

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1193 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

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Approved for Reporting	Yes	No
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GUJARAT ELECTRICITY BOARD**Versus****MAHENDRA SUTING LTD & ORS.****Appearance:****MS LILU K BHAYA(1705) for the Appellant(s) No. 1****BHOOMI M THAKORE(6237) for the Defendant(s) No. 3****RULE UNSERVED for the Defendant(s) No. 1****CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 11/09/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. By way of this First Appeal, the appellant – original plaintiff challenges the judgment and decree dated 01/07/2004 passed in Special Civil Suit No.373 of 2002 by the learned Civil Judge, (SD), Ahmedabad Rural whereby the suit preferred by the appellant – plaintiff came to be dismissed seeking recovery of the amount of Rs.41,82,789.79 Paise.

2. For the sake of convenience and brevity, the parties herein are referred to as per their original status before the learned Trial Court.

3. At the outset, it deserves to be noted that the respondent No.1 – company has gone into the liquidation vide order dated 09/07/2025, following which the Official Liquidator is appointed and impleaded as party necessary. Now, the fact which records to the effect of liquidation pending the proceedings is concerned, it is oblivious that the respondent – company has gone into the liquidation and therefore, the OL – respondent No.3 who acts on behalf of the company to manage and dispose of its assets. Consequently, the OL entered into the shoes of the company considering the matter relating to the companies.

4. Now, so far as the case on hand is concerned, during the pendency of the appeal, the liquidator has been impleaded as party respondent No.3 and therefore, the effect thereof would concern to the right or the claims of the companies which is to be presented through the liquidator and thus the liquidator who is being represented fairly conceded that even if the appeal succeeds then he is to lodge the claim and is to stand in queue for recovery of the same. Thus, the same rests on the outcome of the appeal which has been fairly conceded.

5. The brief facts of the case as emerging from the pleadings of the learned Advocate for the appellant are as under:

5.1 The defendant – company applied for 2000 KVA power from the plaintiff – Board and in response thereto the estimate of Rs.4,08,320/- was

issued. The defendant – company paid the estimate amount and thereafter an agreement was executed with the plaintiff for 2000 KVA. The defendant was permitted to use diesel generating set.

5.2 It is the case of the plaintiff that the defendant applied for 1000 KVA as stopgap arrangement since the technical feasibility was not made and the appellant was not ready to supply 2000 KVA and it was possible to supply only 500 KVA not as a part of the agreement; but as a stopgap arrangement since 2000 KVA was to supply from another feeder but till that special arrangement was to be made and the defendant can be given power supply at night hours for which defendant asked for 1000 KVA. However, considering the technical feasibility, the Board sanctioned 500 KVA for which the defendant installed night hour meter and CTPT and paid security deposit of Rs.5,62,000/-.

5.3 It is further case of the plaintiff that as a stopgap arrangement connection for 500 KVA was released for supplying power at night hours. The defendant was supplied 500 KVA power for 24 hours. Again, the defendant asked for extension of load from 500 to 800 KVA; however since the Board was not in a position to give more power than 500 KVA, the said application was not sanctioned.

5.4 It is further the case of the plaintiff that the Board was ready to release power of 2000 KVA as per the demand of the defendant and as power of 500 KVA was already released for the remaining 1500 KVA Board completed the procedure and informed the defendant No.1 that the Board is ready to release the remaining 1500 KVA subject to the

respondent making payment of Rs.34,41,951.00 as security deposit within one month thereof. In that letter, there was a clause that if the respondent fails to take power supply within four months, the Board will be entitled to charge the respondent for the minimum charges for 2000 KVA. There is another clause in the said letter/release order that as per the estimate, the Board will initially supply power only at night hours on the payment of security deposit, as also in the said letter there is a clause that if after the deposit, the respondent applies for power for 24 hours, it will be considered. However the respondent did not pay the amount of the security deposit as required.

5.5 It is further the case of the plaintiff that though under the said agreement, it is not permissible to reduce the load, but since the power supply taken by the respondent which was released by the Board, the said request was considered by Board and the defendant was asked to pay additional 20% of the estimate charges. However, the defendant did not pay the said requisite amount of 20% as asked by the Board for reduction of the load. The defendant neither paid the amount of security deposit nor paid the amount of 20% of estimate charges for getting reduction of the load as per the agreement and as per the conditions and Miscellaneous Charges for Supply of Electrical Energy, the Board started charging minimum charges from the defendant for 2000 KVA after expiry of 4 months from the date of release order dated 23.1.1998. However, the defendant again asked for reduction of load.

5.6 It is also the case of the plaintiff that the plaintiff replied to the respondent and stated that the Board is ready to supply the full quantum

of load round the clock on making security deposit and again informed about payment of respondent that the reduction of load can be considered if the defendant pays 20% of the estimate charges. However, the defendant did not pay the amount of security deposit for release of the power supply of 2000 KVA nor the amount of 20% of the estimate for reduction of load.

5.7 It is further the case of the plaintiff that since the plaintiff started charging minimum charges from the defendant on expiry of four months as per the terms of the agreement and conditions of supply and the defendant did not pay the amount of security deposit nor it paid amount of charges for reduction of load. Thereafter, the defendant agreed to pay 20% of the estimate charges and requested not to charge minimum charges for additional 1500 KVA. The defendant wrote a letter that now it does not want reduction of load and wants power for 2000 KVA and also requested to grant installment for making payment of security deposit of Rs.34,41,951.00. The said installment was granted by the plaintiff for payment of security deposit. However, the respondent did not pay the amount of security deposit despite grant of installment.

5.8 It is further the case of the plaintiff that the plaintiff issued notices for termination of contract and therefore, the respondent filed Special Civil Application No.744 of 1999 before this Court against such termination of contract and in the said petition, the petitioner was granted installment by this Court for paying of energy consumption charges to the tune of Rs.37,74,178.76ps. Thereupon, the notice of termination of contract was cancelled and the connection was reconnected. The

defendant paid amount towards arrears of energy consumption charges and not towards security deposit and therefore, the connection for 500 KVA was released and not for 2000 KVA.

5.9 It is further the case of the plaintiff that defendant ultimately paid 20% of the estimate charges; however since the defendant had not paid the security deposit and the notice for termination of contract was issued and therefore, the amount of Rs.81,664/- which was paid towards additional amount of estimate charges was adjusted towards arrears of energy bills. The defendant did not pay the energy charges, notice for termination was issued for termination of contract for supply of 2000 KVA. However, the defendant did not pay the arrears of energy charges, the connection was permanently disconnected.

5.10 As a result, the appellant – plaintiff filed a Special Civil Suit No.373 of 2002 before the learned Civil Court. Upon filing of the suit, the reply / written statement was filed by the respondent – defendant denying the claim made by the appellant – defendant. The learned Judge of the Civil Court has framed mainly five issues and evidence was led by the parties in oral as well as documentary nature and after considering the arguments made before the learned Civil Court, the learned Judge of the Civil Court has dismissed the suit by the impugned order which has been carried before this Court by way of present appeal.

6. Learned Advocate appearing for the appellant – plaintiff would assail the impugned judgment and order passed by the learned Judge of the Trial Court by submitting that the learned Trial Court has failed to

appreciate the fact that the defendant has failed to act as per the terms and conditions of the contract. It is submitted that 500 KVA power supply which was given to the defendant was not towards its application for 2000 KVA; but it was a special arrangement till the Board is ready to supply 2000 KVA. It is submitted that it was a stopgap arrangement which is not the part of the agreement; however with a view to see that till the Board prepares the lines the defendant consumer can get power supply immediately and therefore the aforesaid supply of 500 KVA was released.

6.1 It is further submitted that the learned Trial Court has failed to appreciate the fact that as per the agreement which is executed between the defendant and appellant, once the agreement is executed, the defendant is bound by the said agreement and as per the terms of the agreement, the defendant cannot reduce the contracted load within two years from the date of execution of the agreement since the Board is incurring heavy expenditure on laying of lines, erection of transformer etc.

6.2 It is further submitted that the learned Trial Court has failed to appreciate the fact that the application of the defendant for extension of load from 500 to 800 KVA made on 25.10.1997 which was not accepted since original application was for 2000 KVA and the 500 supply was released as a stopgap arrangement which cannot be increased to 800 KVA. However, thereafter since all the infrastructure was ready, the Board had issued letter/release order stating that the Board is ready to supply power of 2000 KVA to the defendant as per the estimate initially

the power was to be given only during night hours and thereafter at the request of the defendant, it can be given for 24 hours. Thus, the learned Judge of the Trial Court has failed to appreciate the fact that initially power supply was released for 500 KVA during night hours and the defendant was using D.G.Set which was running its unit continuously and therefore the submission of the defendant that it cannot run its factory for 24 hours without 2000 KVA is not correct.

6.3 It is further submitted by learned Advocate for the plaintiff that the learned Judge of the Trial Court has failed to appreciate the fact that again the respondent applied and made a request that it does not want 2000 KVA power supply on 15.2.1998 and wanted to reduce the power from 2000 KVA to 500; however as per the special resolution passed by the appellant - Board to see that the industry can run, it decided to inform the defendant that if it pays 20% more amount of the estimate charges of Rs.4,08,320/- which is however paid by it Rs.81,664/-, the appellant would reduce the load; but again the defendant did not pay the said amount.

6.4 It is further submitted by the learned Advocate for the appellant that the learned Judge of the Trial Court has failed to appreciate the fact that the termination notice was issued since the respondent had not paid the energy charges and minimum charges for 2000KVA and due to non-payment of energy charges, the connection of the defendant w.e.f. 1.6.2000 was permanently disconnected. It is submitted that the finding arrived at by the learned Trial Court is erroneous that since the appellant has not supplied the power for 2000 KVA and therefore the Board is not

entitled to charge minimum charges from the respondent.

6.5 While taking this Court through the impugned judgment and decree, it is submitted that there is no proof or evidence produced by the defendant in support of the case and the learned Judge of the Trial Court has without there being any evidence has passed the judgment and decree which is contrary to the law and evidence.

6.6 In support of the submissions advanced by the learned Advocate for the appellant, reliance is placed upon the following decisions.

1. Bihar State Electricity Board, Patna vs. Green Rubber Industries [1990 (1) SCC 731].
2. Hyderabad Vanaspathi Ltd. vs. A.P. State Electricity Board & Others [(1998) 4 SCC 470].
3. A decision of this Hon'ble Court rendered in the case of Prakash Industries vs. Dakshin Gujarat Vij Company Limited (DGVCL) & Ors., in First Appeal No.2182 of 2019 dated 08/06/2026.

6.7 By making the above submissions, learned Advocate for the appellant would submit to allow the present appeal and to quash and set aside the judgment and decree passed by the learned Judge of the Trial Court.

7. Learned Advocate for the respondent – defendant – company though has been served has chosen not to contest the appeal.

8. As noted herein above, the respondent – company went under the

liquidation and the liquidator has been appointed who has fairly conceded that if the appeal succeeds then he is to lodge the claim and is to stand in queue for recovery of the same. Thus, the same rests on the outcome of the appeal.

9. Having heard the learned Advocate appearing for the appellant and examining the impugned judgment and order, it transpires there-from that the defendant had admittedly applied for 2000 KVA powers from the plaintiff – Board following which the plaintiff issued the estimate for Rs.4,08,320/- on 15/07/1994 and as per the clause of the said estimate, that the supply is to be initially given during the night hours, only in case if the requirement is more than 500 KVA which would be subject to the scrutiny by the committee.

9.1 It also transpires that the agreement seems to have been executed between the parties for 2000 KVA and initially the defendant was supplied with the powers to the extent of 500 KVA during the night hours. However, subsequent thereto the defendant has sought the addition of 1500 KVA from the contract demand of 500 KVA which comes to 2000 KVA. However, as per the correspondence made between the parties, it appears that in lieu of the aforesaid, that out of the total contract demand of 2000 KVA, the defendant was permitted to utilize 500 KVA only during day and night hours and respondent was directed to pay the fixed service connection charges + other ancillary charges as per the conditions for supply of release of additional load and consequently the security in question has been deposited as called for from the appellant. However, thereafter, the respondent-defendant addressed a letter to the

appellant that they do not want to continue with the requirement of additional 1500 KVA as was sanctioned to them for the night hours since their requirement was sufficient to fulfill the demand through 500 KVA. While stating that the defendant requires no break power round the clock and therefore they cannot utilize the sanctioned load for the night hours only and while addressing the aforesaid letter has requested that they would apply for the additional load in future for the extension of their establishment if so required. Thus, in nutshell, the defendant sought rejection of the load from 1500-2000 KVA to 500 KVA.

10. The submission made by the learned Advocate for the appellant is that under the said agreement, the same is not permissible however, the said request considering the fact of supply of 500 KVA is allowed and subsequent thereto request for additional 1500 KVA is allowed subject to payment of additional charges to the extent of 20% estimate charges. In this regard, it would be apt to note that though it is submitted that since the respondent had not paid the said requisite amount of 20% of the estimate charges nor the amount towards the security deposit and therefore, the same has violated the terms and conditions of the agreement and hence miscellaneous charges for supply of electrical energy, the appellant-Board was constrained to initiate charging minimum charges from the respondent for 2000 KVA.

11. Though efforts have been made by the learned Advocate for the appellant that even the appellant-Board has called upon the respondent while expressing the readiness and willingness to supply full quantum of load round the clock on making payment of deposit and requested the

company to consider the reduction of load if it pays 20% of the estimate charges. Thus, it is submitted that since the defendant has failed to act as called upon by the appellant, the appellant was constrained to issue a letter dated 25/05/1998 following which as submitted by the learned advocate for the appellant, the respondent had agreed to pay 20% of the estimate charges and requested not to charge minimum charges for additional 1500 KVA. However, the same could not have been equated and therefore the respondent is alleged to have called upon the appellant seeking to supply of power for 2000 KVA subject to the grant of installment for making the payment towards the security deposit. Thus, the arguments advanced on behalf of the appellant that despite the aforesaid, the respondent – company failed not only to act upon as called upon by the appellant but flagrantly neglected to pay 20% amount towards the minimum estimate charges and also committed default in paying the installment and therefore, the notice of termination came to be issued by the appellant though the said termination appears to have been challenged by the respondent by filing SCA No.744 of 1999 wherein the request for granting installment came to be considered by this Hon'ble Court and consequently the notice of termination came to be cancelled and connection was reconnected.

12. It further transpires as claimed by the appellant that due to the default on the part of the respondent to pay the arrears of energy consumption charges, connection of 500 KVA was released instead of 2000 KVA. It further transpires from the material placed for consideration that due to the alleged default on the part of the respondent – company against the paying 20% of the estimate charges, again the

notice for termination of the contract came to be issued and therefore, the amount of Rs.81,664/- have been paid. However, the appellant – Board claimed to have adjusted the same towards the arrears of energy bill as the defendant has failed to pay energy charges which culminated in permanent disconnection of the electricity supply of the respondent – company.

13. Thus, in view of the aforesaid, it transpires from inception that the demand for supply of the electricity by the appellant was to the extent of 2000 KVA round the clock so that they can utilize the sanctioned load for the purpose they have sought for. However, the appellant could not have supplied the same due to technical defects with the rider that at initial stage, the respondent was provided with 500 KVA and thereafter due to demand and request tendered by the respondent – company sought the addition of 1500 KVA. However, there appears several correspondence and communications entered into between the parties with regard to the reductions and additions of the supply which has apparently revealed that the same could not have reached upto 2000 KVA. It is only after the letter being addressed by the respondent – company to the appellant that since they do not want 1500 KVA supply and only thereafter sought reduction to 500 KVA. However, the said request was considered subject to payment of minimum charges of 20% estimate charges and the same was not agreed upon as claimed by the appellant since the respondent seems to have paid the charges of the electricity supply. Not only that, it appears that the respondent seems to have paid the charges in excess to the amount towards the electricity supply.

14. The issue which now remains to be confined is as to whether at any point of time, the appellant has provided rather supplied 2000 KVA or not to the respondent as per the terms and conditions followed by the execution of the agreement. The answer would be in negative as at no point of time the respondent – company has ever been supplied with 2000 KVA or energy and therefore, that hampered upon the very establishment of the respondent – company which in turn has been constrained to get the reduction only for particular hours. Thus, in nutshell since the appellant – company could not have provided 2000 KVA supply, the minimum charges as sought to be imposed and saddled by the appellant – company and the claim thereof could not have been sustained.

15. Though much has been emphasized by the learned Advocate for the appellant that since the agreement for supply of the electricity has been executed between the parties which stipulating to pay the minimum guaranteed charges irrespective of whether the defendant consumed or not and therefore even in case that the supply line was disconnected then also the respondent – firm is liable to pay the minimum guaranteed charges as per the agreement and to substantiate the same, learned advocate for the appellant has placed reliance upon the decision in case of ***Bihar State Electricity Board, Patna (supra)*** which pertains to the case where the agreement for supply of electricity was executed with a stipulation to pay minimum guaranteed charges irrespective of whether energy was consumed or not and therefore whether despite the fact that supply line was connected and therefore firm was liable to pay minimum guaranteed charges as per agreement or not. However, equating the same with the facts of the case, here is not the case of disconnection of supply

line. In the facts of the case on hand, the appellant – Board agreed to supply 2000 KVA and thereafter failed to supply the same round the clock.

16. Further, it is required to be noted that there is no dispute with regard to the parties having entered into the contract and as per the said contract, the appellant was required to supply 2000 KVA however instead thereof, at different time slot, the appellant appears to have provided 500 KVA and the request of the respondent has been extended for addition of 1500 KVA and that there was an admission on the part of the respondent for the supply of 2000 KVA which could not have been supplied which ultimately compelled the respondent – company to seek the reduction upto 500 KVA as non-supply of the required demand round the clock would not serve the purpose of the respondent – company which otherwise hampered the activities of the respondent – company.

17. On the same line and scenario, learned Advocate for the appellant has placed reliance on the decision in case of *Hyderabad Vanaspathi Ltd (supra)*. We have gone through the said decision which pertains to the terms and conditions of the supply of the electricity to the consumer by the appellant and which are considered to be of statutory in character. However, merely entering into any written agreement between the Board and consumer would not make the terms and conditions of the purely contractual nature as held therein and equating the same with the facts of the case on hand, there is no dispute that the parties have entered into the agreement; but the issue remains to be determined is with regard to the fulfillment of the terms and conditions and the parties either appears to

have been litigating on the aforesaid issue and there also appears to be a conflict in regard to the execution of the agreement between the parties; but with regard to the supply of the electricity as demanded by the respondent – company which could not have been provided by the appellant – Board round the clock and instead thereof during the night hours only and therefore on different occasions the respondent – company was constrained to address a letter for addition of 1500 MVA. However, since it was also provided during the night hours and therefore the respondent–company have sought to reduce the same to the extent of 500 KVA. Thus, in nutshell the agreement executed between the parties was to the extent whereby the appellant was supposed to supply 2000 KVA instead thereof, the appellant appears to have supplied 500 KVA and the same was extended at the request of the respondent upto 1500 KVA that too with the rider only during the night hours.

18. Now, insofar as, the finding of the learned Judge of the Trial Court is concerned, it appears from the record that though the number of documentary and oral evidence was produced before the Court; however the same does not support the claim of the appellant-plaintiff. It transpires that by letter dated 04.06.1997 at Exh.27, the Additional Chief Engineer recognized the defendant's unit as a Continuous Processing Industry and directed the Executive Engineer, Bavla, to extend the benefit applicable to such industry, which necessarily contemplated uninterrupted electricity supply for 24 hours. The plaintiff has also examined the Executive Engineer, Shri Malibhai G. Patel, at Exh.19 and in cross-examination, the said witness appears to have admitted that the plaintiff was not in a position to supply 2000 KVA and the necessary line for

supplying 2000 KVA had to be completed by the plaintiff itself. The said witness has further admitted that the defendants had already paid the estimated charges for the 2000 KVA line, but that the line could be completed only on 23.01.1998 and that supply of 2000 KVA was not possible prior thereto. It was also admitted that, initially, permission was granted for only 500 KVA on a round-the-clock basis with effect from 19.03.1998, and that even 800 KVA could not be supplied before 23.01.1998. Thus, the evidence produced at Exhs.26, 28, 29 and 30 corroborates the aforesaid version as is come out from the evidence of the plaintiff.

19. It would also appear from the record that evidence produced at Exh.30 indicates that the plaintiff-Board could have made an offer for the additional supply of 1500 KVA only during night hours and the witness examined on behalf of the plaintiff as aforesaid has admitted that supply of electricity only during night hours would interrupt the manufacturing process of the defendant's Continuous Processing Industry and would, therefore, be of no practical utility. It thus proved that the plaintiff was not in a position to provide the contracted 2000 KVA continuously and round the clock during the material period. The subsequent conduct also act against the plaintiff's claim for minimum demand charges on the basis of 2000 KVA which would be appearing from the document produced at Exh.31 that the defendant's request for reduction of the additional 1500 KVA in view of the plaintiff's inability to provide the contracted load continuously. The evidence produced at Exh.32 also indicates that the plaintiff had agreed for cancellation/reduction of the additional load subject to payment of Rs.81,664/-. More so, the Executive Engineer

examined on behalf of the plaintiff has admitted that he could not identify any contractual provision authorising the demand of Rs.81,664/- for cancellation of the additional 1500 KVA and that no bill for the said amount had been issued.

20. Thus, in light of the aforesaid, it is apparent that the defendant requested for reduction of the load as per Exh.33 as the defendants were not interested in retaining the additional 1500 KVA and at the same time the acceptance of Rs.81,664/- made on behalf of the plaintiff as it evident from Exh.39, as also admitted by witness in cross-examination examined on behalf of the plaintiff further dis-entitle the claim made on behalf of the plaintiff as once the plaintiff accepted the said amount, it cannot subsequently assert a continuing entitlement to levy minimum demand charges on the basis of the original 2000 KVA load, particularly when there is no satisfactory evidence of any subsequent decision of the competent authority restoring the 2000 KVA load.

21. The appellant - plaintiff has relied upon Exhs.59 and 60 to contend that the defendant subsequently expressed its desire to continue with the 2000 KVA load. However, a conjoint reading of these documents does not establish the restoration of the additional 1500 KVA. The said documents is indicative of the fact that payment of Rs.11,47,000/- in installments, with the subsequent installment being payable after restoration of the 1500 KVA connection which establishes the fact that the additional 1500 KVA was never restored and the original decision reducing the load, continued to operate. Furthermore, the plaintiff has

also not produced any decision of its competent authority restoring the 2000 KVA load; nor has produced any satisfactory evidence establishing that it was, in fact, capable of supplying 2000 KVA continuously and round the clock during the relevant period. Thus, the plaintiff has failed to prove that it was entitled to levy minimum demand charges on the basis of 2000 KVA since the plaintiff's own witness has admitted the plaintiff's inability to supply the contracted 2000 KVA continuously and the subsequent correspondence, reduction of load, acceptance and forfeiture of amounts, and absence of any competent decision restoring the 2000 KVA load corroborate the stand taken by the defendant.

22. It would be apt to note that the learned Judge of the Trial Court after considering the evidence adduced before it and after having threadbare examination of the witnesses examined before the Court at length has come to the conclusion as observed herein above with which this Court is in complete agreement and therefore, the same does not warrant any interference at the hands of this Court.

23. In the result, the present appeal is devoid of merits and it is accordingly dismissed. Interim-relief, if any, shall stand dismissed. The connected application also stands disposed of. Records and Proceedings be sent back.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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