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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL WRIT PETITION NO.1126 OF 2015**
**WITH**
**CRIMINAL APPLICATION NO.494 OF 2015**
**WITH**
**CRIMINAL WRIT PETITION NO.1519 OF 2015**
**WITH**
**CRIMINAL APPLICATION NO.493 OF 2015**

BPEA Advisors Private Limited and Ors. … Petitioners
Vs.
The State of Maharashtra and Anr. … Respondents

Mr. Ashwin Thool a/w Gunjan Mangla, Aniket Nimbalkar and Prabhav Shroff i/by AZB and Partners for the Petitioners in both WPs.

Dr. F.R. Shaikh, APP for the Respondent No.1 in both WPs.

Mr. A.P. Mundargi, Senior Advocate a/w Mr. Rahul Sinha i/by DSK Legal for the Respondent No.2 in both WPs and for Applicants in both APPWs.

**CORAM : A.S. OKA &**
**ANUJA PRABHUDESSAI, JJ.**

**DATE : 27$^{th}$ FEBRUARY, 2017**

**P.C.**

1 Rule. The learned APP waives service for the first respondent. Advocate on record for the second respondent waives service. Forthwith taken up for final disposal. The subject matter of challenge in both these Writ Petitions under Article 226 of the

Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is the First Information Report (FIR) No.66 of 2015 registered at the instance of the second respondent by N.M. Marg Police Station, Mumbai. The second respondent in both the Petitions lodged the FIR on behalf of the Global Indian International School and Global Schools Foundation Limited. The petitioners have been arraigned as accused.

2 The FIR has been registered for the offences punishable under Sections 420, 506 read with Section 34 of the Indian Penal Code on 9th March, 2015. It is alleged that the offences have taken place between 2009 to 2015. The allegation in short is that the Company which the first informant represents was deceived by the accused to execute an agreement with an intention of taking over the Company.

3 It appears that on 19th January, 2017 there was a Settlement Agreement executed at Singapore by and between the contesting parties :-

"SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made this 19th day of January 2017.

BETWEEN:

1. GLOBAL INDIAN SCHOOLS HOLDINGS LIMITED (British Virgin Islands Registration No.1611623)

("GISH");

2. GLOBAL SCHOOLS FOUNDATION LIMITED (Singapore Registration No.200920669H) ("GSF");
3. K12 EDUSCHOOLS HOLDINGS LTD (British Virgin Islands Registration No.1611622) ("K12");
4. ATUL ARVIND TEMURNIKAR (NRIC NO.S2635543E) ("Mr Temurnikar")'
5. BODHANKAR KAUSTUBH SUDHAKAR (NRIC No.S7484037Z) ("Mr Bodhankar");

AND

6. MINERVA EDUCATION HOLDINGS LIMITED (British Virgin Islands Registration No.1596478) ("Minerva");
7. BARING PRIVATE EQUITY ASIA LIMITED (Hong Kong SAR Registration No.645312) ("BPEA");

(collectively, the "Parties" and each, a "Party").

WHEREAS:

(a) By way of Singapore International Arbitration Centre ("SIAC") Arbitration Nos 171, 172 and 173 of 2013, GISH, GSF and K12 (collectively, "the Global Indian Schools Companies") commenced arbitration proceedings against Minerva on 19 August 2013 ("the SIAC Arbitrations"). A Final Award dated 11 November 2015 ("Final Award") was issued in the SIAC Arbitrations;

(b) By way of Originating Summons No.1098 of 2015, Minerva commenced proceedings against the Global Indian Schools Companies on 18 November 2015 ("the Enforcement Proceedings"). In the Enforcement Proceedings, Minerva sought leave to enforce the Final Award in the same manner as a judgment of the High Court. Minerva obtained a Final Judgment dated 23 November 2015 in terms of the Final Award;

(c) By way of Suit No.95 of 2014, the Global Indian Schools Companies Commenced an action in the Singapore High Court against Minerva and BPEA on 23 January 2014 ("Suit 95"). Suit 95 has been struck out as against Minerva on 14 September 2016. The Global Indian

Schools Companies recently joined three new parties as defendants in Suit 95. The new parties are Mr Kosmas Kalliarekos and Mr Jimmy Mahtani who are BPEA's officers and Nord Anglia Education, Inc ("Nord Anglia").

(d) By way of Originating Summons No.576 of 2016 and Originating Summons No.993 of 2016, BPEA commenced proceedings against the Global Indian Schools Companies, Mr. Temurnikar and Mr. Bodhankar, on 7 June 2016 and 29 September 2016 respectively ("the Committal Proceedings") for contempt of Court; and

(e) On 9 March 2015, the Indian police issued a First Information Report ("the FIR") against Nord Anglia, Minerva, BPEA and its related company, BPEA Advisors Private Limited ("BPEA India"), and their officers as a result of a complaint ("the Complaint") made by Mr. Sivankutty Janardhan Nair ("Mr Nair"), an employee of a subsidiary of GISH, to the Indian police against Minerva, BPEA, BPEA India, Nord Anglia, Mr. Jean Eric Salata, Mr Jimmy Mahtani, Mr Hari Gopalakrishnan, Mr Ashish Agarwal, Mr Anubhav Kaul, Mr. Kosmas Kalliarekos, Mr Andrew Fitzmaurice and Mr. Jack Hennessy in August 2014 ("the Indian Criminal Proceedings"). Minerva, BPEA, BPEA India, Nord Anglia and their officers have filed Criminal Writ Petition No.1126 of 2015 and Criminal Writ Petition No.1519 of 2015 in the Mumbai High Court to quash the FIR ("Quashing Petitions").

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The Parties hereby agree, on the terms and subject to the conditions of this Agreement, to a full and final settlement of any and all disputes, claims and/or counterclaims between each Party, including but not limited to the commercial disputes in relation to the SIAC Arbitrations, the Enforcement Proceedings and Suit 95 as well as the Committal Proceedings and the Indian Criminal Proceedings. For the avoidance of doubt, this Agreement is and is intended by the Parties to be a complete settlement of any and all differences and disputes, of whatever nature and whether known or

unknown, between the Parties.

2. The Global Indian Schools Companies, Mr. Temurnikar and Mr. Bodhankar hereby agree to waive, forego and release any and all claims, causes of action, counterclaims, damages, demands, rights, remedies and/or reliefs, both known and unknown, in law or equity or otherwise, of any kind whatsoever against Minerva, BPEA, BPEA India, Nord Anglia, Mr Jean Eric Salata, Mr Jimmy Mahtani, Mr Hari Gopalakrishnan, Mr Ashish Agarwal, Mr Anubhav Kaul, Mr Kosmas Kalliarekos, Mr Andrew Fitzmaurice and Mr Jack Hennessy.

3. Subject to clause 15 of this Agreement, Minerva and BPEA hereby agree to waive, forego and release any and all claims, causes of action, counterclaims, damages, demands, rights, remedies and/or reliefs, both known and unknown, in law or equity, of any kind whatsoever against the Global Indian Schools Companies, Mr Temurnikar and Mr Bodhankar.

4. GISH, GSF and K12 shall jointly and separately be liable to pay the sum of US$34 million to Minerva within 45 days from 31 January 2017, such payment being strictly without any admission as to liability. The sum of US$34 million shall be paid to Drew & Napier LLC's ("D&N") client account, details of which shall be provided by D&N to K&L Gates LLP.

5. Upon execution of this Agreement, the Global Indian Schools Companies, Mr Temurnikar and Mr Bodhankar shall apply to the Mumbai Police to withdraw the Complaint filed against Minerva, BPEA, BPEA India, Nord Anglia, Mr Jean Eric Salata, Mr Jimmy Mahtani, Mr Hari Gopalakrishnan, Mr Ashish Agarwal, Mr Anubhav Kaul, Mr Kosmas Kalliarekos, Mr Andrew Fitzmaurice and Mr Jack Hennessy in August 2014 as the disputes between the parties stand amicably resolved. **In addition, when the Quashing Petitions are next taken up for hearing (whether pursuant to mentioning the matters and the Honourable High Court granting an earlier date, or on the next scheduled date), the Honourable High Court will be**

**informed that the matter is amicably settled and Mr. Nair is withdrawing all allegations made in the Complaint and the FIR against Minerva, BPEA, BPEA India, Nord Anglia, Mr Jean Eric Salata, Mr Mahtani, Mr Hari Gopalakrishnan, Mr Ashish Agarwal, Mr Anubhav Kaul, Mr Kalliarekos, Mr Andrew Fitzmaurice and Mr. Jack Hennessy, and request the Court to pass an order quashing the FIR in its entirety ("the Quashing Order"), and recording that all disputes in respect of the Complaint and the FIR stand amicably resolved and that an application has been made to the Mumbai Police for withdrawing the Complaint, and that the Complaint is not being prosecuted further.**

6. Within 14 days of this Agreement, the Global Indian Schools Companies shall file a Notice of Discontinuance in Suit 95 by consent against all defendants in Suit 95. There shall be no orders as to costs in respect of the Parties.

7. Within 3 days of completion of all the obligations stated at clauses 4 and 5 above and BPEA's receipt of the Quashing Order, BPEA shall :

(a) file a Notice of Discontinuance in the Enforcement Proceedings with no orders as to costs;

(b) Take all necessary steps to cause the withdrawal of the Committal Proceedings with no orders as to costs;

(c) cause Mr Kosmas Kalliarekos to resign from his position as a director on the board of directors of GISH;

(d) cause Mr Jimmy Mahtani to resign from his position as a director on the boards of directors of the following companies :

(i) Global Schools Holdings Private Limited; and
(ii) Global Indian Holdings Private Limited.

GIST, Mr Temurnikar and Mr Bodhankar shall cause Global Schools Holdings Private Limited and Global Indian Holdings Private Limited to waive and release Mr

Jimmy Mahtani from any and all claims that they may have against him.

8. The Parties agree to the following statement being published with no further details within 7 days from the date of completion of all the obligations stated at clauses 4, 5, 6 and 7 above. No other statements shall be made by the Parties concerning or relating to this matter.

   "The Parties have agreed to settle all disputes between them amicably on confidential terms."

9. The following agreements shall be deemed to be terminated upon the completion of all of the obligations in clauses 4, 5, 6 and 7 above:

   (a) the Securities Purchase Agreement dated 22 July 2011 entered into between Minerva and the Global Indian Schools Companies;

   (b) the Securityholders Agreement dated 22 August 2011 entered into between Minerva and the Global Indian Schools Companies;

   (c) the Series A1 Convertible Note issued by GISH to Minerva on 22 August 2011; and

   (d) the Side Agreement dated 22 August 2011 entered into between Minerva and the Global Indian Schools Companies.

10. Save as expressly provided at clauses 6 and 7 above, and unless by agreement, no Party shall use this Agreement, whether directly or indirectly, to affect and/or to adjourn any timelines in Suit 95, the Enforcement Proceedings and the Committal proceedings.

**Warranties & representations**

11. Each Party hereby warrants and represents to the other that :

   (a) They have full power and authority to enter into this Agreement;

(b) this Agreement constitutes that Parties' legal valid and binding obligations enforceable in accordance with its terms;

(c) they enter into this Agreement voluntarily upon their own information, investigation and legal advice; and

(d) they shall procure that any necessary third party shall, execute such documents and do such acts and things as may be necessary or desirable to give full effect to the provisions of this Agreement.

**Costs**

12. Each Party shall respectively be responsible for its own legal costs incurred in respect of the negotiation and preparation of this Agreement.

13. The Parties shall bear their own costs in respect of the Enforcement Proceedings, Suit 95, the Committal Proceedings and the Indian Criminal Proceedings.

**Confidentiality**

14. Subject to clause 8 above, the terms of this Agreement and its negotiations shall be confidential. No Party shall directly or indirectly publish, disclose or cause to be published or disclosed, and shall prevent the direct or indirect publishing, disclosure or causing to be published or disclosed, to any third party the terms of this Agreement and all circumstances surrounding its negotiations and execution. The obligation of confidentiality is subject to these exceptions:

(a) where the disclosure is for the purpose of giving effect to and enforcing the terms of this Agreement;

(b) where the disclosure is to the Parties' respective solicitors acting for and/or advising them in relation to the Enforcement Proceedings, Suit 95, the Committal Proceedings or the Indian Criminal Proceedings;

(c) where the disclosure is for the purpose of pursuing any rights or claims any Party may have against the other(s) arising out of and/or in connection with a breach of this Agreement;

(d) where the disclosure is compelled by law or pursuant to an order of a court of competent jurisdiction or applicable law or regulation. The disclosure shall only be to the extent required by law or pursuant to an order of a court of competent jurisdiction or applicable law or regulation;

(e) where the written consent of each and every Party is obtained; or

(f) where limited partners of funds affiliated with BPEA are informed of the settlement.

**Non-receipt of payment**

15. In the event that payment of the sum stated at clause 4 above is not received by Minerva within the stipulated period, BPEA and Minerva shall be entitled to revive or pursue any of the settled disputes, claims and/or counterclaims.

**Governing law of agreement and jurisdiction**

16. This Agreement shall be governed by and construed solely in accordance with the laws of Singapore. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of three arbitrators. The language of the arbitration shall be the English language.

**Third parties**

17. BPEA India, Nord Anglia, Mr Jean Eric Salata, Mr Jimmy

Mahtani, Mr Hari Gopalakrishnan, Mr Ashish Agarwal, Mr Anubhav Kaul, Mr Kosmas Killiarekos, Mr Andrew Fitzmaurice and Mr Jack Hennessy shall have the right under the Contracts (Rights of Third Parties) Act (Cap 53B) to enforce the terms of this Agreement. Unless otherwise expressly provided herein, no person who is not a Party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act (Cap 53B) to enforce any of the terms of this Agreement.

**Counterparts**

18. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each Party may enter into this Agreement by executing any such counterpart.

WITNESS whereof this Agreement has been entered into on the date stated above."

(emphasis added)

4 We may note here that the first petitioner in Criminal Writ Petition No.1126 of 2015 and the first petitioner in Criminal Writ Petition No.1519 of 2015 are parties to the said settlement agreement dated 19th January, 2017. The settlement agreement refers to arbitration proceedings before the Singapore International Arbitration Centre and the final award dated 11th November, 2015. There is a reference to originating summons taken out on the basis of the award. The settlement agreement refers to settlement of all subsisting disputes between the Company/entity of the first informant and the first petitioner in both the Petitions. Clause 5 of the Agreement records the

agreement between the parties regarding quashing the impugned FIR by consent.

5 Apart from the affidavits of the first informant, a certified true copy of the Resolution of the Board of Directors passed by the Board of Directors of the Global Indian School Services Private Limited is also produced on record which authorises the second respondent to appear before the Courts of law for the purposes of quashing the FIR. The Resolution records that in view of the settlement arrived at under the aforesaid Deed of Settlement, it was agreed between the parties to the settlement that the First Information Report subject matter of these Petitions be quashed. Accordingly, the second respondent has no objection for quashing the FIR.

6 Perusal of the Settlement Agreement as well as the assertions made in the statement of the second respondent on the basis of which the FIR was registered shows that the dispute between the parties had predominantly a civil flavour. Now, there is a complete commercial settlement of the dispute between the Company representing the second respondent and the first petitioner Companies in both the Petitions.

7 Therefore, considering the law laid down by the Apex Court in the case of *Gian Singh Vs. State of Punjab*[1], this is a fit case to exercise power of this Court under Section 482 of the Code of Criminal Procedure, 1973. The second respondent had set the criminal law in motion in a dispute which has predominantly a civil flavour. Therefore, these Petitions were heard before this Court from time to time. Therefore, this is a fit case to impose costs on the second respondent. However, the Global Indian School Education Services Private Limited on its own has paid donation of Rs.5 Lakhs on 24th February, 2017 to the Sarvodaya Ashram having registered office at Dharam Peth, Nagpur. A photo copy of the receipt is placed on record. Thus, the said Company has paid substantial amount to a charitable organisation of some repute. Therefore, we are not passing any separate order as to costs.

8 Accordingly, the Petitions must succeed and we pass the following order :-

ORDER

(i) Rule issued in Writ Petition No.1126 of 2015 is made absolute in terms of prayer clause (a) which reads thus :-

"(a) after examining the validity, propriety and correctness of the aforesaid FIR No.66 of 2015

1 (2012) 10 SCC 303

registered with N.M. Joshi Marg Police Station, Mumbai, be pleased to issue appropriate writ/direction under Article 226 of the Constitution of India and section 482 of the Criminal Procedure Code, 1973 quashing the F.I.R. No.66 of 2015 dated 09.03.2015, registered by N.M. Joshi Marg Police Station on a complaint by Respondent No.2 herein, under Sections 420 and 506 read with Section 34 of the Indian Penal Code 1860 against the Petitioners."

(ii) Rule issued in Writ Petition No.1519 of 2015 is made absolute in terms of prayer clause (a) which reads thus :-

"(a) after examining the validity, propriety and correctness of the aforesaid FIR No.66 of 2015 registered with N.M. Joshi Marg Police Station, Mumbai, be pleased to issue appropriate writ/direction under Article 226 of the Constitution of India and section 482 of the Criminal Procedure Code, 1973 quashing the F.I.R. No.66 of 2015 dated 09.03.2015, registered by N.M. Joshi Marg Police Station on a complaint by Respondent No.2 herein, under Sections 420 and 506 read with Section 34 of the Indian Penal Code 1860 against the Petitioners."

9 All pending applications, if any, do not survive and the same are disposed of.

**(ANUJA PRABHUDESSAI, J)** **(A.S. OKA, J)**