

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE **T.S. SIVAGNANAM**

**C.S.No.212 of 2011 &
A.No.2286 of 2015**

Startek Shipyards Private Limited
rep. by its Executive Director
Mr.Deepak Rao Beedu ... Plaintiff

Vs

1.Chennai Port Trust
rep. by its Chairman
Rajaji Salai, Chennai 600 001.

2.The Fishing Harbour Management Committee
rep. by the Member Secretary/Chief Engineer
Chennai Port Trust Fishing Harbour
Chennai 600 081.

3.Axis Bank Ltd.,
Credit Management Centre
82, Radhakrishnan Salai
Mylapore, Chennai 600 004. .. Defendants

Prayer : Plaint under Order IV Rule 1 of O.S.Rules, read with Order VII Rule 1 CPC praying (a) for a decree directing the 1st and 2nd defendants to jointly and severally pay the Plaintiff the principal sum of Rs.3,05,94,347/-, with interest at 15% from the date of the plaint till the date of realization on the said sum; (b) for a decree of permanent injunction restraining the 1st and 2nd defendants, their

servants, and agents from invoking the Bank Guarantee in Guarantee No.0060100001698 drawn on the 3rd Defendant in favour of the 2nd defendant; (c) for a consequential decree of mandatory injunction direction the 1st and the 2nd defendants, their servants and agents to return the original Deed of Bank Guarantee in Guarantee No.0060100001698 drawn on the 3rd defendant in favour of the 2nd defendant and (d) Ordering costs of the suit in favour of the Plaintiff.

For Plaintiff : Mr. R.Sunil Kumar
For Defendants : Mr.R.Karthikeyan - D1 & D2
Mr.V.V.Sivakumar -D3

J U D G M E N T

Heard Mr. R.Sunil Kumar, learned counsel appearing for plaintiff, Mr.R.Karthikeyan, learned counsel appearing for the defendants 1 & 2 and Mr.V.V.Sivakumar, learned counsel appearing for 3rd defendant.

2. The suit was referred for mediation by an order dated 23.09.2015. By the untiring efforts of the dedicated mediators, the parties were able to enter into an agreement dated 23.03.2016. For better appreciation, the entire agreement is quoted herein below:

Memorandum of Compromise

Date: 23.03.2016

Mediation Case No. : 1130/2015

Case Details : A.No.2286/2015 in C.S.No.212/2011

Referred by : Hon'ble Mr. Justice G.Chockalingam

Date of Order : 23.09.2015

Parties Name : Startek Shipyards Pvt.Ltd.,
A Private Limited Company
incorporated Under the Companies
Act, 1956,
Rep. by its Executive Director
Mr.Deepak Rao Beedu - Plaintiff
Vs.
1.Chennai Port Trust
rep. by its Chairman, Rajaji Salai
Chennai -81
and 2 others - Defendants

Counsel Name : Mr.R.Sunil Kumar, Advocate for
plaintiff
Mr.R.Karthikeyan, Advocate for
Defendants 1 & 2
Mr.V.V.Sivakumar, Advocate for 3rd
Defendant

Both the parties appeared before the Centre along with their Counsel. Matter has been settled between them as per the terms cited in the Memorandum of Compromise. For better appreciation, the entire Memorandum of Compromise is quoted herein below:

The Plaintiffs and the 1st and 2nd Defendants have entered into this Deed of Compromise and the same may be recorded and a decree passed in terms of the Deed of Compromise.

WHEREAS the Plaintiff was the successful bidder in a tender floated by the 1st and 2nd Defendants for Licensing of a Slipway Complex for the Operation And Maintenance of Chennai Fishing Harbour at Royapuram, Chennai.

WHEREAS an agreement in Agreement 18 of 2009 dated 4.5.2009 was entered into between the Plaintiff and the 1st and 2nd Defendants in terms of which the Plaintiff was permitted to license the slipway complex for a period of 7 years extendable by another 3 years on payment of a License Fee of a sum of Rs.12,40,000/- per month exclusive of service tax.

WHEREAS the Plaintiff also paid a sum of Rs.1,48,80,000/- as Advance License Fee made refundable under the contract and a sum of Rs.1,48,80,000/- towards the Non-Refundable Premium.

WHEREAS the Plaintiff had also furnished a Bank Guarantee in Guarantee No.0060100001698 for a sum of Rs.2,60,40,000/- drawn on the 3rd Defendant in favour of the 2nd Defendant. WHEREAS the 3rd defendant is a nominal and formal party shown here in the deed of compromise primarily on account of the fact that the

deed of guarantee has been taken out by the Plaintiff in favour of the 2nd Defendant.

WHEREAS on a writ petition filed by M/s Rarefield Engineering Private Limited in W.P.No.21173 of 2008, this Hon'ble Court by order dated 14.10.2009 had set aside the proceedings of the Chennai Port Trust in JDR/5869/07/E dated 14.08.2008, granting the license of the Slipway Complex in favour of the Plaintiff giving the 1st and 2nd Defendants liberty to go for a fresh tender on the ground that the clauses in the tender were open to differing interpretations and that there was no "legal certainty" in the tender process.

WHEREAS in writ appeals filed by all the parties challenging the order dated 14.10.2009, passed in W.P.No.21173 of 2008, this Hon'ble Court in W.A.No.1540 of 2009 batch dismissed all the appeals confirming the order passed in the writ petition.

WHEREAS Agreement 18 of 2009 dated 4.5.2009, entered into between the Plaintiff and the 1st and 2nd Defendants and the allotment order dated 14.8.2008 had become ab initio void and non est in law as a consequence of which the Plaintiff was unable to use/licence the slipway complex for the remainder of the terms of the license.

WHEREAS 1st and 2nd Defendants threadtended to invoke the bank guarantee taken out by the Plaintiff in favour of the 1st and 2nd Defendants when the Plaintiff resolved to vacate the slipway complex by 31.3.2011 which it intimated by its letter dated 23.2.2011.

WHEREAS the Plaintiff instituted the present suit for cultiple relief hereunder:

(a) For a decree directing the 1st and 2nd Defendants to jointly and severally pay the Plaintiff the principal sum of Rs.3,05,94,347/- with interest at 15% from the date of the plaint till the date of realization on the said sum.

(b) For a decree of permanent injunction restraining the 1st and the 2nd Defendants, their servants, and agents from invoking the Bank Guarantee in Guarantee No.0060100001698 drawn on the 3rd Defendant in favour of the 2nd Defendant.

(c) For a consequential decree of mandatory injunction directing the 1st and the 2nd Defendants, their servants, and agents to

return the original Deed of Bank Guarantee in Guarantee No.0060100001698 drawn on the 3rd Defendant in favour of the 2nd Defendant.

WHEREAS the Plaintiff had claimed recovery of Rs.3,05,94,347/- with interest at 15% from the date of the plaint till the date of realization on the said sum from the 1st and 2nd Defendants on the premise that the Advance Licence Fee, Premium and other sum was refundable to the Plaintiff as the contract was adjudged null and void by order of this Hon'ble Court, after setting it off against a sum of Rs.7,62,000/- per month (the reserve price fixed under the tender) during the period it was in possession of the slipway complex.

WHEREAS this Hon'ble Court by order dated 24.02.2011 restrained the 1st and the 2nd Defendants, their servants and agents from invoking the Bank Guarantee in Guarantee No.0060100001698 drawn on the 3rd Defendant in favour of the 2nd Defendant.

WHEREAS this Hon'ble Court by its order dated 15.02.2012 directed both the Plaintiff and the 1st and 2nd Defendants to hold discussions with a view to settle the contentious disputes and amicably arrive at a settlement.

WHEREAS both the Plaintiff and the 1st and 2nd Defendants have held a number of discussions to amicably resolve the disputes which are subject matter of the aforementioned suit in C.S.212 of 2011 pending before this Hon'ble Court.

NEW THEREFORE, the parties wish to settle the disputes and decided to enter into this Deed of Settlement as per the terms and conditions stated herein.

OPERATIVE PROVISIONS

1.SETTLEMENT

1.1 The parties agree that, the 1st and 2nd Defendants shall pay a total amount of Rs.58,32,529 (Rupees Fifty Eight Lakhs Thirty Two Thousand Five Hundred Twenty Nine Only) to the Plaintiff as a **full and final settlement** of the reliefs sought in the suit (hereinafter called "Settlement Amount"). The 1st and 2nd Defendants shall pay the Settlement Amount in one lumpsum by way of Demand Draft drawn in the name of Startek Shipyards Private Limited vide Demand Draft No.440201 drawn on Indian Bank, dated 17.03.2016.

1.2 The 1st and 2nd Defendants have returned the original Deed of Bank Guarantee in Guarantee NO.0060100001698 drawn on the 3rd Defendant in favour of the 2nd Defendant.

1.3 It is further agreed that after payment by the 1st and 2nd Defendants to the Plaintiff terms of this Deed, there will be no amount payable/receivable by either party and all rights of both the parties shall immediately extinguish against each other.

1.4 The parties undertake that, after the payment of the Settlement Amount mentioned in section 1.1, the parties and/or their affiliates and subsidiaries, hereby release, acquit and forever discharge the other party from any and all claims, liabilities, demands, causes of action, costs, expenses, taxes, damages and all known and unknown claims. This undertaking is a binding contract on the terms set herein above and constitutes the complete and final settlement.

1.5 The parties hereby irrevocable confirm that their claims under the Agreement have been settled in full. Both the parties confirm that they shall not file any fresh claim before any Court or forum or other statutory authorities against the other arising out of or in connection with the Agreement or Arbitral Tribunal or circumstances surrounding therewith.

2 COUNTER PART

This Deed may be executed in any number of counterparts each of which taken together shall be

deemed to constitute one and the same agreement and each of which individually shall be deemed to be an original, with the same effect as if the signature on each counterpart were on the same original.

3 ENTIRE AGREEMENT

This Deed sets out the entire agreement between the parties and supersedes all prior discussions between them or their advisors and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings whenever given and whether orally or in writing with respect to the matters contained in this Deed.

4 OTHER TERMS

4.1 The Parties hereby declare that they have taken the independent advice from their respective advocates and they know the true meaning and effect of this Settlement Deed.

4.2 The Settlement hereby made is out of free will, mutual consent and without any force, fraud, coercion, misrepresentation and threat and it shall be irrevocable and binding on all the parties.

• SD/

STARTEK SHIPYARS PVT.LTD.
DEEPAK RAO BEEDU
EXECUTIVE DIRECTOR
(Plaintiff)

SD/

CHAIRMAN
CHENNAI FISHING HARBOUR
MANAGEMENT COMMITTEE
(2nd Defendant)

SD/

Mr.R.Sunil Kumar,
(Counsel for plaintiff)

SD/-

Mr.R.Karthikeyan
(Counsel for 2nd defendant)

SD/

Member Secretary
Chennai Fishing Harbour Management Committee
4th Floor, Old Administrative Office Building
Chennai Port Trust, Rajaji Salai
Chennai 600 001

3. Thus, the Memorandum of Compromise entered into between the parties dated 23.03.2016, is placed on record and Civil Suit is decreed in terms of Memorandum of Compromise dated 23.03.2016. The Memorandum of Compromise dated 23.03.2016 shall form part of the judgment.

4. In the light of the above settlement, the full Court Fee shall be refunded in favour of the plaintiff.

5. On the suggestion made by this Court to the learned counsel for the plaintiff and the learned counsel for the defendant, the plaintiff has voluntarily come forward to pay a sum of Rs.75,000/- [Rupees Seventy Five Thousand only] to the

Mediation and Conciliation Centre. The aforesaid payments shall be made to the Mediation and Conciliation Centre within a period of eight weeks from the date of receipt of a copy of this order. Consequently A.No.2286 of 2015, is closed.

sd/.T.S.S.J

29.04.2016

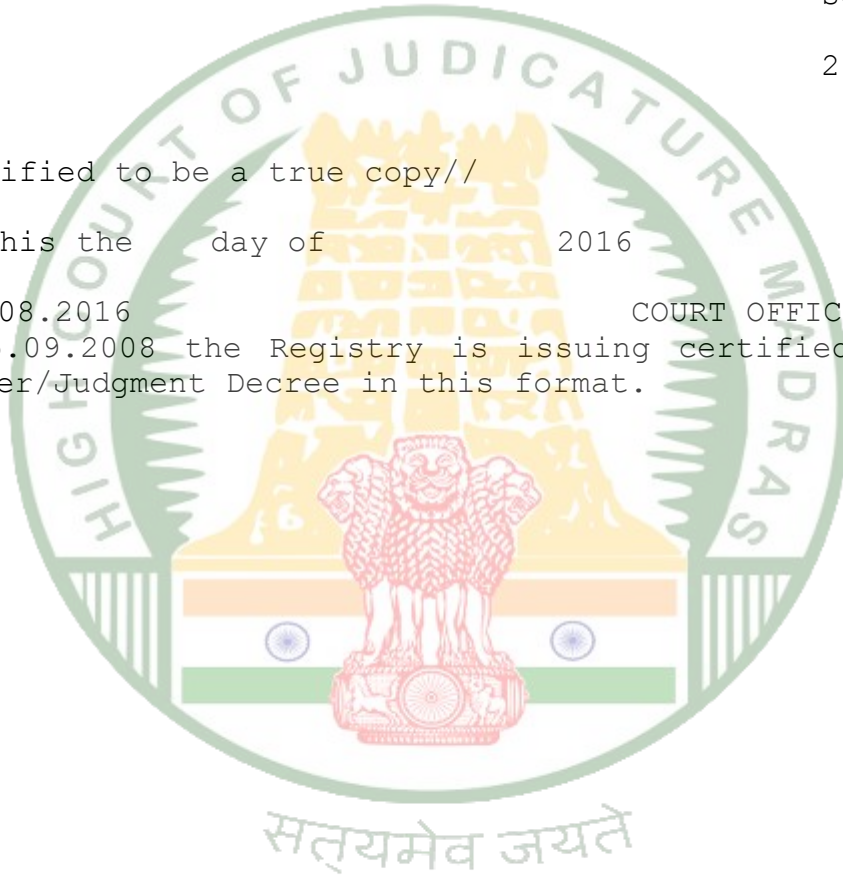
//Certified to be a true copy//

Dated this the day of 2016

S.s/01.08.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



WEB COPY