IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M. VENUGOPAL

O.S.A.No.164 of 2015
and
M.P. No. 1 of 2015

R.R.DONNELLEY PUBLISHING INDIA PVT.LTD
REGD OFFICE
AT C-11 SIPCOT INDUSTRIAL PARK
SRIPERUM BUDUR - 602 105
REP BY ITS DIRECTOR AND FINANCE CONTROLLER
MR.G.MADHAN KUMAR ...Appellant/Petitioner

vs

1 M/S.CANARA TRADERS AND PRINTER PVT LTD
TYPE-II NO.33.VSI ESTATE
THIRUVANMIYUR CHENNAI -41
WITH ITS REGISTERED OFFICE AT
NO.142B PETERS ROAD
CHENNAI - 600 086

2 HONBLE MR.JUSTICE B.P.JEEVAN
PRESIDING ARBITRATOR PLOT NO.301
NO.25 JUBILEE HILLS ROAD
HYDERABAD - 500 033

3 HONBLE MR.JUSTICE K.A.SWAMI
MEMBER ARBITRATOR SAI NIVAS
NO.16 8TH MAIN ROAD 2ND CROSS
R.M.V.EXTN.SADASHIVNAGAR
BANGALORE - 560 080

4 HONBLE MR.JUSTICE K.P.SIVA
SUBRAMANIAM MEMBER ARBITRATOR
46 PULLA AVENUE SHENOY NAGAR
CHENNAI - 600 030. ...Respondents

Appeal filed under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the common order dated 09.12.2014 passed in O.P. No.717 of 2011.

O.P.No.717 of 2011 & 433 of 2012:

Petitions under section 34 of the Arbitration and Conciliation Act, 1996, seeking (i) to set aside the impugned award dated 19.09.2011 and for costs and (ii) to set aside that partion of the award dated 19.09.2011 in as much as for not having awarded interest fr the period prior to the date of the award and direct the first respondent to pay the interest at 12% per annum in the amount of Rs.16.50 Crores from May 2007 till the date of award i.e. 19.09.2011.

For Appellant : Mr. Shivathanu Mohan Sanjay for M/s. S. Ramasubramaniam Associates

For Respondents : Mr.G. Masilamani, Sr. Counsel for M/s. Manisundargopal

JUDGMENT

(Judgement of the Court was made by S.MANIKUMAR, J.)

On 18.08.2015, we admitted this Original Side Appeal No.164 of 2015 and passed an interim order.

2. After notice and on this day, based on the Joint Memorandum of Compromise dated 07.10.2015, submissions have been advanced by the learned counsel appearing for both parties that the disputes have been amicably resolved between the parties, in terms of a Joint Memorandum of Compromise, duly signed by the parties and their respective learned counsel. The Joint Memorandum of Compromise dated 07.10.2015 is perused. The Joint Memorandum of Compromise dated 07.10.2015 is extracted hereunder:

Joint Memorandum of Compromise (MoC)

This Memorandum of Compromise entered into between RR Donnelley Publishing India Pvt. Ltd. a company incorporated under the laws of India and having its Registered office at C-10, SIPCOT Industrial Park, Sriperumpudur - 602 117, represented herein by its Director and Finance Controller, Mr. G. Madhan Kumar hereinafter referred to as the “Appellant” (which expression unless it be repugnant to the context or meaning thereof deemed to mean and include its successors and assigns) of the ONE PART ;

And

M/s. Canara Traders and Printers Pvt. Ltd., a company incorporated under the laws of India and having its Registered office at Type - II, No.33, V.S.I Estate, Thiruvanmiyur, Chennai - 600 041, represented herein by its Chairman & Managing Director, Mr. Vasant M. Shanbhag hereinafter referred to as the "First Respondent" (which expression unless it be repugnant to the context or meaning thereof deemed to mean and include its successors and assigns) of the OTHER PART;

Whereas the parties herein had business relationship with each other pursuant to entering into an Agreement dated 20.05.2006.

Whereas disputes arose between the parties which was then referred to arbitration. The Hon'ble Arbitration Tribunal passed an award on 19.09.2011.

Whereas aggrieved by the said Arbitral Award the first respondent and the appellant had filed O.P. No. 433 of 2012 and O.P. No.717 of 2011 respectively under Sec.34 of the Arbitration and Conciliation Act 1996 before the Hon'ble Madras High Court. The first respondent had also filed Application No.3752 of 2012 seeking for deposit of the award amount. The Hon'ble Madras High Court on vide its order dated 09.12.2014 dismissed the aforesaid Original Petitions and Application.

Whereas the appellant aggrieved by the order passed by the Hon'ble Madras High Court in O.P. No.717 of 2011 filed O.S.A. No.164 of 2015;

Whereas in the meantime the first respondent had filed Application No.1509 of 2015 and O.A. No.230 of 2015 before the Hon'ble Madras High Court. The Hon'ble Madras High Court vide its order dated 07.04.2015 directed the appellant to deposit a sum of Rs.24,22,00,000/-to the credit of O.P. No.717 of 2011 with the Indian Bank, High Court Branch.

Whereas the first respondent had filed E.P. No.48 of 2015 seeking attachment of the money deposited by the appellant and the same was allowed vide order dated 12.08.2015.

Whereas the Hon'ble Madras High Court vide its order dated 18.08.2015 in M.P. No.1 of 2015 in O.S.A. No.164 of 2015, has passed the following order "28. In view of the fact that it has come to the notice of this Court that the appellant has deposited the award amount in the Execution Petition and also at this stage, taking note of the fact that the respondent has succeeded before the learned Single Judge in O.P. Nos. 717 of 2011 and 433 & 3752 of 2012, dated 09.12.2014, on the basis of the equity, fair play, good conscience and even as a matter of prudenjce and in furtherance to prevent an aberration of justice and to promote substantial cause of justice, grants permission to the respondent to withdraw 50% of the award amount, with interest, lying in O.P. Nos. 717 of 2011, on condition that the respondent furnishes Bank Guarantee as security, for the above said sum, within a period of four weeks, from the date of receipt of a copy of this order. There is no stay, as to costs. Balance award amount with interest shall continue to remain in the deposit, until further orders. There shall be limited stay, only in relation to 50% of the decree amount, now directed to continue in the deposit. It is made clear that the attachment ordered would continue to be in force, and not displaced.

Whereas during the pendency of the aforementioned ligations, the parties have negotiated in good faith and have resolved to amicably settle their disputes, the terms of which are captured as under :

NOW THIS MEMORANDUM OF COMPROMISE WITNESSETH AS FOLLOWS :

The Appellant and the first respondent have arrived at a settlement on the following terms and conditions :

1. Payment : The appellant has agreed to pay the first respondent a sum of Rs.16,50,00,000/- (Rupees Sixteen Crores Fifty Lakhs only)

towards Arbitration Award amount, a sum of Rs.88,76,390/- (Rupees Eighty Eight Lakhs Seventy six thousand three hundred and ninety only) towards cost awarded by Arbitral Tribunal and a sum of Rs.3,36,23,610/- (Rupees Three Crores Thirty six lakhs Twenty three thousand six hundred and ten only) towards interest, totallying to Rs.20,75,00,000/- (Rupees Twenty Crores and Seventy five lakhs only) in full and final satisfaction of the Arbitration Award dated 19.09.2011 and the first respondent has agreed to receive the same in full and final satisfaction of its claims under the Arbitration Award dated 19.09.2011. The parties agree and submit that this payment and receipt absolves both parties of all claims and liabilities between each other. The parties hereby agree that the said sum mentioned above is towards full and final satisfaction of all claims whether past, present or future that the parties had or may have against the other without any limitation.

2. Mode :

A) The appellant pursuant to order dated 07.04.2015 has deposited a sum of Rs.24,22,00,000/- to the credit of O.P. No.717 of 2011 which has subsequently been attached by Order dated 12.08.2015 under E.P. No.48 of 2015.

B) That both the parties hereby agree and consent that out of the Rs.20,75,00,000/- (Rupees Twenty Crores and Seventy Five Lakhs) payable to the first respondent, towards the full and final satisfaction, a sum of Rs.20,41,37,639/- (Rupees Twenty Crores Forty One Lakh Thirty Seven Thousand Six hundred and thirty nine only) shall be released/ paid by the executing court by way of payment out to the first respondent, out of the amount deposited by the appellant as mentioned in Clause 2A above.

C) The balance lying in the amount deposited by the appellant as mentioned in Clause 2 A above, being Rs.3,80,62,361/- (Rupees Three Crores Eighty Thousand Sixty Two thousand three hundred and sixty one only) along with any accrued interest, shall be released and paid by the executing court to and in favour of the appellant.

D) That both the parties agree that the balance sum of Rs.33,62,361/- in Rs.20,75,00,000/- (Rupees Twenty Crores and seventy five Lakhs) be deducted towards TDS, by the appellant. The appellant shall remit the TDS amount of Rs.33,62,361/- to the credit of PAN NO. AACCC6919K of M/s. Canara Traders & Printers Pvt. LTD. and issue a TDS Certificate to and in favour of the first respondent on or before 31st March 2016 for a sum of Rs.33,62,361/- (Rupees Thirty Three Lakhs Sixty Two Thousand Three Hundred and Sixty One Only).

E) The first respondent hereby acknowledges receipt of the aforementioned and accepts this payment towards full and final settlement of all disputes between and with appellant in the past, present or future. The first respondent and the appellant agree and consent to this MOC be filed before the Hon'ble High Court, Madras in O.S.A. No.164/2015 to have judgment and decree passed by the Hon'ble High Court, Madras, recording the terms of this Memorandum of Compromise in O.S.A. No.164 of 2015 and to make this Joint Memorandum of Compromise as a part of the judgment and decree in the above mentioned O.S.A. No. 164/2015.

3. Dismissal :The first respondent assures that they have not filed any other proceedings filed and pending save those mentioned in this MOC arising from and out of this dispute. The first respondent agrees to have all other proceedings, if any, already filed, arising from and out of this dispute, withdrawn.

4. Releases: The first respondent and the appellant, on behalf of themselves and each of their representatives, agents, employees, officers, directors, heirs, assigns, attorneys, subsidiaries, parents, predecessors and successors hereby release and forever discharge each other, their representatives, agents,

employees, officers, directors, heirs, assigns, attorneys, subsidiaries, parents, predecessors and successors from any and all claims, suits, awards, Judgments, orders and damages of any nature whatsoever, which they have or may have against one another, known and unknown to the first respondent or the appellant, as the case may be, save the terms and condition of this MOC to which both parties agreed and consented.

5. Signing Authority : Each signatory to this Agreement represents that he is authorised to sign this agreement on behalf of the respective parties and Board resolutions of respective parties are exchanged between the parties and attested true copies are filed as a part of this MOC.

6. No Admission : It is acknowledged by the parties herein that the payment being made hereunder to the first respondent is a settlement and compromise and is not to be construed as any admission of liability or wrongdoing by any party.

7. Confidentiality : The parties agree to keep this agreement and the facts and circumstances relating to the dispute strictly confidential and will not disclose them to any third parties, except that each party may disclose the terms of this agreement to its respective office records staff accountants, auditors, insurers and Attorneys/ Advocates, Officials under tax laws, bank officials, Courts and Tribunals. However, if a third party gets this agreement from some other source then this clause will not be applicable.

8. Binding : This Memorandum of Compromise is binding on the successors, transferees, assignees of the first respondent and the appellant.

9. Free Will and Voluntary Consent : Both parties, The First Respondent and the Appellant hereby declare and affirm that this compromise has been arrived at and the Memorandum of

Compromise is filed, out of free will and voluntary consent of the parties and without any coercion or undue influence.

10. No other disputes, claims and pending cases : Both parties, the First Respondent and the Applicant declare and affirm that there exists no other disputes or claims or pending cases between them, other than those mentioned hereinabove, for which this Memorandum of Compromise is entered into.

11. Governing Law: This Agreement is governed by the laws of India and the courts at Chennai alone shall have exclusive jurisdiction.

12. Entire Agreement: This compromise contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior communications and agreements between the parties.

It is therefore prayed that this Hon'ble Court may be pleased to take this Memorandum of Compromise on record and pass suitable Judgment and Decree in terms of this Compromise and order that this Memorandum of Compromise shall form part of the Decree in O.S.A. No.164/2015 on the file of this Hon'ble Court and order that the Parties to bear their respective cost in O.S.A. and thus render justice."

3. When the parties to the lis, have filed a Joint Memorandum of Compromise dated 07.10.2015, duly signed by them, and also by the learned counsel, with a prayer to pass a decree, in terms of the Joint Memorandum of Compromise dated 07.10.2015, we have no hesitation to pass a decree. Therefore, O.S.A. No.164 of 2015 is disposed of. Consequently, the connected M.P is closed. The Registry is directed to draft the decree in terms of the Memorandum of Compromise and issue the same, at the earliest.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

avr

Copy to:

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

4 CCs to M/s. Manisundargopal, Advocate SR.No. 54676 & 54677

1 CC to M/s. S. Ramasubramaniam Associates, Advocate SR.No. 54964

O.S.A.No.164 of 2015
and
M.P. No. 1 of 2015

RSK (CO)
PSI (15.10.2015)