

In the High Court of Judicature at Madras

Dated: 01.12.2016

Coram

The Honourable **Mr.JUSTICE RAJIV SHAKDHER**

C.P.No.377 of 2016
O.P.No.436 of 2016 and
Cont.P.No.2824 of 2016
and Sub.Appln.Nos.628 and 643 of 2016

C.P.No.377 of 2016:

1 Rakesh Sheth
No.340 1st South Main Road Kapaleeswar
Nagar Neelankarai Chennai-600 115.
.... Petitioner

Vs

1 M/s.KGS Constructions Ltd.
No.43 Besant Avenue Road Adyar Chennai-
600 020.
2 M/s.KGS Constructions Ltd.
No.43 Besant Avenue Road Adyar Chennai-
600 020.
.... Respondents

Prayer: PETITION filed under Section 433(e) and (f) and 434(ia)(a) and 439(i)(b) of the Companies Act to order winding up of the Respondent Company namely M/s.KGS Constructions Ltd having its registered office at No.43 Besant Avenue Road Chennai-600 020 under the provisions of Companies Act 1956; b) To appoint the Official Liquidator of the Respondent Company to take charge of the assets and liabilities of the respondent company; c) To direct that the costs of this petition come out from the estate of the Respondent Company.

For Petitioner : Mr. Nithyaesh Natraj

For Respondents: Mr.Prahalat Bhal
for M/s.Raghul Balaji

O.P.No.436 of 2016:

1 MR.RAKESH SHETH
S/O.PREMKUMAR SHETH NO.340 1ST SOUTH MAIN
ROAD KAPALEESWAR NAGAR NEELANKARAI
CHENNAI-600 015.

2 Roshini R.Sheth
No.340 1st South Main Road Kapaleeswar
Nagar Neelankarai Chennai-600 015.

.... Petitioners

Vs

1 M/S.KGS DEVELOPERS LTD.
NO.63 KAMARAJ AVENUE 1ST STREET ADYAR
CHENNAI-600 020.

2 M/s.KGS Constructions Ltd.
No.63 Kamaraj Avenue 1st Street Adyar
Chennai-600 020.

.... Respondents

PETITION filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 03.01.2015 read with 10.12.2015 to the extent wherein it refused to impose liability on the first respondent and allow the claim petition filed by the Petitioner before the Honble Tribunal against the first respondent as well. b) For costs of the O.P.

For Petitioner : Mr. Nithyaesh Natraj
 For Respondents: Mr.Prahalat Bhal
 for M/s.Raghul Balaji -R2

Cont.P.No.2824 of 2016:

- 1 MR.RAKESH P.SHETH
 S/O.PREMKUMAR SHETH NO.340 1ST SOUTH MAIN
 ROAD KAPALEESWAR NAGAR NEELANKARAI
 CHENNAI-600 015.
- 2 MRS.ROSHINI R.SHETH
 W/O.RAKESH P.SHETH NO.340 1ST SOUTH MAIN
 ROAD KAPALEESWAR NAGAR NEELANKARAI
 CHENNAI-600 015.

.... Petitioners

Vs

- 1 M/S KGS DEVELOPERS LTD.
 REP BY ITS DIRECTORS: MR.GIGI GEORGE MR.P.V.
 SHANMUGAM MR.K.KUMARAN NO.63 KAMARAJ
 AVENUE 1ST STREET ADYAR CHENNAI-600 020.
- 2 M/S.KGS CONSTRUCTIONS LTD.
 REP BY ITS DIRECTORS: MR.GIGI GEORGE MR.P.V.
 SHANMUGAM MR.K.KUMARAN NO.63 KAMARAJ
 AVENUE 1ST STREET ADYAR CHENNAI-600 020.
- 3 MR.P.V.SHANMUGAM
 M/S KGEYES NELSUN ARGES DEVELOPERS NO.10
 SRUSHTISSTHAL SECOND CROSS ST RAJA
 ANNAMALAI PURAM CH-600 028.
- 4 M/S.RIDA ESTATES PVT LTD.
 NO.37/21 SKYLARK CHAMBERS YELAPPA CHETTY
 LAYOUT ULSOOR ROAD BANGALORE-560042.
- 5 THE PRESIDENT
 VILLAGE PANCHAYAT MUTTUKADU PANCHAYAT UNION

EGATTUR VILLAGE CHENGALPETTU KANCHEEPURAM.

- 6 M/S.ICICI BANK LTD.
CRFG TEAM ICICI BANK TOWER REGIONAL OFFICE
NO.24 SOUTH PHASE AMBATTUR INDUSTRIAL
ESTATE AMBATTUR CHENNAI-600 058.
- 7 ARUNKUMAR SAMUEL
NO.277A FIRST MAIN ROAD KAMAKOTI NAGAR
PALIKARNAI KANCHIPURAM.
- 8 C.H.JAMUNA
NEW NO.8 OLD NO.19 BALAJI AVENUE 1ST
STREET T.NAGAR CHENNAI-600 017.
- 9 C.H.KRISHNAN
NEW NO.8 OLD NO.19 BALAJI AVENUE 1ST
STREET T.NAGAR CHENNAI-600 017.
- 10 MANISHANKAR YAMARAJA
NO.4/17H GANESH NAGAR MEELAVITTAN VILLAGE
THOOTHUKOODI.
- 11 KAVITHA SITRAMBALAM BASKAR
NO.4/17H GANESH NAGAR MEELAVITTAN VILLAGE
THOOTHUKOODI.
- 12 STATE BANK OF HYDERABAD
PLOT NO.14 DHANDEESWARAM NAGAR 1ST MAIN
ROAD VELACHERY CHENNAI.
- 13 G.PHANEEDRA
D.NO.64/43 S.V.KOIL STREET TAMBARAM
SANITORIUM CHENNAI-600 047.
- 14 R.J.SUPRIYA
NO.8 A.A.ROAD BALARENGAPURAM MADURAI-
625009.

.... Respondents

PETITION filed under Section 11 of the Contempt of Courts Act, 1971 and Rule 4 of the Contempt of Court Rules, High Court Madras, 1975 to punish respondents 1 - 2 for their wilful disobedience of this Hon'ble Court's Order dated 29.07.2015 in Application No.4445 of 2013 and further direct the respondents 1 - 2 to comply with the orders of this Hon'ble Court dated 29.07.2015 in Application No.4445 of 2013.

For Petitioner : Mr.Prahalat Bhal
for M/s.Raghul Balaji - R1
For Respondents: Mr. Balamurali
for M/s.Shivakumar & Suresh - R6

COMMON ORDER

C.P.No.377 of 2016:

1. Counsel for the parties say that they have arrived at a settlement. A copy of the settlement agreement dated 29.11.2016 has been placed before me.

2. Mr.Nithyaesh Nataraj, represents the petitioner in C.P.No.377 of 2016, while Mr.Prahalad Bhal, represents the respondent company in C.P.No.377 of 2016.

3. The terms of agreement arrived at between the parties, as set out in the settlement agreement dated 29.11.2016, are as follows:

"a) The Parties of the Second Part agrees to convey,

sell, transfer and release the immoveable property more fully described in the Annexure A (comprising of Schedule A and Schedule B) to this Agreement to the Parties of the First Part, either in their individual names or jointly or to their nominees on or before 2nd December 2016 and the Parties of the First part agree to have the same conveyed in their name. The cost of transfer, if any, will be borne by the Parties of the Second Part is the rate of 75% of their cost and the balance to the cost of party of the First part.

b) The above sale shall be free from all encumbrances and the Parties of the First Part shall be free to enjoy and possess the said properties free from any claims or encumbrances. The Parties acknowledge that properties mentioned in Schedule B to this Agreement is presently mortgaged to Canara Bank and as such, the Party of the Second Part agrees to release the said mortgage and obtain a No-Objection Certificate from the said Bank on or before 31st March 2017.

c) The Parties of the Second Part shall further compensate the Parties of the First Part with a sum of Rs.1,00,00,000/- (Rupees One Crore Only) which shall be Payable in the following manner and the said Cheques will be issued specifically by M/s.KGS Developers Ltd and on signing this Agreement

a. Rs.50,00,000/- vide Cheque No.994401 dt.10.12.2016.

b. Rs.50,00,000/- vide Cheque No.994402

dt.10.12.2016.

d) In consideration of the above, the Parties to the First Part agree to put on hold all legal proceedings initiated by them, either jointly or severally, against the Parties of the Second Part or its Directors, including but not limited to the following mentioned herein.

i) C.C.No.4382 and 4383 of 2013 filed before the Saidapet Fast Track Court

ii) C.C.No.1407 of 2016

iii) O.P.No.436 of 2016 (S.34 OP)

iv) Crl.O.P.11054 of 2016 - Madras High Court

All the above will be withdrawn only after full and successful completion of Clauses (a) (b) and (c) mentioned above by the KGS Group i.e. the Parties of the Second part, in honouring their commitment towards settlement of all their admitted and existing dues payable to the party of the first part.

e) In consideration of clauses mentioned above and on the fulfilment of the same, both the Parties of the First Part and the Parties of the Second Part agree that they shall have no claims against each other under the arbitral award dated 03.01.2015 passed by Justice Vinod Kumar Sharma and under the order dated 29.07.2015 in A.4445/2013 passed by the Hon'ble Madras High Court and that they expressly waive any rights and claims that they have under the said award and order in consideration of the full and final settlement reached between the Parties as mentioned in clauses (a), (b), and

(c) above.

f) The obligation of the Parties of the First Part in clause (d) above i.e. to withdraw all the pending cases shall arise only upon the parties of the second part jointly and severally, fulfilling the mandate enshrined under this agreement which inter alia includes transfer of all properties to the Parties of the First Part or its nominees and payment of the sum of Rs.1,00,00,000 [Rupees One Crore Only] as mentioned in Clause (c) above.

g) If there is any default by the Party of Second Part of its obligations under clauses (a), (b), and (c) mentioned above, the party of the first part shall be entitled to proceed against the parties of the second part jointly and severally in a manner known to law."

4. To be noted, the party of the first part in the settlement agreement is the petitioner, while the party of the second part in the settlement agreement is the respondent No.1 company. According to me, the terms of settlement are lawful.

5. As prayed for by the learned counsel for the parties, the captioned petition is disposed of in the aforementioned terms, which are incorporated in the settlement agreement dated 29.11.2016.

6. Counsel for the parties undertake on behalf of the respective parties, to abide by the compromise. In case, there is any default by the respondent company, in complying with the terms of the settlement, the petitioner will have liberty to revive the Company Petition. In addition, the petitioner will also have liberty to take recourse to any other remedy, that may be available in law.

6.1. To be noted, the petitioner and the Managing Director of the respondent No.1 company, who are present in Court, have affirmed before me that a settlement has been reached between the parties as recorded above.

Contempt Petition No.2824 of 2016:

7. Mr.Nithyesh Natraj, learned counsel for the petitioner says that in view of the settlement arrived at with respondent No.1 company, for the moment, he has instructions not to press the Contempt Petition.

8. The Contempt Petition is accordingly, disposed of, as not pressed. Consequently, the captioned sub-applications are also closed. However, there will be no order as to costs.

O.P.No.436 of 2016:

9. To be noted, on the previous day, i.e., 29.11.2016, I had directed the Registry to place O.P.No.436 of 2016 in Court. Unfortunately, the Registry has not placed the same before. Today, I have called for the same.

10. In view of the settlement recorded in C.P.No.377 of 2016, counsels say that nothing survives in the Original Petition as well. The said petition is, therefore, closed. However, there will be no order as to costs.

sl

01.12.2016

RAJIV SHAKDHER,J.

sl

C.P.No.377 of 2016
O.P.No.436 of 2016 and
Cont.P.No.2824 of 2016
and Sub.Appln.Nos.628 and 643 of 2016

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<http://www.judis.nic.in>