

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3521 OF 2015

Kirloskar Brothers Limited through
Mr. Sandeep Phadnis Company
Secretary and Key Managerial
Personnel of the Company ...Petitioner
Versus
The Micro and Small Enterprises
Facilitation Council at Pune & Ors. ...Respondents

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Mr. Tejesh Dande I/b. M/s. Tejesh Dande and Associates for the
Petitioner.
Mrs. M.P. Thakur, AGP for the Respondent-State.
Mr. Suresh Dhole for the Respondent No.3.

Megha
Shridhar
Parab

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by Megha
Shridhar Parab
Date: 2018.07.20
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**CORAM : RANJIT MORE AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 18th JULY, 2018.

P.C.:-

Parties have settled their dispute and filed settlement
agreement /consent terms, which reads as follows:-

“1. Settlement:

1.1 Principal Due: Fusion agreed and accepted that Rs.35 Lakh is the principal due amount payable from KBL to fusion against the contracts/purchase orders issued to Fusion and in view of the same Fusion relinquishes the rest of its claim amount filed in the Claim Petition bearing no.18 of 2011 before MSME Council, Pune and relieves KBL from all such other claims it has or alleged to have against KBL.

1.2 Agreed Rate of Interest: By mutual consent, Fusion and KBL have agreed for the simple interest at the rate of 11% per annum on the above mentioned principal amount amounting to Rs.3,357,416/-.

1.3 Total Settlement Amount: In view of clause 1.1 and 1.2 hereinabove, Parties have reached to a complete resolution/settlement with respect to the Claim Amount raised by Fusion on KBL rounding up at Rs.70 Lakh (principal amount Rs.35 Lakh and balance as interest) (hereinafter referred to as the "Settlement Amount").

1.4 Taxes :- Fusion has agreed to pay TDS on interest and liability towards the aforesaid amount. Fusion will provide/execute all required documents and undertakings for the said TDS amount to /in favour of KBL. In the event, the said required documents and undertaking are not provided, KBL shall deduct TDS, if applicable and make necessary balance payments.

2. Releases : Notwithstanding anything contrary contained herein in this Agreement Fusion does releases and discharges; or shall be deemed to have released or discharged KBL from the Claim Amount including any other and all known and unknown claims, grievances, liabilities, obligations, damages, causes of action, rights, debts, demands, costs, losses and expenses whatsoever, existing now or in the future related to, concerning, or arising, directly or indirectly, out of any injury, damage, loss and expense incurred in connection with the Claim Amount under the Contracts/Purchase Orders upon signing of this Settlement Agreement. This Settlement Agreement will be submitted before the Hon'ble Bombay High Court as conclusive proof of settlement of the dispute between the Parties and would press for appropriate order/directions from the Hon'ble Bombay High Court.

3. WITHDRAWAL OF THE CLAIM PETITION BEARING NO.18 OF 2011 PROCEEDINGS BEFORE THE MSME COUNCIL, PUNE: Fusion hereby discharges KBL from the liabilities under the Claim Petition bearing No.18 of 2011

before the MSME Council, Pune. Fusion confirms that the claim filed by Fusion before the MSME Council, Pune shall be rendered void by the present Settlement Agreement and its said demand shall be deemed to have been set at rest conclusively without further right of recourse to Fusion. Fusion also agrees to place this Settlement Agreement and/ or the MOU and/ or Minutes of Meeting and/or the order of the Hon'ble Bombay High Court, as the case may be and seek withdrawal of the said Claim within 15(fifteen) days from the execution of the present Settlement Agreement, which will be condition precedent for making the payment of agreed amount. Fusion hereby agrees and authorize KBL to place this Settlement Agreement and/or the MOU and/or Minutes of Meeting and/or the order of the Hon'ble Bombay High Court, as the case may be before the MSME Council, Pune and get the Fusion's Claim Petition (no.18 of 2011) formally dismissed. The Settlement Amount would be paid by cheque/DD in favor of "Fusion Controls" by KBL within eight working days after the aforesaid activities are completed and Fusion furnishes the undertaking mentioned in clause 1.4. hereinabove.

4. COVENANT NOT TO SUE :- Fusion hereby agree not to initiate or commence with any lawsuit, action, claim, arbitration, regulatory action, relief, submissions or other proceeding against KBL with respect to the Claim Amount or any other claim under the Contracts/Purchase Orders issued to Fusion by KBL contrary to the terms of this Settlement Agreement.

5. REPRESENTATIONS AND WARRANTIES: Fusion and KBL each represent and warrant that (i) it is not relying upon any statements (oral or written), understandings, representations, expectations or agreements other than those expressly set forth in this Agreement, (ii) this Agreement is being made voluntarily and of each Party's own choice and not under coercion or duress (iii) KBL represent and warrants that it is duly constituted and existing under the provisions of Companies Act, 2013 (iv)

Fusion represents and warrant that it is validly existing as proprietorship enterprise and an MSME unit, and carrying on business in its present name on the date of the execution of this Settlement Agreement (v) the representatives mentioned hereinabove are duly constituted representatives and authorized to represent the Parties respectively (vi) these representations and warranties mentioned in this clause shall survive the execution of this Agreement.

6. MISCELLANEOUS : This Agreement constitutes the entire agreement of the parties with respect to the subject matter addressed herein and supersedes only the payment terms mentioned in the Contract/Purchase order. This Agreement cannot be assigned, amended, modified or terminated without the express written consent of all parties. No waiver of any breach or failure to enforce one or more of the terms and conditions hereof shall be construed as an implied amendment or agreement to modify or as a waiver of the right to later enforce such terms. This Agreement shall be governed by and interpreted under the laws of India and subject to jurisdiction of courts in Pune, Maharashtra. This Agreement shall be binding on, and shall inure to the benefit of, the Parties, their heirs, successors and permitted assigns. This Agreement may be executed in one or more counterparts, each of which shall be binding and enforceable as an original.

7. If any provision/Clause of this Settlement Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions/clauses of this Settlement Agreement will continue to be in effect and the portion or clause so determined as unlawful and/or unenforceable shall be deemed to have been severed from the Settlement Agreement.

8. This Settlement Agreement shall be treated as Full and Final Settlement of all the disputes pending between the Parties.”

2. The consent terms are signed by Mr. Umesh Gosavi, the Associate Vice President and Head Legal of the Petitioner and Mr. Ravi Kulkarni, sole proprietor of the Respondent No.3-M/s. Fusion Control. Mr. Umesh Gosavi as well as Mr. Ravi Kulkarni are present before this Court. On specific query they have stated that they have signed the settlement agreement/consent terms out of their own free will and without there being any coercion. The settlement agreement /consent terms are taken on record and marked 'X' for identification

3. In paragraph 3 of the settlement agreement/consent terms the statement is made that the settlement amount would be paid by cheque/DD in favour of the Respondent No.3- Fusion Controls by the Petitioner-KBL within 8 working days after withdrawal of the Claim Petition No.89 of 2011 before the MSME Council, Pune and the Respondent No.3 has given undertaking mentioned at clause 1.4 of the settlement agreement/consent terms.

4. The Respondent No.3 makes a statement that he will withdraw Claim Petition No.89 of 2011 pending before the MSME Council, Pune, by tomorrow. Statement is accepted. He also submits that undertaking as mentioned at clause 1.4 of the settlement

agreement/consent terms would also be submitted by tomorrow.
Undertaking is accepted.

5. Mr. Tejesh Dande, the learned counsel for the Petitioner having taken instructions from his client, who is present in the Court makes a statement that agreed amount in terms of consent terms shall be paid to the Respondent No.3 latest by Monday i.e. 23rd July, 2018 morning. Statement is accepted.

6. In the light of above, the petition is disposed of in terms of the settlement agreement /consent terms and the statements made by and on behalf of the respective parties.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)