

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRL.O.P.No.25557 of 2017

and Crl.MP.No. 1212 of 2018

M/s.Kothari Industrial Corporation Ltd.,
re. by its Manager, Pradeep Kothari
having registered Office at
Kothari Buildings,
20, Nungambakkam High Road,
Chennai-600034. ..Petitioner

Vs

T.R.Prabhakaran .. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and quash the C.C.No.2447 of 2016 pending on the file of Metropolitan Magistrate Court CCB CBCID, Egmore, Chennai compounding the offence recording the above Memorandum of compromise dated 23.08.2017.

For Petitioner : Mr.P.Bagyalakshmi
For Respondent : No Appearance

O R D E R

The prayer in the present petition is to call for the records and quash the C.C.No.2447 of 2016 pending on the file of Metropolitan Magistrate Court CCB CBCID, Egmore, Chennai compounding the offence recording the above Memorandum of compromise dated 23.08.2017.

2. Heard Mrs. P.Bagyalakshmi, learned counsel appearing for the petitioner. Though the notice has been served on the respondent and printed the name in the cause list, none appears for the respondent.

3. It is submitted by the learned counsel for the petitioner that as per the terms of the joint memo of compromise dated 23.08.2017, the petitioner had settled the entire outstanding due on the impugned cheques and as such the

respondent herein had also agreed to withdraw the complaint in C.C. No.2447 of 2016 pending on the file of the learned Metropolitan Magistrate Court CCB CBCID, Egmore, Chennai.

4. The terms of the Joint Memo of Compromise is as follows;

1. The petition was filed under Section 433(e) of the Companies Act, 1956 seeking for winding up of the Respondent Company for an outstanding operational debt of Rs.30,13,067/-.
2. The Respondent agrees to make payment of a sum of Rs.27,00,000/- (Rupees Twenty Seven Lakhs Only) and the Petitioner agrees to receive the same in full and final settlement of its dues from the Respondent Company, in the following manner:

a) vide cheque No. 221066 dated 22.08.2017 for a sum of Rs.5,00,000/- (Rupees five lakhs only) drawn on State Bank of India, Nungambakkam, Chennai 600034;

b) vide cheque No. 220167 dated 05.09.2017 for a sum of Rs.5,50,000/- (Rupees five lakhs and fifty thousand only) drawn on State Bank of India, Nungambakkam, Chennai 600034;

c) vide cheque No.221068 dated 03.10.2017 for a sum of Rs.5,50,000/- (Rupees five lakhs and fifty thousand only) drawn on State Bank of India, Nungambakkam, Chennai 600034;

d) vide cheque No. 221069 dated 05.11.2017 for a sum of Rs.5,50,000/- (Rupees five lakhs and fifty thousand only) drawn on State Bank of India, Nungambakkam, Chennai 600034;

e) vide cheque No.221070 dated 01.12.2017 for a sum of Rs.5,50,000/- (Rupees five lakhs and fifty thousand only) drawn on State Bank of India, Nungambakkam, Chennai 600034.

3. The above mentioned cheques have been received by the Petitioner on 23.08.2017. In the event of the Respondent failing to make payment of the sum of Rs.27,00,000/- as mentioned in clause 2 herein above by virtue of any of the cheques being dishonored, the concession shown shall be withdrawn

and the petitioner shall be entitled to receive the Petition filed in terms of clause 1, or file a fresh application under the provisions of the Insolvency and Bankruptcy Code, 2016, without prejudice to the petitioner's right to initiate action against the Respondent under the Negotiable Instruments Act or any other law for the time being in force.

4. The petitioner agrees to withdraw the complaint filed against the Chairman of the Respondent Company in C.C. No. 2447 of 2016 pending before the Metropolitan Magistrate Court, CCB-CBCID, Egmore, Chennai and compound the offence in the said complaint in a manner provided by law, and reserves his liberty to revive the complaint if the terms of Clause 2 are breached.
5. The agreement constitutes the entire agreement between Prabhakaran T.R. And M/s. Kothari Industrial Corporation Limited and supersedes and extinguishes all previous agreements, promises, assurances, warranties and representations.
6. The agreement shall be in full and final settlement, and thus the Petition before this Hon'ble Tribunal shall be disposed of recording the terms of this agreement, with liberty to revive the Petition in the event of any of the payment terms being breached and the parties shall bear their respective costs."

5. From the aforesaid terms of the joint memo of compromise, it is seen that the defacto complainant had explicitly agreed to withdraw the same, after receiving the amount due on the impugned cheques. As such, it would not be proper to permit the petitioner to undergo ordeal of the trial, particularly when the respondent has chosen not to appear before this Court. In my view, the impugned proceedings need not be continued in view of the joint memo of compromise arrived between parties.

6. Accordingly, the proceedings in C.C. No.2447 of 2016 pending on the file of the learned Metropolitan Magistrate Court CCB CBCID, Egmore, Chennai are quashed. The Criminal Original Petition stands allowed.

Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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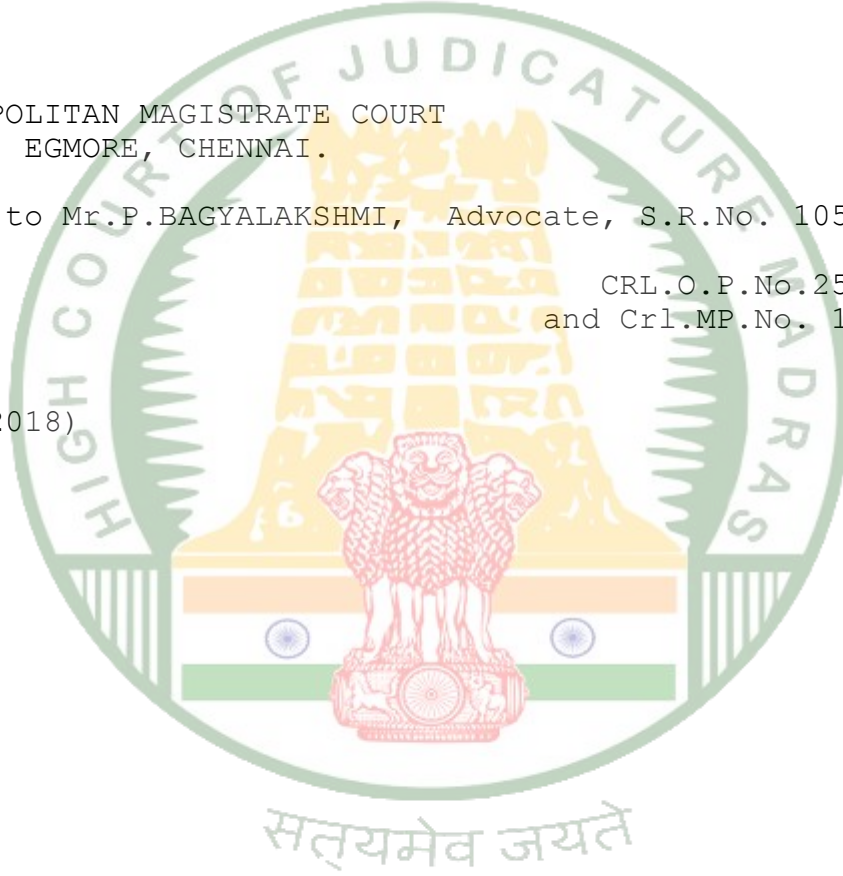
TO

THE METROPOLITAN MAGISTRATE COURT
CCB CBCID, EGMORE, CHENNAI.

+1cc to Mr.P.BAGYALAKSHMI, Advocate, S.R.No. 10519

CRL.O.P.No.25557 of 2017
and Crl.MP.No. 1212 of 2018

TR(08/03/2018)



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