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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2504/2012 & IA Nos. 5372/2016, 12153/2017, 12154/2017
& 246/2018
BRIDGEGAP PETROCHEM PVT LTD Plaintiff
Through: Mr. Tarun Agarwal

versus

SUDARSHAN & ANR Defendants
Through: Mr. Brajesh Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.03.2018**

1. The parties in this suit for recovery of Rs. 1,76,83,036/- with interest, vide order dated 4th October, 2016 referred to the Medication Cell of this Court.
2. Mediation has been successful with the efforts of Ms. Sangeeta Sondhi, Advocate/Mediator and a Settlement Agreement dated 15th February, 2017 purporting to be signed by Mr. Tarun Agarwal on behalf of the plaintiff and by the defendant No. 1, also as proprietor of defendant No. 2 M/s. Shree Agencies, has been received from the Mediation Cell of this Court.
3. A gentleman who claims himself to be Mr. Tarun Agarwal, who has signed the Settlement Agreement on behalf of plaintiff appears on behalf of the plaintiff.
4. Mr. Brajesh Pandey, Advocate appearing on behalf of both the defendants seeks an adjournment.

5. It is strange that in spite of the dispute having been settled more than a year back, the suit is still kept pending.

6. The counsel for the defendant then states that there is a typographical error in the Settlement Agreement dated 15th February, 2017, which in Clause 8 thereof provides for payment of interest by the defendants @ 18% per month instead of 18% per annum. It is stated that an application of the defendant in this regard is pending consideration.

6. The counsel for the defendants further states that the defendants have been unable to pay the amount as per the Settlement Agreement and need more time to make the payment.

7. A perusal of the Settlement Agreement shows (i) the defendants to have agreed to pay a sum of Rs. 65,00,000/- to the plaintiff in full and final settlement, with Rs.10,00,000/- being payable before 24th February, 2017, Rs. 25,00,000/- before 24th April, 2017, Rs. 15,00,000/- before 24th June, 2017 and the balance Rs.15,00,000/- before 24th August, 2017; (ii) the defendants having agreed to pay interest @ 18% per month on the defaulted amount.

8. It is quite obvious that even the Settlement Agreement does not envisage the suit remaining pending. Thus, a decree in terms of Settlement Agreement is to be passed and if the defendant has not paid the amount as per the Settlement Agreement, it will be open to the plaintiff to execute the decree.

9. Mr. Tarun Agarwal for the plaintiff on enquiry informs that only Rs. 31,00,000/- has been paid.

10. Mr. Tarun Agarwal also states that interest at 18% per month was agreed for default of the defendants.

11. This Court, in exercise of its jurisdiction, would be entitled to interfere with the Settlement Agreement, even if any for payment of interest at 18% per month and which is found to be usurious and it is deemed appropriate to direct that the payment of interest in terms of clause 8 of the Settlement Agreement shall be @ 18% per annum instead of 18% per month.

12. A decree is accordingly passed in favour of the plaintiff and jointly and severally against the two defendants in terms of the Settlement Agreement dated 15th February, 2017 save for the correction aforesaid and which Settlement Agreement and this order shall form part of the decree sheet, leaving the parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 01, 2018

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