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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4382/2016 & C.M.No.18347/2016

R D EXTRUSION (PVT) LTD.

..... Petitioner

Through Mr.Pradeep Jain with Mr.Ashish
Bansal, Advocates.

versus

CONTAINER CORPORATION OF INDIA LTD. Respondent

Through Sanjay Khanna with Ms.Pragya
Bhushan, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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16.05.2016

Present writ petition has been filed seeking a direction to the respondent-CONCOR to waive the terminal service charges and consequently refund the amount of Rs.21,74,665/- plus Rs.9,576/- along with interest which the respondent collected from the petitioner.

Learned counsel for petitioner states that the amount charged by the respondent towards terminal service charge for delay in taking delivery of goods was not due to any inaction on the part of the petitioner, but on account of delay attributable to the shipping line. He contends that it is the shipping line which is liable to pay the terminal service charge until the delivery order was issued. In support of his submission he relies upon the judgment of the Supreme Court in *Forbes Forbes Campbell & Co. Ltd. Vs. Board of Trustees, Port of Bombay in Civil Appeal No.7088/2002*.

However, a perusal of the paper book reveals that the petitioner had filed a suit against its shipping line which was compromised by way of an agreement/compromise deed dated 28th July, 2015. The relevant term of the compromise deed reads as under:-

“ xii. The FIRST PARTY shall be solely responsible to make the payments which are due to CONCOR and/or any other authority for any claims/demands/duties/penalties/taxes/charges including but not limited to ground rent which relate to the transaction arising out of the shipment under the subject Bill of Lading. It is understood that all charges pertaining to INLAND HAILAGE of containers/cargo from JNPT NHAVA SHEVA, MUMBAI TO ICD TUGLAKABAD NEW DELHI and TERMINAL HANLING CHARGES at ICD TUGLAKABAD NEW DELHI already stands paid by FIRST & SECOND PARTY to CONCOR.”

(emphasis supplied)

In the delivery order dated 11th August, 2015 issued by the shipping line, it had been intimated to the respondent-CONCOR that charges due would have to be collected from the petitioner-consignee directly.

Keeping in view the aforesaid, this Court is of the opinion that the said dispute cannot be decided in the present writ proceedings and that too in the absence of the shipping line.

Accordingly, the present writ petition and the application are dismissed.

MANMOHAN, J

**MAY 16, 2016
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