

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

C.S.Nos.953 to 955 & 957 of 2015

and

O.A.Nos.1263 to 1265 and 1275 of 2015 &

A.Nos.8054 to 8056 and 8080 of 2015

1.M/s.Glaxy Leathers
Rep.by its Partners
22/H/6, Bright Street,
Kolkata – 700 016.

2.Mr.Ifthakar Najam

3.Mrs.Roquiya Parveen

4.Ms.Shaista Najam

... Plaintiffs in all the Suits

Vs

1.M/s.Forward Leather Company
50, Raja Muthiah Road, Periamet,
Chennai – 600 003

2.Mr.Asgar Ali Dhala

3.Mr.Muhammed Yavar Dhala

... Defendants

Plaint filed under Order IV Rule 1 O.S. Rules r/w Order VII

Rule 1 to 6 of C.P.C.

For Plaintiffs : Mr.Satish Parasaran

For Defendants : Mr.T.S.Gopalan & Co.

JUDGMENT

Suit in CS No.953 of 2015 has been filed for the following reliefs:

(i) directing the defendants jointly and severally to pay a sum of Rs.1,55,68,454/- (One Crore Fifty Five Lakh Sixty Eight Thousand Four Hundred and Fifty Four only) to the plaintiffs which amount includes interest on the principal of Rs.70,58,114/- (Seventy Lakh Fifty Eight Thousand One Hundred and Fourteen only) at the rate of 18% p.a. from 31.03.2009 till the date of suit, and further direct the defendants to pay further interest at the rate of 18% p.a on Rs.70,58,114/- (Seventy Lakhs Fifty Eight Thousand One Hundred and Fourteen Only) from the date of suit till date of realization.

(ii) For costs of the suit.

Suit in CS No.954 of 2015 has been filed for the following reliefs:

(i) directing the defendants jointly and severally to pay a sum of Rs.45,57,527/- (Forty Five Lakh Fifty Seven Thousand Five Hundred and Twenty Seven only) to the plaintiffs which amount includes interest on the principal of Rs.20,66,077/- (Twenty Lakhs Sixty Six Thousand and Seventy Seven only) at the rate of 18% p.a. from 31.03.2009 till the date of suit, and further direct the defendants to pay further interest at the rate of 18% p.a on Rs.20,66,077/- (Twenty Lakhs Sixty Six Thousand and Seventy Seven only) from the date of suit till date of realization.

(ii) For costs of the suit.

Suit in CS No.955 of 2015 has been filed for the following reliefs:

(i) directing the defendants jointly and severally

to pay a sum of Rs.57,13,415/- (Fifty Seven Lakhs Thirteen Thousand Four Hundred and Fifteen only) to the plaintiffs which amount includes interest on the principal of Rs.28,20,391/- (Twenty Eight Lakhs Twenty Thousand and Three Hundred and Ninety One only) at the rate of 18% p.a. from 31.03.2009 till the date of suit, and further direct the defendants to pay further interest at the rate of 18% p.a on Rs.28,20,391/- (Twenty Eight Lakhs Twenty Thousand Three Hundred and Ninety One only) from the date of suit till date of realization.

(ii) For costs of the suit.

Suit in CS No.957 of 2015 has been filed for the following reliefs:

(i) directing the defendants jointly and severally to pay a sum of Rs.2,86,96,404/- (Two Crores Eighty Six Lakhs Ninety Six Thousand Four Hundred and Four only) to the plaintiffs which amount includes interest on the principal of Rs.1,48,94,564/- (One Crore Forty Eight Lakhs Ninety Four Thousand Five Hundred and Sixty Four only)

at the rate of 18% p.a. from 31.03.2009 till the date of suit, and further direct the defendants to pay further interest at the rate of 18% p.a on Rs.1,48,94,564/- (One Crore Forty Eight Lakhs Ninety Four Thousand Five Hundred and Sixty Four only) from the date of suit till date of realization.

(ii) For costs of the suit.

2. Pending the suit, the Original Application Nos.1263 to 1265 & 1275 of 2015 and A.Nos.8054 to 8056 & 8080 of 2015 have been referred for mediation to Tamil Nadu Mediation and Conciliation Centre, High Court, Madras.

3. A communication dated 05.01.2017 of the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, enclosing a copy of memo of compromise dated 05.01.2017, duly signed by both the parties and countersigned by the respective counsel has been received, wherein it is stated as follows :-

"Both the parties appeared before the centre along with their counsel. Matter has been settled between them as per the terms

cited in the Memo of Compromise which is enclosed. Hence the matter is submitted back to the Hon'ble Court."

4. The parties have arrived at a settlement and the memo of compromise dated 05.01.2017 has been signed by the parties, duly attested by the respective counsel. The terms of the memo of compromise dated 05.01.2017 reads as under:

1. The aforesaid suits were filed by the plaintiffs herein, which are related entitles, the plaintiffs, at various points of time, supplied goods to the Defendants and raised invoices for the same which remained unpaid. Hence, the aforesaid suits were filed for recovery of money along with interest as follows :

<i>Case No.</i>	<i>Parties</i>	<i>Claim</i>
C.S.No.953/2015	Hena Leather Company & Ors. (Plaintiffs) Concerial Virgina Pvt. Ltd. & Ors. (Defendants)	Rs.1,33,03,226/-
C.S.No.954/2015	Glaxy Leathers & Ors. (plaintiffs) Conceria Virginia Pvt. Ltd. & Ors. (Defendants)	Rs.45,57,527/-
C.S.No.955/2015	M.D.Tasleem (plaintiff) Forward Leather Company & ors.	Rs.57,13,415/-
C.S.No.957/2015	Hena Leather Company & Ors. (Plaintiffs) Forward Leather Company & Ors. (Defendants)	Rs.2,86,96,404/-

<i>Case No.</i>	<i>Parties</i>	<i>Claim</i>
C.S.No.959/2015	Glaxy Leathers & Ors. (Plaintiffs) Forward Leather Company & ors. (Defendants)	Rs.1,55,68,454/-
	Total	Rs.6,78,39,026/-

2. As set out above in para 1, on the date of the filing of the suit, a debt of Rs.6,78,39,026/- including interest, (out of which the principal amount is Rs.3,28,64,307/-) was claimed as owned to the Plaintiffs by the Defendants, who are also related entitles due to non-payment of invoices raised by the Plaintiffs.

3. The aforesaid suits were referred to mediation by the Hon'ble Madras High court to explore the possibility of settlement. The parties, without prejudice to their respective rights and contentions, in order to sort out the differences between them, initiated discussions to amicably settle the dispute which are the subject matter of the present suits.

4. In the interest of settling the matter amicably, the parties have now decided to enter into a compromise on the following terms :

a. The Defendants have confirmed that an outstanding principal sum of Rs.2,24,78,225/- (excluding interest) is due and payable to the plaintiffs, jointly, in

respect of the total claim set out above in para 1.

b. The Defendants agree unequivocally to pay the Plaintiffs an initial sum of Rs.40,00,000/- (Rupees Forty Lakhs) upon signing this Memo of Compromise, out of which the Plaintiffs have received a sum of Rs.20,00,000/- acknowledgement of which is attached herewith (Annexure 1) A Sum of Rs.20,00,000/- is being paid by way of Demand Draft in the name of Glaxy Leathers, payable at Kolkata, a copy of which is enclosed herewith (Annexure 2).

c. The Defendants further agree that the balance of Rs.1,84,78,225/- shall be settled by way of property in the following manner :

(i) The Defendants represent that they are in the process of entering into a joint development agreement with M/s. X S Real properties Private Limited for construction of a Multi-Storeyed Building for the purposes of a residential complex in the premises owned by Forward shoes India Private Limited situated at Pammal Village, chennai admeasuring 9.76 acres.

(ii) The Defendants agree to set aside a portion of 4106 sq. ft. (selling area as described by the

developer) equated at Rs.4500/- per sq. ft. in the aforesaid project towards balance of Rs.1,84,78,225/- payable to the Plaintiffs, for which the consideration will be paid by forward Leather Company. Any shortfall in covering a unit/unit's space will be paid for by the Plaintiffs at the then market price.

(iii) The aforesaid property will be registered jointly in the name of Ms.Sabhia Najam and Ms.Shaista Najam, both residing at 6B, Tijala Road, Flat No.318, Kolkata - 700 046 and the charges for registration alone will be borne by the Plaintiffs.

(iv) The Defendants represent that the aforesaid residential project beyond the 60 months from the date of signing this compromise memo.

(v) In case there is any delay to the aforesaid residential project extension for a further 12 months, after which the Defendants shall be entitled to an extension for a further 12 months, after which the Defendants agree to pay a sum comprising interest on the balance outstanding of Rs.1,84,78,225/- at the rate of 12% P.A. From the date of this Memo of Compromise till date of handover of possession to the Plaintiffs.

(vi) In case the aforesaid residential project does not commence within 18 months from the date of signing of this compromise memo, for any reason whatsoever, the Defendants agree to repay the balance outstanding of Rs.1,84,78,225/- together with interest at the rate of 12% P.A. From the date of this Memo of Compromise till date of payment, by cheque or Demand Draft in name of Hena Leather Company.

5. It is agreed between the parties that the total amount agreed by the Defendants to be payable to the Plaintiffs under this Memo of Compromise is in full and final satisfaction of all the claims of the Plaintiff.

6. It is further agreed between the parties that upon the Defendant complying with the terms of settlement set out in para 4 above, the parties shall have no further claims against each others.

7. It is further agreed between the parties if the terms of settlement as set out in para 4 are not complied with by the Defendants, for any reason whatsoever, the Plaintiffs shall have the liberty to enforce the same as against the Defendants by seeking payment of the entire suit claim set out in para 2 together with interest at the rate of 12% p.a. From the date of this Memo of Compromise till date of payment, after adjusting for the

sums already paid to the Plaintiffs.

8. The parties hereby confirm that they shall immediately take all appropriate steps to records the present memo of Compromise in the above suits and keep any/all other legal or other proceedings initiated by the Plaintiffs against the Defendants in abeyance, till satisfactory performance of the conditions agreed in this memo of compromise, in particular para 4.

9. Mr.Muhmmad Yavar Dhala residing at No.4, Caurina Drive, Sri Kapaleeswarar Nagar, neelangarai, Chennai-600 041, 3rd Defendant in the aforesaid suits, personally undertakes and guarantees the performance of the Defendants obligations as setout in para 4 and 5 either through the Defendants directly or through its associate enterprises and confirms that the Defendants will be liable for any actions of its associate enterprises in respect of this Memo of Compromise.

10. This memo of Compromise reflects the entire understanding and agreement between the parties in respect of the subject matter of the present suits superseding all earlier correspondences, agreements, communications, notices including legal notices, claims, demands, etc.

11. The signatories to this Memo are Hena

Leathers represented by its Partner Mr.Ifthikar Najam who is duly authorised to sign on behalf of the partnership and other partner; Glaxy Leathers represented by its partner Mr.Ifthikar Najam, who is duly authorised to sign on behalf of the partnership and other partneers and Mr.M.D.Tasleem proprietor of Shaista Enterprises as plaintiffs, and forward Leather company rep. By Mr.Asgar Ali dhala and Mr.Muhammad Yavar Dhala and M/s. Conceria Virginia Pvt. Ltd, rep. By its Managing Director Mr.Muhammad Yavar Dhala as Defendants, in respect of all the aforesaid civil suits, and they confirm that they have the necessary power, authority and competence to execute this Memo of Compromise and bind all the Plaintiffs and all the Defendants respectively.

5. In terms of the settlement arrived at between the parties which is recorded under the mediation report dated 05.01.2017, this Civil Suit and the Original Application are disposed of. The memo of compromise shall form part of the decree. The plaintiff is entitled to refund of entire court fee. No costs.

07.02.2017

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K.KALYANASUNDARAM, J.
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To

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

C.S.Nos.953 to 955 & 957 of 2015

07.02.2017

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