

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01-08-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.5932 of 2018

And

W.M.P.Nos.7311 of 2018

1.The Management of C&A Sourcing International Ltd.,
India (Branch),
(Formerly known as Mondial Oriental Ltd),
244-A, Ramana Industrial Garden,
Ring Road,
15 Velampalayam,
Tirupur - 641 652.

2.The Management of C&A Sourcing International Ltd.,
India (Branch),
(Formerly known as Mondial Oriental Ltd),
Samsons Arcade 2nd and 3rd,
22 Andree Road, Shanthinagar,
Bangalore - 560 027,
Karnataka.

.. Petitioners

Versus

1.C.J.D Charles Dilip Roy,
Plot No.63, Dr.Danial Nagar,
Thoppampatti, K.Vadamadurai Post,
Coimbatore - 641 107.

2.The Presiding Officer,
Labour Court,
Coimbatore.

.. Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the Award passed by the second respondent in CP No.237 of 2013, dated 27.9.2017 and quash the same.

For Petitioner : Mr.P.J.Rishikesh
For Respondent-1 : Mr.B.Rajagopal
For Respondent-2 : Labour Court

O R D E R

The learned counsel appearing on behalf of the writ petitioner and the learned counsel appearing for the first respondent made a submission that the disputes between the

parties were settled and the terms of settlement has agreed, which is extracted hereunder:-

"1. Terms of Settlement:

1.1 That although the First Party has been directed as per the Order to pay the Second Party an amount of Rs.55,53,660/- (Rupees Fifty Five Lakhs Fifty Three Thousand Six Hundred and Sixty only) towards back wages and other benefits along with Rs.1,000/- being the cost of this litigation, however, the Parties have now mutually agreed to settle the disputes/claims that they have against each other arising out of the said Order.

1.2 In accordance with the aforesaid settlement, the Second Party has agreed to accept a sum of Rs.49,90,000/- i.e., Rupees Forty Nine Lacs and Ninety Thousand only (the "Settlement Amount") in lieu of the amount of Rs.55,53,660/- (Rupees Fifty Five Lakhs Fifty Three Thousand Six Hundred and Sixty only) awarded under the Order, as full and final settlement and satisfaction of all claims whatsoever, including but not limited to any obligations, liabilities, promises, agreements, controversies, damages, actions, causes of action, suits, judgments, rights, demands, losses, debts, contracts, commitments or expenses of every kind and nature, specifically in relation to the Second Party's employment with the First Party (collectively "Claims"), including all costs, expenses and attorneys' fees related thereto, which the Second Party now has, or which it may have against the First Party from the beginning of time upto, through, and including the Effective Date. It is hereby clarified that this Settlement Amount would be subject to tax deduction at source in terms of the provisions of the Income Tax Act, 1961.

1.3 The Parties agree that upon withdrawal of the Writ Petition in terms of this Deed by the First Party and passing of necessary order in this regard by the Madras High Court, the Settlement Amount i.e., an amount of Rs.49,90,000 (Rupees Forty Nine Lacs and Ninety Thousand only) (after deduction of TDS) shall be wire transferred into the designated account of the Second

Party by the First Party. The Second Party agrees and confirms to assist and co-operate with the First Party in withdrawal/disposal of the Writ Petition and any other (present and future) legal proceedings between the Parties and sign the necessary documents, including but not limited to the document specified in Clause 1.5 herein below, required in relation thereto.

1.4 Following the acceptance of the Settlement Amount as mentioned in Clause 1.2 above, the Second Party confirms that he has not initiated/instructed to initiate any legal proceedings, complaint(s), civil or criminal in nature, filed/instituted before any statutory authority, court of law, tribunal or arbitrator against the First Party as on the Effective Date including filing for execution of the Order.

1.5 It is further agreed between the Parties that the Second Party would execute an affidavit to be filed by the First Party before the Hon'ble Madras High Court (annexing this Deed) at the time of withdrawal of the Writ Petition clearly stating that his Claims (including in terms of the Order) have been fully settled to his satisfaction and he has not further claims against the First Party.

1.6 The Second Party further agrees and acknowledges that upon receipt of Settlement Amount by the Second Party in the manner stated herein, there shall remain no outstanding disputes whatsoever between them relating to and/or arising out of the Claims. The Second Party promises to the First Party to refrain from filing, pursuing or participating in any legal proceedings arising out of or relating to the Claims released/settled by this Deed.

1.7 The Parties further accept and agree that anything contrary to the representation made in this Clause 1 shall amount to a breach of this Deed giving a right to the First Party to initiate appropriate legal action(s) against the Second Party for such breach.

2. Release:

2.1 Upon execution of this Deed, subject to payment of the Settlement Amount to the Second Party in terms of this Deed,

and based upon the mutual promises contained herein and other good and valuable consideration, the Second Party on its behalf and on behalf of all of its heirs, successors, assigns, agents, legal representatives and personal representatives, hereby irrevocably and fully releases, waives and relinquishes and forever discharges the First Party, and each of their respective past, present and future representatives, affiliates, successors and assigns, affiliates, parents/holding company (ies), subsidiaries, shareholders, its/such entities directors, officers, employees, heirs, executors and administrators from the Claims. The First Party shall have the benefit of, and the right to enforce, as intended third-party beneficiaries, the provisions of this Deed. Second Party, understands and acknowledges the significance and consequence of this release, including the specific release of unknown claims.

3. Miscellaneous:

3.1 The Parties agree to perform in good faith such acts and to prepare and execute such documents and stipulations as are reasonably required to perform its obligations and satisfy the provisions of this Deed.

3.2 Neither the offer nor acceptance of the terms and conditions of this Deed represent an admission of liability or fault on the part of First Party, but instead represents a resolution of the Second Party's Claims and disputes which is made by mutual agreement, without any duress or coercion and without any expression on the merits of the dispute between them.

3.3 All disputes, controversies or disagreements which may arise among the Parties, in relation to or in connection with this Deed, or for the breach hereof, shall be finally resolved by arbitration by a sole arbitrator appointed mutually by the Parties in accordance with the Arbitration and Conciliation Act, 1996. The seat and venue of the arbitration shall be at Bengaluru. The award rendered by the sole arbitrator shall be final and binding upon the Parties.

3.4 This Deed shall in all respects be interpreted, enforced and governed under the laws of India and subject to Clause 3.3 hereof, the courts at Bengaluru shall have exclusive jurisdiction to enforce the terms of this Deed. This Deed sets forth the entire agreement between the Parties with regard to the Claims, as the case may be. All prior and contemporaneous negotiations, representations, and understandings with respect to the subject matter hereof are waived, merged herein and superseded hereby.

3.5 Except as otherwise expressly limited herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, permitted assigns, heirs, executors, and administrators of the Parties hereto.

IN WITNESS WHEREOF, C&A Sourcing International Ltd., through its authorised representative and Mr.C.J.D.Charles Dilip Roy have set their respective hands on the day, month and year first above written in the presence of following witnesses."

2. In view of the settlement made between the parties, no further adjudication is required in this writ petition. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

Svn
To

The Presiding Officer,
Labour Court,
Coimbatore.

+1 CC to Mr.B.Rajagopal, Advocate sr 52287.

+1 CC to Mr.P.J.Rishikesh, Advocate sr 52206.

WP 5932 of 2018

SP(11/08/2018)