IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11550 of 2017 and WMP.Nos.15385 & 12542/2017

The Management of Trimble
Information Technologies India Pvt.Ltd.,
Rep.by its Head-HR Mr.Srikanth Ganesan
A-North Block, 9th Floor,
Tidel Park, No.4, Rajiv Gandhi Salai,
Taramani, Chennai-600 113. .. Petitioner

vs

1. The Appellate Authority Under Tamil Nadu Shops and Establishments Act, 1947, rep.by The Special Deputy Commissioner of Labour, Commissioner of Labour, Chennai-600 006.

2. Mrs.Kalaivani Vaidyanathan .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to TSE-1/4/2014 (on the file of Special Deputy Commissioner of Labour, Commissioner of Labour) and quash the order dated 27.03.2017 passed by the Appellate Authority under Tamil Nadu Shops and Establishments Act, 1947, Special Deputy Commissioner of Labour, Commissionerate in TSE-1/4/2014.

For Petitioner : Mr.C.Mohan for M/s.King & Partridge
For Respondents : Mr.A.Rajaperumal
Additional Government Pleader for R1
Mr.Balan Haridoss for R2

O R D E R

The respective parties namely the writ petitioner represented by Ms.Sangeetha Balachandar, Director, Human Resources, Trimble Technologies India Private Limited, Office at C North Block, Module 603 & 604, 6th Floor, Tidel Park, No.4, Rajiv Gandhi Salai, Taramani, Chennai-600 113 as well as the 2nd respondent viz., Ms.Kalaivani.Vaidyanathan, No.5/61, II Cross Street, Sea View Avenue, Neelankarai, Chennai-41 are present.

2.The parties have exchanged the proceeds of the Settlement. The Memorandum of Settlement is extracted hereunder:

Memorandum of Settlement

"This Memorandum of Settlement is executed at Chennai on this 23rd day of April 2018 by and between

M/s.Trimble Information Technologies India Private Limited (PAN AACCA6240K) having its registered office at C - North Block, Module 603 & 604, 6th Floor, Tidel Park, No.4, Rajiv Gandhi Salai, Taramani, Chennai-600 113, represented by Sangeetha Balachandar, HR Director, hereinafter referred to as ''the Company'' which term shall mean and include their successors in interest and permitted assigns on the ONE PART;

and

Mrs.Kalaivani Vaidyanathan (PAN: AGVPK1515D), wife of B.Umashankar aged about 43 years, residing at No.5/61, 2nd Cross Street, Sea view Avenue, Neelankari, Chennai-600 041 hereinafter referred to as ''Kalaivani Vaidyanathan'' which term shall mean and include her legal heirs, successors in interest and permitted assigns on the OTHER PART;

whereas the Company is incorporated in India under the Companies Act and having offices across India engaging several hundred employees on their roles. The Company was originally incorporated under the name of At Road Software India Private Limited, a wholly owned subsidiary of At Road Inc, U.S.A. Later, on 16.02.2007, the parent entity at USA namely ''At Road Inc.,'' was acquired by Trimble Navigation (USA). Accordingly, the Indian subsidiary Company namely, At Road Software India Private Limited had become the subsidiary of Trimble Navigation (USA). The name of the Company ''At Road Software India Private Limited was thereafter renamed to ''Trimble Information Technologies India Private Limited''. The Company is a part of a reputed multinational Company engaged in providing software development services for fleet management in the transportation and logistics sector and technical support to its parent Company. The activities of Trimble Navigation USA among others were providing solutions for Geospatial, Agriculture, Construction and Transportation Logistics segments. These activities were carried out by Trimble Information Technologies India Private Limited in the form of captive R & D activities in Engineering.

whereas Kalaivani Vaidyanathan is a B.Tech graduate (Production Engineering) from M.I.T., Anna University had applied for employment and was appointed as a Senior Team Leader at ''At Road Software India Private Limited" (as it was known then) by an appointment order dated 15.09.2000. She had been in continuous service for about 14 years till 24.03.2014 even after the acquisition of At Road Software Inc., by Trimble Navigation (USA) and thereby the present Indian entity namely Trimble Information Technologies India Private Limited had become the subsidiary of Trimble Navigation.

whereas, Kalaivani Vaidyanathan had tendered her resignation on 21.03.2014 during a meeting with Mr.Bob Laithwaite, World Wide Engineering Director and Mr.Srikanth Ganesan, the Head HR at Chennai Office.

whereas Kalaivani Vaidyanathan had revoked her resignation on the next day for the reasons narrated by her in the TSE Appeal No.1/4/2014 filed under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 before the Appellate Authority.

whereas, the Company without considering the revocation of resignation by Kalaivani Vaidyanathan had sent an order of termination on 24.03.2014 intimating that her position is eliminated due to business reorganization amongst other reasons.

whereas Kalaivani Vaidyanathan had challenged the said order of termination issued by the Company under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the Appellate Authority under the Act in TSE Appeal No.1/4/2014. The Company entered appearance and contested the case. Thereafter, the Appellate Authority after hearing both sides, had passed order dated 27.03.2017 in TSE Appeal No.1/4/2014 setting aside the order of termination and directed the Company to reinstate Kalaivani Vaidyanathan into service with continuity of service and attendant benefits.

Whereas, the Company on receipt of the order dated 27.03.2017 in TSE Appeal No.1/4/2014 had decided to challenge the same and accordingly a Writ Petition.No.11550 of 2017 was filed before the Hon'ble High Court, Madras and on admission of the Writ

Petition, an Interim stay was granted by the Hon'ble High Court vide its order dated 05.05.2017.

Whereas, while the stay granted by the Hon'ble High Court continued to be in operation, Kalaivani Vaidyanathan had filed two miscellaneous petitions WMP Nos.15384 and 15385 of 2017 for a direction to pay her the last drawn salary and to vacate the interim order of stay dated 05.05.2017.

Whereas, while hearing the case, the Hon'ble High Court had referred both the parties to settle the issue by mutual talks and accordingly referred the matter to the Mediation and Conciliation Centre, wherein no finalty was reached between the parties.

Whereas, subsequently the case was posted and heard on various dates, during the hearing on 15th December 2017, the Hon'ble Court indicated to the Company to reinstate Kalaivani Vaidyanathan into service for which the Company had requested time citing the consultation time required with its Management at USA.

Whereas, the Company categorically decided not to reinstate Kalaivani Vaidyanathan into the employment of the company and have now decided to settle the matter through a Memorandum of Settlement and sought the consent of Kalaivani Vaidyanathan.

Whereas, Kalaivani Vaidyanathan in order to bring to an end the long pending litigation and the suffering from the date of her termination from service on 24.03.2014 to till date has agreed for the proposal of the Company for entering into a Memorandum of Settlement provided a meaningful compensation is awarded to her.

Whereas, after the active participation of the counsels for the Company and Kalaivani Vaidyanathan, the parties namely the Company and Kalaivani Vaidyanathan have decided to settle the matter amicably for a compensation of Rs.3,00,00,000/- (Rupees Three Crores only) to be paid to Kalaivani Vaidyanathan by the Company in this respect for her agreement settling the disputes and subject to tax deduction under Section 192B to the Income tax Act, 1961.

Whereas, Kalaivani Vaidyanathan informed the Company that Section 192B of the Income tax Act, 1961 is not applicable for the present compensation payable by the Company to her, as the said sum paid is not a salary or perquisite or profits in lieu of salary but agreed by her to receive as compensation for sufferings.

Whereas, Kalaivani Vaidyanathan has also brought to the attention of the Company that the amendment brought in by the finance act, 2018 by insertion of a clause(x) in sub-section(2) in Section 56 of the Income tax Act, 1961 has no application in the present case as the compensation agreed in this Memorandum of Settlement is towards ending the dispute.

Whereas, it was suggested to the Company that the Company may deduct taxes by recording the objection and views raised by Kalaivani Vaidyanathan with respect to tax deduction at source in the Memorandum of Settlement as an abundant caution and also suggested Kalaivani Vaidyanathan to claim for refund of the tax so deducted from the Income tax department to the satisfaction of the Income Tax Department, for which both the parties agreed and accordingly this Memorandum of Settlement is executed between the parties to record the terms of the Settlement.

In terms hereof the parties hereunto agree on the following:

1.This Memorandum of Settlement is executed between the Company and Kalaivani Vaidyanathan - the Parties without admission by any party, through which both the parties agree to end the disputes among themselves which is the subject matter of the Writ Petition No.11550 of 2017.

2.In consideration of Kalaivani Vaidyanathan's agreement to settle the disputes with the Company and her agreement in not making any further claim on the Company including monetary or employment claim or any other claim like mental agony, loss of personal reputation in the employment industry and in the society in general or such or other claim of whatsoever nature, under any circumstance, the Company agrees to pay Kalaivani Vaidyanathan a sum of Rs.3,00,00,000/- (Rupees Three Crores only) as compensation for ending the disputes through this Memorandum of Settlement. Accordingly the Company has obtained Banker's Cheque in favour of Kalaivani Vaidyanathan for a sum of Rs.1,95,61,594/-(Rupees One Crore Ninety Five Lakhs Sixty One thousand five hundred and ninety four only) in Banker's Cheque No.192041 dated 23.04.2018 drawn on J.P.Morgan Chase Bank N.A after deduction of TDS of Rs.1,04,38,406/-(Rupees One Crore Four Lakhs thirtyseven thousand four hundred and six only) computed at the rate of 34.7946 % on the gross compensation of Rs.3,00,00,000/- which shall be produced before the court.

4.The Company shall issue the TDS certificate to Kalaivani Vaidyanathan after filing the TDS return for the first quarter of the financial year 2018-19.

5.Both parties and their counsels agree that they shall file this Memorandum of Settlement before the Hon'ble High Court when the matter comes for the next hearing and would request the Hon'ble High Court to take note of this Memorandum of Settlement, record the same, setaside the order of the Authority in TSE-1/4/2014 dated 27.03.2017 and issue orders in W.P.No.11550 of 2017 accordingly.

6.Upon recording of this Memorandum of Settlement by the Hon'ble High Court and after passing the setting aside order of the Authority dated 27.03.2017(impugned in W.P.No.11550 of 2017), the above referred payment of compensation of Rs.1,95,61,594/-(Rupees One crore ninety five lakhs sixty one thousand five hundred and ninety four only) shall be handed over to Kalaivani Vaidyanathan through her counsel."

3.In view of the above Memorandum of Settlement, all the disputes and the issues are resolved and accordingly, the writ petition stands closed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Authority Under Tamil Nadu Shops and Establishments Act, 1947, rep.by
The Special Deputy Commissioner of Labour,
Commissioner of Labour, Chennai-600 006.

+1cc to M/s.King & Partridge, Advocate, S.R.No.30191
+1cc to Mr.Balan Haridoss, Advocate, S.R.No.30283

W.P.No.11550 of 2017

ssv(co)
cs/07/06/18