IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	**10.04.2026**
Judgment pronounced on	**01.06.2026**

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.(COMM DIV.) No. 241 of 2023

The Tamil Nadu Generation and Distribution
Corporation Limited
Rep. By its Superintending Engineer
Ennore Thermal Power Station,
Ennore, Chennai 600 057.

..Plaintiff

Vs

M/s. Ash Tech (India) Private Limited
12 Rathnapuri Lay Out,
Jawaharlal Nehru Road
Koyambedu
Chennai 600 107.

..Defendant

PRAYER : Plaint filed Order VII Rule 1 of the CPC R/W Order IV Rule 1 of the Original Side Rules prays for a judgment and decree:

(a) Directing the defendant to pay to the plaintiff Rs.9,34,79,262.79 (Rupees Nine Crores Thirty Four Lakhs Seventy Nine Thousands Two Hundred and Sixty Two and Seventy Nine paise) due to the plaintiff as on 31-03-2020.

(b) Directing the defendant to pay interest on the sum of Rs.9,34,79,262.79 (Rupees Nine Crores Thirty Four Lakhs Seventy Nine Thousands Two Hundred and Sixty Two and Seventy Nine paise) at 10.75% per annum compounded monthly from the date of filing to till the date of realization; and

(c) Directing the defendant to pay costs of the suit and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr. P.Raghunathan

For Defendant : Mr.V.P.Raman

JUDGMENT

Background

The predecessor-in-interest of the plaintiff, the Tamil Nadu Electricity Board (the TNEB) operated the Ennore Thermal Power Station (ETPS). One of the by-products of the generation of thermal power is fly ash. Because fly ash is a pollutant, it is necessary to collect and dispose of the same safely and appropriately. The TNEB had earlier engaged the services of a third party, HV Equipment, Delhi, to install and maintain a fly ash collection system at the ETPS. Said third party failed to complete the task. Therefore, Memorandum of Understanding (MoU) dated 11.11.2005 (the MoU) was entered into between the TNEB and defendant whereby the existing non-operational fly ash collection system in all the five units at ETPS were allotted to the defendant on 'as is where is' condition with the object of undertaking necessary measures to make the system operational. This system is referred to as the Pressurised Dense Fly Ash Collection System (PDFACS). The term of the MoU was fixed at 14 years and the MoU specified that the defendant should pay service charges for the fly ash collected in the modified system at the rate charged by the Board from time to time. Originally, the TNEB charged at Rs.60/- per metric tonne (MT). Out of the fly ash collected in course of operation of the PDFACS, 90% could be retained by the defendant and 10% was allotted to the share of TNEB.

2. With a view to modify the duration of the MoU and provide for allotment of fly ash to India Cements Limited, Tripartite Memorandum of Understanding dated 14.06.2007 (the Tripartite MoU) was entered into between the TNEB, India Cements Limited and the defendant. The Tripartite MoU reduced the defendant's share of fly ash to 65% and provided for the allotment of 25% to India Cements Limited. It also reduced the term of the MoU to 9 years. The Tripartite MoU expressly recorded that all other terms of the MoU and the separate MoU dated 28.06.2006 with India Cements Limited remain unaltered.

3. The plaintiff is the successor-in-interest of the TNEB in relation to the power generation and distribution business and stepped into its shoes, including in relation to the MoU and Tripartite MoU. The agreed position is that the rate per MT of service charges was revised on 15.10.2009 to Rs.200/-; on 29.03.2010 to Rs.250/-; and on 13.07.2010 to Rs.350/-. These revisions were

accepted by the defendant and requisite service charges were paid to the plaintiff. On 01.03.2011, the plaintiff made a further revision of service charges to Rs.700/- per MT.

4. The fixation of service charges at Rs.700/- per MT was challenged by the defendant (W.P. No.6125 of 2011) and several cement companies. Interim orders of stay and injunction were issued on 11.03.2011 in W.P.No.6125 of 2011 in favour of the defendant subject to payment of service charges at Rs.350 per MT. Pursuant thereto, it is common ground that service charges at Rs.350 per MT were paid for the remainder of the contract period. By final order dated 23.02.2017 in W.P. No.6125 of 2011, notification dated 01.03.2011 fixing service charges at Rs.700/- per MT was set aside insofar as the defendant herein is concerned. On the basis of the interim order passed in Review Application Nos.55, 56 and 59 of 2013, by the said order, the service charge for fly ash was fixed as Rs.410/- per MT, pending disposal of the review applications.

5. After the disposal of the above mentioned review applications on 19.04.2017 by directing the plaintiff herein to collect service charges from the cement companies at Rs.410/- per MT, the plaintiff called upon the defendant to pay the differential amount of Rs.60/- per MT (Rs.410-Rs.350) for fly ash collected from 01.03.2011 to November 2016. The defendant applied for and

obtained a clarification on 28.01.2020 in WMP No.116 of 2020 that the direction fixing service charges at Rs.410/- per MT in order dated 23.02.2017 was subject to the MoU as regards the defendant. Thereafter, the defendant denied liability in respect of the differential claim and instead asserted that there was excess recovery of Rs.177,73,18,825.66 in letter dated 17.03.2020. By response dated 26.05.2020, this was refuted by the plaintiff and a claim of Rs.9,34,79,263 was made. This communication was challenged by the defendant in W.P. No.15963 of 2020. Shortly thereafter, the present suit was instituted. Although an interim injunction was issued on 09.11.2020, the writ petition was dismissed on 15.02.2023 after taking note of the pending civil suit. The appeal and special leave petition against said order were also rejected.

6. The plaintiff has sued the defendant for recovery of a sum of Rs. Rs.9,34,79,262.79 consisting of the principal claim of Rs.5,33,47,066/- with interest thereon at 10.75% per annum compounded monthly and calculated up to the date of the plaint. Further interest for the subsequent period and costs have been claimed. Initially, the suit was filed as an ordinary suit (C.S.No.225 of 2021). Later, it was transferred to the Commercial Division by order dated 07.09.2023, renumbered and declared to be a commercial dispute by order dated 16.11.2023.

Pleadings, issues and evidence

7. In the plaint, the plaintiff asserts that fly ash is a by-product of coal based power stations generated by the combustion of pulverised coal. It is also stated that the plaintiff considered it expedient to permit third parties to erect efficient and non-polluting fly ash collection systems at the five units of the ETPS. Towards that end, it is stated that HV Equipment, Delhi, was awarded a contract for installing, commissioning, maintaining and collecting fly ash. Because the said third party failed to complete the project, it is stated that the MoU was entered into with the defendant. It is also stated that the Tripartite MoU was later entered into between the plaintiff, the defendant and India Cements Limited modifying the earlier MoU by reducing the defendant's share of fly ash to 65% from 90%. The term of the original MoU, which was 14 years, was also reduced to 9 years under the Tripartite MoU.

8. The plaintiff states further that service charges were revised from time to time as follows: from Rs.60 per MT to Rs.200/- per MT from 15.10.2009; to Rs.250/- from 29.03.2010; and to Rs.350/- per MT from 13.07.2010. It is also stated that the defendant paid the above mentioned service charges without any demur or protest. When service charges were increased from Rs.350/- per MT to Rs.700/- per MT under notification dated 01.03.2011, it is stated that the defendant challenged the same by filing W.P. No.6125 of 2011. It is also stated

that an interim stay of said notification was granted on 11.03.2011 and the plaintiff was restrained from demanding anything more than the existing rate of Rs.350/- per MT.

9. The plaintiff also states that notification dated 01.03.2011 was challenged in a batch of connected writ petitions by cement companies, namely, W.P.Nos.5513 to 5515 of 2011, and that said writ petitions were disposed of on 01.02.2013 by modifying and fixing the service charges at Rs.540/- per MT from 01.03.2011. Said parties filed Review Application Nos.55, 56 and 59 of 2013. By order dated 12.04.2013, the plaintiff was restrained from recovering service charges in excess of Rs.410/- per MT. Based on said interim order in the review applications, the plaintiff states that order dated 23.02.2017 was issued in W.P. No.6125 of 2011 quashing notification dated 01.03.2011 that fixed service charges at Rs.700/- per MT and instead fixing service charges at Rs.410/- per MT pending disposal of the review applications. It is also stated that the review applications were allowed by order dated 19.04.2017 by fixing the service charges at Rs.410/- per MT.

10. In those circumstances, the plaintiff states that it called upon the defendant to pay the differential amount of Rs.60/- per MT. After referring to various communications in this regard, the plaintiff states that the defendant

filed a miscellaneous petition seeking clarification of order dated 23.02.2017 in W.P.No.6125 of 2011. By order dated 28.01.2020, this Court clarified that the directions issued earlier were subject to the MoU.

11. Stating that the defendant had lifted 8,89,118 MT of fly ash between March 2011 and November 2016, the plaintiff states that the defendant owes the plaintiff the differential sum of Rs.5,33,47,066/- at the rate of Rs.410/- per MT. After computing interest thereon at 10.75% p.a. compounded monthly, the suit claim has been made.

12. In the written statement, the defendant states that it invested a huge amount of money for installation of the dry fly ash collection system. In view thereof, it is stated that the defendant was exempted from paying water and power consumption charges. The defendant also states that the plaintiff did not communicate to the defendant the heads under which service charges were collected while making revisions. It is also stated that the defendant paid amounts claimed by the plaintiff towards service charges under the *bona fide* impression that the same excluded water and power charges which were exempted under the MoU.

13. After adverting to the writ petitions and review applications filed by cement companies and the fixation of service charges at Rs.410/- per MT in the review applications, the defendant states that it received a demand notice for a sum of Rs.5,37,62,572/- under notice dated 17.07.2017. The defendant also states that said notice was replied to on 25.04.2018 stating that claims made under Sl. Nos. 5, 8 and 9 are not applicable to the defendant. The defendant also states that it informed the plaintiff under letter dated 17.03.2020 that amounts recovered from the defendant for the period running from March 2011 to November 2016 towards current consumption charges for the electro-static precipitator (ESP) at Rs.96/- per MT, cost of investment of ash silo at Rs.18/- per MT, maintenance charges for road, lighting and water charges at Rs.108/- per MT and maintenance charges for fly ash evacuation system, pipelines and silos at Rs.98/- per MT, aggregating to Rs.320/- per MT, were not payable. Consequently, the defendant states that the plaintiff was informed that excess recovery of Rs.177,73,18,825.66/- was made. After further stating that the plaintiff was informed that only Rs.108/- per MT was payable by the defendant as service charges after excluding charges covered under Sl. Nos.5,8 and 9, the defendant has prayed that the suit be dismissed with costs.

14. Based on the above pleadings, this Court framed the following issues on 16.02.2022:

"i) Whether the plaintiff to recover a sum of Rs.9,34,79,262.79/- from the defendant?

(ii) Whether the plaintiff is entitled to get interest from the defendant on Rs.9,34,79,262.79/- at the rate of 10.75% per annum compounded monthly from the date of filing to till the date of realization?

(iii) Whether the defendant is entitled to power and water required during the installation of PDAF system at free of charge?

(iv) Whether the present suit has been filed in disregard to the Memorandum of Understanding dated 11.11.2005 and in violation of the order of this Court on 23.02.2017 and further clarified order dated 28.01.2020?

(v) Whether the plaintiff is entitled to any charges other than the mutually agreed service charge for ash collection?

(vi) Whether the charges mentioned under Sl. 5, 7, 8 & 9 as extracted (from letter dated 26.05.2020 are to be excluded from the cost payable per metric ton by the defendant?

(vii) Whether the suit filed by the plaintiff is a complete disregard to the order of interim injunction passed by this Court in WMP.No.19868 of 2020 in W.P.No. 15963 of 2020?

(viii) Whether the plaintiff is entitled for the cost of the suit?

(ix) What other reliefs, the plaintiff is entitled to?"

15. By subsequent order dated 17.02.2025, at the request of both parties, Issue No.3 was reframed as under:

> *"Whether the defendant is entitled to required free power and water for the installation and operation of the PDFAC system?"*

16. The plaintiff adduced evidence by examining Mr.P. Jaya Francis Selvakumar as PW1. In course of his examination-in-chief, Exs. P1 to P131 were marked subject to objections, including denial of several documents by the defendant. He was cross-examined by learned counsel for the defendant. In course thereof, Exs. D1-D4 were marked. The defendant examined Mr.Gautam Sonthalia as DW1 and Mr.Alok Raizada as DW2. Exs. D5 to D17 were marked through DW1. Except for denying the contents of some documents, the other documents were admitted by the plaintiff. Both DW1 and DW2 were cross-examined by learned counsel for the plaintiff.

Counsel and their contentions

17. Oral arguments on behalf of the plaintiff were advanced by Mr.P.Raghunathan. Oral arguments on behalf of the defendant were advanced by Mr.V.P.Raman. Both parties also filed written arguments.

18. Learned counsel for the plaintiff submitted that the MoU was entered into between the plaintiff and the defendant for carrying out balance works and operating and maintaining the fly ash collection system in all five units of the ETPS. He submitted further that there is no dispute between the parties with regard to the defendant lifting 8,89,118 MTs of fly ash between March 2011 and November 2016. He also submitted that the admitted position is that the defendant has paid service charges at Rs.350/- per MT in respect thereof and that the suit claim relates to the differential amount of Rs.60/- per MT.

19. Adverting to the MoU, learned counsel contended that the plaintiff is entitled to fix the service charges from time to time for the fly ash collected by the defendant. He also pointed out that this Court held in the batch of writ petitions filed by the cement companies that the contract is not in the nature of a statutory contract. Referring to notice dated 17.07.2017 (Ex. D9) demanding the differential amount of Rs.60/- per MT from March 2011 to November 2016 and the aggregate demand of Rs.5,37,62,572/- made therein, he pointed out that the defendant questioned three items in the heads of charges referred to in the order dated 23.02.2017 and claimed that only a sum of Rs.108/- per MT is payable by the defendant. According to learned counsel, said contention is totally untenable and that the defendant is not a captive consumer of fly ash and instead sells the

same at commercial rates. Therefore, he contended that the defendant cannot be equated with cement companies which built and installed the Pressurised Dense Fly Ash Collection System (PDFACS) and used the fly ash for cement production.

20. He also contended that the defendant was not duly authorised to institute the suit and that neither Ex.D4 nor Ex.D5 qualify as proper authorisation for instituting the suit and verifying pleadings in relation thereto. Although there is no contractual rate of interest, he submitted in conclusion that the plaintiff is entitled to interest at commercial rates in view of the nature of the transaction.

21. Mr.V.P.Raman responded to these contentions by first referring to the order dated 23.02.2017 in W.P.No.6125 of 2011 (Ex. P13) and the clarification thereof on 28.01.2020 in WMP No.116 of 2020 (Ex. P27). In effect, he submitted that the order fixing service charges at Rs.410/- per MT was clarified as being subject to the MoU between the plaintiff and the defendant. He also pointed out that notification dated 01.03.2011 fixing the service charges at Rs.700/- per MT was expressly set aside with regard to the defendant on 23.02.2017.

22. Because demand notice dated 17.07.2017 (Ex. D9) pertains to the period running from March 2011 to November 2016, he submitted that the claim is barred by limitation.

23. Without prejudice, he submitted that the claim of Rs.410/- per MT includes a sum of Rs.96/- per MT towards current consumption for the ESP. Referring to Question and Answers (Q&A) Nos.85 to 87 in the cross-examination of PW1, he submitted that PW1 attempted to make the untenable distinction between current consumption charges for the ESP and current consumption charges for the PDFACS. Referring to clause 6 of the MoU, learned counsel contended that both water and electricity charges for effective fly ash collection are required to be borne by the plaintiff and not the defendant.

24. In addition to the inclusion of current consumption charges for the ESP system, he submitted that the plaintiff has erroneously claimed Rs.18/- per MT as the costs towards investment on ash silos. In this connection, by referring to Q&A 89 to 104, he contended that PW1 was unable to justify the inclusion of a sum of Rs.18/- per MT towards investment for silos when some of the silos were put up by the defendant.

25. Referring to the cross-examination relating to the ESP, maintenance of roads and water charges, learned counsel contended that these charges were included in the sum of Rs.410/- per MT, although the entire operation and maintenance activity was carried out by the defendant. He also contended that as learned counsel for the plaintiff did not cross-examine the defendant's witnesses on the statements in the proof affidavits of DW1 and DW2 relating to the erroneous levy on various heads of charges, the work carried out by the defendant and on the earlier court orders, these critical aspects stand admitted. In this regard, he placed reliance upon the judgments of the Hon'ble Supreme Court in *Muddasani Venkata Narsaiah v. Muddasani Sarojanna, (2016) 12 SCC 288* and *Amar Singh v. State of Bihar, (1971) 3 SCC 273*.

26. The next contention of learned counsel was that the plaintiff is, in any event, not entitled to interest. On this issue, he first pointed out that the MoU does not specify any rate of interest. He also referred to the cross-examination of PW1, particularly Q&A 172 to 185. In particular, he emphasised that PW1 admitted that interest was not demanded in Ex. P17 or letter dated 28.08.2018 (Ex. P21). He also pointed out that PW1 admitted that interest was first claimed in letter dated 26.05.2020 (Ex.P22).

27. By way of rejoinder, learned counsel for the plaintiff submitted that this Court fixed the rate of service charges at Rs.410/- per MT by order dated 23.02.2017 in WP No.6125 of 2011 subject to the outcome of the review applications filed by the cement companies. The final order in the review applications maintained the service charges at Rs.410/- per MT. Thereafter, the defendant requested India Cements to pay at the rate of Rs.410/- per MT from March 2011 to November 2016 under Ex. P16. He contended that this amounts to acquiescence. He concluded his contentions by submitting that neither DW1 nor DW2 have any personal knowledge of the installation or operation and maintenance of the PDFACS, and that their evidence cannot be relied on.

Discussion, analysis and conclusions:

Preliminary objections

28. Although an issue was not framed on limitation, learned counsel for the defendant contended that the suit claim pertains to the period March 2011 to November 2016 and that said claim is barred by limitation. This contention warrants consideration. The plaintiff (through its predecessor) revised the service charges for several classes of companies, including the defendant, from Rs.350 per MT to Rs.700 per MT under notification dated 01.03.2011 (Ex. P95). As discussed earlier, the defendant challenged this notification and obtained an interim stay and injunction on 11.03.2011 subject to payment of

Rs.350 per MT. Pursuant thereto, the defendant paid at Rs.350 per MT for the relevant period. While disposing of the writ petition (W.P. No.6125 of 2011) on 23.02.2017, the impugned notification was set aside and service charges were fixed at Rs.410 per MT subject to the outcome of the review applications. The review applications were partly allowed on 19.04.2017 by maintaining service charges at Rs.410 per MT as per the interim order.

29. Hence, the plaintiff had been restrained from claiming at Rs.700 per MT for this period and could claim at Rs.410 per MT only after these orders in 2017. When such claim was made under notices dated 17.07.2017 (Ex. D9) and 14.12.2017 (Ex. P17), the defendant denied liability by reply dated 25.04.2018 (Ex. P18). The plaint was presented on 29.10.2020, which is within the period of limitation. Hence, this preliminary objection is rejected.

30. Another preliminary objection was raised by learned counsel for the plaintiff that DW1 and DW2 lacked proper authorisation. Mr. Gautam Sonthalia (DW1) has signed and verified the written statement by relying on board resolution dated 14.07.2021. This board resolution and later board resolution dated 02.12.2024 were exhibited collectively as Ex. D5. The board resolution of 14.07.2021 authorises Mr. Gautam Sonthalia to sign the vakalat, pleadings and applications in relation to proceedings against the TNEB. The subsequent

resolution of 02.12.2024 authorises both Mr. Gautam Sonthalia and Mr. Alok Raizada to adduce evidence on behalf of the defendant. In course of the cross-examination of DW1, the following was recorded in this regard:

> *" Q38. Even as at 23rd May 2020 TANGEDCO has come into being as a separate legal entity. Is it right?*
>
> *A: Yes.*
>
> *Q39. Therefore the Resolution dated 14th July 2021 permits you to sign vakalathnama and appear before the proceedings and file writings, only in respect of proceedings against TNEB?*
>
> *A: As a usual practice in my company we often refer to TNEB and TANGEDCO as one and the same and since our earlier dealings always stated the name of TNEB. We usually always refer to the subject matter as of TNEB."*

Considering that the plaintiff, TANGEDCO, was formed by restructuring TNEB as the successor in respect of power generation and distribution businesses, the above explanation is reasonable and warrants acceptance.

31. A related objection was raised that DW1 and DW2 lack personal knowledge. This objection falls in a distinct category and does not affect the admissibility of their evidence. It could, however, have a bearing on the materiality and weight of their oral evidence, if consideration thereof were to become relevant. Resolving the preliminary objections in this manner, I turn to the merits.

Issue Nos. 1, 3, 4, 5, 6 and 7:

32. All these issues relate to the validity of the suit claim for differential service charges at Rs.60/- per MT for the period between March 2011 and November 2016. In the written statement, the defendant asserts that the heads under which the service charges of Rs.410/- per MT were computed and claimed include current consumption charges for fly ash evacuation system at Rs.96/- per MT, maintenance charges for roads, lightening and water at Rs.108/- per MT and maintenance charges for fly ash evacuation system, pipelines and silos at Rs.98/- per MT. According to the defendant, these heads of charges are not applicable to the defendant and that if they are excluded, the amount payable is only Rs.108/- per MT. Because the defendant paid at Rs.350/- per MT, the defendant has also pleaded that an excess recovery of about Rs.177.73 crore was made by the plaintiff. The defendant, however, did not make a counter claim. Therefore, the only aspect that requires to be adjudicated is the plaintiff's claim for the differential sum of Rs.60/- per MT.

33. In the plaint and the written statement, reference has been made to the periodical revisions made to the service charges. It is sufficient to refer to paragraph 5(e) of the written statement wherein the defendant has set out the rate charged for specific periods. The defendant has also stated that the heads under which service charges were levied were not disclosed earlier and that the

defendant paid the charges under the *bona fide* impression that the same excluded water and power charges. Thus, it is common ground between the parties that the revisions made earlier by the plaintiff to service charges were not challenged by the defendant. The last revision was made under notification dated 01.03.2011, which was issued in common to several companies, including the defendant, and this was successfully challenged by the defendant as recorded earlier.

34. In order to determine whether the plaintiff is entitled to the suit claim, the first document warranting consideration is the MoU. Clause 3 thereof, which deals with service charges, is set out below:

> *"3. The Company has to pay the service Charges for the 90% of fly ash collected in the modified installed system at the rate charged by the Board from time to time (present rate is Rs. 60/- per tonne). The Company has to deposit in advance one month's proceeds on fly ash that would be issued to them. Power and water required during the installation of the system will be provided on free of charges."*

35. As can be seen from the above clause, the plaintiff is empowered to claim service charges at the rate charged by the Board (i.e. TNEB) from time to time. Clause 3 also specifies that power and water required for the installation

of the PDFACS will be provided free of charge. Exercising power under this clause, the plaintiff revised the service charges from Rs.60/- at the inception to Rs.200/- per MT on 15.10.2009; from Rs.200/- to Rs.250/- on 29.03.2010; and from Rs.250/- to Rs.350/- on 13.07.2010. The last revision on 01.03.2011 from Rs.350/- to R.700/- per MT was the subject matter of challenge by the defendant in W.P.No.6125 of 2011. Initially, an interim order was issued on 11.03.2011 in the said writ petition granting an interim injunction and stay on condition that the defendant continues to pay Rs.350/- per MT. By final order dated 23.02.2017, service charges were fixed at Rs.410/- per MT subject to the outcome of the pending review applications. Such review applications were partly allowed on 19.04.2017 maintaining service charges at Rs.410/- per MT. By order dated 28.01.2020 in WMP No.116 of 2020 in W.P.No.6125 of 2011, the earlier order dated 23.02.2017 was clarified by recording that it would be subject to the MoU.

36. Because of the above clarification, the primary contention of the defendant is that about three heads of claim forming part of the service charges of Rs.410/- per MT are not applicable to the defendant as per the MoU. This contention is, thus, at the core of this dispute.

37. The following worksheet for calculation of service charges for cement companies (PDFACS) has been extracted in order dated 23.02.2017 in W.P. No.6125 of 2017 (Ex. P13):

"Working sheet for calculation of service charges for Cement Companies (PDFACS)

1) Maintenance of BSP electrical equipments control panels and establishment charges of B.M. Sub-division Rs.21/ton.

2) Maintenance charges of BSP mechanical equipments and establishment charges of ESP sub-division Rs.69/ton.

3) Establishment charges of AHP division regarding fly ash Management & security system Rs.72/ton.

4)Current consumption charges for fly ash evacuation system Rs.50/ton

5) Current consumption charges for ESP system Rs.96/ton.

6) Cost towards investment for dry fly Ash collection system Rs.76/ton

7) Cost towards investment for Ash silo Rs.18/ton.

8) Maintenance charges for road, lighting water charges etc., Rs.108/ton.

9) Maintenance charges for fly ash evacuation system, pipe lines & silo etc. Rs.98/ton

Total - Rs.608/ton"

By order dated 19.04.2017 in Review Application Nos. 55,56, 59, 60 and 61 of 2013 (Ex. P14), excluding the charges under the heads in Sl. Nos.3,4 and 6, the service charge of Rs.410/- per MT was arrived at and this was the basis of the plaintiff's demand notices to the defendant.

38. Relying on clarification dated 28.01.2020 (Ex. P27) to the effect that service charges of Rs.410 per MT are subject to the MoU, the defendant's first objection pertains to Sl. No.5 relating to current consumption charges for the ESP system. This contention is raised on the ground that the MoU between the parties provides that current consumption charges would be borne by the plaintiff and not the defendant. Clause 6 of the MoU is relevant in this regard and reads as under:

> *"6. 100% fly ash generated should be collected by the company in the respective silos from the allotted unit. Out of the above, 10% of fly ash should be spared to TNEB for allotting the same to other Industries and the balance 90% of fly ash shall be taken for their utilisation.* ***The charges towards water and current consumption for the effective dry ash collection will be borne by the Board for the initial lease period of 14 years.****"*
>
> (emphasis added)

39. The language used in clause 6 is that the charges towards water and current consumption for effective dry ash collection will be borne by the Board (TNEB) for the initial lease period of 14 years. The defendant contends that the plaintiff is, therefore, not entitled to claim service charges by taking into

account current consumption charges for the ESP system at Rs.96/- per MT. The plaintiff, on the other hand, contends that the current consumption charges relating to the PDFACS would be borne by the plaintiff, but that the plaintiff is entitled to take into account the current consumption charges relating to the ESP while fixing service charges.

40. An ESP is a filtration device used in coal based thermal power plants to remove fine particulate matter, primarily fly ash, from the exhaust gases. The operation of the ESP entails consumption of substantial power. The fly ash removed by operation of the ESP falls into hoppers and is subsequently conveyed to and stored in silos. The collection of fly ash in the hoppers and the transportation/conveyance thereof for storage in silos is the function performed by the PDFACS. As discussed earlier, the execution of balance work and the operation and maintenance of the PDFACS was entrusted to the defendant. The installation and operation of the PDFACS also entails the use of power. Therefore, the question that falls for consideration is whether the plaintiff is entitled to take into account power consumption for the operation of the ESP while determining service charges payable by the defendant.

41. As is evident from clauses 3 and 6 of the MoU, power and water required for both installation and effective dry ash collection are required to be

provided free of charge or borne by the plaintiff, as the case may be. Clause 6 *inter alia* refers to current consumption for effective dry fly ash collection, but there is nothing in said clause or anywhere in the MoU to indicate whether this is limited to the PDFACS or covers both ESP and PDFACS.

42. PW1 was questioned on this issue. Q&A 85 to 88 are set out below:

> *"Q85: Is it correct that the Current Consumption Charges for ESP system is included in the Final amount Rs.410/- per MT?*
>
> *A: Yes.*
>
> *Q86: But Current Consumption Charges for Ash Tech is exempted under the MOU?*
>
> *A: It is exempt only for maintenance of PDFACS. It is not exempted for the ESP.*
>
> *Q87: I put it to you that Current Consumption Charges is exempted for Ash Tech for evacuation from the precipitator to the Silo but also in respect of the building used by them within the ETPS as admitted by you in the Proof Affidavit?*
>
> *A: Yes. Witness Adds: Current Consumption Charges exempted only in respect of PDFACS to Silo. ESP is maintained by the TANGEDCO.*
>
> *Q88: I put it to you that you are now creating a new case to justify Current Consumption Charges of Rs.96/- per MT for the ESP?*
>
> *A: I deny.*

43. PW1 has deposed that the exemption from current consumption charges is only for the PDFACS and not for the ESP. As noticed above, the MoU does not state that current consumption charges relating to the PDFACS would be borne by the plaintiff. Instead, it is recorded in clause 6 that charges for water and current consumption for effective dry ash collection would be borne by the plaintiff. Without operating the ESP, fly ash cannot be collected in the hoppers for transportation to the silos. Therefore, in the absence of any limitation in the MoU with regard to the nature of current consumption charges to be borne by the plaintiff, other than the qualification that such power consumption should be for effective dry ash collection, the plaintiff cannot take into account current consumption charges for the ESP at Rs.96 per MT while fixing service charges for the defendant.

44. The defendant has also raised an objection regarding the inclusion of a sum of Rs.108/- per MT towards maintenance charges for roads, lighting and water. As regards this head of claim, there is no break-up between amounts charged towards roads, lighting and water. Clause 6 of the MoU specifies that water charges would be borne by the plaintiff, but does not speak of maintenance charges for roads and lighting. The defendant, however, contended that even maintenance charges for roads and lighting cannot be taken into

consideration because the defendant maintained the roads and lighting relating to the PDFACS.

45. PW1 was questioned about these aspects. The relevant questions and answers are set out below:

"Q154: As per Ex.D3 Ash Tech was maintaining the Approach Roads and Surrounding Areas to ensure the Safety of the people working in the ESP areas. Do you agree?

A: They were maintaining only the SILO area, but not the roads.

Q155: Have you produced any document that states Ash Tech is not maintaining the Roads?

A: I am relying on Ex.D3.

Q156: What is the Service Charge towards Water that you have levied on Ash Tech?

A: Free of Charge for only Dry Fly Ash Evacuation System.

Q157: How have you included the Water Charges as a part of Rs.108/- per MT?

A: That is not Water Charges towards Dry Fly Ash Evacuation System but Water Charges for Pond Ash. Eg. Clarifier System, etc.,

Q158: I put it to you that such a explanation is not a part of Pleadings, Proof Affidavit or Documents filed by you?

A: I have submitted the drawing Ex.P131.

Q159: Has Ash Tech maintained the roads utilised by them?

A: They have maintained the roads from the SILO area to the Main Gate Area.

Q160: Is this the Road they take after collection the Fly Ash to Exit ETPS?

A: Yes.

Q161: Therefore I put it to you that Ash Tech has maintained the roads in the area utilised by them for Dry Ash Collection.

A: I deny.

Q162: So, How do you explain the contradiction in your Proof Affidavit where you state the entire roads in ETPS were taken care only by TANGEDCO?

A: It is explained in Ex.P131.

Q163: Ex.P131 is shown to the Witness. Where in Ex.P131 is the road utilised by Ash Tech is shown?

A: It is not shown.

Q164: Ex.P131 also shows the road in and around Coal handling plant. ESP units, around the Railway Track and around Vacant land etc., Is your charges of Rs.108/- per MT on Ash Tech towards maintenance of all these roads which was not utilized by Ash Tech?

A: No it is not towards all these Roads but only towards the Roads leading to the Pond, SILO and ESP Areas, etc.," As can be seen from the above, PW1 admitted that the defendant was maintaining the roads from the silo area to the main gate area. PW1, however, states that the charges are only in respect of the roads leading to the ponds, silos and ESP areas.

46. From the above evidence, it appears that there were roads leading from the silos to the main gate and other roads. It also appears that not all roads were maintained by the defendant. The MoU enables the plaintiff to fix the service charges for the fly ash collected by the defendant subject to the plaintiff providing water and power for installation of the PDFACS free of charge and bearing water and power consumption charges for effective dry ash collection. There is nothing in the MoU that precludes the fixation of service charges by taking into account expenditure incurred towards maintenance of roads and lighting. Therefore, this objection of the defendant cannot be countenanced. In any event, nothing material turns on this head of claim inasmuch as the suit claim is confined to the differential amount of Rs.60/- per MT and said suit claim fails in view of the earlier conclusion that the plaintiff is not entitled to reckon a sum of Rs.96/- per MT towards power consumption charges for the ESP while computing and claiming service charges.

47. For the same reason, subject to the same observation that the MoU does not preclude reckoning the cost of investment of Ash silo at Rs.18/- per MT or the maintenance charges for fly ash evacuation systems, pipelines and silo at Rs.98/- per MT while computing and claiming service charges, it has become unnecessary to dilate on and record findings on the oral evidence pertaining to the above heads of charges. As a corollary, the failure to cross-examine DW1 and 2 on these aspects also pales into insignificance.

48. Thus, these issues are disposed of by holding that the defendant is entitled to free power and water both for installation of the PDFACS and effective dry ash collection. Consequently, upon deducting the head of claim relating to current consumption charges at Rs.96/- per MT from Rs.410 per MT, the plaintiff's differential claim of Rs.60 per MT is liable to be rejected.

Issue No.2

49. As a result of the plaintiff failing to prove the principal suit claim, the claim for interest fails. Merely for the sake of completeness, it is recorded that the MoU does not provide for a rate of interest. It clearly also does not therefore provide for interest on compound basis. Therefore, even if the plaintiff had succeeded, the claim for compound interest would have failed.

Issue Nos.8 and 9

50. Because the plaintiff was unsuccessful, the plaintiff is not entitled to costs. The plaintiff is also not entitled to any other relief. Ordinarily, the defendant would be entitled to costs. In this case, however, after asserting that the plaintiff had recovered an excess sum of about Rs.177.73 crore at para 5(o) of the written statement, the defendant did not make a counter claim. The plaintiff has paid a sum of Rs.9,38,100/- as court fees and this is a sunk cost, whereas the defendant has not incurred any expenditure towards court fees. Considering these aspects and the multiple legal challenges mounted in this regard by the defendant entailing expenditure for the plaintiff, I conclude that the defendant is not entitled to costs. Hence, parties are directed to bear their respective costs.

51. For reasons aforesaid, the suit is dismissed. The parties shall bear their respective costs.

01.06.2026

Neutral Citation : Yes/No

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Plaintiff's witness:

1. Mr.P. Jaya Francis Selvakumar - P.W.1

Defendant's witnesses:

1. Mr.Gautam Sonthalia - DW1
2. Mr.Alok Raizada - DW2

Documents exhibited by the plaintiff:

Exhibits	Description
Ex.P1	The Letter of Authorisation dated 04.01.2023.
Ex.P2	The Memorandum of Understanding dated 11.11.2005.
Ex.P3	The photocopy of the Proceedings communicating order of Chairman dated 09.12.2005 (Subject to admissibility, proof and relevancy).
Ex.P4	The photocopy of the Affidavit and Petition in WP No.5513 of 2011 dated 03.03.2011 (Subject to admissibility, proof and relevancy).
Ex.P5	The Counter affidavit filed in WP 5513 to 5515 of 2011 March 2011.(Subject to admissibility, proof and relevancy).
Ex.P6	The certified copy of the Order in MP Nos 4 & 5 of 2011 in WP Nos 5513 and 5514 of 2011 and MP Nos 3 and 4 of 2011 in WP No.5515 of 2011 dated 03.03.2011.
Ex.P7	The photocopy of the Affidavit filed in WP 6125 of 2011 and WMP 3 of 2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P8	The Interim order dated 11.03.2011 in MP Nos 3 and 4 of 2011 in WP 6125 of 2011 granting injunction. (The learned counsel for the defendant objects to mark the same as it is an incomplete document).
Ex.P9	The photocopy of the Common counter affidavit filed in WP Nos 5513, & 5515 of 2011 dated 04.03.2011. (The learned counsel for the defendant objects to mark the same subject

	to admissibility, relevancy of proof).
Ex.P10	The photocopy of the Common order in WP Nos 22765 and 23779 of 2009 and 5513 to 5515, 5823 and 5824 of 2011 modifying service charges from 700 to 540 per MT dated 01.02.2013. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof and incomplete document).
Ex.P11	The photocopy of the Review application No.55 of 2013 dated March 2013. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P12	The photocopy of the 12.04.2013 Order of interim injunction from recovering charges in excess of Rs.410 in MP No.1 of 2013 in review application No.55,56 and 59 of 2013. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P13	The the photocopy of the Order in WP 6125 of 2011 filed by defendant fixing service charges at Rs.410 per MT pending disposal of review Application dated 23.02.2017. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P14	The photocopy of the Order in review Application Nos 55,56,59, 60 and 61 of 2013 filed by Madras Cements Limited and two others dated 19.04.2017. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P15	The Letter requesting waiver of arrears of service charges received on 10.05.2017.
Ex.P16	The photocopy of the Letter calling for payment of arrears of Rs 2,45,40,162.60 at Rs 60 per ton dated 27.07.2017 (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P17	The Letter calling for payment dated 14.12.2017.
Ex.P18	The Letter seeking acceptance of defendant's computation dated 25.04.2018
Ex.P19	The Reply to Defendant's Letter dated 25.04.2018 and calling for payment dated 30.05.2018.
Ex.P20	The Reply to Defendant's Letter dated 25.04.2018 and

	calling for payment dated 30.05.2018.
Ex.P21	The Letter calling for payment of Rs.5,33,36,475 dated 28.08.2018.
Ex.P22	The Letter calling for payment dated 26.05.2019.
Ex.P23	The Letter calling for the same dated 21.09.2018.
Ex.P24	Letter calling for payment of Rs.32569092 with computation dated 14.11.2019. (The learned counsel for the defendant objects to mark the same as there are differences between original and the photocopy filed along with the plaint).
Ex.P25	The Reply to Notice dated 14.11.2019 dated 20.11.2019.
Ex.P26	The photocopy of the Affidavit and Petition in WMP 116 of 2020 in WP No.6125 of 2011 dated 12.12.2019. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P27	The Order in WMP No.116 of 2020 in WP No.6125 of 2011 dated 28.01.2020.
Ex.P28	The Letter calling for payment of 177,73,88,25.66 dated 17.3.2020.
Ex.P29	The photocopy of the Cognizance for extension of limitation dated 23.03.2020. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P30	The Letter calling for payment of Rs.9,33,79,263/- dated 09.06.2020.
Ex.P31	The photocopy of the Inter Office Memorandum dated 31.01.2006. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P32	The photocopy of the Letter sent by defendant to plaintiff dated 09.05.2006. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P33	The photocopy of the Inter Office Memorandum dated 02.06.2006. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of

	proof).
Ex.P34	The Letter sent by Plaintiff to defendant dated 16.10.2008.
Ex.P35	The Inter Office Memorandum dated 15.11.2008.
Ex.P36	The Inter Office Memorandum dated 04.12.2008.
Ex.P37	The Inter Office Memorandum dated 15.12.2008.
Ex.P38	The photocopy of the Inter Office Memorandum dated 30.12.2008. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P39	The Inter Office Memorandum dated 05.01.2009.
Ex.P40	The Inter Office Memorandum dated 04.02.2009.
Ex.P41	The Inter Office Memorandum dated 03.03.2009.
Ex.P42	The Inter Office Memorandum dated 09.04.2009.
Ex.P43	The photocopy of the Inter Office Memorandum dated 02.06.2009. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P44	The Inter Office Memorandum dated 02.11.2009.
Ex.P45	The Inter Office Memorandum 15.10.2009, along with the photocopy of the letter dated 17.08.2009. (The learned counsel for the defendant objects the letter dated 17.08.2009).
Ex.P46	The Inter Office Memorandum dated 17.11.2009.
Ex.P47	The Inter Office Memorandum dated 13.04.2010.
Ex.P48	The Inter Office Memorandum dated 03.06.2010 (2 papers only).
Ex.P49	The Inter Office Memorandum dated 17.06.2010.
Ex.P50	The photocopy of the Receipt of Payment dated 20.08.2010. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P51	The Inter Office Memorandum dated 02.02.2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).

Ex.P52	The Inter Office Memorandum dated 22.02.2011.
Ex.P53	The Inter Office Memorandum dated 16.05.2011.
Ex.P54	The Inter Office Memorandum dated 16.05.2011. (The learned counsel for the defendant objects that the document doesn't carry any signature and also subject to admissibility, relevancy of proof).
Ex.P55	The Inter Office Memorandum dated 20.05.2011. (The learned counsel for the defendant objects to mark the same that the second page is missing in the document which has been filed along with the application).
Ex.P56	The Inter Office Memorandum dated 24.05.2011.
Ex.P57	The Inter Office Memorandum dated 04.07.2011.
Ex.P58	The Inter Office Memorandum dated 19.07.2011.
Ex.P59	The Inter Office Memorandum dated 17.09.2011.
Ex.P60	The Inter Office Memorandum dated 21.09.2011.
Ex.P61	The Inter Office Memorandum dated 13.12.2011.
Ex.P62	The Inter Office Memorandum dated 27.12.2012. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P63	The Inter Office Memorandum dated 06.01.2015.
Ex.P64	The Letter sent by India Cements Ltd to the Plaintiff dated 13.01.2015.
Ex.P65	The Inter Office Memorandum dated 27.01.2015.
Ex.P66	The Inter Office Memorandum dated 31.01.2015.
Ex.P67	The Letter sent by The India Cements Ltd to Plaintiff dated 13.02.2015.
Ex.P68	The Letter sent by the Plaintiff to India Cements Ltd dated 24.02.2015.
Ex.P69	Letter sent by the Plaintiff to India Cements Ltd dated 23.03.2015.
Ex.P70	The Letter sent by the Plaintiff to India Cements Ltd dated 06.05.2015.
Ex.P71	The Letter sent by the India Cements Ltd to the Plaintiff dated 24.08.2015. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy

	of proof).
Ex.P72	The Letter sent by the India Cements Ltd to the Plaintiff dated 22.09.2015. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P73	The Letter and the photocopy of the letter dated 14.12.2015 sent by the India Cements Ltd to the Plaintiff. (The learned counsel for the defendant objects the photocopy of the letter).
Ex.P74	The Inter Office Memorandum dated 23.12.2015.
Ex.P75	The Inter Office Memorandum dated 02.01.2016.
Ex.P76	The Letter sent by the Plaintiff to the India Cements Ltd dated 08.01.2016.
Ex.P77	The Inter Office Memorandum dated 28.06.2016.
Ex.P78	The Inter Office Memorandum dated 21.07.2016.
Ex.P79	The Inter Office Memorandum dated 30.07.2016.
Ex.P80	The Inter Office Memorandum dated 27.11.2012.
Ex.P81	The Inter Office Memorandum dated 30.11.2012.
Ex.P82	Inter Office Memorandum dated 24.02.2015.
Ex.P83	The photocopy of the Letter from Chief Engineer Civil Designs to the Defendant allotting five un-operational PDFACS Units of Ennore Thermal Power Station for modified Installation, Operation and Maintenance dated 12.12.2005. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P84	The photocopy of the Letter from Chief Engineer Ennore Thermal Power Station to Chief Engineer Civil Designs Anna Salai confirming handing over of five PDFACS Units to the Defendant dated 26.12.2005. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P85	The photocopy of the Proceedings of Chief Engineer, Ennore Thermal Power Station recording the agreement between the plaintiff, defendant and India Cements Ltd regarding payment of service charges by India Cements Ltd to the defendant dated 21.08.2007. (The learned counsel for the defendant objects to mark the same subject to admissibility,

	relevancy of proof).
Ex.P86	The Letter from Factory Manager, Ennore Thermal Power Station to Superintending Engineer Mechanical Maintenance-II regarding unsafe ash handling and Unit-IV hopper rectification dated 07.06.2008.
Ex.P87	The Letter form Chief Engineer Civil Designs to all Thermal Power Plants convening a meeting by the Chairman for 100% fly Ash utilization dated 02.06.2009.
Ex.P88	The Reply letter from Chief Engineer Ennore Thermal Power Station to Chief Engineer Civil Designs enclosing points for discussion in the meeting convenient by the Chairman dated 03.06.2009.
Ex.P89	The photocopy of the Letter from Chief Engineer, Civil Designs Head Quarters to Chief Engineer, Ennore Thermal Power Station and others seeking proposal for establishment of weigh bridge dated 12.08.2009. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.90	The photocopy of the Proceedings of the Chairman revising service charges per ton to different users dated 15.10.2009. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P91	The photocopy of the Proceedings of the Chairman revising service charges per ton to different users dated 29.03.2010. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof and it is incomplete document).
Ex.P92	The Letter from M/s. India Cements Committee to the Chief Engineer of the Plaintiff requesting for reworking the Power and consumption charges to be paid by M/s. India Cements along with annexures dated 30.06.2010.
Ex.P93	The photocopy of the Proceedings revising the rate of service charges dated 13.07.2010. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P94	The photocopy of the Letter from Chief Engineer Mechanical Maintenance to Superintending Engineer Head Quarters recording that Water and Current consumption charges would borne by the Board dated 17.02.2011. (The learned

	counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P95	The photocopy of the Proceedings of the Board revising rate of service charges with effect from 01.03.2011 dated 01.03.2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P96	The photocopy of the Letter from the Counsel for the Defendant enclosing the Affidavit of Writ Petition No.8291/2011 dated April 2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P97	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters regarding revenue loss to the Board because of free electricity and water dated 16.05.2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P98	The photocopy of the Letter from Chief Engineer, Head Quarters Chief Engineer, Ennore Thermal Power Station-seeking recommendation regarding revenue loss dated 24.05.2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P99	The photocopy of the Letter from Chief Engineer, Head Quarters to Chief Engineer, Ennore Thermal Power Station-seeking recommendation regarding revenue loss dated 31.05.2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P100	The photocopy of the Letter from Superintending Engineer Mechanical Maintenance-II Ennore Thermal Power Station to Chief Engineer, Head Quarters working out approximate current consumption charges for the period from 01.04.2009 to 03.05.2011 at Rs.5,16,72,896/-dated 04.07.2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P101	The photocopy of the Letter from Chief Engineer, Civil Designs Head Quarters to Chief Engineer, Ennore Thermal Power Station calling for a discussion regarding a proposed

	amendment of Memorandum of Understanding dated 17.09.2011. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P102	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to Director Generation - Head Quarters regarding failure to lift allotted Fly ash forceful de-ashing of fly ash to ash dyke which causes a considerable financial loss dated 28.05.2013 (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P103	The photocopy of the Letter from Chief Engineer, Head Quarters to the Chief Engineer, North Chennai Thermal Power Project, Chennai regarding low generation at Ennore Thermal Power Station, low generation of fly ash and therefore permitting Defendant to shift fly ash from North Chennai Power Plant Stage II dated 27.09.2013. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P104	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station, to the Chief Engineer, Head Quarters regarding generation of fly ash during 2013-14 and actual lifting dated 23.04.2014. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P105	The photocopy of the Record of Proceedings at Head Quarters regarding commencement of Contracts for lifting Dry Fly Ash held on 26.06.2014. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P106	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to Chief Engineer, Civil Designs regarding the process of weighment of fly ash dated 04.08.2014. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P107	The photocopy of the Letter from the Chief Engineer, lead Quarters to Chief Engineer, Ennore Thermal Power Station calling for 17.04.2015. (The learned Data regarding fly ash generation dated counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).

Ex.P108	The Proceedings regarding disposal of Dry Fly ash to Ultratech Cement dated 18.05.2015
Ex.P109	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to M/s. India Cements calling for payment of Rs.9,42,861/- towards current consumption charges dated 16.09.2015. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P110	The photocopy of the Letter from Chief Engineer to Thermal Power Station requesting to furnish details of present system of Service Connection to PDFACS Companies dated 03.11.2015. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P111	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to M/s. India Cements calling for payment of Rs. 16,54,278/- towards current consumption charges dated 26.11.2015. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P112	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to M/s. India Cements calling for payment of Rs.18,06,762/- dated 21.01.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P113	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to M/s. India Cements calling for payment of Rs.21,44,215/- dated 28.01.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P114	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters seeking to resolve the issue of non-payment of current consumption charges by India Cements dated 01.03.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P115	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to the Chief Engineer, Head Quarters regarding non-lifting of allotted quantity of Fly Ash by the Defendant dated 06.04.2016. (The learned counsel for the

	defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P116	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters complaining about non-lifting of allotted quantity of Flash Ash by the Defendant dated 20.05.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P117	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters regarding low lifting of Fly Ash by the Defendant Company dated 07.06.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P118	The Letter from Chief Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters regarding de-commissioning of Ennore Thermal Power Station from 31.03.2017 dated 30.07.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P119	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters regarding weighment problems of fly ash loaded vehicle 06.07.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P120	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters complaining about non-lifting of allotted quantity by the Defendant and Indian Cements dated 01.11.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P121	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters regarding dues from India Cements dated 14.11.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P122	The photocopy of the Letter from Superintending Engineer, Ennore Thermal Power Station to Chief Engineer, Head

	Quarters regarding dues from India Cements dated 26.11.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P123	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to India Cements calling for payment of current consumption charges dated 05.02.2016. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P124	The photocopy of the Letter from Chief Engineer, Ennore Thermal Power Station to Chief Engineer, Head Quarters regarding stoppage of Coal supply from 05.11.2016 stoppage of Fly ash generation from 06.11.2016 and stoppage of Fly Ash despatch from 20.11.2016 and suggesting closure of MOU dated 02.01.2017. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P125	The photocopy of the Letter from Chief Engineer, Head Quarters to Chief Engineer, North Chennai Thermal Power Station II regarding allocation of Dry Fly Ash from North Thermal Power Station to existing allottees of Ennore Thermal Power Station dated 09.01.2017. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P126	The Proceedings of the Chairman dated 14.09.2017.
Ex.P127	The photocopy of the Letter from Chief Engineer, Head Quarters to the Defendant calling for detailing the entire circumstances and calling for payment dated 26.05.2019. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P128	The photocopy of the Letter from Chief Engineer, Mettur Thermal Power Station to Chief Engineer, Head Quarters regarding lifting of Fly Ash by the Defendant from September, 2015 to September, 2016 dated 01.07.2019. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof).
Ex.P129	The Web copy of the order in WP.No.15963 of 2020 dated 15.02.2023. (The learned counsel for the defendant objects to mark the same subject to admissibility, relevancy of proof, Certificate u/s65-B of I.E Act not produced).

Ex.P130	The Photographs showing the silos, hopper, roads and site dated 10.02.2023. (The learned counsel for the defendant objects to mark the same Certificate u/s.65-B of I.E Act not produced).
Ex.P131	The Ennore Thermal Power Station Layout dated 27.03.2023.

Defendant's documents marked during cross-examination of

PW1:

Exhibits	Description
Ex.D1	The order passed in W.A.690 of 2023 dated 19.06.2023
Ex.D2	The Order of the Hon'ble Supreme Court in SLP (Civil) Diary Nos. 43157 of 2023
Ex.D3	Letter dated 12.12.2007
Ex.D4	Letter dated 05.02.2008

Documents exhibited by the defendant:

Exhibits	Description
Ex.D5	The Board Resolutions dated 14.07.2021 and 02.12.2024.
Ex.D6	The photocopy of the Order of allotment made to the defendant based on the MOU dated 12.12.2005. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy and also signature not found in the document).
Ex.D7	The photocopy of the Tripartite Agreement between the defendant TNEB and India Cements Ltd dated 14.06.2007. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy).
Ex.D8	The photocopy of the Notification issued by Ministry of

	Environment and Forests promoting utilization of fly ash dated 03.11.2009.
Ex.D9	The photocopy of the Notice issued by the plaintiff seeking difference in service charge to be paid by the defendant dated 17.07.2017. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy).
Ex.D10	The photocopy of the Letter issued by the plaintiff fixing interest on the demand at 10.75% and computing total demand at Rs.9,34,79,263/- dated 01.04.2020. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy).
Ex.D11	The photocopy of the Letter of the Defendant reiterating its stand on the refund of excess amount collected by the plaintiff dated 23.05.2020. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy and also signature not found in the document).
Ex.D12	The photocopy of the Letter bearing Lr.No.CE/CD/DE/CD&HP/EE-2/AEE-3/F.ETPS/Ashtech/D.61 of 2020 issued by the plaintiff dated 26.05.2020. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy).
Ex.D13	The photocopy of the Letter from the defendant in response dated 14.06.2020. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy).
Ex.D14	The photocopy of the Letter from the plaintiff requesting for outstanding dues to be paid dated 25.06.2019. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy).
Ex.D15	The photocopy of the Letter from the Defendant requesting for excess amounts to be paid dated 03.09.2020. (The learned counsel for the plaintiff objects to mark the document since it is a photocopy and also signature not found in the document and not in the Company's Letter Head).
Ex.D16	The photocopy of the Affidavit and Petition filed in W.P.No.15963 of 2020 dated 28.10.2020.

Ex.D17	The printout of the Interim Order Passed in W.P.No.15963 of 2020 dated 09.11.2020. (Certificate u/s 65B of 1.E. Act produced).

01.06.2026

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SENTHILKUMAR RAMAMOORTHY J.

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C.S(COMM DIV) No. 241 of 2023

01.06.2026