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**IN THE COURT OF LXXXII ADDL.CITY CIVIL &
SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU
(CCH-83)**

**PRESENT: SRI. VIDYADHAR SHIRAHATTI, L.L.M.,
LXXXII ADDL.CITY CIVIL & SESSIONS
JUDGE,
BENGALURU.**

Com.O.S.No.8994/2011

Dated on this 16th Day of July 2025

IA No. 35 and 36

**plaintiff M/s weP Perioherals
 Limited.**

// versus //

**Defendants Electronics and Controls Power
 Systems Private Limited and
 Others.**

ORDERS ON I.A. NO. 35 and 36

The Defendant No.5 filed this application under Order XI
Rule 1 (10) as amended under Section 16 of the Commercial

Court Act, 2015, read with Section 151 of CPC for grant leave by condoning the delay in producing the documents as per the list accompanying in this application and for taking the same as the evidence of the Defendant No.2 to 5 and pass such other orders this court may deem fit in the facts and circumstances and in the interest of justice and equity.

2. The I.A. No.36 filed by the Defendant No.2 to 5 have filed this application under Order XI Rule 1 (10) as amended under Section 16 of the Commercial Court Act, 2015, read with Section 151 of CPC for permit to produce the following document viz.,

1. C.C. No. 12784/2024 issued by Assistant Registrar of Companies Karnataka, Ministry of Company Affairs, Government of India certifying the documents listed thereto as true copy of the as filed by plaintiff company.

3. In accompanying affidavit the Defendant No.5 in I.A. No. 35 have stated on oath that, the defendant has received suit summons and entered appearance through his advocate in the said suit. That he was advised by his advocate to file the written statement and, he filed his written statement in the said suit. After coming on record Defendant filed I.A. No. 3 on 01.04.2013 seeking deletion from the array of parties in the suit since, the plaintiff had already filed a company petition No. 166 of 2010

before the Hon'ble high court of Karnataka, seeking winding up of 1st Defendant company by construing the alleged claim amount as alleged debt owed by the 1st Defendant company on the further allegation of neglect to pay such alleged debt owed. The Defendant No.2 to 4 after coming on record and also filed I.A. No. 4,5 and 6 on 18.09.2013 seeking deletion from the array of parties in the said suit and simultaneously filed their written statement in the said suit. The said suit was transferred from City Civil court to Commercial Court vide notification dated 10.01.2019 and thus, the said I.As 3 to 6 were posted for hearing on several dates. The said I.As 3 to 6 were taken up together and disposed of this court on 27.09.2019. This court has framed issues to be tried in the above matter on 11.10.2019 and thereafter the plaintiff has filed affidavit evidence on 18.10.2019. The plaintiff has filed I.A.No. 19 for produce additional records and this court on 20.12.2019 allowed. The plaintiff did not mark the documents in its evidence till date inspite of various opportunities taken by the plaintiff. On 01.02.2020, the defendant filed I.A. 19 for amendment of his written statement to bring on record subsequent events by which the plaintiff has lost its locus to continue this suit. On 25.02.2020, the said I.A was partly allowed and amendment in his written statement was carried out and on 03.03.2020, this court framed an additional issue. The plaintiff commenced its

evidence and concluded the same on 05.08.2024 and now the said suit is set down for the Defendant's evidence.

4. The Defendant No.5 further stated that, there is no malafide intention of the Defendant No.2 to 5 in not producing the documents since, the defendants were under the bonafide belief that the I.A. 3 to 6 will be allowed by this court. The few documents now sought to be produced were not in the power, control, custody and possession of the applicant and thus, the applicant preferred I.A.30 in the said matter seeking directions from this court to the plaintiff to produce the documents. The plaintiff did not produce the documents on the ground that the said documents were old records and were not available with the plaintiff and thus, most of the documents now sought to be produced by the application are on the merits of the said case and the same have been deliberately suppressed by the plaintiff. The documents produced as per the list accompanying in this application are relevant documents and supports his defence and claims and that the documents sought to be produced ensures that necessary evidence is brought before this court for a fair and just adjudication of the said case. Hence, this application.

5. In accompanying affidavit the Defendant No. 2 to 5 in I.A. No. 36 have stated on oath that, on 14.08.2024, these defendants filed I.A. No. 35 for production of documents in the DW.1 evidence, seeking permission of this court for production of documents in support of these defendant's evidence. These defendants through one of the practicing company secretary, Mr. Biswajit Ghosh had applied for certain certified copy of the documents as filed by plaintiff company from the Registrar of Companies, Karnataka of Ministry of Company Affairs, Government of India. The accompanying application became necessary only based on the evasive response of Pw.1 during his cross-examination concluded on 05.08.2024 and that even when shown with documentary evidence as downloaded from the Ministry of Company affairs, Government of India they were not remembered by PW.1 and on the contrary were denied by PW.1 as not being a certified true copy. The said documents applied on 08.08.2024, were got ready after the last hearing held on 14.08.2024. These defendants got the said document duly certified by the authority. The said document No. C.C. No. 12784/2024 containing list of about 39 documents filed by the plaintiff company, to be taken as additional documents in addition to the list of documents submitted in I.A. 35. Thus, the present application merits to be allowed. Hence, this application.

6. Per contra, the Plaintiff has filed an objection in I.A. No. 35 stating that, the said Application is not maintainable in the first instance and is also devoid of merits. It is a matter on record that the Defendant No.5 submitted his written statement way back in the year 2013. Further he also filed amended written statement on 3.3.2020. The above Suit which was originally filed before the City Civil Judge, Bengaluru was transferred to Commercial Court on 13.12.2017. In the written statement filed by the Defendant No.5, he has not reserved his right to submit any additional documents and as stated by them, the documents now sought to be produced are all allegedly concerning the Defendant No.1 which has not filed its written statement and the Defendant No.5 is only espousing the cause of the Defendant No.1 which has not raised any defense whatsoever. The Defendant No.1 having not filed its written statement, the Defendant Nos. 2 to 5 who are all officers/Directors of the Defendant No.1, the Defendant No.5 has sought to produce various documents as a clear after thought with a view to mislead this Hon'ble Court in as much as the documents now sought to be produced are not at all necessary for adjudicating the claim made by the Plaintiff. The Application is also liable to be dismissed as the

same is hit by delay and latches more so when the matter is pending since 2011 and before the Commercial Court since the year 2017. The Application in question does not set out any reason as to what prevented the Defendant No.5 from filing this Application at the earliest point of time and not after 10 years after he filed his written statement. Plaintiff submitted the Affidavit by way of Evidence of its witness (PW-1) way back in the year 2019 itself and the above Suit was transferred to the Commercial Court way back in the year 2017. The Defendant No.5 also filed Application for amendment of written statement and the same was partly allowed and an additional issue was also cast in the year 2020. It is also a matter on record that even case management hearing was conducted and both parties were asked to submit their admission and denial with regard to the documents submitted by the other. Substantial portion of the documents now sought to be produced are claimed to be of the year 2006 and 2007 and they are not documents which have arisen subsequent to the Defendant No.5 submitting his written statement. The Application therefore lacks bona fides.

7. The plaintiff further stated that, the Defendant No.5 and the Defendant No.1 have already cross-examined the PW-1 extensively and in the process of cross-examination of the PW-1, various documents were countered to the witness and have been marked as Exhibits. Many of the documents now sought to be produced were countered to the PW-1 and he has denied the contentions/suggestions made with reference to those documents and also expressed his inability to even verify the veracity of the same as many of the documents countered to him were older than 14 years. Despite the said position, the Defendant No.5 has now sought to produce the very same documents countered to the PW-1 in the course of his cross-examination. It is trite law that what cannot be done directly cannot be permitted to be done indirectly. Except the documents at Sl.Nos. 1 to 3, the production of the remaining documents are objected to and no reason justifying the non-production of the same at the earlier point of time has been cited. In the absence of fulfilling the said mandatory requirement under the provisions of the Commercial Courts Act, the Defendant No.5 cannot casually make such an application. Hence, he prayed to dismiss the application.

8. Per contra, the Plaintiff has filed an objection in I.A. No. 36 stating that, the said Application is not maintainable under law or on facts and is liable to be dismissed in limine. No document was produced by the Defendant No. 2 to 5 along with their written statements and they have also not reserved their right to produce any documents at a future date. As such no satisfactory explanation has been given justifying the delay of more than 11 years since the written statement was filed by the Defendant Nos. 2 to 5. The Defendant No. 5 had recently filed I.A. No.35 to produce additional documents and the same is not yet considered by this Hon'ble Court. Statement of objections have been filed by the Plaintiff against allowing of the said application on the ground of delay and latches. However without reserving liberty the Defendant has presented this Application to produce additional documents and thereby taken this Court for granted. Such Applications without valid and justifiable reasons for not producing the documents at the earlier instance cannot be accepted and the same is against the express provisions of the Commercial Courts Act, 2013. The documents pertaining to the Plaintiff right from the year 2008 have been sought to be produced and as such the said documents were very much available to the defendant

Nos. 2 to 5 in 2013 itself when they filed their written statement. However no document has been filed along with the written statement and also no statement has been made to produce any such document at a later date.

9. The plaintiff further stated that, No Notice as prescribed to be given under Form No.7 Appendix - C as per Rule 1 has been given. The documents, production of which is sought for, must be in the possession or power of the Plaintiff. However, the same is not available with the Plaintiff. The documents which the Defendant No.5 has sought the Plaintiff to produce under I.A. No.30 most of which are not available, does not relate to the controversy involved in the Suit and more so they are all dated prior to the signing of the Memorandum of Understanding (EX - P2) and are pertaining to the cancelled Agreements which aspect has already been decided by our Hon'ble High Court in CMP 15/2012 and affirmed by the Hon'ble Supreme Court in SLP. The expediency, justness and the relevancy of the documents to the matter in question has not been narrated by the Defendant No.5 and the Application is also filed belatedly that is after a period of 11 years after the Defendant No.5 filed his written statement. Hence if the

Application is filed belatedly and or if the document sought for production is not relevant the Application would have to be dismissed. The Defendants themselves claim to be the recipients or authors of the alleged e-mails listed out in I.A. No.30 now sought to be produced by the Plaintiff. Such being the case, the question of the Plaintiff producing documents, if any, does not arise. That many of the documents which are listed in the I.A. No.30 have already been marked in the course of the cross-examination of PW-1 and also the Defendant No.5 has sought leave of this Hon'ble Court to produce some of the documents referred to in I.A. No.30 under I.A. No.35 which is a matter on record. The said I.A. is not yet considered.

10. The plaintiff further stated that, the PW-1 was countered with a photocopy of a document, he has denied the same as he was not sure about its authenticity. That cannot be an excuse to produce some 39 documents. It is nothing but a false excuse given by the defendant no.5 for his lapses. Accordingly, the application needs to be rejected on that very ground. Despite there being a delay of 11 years in submitting the documents and there being no justifiable ground, the application deserves to be rejected.

Hence, he prayed to dismiss the application with exemplary costs.

11. I have heard the arguments of the learned advocate for the Plaintiff and the Defendants.

12. Based on the contentions of the respective parties, submissions made by the learned Advocates for both parties, I formulate the following Points for my consideration:-

1. Whether the Defendants No.2 have made out grounds to allow I.A. No. 35 ?
2. Whether the Defendants No.2 to 5 have made out grounds to allow I.A. No. 36 ?
3. What Order?

13. My findings are as follows:-

Point No. 1: - In the Partly Affirmative.

Point No. 2: - In the Affirmative.

Point No. 3: - As per my final orders for the following reasons.

REASONS

14. Point No. 1: - The Defendant No.5 has taken a contention that, the plaintiff has filed 4 I.A. i.e., I.A. No.

14,19,24 and 26 for production of additional documents and 4 I.A's were allowed. Similar lenient view to be taken by production of documents. The document No.1 to 3 are Special Power of Attorney of Defendant No.2 to Defendant No.1 in favour of Document No. 10 and 11 and evidence of inspection of records. Document No.4 notice and reference to Answer No. 81 and 82. Document No. 5 is the WP 53779/2017 and reference Ans to question 450 of deposition of PW.1. Document No.6 memo Reference to Answer to question 504 of deposition. Document No.7 is reference to question 456 of deposition. Document No.8 is a letter reference to question 505 of deposition. Document No.9 lost of documents reference answer to question 242 of deposition. Document No.12 is reference to answer to question 488 of deposition. Document No. 12 reference to answer to question 494 of deposition. Document No. 13 to 37 are the invoices, Document No. 38 to 63 answer at SI No. 234, 237 of deposition. The mail correspondence was not produced. it is required to allow the I.A.No. 35 and I.A. No. 36.

15. In the course of argument, the plaintiff has taken a contention in written argument that there is no basis to file I.A. No. 35 and 36 and falsely stated that all the documents mentioned in I.A. No. 35 and 36 are in possession of plaintiff. The suit being the year 2011 and no document whatsoever having been produced by the defendant No.2 to 5 along with their statement and having not referred to any of the documents in their written statement. The Defendant No.2 to 5 who are the principal officer of the Defendant No.1 company have clear thought either introduce documents on behalf of the Defendant No.1 or to summons the same from the Plaintiff by filing the present application. The said defendants cannot be permitted to do things indirectly what the defendant No.1 could not do directly.

16. The Documents produced by the Defendant is nothing but filing up of lacunae or to bring in fresh facts and producing new documents. In reporting the judgment of Hon'ble supreme court in VE Commercial Vehicles Limited vs. M/s Bangalore Metropolitan Transport Corporation and Others -Civil Appeal No. 93/2023 (SLP (c) No. 10129/2022 dated 05.01.2023 wherein Hon'ble Supreme court, the suit originally filed before the non- commercial court in the year

2011 was transferred to the commercial court and the application for production of additional documents after conclusion of Evidence of plaintiff was rejected by the commercial Court and later reversed by the Hon'ble High Court of Karnataka. The said matter was taken up before the Hon'ble Supreme Court and the order of the Commercial Court rejecting the Application for production of Additional documents was affirmed.

17. The document Nos. 1 to 3 under I.A. No.35 as they are special power of attornies which have come into existence only now at the stage of tendering of Evidence of the Defendant Nos. 2 to 5. The document at serial No. 4 alleging to be a notice dated 1.10.2009, the same is not admitted and it is produced for the first time in these proceedings. There is no document evidencing service of the alleged notice on the Plaintiff. No reason is forthcoming as the alleged document which is dated 1.10.2009 definitely in the possession of the Defendant No.2 to 5 and they had no difficulty to produce the same. The document at serial No.5 sought to be produced by the Defendant No.5 is stated to be certified copy of the Writ Petition No.53779/2017 and the said documents are certified copy

and which is not in custody of the plaintiff. The document at serial No.6 sought to be produced is stated to be a certified copy of Memo dated 7.10.2003 filed by WeP Solutions Ltd., in OSA 7/2013 before the Hon'ble High Court of Karnataka. The said document is not concerning the Plaintiff and the Plaintiff is not a party to the said Memo. The document at serial No.7 sought to be produced to be a copy of internal code for prevention of document, which does not pertain to the Plaintiff or any insider trading of Wep Solutions Ltd. It is once again, the Plaintiff and it has no relevance for adjudicating case of the defendants. The document at serial No.8 alleged to be letter dated 17.10.2008 said to have been issued by Mr. M. Saravanan demanding the amount of Rs.200 lakhs paid on 6.10.2006 without any reference to Memorandum of Understanding dated 28.12.2007. As regards the document at serial No.9, alleged to be list of documents and information handed over to Mr. Deepak A Chari of Plaintiff company by the Defendant No.5, the same is a fabricated document and prepared now as clear after thought. It does not contain either the signature of Deepak Chari or the seal of the plaintiff company.

18. The document at serial Nos. 10, 11, 12 and 13 are concerned, the Defendant No.5 is stated to have downloaded the documents pertaining to the period prior to the year 2011. However, when he filed his written statement in the year 2013, it is not permissible. The said documents are very much available in the Registrar of companies. Document No.14 to 37 now sought to be Produced by the Defendant No.5, the copies of the alleged Invoices said to have been of the year 2008 and which are already been denied by the Plaintiff. The alleged invoices are sought to be produced is not permissible. Serial Nos. 38 to 63, which are stated to be e-mails, the alleged e-mails at SI.Nos. 38 to 60 are all prior to the date of signing of the Memorandum of Understanding dated 28.12.2007 under which the suit claim is solely based on. As such those e-mails have no relevance. The document at SI No.63 is more than 16 years old documents and unable to retrieve the same by the Plaintiff. The document at serial No.64 is concerned, the Defendant No.1 during cross-examination had already countered the said document and the PW-1 has been able to confirm only the financials (Balance Sheet) portion of the said document and it is already have been permitted to be marked. The last

document at Sl.No. 65 is said to be the certificate under Section 63(4) (a) of the BNSS, 2023, to confirm the mails.

19. I.A. No.36 are also said to be certified copies of documents which are of the year 2011 and I.A. No.35 was already filed another Application could not have been filed subsequently.

20. I have gone through the submissions made by both the counsels. The application filed by the Defendant No.5 stated that, the Defendant No. 2 to 5 have not produced the documents. The Defendant No. 2 to 5 after coming on record filed I.A. No.3 to 6 for seeking deletion from array of the parties in the present suit. There is no malafide intention of Defendant No. 2 to 5 have not producing the documents since the said defendants were under bonafide belief that the I.A. No. 3 to 6 will be allowed. Hence, the application prayed to allow.

21. The Defendant has filed total 65 documents along with I.A.No. 35. The document No 1 to 3 are Special Power of Attorney. The plaintiff has not objected to allow the said application. Hence, the Document No.1 to 3 are deserves to be taken on record.

22. Document No.4 is a notice dated 01.10.2009. Document No.5 is a True copy of WP No. 53779/2017. Document No.6 is a Certified Copy of Memo dated 07.10.2003. Document No.7 is a Copy of Internal Code for prevention of insider trading of transferee company. Document No.8 is the letter dated 17.10.2008. Document No.9 List of documents and information handed over to Mr. Deepak A Chari dated 06.10.2006. Document No.10 is inspection of documents of the plaintiff company. Document No.11 is list of documents downloaded during inspection from the website of Ministry of Company Affairs. Document No.12 and 13 is copy of downloaded Form No.32 and Form No. 23 pertaining on 02.01.2008 and in the year 2011. Document No. 4 to 9 and 11 to 13 were existence prior to institution of the suit. However, the said documents are not produced by the defendant along with written statement. The reason assigned by the Defendant has not produced the said document by assuming to allowing I.A. No. 3 to 6 is not admissible.

23. Document No. 14 to 16 are the invoices dated 05.02.2007. Document No.17 and 18 are the invoices dated 08.002.2007. Document No.19 is the invoice dated

09.02.2007. Document No.20 is the invoice dated 13.02.2007. Document No.21 is the invoice dated 22.02.2007. Document No.22 and 23 are the invoices dated 28.02.2007. Document No.24 is the invoice dated 27.03.2007. Document No.25 is the invoice dated 31.03.2007. Document No. 26 and 27 are the invoice dated 28.05.2007. Document No.28 is the invoice dated 31.05.2007. Document No.29 is the invoice dated 03.08.2007. Document No.30 is the invoice dated 01.09.2007. Document No.31 is the invoice dated 03.09.2007. Document No.32 to 34 are invoice dated 29.10.2007. Document No.35 is the invoice dated 14.02.2008. Document No.36 is the invoice dated 18.02.2008. Document No.37 is the invoice dated 14.07.2008. The document No. 14 to 37 are the invoice, the defendant has not stated about their possession and control. Hence these documents are prior to institute of the suit. Hence, those documents are not taken on record.

24. The Document No.38 to 45 are the email correspondence. But these mail correspondence were not submitted by the defendant in earlier stage as the same mail correspondence pertaining to the year 2006.

Document No.46 is communication circular intimation from the Defendant No.2 addressed to all customer. However, the said document has not in the custody of the plaintiff.

25. Document No. 47 to 63 are all e-mail extract of 08.02.2008. The said email extract were not in the custody of the plaintiff. The Plaintiff has not made any efforts to produce the email extract along with written statement. Document No.64 is a copy of Annual report of plaintiff company for the year 2008-09. The applicant has not made any efforts to call the records along with written statement. Therefore, the Documents No. 64 to produced at belated stage is not admissible. Document No. 65 is the certificate in terms of Section 63 (4)(a) of Bharatiya Sakshya Adhinyam, 2023 is executed at the time of evidence it can be taken on record.

26. The Document No.10 is the Ministry of Corporate affairs challan dated 29.07.2024. Though the said document is also obtained after filing of the written statement. Hence, the Document No.10 is also taken on record. In view of the above observation the Document No. 1 to 3, 10 and 65 are taken on record and Document No. 4

to 9 and 11 to 64 are prior to filing the written statement and that has to be easily secure to produce by the Defendant before the court along with written statement. However, the applicant has not made out any such grounds as the defendant is having impression to delete the name in the suit by allowing the I.A. No. 3 to 6. The such reason is not admissible in accordance with law.

27. I.A. No. 36 is filed to produce the certified copy of CC No. 12784/2024 issued by the Assistant Registrar of Companies. The said documents are certified copy and obtained after filing written statement. The genuinity of the document cannot expressed at the time of deciding the application under Order 11 rule 1 (10) of CPC. Therefore, all the certified copy submitted by the Defendant No.2 to 5 along with I.A. No. 36 are obtained after filing of the written statement. Therefore, I.A No. 36 is deserves to be allowed.

28. Point No.2 : Accordingly, I pass the following;

ORDER

The I.A. No.35 filed by the Defendant No.5 under Order XI Rule 1 (10) as amended under Section 16 of the Commercial Courts Act, 2015, read with

Section 151 of CPC is hereby allowed in part with cost of Rs. 2,000/-.

The I.A. No.36 filed by the Defendant No.2 to 5 under Order XI Rule 1 (10) as amended under Section 16 of the Commercial Courts Act, 2015, read with Section 151 of CPC is hereby allowed with cost of Rs. 2,000/- .

(Dictated to the Stenographer, typed by him directly on the computer, verified by me and pronounced in the open court on **16th day of July 2025**).

**(VIDYADHAR SHIRAHATTI),
LXXXII Addl.City Civil & Sessions Judge,
Bengaluru.**