

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.1253 OF 2015**

Prakash Shah,
Sole Prop. pf M/s. Nimit Impex

....Petitioner

Vs.

M/s. Nik-San Engineering Company Ltd.

....Respondent

Mr. Benny Joseph I/b. BJ Law Offices LLP for petitioner.

Mr. Sandeep Chavan, authorised signatory of petitioner present.

Mr. Rushil Mehta for respondent.

Mr. Abhishek Choudhary, Director of respondent company present.

CORAM : K.R.SHRIRAM, J.

DATE : 5th JULY 2018

P.C.:

1 Parties have entered into consent terms dated 5th July 2018. The consent terms signed by the authorised signatory of petitioner, director of respondent and their respective advocates is taken on record and marked “X” for identification. Mr. Mehta, counsel for respondent company states that Mr. Abhishek Choudhary is authorised to sign this consent terms by the Board of Directors and he shall forward a copy of the resolution, authorising Mr. Abhishek Choudhary to sign the consent terms, to the advocate for petitioner within one week from today. Statement accepted as an undertaking to this Court.

2 Order in terms of the consent terms. All undertakings given in the consent terms are accepted and so ordered. For ease of reference,

scanned copy of the consent terms is reproduced herein :

- X for 5/2/18

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.1253 OF 2015

Mr. Prakash Shah, Sole Proprietor of
M/s Nimit Impex ..Petitioner

V/s

M/s. Nik-San Engineering Company Ltd. ..Respondent

Coram: K. R. SRIRAM, J.

Date: 5th July, 2018

CONSENT TERMS

1. The Company Petition is filed by the Petitioner against the Respondent Company as the Respondent Company is/was liable to pay to the Petitioner a sum of Rs. 24,35,023/- (Rupees Twenty Four Lakhs Thirty Five Thousand and Twenty Three Only) being the principal sum of Rs.17,29,016/- (Rupees Seventeen Lakhs Twenty Nine Thousand and Sixteen Only) along with agreed interest @ 18% per annum from the due dates of the invoice, being 25th May 2013 to 31st August, 2015 being the sum of Rs.7,06,007/- (Rupees Seven Lakhs Six Thousand and Seven Only) till payment and/or realization, as per the Particulars of Claim annexed to the Company Petition.
2. The Respondent Company has already deposited the principal sum of Rs.17,29,016/- (Rupees Seventeen Lakhs Twenty Nine Thousand and Sixteen Only) before this Hon'ble Court as per orders 20th December 2017 and 13th April 2018. It is further

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agreed and confirmed that a sum of Rs.14,81,763/- (Rupees Fourteen Lakhs Eighty One Thousand Seven Hundred Sixty Three only) towards interest as on 13th April 2018 is admittedly due and payable by the Respondent to the Petitioner.

3. The Respondent Company through, Mr. Abhishek Choudhary, Director of the Respondent Company agrees, confirms and undertakes to this Hon'ble Court that the Respondent Company shall pay to the Petitioner the interest of Rs. 9,00,000/- (Rupees Nine Lakhs only) towards full and final settlement as the interest component in the following six equal installments which will be payable on first day of every month, commencing from ~~1st~~ ^{1st} August, 2018, which shall be transferred directly in to the bank Account of the Petitioner with Indian Bank CA 727126870: -

Sr. No.	Date	Amount (in Rs.)
1.	20 18 08.2018	1,50,000/-
2.	20 18 09.2018	1,50,000/-
3.	20 18 10.2018	1,50,000/-
4.	20 18 11.2018	1,50,000/-
5.	20 18 12.2018	1,50,000/-
6.	20 18 02.2019	1,50,000/-
	Total	<u>9,00,000/-</u>

4. The Respondent Company through, Mr. Abhishek Choudhary, Director of the Respondent Company further agrees, confirms and undertakes to this Hon'ble Court that payments as aforesaid will be honoured/made on the respective due dates.

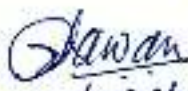
5. In the event of the Respondent Company committing default in payment of any of the aforesaid installments or any part thereof, forthwith the Company Petition shall without reference to this Hon'ble Court be revived and stand admitted. In the event of any single default in making payment of any single installment or any part thereof, the Official Liquidator shall forthwith stand appointed as provisional liquidator and shall immediately take charge/possession of the records as well as the movable and immovable properties of the Company.
6. In the event of the Respondent Company defaulting in making the payment of any amount on the due dates as set out in Clause 3 hereinabove, without prejudice to other remedies as may be available to the Petitioner against the Respondent Company, the Respondent Company agrees, confirms and undertakes that:
 - (a) The Petitioner will be entitled for an aggregate sum of Rs. 14,81,763/- (Rupees Fourteen Lakhs Eighty One Thousand Seven Hundred Sixty Three Only) is admittedly due and payable by the Respondent to the Petitioner
 - (b) The above Company Petition stands allowed without reference to the Hon'ble Court as set out in Clause 5 hereinabove.
7. Upon the payment being received by the Petitioner as per Clause 3 hereinabove, neither party shall have any claim against each other.

8. This Hon'ble Court shall accept the undertaking given by the Parties herein as undertaking given to this Hon'ble Court. Order in terms of Consent Terms may be passed.
9. No order as to the costs.

Dated this 5th day of July, 2018

Mr. Prakash Shah, Sole Proprietor of
M/s Nimit Impex


Sandeep Chavara
~~Prakash Shah~~ Contributed Attorney
Sole Proprietor
(Petitioner)


BJ Law Offices LLP,
Advocates for the Petitioner

Nik-San Engineering Company Ltd.


Director
(Respondent)


Rushil Mehta
Advocate for Respondent

The six installments towards interest have been agreed to be paid every month beginning 20th August 2018 and ending on 20th February 2019.

3 Mr. Abhishek Choudhary, Director of respondent company assures this Court for himself personally, on behalf of the other Directors of

the company and the company that the amounts will be paid on the dates mentioned in the consent terms. This assurance is taken as further undertaking to this Court. It is made clear that if there is any default, petitioner will be at liberty to execute this order as a decree of this Court against not only respondent company but Mr. Abhishek Choudhary in his personal capacity and all the other Directors of the company.

4 Since this petition has not been advertised, petition stands disposed with liberty to petitioner to approach this Court for revival of the petition and for further orders in case there is a default.

5 Respondent company has filed First Appeal bearing stamp no.13519 of 2018. Though it is not part of the assignment of this Court, the counsel by consent request that this Court may take up the First Appeal for hearing now so that respondent, who is appellant in First Appeal, can withdraw the same.

6 Therefore, by consent First Appeal stamp No.13519 of 2018 is taken up for hearing and dismissed as withdrawn. Civil application nos.2147 of 2018 and 2148 of 2018 also stand disposed. Refund of court fees, if any, in accordance with rules.

7 Mr. Joseph, counsel for petitioner states that petitioner will not execute the decree, that it has obtained from the City Civil Court at

Dindoshi in Summary Suit No.373 of 2016, so long as the installments are being paid as per the consent terms. Statement accepted.

(K.R. SHRIRAM, J.)