IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30 / 03 / 2026
PRONOUNCED ON : 10 / 04 / 2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

Appeal (CAD)No.30 of 2026 &
C.M.P.No.6813 of 2026

M/s.Dee-Tech Project Private Limited (DPPL),
Through its Director,
No.129, Aani Street, 2nd Floor,
Chinmaya Nagar, Chennai - 600 092.

Also at:
49A, 1st Floor, 13th Street,
V Block, Anna Nagar, Chennai - 600 040. ... Appellant

Vs.

TK Elevator India Private Limited,
(Formerly Known as Thyseenkrupp
Elevator (India) Private Limited,
Old No.21, New No.36, GPR Business Centre,
Vaidhyaraman Street, T.Nagar,
Chennai - 600 017, Tamil Nadu.
(Amended by virtue of order passed in I.A.No.2 of 2024,
dated 27.09.2024)

Also, at:
M/s.Thyssen Krupp Elevator (India) Private Limited (TKEI),
87/172, Bharati Colony,
Peelamedu, Coimbatore - 641 004. ... Respondent

Prayer: This Appeal (CAD) is filed under Section 96 and Order 41, Rule 1 of C.P.C. to set aside the judgment and decree dated 08.10.2025 in C.O.S.No.501 of 2022, on the file of the Additional Commercial Court, Egmore, Chennai.

For Appellant : Mr.J.Chandran Sundar Sashikumar

For Respondent : Mrs.R.Mithra
For M/s.Fox Mandal & Associates

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JUDGMENT

P.VELMURUGAN, J.

This Appeal Suit has been filed by the appellant/defendant challenging the judgment and decree dated 08.10.2025 passed in C.O.S. No.501 of 2022 on the file of the learned Additional Commercial Court, Egmore, Chennai, whereby the suit filed by the respondent/plaintiff for recovery of money was partly decreed. Originally, the suit was instituted as C.S. No.296 of 2015 on the file of this Court. Subsequently, the suit was transferred and renumbered as O.S.No.3621 of 2019 on the file of the learned VII Additional City Civil Court, Chennai. Thereafter, upon constitution of the Commercial Court and having regard to the commercial nature of the dispute, the matter was again transferred and renumbered as C.O.S. No.501 of 2022 on the file of the learned Additional Commercial Court, Egmore, Chennai.

2. The brief facts leading to the filing of the suit, as stated by the respondent/plaintiff, are that the appellant/defendant had placed a work order in connection with the supply, erection, testing and commissioning of elevator equipment for a project. According to the respondent/plaintiff, the work entrusted to it was carried out and completed in accordance with the contract and the elevators were installed and commissioned. The respondent/plaintiff states that for the work executed, invoices were raised from time to time and a substantial portion of the contract value had already been paid by the appellant/defendant through a Letter of Credit. However, according to the respondent/plaintiff, a balance amount of Rs.22,00,000/- remained due and payable by the appellant/defendant. It is the further case of the respondent/plaintiff that despite repeated requests and demands for

payment, the appellant/defendant failed to settle the outstanding amount. Therefore, the respondent/plaintiff filed the suit seeking recovery of the said sum of Rs.22,00,000/- together with interest and costs.

3. The appellant/defendant contested the suit by filing a written statement denying the claim made by the respondent/plaintiff. The appellant contended that the suit claim is not maintainable and is barred by limitation. According to the appellant, the work relating to erection, testing and commissioning of the elevator was completed on 05.02.2010 and the respondent/plaintiff had encashed the Letter of Credit amounting to Rs.50,00,000/- on 08.02.2010. It was therefore contended that if any balance amount was due, the respondent/plaintiff ought to have initiated legal proceedings within a period of three years from the said date. However, the suit was filed only after several years and therefore the claim is clearly barred by limitation. The appellant further contended that the invoice dated 30.03.2012 relied upon by the respondent/plaintiff was never acknowledged by the appellant and the same does not contain the signature or seal of the appellant. According to the appellant, the said invoice was unilaterally

created by the respondent/plaintiff only to bring the suit within the period of limitation.

4. The appellant also contended that there was considerable delay in the completion of the work by the respondent/plaintiff and due to such delay, the Tamil Nadu Electricity Board (TNEB) imposed liquidated damages in connection with the project. According to the appellant, the respondent/plaintiff had agreed that any liquidated damages imposed due to delay would be borne by the respondent/plaintiff and therefore the appellant was justified in withholding the balance amount claimed by the respondent/plaintiff. The appellant further contended that the respondent/plaintiff had suppressed certain material documents including the appellant's communication dated 20.09.2010 wherein it was stated that the payments would be made only after the final settlement with TNEB and after determining the liquidated damages imposed. The appellant also contended that it had raised a counter claim against the respondent/plaintiff in connection with the damages caused due to delay. It was also the case of the appellant that it was only acting as an agent on behalf of M/s.Imeyam Industrial Traders and therefore the respondent/plaintiff ought to have

proceeded against the principal and not against the appellant. On these grounds, the appellant prayed that the suit filed by the respondent/plaintiff be dismissed.

5. The trial court, after considering the pleadings of both parties, framed the following issues for determination:

> *"(i) Whether the defendant to pay the plaintiff a sum of Rs.28,49,063/- with further interest at 18% per annum on Rs.22,00,000/- from the date of plaint to till the date of realization?*
>
> *(ii) Whether the suit is barred by limitation?*
>
> *(iii) To what other relief the plaintiff is entitled for?*
>
> *Additional Issues*
>
> *(i) Whether the suit is maintainable against the defendant?"*

On the side of the respondent/plaintiff, two witnesses were examined as P.W.1 and P.W.2, and 15 documents were marked as Exs.A1 to A15. On the side of the appellant/defendant, one witness was examined, and 11 documents were marked as Exs.B1 to B11.

6. The trial Court, after considering the pleadings and evidence, held that the defendant's plea of limitation could not be sustained. It observed that the agreement was not merely for supply but was a composite contract covering erection, testing, commissioning and warranty. The handing-over certificate itself provided for a warranty period of twenty-four months, and therefore the cause of action arose only after expiry of that period. The invoice (Ex.A13) dated 30.03.2012 was validly raised, and the suit filed on 26.03.2015 was within limitation. The Court further found that the plaintiff had completed the work entrusted and that a balance sum of Rs.22,00,000/- remained unpaid. The defence that the amount stood adjusted against liquidated damages imposed by TNEB was not substantiated by convincing evidence. The contention that the defendant was only an agent of Imeyam Industrial Traders was also rejected, since the work order and the letter of credit were issued by the defendant itself. On these findings, the trial Court partly decreed the suit, directing the defendant to pay the sum of Rs.22,00,000/- together with interest at 9% per annum.

7. Aggrieved by the said judgment and decree, the appellant/defendant has filed the present appeal.

8. The learned counsel appearing for the appellant/defendant submitted that the judgment and decree passed by the trial court are unsustainable both on facts and in law and that the trial court failed to properly appreciate the pleadings, oral evidence and documentary evidence available on record. According to the learned counsel, the materials placed before the court clearly establish that the work relating to erection, testing and commissioning of the elevators had been completed as early as on 05.02.2010 and that the respondent/plaintiff had encashed the Letter of Credit for a sum of Rs.50,00,000/- on 08.02.2010. It was therefore contended that the cause of action, if any, had arisen at that point of time and the respondent/plaintiff ought to have instituted the suit within a period of three years therefrom. However, the suit came to be filed only after several years and therefore the claim is clearly barred by limitation.

9. The learned counsel further submitted that the respondent/plaintiff attempted to rely upon an invoice dated 30.03.2012 marked as Ex.A13 in order to contend that the suit was filed within the period of limitation.

However, the said invoice was never acknowledged by the appellant/defendant and does not bear the signature or seal of the appellant. According to the learned counsel, there is no evidence to show that the said invoice was served on the appellant. It was therefore argued that the said invoice was unilaterally created by the respondent/plaintiff only with a view to bring the claim within the period of limitation and the trial court erred in placing reliance upon the said document.

10. The learned counsel further submitted that the trial court failed to properly appreciate the documentary evidence placed on record, particularly Ex.A3 and Ex.A7, which relate to the work order and the contractual terms governing the execution of the work. According to the learned counsel, the trial court misinterpreted the contents of the said exhibits and arrived at an erroneous conclusion that the respondent/plaintiff was entitled to claim the alleged balance amount after the expiry of the warranty period. It was contended that Ex.A3 clearly stipulates the stages of payment and that the balance contract value was payable upon completion of installation, testing and handing over of the elevators for beneficial use. However, the trial court wrongly interpreted the expression “etc.” found in Ex.A7 and consequently

arrived at an incorrect finding with regard to the entitlement of the respondent/plaintiff to claim the balance amount.

11. The learned counsel further submitted that the trial court failed to properly consider the other documentary evidence on record, particularly Ex.A11, Ex.A12 and Ex.A14 marked on the side of the respondent/plaintiff as well as Ex.B9 marked on the side of the appellant/defendant. According to the learned counsel, a proper appreciation of the said documents would clearly demonstrate that the appellant had acted only in the capacity of a power agent of M/s.Imeyam Industrial Traders, who was the principal contractor to whom the project had been awarded by the Tamil Nadu Electricity Board (TNEB). It was therefore contended that the appellant did not have any independent authority to award the contract in its individual capacity and that all communications issued by the appellant were only in the capacity of an agent acting on behalf of the said principal contractor.

12. The learned counsel further submitted that the trial court failed to consider that the principal contractor, namely M/s.Imeyam Industrial

Traders, who had been awarded the contract by TNEB and who alone was competent to deal with matters relating to the contract and payments, had not been impleaded as a party to the suit. According to the learned counsel, in the absence of the said principal contractor being made a party, the suit itself is bad for non-joinder of necessary parties, and the trial court erred in fastening the liability solely on the appellant/defendant.

13. The learned counsel also submitted that the trial court failed to appreciate that there had been delay in the completion of the work on the part of the respondent/plaintiff and due to such delay the Tamil Nadu Electricity Board had imposed liquidated damages in connection with the project. According to the learned counsel, as per the contractual understanding between the parties, any liquidated damages imposed due to delay attributable to the respondent/plaintiff were to be borne by the respondent/plaintiff itself. It was therefore contended that the appellant was justified in withholding the balance amount claimed by the respondent/plaintiff.

14. The learned counsel further submitted that the trial court erred in observing that the appellant had neither prayed for set-off nor raised a counter claim. In this regard, the learned counsel pointed out that a document had been marked on the side of the appellant indicating a claim for a sum of Rs.3,02,27,099/-, and it was contended that such claim, if at all, could be pursued only by the principal contractor, namely M/s.Imeyam Industrial Traders, and not by the appellant who was only acting as a power agent. According to the learned counsel, the trial court failed to appreciate this aspect in the proper perspective.

15. The learned counsel therefore submitted that the trial court had misread the pleadings and documentary evidence, failed to properly appreciate the role of the appellant as an agent of the principal contractor and arrived at erroneous findings with regard to limitation, liability and entitlement of the respondent/plaintiff. On these grounds, the learned counsel prayed that the impugned judgment and decree passed by the trial court be set aside.

16. Per contra, the learned counsel appearing for the respondent/plaintiff supported the judgment of the trial court and submitted that the trial court had correctly appreciated the evidence available on record. According to the learned counsel, the respondent/plaintiff had clearly established that it had executed and completed the work entrusted to it and that the appellant/defendant was liable to pay the balance amount due under the contract. The learned counsel submitted that invoices had been raised for the work carried out and that the respondent/plaintiff had made repeated requests to the appellant for settlement of the outstanding amount. However, the appellant failed to honour its contractual obligation and therefore the respondent/plaintiff was constrained to file the suit for recovery of the amount due.

17. The learned counsel for the respondent further submitted that the defence raised by the appellant with regard to limitation is unsustainable. According to the learned counsel, the respondent/plaintiff had produced documents to show that the liability of the appellant continued and that the cause of action for filing the suit had arisen subsequently. Therefore, the suit cannot be said to be barred by limitation. The learned counsel also submitted

that the contention raised by the appellant regarding liquidated damages has not been substantiated by any acceptable evidence. It was further submitted that the trial court, after carefully analysing the oral and documentary evidence, rightly came to the conclusion that the respondent/plaintiff is entitled to recover the suit amount. Hence, the learned counsel prayed that the appeal may be dismissed and the judgment and decree passed by the trial court may be confirmed.

18. This Court has carefully considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

19. The learned counsel for the appellant/defendant contended that the work relating to the supply, erection, testing and commissioning of the elevators had been completed on 05.02.2010. It is further submitted that the respondent/plaintiff had encashed the Letter of Credit for a sum of Rs.50,00,000/- on 08.02.2010. According to the appellant, if any balance amount was payable, the respondent/plaintiff ought to have initiated

appropriate proceedings within a period of three years from the said date. However, the suit came to be filed only in the year 2015, after the period of limitation. Hence, the appellant contends that the suit is clearly barred by limitation.

20. The appellant has also contended that the respondent/plaintiff attempted to rely upon an invoice dated 30.03.2012 (Ex.A13) in order to bring the claim within the period of limitation. According to the appellant, the said invoice does not bear the signature or seal of the appellant and there is no material to show that the same was ever acknowledged by the appellant. It is therefore contended that the said invoice is only a unilateral document created by the respondent/plaintiff and the same cannot have the effect of extending the period of limitation.

21. Per contra, the learned counsel for the respondent/plaintiff submitted that the contract between the parties was a composite contract involving supply, erection, testing and commissioning of elevators along with a warranty obligation. According to the respondent/plaintiff, the

contractual obligations continued during the warranty period and therefore the claim raised subsequently was well within the period of limitation.

22. In the light of the rival submissions and the materials placed before this Court, the following points arise for consideration in this appeal:

1. Whether the suit filed by the respondent/plaintiff is barred by limitation?
2. Whether the judgment and decree passed by the Commercial Court warrant interference by this Court?

23. In order to examine the rival contentions, it is necessary to consider the contractual documents relied upon by the parties. Ex.A3, which is the work order issued in favour of the respondent/plaintiff, contains the terms governing the execution of the work. A reading of Clause of the terms of payment in Ex.A3 indicates that the payments were structured in stages and that the balance amount was payable upon completion of installation, testing and handing over of the elevators for beneficial use.

24. The materials placed on record indicate that the work relating to the erection and commissioning of the elevators had been completed and the elevators were handed over during the year 2010. It is also not in dispute that the respondent/plaintiff had encashed the Letter of Credit shortly thereafter. These circumstances would indicate that the contractual transaction between the parties had substantially concluded during the said period.

25. The respondent/plaintiff seeks to rely upon the invoice dated 30.03.2012 (Ex.A13) to contend that the claim was raised subsequently and therefore the suit is within the period of limitation. However, a careful examination of the said document shows that the invoice does not bear any signature, seal or acknowledgment on the part of the appellant. There is also no material placed before this Court to show that the appellant accepted the said invoice or agreed to pay the amount mentioned therein.

26. It is well settled that an invoice, by itself, is merely a document generated by the party raising the claim. In the absence of acknowledgment by the other party, such a document cannot be treated as extending the

period of limitation. In the present case, the invoice relied upon by the respondent/plaintiff appears to be a unilateral document and there is no evidence on record to show that the appellant either acknowledged or acted upon the same.

27. The respondent/plaintiff also sought to rely upon the warranty clause contained in the contract. However, the purpose of a warranty clause is distinct and limited. A warranty provision is intended to ensure that the equipment supplied functions properly for a specified period and that defects, if any, are rectified during that period at the cost of the supplier. Such a clause cannot be interpreted as postponing the cause of action for recovery of the contract price or extending the limitation period for making a monetary claim.

28. The limitation for filing a suit for recovery of money arising out of a contractual transaction is governed by the provisions of the Limitation Act, 1963. In cases of this nature, the claim has to be made within three years

from the date on which the cause of action arises, namely the date of completion of the work or the date when the payment becomes due.

29. In the present case, the materials on record clearly indicate that the work had been completed and the elevators had been handed over during the year 2010. If the respondent/plaintiff was entitled to any further payment under the contract, it ought to have taken steps to recover the same within three years from the date of completion or handing over of the work.

30. Admittedly, there is no acknowledgment of liability by the appellant within the meaning of Section 18 of the Limitation Act. There is also no evidence of any renewal of liability or a fresh promise extending the period of limitation.

31. In the absence of such acknowledgment or fresh agreement, the limitation period cannot be extended. Therefore, the claim made by the respondent/plaintiff beyond the prescribed period of limitation cannot be legally sustained.

32. The trial Court appears to have proceeded on the premise that the existence of a warranty period would postpone the cause of action. In the considered opinion of this Court, such a view is not legally sustainable, since the scope and object of a warranty clause cannot be equated with the obligation to pay the contract price.

33. In view of the above discussion, this Court is of the considered opinion that the trial Court failed to properly examine the issue of limitation and placed reliance on documents which do not legally extend the period of limitation. Consequently, the finding of the trial Court on this aspect cannot be sustained. Accordingly, Issue No.1, namely whether the suit filed by the

respondent/plaintiff is barred by limitation, is answered in favour of the appellant/defendant and against the respondent/plaintiff.

34. Once it is found that the suit itself is barred by limitation, the decree passed by the trial Court cannot stand, since the law of limitation bars the remedy irrespective of the merits of the claim. In view of the above finding, Issue No.2 as to whether the judgment and decree passed by the Commercial Court warrant interference by this Court is also answered in favour of the appellant and against the respondent.

35. Accordingly, this Court holds that the suit filed by the respondent/plaintiff is barred by limitation and therefore the judgment and decree passed by the learned Additional Commercial Court, Egmore, Chennai are liable to be set aside.

36. In the result, the Appeal Suit is allowed. The judgment and decree dated 08.10.2025 passed in C.O.S.No.501 of 2022 on the file of the learned

Additional Commercial Court, Egmore, Chennai are set aside and the suit filed by the respondent/plaintiff stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[P.V.J.,] [N.S.J.,]
10 / 04 / 2026

Speaking Order
Neutral Citation case: Yes

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To

The Sub Assistant Registrar,
(Original Side)
Madras High Court,
Chennai.

P.VELMURUGAN. J.
and
N.SENTHILKUMAR, J.

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Pre-Delivery Judgement in Appeal (CAD)No.30 of 2026

10 / 04 / 2026