



C.S.No.235 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 06.01.2025

PRONOUNCED ON : 21.01.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Civil Suit No.235 of 2012

Indowind Energy Limited,
Rep. by its Company Secretary,
Mr.S.Diraviam, No.114, Kothari Buildings,
IV Floor, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

... Plaintiff

Vs.

M/s.Vaata Smart Limited,
Represented by its Whole Time Director,
Mr.V.R.Raghunathan, No.7, 11th Avenue,
Ashok Nagar, Chennai – 600 083.
(Amended as per order
dated 07.07.2021 in A.No.2294/2021)

...Defendant

Plaint filed and numbered as C.S.No.235 of 2012, under Order IV Rule 1 of the Original Side Rules of this Court, read with Order VII Rule 1 of the Civil Procedure Code, praying for judgment and decree to direct the defendant to pay Rs.3,81,78,011/- towards the outstanding dues to be paid to the plaintiff, with interest at the rate of 18% till the date of realisation and to award costs of the suit.



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For plaintiff : Mr.S.R.Sundar

For defendant : Mr.S.K.Srinivasan

JUDGMENT

The plaintiff-Company has filed the present suit seeking directions to the defendants to pay Rs.3,81,78,011/- towards the outstanding dues to be paid to the plaintiff, with interest at the rate of 18% till the date of realisation and to award costs of the suit.

2 The averments made in the plaint, in a nut-shell, are as follows:

2.1 The plaintiff-Company is incorporated under the provisions of the Companies Act, 1956 on 19.07.1995. The main object of the plaintiff-Company is to harness wind energy with the help of wind turbines and other equipments and from such production, the plaintiff-Company is selling, distributing, supplying and shares energy to Governments, companies, industries, electricity Boards and individuals. In addition, the plaintiff-Company provides various kinds of service including installation, commission, operation and maintenance of all kinds of power generation



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equipments, machineries and plants.

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2.2 On 29.03.2006, the plaintiff-Company entered into an agreement with the defendant-Company for carrying out operation and maintenance (O & M) work of the defendant's 265 W.E.G's (Wind Electric Generators), which was accepted by the defendant-Company on the same date. The work order was entered with certain terms and conditions prescribed, as per which the O & M work has to be carried at Tirunelveli and Kanyakumari Districts at the wind farm installation on turn-key basis. The work includes providing consumables like greases and lubrications, fuses, break pads, etc., torque checking, preventive and regular maintenance work for wind turbines and other installations.

2.3 The plaintiff-Company had been carrying out their best and makes the wind turbines operate at 95% of its efficiency. The agreement includes O & M of wind turbines, electrical DP structures, infer-farm lines up to metering point. The charge arrived at for O & M of each wind turbine per month is Rs.12,000/- and the plaintiff-Company had been sincerely and

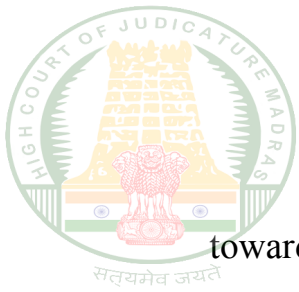


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regularly carrying out work of O & M allotted to it. As such, the defendant is liable to pay the plaintiff a sum of Rs.1,53,60,000/- towards the O & M works done by the plaintiff.

2.4 The plaintiff-Company has engaged its employees to carry out the work. The plaintiff had spent a sum of Rs.1,09,69,801/- in maintaining the defendant-Company's 265 W.E.G's by purchasing materials, spares and paying salary to the employees. All of a sudden, the defendant in the month of August 2006 abruptly stopped its payment to the plaintiff. Due to non-payment, the plaintiff was unable to bear the expenses and pay the salary to its employees. The plaintiff spent huge amount of Rs.1,09,69,661/- towards operating and maintaining and paying salary to the employees for maintenance of 265 WEG of the defendant-Company. The plaintiff-Company performed their part of contract for 265 units as per the O & M agreement.

2.5 The defendant is liable to pay the plaintiff a sum of Rs.2,63,29,661/- towards O & M charges and expenses incurred by it



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towards maintaining the defendant's 265 WEGs.

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2.6 There was no complaint or dis-satisfaction in the work carried out by the plaintiff-Company. Payment was not made to the plaintiff from the month of September 2006 and the defendant-Company promised to pay the dues. Believing the words of the defendant, the plaintiff had been carrying out their work by incurring expenses towards maintaining 265 WEGs belonging to the defendant-Company. The plaintiff is entitled to the amount to which it has performed the service work and to the expenses incurred in maintaining the defendant's WEGs, as per the O & M agreement dated 29.03.2006. Despite several requests made by the plaintiff from September 2006, the defendant had not made the outstanding dues to be paid to the plaintiff. One way or the other, the defendant is delaying payment for no reasons and left with no other remedy, the plaintiff has filed the present suit to direct the defendant to pay Rs.3,81,78,011/- towards the outstanding dues to be paid to the plaintiff, with interest @ 18% till the date of realisation.



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WEB COPY 3 The defendant had filed written statement stating as under:

3.1 The defendant-Company had been merged with Vaata Infra Private Limited, by order dated 24.08.2012 passed by this Court in Company Petition Nos.95 to 97 of 2012. Thereafter, the name of the Company Vasta Infra Private Limited, had been changed to Vasta Smart Limited, with effect from 12.01.2016. The address of the defendant-Company is No.7, 11th Avenue, Ashok Nagar, Chennai-600 083.

3.2 The present suit filed by the plaintiff is frivolous and vexatious and filed without proper application of mind and without proper appreciation and understanding of facts and law, and therefore, the suit is liable to be dismissed in-limine, as the suit is not maintainable, in view of the fact that no relief by way of decree could be granted at any form of trial.

3.3 The entire suit is built up on bogus claims and the plaintiff never ever accepted or performed the O & M of any wind turbines as alleged. There is no agreement for O & M and hence, it was never acted



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upon by parties. The defendant had never handed over the possession of the wind turbines to the plaintiff. The plaintiff or their men, never permitted to enter inside the wind farm and it is incomprehensible as to how the plaintiff could have performed the alleged O & M, when they never entered the wind farm of the defendant and when no possession of wind turbines were ever given to them. The letter of offer would change to work order only upon the plaintiff's acceptance of the letter of offer with its terms.

3.4 On 29.03.2006, the defendant-Company gave a written communication in the nature of letter of offer for acceptance to the petitioner-Company, which stated that, "Please sign an copy of this letter as a token of your acceptance". Hence, acceptance of the offer by the plaintiff is vital and the entire matter ends there. The plaintiff had not accepted the said letter and till date, the plaintiff had not contacted, nor communicated with the defendant in any form, but they filed the present suit without any reason.



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3.5 The suit itself is barred by limitation and the plaintiff had given the account statement without having any transaction relevant to the alleged O & M for the defendant-Company. The plaintiff neither accepted, nor worked on O & M as per the letter of offer of 29.03.2006. Therefore there exists no liability on the part of the defendant, since neither any concluded contract has ever come into operation, nor the plaintiff had carried out any O & M work at all as alleged by the plaintiff. Further, no invoice had ever been raised by the plaintiff at any point of time, even though it was mandated under the statute of service tax to raise such invoice, within 14 days. The Notification No.23/2005 - ST, dated 07.06.2005) states that "provided that where any payment towards the value of taxable service is not received and such taxable service is provided continuously for successively periods of time and the value of such taxable service is determined or payable periodically, an invoice, a bill, as the case may be, a challan shall be issued by such taxable service, not later than fourteen days from the last day of the said period". Hence, raising of invoice is necessary to establish and authenticate the service. The letter of offer reflects only



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"words are unambiguous and are used in after full understanding of their meaning by experts" and it would be difficult to gather their intention different from the language used in the letter of offer.

3.6 Upon reading of the documents as a whole, it can be deduced from the words actually used therein that the plaintiff was offered O & M contract, subject to certain terms and conditions. The plaintiff had not accepted the offer or did anything as per the letter of offer and suddenly filed this suit against the defendant, claiming huge amounts, without any proof or any direct communication on this subject, and any acknowledgement from the defendant at any point of time. It can be easily perceived that no prudent corporate entity, including the plaintiff spent such sums and render service without raising any invoice with service tax and getting any acknowledgement. The plaintiff had never raised even a single invoice/bill for the alleged contract of O & M. There was no other communication between the parties, apart from the O & M letter presented.

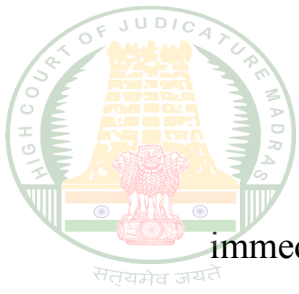


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3.7 The entire set of documents relied upon by the plaintiff are

internal documents (except the Document No.23 at page 33) of the plaintiff, which are neither in the knowledge of the defendant, nor relevant for the alleged O & M. The defendant has neither received, nor acknowledged the receipt of any of the documents. Document No.1 is ledger account with heading of Wescare India Limited, O & M expenses account and the agricultural income is Rs.3,01,484/- and the amounts paid to Wescare is Rs.56,36,909/-. It is beyond anybody's imagination that agricultural income can be shown as O & M expenses. What is even more baffling is that the plaintiff claims that they had paid the money to the defendant to maintain the defendant's own turbines.

3.8 A crucial aspect of any O & M contract is maintaining adequate stocks of spares. Clause 8 of the letter of offer mandates that the plaintiff has to maintain adequate spares at the sites, so that if any turbine breakdown occurs, the required item can be replaced from the stock of spares maintained by the service provider and there is no time wasted for ordering and getting the item to the site and the turbine can be made ready up



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immediately without much down-time and thus, ensure maximum machine availability. For this reason, when O & M service provider purchases spares, it forms part of their stock and only when any spares are issued and consumed for any turbine, it is accounted as an expense, which is charged to the customer based on terms of the O & M agreement. If it is a genuine O & M contract, the ledger account of the O & M expenses for the cost of items issued, would be accounted as expense. Hence, the material issue ledger is the most important document pertaining to O & M expenses, which is the vital document and the same had not been furnished by the plaintiff, which clearly proves that the ledger account of O & M is concocted and bogus.

3.9 It is the contention of the plaintiff that the plaintiff entered into agreement with the defendant-Wescare on 29.03.2006 and that the defendant accepted the same. But the fact is that it was not an agreement and it was only a letter of offer, subject to the acceptance of the plaintiff. However, the plaintiff never accepted the order and it was not pursued. The allegations made by the plaintiff that they were "carrying out its best and



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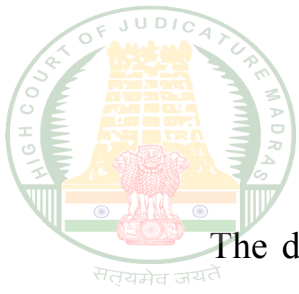
makes wind turbines operate at 95% of its efficiency", is totally false. It is a blatantly false statement, since no wind turbine in the world can operate at 95% efficiency. The plaintiff has made a wrongful claim of Rs.1,53,60,000/- towards O & M charges, based on the letter of offer. But it has never raised even a single invoice during the period of the alleged agreement. It is even amply evident from the very documents filed by the plaintiff that no O & M activity has ever taken place and that the letter of offer was never accepted and acted upon by parties. In fact, the plaintiff is not even aware about the total number of wind turbines that were offered for O & M through the letter of offer, dated 29.03.2006. This is evident from the fact that the annexure to the letter of offer lists 265 turbines at various locations, whereas the plaintiff claims to have carried out O & M for 256 turbines and had raised a claim of O & M charges for 256 turbines only. The plaintiff has not stated anywhere regarding the location and maintenance of the balance 9 turbines, which proves that the plaintiff is unaware of the number of turbines to be maintained. This goes to the root of the matter to prove that the plaintiff's claim is fabricated, concocted and superficial. There has not been even a single communication from the plaintiff



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regarding the O & M of the turbines. The offer letter had cast an obligation on the plaintiff to provide the daily reports on generation, break-down, availability and maintenance reports, etc. No correspondence from both sides on the above crucial performance reports, which is a clear indication that the offer was not accepted upon. As per Clause 5, the plaintiff should pay for all insurance premium, which has not been furnished by the plaintiff.

3.10 As per Clause 8 of the letter of offer, the plaintiff has to maintain adequate spares at the sites. The account statement does not reflect even a single stock of spare, as issued for replacement in any turbines. They have wrongfully claimed the purchase of items as expense in their account statement. The plaintiff had paid Rs.12,65,024/- on 16.06.2006, to the defendant for the defendant's bill, dated 16.06.2006 (additional document filed by the plaintiff, S.No.23, page No.33), which included reimbursement of O & M contract staff salary of the plaintiff. If O & M contract were to be in vogue, the plaintiff would not have paid this money. On the contrary, they would have demanded their O & M charges purported to be pending.



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The defendant had paid Rs.28,73,807/- towards the insurance charges and have not claimed this amount from the plaintiff, in spite of the fact that as per Clause 5 of the offer letter, the insurance payment falls under the scope of the plaintiff. The pity is that the plaintiff is not even aware of the insurance premium payments by the defendants, that is why they have not considered any payment to the defendants. No daily generation products, break-down reports, maintenance reports, mandated by Clause 12 of the offer letter had been furnished by the plaintiff and defendant. No report for machine availability mandated by Clause 7 of the offer letter, dated 29.03.2006 had been furnished by the plaintiff to the defendant. No proof or report had been submitted for 95% efficiency as stated by the plaintiff.

3.11 The plaintiff has alleged that the defendant has never terminated the contract by any written communication. Such being the case, the plaintiff has not produced any document to explain as to how this agreement got terminated in five months. Other than the letter dated 29.03.2006 and the bill dated 16.06.2006, there has been no communication between the parties. There is no document to prove the taking over of the



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possession of the turbines for O & M by the plaintiff, as it is very important

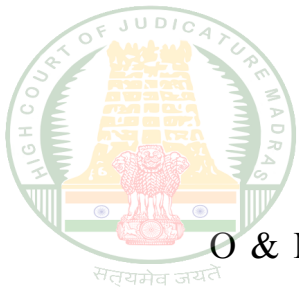
to have the possession of the turbines to carry out the O & M, so also, there is no document to prove the handling over of the turbines back to the defendant. No reason whatsoever was put-forth by the plaintiff for not raising and submitting any invoice to the defendant, for not taking the insurance cover and not giving any reports and no letter demanding payment of the alleged O & M charges. The plaintiff has also not explained the reason as to why, when huge alleged O & M charges were pending, the plaintiff kept making payment of huge sums to the defendant and accounted them as O & M expenses. It is ridiculous that the plaintiff claims to have incurred huge expenditure to maintain the defendant's own turbines. This proves that the entire ledger account is bogus. The letter of offer was never acted upon, had the plaintiff gone ahead with the O & M contract, there would definitely have been some communication between the plaintiff and the defendant regarding insurance payment to ensure the safety of such large value assets. The plaintiff had not even bothered to check the insurance amount which would have been done under any genuine O & M contract. Therefore, it is clear that the plaintiff had not accepted the letter of



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offer and had not performed any of their obligation. The plaintiff has not furnished any statutory proof like service tax return / service tax payment to evidence and substantiate their performance under this letter of offer.

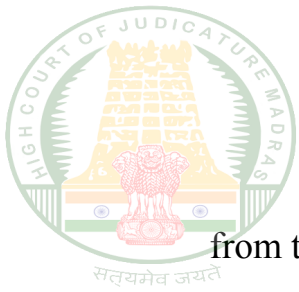
3.12 Till the date of filing the present suit by the plaintiff, there had been no demand on the defendant to pay any money purported to be due under the letter of offer. Not even a single acknowledgement of dues from the defendant was obtained. It is strange that the plaintiff had stated that it is very unethical for the defendant to retain the money, inspite of the plaintiff not even writing a single letter with details and demand. The plaintiff jumped for the legal remedy in 2009, after a lapse of almost three years, without even writing a single letter and let alone any demand for payment. The defendant is perplexed to see the statement where all unconnected and irrelevant entries, including the plaintiff's Madurai branch charges, agricultural income (how the defendant is liable to pay for the plaintiff's agricultural income), printing and stationery charges, postage charges, etc. The plaintiff morality is further exemplified by booking the reimbursement given to the defendant against their bill dated 16.06.2006 as



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O & M money payable by the defendant. It is ridiculous that the plaintiff incurred huge expenditure by paying to the defendant to maintain the defendant's own turbines, especially when the plaintiff states that the defendant had unlawfully retained the amount of Rs.2,63,29,611/-.

3.13 The plaintiff had alleged that they had engaged employees to carry out the work and expenses of Rs.1,06,69,661/- incurred. It is to be noted that the letter of offer had fixed the O & M charges at Rs.12,000/- per month per wing turbine, subject to conditions of 95% machine availability, furnishing of daily generation, maintenance reports, proof of insurance of assets and stocks of spares, etc. Under no stretch of imagination can the plaintiff raise a claim for O & M charges (without fulfilling any of their obligations) and also the various expenditure incurred by them for carrying out the same activity. The alleged expenses claimed by the plaintiff is not as per letter of offer. The letter of offer contemplates only the payment of O & M charges, subject to terms and conditions. In any event, without admitting the existence of an O & M contract for any fixed rate contract, the actual expense incurred by the service provider is irrelevant and cannot be claimed



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from the customer.

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3.14 The plaintiff has alleged further "all of a sudden in the month of August 2006, defendant abruptly stopped payment to plaintiff." This contradicts with the plaintiff statement of account. The defendant never paid the plaintiff, leave alone till August. In fact, the plaintiff had not stated why they paid the defendant Rs.15,96,232/- on 19.09.2006, much later than the purported default. The fact is that the plaintiff owed monies to the defendant under sale of wind turbines and these transactions were part of the sale proceeds as can be seen by the defendant's bill, dated 16.06.2006 and in any event, these are outside the purview of the letter of offer. The plaintiff has not stated how the purported contract of O & M was terminated and no document has been produced for the same. The plaintiff's own additional document under S.No.33 is listed as bill from Wescare to Indowind, which was dated 16.06.2006, wherein Wescare had demanded payment of Rs.12,65,024/- towards expenses incurred on behalf of Indowind. The plaintiff had also made payment for the same on 16.06.2006 without a murmur, as reflected in their ledger account statement. It is important to



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note that even in the letter from defendant, there is no reference whatsoever to the letter of offer. Thus, it is clear that the plaintiff had to pay the defendant and not vice-versa.

3.15 If the plaintiff's contention of carrying out O & M for the defendant were to be true, the plaintiff would have raised a bill/invoice on the defendant and not the other way round. The exhibit under Doc.33 and the payment by the plaintiff to the defendant covered in Doc.1 clearly establishes that defendant had various other transactions including sale of turbine and payment of sales tax dues. Those are clearly outside the ambit of the offer letter. The plaintiff is concocting the claim using documents related to the other transactions. Assuming without admitting that the plaintiff have done O & M work, the charges are fixed and agreed upon and irrespective of actual expenditure incurred by the plaintiff and thus, the claim of Rs.2,63,29,661/- is completely frivolous and does not stand to reason. The account states that the amount of Rs.56,36,909/- was given to the defendant. The letter of offer does not contemplate any payment to be paid to the defendant by the plaintiff. This is strange especially an amount



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of Rs.15,96,232/- was given to the defendant on 19.09.2006, i.e. much later than the purported default had happened. No one would pay a defaulting debtor, especially when they are finding it difficult even to pay their salaries.

3.16 The plaintiff has alleged in paragraph 5 of the plaint that there was no complaint/dis-satisfaction. When there is no O & M agreement as alleged by the plaintiff, and no communication between the parties, the question of complaint / dis-satisfaction does not even arise. This is obvious that this is a concoction to cover up the lacunae of no contract or correspondence. The plaintiff had alleged that several requests were made from September 2006 onwards, but there is not even one single communication from the plaintiff to the defendant and duly acknowledged by the defendant in respect of the purported claim, since no such event ever took place. Not even a single demand notice or legal notice was served by the plaintiff to the defendant, which is very strange. This further substantiates the fact that the O & M offer letter by the defendant was never accepted and acted upon by the plaintiff and hence such an agreement does



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not exist.

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3.17 The plaintiff's statement that "in the month of September 2006, the defendant failed to pay" contradicts with their statement in paragraph 4 of the plaint, which states that "All of a sudden the defendant in the month of August 2006, abruptly stopped its payment to the plaintiff". It is obvious that the plaintiff has filed the suit making bogus claim. As per paragraph 13 of the letter dated 29.03.2006, only the defendant has right to terminate the services by giving 15 days' notice period. The plaintiff categorically stated that the defendant had not terminated the purported contract. If presuming without admitting, that the plaintiff had acted upon the letter of offer, it could be terminated only as per the letter of offer, thereby leading to the only conclusion that the offer was never acted upon. As per the terms and conditions of the offer, the plaintiff had obligations like providing the performance report, availability report, etc., paying for insurance, which has never ever been submitted to the defendant. The offer letter was totally misused by the plaintiff and the plaintiff had concocted the accounts for the purpose of the present suit. The account statement filed along with the



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plaint, is irrelevant to the O & M offer and reflects certain payments made to the defendant-Company and to other unrelated accounts.

3.18 The plaintiff moved the Application No.5287 and 5288 of 2011 in the present suit on 13.10.2011, for condoning the delay for re-presentation and condoning the delay for paying the deficit Court fee as the case was filed on 25.02.2009 with a Court fee of Rs.5,000/-, the same suit was returned on 02.03.2009 for compliance with a time period of 10 days (12.03.2009). The plaintiff filed the above said Applications on 13.10.2011, citing four reasons for the delay, all of which are totally wrong, false, acts of fraud and misrepresentation by the plaintiff before the Court. The plaintiff's plea for condonation of delay were moved without notice to the defendant. In any event the same are entirely built on false statements, misrepresentation and wrong doings of the Company and the plaintiff has deliberately mislead the Court to condone the delay. The only conclusion in the above case is that the plaintiff has resorted to deliberate delay on account of culpable negligence and taken the benefit of its own wrong doings and has obtained the condonation of delay based on the falsehood



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and misrepresentation. Therefore, the entire suit is liable to be dismissed in-

limine on this ground. Conveniently, the plaintiff herein obtained an order of condonation, vide Application No.5287 of 2011 in C.S.No.5641 of 2009 by deliberately and intentionally eclipsing the real facts which itself tantamount to "fraud played before the Court". It is always competent for any Court to vacate any judgment or order if it be proved that such judgment or order was obtained by manifest fraud. On the merits of the matter, the defendant stated that they had given an offer to plaintiff, vide letter dated 29.03.2006, but the offer was not accepted or acted upon by the plaintiff. The plaintiff had not furnished any proof that they have accepted the offer and acted upon. To effect such an order for maintenance, the plaintiff should have acted on it as per the standard prudent business procedures.

3.19 In any genuine O & M contract, the following actions would be taken:

- (i) Acknowledge the offer with acceptance;
- (ii) Issue a document confirming taking over possession of turbines for O & M activity.



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(iii) Prepare a detailed list of inventory including the turbines, spares, tools and stocks;

(iv) Take insurance policy on the turbines and stocks, covered under operation and maintenance.

(v) Raising monthly invoices and the amount to be raised calculated based on the availability for each turbine, for all the turbines along with the generation, availability and break down reports (since the offer is not a standard/fixed amount O & M contract). The turbines with 95% availability, O & M charge of Rs.12,000/- per month and parota reduction in charges for turbines with less than 95% availability.

(vi) Furnish details of material issue of spares and consumables for maintenance of the turbines.

(vii) Invoice together with service tax, should have been submitted to the defendant within 14 days and acknowledgement obtained.

(viii) Account for the invoice raised in the books of accounts by reflecting income from O & M charges and receivable in the name of the defendant.

(ix) Pay the service tax liability.



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(x) Communication/correspondence with the defendant for amounts outstanding and demand payment.

(xi) The plaint is silent about the end of the contract period, as the letter of offer is silent about the same. For termination, the letter of offer does not give the plaintiff any right to terminate unilaterally. The exact date on which the plaintiff stopped the O & M activity was also not mentioned. One cannot run away from the turbines, without any replacement for the operation and security. Hence, sufficient notice should have been given before the termination and such communication is totally absent.

(xii) Handing over of such high valued assets, is very crucial and normally, a joint inspection is done to list the inventory and the condition of the assets at the time of both taking over and handing over of the assets, which was also not happened in the present case.

3.20 None of the above actions had been taken or established by the plaintiff, which clearly proves that the letter of offer was never accepted and acted upon by the parties. The plaintiff is trying to make a completely baseless wrongful and bogus claim. In view of all the facts stated above, the



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defendant denies any amount payable to the plaintiff. It is the plaintiff who is unlawfully making false claim on the defendant. The defendant has been unnecessarily dragged into this litigation and has been made to spend time, resources and money to contest this frivolous litigation. In any event, the entire suit is not maintainable under both law and facts, for the simple reason that the averments or allegation made by the plaintiff, had been deliberately distorted so as to bring about this suit with a false claim.

3.21 Hence, for the above reasons, the suit may be dismissed.

4 Upon considering the pleadings, the following issues have been framed by this Court on 10.02.2020:

(i) Whether the letter of the defendant company dated 29.03.2006 amounts to a concluded contract?

(ii) Whether the plaintiff has carried out the operation and maintenance work of the defendant installation and the defendant whether is liable to pay sum of Rs.2,63,29,661/- towards operation and maintenance charges and expenses incurred by the plaintiff towards maintaining the defendants 256



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Wind Electric Generators?

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(iii) Whether the suit claim is barred by limitation?

(iv) What other relief the plaintiff is entitled for?

5 During trial, on the side of the plaintiff, one S.Diraviam, former Company Secretary of the plaintiff company was examined as P.W.1 and marked 49 documents as Exs.P1 to P49. On the side of the defendant, its authorised signatory V.R.Raghunathan was examined as D.W.1 and 3 documents were marked as Exs.D1 to D3.

6 Learned counsel appearing for the plaintiff would submit that the plaintiff had entered into an agreement with the defendant for carrying out O & M work of the defendant's 256 Wind Electric Generators with certain terms and conditions and the plaintiff had accepted the same. The O & M works has to be carried by the plaintiff at Tirunelveli and Kanyakumari Districts at the defendant's wind farm installation on turnkey basis. The work includes providing consumables like greases and lubrications, fuses, brake pads etc. torque checking, preventive and regular maintenance work



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for wind turbines and other installations. The plaintiff has been carrying out

O & M work to the best of its abilities and made the wind turbines to operate

at 95% of its efficiency. The charge arrived at for O & M of each wind

turbine per month is Rs.12,000/- (Rupees Twelve Thousand Only). The

plaintiff has been sincerely and regularly carrying out the work of O & M

allotted to it and hence the defendant is liable to pay the plaintiff a sum of

Rs.1,53,60,000/- (Rupees One Crore Fifty-Three Lakh Sixty Thousand

Only) towards the charges for O & M works done by the plaintiff. The

plaintiff has engaged its employees to carry out the work and had spent a

sum of Rs. 1,09,69,661/- (Rupees One Crore Nine Lakh Sixty Nine

Thousand Six Hundred and Sixty One Only) in maintaining defendant's 256

W.E.Gs by purchasing materials, spares and paying salary to the employees.

All of a sudden, the defendant in the month of August 2006 abruptly

stopped its payment to the plaintiff. Due to non-payment, the plaintiff was

unable to bear the expenses and pay the salary to its employees. The

plaintiff had performed its part of contract for 256 units as per the O & M

agreement and hence the defendant is liable to pay the plaintiff a sum of

Rs.2,63,29,661/-. The plaintiff is also entitled for interest @ 18% p.m. from



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September 2006 onwards on Rs.2,63,29,661/-, which comes to Rs.1,18,48,350/-. Thus totally the defendant is liable to pay a sum of Rs.3,81,78,011/-.

6.1 Ex.P1 is the original letter dated 29.03.2006, which is the work order issued by the defendant company and the same is not a letter of offer as claimed by the defendant and as requested by the defendant the plaintiff also signed the duplicate copy of this letter and sent the same to the defendant. It was only thereafter the defendant handed over possession of the wind turbines to the plaintiff company and the staff of the plaintiff were permitted to enter inside the wind farm and started the O & M from 29.03.2006 till August 2006. The said Ex.P1 is not disputed by the defendant and it has not let in any evidence to prove that Ex.P1 is not acted upon. As per Ex.D3 the defendant has paid insurance charges for the O & M as per the clause in the Work Order dated 29.03.2006 (ExP1) which proves that the Work order is executed and acted upon and in terms of the same plaintiff also performed its part of obligation. There is no necessity to pay insurance charges for O & M if the plaintiff has not performed any of the agreed terms under Ex.P1.



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6.2 As per Ex.P.19 the defendant company has requested to release

payments from the plaintiff towards the salary of O & M staff, rent for Ekkadunthangal office, EB Charges for Ekkadunthangal office, EB Charges for Tadipatri site which shows that O & M works has been done by the plaintiff company to the defendant company and further for the Tadipatri site, which has 93 Nos. of wind turbines, the plaintiff performed O & M works and the same is available in the annexure document of Ex.P1. The plaintiff has incurred the O & M expenses and maintained the accounts of the O & M expenses and the said documents are marked by the plaintiff as ExP3, Ex8, ExP12, ExP20, ExP25, ExP33, ExP36-40, and also marked the documents towards the payments of security charges and other charges towards O & M expenses and altogether Ex.P1 to P49 marked as documents to the expenses incurred by the plaintiff towards the work order issued by the defendant dated 29.03.2006. The defendant has filed an application No.3917 of 2012 in the above suit for rejection of plaint and the same was dismissed by this Court by its order dated 25.10.2019. Further the application filed by the plaintiff in Application No. 3946 of 2021 was allowed by this court on 17.11.2021.



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allowed by this court on 17.11.2021.

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6.3 On the issue of whether the letter of the defendant company dated 29.03.2006 Ex.P1 amounts to a concluded contract, the learned counsel for the plaintiff submitted that since the duly signed copy of the Ex.P-1 by the plaintiff had been received by the defendant, the defendant cannot approbate and reprobate the same. Further, the act of the plaintiff in not having acknowledgement from the defendant would not have any bearings, since the plaintiff has acted in terms of the same and claiming the amounts due. It is the defendant who is now alleging that the plaintiff did not handover the signed copy of the Ex.P.1, taking advantage of the non availability of the acknowledgement of receipt of the same. Further, the defendant had issued Ex.P.19 wherein the defendant company has requested the plaintiff to release of payments regarding the salary of O & M staff, Rent for Ekkadunthangal office, EB Charges for Ekkadunthangal office, EB Charges for Tadipatri site. This clearly shows that the defendant having availed benefits from the plaintiff in terms of Ex.P.1, and having fully acted upon the contract, has now denied the same for the purpose of unlawful enrichment at the cost of the plaintiff and the same is directly against the



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marked various exhibits of its own documents in support of execution of work in terms of Ex.P1 which are contemporary documents and the defendant did not make any specific denial and the denial made was only general. Though the defendant had averred that they themselves had carried out the works under the Ex.P1, they did not furnish any supporting document to prove the same and it is the specific case of the plaintiff that because the of lack of infrastructure and experienced staff, the defendant issued the Ex.P.1 which was executed, performed and acted upon by both parties. Therefore, Ex.P1 is a concluded contract in all respect.

6.4 On the issue of whether the plaintiff has carried out the O & M work of the defendant installation and the defendant whether is liable to pay sum of Rs.2,63,29,661/- towards O & M charges and expenses incurred by the plaintiff towards maintaining the defendants 256 Wind Electric Generators, the learned counsel for the plaintiff submitted that the plaintiff had produced and marked all the bills, invoices, statement etc., in pursuance to execution of work in terms of Ex.P1 and the said documents are marked as Ex.P3 to 49. All these documents being contemporaneous one and the



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as Ex.P3 to 49. All these documents being contemporaneous one and the defendant had only made a general denial, the same are to be deemed to have been proved. Apart from the plaintiff, no other contractor or staff of the defendant had executed the works under the Ex.P1. Under these circumstances, and having the subject Wind Mills were fully functional during the relevant point of time because of the works carried by the plaintiff in terms of the Ex.P1, it is proved that the plaintiff alone carried out the O & M work of the defendant installation and the defendant is liable to pay sum of Rs.2,63,29,661/- towards O & M charges and expenses incurred by the plaintiff towards maintaining the defendants 256 Wind Electric Generators.

6.5 On the issue of limitation of the suit, the learned counsel for the plaintiff submitted that the defendant issued work order is on 29.03.2006 (Exhibit P1), and the plaintiff performed its part of obligation in terms of the work order from 29.03.2006 till August 2006 and the present suit is filed on 25.02.2009. The commencement of limitation starts from the end of August 2006 and assuming without admitting the starting date of limitation



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period of three years. The plaintiff has filed the suit with deficit court fee and later on filing of applications, it was rectified. The Hon'ble Supreme Court, in the case of ***P.K.Palanisamy-vs-N.Arumugham reported in 2009 (9) SCC 173***, held that once deficit Court fee is paid under Section 149 of CPC, the same would be deemed to have been paid in the first instances and such plaint cannot be rejected under Order VII Rule 11 CPC on the ground of limitation. To support this contentions, the learned counsel further relied on the judgments reported in ***(2016) 4 CTC 880*** and also the decision reported in ***2012 (7) SCC 738***.

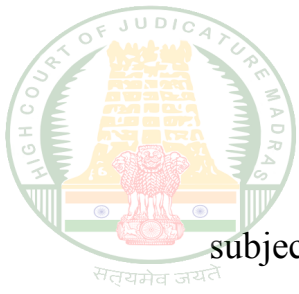
7 The learned counsel for the defendant would submit that the entire suit is build up on bogus claims and the plaintiff has never ever accepted or performed O & M of any wind turbines as alleged. There is no agreement for O & M and hence it was never acted upon by parties. The defendant has never handed over possession of the wind turbines to the plaintiff. The plaintiff or their men never was permitted to enter inside the wind farm and it is incomprehensible as to how the plaintiff could have performed the alleged operation and maintenance when they never entered



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performed the alleged operation and maintenance when they never entered the wind farm of the defendant and when no possession of wind turbines were ever given to them. On 29.03.2006, the defendant company gave a written communication in the nature of letter of offer for acceptance to the plaintiff company which stated “Please sign a copy of this letter as a token of your acceptance”, but, the plaintiff had not accepted this letter and till date the plaintiff not contacted nor communicated with the defendant in any form, but, they filed the suit without any reason. Therefore there exists no liability on the part of the defendant because neither any concluded contract has ever come into operation nor the plaintiff has carried out any O & M work at all as alleged.

7.1 The suit itself is barred by limitation. The plaintiff has given the account statement without having any transaction relevant to the alleged O & M for the defendant company. Further no invoices have ever been raised by the plaintiff at any point of time, even though it was mandated under the statute of service tax to raise such invoice within fourteen days. Upon reading of the documents as a whole, it can fairly be deduced from the



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subject to certain terms and conditions. The plaintiff did not accept the offer or did anything as per the letter of offer and suddenly they filed a suit against the defendant claiming huge amount without any proof or any direct communication on this subject and any acknowledgement from defendant at any point of time. Therefore it can be easily perceived, no prudent corporate entity, including the plaintiff would spend such huge sums and render service without raising any invoice with service tax and getting any acknowledgement. Apart from the letter dated 16.06.2006, no communication between the plaintiff and the defendant was presented.

7.2 Learned counsel for the defendant further submitted that the defendant denies all the documents except Exs.P1, P2 and P19, since they are all internal document of the plaintiff which are neither in knowledge of the defendant nor relevant for the alleged O & M contract. The defendant has neither received nor acknowledged the receipt of any documents marked by the plaintiff. In the document No.1, ledger account with heading Wescare India Limited, has the details that agricultural income is Rs.3,01,484/- and amounts paid to Wescare is Rs.56,36, 909/-. It is beyond anybody's



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amounts paid to Wescare is Rs.56,36, 909/-. It is beyond anybody's

imagination as to how the agricultural income can be shown as O & M expenses. Further more baffling thing is that the plaintiff claims that they paid Rs.12,65,024/- to the defendant for which the plaintiff has not offered any reason as why they paid this money to the defendant and why the defendant should return such money. Clause 8 of the letter of offer mandates that the plaintiff has to maintain adequate spares at the sites, if any turbine breakdown occurs, the required item can be replaced from the stock of spares maintained by the service provider. Hence the material issue ledger is the most important document pertaining to O & M expenses, which will clearly proves that the ledger account of O & M expense is concocted and bogus. Further the plaintiff had claimed the cost of a bearing. Bearing being a capital item, after any replacement, the defective part should be returned to the owner. The plaintiff had not produced any evidence for returning the old bearing to the defendant. The plaintiff claimed that they carried out O & M, which made the wind turbines operate at 95% of its efficiency, but, no wind turbine in the world can operate at 95% efficiency. As per Clause 5 of the offer letter, the plaintiff should pay



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7.3 Clause 12 of the offer letter mandates that the plaintiff should

produce daily generation reports, break down reports, maintenance reports, but the plaintiff did not furnish the same. Further Clause 7 of the offer letter mandates that the plaintiff should submit machine availability report, which also the plaintiff has not produced. Till the date of the plaintiff filing this suit, there had been no demand on the defendant to pay any money purported to be due under this letter of offer. Not even a single acknowledgement of dues from the defendant was obtained.

7.4 The alleged expenses claimed by the plaintiff are not as per the letter of offer. The letter of offer contemplates only the payment of O & M charges subject to terms and conditions. In any event, without admitting the existence of O & M contract, for any fixed rate contract, the actual expense incurred by the service provider is irrelevant and cannot be claimed from the customer. It is averred in the plaint that the defendant all of a sudden in the month of August 2006 abruptly stopped payment to the plaintiff, the same has been contradicts with the plaintiff statement of account.



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7.5 The fact is that the plaintiff owed monies to the defendant under the sale of wind turbines and these transactions were part of the sale proceeds as can be seen by the defendant's bill dated 16.06.2006. In any event, these are outside the purview of the letter of offer. The plaintiff's own additional document under S.No 33 strikes at the very root of the false claim of the plaintiff. Doc S No 33 is listed as 'Bill from Wescare to Indowind' which was dated 16.06.2006, wherein Wescare had demanded payment of Rs.12,65,024/- towards expenses incurred on behalf of Indowind. The plaintiff had also made payment for the same on 16.06.2006 without a murmur, as reflected in their ledger account statement which has been furnished as Doc no.1 in the Additional Documents filed by plaintiff. It is important to note that even in this letter from the defendant, there is no reference whatsoever to the letter of offer. Thus it is clear that plaintiff had to pay the defendant and not vice-versa. The exhibit under Doc 33 and the payment by the plaintiff to the defendant covered in Doc 1 clearly establishes that defendant had various other transactions including sale of turbine & payment of sales tax dues. Those are clearly outside the ambit of



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work, the charges are fixed and agreed upon and irrespective of actual expenditure incurred by the plaintiff. Therefore the claim of Rs.2,63,29,661/- is completely frivolous and does not stand to reason.

7.6 The plaintiff has alleged that there was no complaint/dissatisfaction from the defendant, but, when there is no O & M agreement as alleged by the plaintiff and no communication between the parties, the question of complaint/dissatisfaction does not even arise. Further the plaintiff had alleged that several requests were made from September 2006 onwards. But, it is to be noted that there is not even one single communication from the plaintiff to the defendant and duly acknowledged by the defendant in respect of the purported claim, since no such event ever took place. There is contradictions in the plaint filed by the plaintiff that in para no.7, it is stated that in the month of September 2006, the defendant failed to pay, whereas in para.no.4 it is stated that all of a sudden the defendant in the month of August 2006 abruptly stopped its payment to the plaintiff. Therefore it is obvious that the plaintiff has filed the above suit making bogus claim.



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the above suit making bogus claim.

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7.7 The offer letter was totally misused by the plaintiff and the plaintiff has concocted the accounts for the purpose of this suit, which is irrelevant to the O & M offer, which in fact reflects certain payments made to the defendant company and to other unrelated accounts. The plaintiff has not filed any documents to prove and substantiate that they worked as per the letter of offer and not even a single statement of account has ever been submitted for the alleged transaction. The plaintiff filed application for condoning delay in re-presentation and paying the deficit court fee on 13.10.2011 citing four reasons, all are which totally wrong false and misrepresentation. The only conclusion in the above case is that the plaintiff has resorted to deliberate delay on account of culpable negligence and taken the benefit of its own wrong doings and has obtained the condonation of delay based on falsehood and misrepresentation.

7.8 The testimony given by PW1 clearly shows that no such contract has ever been in placed between the parties. It is shocking to note



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claim. It is the plaintiff who is unlawfully making false claim on the defendant. The defendant has been unnecessarily dragged into this litigation and has been made to spend time, resources and money to contest this frivolous litigation. Further the entire suit is totally based on lies and falsehood. The entire case shows that the plaintiff has foisted a case by stating false averments on an industrial scale with a false claim. The plaintiff must also be prosecuted for perjury. This is a clear case of abuse of process of court and this Court must come down heavily upon the defendant for abusing the process of Court and exemplary costs must be imposed on the plaintiff so as to meet the ends of justice.

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

9 It is the specific case of the plaintiff that the defendant had entered into an agreement with the plaintiff for carrying out O & M work of the defendant's 256 W.E.G's (Wind Electric Generators) and the plaintiff had accepted the same. The work was entered with certain terms and



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had accepted the same. The work was entered with certain terms and conditions and the O & M works has to be carried out by the plaintiff at Tirunelveli and Kanyakumari Districts at the defendant's wind farm installation on turnkey basis. The work includes providing consumables like greases and lubrications, fuses, brake pads etc. torque checking, preventive and regular maintenance work for wind turbines and other installations. The plaintiff has been carrying out O & M work to the best of its abilities and made the wind turbines to operate at 95% of its efficiency. The charge arrived at for O & M of each wind turbine per month is Rs.12,000/- (Rupees Twelve Thousand Only). The plaintiff has been sincerely and regularly carrying out work of O & M allotted to it. As such the defendant is liable to pay the plaintiff a sum of Rs.1,53,60,000/- (Rupees One Crore Fifty-Three Lakh Sixty Thousand Only) towards the O & M works done by the plaintiff. The plaintiff has engaged its employees to carry out the work and had spent a sum of Rs. 1,09,69,661/- (Rupees One Crore Nine Lakh Sixty Nine Thousand Six Hundred and Sixty One Only) in maintaining defendant's 256 W.E.Gs by purchasing materials, spares and paying salary to the employees. All of a sudden, the defendant in the month



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payment, the plaintiff was unable to bear the expenses and pay the salary to its employees. The plaintiff had performed its part of contract for 256 units as per the O & M agreement and hence the defendant is liable to pay the plaintiff a sum of Rs.2,63,29,661/-. The plaintiff is also entitled for interest @ 18% p.m. From September 2006 onwards on Rs.2,63,29,661/-, which comes to Rs.1,18,48,350/-. Thus totally the defendant is liable to pay a sum of Rs.3,81,78,011/-.

10 Per contra, it is contended by the learned counsel for the defendant that entire suit is built up on bogus claims and the plaintiff has never ever accepted or performed O & M of any wind turbines as alleged. There is no agreement for O & M and hence it was never acted upon by both the parties. The defendant has never handed over possession of the wind turbines to the plaintiff. The plaintiff or their men were never permitted to enter inside the wind farm and it is incomprehensible as to how the plaintiff could have performed the alleged O & M when they never entered the wind farm of the defendant and when no possession of wind turbines were ever given to them. On 29.03.2006, the defendant company

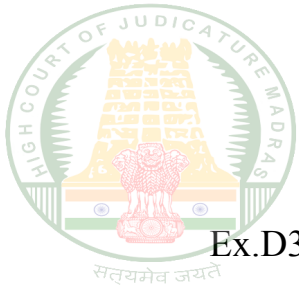


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turbines were ever given to them. On 29.03.2006, the defendant company gave a written communication in the nature of letter of offer for acceptance to the plaintiff company which stated “Please sign a copy of this letter as a token of your acceptance”, but, the plaintiff had not accepted this letter and till date the plaintiff not contacted nor communicated with the defendant in any form, but, they filed the suit without any reason. Therefore there is no liability on the part of the defendant, since neither any concluded contract has ever come into operation, nor the plaintiff has carried out any O & M work at all as alleged.

11 Issue No.1 (i) Whether the letter of the defendant company dated 29.03.2006 amounts to a concluded contract?

11.1 According to the plaintiff Ex.P1 is the Work Order issued by the defendant Company, which is not a letter of offer as claimed by the defendant. Further as requested by the defendant, the plaintiff also signed the duplicate copy of the Work Order and sent the same to the defendant. Thereafter the defendant handed over the possession of wind turbines to the plaintiff and staff of the plaintiff were permitted to enter inside the wind



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Ex.D3, the defendant has paid insurance charges for the O & M as per clause in the work order dated 29.03.2006 (Ex.P1), which proves that work order has been executed and acted upon. If at all, the agreement is not acted upon, there is no necessity for the defendant to pay insurance charges for O & M. Even as per Ex.P19, the defendant Company has requested to release the payment from the plaintiff towards salary of O& M Staff, rent for the Ekkaduthangal office, EB charges for the same, which shows that O & M works has been done by the plaintiff Company to the defendant Company. For Tadipatri site, the plaintiff performed O & M work for 93 number of wind turbines and the same is available in the annexure document of Ex.P1. The plaintiff has incurred O & M expenses and maintained the accounts of O & M expenses and the said documents are marked by the plaintiff as Exs.P3, 8, 12, 20, 25, 33, 36 to 40 and also marked the documents towards the payment of security charges and other charges towards O & M expenses and all together Ex.P1 to Ex.P49 marked as documents to the expenses incurred by the plaintiff towards the work order issued by the defendant dated 29.03.2006.



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WEB COPY 11.2 According to the defendant there is no agreement /O & M and it was never accepted or acted upon and the defendant has never handed over possession of Wind Turbines to the plaintiff. The plaintiff or their men were never permitted to enter inside the Wind Turbines and thus how the plaintiff could have performed the alleged O & M. Except Exs.P1, P2 and P19 all other documents of the plaintiff are internal documents. The defendant has neither received nor acknowledged receipt of any documents marked by the plaintiff. The alleged expenses claimed by the plaintiff are not as per the letter of offer, which contemplates only payment of O & M charges subject to the terms and conditions. The expenses incurred by the service provider beyond the terms of the O & M contract cannot be claimed from the customers. The true fact is that the plaintiff owed money to the defendant under the sale of Wind Turbines and these transactions were part of the sale proceeds as could be seen by the defendant's bill dated 16.06.2006 and in any event these are outside the purview of the letter of offer. The plaintiff's own additional document under Sl.No.33 strikes at the very root of false claim of the plaintiff. It is alleged by the plaintiff that

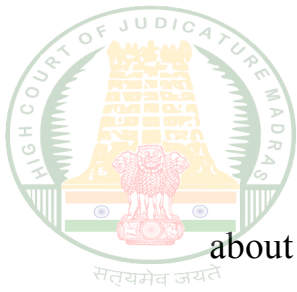


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noted that when there is no O & M agreement as alleged by the plaintiff and no communication between the parties, the question of complaint/dissatisfaction does not even arise. The plaintiff has not filed any proof or substantiated that they worked as per letter of offer and not even a single statement of account has even been submitted for the alleged transaction. Even the testimony of P.W.1 clearly shows that no such contract has ever been placed between the parties. The plaintiff is trying to make a completely baseless, wrongful and bogus claim. The defendant need not pay any amount and the entire suit is based on false claim. The plaintiff has foisted a case by stating false averments on an industrial scale with a false claim. This is nothing but an abuse of process of Court.

11.3 In order to prove the claim of the plaintiff, the authorised signatory of the plaintiff company was examined as P.W.1 and marked 49 documents as Ex.P1 to P49. The only witness examined on behalf of the plaintiff, who is the authorised signatory stated that he was familiar to the case only through the documents referred and he has no personal knowledge about it. Except P.W.1 no witness was examined on the side of the plaintiff,

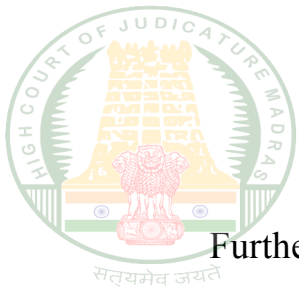


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about it. Except P.W.1 no witness was examined on the side of the plaintiff, especially when the defendant denied Ex.P1 as concluded contract, which according to defendant is only an offer letter and there is no document to show that the plaintiff accepted the same or acknowledged and sent signed copy to the defendant.

11.4 Regarding the particulars of payment, P.W.1 has stated that only accounts people knows about the same. According to the plaintiff, the defendant handed over possession to the plaintiff and the plaintiff engaged workers to carry out O & M work, but when the defence has denied the same and clearly stated that no possession was handed over to the plaintiff, to rebut the same, the plaintiff should have examined any of the workers or any other independent witness to prove the fact of taking over of possession and carrying out of work by the plaintiff.

11.5 During evidence P.W.1 admitted to the effect of clause 3 of Ex.P.1 and he has clearly stated that actually O & M works have been done with the employees of the defendant and Q.No.44 i.e. “Is there any contract

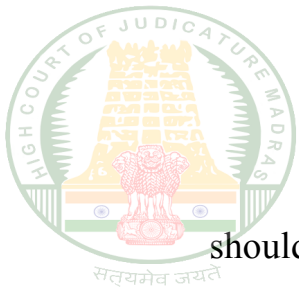


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Further when question No.45 i.e. “Is there any communication in that effect”, was put before him, he has stated that “it is an oral communication”.

When Q.No.47 by showing Ex.P5 that you have enclosed a receipt of Rs.2000/- from the defendant, where it is reflected in your statement of accounts? was put before P.W.1, the answer of the witness is “only accounts people will answer”. For Q.No.49 i.e. “When was contract terminated?”, the witness answered that “in September 2006” and he has no idea about the exact date. Q.No.52, “Do you have any written communication for handing over the turbines back at least for one site” was asked, P.W.1 answered in a single word “No”.

11.6 Except Ex.P1, P2 and P19 all other documents are only internal documents and therefore the said documents will not bind the defendant. Even though the defendant admitted some of the documents relating to certain transaction, the same are not related to Ex.P1 document. In the absence of any specific communication regarding concluded contract, especially when the defence stoutly denied Ex.P1, at least the plaintiff should have examined some independent witnesses regarding taking over

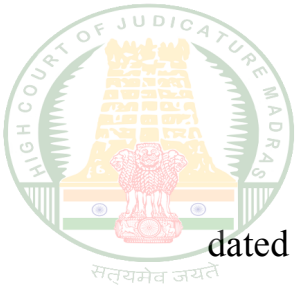


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should have examined some independent witnesses regarding taking over the possession of Wind Turbines and engagement of workers to do service, the plaintiff did not examine any independent witness. Even regarding the contradictions in the amounts and date of payment, P.W.1 has stated only accounts people know the same. Therefore the plaintiff has not proved its case through competent witness and documents, especially when there is specific denial on the side of the defendant with regard to Ex.P1. Under these circumstances, issue no.1 is answered against the plaintiff.

12 Issue No.2 Whether the plaintiff has carried out the operation and maintenance work of the defendant installation and whether the defendant is liable to pay sum of Rs.2,63,29,661/- towards operation and maintenance charges and expenses incurred by the plaintiff towards maintaining the defendants 256 Wind Electric Generators?

12.1 It is the contention of the plaintiff that the plaintiff had been carrying out O & M work to the best of its abilities and made the wind turbines to operate at 95% of its efficiency. As per Ex.D3 the defendant has



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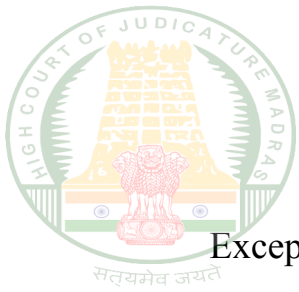
dated 29.03.2006 (ExP1) which proves that the Work order is executed and acted upon and in terms of the same plaintiff also performed its part of obligation. There is no necessity to pay insurance charges for O & M if the plaintiff has not performed any of the agreed terms under Ex.P1. As per Ex.P.19 the defendant company has requested to release payments from the plaintiff towards the salary of O & M staff, rent and EB Charges for Ekkadunthangal office, EB Charges for Tadipatri site which shows that O & M works has been done by the plaintiff company to the defendant company and further for the Tadipatri site, which has 93 Nos. of wind turbines, the plaintiff performed O & M works and the same is available in the annexure document of Ex.P1. The plaintiff has incurred the O & M expenses and maintained the accounts of the O & M expenses and the said documents are marked by the plaintiff as ExP3, Ex8, ExP12, ExP20, ExP25, ExP33, ExP36-40, and also marked the documents towards the payments of security charges and other charges towards O & M expenses and altogether Ex.P1 to P49 marked as documents to the expenses incurred by the plaintiff towards the work order issued by the defendant dated 29.03.2006. The charge arrived at for O & M of each wind turbine per month is Rs.12,000/- (Rupees



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arrived at for O & M of each wind turbine per month is Rs.12,000/- (Rupees Twelve Thousand Only). The plaintiff has been sincerely and regularly carrying out the work of O & M allotted to it and hence the defendant is liable to pay the plaintiff a sum of Rs.1,53,60,000/- (Rupees One Crore Fifty-Three Lakh Sixty Thousand Only) towards the charges for O & M works done by the plaintiff. The plaintiff has engaged its employees to carry out the work and had spent a sum of Rs. 1,09,69,661/- (Rupees One Crore Nine Lakh Sixty Nine Thousand Six Hundred and Sixty One Only). The plaintiff had performed its part of contract for 256 units as per the O & M agreement and hence the defendant is liable to pay the plaintiff a sum of Rs.2,63,29,661/-. The plaintiff is also entitled for interest @ 18% p.m. from September 2006 onwards on Rs.2,63,29,661/-, which comes to Rs.1,18,48,350/-. Thus totally the defendant is liable to pay a sum of Rs.3,81,78,011/-.

12.2 According to the defendant except Ex.P1, no communication between the plaintiff and the defendant. Further no invoices have ever been raised by the plaintiff at any point of time, even though it was mandated



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Except Exs.P1, P2 and P19, all other documents are internal documents of the plaintiff which are neither in knowledge of the defendant nor relevant for the alleged O & M contract. The plaintiff claims that they paid Rs.12,65,024/- to the defendant for which the plaintiff has not offered any reason as to why they paid this money to the defendant and why the defendant should return such money. The plaintiff claimed that they carried out O & M, which made the wind turbines operate at 95% of its efficiency, but, no wind turbine in the world can operate at 95% efficiency. As per Clause 5 of the offer letter, the plaintiff should pay for all insurance premium, which has not been furnished by the plaintiff. Clause 12 of the offer letter mandates that the plaintiff should produce daily generation reports, break down reports, maintenance reports, but the plaintiff did not furnish the same. Further Clause 7 of the offer letter mandates that the plaintiff should submit machine availability report, which also the plaintiff has not produced. Till the date of filing of this suit, there had been no demand on the defendant to pay any money purported to be due under this letter of offer. Not even a single acknowledgement of dues from the defendant was obtained. The fact is that the plaintiff owed monies to the



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defendant was obtained. The fact is that the plaintiff owed monies to the defendant under the sale of wind turbines and these transactions were part of the sale proceeds as can be seen by the defendant's bill dated 16.06.2006. In any event, these are outside the purview of the letter of offer. The plaintiff's own additional document under S.No 33 strikes at the very root of the false claim of the plaintiff. Doc.No 33 is listed as 'Bill from Wescare to Indowind' which was dated 16.06.2006, wherein Wescare had demanded payment of Rs.12,65,024/- towards expenses incurred on behalf of Indowind. The plaintiff had also made payment for the same on 16.06.2006 without a murmur, as reflected in their ledger account statement which has been furnished as Doc No.1 in the Additional Documents filed by plaintiff. Thus it is clear that plaintiff had to pay the defendant and not vice-versa. The exhibit under Doc No.33 and the payment by the plaintiff to the defendant covered in Doc No.1 clearly establishes that defendant had various other transactions including sale of turbine & payment of sales tax dues. Those are clearly outside the ambit of the offer letter. There are contradictions in the plaint filed by the plaintiff that in para No.7, it is stated that in the month of September 2006, the defendant failed to pay, whereas in



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August 2006 abruptly stopped its payment to the plaintiff. Therefore it is obvious that the plaintiff has filed the above suit making bogus claim. The offer letter was totally misused by the plaintiff and the plaintiff has concocted the accounts for the purpose of this suit, which is irrelevant to the O & M offer, which in fact reflects certain payments made to the defendant company and to other unrelated accounts. The testimony given by PW1 clearly shows that no such contract has ever been in place between the parties.

12.3 As already stated in order to substantiate the case of the plaintiff, the authorised signatory of the plaintiff was examined as P.W.1, who, in the cross examination, has clearly stated that based on the documents only he has knowledge and deposed. Further during examination in chief, for some of the questions regarding accounts, P.W.1 answered that accounts people will only know. Except P.W.1, no other independent witness was examined on the side of the plaintiff, especially when the defendant specifically denied the contractual liability. Further the plaintiff has argued that due to lack of infrastructure and experienced staff, the



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has argued that due to lack of infrastructure and experienced staff, the defendant issued Ex.P1, but on the contrary, during evidence. P.W.1 for Q.No.43 with regard to Clause 3 of Ex.P1, answered that actually O & M services had been done with the employees of the defendant.

12.4 It is settled proposition of law that the plaintiff has to prove its case on its own strength and it cannot take advantage of the loopholes left by the defendant. In this case the defendant specifically has denied stating that there is no concluded contract and not handed over any site to the plaintiff and none of the plaintiff's men were permitted to enter inside the site and hence it is for the plaintiff to prove its case that there was a concluded contract and signed copy of the same was also sent to the defendant and the same was also acknowledged by the defendant and site was handed over to the plaintiff and plaintiff engaged men to carry out the works.

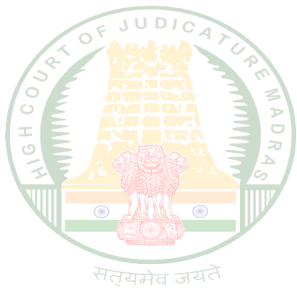
12.5 P.W.1 specifically deposed that only based on the documents, he deposed and hence P.W.1 is not the competent person to speak about the



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P.W.1 answered that the accounts people will only know. Under these circumstances, the plaintiff ought to have examined any other witness, who maintained the accounts of the plaintiff company and also the person who has personal knowledge about the taking over of the possession of the Wind Turbines.

12.6 In this case, even though the defendant has admitted that the defendant company paid insurance, but, the defendant has specifically stated that it was nothing to do with the alleged contract and hence it is for the plaintiff to prove its case, especially when the defendant specifically stated that the plaintiff owed money, which transaction were part of the sale proceeds as could be seen from the defendant's bill dated 16.06.2006 and in any event, these are outside the purview of the letter of offer Ex.P1. When that be the case of the defendant, it is the duty of the plaintiff to examine any witness and establish its case. It is well settled proposition of law that burden of proof of defence is not that much heavy that of the plaintiff and the defence can discharge its burden of proof by preponderance of probabilities.

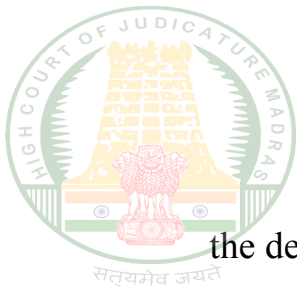


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WEB COPY 12.7 Even prior or after filing of the suit, there was no notice.

Further the alleged O & M contract has been entered into between the parties on 29.03.2006 and the suit is filed in the year 2009 and during this period there is no communication from the plaintiff demanding payment due to the plaintiff, which are all also creates doubt in the case of the plaintiff. Mere entries in the statement of accounts is not evidence according to Section 34 of Indian Evidence Act. The person, who made entry has to speak about the same, which was regularly kept in the course of business. P.W.1 has also stated accounts people will only aware of the same, but, except P.W.1 no one was examined.

12.8 As already stated the plaintiff has not proved its case by producing sufficient oral and documentary evidence except marking the statement of accounts. It is settled proposition of law that mere filing of statement of accounts itself is not sufficient and it has to be proved in the manner known to law, especially when the defendant denied the same and P.W.1 also for some of the questions stated that accounts people only know.



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the defendant is not liable to pay any amount as claimed in the plaintiff.

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13 Issue No.3 Whether the suit claim is barred by limitation?

According to the plaintiff Ex.P1 is issued on 29.03.2006 and from that day onwards till August 2006 the plaintiff had been doing O & M works and suit is filed in the month of February, 2009 and hence either from the date of contract i.e. 29.03.2006 or from the date of termination of contract i.e. August 2006, the suit is filed within three years and it is not barred by limitation. Accordingly this issue is answered in favour of the plaintiff.

14 In view of the above observations and discussions the plaintiff is not entitled to any other relief and the suit is dismissed. However, considering the facts and circumstances of the case, there shall be no order as to cost.

21.01.2025

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

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S.Diraviam (P.W.1)

List of Exhibits marked on the side of the Plaintiff

S.No	Exhibits	Description of Documents
1	P1	The original letter from the defendant company dated 29.03.2006
2	P2	The original Board Resolution passed by the plaintiff dated 24.01.2009
3	P3	The computer printout of statement of accounts dated 06.05.2006 to 31.03.2007 mentioned in 65B certificate
4	P4	The original compliance certificate issued by the plaintiff dated 19.02.2009.
5	P5	The photocopy of Wescare receipt for Nagercoil site dated 03.05.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
6	P6	The photocopy of the Indo Wind Energy Bank payment Voucher-1, Indo wind energy bank payment voucher-2 and acknowledgement dated 06.05.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
7	P7	The photocopy of Annai Agencies cash/credit bill dated 06.05.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
8	P8	The computer printout of the ledger account for Wescare India Ltd., O & M expenses A/c dated 06.05.2006 to 31.01.2008 mentioned in 65B certificate
9	P9	The photocopy of the letter from Chiranjeevi wind energy to Indo Wind Energy Limited dated 16.05.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
10	P10	The photocopy of the Chiranjeevi wind energy invoice to Wescare dated 16.05.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
11	P11	Photocopy of the Bill from N.Dakshnamurthy dated 19.05.2006



S.No	Exhibits	Description of Documents
		marked as per order in A.No.3946 of 2021 dated 17.11.2021
12	P12	The photocopy of the Indo Wind Energy Ltd., Madurai Voucher-1, Indo WindEnergy Ltd., Madurai Voucher-2, Indo Wind Energy Ltd., Madurai Voucher-3 dated 25.05.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
13	P13	Th photocopy of the Indo Wind tour advance voucher dated 25.05.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021.
14	P14	The photocopy of the SGM wind farm bank payment voucher Telephone bills and cheque to BSNL dated 06.06.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021.
15	P15	The photocopy of the Indo Wind voucher dated 07.06.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021.
16	P16	The photocopy of the Bill from MM Fibre to Indo Wind dated 10.06.
17	P17	The original bearing sales Invoice to Wescare dated 14.06.2006.
18	P18	The photocopy of the Indo Wind Bank payment voucher to Wescare dated 16.06.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
19	P19	The photocopy of the Bill from Wescare to Indo Wind dated 16.06.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
20	P20	The computer printout ledger account for security charges-Wescare dated 16.06.2006 to 30.09.2006 mentioned in 65B certificate
21	P21	The photocopy of the Sri Ram Security Service Receipt dated 17.06.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
22	P22	The photocopy of the invoice from Power Tech Engineers to Wescare dated 30.06.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
23	P23	Th photocopy of the Indo Wind Bank payment voucher for security service dated 30.06.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
24	P24	The photocopy of Letter from Sriram Security to Indo Wind-1,

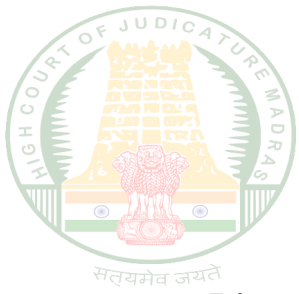


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S.No	Exhibits	Description of Documents
		Sriram Security service bill for the site, letter from Sriram Energy to Indo Wind-2, Security bill for site dated 01.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
25	P25	The computer printout ledger account for tour and travel – Wescare dated 03.07.2006 mentioned in 65B certificate
26	P26	The photocopy of the A.M.Security service bill dated 07.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
27	P27	The photocopy of the Ashok Security service bill for Kumarapuram site dated 08.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
28	P28	The photocopy of the Ashok Security Service Bill for Vadakamkulam site dated 08.07.2006. marked as per order in A.No.3946 of 2021 dated 17.11.2021
29	P29	The photocopy of the M.Amirtharaj Security Service Bill dated 08.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
30	P30	The photocopy of the Annai Security Service Bill dated 08.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021.
31	P31	The photocopy o the Indo Wind Bank payment voucher for salary dated 10.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
32	P32	The photocopy of the Indo Wind Bank payment voucher for security dated 10.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
33	P33	The computer printout ledger accounts for salaries – Wescare dated 10.07.2006 to 30.09.2006 mentioned in 65B certificate
34	P34	The photocopy of the payment made as DD to security services dated 12.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
35	P35	The photocopy of the Bank payment voucher to professional couriers dated 18.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
36	P36	The computer printout ledger accounts for postage-Wescare dated 18.07.2006 to 30.09.2006 mentioned in 65B certificate



S.No	Exhibits	Description of Documents
37	P37	The computer printout ledger account for printing and stationery – Wescare dated 18.07.2006 to 30.09.2006 mentioned in 65B certificate
38	P38	The computer printout ledger account for rent – Wescare dated 18.07.2006 to 30.09.2006 mentioned in 65B certificate
39	P39	The computer printout ledger account for telephone – Wescare dated 18.07.2006 to 30.09.2006 mentioned in 65B certificate
40	P40	The computer printout ledger account for repair and maintenance – Wescare dated 20.07.2006 to 30.09.2006 mentioned in 65B certificate.
41	P41	The photocopy of the Bank payment voucher, Invoice and purchase order to Cosmic Electricals dated 27.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
42	P42	The photocopy of the Bank payment voucher, invoice and purchase order to Pankaj dated 27.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
43	P43	The photocopy of the Bank payment voucher, invoice and purchase order to Trans Electricals dated 27.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
44	P44	The photocopy of the Bank payment voucher to Bankers India Ltd., dated 27.07.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
45	P45	The original S.Thiraviam Civil & Painting Bill to Indowind dated 04.08.2006
46	P46	The photocopy of the Bank payment voucher dated 14.08.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
47	P47	The photocopy of the payment made by DD to security services dated 21.08.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
48	P48	The photocopy of the Bank payment voucher to Wescare dated 19.09.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021
49	P49	The photocopy of the Bank payment voucher to Wescare dated 19.09.2006 marked as per order in A.No.3946 of 2021 dated 17.11.2021



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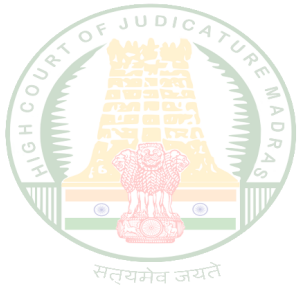
List of witnesses examined on the side of third defendant

V.R.Raghunathan (D.W.1)

List of exhibits marked

S.No	Exhibits	Description of Documents
1	D1	The certified copy of the common order passed in C.P.No.95 to 97 of 2012 dated 24.08.2012
2	D2	The printout of Fresh certificate of incorporation dated 12.01.2016 mentioned in 65B certificate
3	D3	The Computer printout of ledger extract of the plaintiff together with relevant bank statement dated 01.04.2006 to 31.03.2007 mentioned in 65B certificate (marked subject to objection, proof and relevancy)

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P.VELMURUGAN, J.

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