



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	21.08.2025
Judgment Pronounced on	25.10.2025

CORAM

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY**C.S. No.435 of 2000**

M/s.Simplex Infrastructure Limited,
21, Casa Major Road,
Egmore, Chennai – 600 008.

..Plaintiff

Vs

Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
N.P.K.R.R. Maligai,
800, Anna Salai, Chennai-600 002.
Represented by its Chairman.
(Amended as per order in A.No.5053 of 2013
on 04.11.2013)

..Defendant



Prayer : Plaintiff is filed under Order VII Rule 1 of the CPC Read With Order IV Rule 1 of the Original Side Rules, praying to grant a judgment and decree on the following terms:-

(a) For recovery of a sum of Rs.3,81,72,555.01 (Rupees Three Crores Eighty One Lakhs Seventy Two Thousand five hundred and fifty five and paise one only) together with interest at 20% on Rs.2,29,87,159.01 (Rupees Two Crores Twenty Nine Lakhs Eighty Seven Thousand One Hundred and Fifty Nine and paise one only) the date of suit till date of realisation;

(b) For a mandatory injunction directing the Defendant to issue the Completion Certificates for contracts for Civil Works at Tuticorin Thermal Power Project dated 23.11.1989 and Piling work and civil and structural works at Basin Bridge Gas Turbine Power Project dated 30.05.1994 and July 1994 respectively;

(c) for a mandatory injunction directing the Defendant to cancel and return the bank guarantees which are more fully set out in the Schedule hereunder;

(d) for a permanent injunction restraining the Defendant from invoking or otherwise acting on or dealing with the said bank guarantees which are more fully set out in the Schedule hereunder; and

(e) for costs of the suit

For Plaintiff : Mr.Thriyambak J.Kannan,

Ms.Oviya Nila Muralidharan &

Ms.Varsha K.Sukumar



For Defendant : Ms. M.Sneha, Special Counsel for TANGEDCO

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JUDGMENT

Background

Simplex Concrete Piles (India) Limited, the plaintiff, was awarded three contracts by the Tamil Nadu Electricity Board, the defendant. Both these entities underwent a name change later. The former was renamed as Simplex Infrastructure Limited and the latter as the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). Amendments to this effect were allowed by order dated 04.11.2013 in Application No. 5053 of 2013. The first contract was in respect of civil work for the coal handling system for the Tuticorin Thermal Power Project. The second contract related to piling work for the Basin Bridge Gas Turbine Power Project and the third contract related to civil and structural works for the Basin Bridge Gas Turbine Power Project. Claims and counter claims arising out of the above mentioned three contracts form the subject of the suit.

2. The plaintiff has sought recovery of an aggregate sum of Rs.3,81,72,555.01/- with interest at 20% per annum on Rs. 2,29,87,159.01/- from the date of the suit till the date of realisation. In addition, mandatory



injunctions directing the defendant to issue completion certificates in respect of the above mentioned projects and in relation to bank guarantees issued for and on behalf of the plaintiff have also been sought. Pursuant to order dated 03.08.2000 in O.A. No.567 of 2000, the bank guarantees provided to TANGEDCO at the instance of the plaintiff for an aggregate sum of Rs.72,00,000/- were cancelled subject to the provision of a bank guarantee for Rs. 24,00,000/-. Consequently, the relief claimed in respect of the bank guarantees remains valid only to that limited extent. In the written statement first filed, the defendant made a counter claim for Rs.1,21,98,250/-. By order dated 01.07.2009 in Application No.655 of 2003, the defendant was permitted to amend the written statement albeit with effect from the date of order. In the amended written statement, the defendant made a counter claim for Rs. 1,34,07,627/-.

Pleadings, issues and evidence

3. With regard to the civil work contract for the coal handling system, in the plaint, the plaintiff states as follows:

3.1. The letter of acceptance dated 03.03.1989 fixed the contract value at Rs.2,90,99,275/-. A Schedule of Rates (SOR) was appended to the letter of acceptance and such rates were intended to be firm up to a variation of $\pm 25\%$



of the contract value. A formula was fixed for payment of compensation in case the contract value fell below or exceeded the stipulated value by more than 25%. The time for completion was 18 months from the date of letter of acceptance or date of handing over of the site, whichever is later. About 2 ½ years after the contract was awarded, the plaintiff was called upon to undertake the additional work of construction of reclaiming hopper and conveyor tunnel on 11.09.1991. The time for completion of this work was 12 months from the date of handing over on 27.09.1991. The execution of work was delayed for multiple reasons attributable to TANGEDCO, including failure to supply power; failure to supply sulphate resistant cement; and not permitting controlled blasting. Therefore, after several extensions, work was completed on 31.05.1993.

3.2. Hence, the aggregate claim of Rs.16,18,933/- with interest thereon at 20% per annum. The aggregate claim includes a claim of Rs.1,86,570/- towards variation in the contract value; a claim of Rs.3,46,665/- towards cyclone related damage; and a claim of Rs.10,85,698/- towards unpaid bills.

4. In the written statement, the defendant asserts *inter alia* as follows:



4.1. There was a novation of the contract when the work of construction of reclaiming hopper and conveyor tunnel was awarded on 11.09.1991. By consent of parties, at that juncture, the contract value was reduced from Rs.2,90,99,275/- to Rs.1,61,20,932/-. The final executed value was Rs.1,72,95,390/-, which exceeded the revised contract value by 7.28%. Therefore, the contract value was not reduced by more than 25% and the defendant is not liable to pay any amount on that account.

4.2. The cyclone occurred after the scheduled date of completion. Therefore, the defendant is not liable to make any payment towards alleged cyclone related damage.

4.3. The plaintiff completed work for an aggregate value of Rs.1,72,95,390/-. The defendant paid a sum of Rs.5,82,700/- to the plaintiff and this sum has not been taken into account by the plaintiff while stating that an aggregate sum of Rs.65,07,570.95/- was received. If the payment of Rs.5,82,700/- is taken into account, the aggregate sum paid to the plaintiff would be Rs.70,90,270.95/-. The defendant is entitled to make recoveries of Rs.7,71,459.35/- towards the cost of materials such as cement, steel, water charges, etc. The plaintiff is also entitled to an aggregate sum of Rs.17,28,519/-



towards hire charges for the generator and interest on the mobilisation advance.

The defendant is also entitled to a sum of Rs.4,12,083/- towards liquidated damages. After giving credit to the sum of Rs.4,94,601/-, which is due and payable to the plaintiff, the plaintiff owes the defendant the aggregate sum of Rs.24,17,460/-.

5. With regard to the contract for piling work at Basin Bridge, in the plaint, the plaintiff states *inter alia* as follows:

5.1. The contract value was fixed at Rs.2,29,51,000/- in the letter of acceptance dated 29.11.1993. The scheduled completion date was 12 months from the date of handing over of the site. The work was commenced on 25.01.1994 and completed on 02.11.1995. The reasons for delay in execution of the work were on account of the delay in providing pile drawings by the defendant; non-availability of work front; increase in number of piles from 1500 to 2023; extensive underground obstructions; and delay by the Central Electricity Authority (CEA) in granting approval for drawings.

5.2. The contract provides for escalation. In terms thereof, a claim of Rs.11,18,680/- is made. After giving credit to the sum of Rs.3,44,265/-, which was paid by the defendant, a sum of Rs.7,74,415/- is payable. The plaintiff



carried out work for the aggregate value of Rs.2,79,67,003/-. After giving credit to payments received, a sum of Rs.2,56,743.80/- remains outstanding.

5.3 The plaintiff was called upon to carry out excavation below the water table, but was only paid at Rs.100/- per cubic meter. As per the SOR, the plaintiff is entitled to be paid at Rs.130/- per cubic meter. A sum of Rs.1,47,647/- is payable on this account.

5.4 Since the delay in execution is for reasons attributable to the defendant, the plaintiff is entitled to reimbursement of the interest deducted on the mobilisation advance and for reimbursement of the security deposit. The defendant is liable to reimburse the total sum of Rs.7,96,208/- on this account.

5.5 As a consequence of the plaintiff not providing drawings and not making the work front available, the men and machinery of the plaintiff remained idle at site for 94 days. Therefore, the defendant is liable to pay compensation towards disruption in a sum of Rs.23,50,000/-.

6. In the written statement, the defendant stated *inter alia* as follows:



6.1. There was no delay in providing pile drawings to the plaintiff. As regards increase in the number of piles, the contract envisages that any increase in individual items of work does not give rise to any additional claims. The delay in execution is attributable to the plaintiff because the plaintiff did not mobilise requisite resources to carry out work within the stipulated time limit.

6.2. The defendant inadvertently overpaid the plaintiff towards the escalation claim although the plaintiff is only entitled to Rs.1,90,553/-.

6.3. As regards the claim towards unpaid bills, the plaintiff executed work for a total value of Rs.2,78,19,219/- and not Rs.2,79,67,003.80/-. After giving credit to the sum of Rs.2,77,10,263/-, which was paid to the plaintiff, the balance payable to the plaintiff is only Rs.1,08,959/- and not Rs.2,56,743.80/-, as claimed by the plaintiff.

6.4. With regard to excavation below the water table, the SOR prescribes that a sum of Rs.100/- per cubic meter being paid. On that basis, the amount payable was paid to the plaintiff and accepted by it.



6.5. Because the plaintiff received a mobilisation advance, which is a loan, the plaintiff is liable to pay interest thereon and is not entitled to reimbursement. The contract prohibits any claim for idling/disruption. Therefore, the claim for a sum of Rs.23,50,000/- towards idling is not maintainable.

6.6. The defendant is entitled to liquidated damages of Rs.13,90,968/-. In addition, the defendant is entitled to a refund of excess escalation and penal interest. Therefore, an aggregate sum of Rs.19,97,873/- is recoverable by the defendant. After taking into account the aggregate payable of Rs.14,48,380/- (security deposit of Rs.13,37,370/- + Rs.1,08,959/-), the net recoverable from the plaintiff is a sum of Rs.5,49,493/-.

7. With regard to the civil and structural work contract in Basin Bridge, in the plaint, the plaintiff states *inter alia* as follows:

7.1. The letter of acceptance was issued on 25.05.1994. The total contract value was Rs.6,68,68,500/-. The scheduled completion date was nine months from the date of handing over of the site. The site was handed over on 15.06.1994 and work was partly completed on 30.11.1996 and fully completed on 30.09.1997. The defendant did not release drawings to the plaintiff in time



and, in fact, released less than 50% of the required drawings within the scheduled date of completion. Although the clause on escalation had been deleted because the contract was to be executed within nine months, on account of reasons attributable to the defendant, the completion of work took about 39 months. Therefore, the defendant is liable to pay escalation. Since the contract was executed over 39 months, the actual escalation payable to the plaintiff is Rs.31,03,446/-. By confining the claim to 2.5% of the contract value for the period beyond 12 months, the plaintiff is entitled to Rs.28,94,945.48/-.

7.2. The defendant had agreed to pay Rs.140/- per cubic meter for excavation below the water table, but only paid at the rate of Rs.80/- per cubic meter. Therefore, the defendant is liable to pay the differential amount of Rs.4,30,400.70/-.

7.3. As per clause 1.4.0 of Section 2 of the Technical Specifications, the plaintiff was required to arrange to transport excavated soil that remained after backfilling to a place within the project area as directed by the engineer/defendant. On account of non-availability of space within the project area, the plaintiff was directed to transport the excavated surplus earth to an area about one kilometre outside the project area. Therefore, the defendant is



liable to pay for the extra lead at the rate of Rs.100/- per cubic meter for 14,639.105 cubic meters. A sum of Rs.14,63,910/- is payable in this respect.

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7.4. The plaintiff was called upon to execute additional work, such as ceiling plaster, sand filling, bitumen paint, M-15 grade concrete, M.S. Grill, M.S. Grating etc. The aggregate value of additional work was Rs.44,69,128/-. After giving credit to the sum of Rs.34,89,794/-, which was paid by the defendant, a sum of Rs.9,79,333.89/- remains outstanding.

7.5. Since work could not be executed for reasons attributable to the defendant, the defendant is not entitled to deduct the sum of Rs.19,60,883/- towards interest on the mobilisation advance and should refund the sum.

7.6. The plant and machinery, supervisory personnel and establishment of the plaintiff remained idle for a total of 650 days for want of work front and drawings. The defendant is liable to pay a sum of Rs.75,58,200/- towards idling/disruption compensation.

7.7. The security deposit of Rs.13,37,370/- has not been refunded in spite of expiry of the defect liability period on 29.09.1998. Therefore, the plaintiff is entitled to this sum with interest at 20% per annum.



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8. In the written statement, the defendant asserts *inter alia* as follows:

8.1. The site was handed over to the plaintiff on 15.06.1994, whereas the plaintiff completed work on 30.09.1997. Drawings were released periodically and the plaintiff was called upon to execute work wherever the work front was readily available. The delay is on account of improper planning and insufficient mobilisation of men and materials by the plaintiff. The contract does not contain a provision for escalation and, therefore, the plaintiff is not entitled to make such claim.

8.2. With regard to excavation below the water table, the contract provides for payment at Rs.80/- per cubic meter. Payment was made in accordance with the contract.

8.3. As per clause 1.4.0 relating to disposal of surplus earth, the unit rate covers disposal and no extra lead was involved. Therefore, the claim of Rs.14,63,910.50/- is not sustainable.

8.4. Out of the items of additional work listed in the plaint, two items of work, namely sunshade facia work and brickwork in II sort bricks in superstructure are covered in the original scope of work. Therefore, only a sum



of Rs.5,22,206/- is payable to the plaintiff and not the sum of Rs.9,79,333/-, as claimed by the plaintiff. This amount has been adjusted towards the dues of the plaintiff.

8.5. As per clause 2.8 of Section A, a claim for idle time charges for any reason shall not be entertained by the owner. Because the plaintiff accepted this condition, the plaintiff is not entitled to the idling claim of Rs.75,58,200/-.

8.6. Because the plaintiff delayed the completion of civil and structural works by 133 weeks, the defendant is entitled to liquidated damages of Rs.35,43,255/-.

8.7. After taking into account recoveries towards materials issued and excess payments, a total sum of Rs.45,13,455/- is payable by the plaintiff to the defendant. After setting off the amounts payable by the defendant to the plaintiff (Rs.5,41,750/-), a net sum of Rs.39,71,705/- is payable by the plaintiff to the defendant.

9. In the reply statement, the plaintiff asserts *inter alia* as follows regarding the three contracts:



9.1. As per Article 28 of the GCC, the defendant was required to return the security deposit within 6 months of the completion of work and also return the bank guarantees. Work was completed on 31.05.1993.

9.2. The plaintiff agreed to pay hire charges for the diesel generators on hourly basis by letter dated 09.01.1992, but the defendant is not entitled to claim enhanced hire charges on the basis of internal documents that do not form part of the contract and are not binding on the plaintiff.

9.3. The Controller of Explosives permitted controlled blasting. The refusal of the defendant to permit the same is contrary to the contract and the plaintiff is entitled to extension of time on that account.

9.4. The net aggregate counter claim of Rs. 24,17,460.35/- for civil work for the Tuticorin Thermal Power Project, including claim for material supply, hire charges, interest on mobilisation advance and liquidated damages, is denied.

9.5. As per the bill of quantities, the plaintiff was required to drive only 1500 piles but had driven 2023 piles in the Basin Bridge piling work contract.



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9.6. The actual quantities of underground obstruction removed by the plaintiff was 583.58% in excess of the quantities indicated in Annexure 1B of the Letter of Acceptance – Supplemental Schedule of Items.

9.7. The plaintiff is entitled to a sum of Rs.11,18,680.12/- as escalation and to the net sum of Rs.7,74,415.12/- as balance escalation charges.

9.8. The aggregate counter claim of Rs.19,97,873/-, including the individual counter claims towards liquidated damages and interest on security deposit and retention amount, are denied.

9.9. The price escalation clause was deleted since the contract was to be executed within nine months. Because the delay in execution of the civil and structural work at Basin Bridge is attributable to the defendant, the plaintiff is entitled to escalation as per clause 87.

9.10. The claims towards excavation under the water table and for transporting surplus earth beyond the project area are reiterated.



9.11. The plaintiff was directed to execute 12 supplemental items of work and there was concurrence on rates. The plaintiff denies that the sunshade fascia and brickwork in II sort bricks were part of the original scope of work. Therefore, the plaintiff reiterates the claim of Rs. 9,79,333.89/- for supplemental items of work.

9.12. The aggregate counter claim towards the civil and structural work at Basin Bridge is denied, including the liquidated damages claim of Rs.35,48,416/- and claims towards supply of materials and recovery of alleged excess payment.

10. On the basis of the pleadings, the following issues were framed on 19.11.2015:

“(i) Whether the plaintiff is entitled to recover the sum Rs.3,81,72,555.01/- together with interest @ 20% per annum on Rs.2,29,87,159.01/- from the date of suit till the date of realization from the defendant?”

“(ii) Whether the plaintiff is entitled for a decree for a mandatory injunction directing the defendant to issue completion certificates to the plaintiff for the contracts for



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Civil Works at Tuticorin Thermal Power Project dated 23.11.1989, at Basin Bridge Gas Turbine Power Project dated 30.05.1994 and July 1994 respectively?

(iii) Whether the plaintiff is entitled for a decree for mandatory injunction directing the defendant to cancel and return the Bank Guarantees specified in the schedule to the plaint?

(iv) Whether the plaintiff is entitled for a decree for permanent injunction, restraining the defendant from invoking or dealing with the Bank Guarantees specified in the schedule to the plaint?

(v) Whether the Counter claim of Rs. 1,34,07,627/- claimed by the defendant is barred by limitation?

(vi) Whether the defendant is entitled to the Counter claim for a sum of Rs.1,34,07,627/- together with interest @ 20% per annum from the plaintiff?

(vii) Whether the parties are entitled to costs? To what extent ?

(viii) To what other reliefs the plaintiff and defendant are entitled? ”



11. The plaintiff adduced evidence by examining Mr. R. Gopal, Senior Project Manager, as PW1. In course of the examination-in-chief of PW1, 86 documents were exhibited as Exs. P-1 to P-86. PW1 was cross-examined by learned counsel for the defendant. The defendant adduced evidence by examining Mr. R. Ramraj, Superintending Engineer, as DW1. In course of the examination-in-chief of DW1, 86 documents were exhibited as Exs. D-1 to P-97. DW1 was cross-examined by learned counsel for the plaintiff. The plaintiff compiled the pleadings and exhibits in seven volumes (Volumes I-VII), which are referred to in this judgment, where appropriate.

Counsel and their contentions

12. Oral arguments on behalf of the plaintiff were advanced by Mr.Thriyambak J.Kannan, learned counsel. Oral arguments on behalf of the defendant were advanced by Ms. M.Sneha, special counsel for the defendant. Both parties filed written submissions.

13. After providing an overview of the three contracts, learned counsel for the plaintiff first made submissions regarding the Tuticorin Thermal Power Project. He submitted that the site was handed over on 27.09.1991 and that the scheduled completion date was 18 months from such date, i.e. 26.03.1993.



Learned counsel submitted that the actual completion date was 31.05.1993. He contended that the causes for delay were power outage, as evidenced by letter dated 19.11.1991 (Ex. P-6; page 6 of volume III); delay in supply of cement; delay in supply of drawings; and rejection of the request for rock excavation by blasting. He submitted further that the levy of Diesel Generator set (DG set) charges at rates not approved by the plaintiff is untenable. He also submitted that the contract value was Rs.2,90,99,275/-, whereas the executed value was Rs.1,73,03,225/-. Since the executed value was lower than the contract value by more than 25%, he submitted that the plaintiff is entitled to compensation as per the formula prescribed in the contract. He pointed out that the plaintiff had made a claim on such basis for Rs.16,18,933/-. He further submitted that the defendant's counter claims are barred by limitation and that, without prejudice, the defendant is not entitled to hire charges for the DG sets, liquidated damages or interest on the mobilisation advance.

14. As regards the contract for piling work at Basin Bridge, after pointing out that the contract value was Rs.2,29,51,000/-, learned counsel submitted that the contract provided for 20,250 metres as the total area for driving piles. The contract also stipulated the depth at 13.5 metres. If the number of piles were to



be computed on that basis, he submitted that it would work out to 1500 piles.

Instead, he states that 2023 piles were driven by the plaintiff.

15. Apart from the increase in the number of piles, learned counsel submitted that there was not only delay in release of drawings for piling work, but the release was haphazard. In support of this contention, he referred to the letters issued in July 1995 (Exs.P36 and P37; pages 57 & 58 of Volume III). He also referred to letter dated 21.09.1994 (Ex.P38) regarding the idling of the rig. By referring to the cross-examination of DW1, he pointed out that DW1 admitted that the last set of drawings were released in January 1995. He refuted the contention that the collapse of the rig caused delay by pointing out that the rig collapsed on 19.01.1995 and was re-commissioned on 22.02.1995, as evinced by communication dated 22.02.1995 from the plaintiff to the defendant (Ex.D-40; page 154 of volume IV). By referring to letter dated 16.03.1998 (Ex.P47; page 93 of volume III), learned counsel submitted that three claims were made towards excavation below the water table, escalation and additional work relating to demolition and dismantling of obstructions.

16. With regard to the civil work at Basin Bridge, learned counsel submitted that the site was handed over on 15.06.1994 and that work was



substantially completed on 30.11.1996 and fully completed on 30.09.1997. As in the case of the piling work contract, he submitted that the plaintiff is entitled to payment at Rs.140/- per cubic metre for excavation below the water table. After pointing out that the plaintiff had to transport surplus earth after backfilling to an area beyond the project area, he submitted that the plaintiff is entitled to payment of Rs.14,63,910/- at the rate of Rs.100/- per cubic metre on this account. By referring to the items of additional work set out in page 43 of the plaint at paragraph x(e), learned counsel submitted that a sum of Rs.34,89,794/- was paid leaving a balance due and payable of Rs.9,79,333/-. Although this contract did not stipulate escalation, learned counsel contended that escalation was not provided for in view of the contract period being nine months. Since execution was delayed considerably for reasons attributable to the defendant, he contended that the plaintiff is entitled to the escalation claim of Rs.28,94,945/-.

17. Learned counsel for the defendant refuted the above contentions. As regards the Tuticorin Thermal Power Project, she submitted that the original scope of work included reclaiming the hopper pit both inside and outside the compound. By referring to the amended contract at page 26 of volume IV (Ex.D5), she submitted that the total contract value was reduced to



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Rs.1,61,20,932/- instead of Rs.2,90,99,275/-. She also referred to the cross-examination of PW1 in this regard and pointed out that PW1 stated that he is not able to recollect why the value of the work was reduced from Rs.2,90,99,275/- to Rs.1,61,20,932/-. By also referring to the cross-examination of DW1 in this regard, she pointed out that DW1 stated that the contract was amended in September 1991. As regards interest on mobilisation advance, by referring to Exs.D4 & D5 at pages 25 to 28 of volume IV, learned counsel submitted that it was agreed that interest would be levied at 18% per annum on the mobilisation advance. With regard to electricity charges, with reference to communication dated 15.02.1989 from the plaintiff (page 359 of volume V) (Ex.P1), learned counsel submitted that the agreement envisaged water/electricity supply at one point on chargeable basis. She also referred to reply dated 22.02.1989 in this regard. As regards charges relating to the DG sets, by referring to Ex.D7 at page 39 of Volume IV, learned counsel submitted that the plaintiff agreed to pay hire charges. Turning to the cross-examination of DW1 at page 42 of volume II, learned counsel submitted that DW1 stated that the first DG set was installed on 28.01.1992 and the second on 23.02.1993 and that there was no delay because the request for the second DG set was made on 22.02.1993, as evidenced by the communication at page 20 of volume III (Ex.P12).



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18. As regards cyclone damage, by referring to clause 27 of the contract (*force majeure* clause) and Ex.P10 as well as the minutes of meeting held on 30.01.1993 (Ex.P11), learned counsel submitted that the agreed amount was paid towards de-silting. As regards unpaid bills, after pointing out that all RA bills up to RA bill 16 were paid, learned counsel submitted that RA bill 17 was not settled on account of recoveries by the defendant from the plaintiff.

19. With regard to the piling work contract at Basin Bridge, learned counsel submitted that such piling work was delayed because the defendant did not provide the dynamic test results for the piles. By referring to clause 5.0 of the letter of acceptance, learned counsel contended that increase in quantities of individual items was provided for without any additional compensation in such regard. She also referred to clause 21.0 of the bid document at page 57 of volume IV and page 19 of volume VI. By referring to clause 4.0 of the letter of acceptance, learned counsel pointed out that it provides for recovery of interest on the mobilisation advance and for recovery of interest on the security deposit. After pointing out that the measurement book shows the value of work done as Rs.2,78,19,219/-, learned counsel submitted that the amount payable towards unpaid bills is only Rs.1,08,959/-. As regards work under the water table,



learned counsel submitted that it is payable and was paid at Rs.100/- per cubic meter.

20. As regards the civil and structural works contract at Basin Bridge, learned counsel submitted that claim for idling is prohibited in clause 2.8 of Section A. As regards excavation below the water table, she pointed out that it was paid at Rs.80/- per cubic meter as per SOR 3(ii). With regard to the supplementary item claim, learned counsel submitted that only the ratio of ceiling plaster was changed from that specified in SOR item 15(i). With regard to the filling of sand instead of excavating earth, she submitted that it was paid at Rs.215/- per cubic meter in terms of SOR item 3. Similar submissions were made with regard to the deck guard, bitumen paint, M.S. Grill, M.S. Grating, brick and railway gauge. As regards the extra lead claim, learned counsel submitted that the disposal of surplus earth was within the project area. With regard to escalation, by referring to clause 7.2 to 7.4 of the Technical Specifications and clause 83 of the General Conditions of Contract (GCC), learned counsel contended that escalation is not permissible unless the formula is prescribed in the bid document with a ceiling.



21. Dealing with the counter claims, learned counsel submitted that all drawings were submitted by 09.10.1995 in relation to the piling work contract, whereas the work was completed only on 02.11.1995. As regards the civil and structural works contract, she submitted that work was completed in September 1997 and even if calculated from 02.11.1995, the contractor should have completed all work by September 1996.

22. By way of rejoinder, learned counsel for the plaintiff submitted that Ex.P4 is an amendment to the Tuticorin Thermal Power contract and not a novation. Reliance was placed by him on Section 62 of the Contract Act, 1872 in support of this contention. Learned counsel contended that the original contract empowered reduction in contract value subject to clause 4 thereof. Therefore, he contended that clause 4, which provides for compensation if the contract value is reduced or increased by more than 25% of the specified value, would apply to the reduction to Rs.1.61 crores. With regard to unpaid bills, learned counsel submitted that only the receipt of an additional sum of Rs.2 lakhs is admitted, whereas the assertion that Rs.3.63 lakhs + Rs.50,000/- was paid is disputed. As regards the DG sets hiring charges, he contended that the rates were not provided earlier and that such rates cannot be foisted on the plaintiff. As regards the piling work contract, by referring to minutes of



meeting held on 21.09.1994, learned counsel pointed out that it is recorded therein that drawings are pending with the CEA for approval. He also referred to letter dated 28.06.1999 (Ex.P80) with regard to increase in number of piles and in the number of obstructions. As regards the civil work contract, learned counsel pointed out that surplus earth was disposed of outside the project site and that Ex.D58 indicates that the distance is the same and not that it is within the project area. He concluded his submissions by referring to Ex.P81 with regard to drawings issued after the contract completion period.

Discussion, analysis and conclusions

Issues (i), (v) and (vi)

23. Out of the eight issues framed by this Court, issue (i) relates to the monetary claim made by the plaintiff, issue (v) relates to whether the defendant's counter claims are barred by limitation and issue (vi) relates to whether the defendant is entitled to the counter claims. These monetary claims have been made in respect of all three contracts jointly. The adjudication, however, has to be done separately in respect of claims and counter claims arising out of each contract. I first deal with the contract relating to civil work for the coal handling system for the Tuticorin Thermal Power Project.



Contract relating to civil work for coal handling system at the Tuticorin Thermal Power Plant

24. The contract value was specified as Rs.2,90,99,275/- in the letter of acceptance (part of Ex. P-1). The scope of work is indicated in clause 3.1 of the letter of acceptance as under:

3.1 The scope of work coming under this contract i.e. part I of specification SECT II-3 generally comprises of the following main works and structures:

- a) Manual unloading Track Hopper/Pit.*
- b) Transfer House and Conveyor Tunnels.*
- c) Reclaim Hopper/Pit and Conveyor Tunnel.*
- d) Any other allied work.”*

After recording in clause 2.1 of such letter of acceptance that the rates are firm until completion of the entire work, quantity variation was provided for in clause 4. Clause 4 is set out below:

“4) COMMERCIAL:

Quantity Variation: Your request for price increase for quantity variation beyond $\pm 25\%$ to $\pm 50\%$ of the accepted contract value is accepted as below.



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a) *Your accepted rates are firm for any change in total contract value upto $\pm 25\%$. For percentage decrease in contract value below $- 25\%$ and upto $- 50\%$, your rates will be increased by $7 \frac{1}{2} \%$ for the actual percentage decrease in contract value below 25% . For % age increase in contract value $+25\%$ upto $+50\%$, your rates shall be increased by 5% for the actual percentage increased in contract value above 25% . This increase in rates will not be paid for the value of materials issued by the Board in the increased and decreased value. The contract value for the purpose of ascertaining the percentage increase or decrease will be exclusive of escalation charges if any payable. Please also note that the above stipulation is subject to the condition that quantity of individual item of work may vary to any extent and no extra payment is admissible on this amount. ”*

25. Learned counsel for the plaintiff contended that the value of the contract was reduced to Rs.1,61,20,932/- by letter dated 11.09.1991 (Ex. P-4). Since the reduced contract value is lower than the original contract value by more than 25% , it was contended that the plaintiff is entitled to an increase in rates by $7 \frac{1}{2} \%$ for the actual percentage decrease below 25% . This contention was countered by learned counsel for the defendant by relying on clause 3 (particularly 3.2 thereof) of Ex. P-4, which is as under:

“ 3.0. Rates and Prices



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The revised price schedule and quantities indicated in the enclosure to this letter is applicable only for the works to be taken up for Reclaiming Hopper and Conveyor Tunnel outside the compound wall. These rates are firm without escalation till the completion of the entire works. It shall be noted that neither increase in price nor escalation will be permissible.

3.2. The value of the contract to be executed for the portion of work as indicated above is Rs.83,48,568/- (Rupees eighty three lakhs forty eight thousand five hundred and sixty eight only) and the total contract value including the existing work under execution will be Rs.1,61,20,932/- (Rupees one hundred and sixty one lakhs twenty thousand nine hundred and thirty two only)."

26. Clause 3 indicates that the value for execution of work relating to reclaiming hopper and conveyor tunnel outside the compound wall is Rs.83,48,568/-. After taking into account existing work under execution at that point of time, the total contract value was fixed at Rs.1,61,20,932/-. Ex. P-4 draws reference to three communications from the plaintiff dated 27.06.1991, 01.07.1991 and 15.07.1991 requesting for an increase in the earlier agreed rates by 40% for execution of reclaiming hopper and conveyor tunnel outside the compound wall. Learned counsel for the plaintiff contended that Ex. P-4 pertained to additional work and that it did not result in a novation of the



original contract. The cross-examination of DW1 is relevant in this regard and the key questions and answers from the cross-examination on 02.08.2018 and 12.12.2018 are set out below:

“Q: Has the defendant referred to deletion of work awarded under Ex.P1 in Ex.P4?

A: This amendment to the contract scope speaks about reclaiming hopper and conveyor tunnel dropping two other scopes contemplated originally namely (a) manual unloading hopper/pit and (b) transfer house and conveyor tunnels.

Q: Is it correct that the conveyor system under Ex. P1 was termed as conveyor no.60?

A: Yes

Q: What is the number of the conveyor system outside the compound wall?

A: Conveyor number 61 and 62.

Q: In the same statement in Ex.P15, see last page the value of the work is shown as Rs.95,22,807.92 and a further sum of Rs.77,80,417.70 is shown as the value of work in respect of Conveyor No.60, Is it correct that amount of Rs. 95,22,807.92 relates to the work executed under Ex.P4 and the sum of Rs.77,80,417.70 relates to the work executed under Ex.P1?

A: I have to go back to the records and verify it.

Q: Please see the last question posed to you on 2/8/2018 wherein you were to confirm the value of the work done by the plaintiff as being Rs.95,22,807.22 under Ex.P4 and



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Rs.77,80,417.70 under Ex.P1, you were to verify these records and inform the Hon'ble Court, have you verified the records?

A: Yes, The records have been verified, cumulative value of work done is Rs.1,72,95,390/- and the outstanding bill to be released to the defendant was given in page 21 of the proof affidavit.

27. When Exs.P-1 and P-4 are analysed along with the oral evidence of DW1, the conclusions that follow are as follows. Work outside the compound wall was not within the scope of Ex.P-1. When the plaintiff was requested to undertake this work, the plaintiff requested for an increase of 40% over rates agreed to in Ex.P-1. This request was acceded to and the total contract value was reduced to Rs.1,61,20,932/-. Although Ex.P-4 does not expressly state that (a) manual unloading hopper/pit and (b) transfer house and conveyor tunnels were deleted from the revised scope of work, by taking note of the drastic reduction in estimated contract value from Rs.2,90,99,275/- to Rs.1,61,20,932/-, in spite of the addition of work outside the compound, the oral evidence of DW1 on deletion is liable to be accepted. Thus, the plaintiff appears to have accepted a package deal involving an increase in rates for the additional work subject to accepting a reduction in the total contract value. Indeed, on careful examination of Ex.P-4, it is evident that each clause of the original letter of



acceptance is referred to therein and, in case of amendment, the amendment is specified. Otherwise, it is stated that there is no change and that it is as per the original acceptance letter. When seen in this light, the conclusion that follows is that the price clause of the original letter of acceptance was modified and substituted by the amended clause (i.e. clause 3 of Ex. P-4).

28. Learned counsel for the plaintiff contended, however, that the quantity variation clause was not modified by Ex. P-4. On that basis, he contended that the plaintiff would be entitled to increase in rates in terms of the quantity variation clause. This contention cannot be countenanced because the rates and prices clause in Ex. P-4 has effectively substituted the corresponding clause in the original letter of acceptance. Therefore, notwithstanding the retention of the quantity variation clause, only if the executed value was 25% lower than the revised contract value of Rs.1,61,20,932/- would the plaintiff be entitled to claim a higher rate as per the quantity variation clause. Consequently, the claim of Rs.1,86,570/- is rejected.

29. The plaintiff also made a claim for cyclone related damage. This claim was refuted by learned counsel for the defendant by referring to clause 27



of the General Conditions of Contract (part of Ex. P-1) pertaining to *force majeure*. The *force majeure* clause reads as under:

“27.0 Force Majeure

If at any time during the continuance of this contract, the performance in whole or in part in any delegation under this contract shall be prevented or delayed by reasons of any war, hostilities, acts of public enemy, acts of civil commotion, strikes, lock outs, sabotages, fires, floods, explosions, epidemics, warranting restrictions or other acts of God (hereinafter referred to as eventualities), then provided notice of the happening of any such eventuality is given by the TENDERER to the Board within 15 days from the date of occurrence thereof, neither party shall, by reasons of such eventuality, be entitled to terminate this contract nor shall have any claims for damages against the other in respect of such non-performance or delay in performance and deliveries under this contract shall be refunded as soon as practicable after such eventuality has come to an end or ceased to exist.

Provided that if the performance in whole or part by the TENDERER or any obligation under this contract is prevented or delayed by reasons of any eventuality for a period exceeding 60 days, the Board may at its option, terminate this contract by notice in writing,”



As is noticeable from the above clause, flood falls within the scope thereof. As is typical with *force majeure* clauses, however, clause 27 provides for excusing non-performance during the *force majeure* period and not claiming damages *inter alia* for flood/cyclone related clauses. Therefore, the claim for cyclone-related damage cannot be countenanced.

30. Additionally, in minutes of meeting held on 30.01.1993 (Ex. P-11), this aspect was discussed and it was agreed between the parties that the plaintiff's claim for removal of silt and slush would be accepted at rates specified in particular items of the SOR. The agreed position is that payment towards removal of silt was made. It was specifically recorded as follows regarding all other claims for cyclone-related damage:

“ 4. Regarding all other claims, M/s Simplex have been informed that they are not feasible for compliance and hence not admissible and this was agreed to be absorbed by M/s Simplex.”

Ex. P-11 contains the signature of Mr.Shankar Guha, General Manager, on behalf of the plaintiff. In these circumstances, except to the extent agreed, the claim towards cyclone damage cannot be sustained.



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31. The plaintiff made a claim of Rs.10,85,698/- towards unpaid bills. In the written statement, the defendant asserted that a sum of Rs.5,82,700/- was paid in addition to amounts admitted to be received by the plaintiff. According to the defendant, the total amount paid to the plaintiff for this contract was Rs.70,90,270.95/- and not Rs.65,07,570.95/-. Details of such additional payment were provided by the defendant in course of final arguments by way of a statement of account. When a comparison is made between receipts admitted by the plaintiff and payments said to be made by the defendant, it appears that payment by cheque dated 11.06.1992, cheque no.986652, of a sum of Rs.2 lakhs was not taken into account by the plaintiff. On verification, learned counsel for the plaintiff admitted receipt of this sum by the plaintiff. As regards this amount, the defendant has therefore established having made the payment. Hence, there is evidence of payment of Rs. 67,07,570.95/- towards R.A. Bills I-XVI leaving a balance of Rs.3,82,700/-.

32. In the statement of account submitted in course of final hearing, the defendant indicated that the aggregate payment of Rs.70,90,270.95/- included the following adjustments: Rs.3,63,950/- towards recoveries on account of mobilisation advance and current consumption charges; Rs. 50,000/- from LS VI; and Rs. 1,68,750/- towards mobilisation advance. This is not in line with



the pleading in the written statement, wherein a statement of payables and recoveries is set out at paragraph 15(a) thereof. Being contrary to pleadings as regards the above adjustments, the statement of account is rejected to that extent. Whether and, if so, the extent to which the entitlement to effect recoveries is established will be considered while dealing with the counter claims.

33. In addition to the revised claim of Rs.3,82,700/- towards R.A. bills I-XVI, the final bill value remains unpaid. The amount claimed by the plaintiff towards this bill is Rs.4,56,510/- and the amount admitted as payable by the defendant is Rs.4,48,675/-. I will proceed on the basis that the defendant's calculation is correct in view of the minor variation of Rs.7835/-. The defendant has also admitted that the withheld amount of Rs.45,926/- is liable to be released. On that basis, the amount payable to the plaintiff would be Rs. 8,77,301/- (Rs.3,82,700/- + Rs. 4,48,675/- + Rs. 45926/-) for this contract. This amount would, however, have to be adjusted against the counter claim to the extent allowed and I turn to this aspect next.

Counter claims of the defendant

Limitation: common to all three contracts



34. The first aspect to be examined in this regard is whether the counter claims are barred by limitation. The counter claims in respect of all three contracts were made on or about August 2000 in the first filed written statement and amended with effect from 01.07.2009 in the amended written statement. As noticed earlier, the aggregate counter claim made in the first filed written statement was Rs. 1,21,98,250/- and this was increased to Rs.1,34,07,627/- in the amended written statement. The difference is only in respect of the contract for civil and structural work at Basin Bridge. The amount payable to the plaintiff for work done has been increased from Rs.5,22,206/- to Rs.5,77,443/-. The counter claims for recoveries towards materials issued has been raised from Rs.1,59,975/- to Rs.9,22,215/- and for excess payments has been reduced from Rs. 1,07,440/- to Rs.47,985/-. As is typical with construction contracts, in all three contracts, payments were required to be made during execution of work against running account bills. After completion of work, the contracts envisaged submission of final bills. In such final bills, credit was to be given for payments received against running account bills, recoveries, if any, were to be adjusted and net payments made by the party owing.

35. The GCC contains an identical clause in each contract regarding payments during execution and the same is set out below:



**“45.0 CERTIFICATE TO BE PROVISIONAL AND
SUBJECT TO CORRECTION**

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Every certificate for payment on account of work, materials or things shall be regarded as only provisional and approximate and all payments made on such certificate shall be regarded as being open payments and shall respectively be subject to revision and settlement by the ENGINEER and in the event of his deciding that from any circumstances the measurements of works executed, returns of materials provided and used for the estimates of value previously made did not truly represent the portion of works executed and materials received and used having reference to the amount of the contract sum and the work remaining to be executed by the CONTRACTOR, the ENGINEER shall have power from time to time to correct the total results by adding thereto or deducting therefrom such sum as, after communication with the CONTRACTOR or his duly authorised agent, the ENGINEER may deem to be just and such addition or deduction shall be credited to or (as the case may be) debited against the CONTRACTOR at such time as the ENGINEER may think fit.”

All three contracts also provide for the issuance of a completion certificate (clause 44.0 of the GCC) and the issuance of a final certificate. In this case, on the ground that completion certificates were not issued in spite of completion of work, one of the remedies claimed is for the issuance of completion certificates.



36. These contracts also provide for the issuance of final certificates upon expiry of the 12 month maintenance period running from the issuance of the completion certificates. Clause 43.0, which deals with the final certificate, provides, in relevant part, as under:

“43.0 FINAL CERTIFICATE

The contract shall not be considered as completed until a certificate (hereinafter referred to as 'the final certificate') shall have been signed by the ENGINEER to the effect that the CONTRACTOR has carried out all his obligations under 'Maintenance' and in the manner provided by this contract....”

As regards the contract for civil work for the Tuticorin Thermal Power Project, Ex. D-75 (pages 205-206 of volume IV), which is a letter dated 06.01.1999 from the defendant to the plaintiff, reveals that recoveries were indicated while processing L.S. XVII and part bill. The final bill had not been prepared at that stage. Likewise, as regards piling work for the Basin Bridge Gas Turbine Power Project, by letter dated 13.11.1999 (Ex. D-84), the plaintiff was informed that the final bill is ready for signature. Communication dated 26.04.2000 (Ex. D-88) discloses that the final bill for the civil and structural work for the Basin Bridge Gas Turbine Power Project is under preparation. Therefore, the counter claims made in August 2000 are within the period of limitation. Whether the amended counter claims are within the period of



limitation is a separate matter, which may be examined, if necessary, after considering the counter claims on merits.

Counter claims in contract for coal handling system at Tuticorin

37. An aggregate counter claim of Rs.29,12,061.35/- and a net counter claim of Rs.24,17,460.35/- was made by the defendant with regard to this contract. The largest element thereof is DG set hire charges of Rs.16,71,981/-. The contract envisaged provision of power supply at one point on chargeable basis. This is evident from letter dated 15.02.1989 from the plaintiff setting out requirements not included in the work order (Ex. P-1 at pages 359 & 361 of volume V). Ex. D-7 at page 39 of volume IV is a letter dated 09.01.1992 from the plaintiff to the defendant. After requesting the defendant to provide one diesel generator of suitable capacity, the plaintiff stated as under:

“We agree to pay the prevailing hire charges of Diesel Generator per hour meter reading of the generator to be in use, during power failure.”

Therefore, it is beyond doubt that the plaintiff agreed to pay hire charges.

38. The plaintiff contended that the defendant did not mention the hire charges and obtain the plaintiff's approval in respect thereof. In response, the defendant relied upon Board Proceedings No.209 (Ex. D-1). In course of cross-



examination, a question was put to DW1 at the hearing on 21.12.2018 regarding the supply of DG sets. The said question and answer are set out below:

“Q: Paragraph 4g, it is said that plaintiff requested for, are you aware as to when this diesel generator were supply by the defendant to the plaintiff?”

A: Defendant installed two generators on 28/1/1992 and another one on 23/2/1993.”

At the hearing on 28.02.2020, further questions were put on DG set hire charges. The said questions and answers are set out below:

“Q: Ex.D75 is shown to the witness. Prior to the issuance of Ex.D75 letter dated 06.01.1999, was recovery for the hire charges of the DG set made in terms of Ex.D1?”

A: Yes. Even before the issuance of Ex.D75 it was based on Ex.D1.

Q: Ex.D7 and Ex.D14 are shown to the witness. Ex.D7 letter dated 09.01.1992 and Ex.D4 dated 19.04.1993. Do either of these letters make reference to Ex.D1?

A: No, it is not there.

39. The above evidence leads to the conclusion that the plaintiff was informed that hire charges would be charged for the DG sets and the plaintiff agreed to pay. Ex. D-1, however, was not made available to the plaintiff at the



time of entering into the contract and cannot be considered as forming part of contract documents. Nonetheless, by taking into account the following: the express consent of the plaintiff to pay DG set hire charges; the absence of any evidence that the sum of Rs.2,210/- per day towards hire charges is unreasonable or disproportionate; and the fact that the DG sets were installed and admittedly remained in the plaintiff's custody on the relevant dates for which charges were levied, interference is not warranted with the defendant debiting total DG hire charges of Rs. 16,71,981/-.

40. Apart from the DG hire charges, the defendant counter claimed Rs.4,14,620/- towards current consumption charges, Rs.3,11,859/- towards material cost for cement, steel and the like, Rs.11,500/- towards damaged cables, Rs.51,590/- towards interest on mobilisation advance, Rs.22,435/- towards retention amount, Rs.10320/- towards income tax, Rs.4,948/- towards structural steel charges and Rs.4,12,083/- towards liquidated damages.

41. With regard to both electricity consumption charges and hire charges, the plaintiff stated in the reply statement that these amounts were recovered from the running account bills. The pleading, in relevant part, from paragraph 3(o) is set out below:



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“(o)The plaintiff states that the electricity charges and the hire charges for the diesel generator sets have already been recovered by the defendant from the running bills and the Defendant is not entitled to unilaterally recover additional amounts on account of alleged audit conducted by their Board.”

No evidence of such recovery was, however, provided. When questioned on the basis of recovery, DW1 stated as under on 28.02.2020:

“Q: In the recoveries to be allegedly made against the plaintiff, what is the basis for seeking the alleged recovery of the sum of Rs.4,14,620/- towards current consumption charges?

A: The recoveries have been made on the actual consumption of power supply by the plaintiff since the power supply was on chargeable basis as per the contract condition.”

By taking into account the contractual stipulation that the plaintiff was liable to pay for electricity consumption, the lack of evidence of adjustment thereof against running account bills and the oral and documentary evidence, I conclude that the defendant is entitled to the sum of Rs.4,14,620/- towards electricity consumption charges.

42. Clause 6.6(c) of the GCC provides for the levy of interest on the mobilisation advance at 18% per annum. In this contract, however, the



defendant agreed to provide an interest-free mobilisation advance of Rs.29,09,300 and disbursed the same on 27.07.1989. As per clause (vii) of the letter of acceptance, this amount was to be recovered from the running account bills within the original contract period. The completion of work, in this case, extended beyond the original contract period. Clause 6.6(x) of the GCC deals with a situation where an interest free mobilisation advance could not be used within the specified time schedule. The said clause is as under:

“ x. In case the advance is interest free, in the event of the CONTRACTOR not producing the materials/machineries and utilising the advance for the purpose for which it was given as per the time schedule given in the contract, the CONTRACTOR is liable to pay interest at the Board's specified rate from the time the advance is given to the date of actual utilisation of the advance and the commencement of the work governed by the contract. ”

Considering that a mobilisation advance is in the nature of a loan and such loan could not be recovered within the originally anticipated time frame, in this contractual context, I conclude that this counter claim of Rs.51,590/- is liable to be allowed. As regards the other recoveries made by the defendant towards issuance of materials, damaged cables and structural steel charges, the sustainability thereof is dependent on evidence.



43. In the proof affidavit of DW1, the recoveries were dealt with as follows in internal page 6 thereof (page 218 of volume I):

“ For materials and other recoveries an amount of Rs.7,71,459.35 has to be recovered from the plaintiff as per Defendant's records towards the cost of cement, steel, water charges, Retention amount, etc. The recovery proposed by the Defendant for materials such as cement, steel supplied to a tune of Rs.3,11,859.35 is correct.... ”

In course of cross-examination on 02.01.2019, DW1 was questioned about these recoveries. The relevant question and answer is as under:

“Q: Is there a document on record showing details of all the recoveries effected by the defendant and the payments made by the defendant?

A: Yes, pre final bill showing the recoveries, deductions etc. was sent to the plaintiff for their consent but the plaintiff did not evoke any response. ”

While the proposed recoveries are mentioned in letter dated 06.01.1999 from the defendant to the plaintiff (Ex. D-75), the said letter contains no particulars regarding the basis for such recovery. There is no information on the quantity of supply or the dates of supply or how the amount was computed. Since the defendant has failed to discharge the burden of proof in this regard, the counter claim for recovery towards materials issued, damaged cables and income tax is disallowed. The contract was completed a long time ago and the defect liability



period has long expired. Therefore, the recovery of Rs.22,435/- towards retention is impermissible. I next examine the claim for liquidated damages.

44. The admitted position is that work was required to be completed on or before 26.09.1992 as per Ex. P-4, but was completed only on 31.05.1993. The defendant has counter claimed a sum of Rs.4,12,083/- as liquidated damages on this account. In order to sustain this claim, the defendant has to establish that the delay is attributable to the plaintiff. Towards this end, the defendant should have placed on record the critical path regarding this project by specifying the sequential activities and by proving that project completion was delayed for reasons attributable to the plaintiff. The plaintiff alleged that delay occurred due to multiple reasons such as not providing uninterrupted supply of power, delayed supply of sulphate resistant cement, not permitting controlled blasting and heavy rains and cyclonic weather.

45. While the defendant has effectively shown that provision of uninterrupted power supply was not assured under the contract, it admitted that there was a delay of 18 days in providing sulphate resistant cement. The defendant also agreed that it could not permit controlled blasting due to proximity to the Indian Oil Corporation's storage tank, naphtha line, etc. and



that this would result in additional excavation time. Relevant questions and answers from the cross-examination of DW1 on 02.01.2019 are set out below:

“Q: In terms of the Tender document was the plaintiff entitled to carry on a portion of excavation using controlled blasting techniques?”

A: Yes.

Q: Is it not a fact that the time for performance and completion of the plaintiff was dependent on the plaintiff's being able to use controlled blasting?”

A: Yes, if they had resorted to controlled blasting for excavation, they should have completed that activity much earlier.”

Even with regard to floods, the defendant agreed to compensate for silt removal. In the face of this evidence and in the absence of evidence that the delay is attributable to the defendant, the counter claim for liquidated damages is rejected.

46. In summary, out of the total counter claim of Rs.29,12,061.35/-, a sum of Rs. 21,38,191/- (Rs.4,14,620/- + Rs.16,71,981/- + Rs.51,590/-) is allowed towards current consumption, DG hire charges and interest on mobilisation advance. In order to arrive at the net payable, the aggregate sum payable by the defendant to the plaintiff, i.e. Rs. 8,77,301/- (Rs.3,82,700/- + Rs.



4,48,675/- + Rs. 45926/-), should be deducted there from. In effect, a sum of Rs.12,60,890/- is payable by the plaintiff to the defendant for this project. Amounts payable under other contracts, however, should be reckoned before deciding on net payables.

Piling work for Basin Bridge

47. The scheduled completion date was 12 months from the date of handing over the site. The plaintiff commenced work on 25.01.1994 and completed the same on 02.11.1995. The plaintiff made an aggregate claim of Rs.41,77,366.92/- under this contract. This aggregate claim comprised a claim of Rs.1,09,096.40/- towards unpaid bills, a sum of Rs.7,74,415.12/- towards balance due towards escalation, a sum of Rs.7,96,208/- towards reimbursement of interest deducted towards mobilisation advance, security deposit and additional security deposit and a sum of Rs.23,50,000/- towards idling charges. I first deal with the escalation claim.

48. The contract documents included Articles of Agreement dated 30.05.1994 (the Articles of Agreement) (part of Ex. P-26) specifying the consideration of Rs.2,29,51,000/- calculated with reference to the rates



specified in the schedule. The schedule set out unit rates and estimated quantities. Clause 8 of the Articles of Agreement specified as under:

“8. The Board shall make payment to the contractor in accordance with the unit rates provided against the various items in the Schedule of accepted prices as specified in the specification irrespective of the fact whether the amount exceeds Rs.2,29,51,000/- (Rupees two crores twenty nine lakhs and fifty one thousand only) or not.”

Clause 7 of the Instructions to Bidders (also part of Ex. P-26) deals with prices and rates and provides for escalation as follows:

“7.4 In case the Tenderer insists on an escalation clause, appended to his tender, he shall furnish the formula for escalation along with a separate ceiling on escalation for labour, material, fuel, etc., and base date for operation of escalation (Also refer clause 83 of Section 'D').

7.5 The Contractor shall clearly indicate either a price variation formula for escalation alongwith separate ceiling under each head or other means for regulating payment in the event work spills over the contract period now envisaged due to reasons attributable to TNEB. The contractors shall furnish ceiling for various components on the balance work. The ceiling percentage is to be applied on the contract value.”



49. While submitting its offer on 03.02.1992 (Ex. P-26, page 170 of volume VI), the plaintiff specified a price escalation formula. The base date was fixed as the date of tender, i.e. February 1992. This formula provided for the adoption of the minimum wage rate as per the Minimum Wages Act and rules framed thereunder for calculating escalation on labour costs. With regard to materials (other than cement and steel), it provided for the adoption of the All India Wholesale Price Index (All Commodities) published by the Reserve Bank of India. As regards petroleum, oil and lubricants (P.O.L.), it provided for adoption of the rates at the filling station closest to the project site. The plaintiff's price escalation formula was accepted by the defendant in the letter of acceptance subject to the following ceilings:

“1.1) The accepted rates given in the annexed schedule shall be kept firm during the entire contract period subject to the variations as detailed below:-

The contractors shall be paid for escalation on the cost of labour, materials, (other than cement and steel), and P.O.L. on the basis of the formula indicated. The overall ceiling is as shown below:-

a) For all periods within the contract period: 1 ½

% contract value

b) For a period upto 12 months beyond the schedule date of completion: 2 ½ % of contract value



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*c) Beyond the above period as mentioned in b) above:
Escalation formula to be reviewed and revised by mutual
agreement with TNEB.*

50. By letter dated 06.10.1997 (Ex. P-44), the plaintiff computed escalation as per the formula in a total sum of Rs.39,49,825.10/-. Thereafter, the plaintiff applied the agreed overall ceilings on the executed contract value of Rs.2,79,62,646/- and claimed an aggregate sum of Rs.11,18,680/- towards escalation. After giving credit to the sum of Rs.3,44,265/-, which was paid by the defendant, a net claim for Rs.7,74,415/- was made in this suit. The defendant contended that the plaintiff was only entitled to 1½ % on the value of Rs.2,29,51,000/- specified in the contract documents. As is evident from clause 8 of the Articles of Agreement and clause 21 of the Instructions to Bidders, this contract is a unit rate contract and payment is on measure-and-pay basis. Consequently, the calculation of the ceilings as a percentage of the executed value of work is in consonance with the contract. Besides, as noticed above, as per the escalation formula, the claim is Rs.39,49,825.10/-. Hence, I conclude that the plaintiff is entitled to the sum of Rs.7,74,415.12/-. As a corollary, the counter claim of the defendant towards alleged excess payment of Rs. 1,53,712/- as escalation is rejected.



51. As regards unpaid bills, the plaintiff claimed a sum of Rs. 2,56,743.80/- in paragraphs B (ix) of the plaint and 4 (e) of the reply statement by asserting that the total value of work done is Rs.2,79,67,003.80/-. The defendant denies this claim by stating that the total value of work done is Rs.2,78,19,219/- and not Rs. 2,79,67,003.80/- as per the measurement book. The defendant states that a sum of Rs. 2,77,10,260/- was paid to the plaintiff for this contract. In the reply statement, the plaintiff admits receipt of this amount. The defendant did not exhibit the measurement book and the plaintiff also failed to adduce credible evidence on the total value of work done. In paragraph B (xvi) of the plaint, the plaintiff makes a lower monetary claim of Rs.1,09,096.40/- towards unpaid bills in this contract while making a total claim of Rs. 41,77,362.92/-. The defendant provided a revised calculation in course of final hearing that Rs.1,08,959/- + Rs. 2051/- = Rs.1,10,010/- is payable. In those circumstances, I conclude that the admitted sum of Rs.1,11,010/- is payable on this account.

52. With regard to excavation below the water table, the plaintiff claimed that the rate for such work is Rs.130/- per cubic metre. The said contention is advanced by interpreting the SOR. The relevant entries in the SOR are as under:



Sl. No. (1)	Description of items (2)	Unit (3)	Quantity (4)	Rate		Amount in Rs. (7)
				In fig (5)	In words (6)	
1.	Excavation in the dry soil (for all types of soils) for any section including all labour and equipments, sheeting, shoring, excavation lifting, hauling and stockpiling of excavated material for all lifts and for all leads within the project area as per specifications.	M ³	3500.0	Rs.30/-	Rupees Thirty only	1,05,000
2.	Extra for excavation below water table (for all types of soil) for any section including all labour and equipment, sheeting, shoring, excavating, lifting, hauling, stockpiling of excavated material and all labour and equipments for de-watering and maintaining dry working conditions during excavation, demolition/dismantling work and backfilling as per specifications.	M ³	3000.0	Rs.100/ -	Rupees One hundred only	3,00,000



53. The first SOR item relates to excavation in dry soil. By estimating the quantity of work at 3500 cubic metres, at the rate of Rs.30/- per cubic metre, the price has been fixed at Rs.1,05,000/- for this SOR item. Item 2 relates to excavation below the water table. Because the phrase used is “extra for excavation below water table”, the plaintiff contended that the rate should be Rs.30/- + Rs.100/-, i.e. Rs.130/- per cubic metre. On examining this SOR item, it is evident that the quantity was estimated at 3000 cubic metres. At the rate of Rs.100/- per cubic metre, the total price of Rs.3,00,000/- was arrived at. Thus, it is very clear from this SOR item that the rate fixed for excavation below the water table was Rs.100/- per cubic metre and not Rs.130/- per cubic metre, as contended by the plaintiff.

54. The plaintiff requested for reimbursement of Rs.7,96,208/-, which was recovered by the defendant as interest on the mobilisation advance and security deposit. Clause 4.0 of the letter of acceptance (part of Ex. P-26 at page 236 of volume VI) provides as under regarding mobilisation advance:

“ 4.0) MOBILISATION ADVANCE: The request for the payment of mobilisation advance at 10% value of contract is agreed against submission of Bank Guarantee and you have agreed to pay the interest for the mobilisation advance. Hence an amount of Rs. 22,95,100/- towards mobilisation advance (10% of contract value) will be paid to you as a



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special case. You are requested to pay the interest to 20% for the above amount and produce the Bank Guarantee at convenient units for the Mobilisation advance.”

The mobilisation advance is in the nature of a loan. Therefore, even assuming that the plaintiff was not responsible for delay in execution, the plaintiff is not entitled to reimbursement of interest on mobilisation advance.

55. Clause 2.0 of the letter of acceptance (part of Ex. P-26 at page 235 of volume VI) deals with security deposit as follows:

“ 2.0) SECURITY DEPOSIT: You are exempted from paying EMD, as your firm is a permanent deposit holder with Tamil Nadu Electricity Board. However you have to pay a sum of Rs.4,59,020/- towards Security Deposit for the above work. But your request to pay the Security Deposit by Bank Guarantee for the above amount together with interest is accepted. Hence you are requested to submit the Bank Guarantee for the above amount including interest at 20% in convenient units within 15 days from the date of receipt of this letter. The interest at 20% on Bank Guarantee towards Security Deposit will be recovered in the first running account bill payable to you. The payment of Security Deposit will be refunded to you only after the expiry of the maintenance/guarantee period. If you fail to furnish the above Security Deposit within the above stipulated period then this acceptance letter is liable to be cancelled.”



While a security deposit cannot be equated with a loan, it appears from the above clause that the defendant agreed to accept a bank guarantee towards security deposit on condition that such bank guarantee be topped-up to include interest at 20% on Rs. 4,59,020/- and subject to the condition that this would be recovered from the first running account bill. In view of this express contractual stipulation, the plaintiff is not entitled to reimbursement of this amount.

56. The plaintiff also claimed a sum of Rs.23,50,000/- towards idling for 94 days. The contract between the parties expressly excludes any claim for idling by specifying as under at clause 2.8 of the Instructions to Bidders:

“2.8 Idle time charges for any reason whatsoever shall not be entertained by the owner.”

Even otherwise, the plaintiff has not provided any evidence in support of the disruption claim. Therefore, the said claim cannot be sustained and is rejected.

Counter claims of defendant in piling work contract

57. The plaintiff contended that execution was delayed due to belated release of pile drawings, non-availability of work front, increase in the number of piles and significant increase in underground obstructions. As regards the increase in the number of piles, by referring to the relevant SOR item, learned counsel for the plaintiff pointed out that it provides for driving piles in an area



of 20,250 metres. By taking into account the piling depth of 13.5 metres, he submitted that it works out to 1500 piles (20250 divided by 13.5). As against 1500 piles, he submitted that the agreed position is that 2023 piles were driven by the plaintiff. In response to this contention, learned counsel for the defendant submitted that clause 5.0 of the letter of acceptance enables increase in the quantities of individual items of work and that no claim is maintainable in respect thereof. Clause 5 of the letter of acceptance is as under:

“5.0 QUANTITY VARIATION:

If the value of the work increases to more than 25% and upto 50%, prices will remain firm except for payment of escalation as per escalation formula indicated in your offer. In case the value of the works are less than 25% and upto 50% then your rates for all the items quoted will be enhanced by 10%.

The above limit of variation is for the total contract value only and the individual item can vary to any extent. You can not claim any extra payment on this account.”(emphasis added)

58. As contended by learned counsel for the defendant, the above clause expressly enables variation in the quantity of individual items and excludes any claim for extra payment on that account. The plaintiff, however, has not made a



claim for extra payment on account of the increase in the number of piles.

Instead, the increase in the number of piles is cited as a reason for delay in execution of the contract. On examining the relevant SOR item, the contention of learned counsel for the plaintiff that it indicates that 1500 piles would be driven over an extent of 20250 metres is liable to be accepted. The tender documents specified the approximate number of piles as 1650 (page 153 of volume VI), but clarified that this was approximate and tentative and that the actual number would be decided only during detailed engineering. Even so, since the total number of piles that were driven was 2023, which is a substantial increase over the number envisaged in the contract, it is likely that the time taken for execution would increase proportionately. To that extent, I conclude that the said increase in quantity of work would justify an extension of the contract period.

59. DW1 was questioned about the delay in release of drawings. The following question and answer during cross-examination on 25.01.2019 is pertinent on this issue:

“Q: I therefore put it to you that even after the Scheduled completion date which is 24/1/1995, drawings for construction were being released by the defendant to the plaintiff?”



A: Yes, last lap of drawing was released after 24/1/1995 was on the ground of delayed particulars made by the plaintiff.”

With regard to underground obstructions, the following question and answer of DW1 during cross-examination on 01.10.2019 is pertinent:

“Q: I therefore put it to you that the plaintiff had removed almost 583% in excess of quantity in respect of underground obstruction as compared to the quantity as set out in the BOQ?

A: Perhaps it could have been on actuals, as the defendant was unassumed for the predictability of underground obstructions, the conditions were framed in the tender for the tenderers to shoulder the sole grounds of responsibility to remove the underground obstructions by means of rigorous process of data examination.”

In this factual matrix, learned counsel for the defendant submitted that piling work was delayed in the contract because the plaintiff did not provide the dynamic test results for the piles. Neither party has placed on record the critical path for the execution of this project. While clause 2.2 of the Instructions to Bidders (Ex. P-26 at page 10 of volume VI) contains a break-up of work with a broad time schedule, this does not appear to list sequential activities. Merely on the basis of communications regarding the non-provision of drawings or the non-provision of the dynamic test results for the piles, no rational conclusion may be recorded regarding the impact thereof on the execution of work. Put



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differently, any construction project consists of activities that may be carried out sequentially or concurrently. Unless the record shows the sequential activities and also provides evidence of impact of particular delay events on such sequential activities, it cannot be decided as to whether a particular delay event actually impacted the execution of the contract as per the specified time schedule. In the absence of actionable evidence in this regard, it is not possible to conclude whether the belated supply of pile drawings by the defendant or the non-supply of dynamic test results by the plaintiff impacted the execution and, if so, the extent of such impact.

60. Given that the burden of proof lies on the defendant in this connection, the levy of liquidated damages is not sustainable in the absence of proof that such delay was attributable to the plaintiff. Therefore, I conclude that the defendant has failed to establish its entitlement to levy liquidated damages of Rs.13,90,968/- for delayed execution.

61. For reasons set out while determining the plaintiff's escalation claim, the counter claim for recovery of Rs.1,53,712/- towards alleged excess escalation is rejected. The defendant also counter claimed penal interest of Rs.7689/- on the unadjusted portion of the mobilisation advance and



Rs.1,27,708/- on the counter claims by the defendant. On examining the contract, I do not find contractual basis to levy the same. During cross-examination on 09.03.2020, DW1 was questioned on this issue. The relevant question and answer are as under:

“Q: Can you then point out the clause in Ex.P26/Ex.D26 where the defendant has the power to levy penal interest in respect of mobilisation advance?”

A: There is no clause in the contract entitling the levy of penal interest and further no penal interest has been levied.

Therefore, the penal interest counter claims are rejected. Although clause 3.0 of the letter of acceptance (part of Ex. P-26 at page 235 of volume VI) provides for the levy of 20% interest on the retention amount, it provides for the deduction thereof from the running account bills. Except for mentioning in the enclosure to letter dated 26.04.2000 (Ex. D-88 at page 228 of volume IV) that a claim of Rs.2,27,889/- is made towards interest on R.A. (period 9.1.96 to 2.11.96), no details were provided to substantiate the claim. Therefore, this claim is rejected. For the same reason, the smaller counter claims in this contract of Rs.77,005/- towards interest on security deposit, Rs. 2179/- + Rs.327/- towards income tax, including surcharge, C.C. Charges, etc. are rejected.



62. Thus, the plaintiff is entitled to receive an aggregate sum of Rs.8,84,425.12/- (Rs.1,11,010/- as the agreed amount towards unpaid bills plus the net payable of Rs.7,74,415.12/- towards balance payable as escalation). All the counter claims of the defendant are rejected for reasons stated above.

Civil and Structural Works at Basin Bridge

63. As in the case of the piling work contract, the plaintiff made a claim of Rs.75,58,200/- towards idling charges. In the tender documents, at clause 2.8 of the Instructions to Bidders, it was specified as under:

“2.8 Idle time charges for any reason whatsoever shall not be entertained by the OWNER.”

The above disruption claim of Rs.75,58,200/- was made for alleged inability to utilise men and materials for 650 days. Apart from the contractual prohibition, the said claim cannot be sustained on account of the complete lack of evidence in support of the claim.

64. A claim for excavation below the water table was made. Such claim was made by asserting that payment should be made at Rs.140/- per cubic metre. The relevant SOR items are as under:



Sl. No. (1)	Description of items (2)	Unit (3)	Quantity (4)	Rate In figure In words (5)		Amount in Rs. (6)
2(i)	Excavation, in the dry (for all types of soil) for any section including all labour and equipment for sheeting, shoring, excavation, lifting, hauling and stock piling of excavated material for all lifts and for all lead within the project area as per specifications.	M ³	20,000	Rs.60/-	Rupees Sixty only	12,00,000
2(ii)	Extra for excavation below water table (for all types of soil) for any section including all labour and equipment for sheeting, shoring, excavating, lifting, hauling, stockpiling of excavated material and all labour and equipments for de-watering and maintaining dry working area during excavation, concreting and backfilling as per specifications.	M ³	14,000	Rs.80/-	Rupees eighty only	11,20,000



65. SOR item 2(i) deals with excavation in dry soil. By estimating the total quantity at 20,000 cubic metres and providing the rate of 60 per cubic metre, the total price of Rs.12,00,000/- has been arrived at. In SOR item 2(ii), by estimating the quantity at 14,000 cubic metres, at the rate of Rs.80/- per cubic metre, the total price of Rs.11,20,000/- has been arrived at. By emphasising the word 'extra' in the phrase “extra for excavation below water table”, the plaintiff has claimed at the rate of Rs.140/- (Rs.60/- + Rs.80/-) per cubic metre. As described above, SOR item 2(ii) proceeds on the basis that the rate is Rs.80/- per cubic metre for excavation below the water table and not at Rs.140/- per cubic metre. Hence, the plaintiff's interpretation is not in consonance with the SOR item.

66. A claim of Rs.14,63,910/- was made in respect of disposal of surplus earth on the ground that it was disposed of beyond the project area and that it, consequently, qualifies as additional work. The plaintiff asserts that 14639.105 cubic metres of excavated earth were transported and that it is entitled to Rs.14,63,910/- at Rs.100/- per cubic metre. The defendant denied this claim on the ground that clause 1.4.0 of the Technical Specifications for Earth Work specifies that the unit rate for excavation includes all related activities, including transportation of surplus earth for disposal. Therefore, it was



contended that this claim is untenable. Clause 1.4.0 (Ex. P-55 at page 39 of volume VII) is as under:

“ 1.4.0 Disposal of surplus earth

*The contractor shall arrange to transport the surplus excavated soil remaining after backfilling to any place **within the project area** as directed by the Engineer-in-charge. The soil so transported shall be stacked and levelled neatly. The unit rate for excavation shall including loading, transporting, unloading and stacking, levelling complete. The disposal area shall be intimated by the Engineer-in-charge.”*
(emphasis added)

67. The expression “project area” is not defined in the contract. If the place at which the disposal was done were to be construed as part of the project area, the plaintiff would not be entitled. On the other hand, if the place of disposal were to be construed as outside the project area, the plaintiff would be entitled to its claim. The plaintiff has made this claim with details set out *inter alia* in Annexure V of letter dated 04.11.1998 (Ex. P-45 at page 85 of volume-III). In letter dated 28.06.1999 from the plaintiff to the defendant (Ex. P-80 at page 195 of volume III), this claim was reiterated by contending that the additional lead is five times more than in the plant area. The plaintiff also included this claim in the 19th R.A. Bill (part of Ex. P-73 in volume III). Ex.D58 clearly shows that the defendant called upon the plaintiff to dispose of



surplus earth at a different location. The defendant has been unable to establish that the surplus earth was disposed of within the project area. Therefore, I conclude that the plaintiff is entitled to this claim.

68. The plaintiff also made a claim for escalation. With regard to escalation, clause 7.3 and 7.4 of the Instructions to Bidders (Ex. P-55 at page 319 of volume VII) is identical to the clauses from the piling work contract extracted at paragraph 38 above. In addition, clause 83.0 of the General Conditions of Contract (GCC) provides as under:

“83.0 Price Variation Clause:

*The tenderer has to indicate clearly whether his offer is a firm price contract without escalation or whether the prices are subject to escalation. In case the prices are not firm, the tenderers are to specify their own formulae for escalation specifying percentages of labour, material, and other components on which they want escalation as well as the base date for the operation of escalation. Separate ceiling for escalation for labour, material and fuel shall also be indicated. The tenderers are also informed that if nothing is specified in their tender about escalation, their offer will be taken as **'FIRM WITHOUT ESCALATION'** for the entire period of work including any agreed extensions thereto. If*



the tenderers give only the escalation formulae without any ceiling, their tenders will be summarily rejected.”

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Clause 87 provides as follows with regard to additional claims:

“87.0 ADDITIONAL CLAIMS BY THE CONTRACTOR

The contractor should note that any extra claims such as supplementary items, escalation, extra lead etc. shall be preferred by the contractor within three months from the date of completion of the work. Belated claims will not be entertained. ”

69. It is common ground between the parties that the plaintiff did not request for an escalation clause in the contract and specify the escalation formula. Clause 1.1 of the letter of acceptance is also relevant in this connection. The said clause is as under:

“1.1) The accepted rates given in the annexed schedule shall be kept 'FIRM' during the entire contract period subject to the variations as detailed below:

(a) Rates mentioned in the accepted schedule under this contract, will hold good for a plus or minus 25% variations.

(b) In case the variation is beyond (+) 25% and upto (+) 50% i.e. increase in the quantities, the rates will be increased by 5% (Five percent only).



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(c) *In case the variation is of the order of (-) 25% to (-) 50%, (i.e.) decrease in the quantities, the rates will be increased by 7 ½ %.*

(d) *For variations exceeding these limits, separate rates will be negotiated. It shall be specifically noted that TNEB shall not pay any increase in rates over those accepted herein for the delay in completion of works under any circumstances.”*

Thus, except with regard to a variation of not less than 25% in the total contract value, parties agreed that the prices would remain firm until completion of work, including during extended periods. While escalation may be granted when the contract is silent (*P.M. Paul v. Union of India 1989 Supp (1) SCC 368*), it cannot be granted when there is an unequivocal prohibition even in the extended period. Because of the nature of the clause, therefore, even the judgment of the Supreme Court in *Assam State Electricity Board and others v. Buildworth (P) Ltd. (2017) 8 SCC 146* does not come to the aid of the plaintiff. By taking note of these contractual clauses, the escalation claim is rejected.

70. A claim for reimbursement of interest of Rs.19,60,883/- on mobilisation advance was made by the plaintiff. Since such mobilisation advance is in the nature of a loan, the request for reimbursement cannot be entertained. The plaintiff also claimed refund of the security deposit of



Rs.13,37,370/- and additional security deposit of Rs.19,544/-. On account of completion of work and the expiry of the maintenance/defect liability period, the plaintiff is entitled to such refund. Indeed, as regards the latter, the defendant has admitted the liability in the written statement.

71. A claim of Rs. 9,79,333.89/- was made by the plaintiff towards balance due on supplementary or additional work. In the plaint at paragraph C (x) e) details of the 12 items of work are provided. Ex. P-45 contains further details of such supplementary work in Annexure VII thereto at page 86 of volume III. The said Annexure mentions the aggregate claim of Rs.44,69,128.87/- and the net claim of Rs.9,79,333.89/- after giving credit to the sum of Rs.34,89,794.98/- received earlier by way of part payment towards all 12 items of work. In the written statement, the defendant admits that 10 items of additional work were executed and that a sum of Rs.5,22,206/- is payable on this account. As regards the sun shade facia work, it is stated that it is covered in clause 2.1.6 of Section-1 of the specification and that brick work in II sort was substituted for brick work in sort I. By letter dated 29.04.1999 from the plaintiff to the defendant (Ex. P-49 at page 101 of volume III), it was clarified by the plaintiff that part payment for all 12 items were made with the approval of the Chief Engineer and that an executed and measured work cannot



be deleted. This contention is valid. Therefore, I hold that the plaintiff is entitled to the entire balance claim of Rs. 9,79,333.89/- under this head.

72. The plaintiff also made a claim of Rs. 5,46,271/- for constructing reinforced concrete (RC) walls for the earth pits. On the basis that this is additional work, the above claim was made. In the written statement, the defendant does not deny that this work was executed or that it constitutes additional work. The contention of the defendant, in relevant part, is set out below (internal page 28 of amended written statement):

“ d) The plaintiff has failed to give rebate for the 'associated civil works' as agreed during the meeting held with the Chief Engineer/Civil Designs on 23.6.98. As the specification was changed to suit the requirement of defendant, payments are to be paid separately for this item of work done by the plaintiff. As such the plaintiff has to give rebate for the portion of the work that is for 'associated civil works' which the plaintiff has not actually done while providing the earth pit, per the revised specification. Hence, this item could not be finalised....”

The above contention has been raised after the work was executed without mentioning the agreed rebate. Especially in the context of a unit rate contract, wherein payment is made on 'measure-and-pay' basis, the defence is tenuous



and cannot be accepted. Hence, I conclude that the plaintiff is entitled to this claim.

73. Thus, out of the plaintiff's claims, the following are accepted: Rs.14,63,910/- towards extra lead; Rs.13,37,370/- towards refund of security deposit; Rs.19,544/- towards refund of additional security deposit; Rs.9,79,333.89/- towards additional work; and Rs.5,46,271/- towards RC walls for earth pits. This aggregates to a sum of Rs. 43,46,428.89/-.

Counter claims of defendant for civil and structural work at Basin Bridge

74. The defendant alleges that the plaintiff is responsible for the delay in execution of the contract and has claimed a sum of Rs.35,43,255/- as liquidated damages in the amended written statement. Such claim is made on the basis that all drawings were provided by 09.10.1995, whereas the contract was completed in September 1997. The plaintiff refuted these contentions on the basis that work was delayed due to delayed issuance of drawings, which were issued even in the 26th month after the site was handed over and non-availability of work front. As recorded in relation to the piling work contract, the defendant has not placed on record the critical path for execution of the contract. Even a bar chart indicating key events and time lines in relation thereto has not been provided.



In these circumstances, as stated earlier, it is not possible to rationally determine the reasons for delay and attribute responsibility for such delay.

Questions were put to DW1 on whether the defendant had adduced proof of loss in respect of each contract with regard to the claim of liquidated damages, and the consistent answer across these contracts was that there is no proof of loss. The question and answer recorded on 09.03.2020 as regards proof of loss in the civil and structural work at Basin Bridge is as follows:

“ Q: Would I therefore be correct in suggesting that in so far as the civil and structural work is concerned no proof of losses for liquidated damages has been filed?

A: Yes, the replies given in other two contracts is having the striking similarity for these annotations. ”

Because the burden of proof with regard to the counter claim towards liquidated damages is on the defendant, I conclude that the defendant has failed to establish that it is entitled to impose liquidated damages for delay by the plaintiff.

75. The defendant also counter claimed a sum of Rs.9,22,215/- towards supply of materials, Rs.47,985/- towards recovery of excess amount paid in R.A. Bill XIX and part. As regards supply of materials, there is significant disparity between the counter claim of Rs.1,56,975/- made only towards supply of G.I. Flats in the first filed written statement and the counter claim of Rs.



9,22,215/- made in the amended written statement. Both in the proof affidavit and in the cross-examination, DW1 did not identify relevant documentary evidence or even provide details of recoveries. Considering the above aspects, the defendant has failed to discharge the burden of proof in this regard and, consequently, the counter claim for recovery towards materials issued and alleged excess payments is rejected. In view of the rejection of these counter claims, it becomes immaterial as to whether the amended counter claims are within the period of limitation.

76. In sum, as regards this contract, the plaintiff is entitled to an aggregate sum of Rs.43,46,428.89/- (Rs.14,63,910.50/- + Rs.13,37,370/- + Rs.19544/- + Rs.9,79,333.89/- + Rs.5,46,271/-).

Net payables across all three contracts

77. Upon reckoning net payables in all three contracts, across the three contracts, the defendant is liable to pay Rs. 43,46,428.89/- + Rs.8,84,425.12/- - Rs.12,60,890/- = Rs.39,69,964.01/-, which is rounded off as Rs.39,69,964/- to the plaintiff. By taking into account inflation and interest rates during the relevant period, I fix the rate of interest on the principal sum at 9% per annum



from the date of plaint until realisation. Issues (i), (v) and (vi) are disposed of on these terms.

Issue Nos. (ii), (iii) and (iv)

78. The work in relation to the Tuticorin Thermal Power Project was completed on 31.05.1993; the work in relation to piling at Basin Bridge was completed on 02.11.1995; and the civil and structural work at Basin Bridge was completed on 30.09.1997. The defect liability period of one year also ended several decades ago. Therefore, the plaintiff is entitled to completion certificates. With regard to return of bank guarantees, as discussed earlier, several bank guarantees for an aggregate sum of Rs.75,00,000/- were provided to the defendant earlier. These bank guarantees were directed to be returned by order dated 03.08.2000 in O.A. No.567 of 2000 subject to the plaintiff submitting a bank guarantee for a sum of Rs.24,00,000/-. On account of holding that there is a net payable by the defendant to the plaintiff, this bank guarantee is liable to be returned for cancellation. These issues are disposed of on these terms.

Issues (vii) and (viii)



79. As the partly successful party, the plaintiff is entitled to proportionate costs. The plaintiff had paid a sum of Rs. 3,92,405/- as court fees and is entitled to a sum of Rs.1 lakh towards the same. The plaintiff is also entitled to a sum of Rs.4,00,000/- towards lawyer's fees and expenses. In the aggregate, the defendant is liable to pay a sum of Rs.5 lakhs as costs to the plaintiff.

80. In the result, the suit is decreed as under:

(i) The defendant is directed to pay a net sum of Rs.39,69,964/- (after setting off the net allowed counter claims of Rs.12,60,890/- from and out of the aggregate allowed counter claims of Rs.21,38,191/-) to the plaintiff with interest thereon at 9% per annum from the date of plaint until realisation.

(ii) The counter claims are partly allowed to the extent indicated in the judgment with no net payables by the plaintiff to the defendant.

(iii) The defendant is directed to issue completion certificates in respect of civil work for the Tuticorin Thermal Power Project, piling work for the Gas Turbine Power Project at Basin Bridge and civil and structural work for the Gas Turbine Power Project at Basin Bridge.



(iv) The defendant is directed to return for cancellation the bank guarantee for the sum of Rs.24,00,000/- procured and provided by the plaintiff in terms of order dated 03.08.2000 in O.A. No.567 of 2000.

(v) The defendant is directed to pay an aggregate sum of Rs.5 lakhs as costs to the plaintiff.

25.10.2025

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

Tamil Nadu Generation and Distribution
Corporation Limited, N.P.K.R.R. Maligai,
800, Anna Salai, Chennai-600 002.
Represented by its Chairman.

Plaintiff's witness:

P.W.1 – Mr.R.Gopal

Defendant's witness:

D.W.1 - Mr.R.Ramraj

Documents exhibited by the plaintiff:

<i>Exhibit Nos.</i>	<i>Description</i>
Ex.P1	Original Articles of Agreement with Annexures dated 23.11.1989



<i>Exhibit Nos.</i>	<i>Description</i>
	entered into between the Plaintiff and Defendant.
Ex.P2	The photo copy of Bank Guarantee dated 10.08.2000 and its amendment dated 04.08.2010 given by the Plaintiff. (Ex.P2 is marked subject to the objection that the document is xerox copy.) (The defendant in his written statement at page 41 admitted the contents of the document, hence it is marked.)
Ex.P3	The photo copy of Latest renewed Bank Guarantee dated 05.08.2016 given by the Plaintiff. (Ex.P3 is marked subject to the objection that the document is xerox copy.)
Ex.P4	The original Letter dated 11.09.1991 sent by the Defendant to Plaintiff.
Ex.P5	The office copy of Letter dated 27.09.1991 taking over site sent by the Plaintiff to Defendant.
Ex.P6	The original Letter dated 19.11.1991 sent by the Plaintiff to Defendant.
Ex.P7	The original Letter dated 13.06.1992 sent by the Plaintiff to Defendant.
Ex.P8	The office copy of Letter dated 21.09.1992 sent by the Plaintiff to Defendant.
Ex.P9	The original Letter dated 03.11.1992 sent by the Plaintiff to Defendant.
Ex.P10	The original Letter dated 17.12.1992 sent by the Plaintiff to Defendant.
Ex.P11	The copy of the Minutes of Meeting dated 30.01.1993.
Ex.P12	The original Letter dated 22.02.1993 sent by the Plaintiff to Defendant.
Ex.P13	The original Letter dated 16.02.1993 sent by the Defendant to Plaintiff.



<i>Exhibit Nos.</i>	<i>Description</i>
Ex.P14	The original Letter dated 30.03.1993 sent by the Defendant to Plaintiff.
Ex.P15	The original Letter dated 26.08.1993 sent by the Plaintiff to the Defendant.
Ex.P16	The original Letter dated 27.08.1993 sent by the Plaintiff to Defendant.
Ex.P17	The original Letter dated 08.11.1993 sent by the Defendant to Plaintiff.
Ex.P18	The office copy of Letter dated 12.01.1998 sent by the Plaintiff to Defendant.
Ex.P19	The office copy of Letter dated 13.04.1998 sent by the Plaintiff to Defendant.
Ex.P20	The office copy of Letter dated 13.04.1998 sent by the Plaintiff to Defendant.
Ex.P21	The office copy of Letter dated 09.07.1998 sent by the Plaintiff to Defendant.
Ex.P22	The original Letter dated 06.01.1999 sent by the Defendant to Plaintiff.
Ex.P23	The original Letter dated 19.01.1999 sent by the Plaintiff to Defendant.
Ex.P24	The original Letter dated 23.11.1999 sent by the Defendant to Plaintiff.
Ex.P25	The original Letter dated 15.12.1999 sent by the Plaintiff to Defendant.
Ex.P26	The copy of Articles of Agreement with Annexures (BBGTPP-piling) dated 30.05.1994 entered into between the Plaintiff and Defendant. (Original is filed by the defendant and hence copy is marked.)
Ex.P27	The office copy of Letter dated 23.03.1994 sent by the Plaintiff to Defendant.
Ex.P28	The office copy of letter dated 06.04.1994 sent by the Plaintiff to



<i>Exhibit Nos.</i>	<i>Description</i>
	Defendant.
Ex.P29	The office copy of Letter dated 28.07.1994 sent by the Plaintiff to Defendant.
Ex.P30	The original Letter dated 23.08.1994 sent by the Plaintiff to Defendant.
Ex.P31	The office copy of Letter dated 10.01.1995 sent by the Plaintiff to Defendant.
Ex.P32	The office copy of Letter dated 30.03.1995 sent by the Plaintiff to Defendant.
Ex.P33	The office copy of Letter dated 17.04.1995 sent by the Plaintiff to Defendant.
Ex.P34	The office copy of Letter dated 31.05.1995 sent by the Defendant to Plaintiff.
Ex.P35	The office copy of Letter dated 20.07.1995 sent by the Defendant to Plaintiff.
Ex.P36	The original Letter dated 29.07.1995 sent by the Plaintiff to Defendant.
Ex.P37	The original Letter dated 07.08.1995 sent by the Plaintiff to Defendant.
Ex.P38	The office copy of Letter dated 21.09.1994 by the Defendant to Plaintiff.
Ex.P39	The office copy of Letter dated 08.09.1995 sent by the Plaintiff to Defendant.
Ex.P40	The original Letter dated 14.09.1994 sent by the Plaintiff to Defendant.
Ex.P41	The original Letter dated 19.06.1995 sent by the Plaintiff to Defendant.
Ex.P42	The original Letter dated 11.08.1995 sent by the Plaintiff to Defendant.



<i>Exhibit Nos.</i>	<i>Description</i>
Ex.P43	The office copy of Letter dated 22.09.1995 sent by the Plaintiff to Defendant.
Ex.P44	The original Letter dated 06.10.1997 sent by the Plaintiff to Defendant.
Ex.P45	The original Letter with Annexures sent by the Plaintiff to Defendant dated 04.11.1998.
Ex.P46	The original Draft Bill prepared by the Plaintiff.
Ex.P47	The original Letter dated 16.03.1998 sent by the Plaintiff to Defendant.
Ex.P48	The original Letter dated 16.04.1999 sent by the Defendant to Plaintiff.
Ex.P49	The office copy of Letter dated 29.04.1999 sent by the Plaintiff to Defendant.
Ex.P50	The original Letter dated 15.05.1999 sent by the Defendant to Plaintiff.
Ex.P51	The office copy of Letter dated 28.06.1999 sent by the Plaintiff to Defendant.
Ex.P52	The original Letter dated 07.12.1999 sent by the Defendant to Plaintiff.
Ex.P53	The office copy of Letter dated 26.04.2000 sent by the Defendant to Plaintiff.
Ex.P54	The office copy of Letter dated 14.06.1994 sent by the Defendant to Plaintiff.
Ex.P55	The copy of Articles of Agreement with Annexures (BBGTPP-Civil Work) entered into between the Plaintiff and Defendant in July 1994. (Original is filed by the defendant and hence copy is marked.)
Ex.P56	The original Site handing over note by Plaintiff to Defendant dated 15.06.1994.
Ex.P57	The office copy of letter dated 28.07.1994 sent by the Plaintiff to Defendant.



<i>Exhibit Nos.</i>	<i>Description</i>
Ex.P58	The office copy of letter dated 07.09.1994 sent by the Plaintiff to Defendant.
Ex.P59	The original Letter dated 24.11.1994 sent by the Plaintiff to Defendant.
Ex.P60	The office copy of Letter dated 01.03.1995 sent by the Plaintiff to Defendant.
Ex.P61	The original Minutes of Meeting by Plaintiff and Defendant dated 21.09.1994.
Ex.P62	The office copy of Letter dated 05.12.1995 sent by the Plaintiff to Defendant.
Ex.P63	The office copy of Letter dated 22.02.1996 sent by the Plaintiff to Defendant.
Ex.P64	The office copy of Letter dated 18.03.1996 sent by the Plaintiff to Defendant.
Ex.P65	The office copy of Letter dated 27.04.1996 sent by the Plaintiff to Defendant.
Ex.P66	The office copy of Letter dated 08.07.1996 sent by the Plaintiff to Defendant.
Ex.P67	The office copy of Letter dated 25.09.1996 sent by the Plaintiff to Defendant.
Ex.P68	The office copy of letter dated 14.09.1994 sent by the Plaintiff to Defendant.
Ex.P69	The original Letter dated 11.08.1995 sent by the Plaintiff to Defendant.
Ex.P70	The office copy of Letter dated 10.02.1996 sent by the Plaintiff to Defendant.
Ex.P71	The original Letter dated 08.07.1998 sent by the Plaintiff to Defendant.
Ex.P72	The office copy of Letter dated 03.12.1996 sent by the Plaintiff to Defendant.
Ex.P73	The original Letter dated 30.09.1997 sent by the Plaintiff to



<i>Exhibit Nos.</i>	<i>Description</i>
	Defendant.
Ex.P74	The original Letter dated 12.09.1995 sent by the Plaintiff to Defendant.
Ex.P75	The office copy of Letter dated 20.04.1996 sent by the Plaintiff to Defendant.
Ex.P76	The office copy of Letter dated 31.07.1996 sent by the Plaintiff to Defendant.
Ex.P77	The original Final Bill dated 08.10.1997 submitted by the Plaintiff in respect of the Civil and Structural Works at Basin Bridge Gas Turbine Power Project to the Defendant.
Ex.P78	The original Letter dated 11.11.1999 sent by the Plaintiff to Defendant.
Ex.P79	The original Letter dated 08.12.1999 sent by the Defendant to Plaintiff.
Ex.P80	The office copy of Letter dated 28.06.1999 sent by the Plaintiff to Defendant.
Ex.P81	The office copy of Working Sheet prepared by the Plaintiff in support of the calculation made in Letter dated 28.06.1999.
Ex.P82	The original Statement of Claims filed by the Plaintiff.
Ex.P83	The original Letter dated 14.03.2000 sent by the Plaintiff to Defendant.
Ex.P84	The copy of Letter dated 25.05.2000 sent by the Defendant to Plaintiff.
Ex.P85	The copy of Letter dated 19.05.2000 sent by the Defendant to Plaintiff. (Original is filed by the defendant and hence copy is marked.)
Ex.P86	The copy of Letter dated 06.06.2000 sent by the Defendant to Plaintiff.

Documents exhibited by the Defendant:



<i>Exhibit Nos.</i>	<i>Description</i>
Ex.D1	The true extract of Defendant Proceeding B.P.No.209, dated 20.5.86. (Objected. Marked subject to admissibility and proof)
Ex.D2	The original Acceptance letter dated 03.03.1989 for the award of work sent by Defendant to Plaintiff.
Ex.D3	The original Article of Agreement dated 23.11.1989 entered into between Defendant and Plaintiff.
Ex.D4	The original Defendant Proceeding B.P. No.5 dated 09.01.1991 to recover mobilisation advance with 18% interest.
Ex.D5	The original letter dated 11.09.1991 Amendment issued to the original acceptance letter sent by Defendant to Plaintiff.
Ex.D6	The original site handing over copy dated 27.09.1991 signed by Defendant and Plaintiff.
Ex.D7	The original letter dated 09.01.1992 requesting D.G set sent by Plaintiff to Defendant.
Ex.D8	The original letter dated 21.09.1992 requesting the extension of time upto 24.12.92 sent by Plaintiff to Defendant.
Ex.D9	The original letter dated 03.11.1992 requesting the extension of time upto 31.01.93 sent by Plaintiff to Defendant.
Ex.D10	The original Minutes of Meeting dated 30.01.1993 held between Defendant and Plaintiff.
Ex.D11	The original letter dated 16.02.1993 for the Extension of time granted upto 25.03.93 sent by Defendant to Plaintiff.
Ex.D12	The original letter dated 11.03.1993 requesting the extension of time upto 15.05.1993 sent by Plaintiff to Defendant.
Ex.D13	The original letter dated 30.03.1993 for the Extension of time granted upto 30.04.93 sent by Defendant to Plaintiff.
Ex.D14	The original letter dated 19.04.1993 requesting to take back the DG set sent by Plaintiff to Defendant.
Ex.D15	The original letter dated 30.04.1993 requesting the Extension of time upto 31.05.93 sent by Plaintiff to Defendant.
Ex.D16	The original letter dated 08.11.1993 mentioning the date of



<i>Exhibit Nos.</i>	<i>Description</i>
	completion sent by Defendant to Plaintiff.
Ex.D17	The original Acceptance letter dated 29.11.1993 sent by Defendant to Plaintiff.
Ex.D18	The original letter dated 10.01.1994 by accepting the Bank Guarantee sent by Defendant to Plaintiff.
Ex.D19	The office copy dated 23.02.1994 informing the amendment -1 sent by Defendant to Plaintiff.
Ex.D20	The office copy dated 09.03.1994 informing the progress review sent by Defendant to Plaintiff.
Ex.D21	The office copy dated 19.03.1994 issuing clarification to the amendment -1 sent by Defendant to Plaintiff.
Ex.D22	The original letter dated 23.03.1994 informing the delay in progress of work sent by Defendant to Plaintiff.
Ex.D23	The original letter dated 13.04.1994 informing the delay in work sent by Defendant to Plaintiff.
Ex.D24	The original letter dated 19.04.1994 requesting to furnish the programme of work sent by Defendant to Plaintiff.
Ex.D25	The original acceptance letter dated 25.05.1994 sent by Defendant to Plaintiff.
Ex.D26	The original Article of Agreement and Instruction to Bidders dated 30.05.1994 entered into between Defendant and Plaintiff.
Ex.D27	The original Article of Agreement for Civil and Structural work entered into between Defendant and Plaintiff.
Ex.D28	The original letter dated 22.08.1994 informing the slow progress of work sent by Defendant to Plaintiff.
Ex.D29	The original letter dt. 25.08.1994 enclosing the abstract of 591st Meeting held on 08.08.1994 by Defendant's correspondences.
Ex.D30	The original letter dated 31.08.1994 sent by Defendant to Plaintiff.
Ex.D31	The original letter dated 03.09.1994 sent by Defendant to Plaintiff.
Ex.D32	The original letter dated 30.09.1994 sent by Defendant to



<i>Exhibit Nos.</i>	<i>Description</i>
	Plaintiff.
Ex.D33	The office copy dated 01.10.1994 sent by Defendant's correspondences.
Ex.D34	The original letter dated 14.10.1994 sent by Defendant to Plaintiff.
Ex.D35	The office copy dated 03.12.1994 sent by Defendant to Plaintiff.
Ex.D36	The office copy dated 08.12.1994 sent by Defendant to Plaintiff.
Ex.D37	The original letter dated 18.01.1995 sent by Plaintiff to Defendant.
Ex.D38	The office copy dated 14.02.1995 sent by Defendant to Plaintiff.
Ex.D39	The office FAX message copy dated 18.02.1995 sent by Defendant to Plaintiff.
Ex.D40	The original FAX dated 22.02.1995 sent by Plaintiff to Defendant.
Ex.D41	The office copy dated 28.02.1995 sent by Defendant to Plaintiff.
Ex.D42	The original letter dated 01.03.1995 sent by Defendant to Plaintiff.
Ex.D43	The original FAX dated 02.03.1995 sent by Defendant to Plaintiff.
Ex.D44	The original letter dated 06.03.1995 sent by Defendant to Plaintiff.
Ex.D45	The office copy dated 13.03.1995 sent by Defendant to Plaintiff.
Ex.D46	The office copy dated 20.03.1995 sent by Defendant to Plaintiff.
Ex.D47	The office copy dated 24.03.1995 sent by Defendant to Plaintiff.
Ex.D48	The original letter dated 05.04.1995 sent by Defendant to Plaintiff.
Ex.D49	The original letter dated 24.04.1995 sent by Defendant to Plaintiff.
Ex.D50	The original letter dated 25.04.1995 sent by Defendant to Plaintiff.
Ex.D51	The original letter dated 31.05.1995 sent by Defendant to



<i>Exhibit Nos.</i>	<i>Description</i>
	Plaintiff.
Ex.D52	The original letter dated 12.06.1995 sent by Plaintiff to Defendant.
Ex.D53	The original letter dated 20.07.1995 sent by Defendant to Plaintiff.
Ex.D54	The office copy dated 25.07.1995 sent by Defendant to Plaintiff.
Ex.D55	The original letter dated 20.09.1995 sent by Defendant to Plaintiff.
Ex.D56	The office copy dated 06.03.1996 sent by Defendant to Plaintiff.
Ex.D57	The office copy dated 20.08.1996 sent by Defendant to Plaintiff.
Ex.D58	The original letter dated 21.08.1996 sent by Defendant to Plaintiff.
Ex.D59	The office copy dated 11.04.1997 sent by Defendant to Plaintiff.
Ex.D60	The office copy dated 23.04.1997 sent by Defendant to Plaintiff.
Ex.D61	The original letter dated 10.06.1997 sent by Defendant to Plaintiff.
Ex.D62	The original letter dated 10.06.1997 sent by Defendant to Plaintiff.
Ex.D63	The original letter dated 13.06.1997 sent by Defendant to Plaintiff.
Ex.D64	The office copy dated 24.06.1997 sent by Defendant to Plaintiff.
Ex.D65	The office copy dated 02.07.1997 sent by Defendant to Plaintiff.
Ex.D66	The original letter dated 07.07.1997 sent by Plaintiff to Defendant.
Ex.D67	The original letter dated 11.07.1997 sent by Plaintiff to Defendant.
Ex.D68	The original letter dated 30.06.1998/04.07.1998 sent by Defendant to Plaintiff.
Ex.D69	The original letter dated 09.07.1998 sent by Plaintiff to Defendant.
Ex.D70	The office copy dated 31.07.1998 sent by Defendant to Plaintiff.



<i>Exhibit Nos.</i>	<i>Description</i>
Ex.D71	The office copy dated 14.09.1998 sent by Defendant to Plaintiff.
Ex.D72	The original letter dated 26.09.1998 sent by Plaintiff to Defendant.
Ex.D73	The office copy dated 17.10.1998 sent by Defendant to Plaintiff.
Ex.D74	The office copy dated 30.12.1998 sent by Defendant to Plaintiff.
Ex.D75	The office copy dated 06.01.1999 sent by Defendant to Plaintiff.
Ex.D76	The original letter dated 19.01.1999 sent by Plaintiff to Defendant.
Ex.D77	The office copy dated 06.03.1999 sent by Defendant to Plaintiff.
Ex.D78	The original letter dated 17.03.1999 sent by Defendant to Plaintiff.
Ex.D79	The office copy dated 24.03.1999 sent by Defendant to Plaintiff.
Ex.D80	The original letter dated 16.04.1999 sent by Defendant to Plaintiff.
Ex.D81	The original letter dated 17.05.1999 sent by Plaintiff to Defendant.
Ex.D82	The office copy dated 03.10.1999 sent by Defendant to Plaintiff.
Ex.D83	The original letter dated 11.11.1999 sent by Plaintiff to Defendant.
Ex.D84	The original letter dated 13.11.1999 sent by Defendant to Plaintiff.
Ex.D85	The office copy dated 22.11.1999 sent by Defendant to Plaintiff.
Ex.D86	The original letter dated 07.12.1999 sent by Defendant to Plaintiff.
Ex.D87	The photo copy of letter dated 23.12.1999 sent by Plaintiff to Defendant. (Objected. Marked subject to admissibility and proof)
Ex.D88	The office copy dated 26.04.2000 sent by Defendant to Plaintiff.
Ex.D89	The original letter dated 19.05.2000 sent by Defendant to Plaintiff.
Ex.D90	The original letter dated 06.06.2000 sent by Defendant to



<i>Exhibit Nos.</i>	<i>Description</i>
	Plaintiff.
Ex.D91	The original letter dated 07.06.2000 sent by Defendant to Bank.
Ex.D92	The original letter dated 07.06.2000 sent by Defendant to Bank.
Ex.D93	The original letter dated 07.06.2000 sent by Defendant to Bank.
Ex.D94	The original letter dated 13.06.2000 sent by Bank to Defendant.
Ex.D95	The original letter dated 13.06.2000 sent by Bank to Defendant.
Ex.D96	The original letter dated 07.07.2000 sent by Bank to Defendant.
Ex.D97	The original letter dated 07.07.2000 sent by Bank to Defendant.

24.10.2025



WEB COPY

C.S. No.435 of 2000



SENTHILKUMAR RAMAMOORTHY, J.

Kj

Pre-delivery Judgment made in

C.S.No.435 of 2000

25.10.2025