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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 630 OF 2018
WITH
NOTICE OF MOTION NO. 1390 OF 2018
IN
SUIT NO. 630 OF 2018**

Inox Leisure Ltd. .. Plaintiff
Vs.
Dilip Harishankar Shrivastav & Ors. .. Defendants

Mr. Durshit Jain a/w. Ms. Kathleen Lobo I/b Khaitan and Co. for the Plaintiff.

Ms. Namrata Sharma-Authorised Signatory of Plaintiff present.

Mr. Kishorekumar Shankar Shetty for Defendant No.1.

Mr. Phiroze N. Mehta for Defendant No.2.

Ms. Sanan K. Khan for Defendant No.3.

Mr. Ajay V. Jadhav I/b Sandeep N. Karu for Defendant No.4.

Mr. Dilip H. Shrivastav-Defendant No.1 present in person.

Ms. Deepika D. Shrivastav-Confirming Party No.1 and Mr. Hari Shankar Shrivastav-Confirming Party No.2 present in Court.

CORAM : K. R. SHRIRAM, J.

DATE : 3rd MAY, 2019.

P. C. :

1. At the outset, learned Counsel Mr. Jain seeks to withdraw the Suit as against Defendant Nos.2, 3 and 4.

2. The Suit is dismissed as withdrawn as against Defendant Nos.2, 3 and 4.

3. Plaintiff and Defendant No.1 have entered into Consent Terms dated 02.05.2019. Defendant No.1 has agreed to liquidate certain assets and pay the Plaintiff. His wife and father of Defendant No.1, who are Confirming Party No.1 and Confirming Party No.2, respectively, and who are not parties

to the present suit, have also agreed to be personally liable for making payment to be made by Defendant No.1 to the Plaintiff as per Consent Terms. The Consent Terms has been signed by Plaintiff, Defendant No.1 and the Confirming parties and their Advocates. Learned Counsel state that the signatory of Plaintiff, Defendant No.1, Confirming Party No.1 and Confirming Party No.2 are present in Court and they identify them. Consent Terms are taken on record and marked 'X' for identification.

4. For the ease of reference, the Consent Terms are scanned and re-produced below without exhibits:

X *1/19*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 630 OF 2018

INOX Leisure Limited	1
A company incorporated under Companies Act,	2
1956 having its registered office at ABS Towers,	3
Old Padra Road, Vadodra-390 007 and having its	4
corporate office at 2 nd Floor, Vira Towers, Next to	5
Another Flyover Western Express Highway,	6
Andheri (East) Mumbai - 400 053	7
	8 ...Plaintiff
Versus	
1. Dilip Harishankar Shrivastav	1
An Individual, Indian National, having his	2
address at, Sachdeva Complex, KJ-1-1003, Opposite	3
Dr. Ramesh Sharma, Naigaoan East and at N. G. San	4
City, Phase I, 20/1009, Thane Village, Kandivli	5
East, Mumbai - 400 101 and at R. No. 81/6,	6
Western Railway Colony, Sahar Road, Andheri	7
East, Mumbai-400 059	8
2. P1. Worldways Limited	1
A company incorporated under the Companies	2
Act, 1956 having its registered office at 37, 1 st Fl. P.	3
M. Chetani Crescent Road, Eghoria, Thane-400	4
008 and having its corporate office at Unit No. 16,	5
Kewal Industrial Estate, Sanapati Daga Marg,	6
Lower Panel, Mumbai - 400 013	7

Sharma *Am* *Rajiv* *Sharma*

3. M/s Image Global Pvt. Ltd.)
 A private limited company incorporated under the)
 Companies Act, 1956 having its office at Unit No.)
 07, H. No. 9, First Floor, Jagan Industrial Estate)
 V. K. Purav Road, Chembhat East, Mumbai)
 400 032)
4. Holiday Basket Travels Pvt. Ltd.)
 A private limited company incorporated under the)
 Companies Act, 1956 having its registered office)
 at 801, Wing - C, Bhoomi Park, Old Marine Road,)
 Janakya Nagar, Malad West, Mumbai - 400)
 764 and having its corporate office at 303,)
 Corporate Center, Sander Nagar, Malad W,) **Defendants**
 Mumbai 400 064)

And

1. Mrs Deepika D Shrivastav)
 An individual, Indian Domiciliary, residing at)
 Sadhna complex, K/14-D/007,)
 Opposite Don Bosco School, Nalgoda East)
 Taluka Veng Road, District Palghat - Maharashtra - 401 008)
2. Mr Harishankar Shrivastav)
 An individual, Indian Domiciliary, residing at)
 Wing No 11, Lower Area, Anandnagar - Rudrapur)
 District, Maharashtra, U.P. - 271 553) **Confirming Parties**

A. Sharma

Am

Deepika

Harishankar

CONSENT TERMS BETWEEN THE PLAINTIFF, DEFENDANT NO. 1 AND CONFIRMING PARTIES:

- I. For the purpose of the present Consent Terms, the Plaintiff, Defendant No. 1, Confirming Party No. 1 and Confirming Party No. 2 are individually referred to as "Party" and collectively referred to as "Parties".
- II. Confirming Party No. 1 and Confirming Party No. 2, above-mentioned, being the wife and father of Defendant No. 1 respectively, are not parties to the present Suit. However, it is agreed by and between the Parties hereto that the Confirming Parties be added as party to the present Consent Terms, to agree and confirm the contents hereof.

III. WHEREAS:

- A. The Plaintiff appointed Defendant No. 1 vide letter of appointment dated 15 January 2002 ("letter of appointment"), initially as Executive (Administration) and thereafter as Senior Manager (Travel & Admin) at its corporate office in Mumbai, for making necessary arrangements including liaising with travel agents for making travel and accommodation bookings for the Plaintiff's employees and consultants. The duties and responsibilities of Defendant No. 1 were set out in the letter of appointment.
- B. The Plaintiff entered into agreements with Defendant No. 2, Defendant No. 3 and Defendant No. 4 (collectively "Travel Agency" collectively the "Travel Agencies") whereunder the Travel Agencies agreed to provide travel related services to the Plaintiff.
- C. It is the case of the Plaintiff that Defendant No. 1, during his employment with the Plaintiff, engaged in fraudulent practices in respect of booking of travel tickets with the Travel Agencies. Upon discovery of this, the Plaintiff immediately began conducting an internal investigation into the fraud and found that the Plaintiff had suffered a loss of INR 1,10,08,565/- (Indian Rupees Four Crores Ten Lakhs Eight Thousand Three Hundred Sixty Five only) due to the fraud.
- D. Pursuant to the aforesaid internal investigation and the findings thereof, the Plaintiff terminated the employment of Defendant No. 1 vide letter dated 5 May 2015.
- E. On 5 May 2015, the Plaintiff also filed a criminal complaint against Defendant No. 1 with the Station House Officer, MIDC Police Station, MIDC, Chattri Road, Opp. PDS Hospital, Andheri (East), Mumbai - 400 093 ("Criminal Complaint").
- F. A charge sheet dated 18 May 2017 was filed against Defendant No. 1 under Section 171 of the Code of Criminal Procedure, 1973 in the Court of Metropolitan Magistrate, 29th Court, Andheri (East) for the offences committed under Sections 438, 415, 420, 467, 468, 470, 471 of the Indian Penal Code, 1860 and Section 5 of the Information Technology Act, 2000.

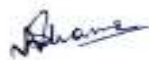
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- G. On 9 February 2018, the Plaintiff filed the present Suit along with Notice of Motion No 1390 of 2018 ("Notice of Motion") against Defendant No 1 and the Travel Agencies for the reliefs more particularly set out therein.
- H. This Hon'ble Court *vide* order dated 7 March 2018 ordered and directed Defendant No.1 and Confirming Party No 1 not to sell, alienate, encumber, part with possession and / or create third party rights in respect of their assets. This order is valid, binding and in effect as on date.
- I. Defendant No 1 has expressed his intention to settle the present Suit with the Plaintiff, and in that regard has offered to pay the Plaintiff, as full and final settlement of the claim of the Plaintiff against Defendant No 1, the entire amount obtained from (i) the sale proceeds; and (ii) refunded amounts; in relation to the movable and immovable assets / properties more particularly described in Schedule-I written hereunder ("Assets / Properties"), subject to the terms and conditions set forth herein.
- J. Though the abovementioned amount would not compensate the loss suffered by the Plaintiff, given the fact that there is no chance of further recovery and with a view to put an end to the matter, the Plaintiff has expressed its intention to accept the proposal of Defendant No 1 mentioned in Clause K above, for the consideration and subject to the terms and conditions set forth herein.
- K. To give effect to and execute the aforesaid understanding between the Plaintiff and Defendant No 1, the Parties have mutually decided to enter into and execute these Consent Terms in accordance with the terms and conditions set forth herein.
- IV. **NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Parties hereby agree, declare and confirm as follows:
- a) Defendant No 1 agrees, confirms and undertakes that the entire amount obtained from (i) sale proceeds; and (ii) refunded amount from the Assets / Properties ("**Settlement Amount**") will be paid to the Plaintiff, as full and final settlement of the claim of the Plaintiff against Defendant No 1, in the manner set forth herein.
 - b) Defendant No 1, Confirming Party No 1 and and Confirming Party No 2 have agreed and undertaken to (i) sell the properties at serial No 1, 4 and 5 of Schedule I written hereunder; and (ii) obtain refunds of the amounts paid towards purchase of the properties at serial No 2 and 3 of Schedule I written hereunder, in order to pay the Plaintiff the Settlement Amount.
 - c) Defendant No 1 has represented, declared and confirmed to the Plaintiff that:
 - i. He is the sole and absolute owner and seized and possessed of or otherwise well and sufficiently entitled to the property mentioned at serial no 1 in Schedule-I written hereunder ("**Property No 1**");






- ii. Save and except the injunction granted by this Hon'ble Court vide order dated 7 March 2018 and the outstanding payment of INR 9,71,000/- (Rupees Nine Lakhs Seventy One thousand only) towards the pending loan advanced by DHFL to Defendant No 1, there are no other encumbrances and / or charge and / or liability and / or lien on Property No 1 or any part thereof;
- iii. No other person has any right, title or interest demand or claim of any nature whatsoever in respect of Property No 1 or any part thereof.

d) Confirming Party No 1 and Defendant No 1 represent, declare and confirm to the Plaintiff that:

- i. A total amount of INR 88,22,609/- (Indian Rupees Eighty Six Lakhs Twenty Two Thousand Six Hundred and Nine only) has been paid in instalments, as per consideration, by Confirming Party No 1 and Defendant No 1 to Vidhi Realtors between 2012 to 2013 towards purchase of the property mentioned at serial No 2 in Schedule-I written hereunder ("Property No 2");
- ii. In the course of the investigation by the Police as part of the criminal proceeding initiated against Defendant No 1, Confirming Party No 1 was restrained from having Property No 2 transferred and conveyed in her name and as such, Confirming Party No 1 is not seized and possessor of Property No 2;
- iii. Property No 2 has hereafter been transferred and conveyed by Vidhi Realtors to a third party;
- iv. Confirming Party No 1 is entitled to a refund from Vidhi Realtors of the amount specified in Clause IV(d)(i) above, after deduction of the necessary and applicable charges;
- v. Confirming Party No 1 and Defendant No 1 shall obtain from Vidhi Realtors a refund of the amount specified in Clause IV(d)(i) above, after the necessary and applicable charges have been deducted, and
- vi. Upon receipt of the aforesaid refund, Confirming Party No 1 shall immediately pay the entire amount obtained as refund from Vidhi Realtors to the Plaintiff towards the Settlement Amount.

e) Confirming Party No 1 represents, declares and confirms to the Plaintiff that:

- i. An amount of INR 28,00,000/- (Indian Rupees Twenty Eight Lakhs only) was paid by Confirming Party No 1 to Navkar Estate & Homes Pvt Ltd in 2013 towards purchase of the property mentioned at serial No 3 in Schedule-I written hereunder ("Property No 3");
- ii. In the course of the investigation by the Police as part of the criminal proceeding initiated against Defendant No 1, Confirming Party No 1 was restrained from having Property No 3 transferred and conveyed in her name and as such, Confirming Party No 1 is presently not seized and possessor of Property No 3;
- iii. Confirming Party No 1 is entitled to a refund from Navkar Estate & Homes Pvt. Ltd. on making a request for cancellation of booking. Accordingly Confirming

Adhikari

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Party No 1 agrees and undertakes to make a request to Navkar Estate & Homes Pvt. Ltd. for cancellation and accordingly a refund will be made by Confirming Party No.1:

- iv. Confirming Party No 1 shall obtain from Navkar Estate & Homes Pvt. Ltd. refund of the amount specified in Clause (V)(ii) above, after the necessary and applicable charges have been deducted; and
- v. Upon receipt of the aforesaid refund, Confirming Party No 1 shall immediately pay the entire amount obtained as refund to the Plaintiff towards the Settlement Amount.

B. In addition to the above, Confirming Party No 1 represents, declares and confirms to the Plaintiff that:

- i. Confirming Party No 1 is the owner of the property mentioned at serial no 5 in Schedule-I written hereunder ("Property No 5");
- ii. Property No 5 was seized and presently possessed by the Police during its investigation as part of the criminal proceeding initiated against Defendant No 1;
- iii. Confirming Party No 1 along with Defendant No 1 and Confirming Party No 2 shall take all steps as may be necessary to have Property No 5 released from seizure and possession by the Police as mentioned in Clause IV of (b) above;
- iv. Upon release of Property No 5 from the seizure and possession by the Police, Confirming Party No 1 shall take possession of Property No 5;
- v. Upon obtaining possession of Property No 5, Confirming Party No 1 shall immediately take steps to effect the sale of Property No 5 in accordance with the present consent terms;
- vi. The entire proceeds from the sale of Property No 5 shall be paid to the Plaintiff towards the Settlement Amount.

C. Confirming Party No 2 has represented, declared and confirmed to the Plaintiff that:

- i. He is the sole and absolute owner and seized and possessed of or otherwise well and sufficiently entitled to the property mentioned at serial no 4 in Schedule-I written hereunder ("Property No 4");
- ii. There are no existing encumbrances and / or charges and / or liability and / or lien on Property No 4 or any part thereof;
- iii. No other person has any right, title or interest claimed or claim of any nature whatsoever in respect of Property No 4 or any part thereof;
- iv. A Registered power of attorney dated 23 April 2019 has been executed and registered by Confirming Party No 2 in favour of Defendant No 1 in relation to Property No 4, which power of attorney stands valid, operative and is effective till date. A copy of the power of attorney dated 23 April 2019 is annexed to the consent terms and marked "Exhibit A".

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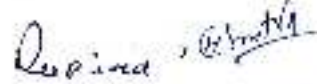
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- h) Defendant No.1 and the Confirming Parties have agreed and undertake not to create any charge and/or encumbrance and/or liability and/or use of any third party rights or pact with possession of Property Nos 1, 4 and 5 or any part thereof to any person or any person at any time till the sale of Property Nos 1, 4 and 5 is affected in terms of these Consent Terms.
- i) Defendant No.1 and Confirming Parties agree and undertake to obtain necessary orders and/or directions from the concerned court/forum to secure (a) refund of the amounts as mentioned in Clause IV(c) and Clause IV(d) above; and (b) release of property as mentioned in Clause IV(f) above, within a period of 14 (fourteen) days from execution of the present Consent Terms. The Plaintiff hereby agrees and undertakes to cooperate in this regard.
- j) Defendant No.1 acknowledges that the Plaintiff is entering into these Consent Terms in reliance of the representations, warranties, agreements and covenants of Defendant No.1 and the Confirming Parties as provided in these Consent Terms.
- k) Besides the above said, the Plaintiff has agreed to settle the Settlement Account as full and final settlement of all its rights, claims and amounts against Defendant No.1 in the present Suit.
- l) The Parties have agreed that the sale of the Property Nos 1, 4 and 5 shall be conducted by the Court Receiver appointed by this Hon'ble Court ("Court Receiver") having office at: 2nd Floor, Bank of India Building, M. G. Road, Fort, Mumbai 400 023.
- m) Pursuant to the filing of the present Consent Terms before this Hon'ble Court, the Parties agree to the appointment of the Court Receiver by this Hon'ble Court for conducting the sale of Property Nos 1, 4 and 5 and doing all acts in connection with and in relation thereto.
- n) The Parties agree to accept and abide by the terms and conditions of sale of Property Nos 1, 4 and 5 as shall be directed by the Court Receiver in consultation with the Plaintiff, Defendant No.1 and Confirming Parties.
- o) In addition to the above, the Parties agree to abide by all such terms and conditions of sale of Property Nos 1, 4 and 5, as may be directed by this Hon'ble Court.
- p) Defendant No.1 and the Confirming Parties agree and undertake to handover all the original documents in respect of Property Nos 1, 4 and 5, respectively, to the Court Receiver, so as may be directed and called upon by the Court Receiver.
- q) Defendant No.1 and the Confirming Parties agree and undertake to sign all deeds, documents, papers, writings etc. as may be required for effecting the transfer and sale of





Property Nos 1, 4 and 5, respectively, in favour of the prospective purchaser whose offer is accepted by the Court Receiver.

r) Defendant No 1, Confirming Party No 1 and Confirming Party No 2 agree and undertake to pay and clear the full and complete maintenance charges, outgoings, service charges, municipal taxes, cess, service taxes, etc. in respect of Property Nos 1 and 4, respectively, up to the date on which possession of the respective property is taken by the prospective purchaser whose offer is accepted by the Court Receiver.

s) Defendant No 1, Confirming Party No 1 and Confirming Party No 2 agree and undertake that the stamp duty, registration charges, transfer charges and all other charges, incidental to the sale and transfer of Property Nos 1 and 4, respectively, shall be paid by Defendant No 1, Confirming Party No 1, Confirming Party No 2 and the prospective purchaser of the respective property whose offer is accepted by the Court Receiver, in the proportion as may be decided in terms and conditions of sale by the Court Receiver.

t) The Parties agree that the amount payable to the Court Receiver for conducting the sale of Property Nos 1, 4 and 5 shall be deducted from the proceeds of sale of Property Nos 1, 4 and 5, and the said deducted amount shall be and act as the payment made to the Court Receiver.

u) The Parties agree that upon receipt of the proceeds from sale of Property Nos 1, 4 and 5 by the Court Receiver, and after the reduction of the amounts due and payable to the Court Receiver, the Court Receiver shall disburse the balance of the sale proceeds of Property Nos 1, 4 and 5 to the Plaintiff up to the Settlement Amount.

v) Defendant No 1 and the Confirming Parties agree and undertake to indemnify and keep indemnified harmless the Plaintiff and / or its successors, assigns, heirs and assigns, all persons, damages, losses and / or damages with respect to transfer and sale of Property Nos 1, 4 and 5, respectively.

w) The Plaintiff agrees that on receipt of the payment of the full Settlement Amount, the Plaintiff shall not oppose any action or proceedings instituted by Defendant No 1, if any, for quashing of the Criminal Complaint filed against him.

x) Upon receipt of payment of the full Settlement Amount, the Plaintiff agrees that it shall not institute and / or prosecute any proceedings, directly or indirectly, or in any manner voluntarily aid in the commencement, institution or prosecution of any claims, demand suit, proceedings or any action against Defendant No 1 and or Confirming Parties in relation to the claim of the Plaintiff under the present Suit.

y) The Parties have agreed that the Parties shall bear their own legal costs, out-of-pocket charges and expenses incurred in and about the negotiation, preparation and execution of

the present Consent Terms and any other document executed in connection with the present Consent Terms.

vi) The Parties agree and undertake to comply with their respective obligations as set forth herein and shall adhere to and be bound by these Consent Terms.

vii) These present Consent Terms are prepared in succession of all earlier discussions, negotiations, understandings and writings, if any, between the Parties hereto.

viii) Each Party certifies that they are executing the present Consent Terms of their own volition and have understood the present Consent Terms.

ix) Each Party represents and warrants that the person signing on behalf of such Party has the requisite authority to sign these Consent Terms on its behalf and to bind such Party.

x) The Parties agree that in case of any breach of the present Consent Terms, the aggrieved Party shall have the liberty to *inter alia* approach this Hon'ble Court as may be permitted under applicable laws.

xi) The undertakings of each Party as recorded herein are duly accepted by this Hon'ble Court as undertakings to this Hon'ble Court.

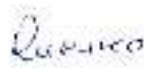
Dated this 2nd day of May 2019

For the Plaintiff

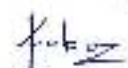

(Authorized Signatory)
Namrata Sharma



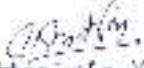
Defendant No.1
Mr. Dilip Harshankar Shrivastava


Confirming Party No.1
Mr. Durgendra B. Shrivastava

For Khaitan & Co


Associates for the Plaintiff


(Khaitan & Co)
Advocate for Defendant No.1


(Mr. Durgendra B. Shrivastava)
Confirming Party No.2

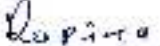
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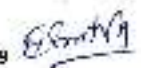

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NOTARI
MANGALURU











Schedule - I

Sr.No	Details of Assets / Properties	Location of Assets / Properties	Owner of the Property
1	Saidham Flat + Parking	Saidham Complex, Building No. KD-1, Flat No. 005 Opposite Dan Rasen School Naigam East Taluka Vasai Road, District Palghar Maharashtra-401208 Parking at: Right Corner of Building KG-1, Saidham Complex, Opposite Dan Rasen School, Naigam East Taluka Vasai Road, District Palghar Maharashtra-401208	Defendant No 1
2	Ravi Group Flat	Flat 801, Wing A, Gaunav Discovery, Mohkoti Road, Village Mahani, Malvi (West), Mumbai, Maharashtra	Confirming Party No 1
3	Navkar Flat	A-2/1164, Navkar City, Survey No.332/1,4 Naigam East	Confirming Party No 1
4	Sai Dhanraj Flat	Flat No.102, 1 st Floor, Sai Dhanraj, Building, "D" Wing, Naigam East, Maharashtra	Confirming Party No 2
5	Gold	Mumbai in custody of MIDC Police Station - Andheri East	Confirming Party No 1

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4. Order in terms of Consent Terms. All statements accepted. All undertakings accepted.
5. As regards the properties mentioned at serial Nos.2 and 3 of Schedule - I of the Consent Terms, Mr. Jain states that Confirming Party No.1 has requested the Developer to refund the amount paid and the same is mentioned in paragraph (d) - (iv) to (vi) and (e) - (iii) to (v). The Developer shall pay over the amount only to the Prothonotary and Senior Master, High Court, Mumbai and nobody else and the plaintiff may apply for the amount to be paid over to the Plaintiff.
6. The Suit stands disposed of in terms of Consent Terms.
7. All the interim applications stand disposed of. All the interim reliefs stand vacated.
8. Drawn up decree dispensed with.
9. No order as to costs.
10. Refund of Court fee, if any, according to rules.
11. All the parties to act on authenticated copy of the Consent Terms.

[K. R. SHRIRAM, J.]