

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.439 OF 2015

SBI Capital Markets Limited	Petitioner
Vs.	
Arshiya Rail Infrastructure Limited	Respondent

WITH

COMPANY PETITION NO.1199 OF 2015

Binani Cement Limited	Petitioner
Vs.	
Arshiya Rail Infrastructure Limited	Respondent

Mr. Chetan Mhatre i/b. Utangale and Co. for petitioner in CP/439/2015.

Ms. M.A. Shinde, authorised signatory of petitioner in CP/439/2015 present.

Mr. Vishnu Shriram i/b. Phoenix Legal for respondent in CP/439/2015.

Mr. Vinod Parekh, authorised signatory of respondent in CP/439/2015 present.

Mr. Nilesh Modi a/w. Mr. Rachit Thakar i/b. M/s. Rustamji and Ginwala for petitioner in CP/1199/2015.

Mr. Ajinkya Patil i/b. Naik Patil Salvi and Associates for respondent in CP/1199/2015.

CORAM : K.R.SHRIRAM, J.

DATE : 13th FEBRUARY, 2018

PC.:

COMPANY PETITION NO.439 OF 2015

1 Parties have amicably settled the matter and entered into consent terms dated 13th February, 2018. The consent terms signed by the authorised representative of petitioner, authorised representative of respondent and their respective advocates is taken on record and marked 'X' for identification. Both counsel state that the persons who have signed the consent terms on behalf of petitioner and respondent are present in Court and identify them.

2 The consent terms are reproduced hereunder :

X 13/2/18 1

IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 439 OF 2015

SBI CAPITAL MARKETS LIMITED,	)	
a statutory corporation incorporated	)	
under Company Act of 1956 and having	)	
Registered Office at 202, Maker Tower	)	
E, Cuff Parade, Mumbai 400 005	)	... Petitioner

VERSUS

ARSHIYA RAIL INFRASTRUCTURE	)	
LIMITED, a company incorporated	)	
under Company Act of 1956 having its	)	
registered office at Unit No. A -1, 4 th	)	
Floor, Chergy, Appa Saheb Marathe	)	
Marg, Prabhadevi, Mumbai - 400 025	)	... Respondent

CONSENT TERMS

1. The Petitioner herein had filed Company Petition No. 439 of 2015 ("Company Petition") before the Hon'ble Bombay High Court for winding up of the Respondent.
2. As on date of the Petition the dues amounting to Rs. 1,59,55,120/- (Rupees One Crore Fifty Nine Lakhs Fifty Five Thousand One Hundred Twenty Only) ("Outstanding Dues") is alleged to be payable to the Petitioner.



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3. The Petitioner and the Respondent with a view to arrive at an amicable settlement, hereby agree that the Respondent shall pay 75% of the Outstanding Dues i.e. Rs.1,19,66,340/- (Rupees One Crore Nineteen Lakhs Sixty Six Thousand Three Hundred Forty Only) ("**Settlement Amount**") towards full and final settlement against all the total dues of the Petitioner.

4. **The Settlement Amount shall be paid as follows:**

- (a) **First Tranche of the Settlement Amount: Rs. 59,83,170/- (being 50% of the Settlement amount):**

The First Tranche i.e. Rs. 59,83,170/- (Rupees Fifty Nine Lakhs Eighty Three Thousand One Hundred and Seventy Only) shall be paid on or before 15th February, 2018 (First Tranche).

- (b) **Second Tranche of the Settlement Amount: Rs. 59,83,170/- (being 50% of the Settlement amount):**

The remaining 50% of the Settlement Amount i.e. Rs. 59,83,170/- (Rupees Fifty Nine Lakhs Eighty Three Thousand One Hundred and Seventy Only) shall be paid in 6 (six) equal monthly installments of Rs. 9,97,195/- (Rupees Nine Lakhs Ninety Seven Thousand, One Hundred Ninety Five Only) on or before 31st day of each month, commencing from 31st March, 2018 onwards, as per the details hereunder:-

Sr. No.	Amount	Date	Cure Period (Working Days)
1	Rs. 9,97,195/-	31.03.2018	5 days
2	Rs. 9,97,195/-	30.04.2018	5 days
3	Rs. 9,97,195/-	31.05.2018	5 days
4	Rs. 9,97,195/-	30.06.2018	5 days
5	Rs. 9,97,195/-	31.07.2018	5 days
6	Rs. 9,97,195/-	31.08.2018	5 days



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5. The Petitioner shall be liable to pay all the taxes as may be applicable from time to time on the Settlement Amount, further the Settlement Amount is inclusive of the previous taxes as per the Petition. On receipt of the Settlement Amount in full, the Petitioner shall have no claim of whatsoever nature against Respondent and the Present Petition shall stand withdrawn.
6. If, however for any reason whatsoever the Respondent fails to make payment of any installment or part thereof as stated herein above then, in that event the same shall constitute an event of default and in that case;
- (a) the Outstanding Dues Amounting to Rs. 1,59,55,120/- (Rupees One Crore Fifty Nine Lakhs Fifty Five Thousand One Hundred Twenty Only) after excluding/ deducting the amounts already paid till the date of default shall be payable immediately.
- (b) The Company Petition shall stand admitted without any further reference to the Court and objection from the Respondent and a publication of the same may be made as directed by the Hon'ble High Court.
7. However, if a payment default occurs on a due date as mentioned in clause 4(b) above, the Respondent shall rectify such default within the period as per the table above in para 4 (b) however there shall be no grace period beyond the said cure period.
8. The Parties hereto agree and undertake to this Hon'ble High Court that the Consent Terms shall be binding upon their successors.

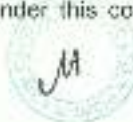


9. The Petitioner agrees and confirms that Respondent i.e. Arshiya Rail Infrastructure Limited, is permitted to transfer the 50,000 equity shares (**Sale Shares**) of Arshiya Rail Siding and Infrastructure Limited (held by the Respondent on its own account, as a joint-holder and / or held by its nominees) to any third party.

10. Notwithstanding anything to the contrary hereunder, the Petitioner agrees and acknowledges that on and from the date of this Consent Terms, the Petitioner shall have no claims whatsoever in respect of the Sale Shares as specified under clause 9 hereto, subject to the release from the bank account of Arshiya Limited (who shall make such payment to the Applicant on behalf of the Respondent) of Rs. 59,83,170/- (Rupees Fifty Nine Lakhs Eighty Three Thousand One Hundred and Seventy Only) towards the First Tranche payment of the Settlement Amount to the Petitioner.

11. Notwithstanding anything to the contrary contained hereunder, the Petitioner agrees and acknowledges that, irrespective of any payment default committed by the Respondent, subject to the release from the bank account of Arshiya Limited, of Rs. 59,83,170/- (Rupees Fifty Nine Lakhs Eighty Three Thousand One Hundred and Seventy Only) towards the First Tranche payment of the Settlement Amount to the Petitioner as agreed under clause 10 hereto, the Petitioner shall have no claims whatsoever in respect of the Sale Shares.

12. The Respondent hereto agrees and undertakes to this Hon'ble High Court that, in the event of default of any payments of any installment or any part thereof, the Petition shall stand admitted without any further reference to the High Court and Petitioner shall be entitled to take necessary steps as may be permissible under the laws for recovery of their dues and in such an event the arrangement under this consent



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terms shall stand null and void at the sole instance of the Petitioner. However, in the event of any payment default by the Respondent, subject to the release from the bank account of Arshiya Limited of Rs. 59,83,170/- (Rupees Fifty Nine Lakhs Eighty Three Thousand One Hundred and Seventy Only) towards the First Tranche payment of the Settlement Amount to the Petitioner as agreed under clause 10 and 11 hereto, the Petitioner undertakes not to initiate any action/shall have no recourse with respect to the Sale Shares as referred to under clause 9 hereinabove.

13. The Signatories hereto hereby represent that they are duly authorized by the respective Parties to enter into the present Consents Terms.

14. The Parties shall bear their own costs.

Dated this 13th day of February 2018

ADVOCATE FOR PETITIONER <i>[Signature]</i> for Phoenix Legal	AUTHORIZED REPRESENTATIVE OF PETITIONER <i>[Signature]</i> MANUHA A-SHINDE Chief Legal Officer
ADVOCATE FOR RESPONDENT <i>[Signature]</i> PHOENIX LEGAL	AUTHORIZED REPRESENTATIVE OF RESPONDENT <i>[Signature]</i> VINOD PAREKH (VICE PRESIDENT LEGAL)

3 The counsel for petitioner states that there is no other petition against respondent company in which any order of admission is in force.

4 Order in terms of the consent terms. All undertakings given in the consent terms are accepted and so ordered. Mr. Parekh, representative of respondent company undertakes to the Court on his own behalf and on behalf of respondent company and the board of directors of respondent company that if the cheques have to be deposited by petitioner, each of the cheque will be honoured on presentation. This undertaking, in addition to the undertakings given in the consent terms, is accepted and so ordered.

5 The petition is at pre-admission stage. Therefore, petition stands disposed.

COMPANY PETITION NO.1199 OF 2015

As last chance to file consent terms, stand over to 26th February, 2018 on which date if consent terms are not filed, parties will have to go on with the petition and no further adjournment will be granted. If petitioner does not go on with the petition on the next date, the petition will be dismissed for want of prosecution.

(K.R. SHRIRAM, J.)