitation since it is filed after 3 years as per admissions by the plaintiff in para 14 of the plaint?
3. Whether the suit is hit by Novation?
4. Whether the defendants herein had performed their obligations in a manner set forth under the agreements entered into between the parties herein?
5. Whether the defendant failed to take necessary steps towards

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performance of its obligations as agreed to upon?

6. Had the plaintiff cooperated with the defendant in order to ensure performance of the said agreement?
7. Are the second and the third defendants, liable to pay the sums claimed by the plaintiff, particularly based on the guarantees that they had executed?
8. Whether plaintiff has right to maintain the suit against the defendants when the claim against the defendants has been adjusted with M/s.MK Holdings by the plaintiff and part claim has been received by the plaintiff?
9. Is the plaintiff entitled to the reliefs claimed by it in its plaint along with interest on the same at the rate of 18% per annum?

5 During trial, on the side of the plaintiff, one Nishith.K.Gupta, a Consultant of plaintiff Company was examined as P.W.1 and marked 15 documents as Ex.P1 to P15. On the side of the defendants no oral and documentary evidence was let in.

6 Learned counsel appearing for the plaintiff reiterating the contents of the plaint would submit that the plaintiff paid a sum of

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Rs.1,00,00,000/- to the first defendant as an advance and second and third defendants who are the directors of the first defendant company had personally guaranteed (Ex.P3) the above said payment. In the meantime, certain dispute arose between the shareholders of the plaintiff company, which was subsequently settled vide a Memorandum of Compromise (Ex.P10). By the time the disputes were settled, the six months time fixed under the First Agreement had expired and hence Second Agreement was entered into between the plaintiff and the first defendant on 15.04.1999 (Ex.P4) to acquire an extent of 500 acres of land for a total sum of Rs.17 Crores for the plaintiff. As per the Second Agreement the first defendant had to ensure that clause 5(f) and (g) of TIDCO's letter dated 23.12.1997 was to be deleted within a period of six months from the date of execution of the Second Agreement as a condition precedent. The plaintiff paid a further sum of Rs.2,00,00,000/- to the first defendant and hence a total sum of Rs.3,00,00,000/- was paid to the first defendant and the parties had

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agreed that the first defendant shall refund the same, in case of non-fulfillment of the terms of the Second Agreement. The first defendant did not comply with the condition precedent as set out in the Second Agreement and hence the plaintiff by letter dated 01.08.2000(Ex.P6) had given notice of its intention to terminate the Second Agreement. The first defendant by its letter dated 21.08.2000 (Ex.P7) denied its liability on false and untenable grounds and hence the plaintiff again by its letter dated 28.09.2000 (Ex.P8) demanded payment of Rs.3,00,00,000/-, for which, the first defendant again denied its liability by letter dated 17.10.2000 (Ex.P9).

6.1 It is the main contention of the defendant that they have not been issued with any authority by the plaintiff to represent them with TIDCO, but, there is no such requirement of authorization that was contemplated between the parties when the Second Agreement was entered into. Considering that deletion of the two clauses was merely in the nature of administrative change, there was no need to particularly authorize the

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first defendant to have the clauses deleted, or otherwise. The defendants, as per the Second Agreement, had accepted the task of having the clauses deleted without any need for prior authorization, which was in fact a condition precedent. The letter dated 23.12.1997 issued by the TIDCO was handed over to the defendants and having been in possession of the said letter, on behalf of the plaintiff, there was no need for any specific authorization. The said letter was handed over only in furtherance to the Second Agreement entered into between the parties herein on 15.04.1999.

6.2 The plaintiff further sent a legal notice dated 11.03.2002 to the defendants (Ex.P11). However, the notice was returned unserved by the postal authority, copies of returned covers have been marked as Ex.P12 series. Therefore the defendants are liable to a pay a sum of Rs.3,00,00,000/- (Rupees Three Crores Only) together with an interest at 18% per annum from 15.10.1999.

6.3 The learned counsel for the plaintiff would further submit that

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as far as the first issue of jurisdiction is concerned, the first defendant carries on business within the jurisdiction of this Court, the second defendant resides at Chennai. The first and second agreements had been entered into between the first defendant and the plaintiff at Chennai and the second and third defendants agreed to guarantee the payment of all monies due and payable by the first defendant by executing personal guarantee at Chennai. The amount of Rs.1.00 Crore paid under the first Agreement by the plaintiff to the first defendant was on 22.11.1997 and a sum of Rs.2 Crores was paid on 15.04.1999 at Chennai, and more importantly, as per Clause 17 of the Second Agreement the jurisdiction for any dispute has been fixed to be at Chennai and hence the filing of this Suit before this Court is maintainable and the defendants ought not to challenge the same.

6.4 The second issue of limitation is concerned, the first agreement is dated 17.11.1997 and the personal guarantee in relation

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thereof is dated 22.11.1997 and the Second Agreement is dated 15.04.1999 and the personal guarantee is of the same date. The liability arose in terms of the said Agreements, when the condition precedent that is deletion of the relevant clauses of the letter of TIDCO dated 23.12.1997 had not been accomplished by the defendants. The plaintiff therefore terminated the Second Agreement by its letter dated 01.08.2000 that had been addressed by the plaintiff to the first defendant, and sought refund of the monies paid to the first defendant, even subsequent to which there has been correspondence between the parties. The suit had been filed on 01.04.2002 and hence the suit is well within the period of limitation and the suit claim is therefore not barred by limitation.

6.5 As far as third issue of Novation is concerned, the suit claim arose on account of the defendants' breach of the Second Agreement dated 15.04.1999. As per Section 62 of the Contract Act, ***in the event of the Parties herein*** agreeing to ***substitute*** a new contract for another or rescind

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it, or alter it, the original contract need not be performed. In this case, parties to the Agreement dated 25.08.2006 are not the same as that of the First and the Second Agreements. Moreover, neither of the parties herein have agreed to substitute the First or Second Agreement with a new contract. It is also relevant to note that, the liability of the defendants is for a sum of Rs.3 crores, arises from and out of both the agreements. In the absence of any exclusion of liability or entirely substituting an agreement with a new contract, the original contract as well as the liability in relation thereof continues to exist. The liability arising under the First Agreement was never extinguished. Furthermore, in the absence of substitution of a contract by a new one and in the absence of the consent of both the parties, with such consent being in writing, the rights under the old contract remains intact even after the second agreement and in light of the rights and obligations under the first agreement not been rescinded, there cannot be a substitution of the earlier contract and hence the concept of novation

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fails. The reference to the entire amount of Rs.3.00 cores which had been paid pursuant to the First and the Second Agreements, would clearly show that the original liability of the defendants shall continue without any novation. In any event the said Agreement is only evidence of the fact that the defendants in terms of the First and the Second Agreement are liable to pay the plaintiff the suit claim and cannot be used against the plaintiff for any other purpose.

6.6 The issue Nos.4, 5 and 6 are concerned, the first defendant had evidently failed to comply with the condition precedent as set out in the Second Agreement, namely, in taking steps to have the two clauses deleted from the TIDCO letter. At no point of time the plaintiff took upon themselves the responsibility of having the two clauses deleted and Clause 3 of the said Second Agreement clearly sets out the condition precedents namely, deletion of conditions 5 (f) and 5 (g) of the TIDCO letter dated 23.11.1997 (Exhibit P14). The plaintiff had never approached TIDCO

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directly, without the representatives of the defendants accompanying them. The shareholders of the plaintiff company are foreigners, and the very reason why the services of the defendant was engaged was to liaison with TIDCO on the matters agreed to upon between the parties in the Second Agreement dated 15.04.1999. There was no requirement to authorize the first defendant to have the clauses deleted. The defendants as per the Second Agreement in no unequivocal terms had in fact accepted the task of having the clauses deleted without any need of prior authorization. The letter dated 23.12.1997 issued by TIDCO was handed over to the defendants and having been in possession of the said letter, on behalf of the plaintiff, there was no need for any specific authorization. The defendants ought to have proceeded on the basis that the letter was given at his instance. Further, the defendants ought not to place any reliance on letter dated 26.06.1999 addressed by the Government, stating that GMH had been termed as a promoter of the power project of the plaintiff, since

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neither of the parties had, while agreeing to enter into this Agreement recorded the need for this letter.

6.7 As far as 7th issue is concerned, it is not in dispute that the second and third defendants had executed personal guarantees in order to guarantee the repayment of the said sums paid by the plaintiff in terms of the First and the Second Agreement. The defendants have not let in any evidence either documentary or oral to prove to the contrary and hence are bound by the Agreements of Guarantee that has been duly executed by them. Hence, they (including their legal heirs who have now been transposed as defendants) being bound by the guarantee and are liable to pay to the plaintiff, the Suit Claim, without any demur.

6.8 With regard to 8th issue the learned counsel would submit that the Agreement dated 25.08.2006 was entered into between the plaintiff and M/s.M K Holdings, which is not the first defendant. For any substitution to

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take place or to be construed, the said Agreement ought to have been entered into before the suit was filed. A suit ought to be decided on the date of filing the suit. The said Agreement was entered into after 4 years since filing of the suit and will not amount to any novation. Further, the defendants had for the very first time referred to the said Agreement only in the draft issues they had filed and no evidence has been let in on behalf of the defendants in this regard. Hence, to link the said Agreement with that of the First and the Second Agreements, in which the parties are at variance would be untenable. Notwithstanding the above, the Agreement dated 25.08.2006 Exhibit P15, that had been entered into between M/s.M K Holdings and the plaintiff, Clause 16, as discussed *supra* provides for an adjustment of the said sum of Rs. 3.00 Crores. In view of the fact that such an adjustment enumerated in terms of the said clause not being carried out, only proves that the original liability of the defendants continues. Neither had the plaintiff relinquished its claim as against the defendants nor would

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this Agreement in any manner discharge the defendants from their liability cast upon the first and the second agreements. The very fact that such an adjustment had been provided for would further bolster the fact that the liability was a continuing one and therefore the plaintiff is well within its rights to maintain this suit against the defendants. In any event, the said Agreement being entered into with an entirely different entity does not in any manner concern the first defendant except to show that such a liability continued to subsist.

6.9 As far as 9th issue is concerned, the learned counsel for the plaintiff submitted that the services that had been offered by the defendants were solely limited to the scope of liaisoning with the concerned authority under the said Agreement, no requirement of any authorization was stipulated therein. The plaintiff had entered into the said Agreement only based on the expertise that it held out to possess in order to carry out the functions as set out in the Agreement. As per the terms stipulated in the

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agreement, if the defendant fails to the have two clauses deleted within a stipulated time, the agreement shall automatically stand terminated. The defendants did not acquire any land for the plaintiff under the agreement. Admittedly, the first defendant has not complied with the terms of the agreement and hence the first defendant as a defaulter and the second and the third defendants having personally guaranteed the return of the said amounts are liable to pay the sum of Rs.3,00,00,000/- (Rupees Three Crores) along with the interest as prayed for by the plaintiff.

7 The learned counsel for the defendant would submit that the plaintiff has entered into an agreement dated 25.08.2006 with M/s.M.K.Partner R.Muthukrishnan, who is 2nd defendant and in Clause 16 of the said agreement, which had been filed as Ex.P15, it was categorically stated as follows:

> "The advance amount paid *by CPGL aggregating to Rs.3,00,00,000/- to Surana Real Builders Pvt. Ltd., shall be*

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*adjusted in five equal instalments to be paid under this agreem*ent."

The above facts has been admitted by the plaintiff during the cross examination. Therefore from the subsequent agreement dated 25.08.2006 between the plaintiff and the second defendant, it clearly established that the contractual obligation between the plaintiff and the defendants 1 to 3 for which the present suit has been filed, has been extinguished and the plaintiff is not entitled to claim any relief in the above suit as it has no right to maintain against the defendants, when the claim against the defendant has already been adjusted with M/s.M.K.Holdings by the plaintiff and part claim has already been received by the plaintiff. Therefore the suit is hit by principles of novation and the present suit has become infructuous. Further cause of action to the present suit has been extinguished and the plaintiff without withdrawing the present suit continues to contest the same with ulterior motives.

7.1 As far as the issue nos.1 & 2 are concerned, the learned

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counsel for the defendants submitted that admittedly, the 1st defendant company is in Pondicherry, and the lands intended to be purchased under Ex-P4 are situated at Kaatupalli, present Thiruvallur district. The said factors are brought out in the cross examination of PW1 in Q. Nos 21 and 22. As such, the jurisdiction for the suit based on the cause of action is outside the territorial jurisdiction of this Court and as such this Court has no jurisdiction to entertain the suit. The plaintiff has not established that the suit is not barred by limitation and in fact, in terms of the averments in paragraph 14 as to the cause of action of the suit, the suit is barred by limitation.

7.2 With regard to issue nos.3 to 6, the learned counsel for the defendants submitted that Ex.P15, which has been admitted by P.W.1 as to the takeover of obligations under Ex.P4 and extinguishment of any liability arising therein, establishes the novation of contract between the parties, resulting in the suit claim on the basis of Ex.P4 being hit by novation. The

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perusal of the said letter being the documents of the first defendant would clearly show that the plaintiff had not cooperated for the due performance of the Agreement, Ex.P4. In view of the said fact, it goes without saying that there is no non-performance on part of the first defendant and the suit claim seeking for recovery of money jointly and severally from the defendant is not tenable on law and on facts. The plaintiff has not established its right beyond doubt to seek recovery of money with interest jointly and severally from the defendants.

7.3 The learned counsel for the defendant submitted that the issue no.7 is concerned, admittedly, the third defendant is not a signatory to the Letter of Guarantee. The second defendant alone is obligated under the said Letter of Guarantee and hence since there is no failure of any obligations by the first defendant, the invocation of the Letter of Guarantee does not arise. As it is categorically established that the first defendant is not liable to pay any amount to the plaintiff, the defendants 2 and 3 are

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also not liable to pay the sums claimed by the plaintiff. The second defendant deceased pending the suit and the defendants 4 to 6 have been impleaded, being the legal heirs of 2nd defendant. The claim of the plaintiff as against 2nd defendant is based on the Letter of Guarantee as to the personal obligation on the failure of the first defendant. The said liability, if any, can be fastened, on the legal heirs only to the extent, of the estate, if any, inherited by them. But, in this case, as could be seen in the above contentions, the second defendant is not liable for any amount as claimed by the plaintiff in the suit. It is also to be noted that the plaintiff has not made any specific averments as to the fastening of liability on the defendant 4 to 6. The prayer seeking for a join and several decree as against the defendants 4 to 6 is not tenable in law as their liability can be limited only to the extent estate inherited. On all these grounds the suit against the defendants 4 to 6 fails and is liable to be dismissed.

7.4 Issue no.8 is concerned, the learned counsel for the defendants

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contended that during the cross examination, P.W.1 admitted the document in Ex.P15 being a subsequent agreement dated 25.08.2006 entered into pending the suit and in terms of which, the obligations to be performed by the first defendant in terms of Ex-P4 was substituted in Ex-P15. Effectively, in answer to Question 54 in the Cross Examination, PW1 admitted that the party to Ex-P15, namely M/s MK Holdings has taken the liability of the defendants. In view of the said categorical admission and answers to the subsequent questions by PW1, apart from the suit being hit by novation, the plaintiff is not entitled for the relief sought in the suit on the basis of Ex-P4 as the claims if any, arising thereto stand adjusted under Ex-P15. Hence the suit is liable to be dismissed on the admission of the plaintiffs themselves being the best piece of evidence. The document in Ex-P15 and the admission of PWI runs contrary to all the claims made by the plaintiff in the suit and the suit relief no more survives. PW1 also admits that the basis of Ex-P15 different extents of properties have already

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been purchased by the plaintiff and vests with them. Any default in the obligations of the performance under Ex-P15 would only give a fresh cause of action for the plaintiff and the present suit is liable to be dismissed.

7.5 Issue no.9 is concerned, the learned counsel for the defendants submitted that the plaintiff has not pleaded anywhere in the plaint, nor established by any documents or evidence as to their entitlement of any interest. As the plaintiff is not entitled for the relief of payment of money from the defendants as claimed in the plaint, the plaintiff is therefore not entitled to any interest. The case of the defendants is established beyond doubt and the plaintiff has failed to prove their case on documents or by any tangible oral evidence and hence the plaintiff is not entitled to any claims as prayed for as against the defendants. The suit is therefore liable to be dismissed with costs to the defendants.

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8 Heard the learned counsel appearing on either side and perused the materials on record.

9 **Issue No.1** Whether this Court has jurisdiction to entertain this suit since cause of action arose outside the jurisdiction of this Court?

9.1 Even though the learned counsel for the defendants contended that the first defendant's Company is in Pondicherry and the lands intended to be purchased under Ex.P4 Agreement are situated at Kattupalli, present Thiruvallur District, it is the contention of the plaintiff that the first defendant carries on its business within the jurisdiction of this Court, the second defendant resides at Chennai. Further it is seen that the first and second Agreements entered into between the plaintiff and the first defendant were executed in Chennai and the second and third defendants agreed to guarantee the payment of all monies due and payable by the first defendant and executed the personal guarantees in Chennai. More

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importantly, as per Clause 17 of the Second Agreement, the jurisdiction for any dispute has been fixed to be at Chennai.

9.2 Therefore this Court has jurisdiction to try this suit and this issue is answered in favour of the plaintiff and against the defendant.

10 **Issue No.2** Whether the suit is barred by limitation since it is filed after 3 years as per admissions by the plaintiff in para 14 of the plaint?

10.1 Even though the first agreement entered into between the plaintiff and the first defendant was on 17.11.1997 and personal guarantee for the same on 22.11.1997, the second agreement was entered into only on 15.04.1999 and personal guarantee for the same was on the same day. The liability arose in terms of the said agreements. Since the first defendant did not fulfill the condition precedent in terms of the second agreement, the plaintiff terminated the second agreement vide its letter dated 01.08.2000

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and even subsequent to the same also there has been correspondence between the parties. The suit was presented on 15.04.2000 and therefore the suit is filed within three years and hence the same is not barred by limitation and this issue is answered in favour of the plaintiff.

11 **Issue No.3** Whether the suit is hit by Novation?

11.1 According to the defendants, the suit is hit by Novation in view of the Agreement dated 25.08.2006, in which, Clause 16 says the advance amount of Rs.3.00 Crores paid by the plaintiff to the first defendant shall be adjusted in five equal instalments to be paid under this agreement.

11.2 It is an admitted fact that the suit claim arose based on the two agreements dated 17.11.1997 and 15.04.1999. But, the Agreement dated 25.08.2006 relied on by the defendants was executed much after the suit. Section 62 of the Indian Contract Act, 1872, deals with the term Novation,

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which is extracted hereunder:

> *"62. Effect of novation, rescission, and alteration of contract.-*
>
> *If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed"*

11.3 In this case, neither of the parties have agreed to substitute the First and Second Agreements with a new contract. In the absence of substitution of a contract by a new one and in the absence of the consent of both the parties in writing, the rights under the old contract remains intact. Therefore, the defendants have not proved that the suit is hit by Novation and the suit is not hit by Novation. Hence this issue is answered in favour of the plaintiff.

12 <u>Issue Nos.4,5, & 6:</u>

4. Whether the defendants herein had performed their obligations in a manner set forth under the agreements entered into between the parties

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herein?

5. Whether the defendant failed to take necessary steps towards performance if its obligations as agreed to upon?

6. Had the plaintiff cooperated with the defendant in order to ensure performance of the said agreement?

12.1 It is an admitted fact that two agreements were entered into between the plaintiff and the first defendant. Since the time fixed for completing the transaction in terms of the First Agreement dated 17.11.1997 had expired for the reasons avered in the plaint, Second Agreement was entered into between the plaintiff and the first defendant on 15.04.1999. As per the Second Agreement, the first defendant had to acquire lands for the plaintiff to an extent of 500 acres for a total sum of Rs.17.00 Crores and also the first defendant had to ensure that the Clause 5(f) and (g) of TIDCO's letter dated 23.12.1997 was to be deleted within a period of six months from the date of execution of the agreement.

12.2 It is evident from Exs.P6 to 9 that the defendant has not completed the acquisition of land as set out in the second agreement. Ex.P6

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is the letter sent by the plaintiff to the defendant showing their intention to terminate the second agreement, since the first defendant failed to comply with the condition precedent and Ex.P7 is the letter sent by the defendant denying the liability. Ex.P8 is the letter sent by the plaintiff on 28.09.2000 to the first defendant demanding Rs.3.00 Crores and Ex.P9 is the letter sent by the first defendant to the plaintiff again denying its liability.

12.3 Per contra, the defendant contended that despite several efforts taken by the first defendant, the plaintiff had not cooperated to comply with the conditions precedent by not issuing authorisation to approach the TIDCO. But, the plaintiff contended that they never approached the TIDCO without the representative of the first defendant.

12.4 It is the bounden duty of the parties to prove that they have performed their part of contract. In this case, both the parties have not proved that they performed their part of contract. Hence these issues are

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answered against the plaintiff as well as the defendants.

13 **Issue No.7** Are the second and the third defendants liable to pay the sums claimed by the plaintiff, particularly based on the guarantees that they had executed?

13.1 Ex.P2 is the First Agreement dated 17.11.1997 and Ex.P3 is the original copy of Personal Guarantee signed by the defendants for the amount of Rs.1.00 Crores received by the first defendant. Ex.P4 is a photocopy of the Second Agreement entered into between the plaintiff and the first defendant dated 15.04.1999 and Ex.P5 is the Personal Guarantee for the total amount of Rs.3.00 Crores paid by the plaintiff to the first defendant.

13.2 The defendants have not let in any oral or documentary evidence to prove the contrary. Therefore under these circumstances the documents produced by the plaintiff shows that the second and third

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defendants are being Personal Guarantors, also liable to pay the suit claim. Hence this issue is answered in favour of the plaintiff.

14 **Issue No.8** Whether plaintiff has right to maintain the suit against the defendants when the claim against the defendants has been adjusted with M/s.MK Holdings by the plaintiff and part claim has been received by the plaintiff?

14.1 Admittedly the acquisition of entire land was not completed within a period of six months as per the terms of the Agreement. As per Clause 16 of the Agreement dated 25.08.2006, advance amount of Rs.3.00 Crores paid by the plaintiff to the first defendant shall be adjusted in 5 equal instalments under the Agreement. But, however, it is evident that the defendants have not acquired the land as per the terms of the agreement. In the said agreement, the second defendant viz. MKH agreed to pay Rs.1000/- for the delayed period. Clause 13 of the Agreement dated

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25.08.2006 is extracted hereunder.

> *13. The acquisition of the entire land shall be completed within a period of six months from the date hereof. In the event of any delay in the acquisition of the land, MKH shall be liable to make payment in the sum of Rs.1,000/- per day for the delayed period. This amount shall be adjusted against the consideration payable by CPGL to MKH. Further Managing Partner of MKH will give personal guarantee that the terms of this agreement are complied with.*

14.2 Even though, it is contended by the first defendant that the liability of the first defendant has been extinguished as per Clause 16 of the Agreement dated 25.08.2006, it is evident that the said Agreement was after four years from the date of filing of the suit. Further as discussed earlier, the suit is not hit by novation and hence the contention of the first defendant is not acceptable and they did not even produce any document to prove their case. Therefore this Court is of the view that the defendants are jointly and severally liable to pay the suit claim. This issue is answered in favour of the plaintiff.

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15 **Issue No.9** Is the plaintiff entitled to the reliefs claimed by it in its plaint along with interest on the same at the rate of 18% per annum?

15.1 Admittedly the plaintiff paid Rs.3.00 Crores as advance to the first defendant under the First and Second Agreements. The second and third defendants executed personal guarantees for the amount paid to the first defendant. The defendants have not let in any oral or documentary evidence to disprove the version of the plaintiff. Further it is true that here is no reference about the interest in the first and second agreements and also the subsequent agreement dated 25.08.2006. However, the defendants have not performed their part of contract within the time stipulated in the above said agreements and they only purchased 55 Acres of lands. Since the defendants have not performed their part of contract and the plaintiff paid Rs.3.00 Crores to the first defendant, which was guaranteed by the defendants 2 and 3 and therefore all the defendants are jointly and severally liable to pay the said amount. Since it is commercial transaction,

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the plaintiff is entitled to interest @ 12% p.a.

16 Further it is also evident that out of Rs.3.00 Crores, the suit claim, the plaintiff received Rs.60,00,000/- by way adjustment towards the payment to be paid to the M.K.Holdings viz. the second defendant by the plaintiff.

17 In the result the suit is decreed in part with cost and the plaintiff is entitled to Rs.2,40,00,000/- along with interest @ 12% p.a. from the date of the suit till the date of realisation and all the defendants are jointly and severally liable to pay the same.

01.07.2024

Speaking Order : Yes / No
Neutral Case Citation : Yes/No
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List of Witness examined on the side of the plaintiff

Nishith.K.Gupta (P.W.1)

List of Exhibits marked:

S.No	Exhibits	Description of Documents
1	P1	Certified Copy of Board Resolution dated 27.03.2002
2	P2	The original Agreement between plaintiff and the first defendant dated 17.11.1997
3	P3	The original Copy of Guarantee (Undated)
4	P4	The photocopy of Agreement entered between the plaintiff and the first defendant dated 15.04.1999
5	P5	The photocopy of copy of Guarantee dated 15.04.1999.
6	P6	The office copy of letter from plaintiff to the first defendant dated 01.08.2000.
7	P7	The original letter of first defendant addressed to the plaintiff dated 21.08.2000.
8	P8	The copy of letter addressed by the plaintiff to the first defendant dated 28.09.2000.
9	P9	The original letter addressed by the first defendant to plaintiff dated 17.10.2000.
10	P10	The copy of judgment passed based on the Joint Memo of Compromise entered between the House of Kedia and plaintiff dated 22.03.1999.
11	P11	The office copy of advocate notice issued by the counsel for the plaintiff to the defendants dated 11.03.2002.
12	P12 (Series 3 in Nos.)	The Returned Original postal covers with A.D.Cards issued to defendants.
13	P13	The certified copy of Certificate of Incorporation dated 17.07.1995
14	P14	The Original letter addressed by the Tamil Nadu

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S.No	Exhibits	Description of Documents
		Industrial Development Corporation Ltd., to the plaintiff dated 23.12.1997.
15	P15	The photocopy of Agreement for purchase of land entered into between M.K.Holdings and the plaintiff dated 25.08.2006.(Original produced, verified and compared)
16	D1	One authorisation for TIDCO was given in favour of P.W.1 and S.Balakrishnan. (not produced by P.W.1 and the defendant has filed the same)

List of witnesses examined on the side of defendants: Nil

List of exhibits on the side of the defendants : Nil

01.07.2024

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P.VELMURUGAN. J.

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C.S. No.931 of 2002

01.07.2024