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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.215 OF 2019
IN
COMPANY PETITION NO.374 OF 2011

Colour Roof (India) Ltd. ... Applicant
In the matter between
Salchi Metalcoat S.R.I. ... Respondent

Mr. Raj Patel, with S. Shah, Nupur Awasthi and Jeenal for
Applicants in CA No.215 of 2019.
Mr. Shaunak Thacker, with Mr. Sunilkumar Neelambaran i/b Mulla
and Mulla & Craigie Blunt & Caroe for the Petitioner.

CORAM: R. I. CHAGLA, J.
DATE: 9TH OCTOBER, 2019

PC:-

1. This Company Application is taken out seeking orders that the claim of the Petitioner Company has been fully satisfied as per the Consent Terms dated 14th December, 2017 executed by the Petitioner and the Respondents in the Company Petition. Further prayers have been sought directing the Petitioner to comply with clause 6 of the Consent Terms and to withdraw the Darkhast Application filed in the Court of Joint Civil Judge (Senior Division), Panvel and to cancel / remove the lien marked on the immovable properties more particularly mentioned in prayer clause (c) of the Consent Terms.

2. The learned Counsel appearing for the Applicants has submitted that under Clause 2(b) of the Consent Terms, it was provided that “in order to enable the Respondent to issue Post Dated Cheque liberty to the Respondents to pay amount of installment in Rupees converted to Rupees at the rate prevailing on Bank dollars rate, on a day prior to the execution of Consent Terms”. He has submitted that the Respondents had issued Post Dated Cheques in Rupees as per clause 2 (b) of the Consent Terms, which was at the rate prevailing at dollars rate on a day prior to the execution of the Consent Terms. He has submitted that as a result of the Respondents complying with clause 2 (b), under clause 1.2 of the Consent Terms, the Petitioner’s debt is to be marked as fully satisfied and the Company Petition to stand dismissed. Under Clause 8, it was further agreed that, on receipt of payment of an aggregate principal debt in the sum of Euros 4,94,718/- without any defaults, the Petitioners and Respondents were to withdraw all the proceedings filed against each other in this Court including the execution proceedings filed by the Petitioners and / or any other proceeding in India or other jurisdiction. He has submitted that it was the understanding between the parties that, the Respondents shall pay the installments in Rupees and that it is not now open for the

Petitioner to contend that the payment was to be made only in Euros and / or that the Petitioner's debt is not fully satisfied.

3. He has further drawn the reference to clause (3) of the Consent Terms, which provides that in case the Respondent makes a payment of respective installments as set out in Clause 1 of the Consent Terms through RTGS to the Petitioner's Solicitors bank account then Petitioner's Solicitor shall return the Post Dated Cheques of the respective installment immediately to the Respondent and shall not hold the same for any reason. He has drawn reference of this Court to a letter dated 9th December, 2017 addressed by the Applicant herein that enclosed the Post Dated Cheques as per the said Consent Terms and it was stated that in case the Applicant makes payment of respective installments as mentioned in Clause 1 of the Consent Terms through NEFT / RTGS to the Bank account of the Respondent herein, they shall return the Post Dated Cheque of the respective installment immediately to the Applicant herein and shall not hold the same. He has submitted that the said letter dated 9th December, 2017 along with the Post Dated Cheques were accepted by the Respondents herein. He has also drawn attention of this Court to the various draft consent terms which were exchanged between the parties and he has submitted that the draft Consent Terms

made it clear that the installments of the Euros which were to be paid as provided in Clause 1 of the Consent Terms on the due dates, instead of the Euro payment, the Rupee equivalent would be paid and the rate would be as per the Clause 2 (b) of the Consent Terms i.e. the rate prevailing on a day prior to the execution of the Consent Terms. He has stated that in one of the draft Consent Terms which were exchanged, in Clause 1, the equivalent rupee amount had been shown and this was responded to by the Respondent to state that the Rupee equivalent amount against Euros at clause 1 of the Consent Terms is not required since clause 1.2 (b), had already dealt with the same. He has accordingly submitted that a clear understanding had been arrived at between the parties under the Consent terms that the Rupee equivalent could be paid by way of the Post Dated Cheques and at the rate specified in Clause (b) of the Consent Terms.

4. The learned Counsel for the Respondents has submitted that under clause 1 read with clause 1.2., it was clear that the Applicant herein would make payment of the principal sum of Euros 4,94,718/- to the Respondent herein and that upon payment of the agreed sum of Euros 4,94,718/-, which was to be paid by installments on the dates mentioned in clause 1 of the Consent

Terms, the debt of the Respondent herein would be marked as fully satisfied and the Petition to stand dismissed. He has submitted that Clause 2(b) is only by way of liberty to the Respondent to pay the amount of installment in Rupees converted to Rupees at the rate prevailing on Bank dollars rate on a day prior to the execution of Consent Terms. He has submitted that the Post Dated Cheque could not be issued in Euros and hence this liberty was provided for. He has submitted that, it is clear from clauses 4 to 6 of the Consent Terms that the parties had clearly envisaged payment of the Petitioner's debt at Euros 4,94,718/- on a strict payment schedule as set out in Clause 1 of the Consent Terms. It was further apparent from clause 8 that on receipt of payment of the aggregate principal debt in the sum of Euros 4,94,718/- without any defaults, the Petitioner and Respondent shall withdraw all proceedings filed against each other in this Court, including the execution proceedings which are before the Joint Civil Judge (Senior Division) Panvel. He has submitted that since the entire sum of Euros 4,94,718/- had not been paid by the Respondents to the Petitioner, the Petitioner's debt cannot be marked fully satisfied and hence the relief sought for in the Company Application cannot be granted.

5. Having considered the submissions, the clear understanding arrived at between the parties under the said Consent Terms dated 14th December, 2017 was that, the Respondent Company (Applicant herein) would pay the Petitioner (Respondent herein), the principle debt payable under the invoices i.e. the aggregate sum of 4,94,718/- in six installment as set out in clause (1) of the Consent Terms. It is clearly mentioned in clause 1 that the installments are to be paid in Euros. Further, clause 1.2 makes it clear that it is only upon payment of the principal sum Euros 4,94,718/- which is to be paid by the Respondent Company to the Petitioner that the Petitioner's debt would be marked as fully satisfied and the Company Petition to stand dismissed. This is further clear from clauses 4 to 6 as well as clause 8 which provides that the Petitioner's debt would be paid at Euros 4,94,718/- and it is upon such payment, that the Petitioner and Respondents shall withdraw all proceedings against each other in this Court including the execution proceedings filed by the Petitioner, the withdrawal of which has been prayed for in the Company Application.

6. The submissions of the Applicant herein that clause 2(b) provided for payment to be made in Rupees terms at the rate prevailing on bank dollars rate on a day prior to the execution of

the Consent Terms and that the payment thereunder would be final satisfaction of the Petitioner's debt and that the Company Petition would stand dismissed cannot be accepted. It appears from clause 2 (b) of Consent Terms that in order to enable the Respondent to issue Post Dated Cheques that a liberty had been granted to the Respondent Company to pay the amount of installment in Rupees converted to Rupees at the rate prevailing on Bank dollars rate on a day prior to the execution of the Consent Terms. This, considering that Post Dated Cheque could not be issued in Euros as provided for in clause 1 payable in installments and on due dates, this arrangement had been arrived at between the parties. However, it cannot be held that the Petitioner had given up its claim insofar as their entitlement to Euros 4,94,718/- which was payable in respect of invoices referred to in paragraph 11 of the Company Petition. This payment in Euros was a necessary term of the Consent Terms and that it was only upon payment of Euros 4,94,718/- on the strict payment schedule set out in Clause 1 of the Consent Terms that the Petitioner's debt would be marked as fully satisfied. Under clause 8 of the Consent Terms, it is also apparent that the principal debt in sum of Euros 4,94,718/- was to be paid and upon receipt thereof by the Petitioner, the Petitioner and Respondents were to withdraw all

proceedings filed against each other in this Court including the Darkhast Application filed in the Court of Joint Civil Judge, (S.D.) Panvel. Clause 3 of the Consent Terms cannot be read in the manner in which the learned Counsel on behalf of the Respondents has sought this Court to read i.e. parties have agreed that Respondents making payment of respective installments in Rupees terms through RTGS and the Petitioner Solicitor returning the Post Dated Cheques of the respective installment immediately to the Respondent, the Petitioner's debt stood satisfied. Under Clause 1 of the Consent Terms, it is clear that this payment was to be made in Euros and that only a liberty had been granted by the Petitioner to the Respondent Company to issue the Post Dated Cheque in Rupee terms. However, that cannot mean that the Petitioner had given up their claim to the principal debt of Euros 4,94,718/- which was due and payable on the due date.

7. In my view, therefore the relief sought for in the Company Application cannot be granted.

8. The draft Consent Terms which were exchanged between the parties also cannot be read as the parties having agreed that the payment was to be made in Rupees equivalent to Euros 4,94,718/- on the due dates of the installments as per Clause 1

read with Clause 2(b) of the Consent Terms in full and final satisfaction of the Petitioner's debt. The parties to the Consent Terms all along understood that the principal debt would be satisfied upon receipt of Euros 4,94,718/- by the Petitioner on the due dates as provided for under Clause 1 of the Consent Terms.

9. Accordingly, the relief cannot be granted in the Company Application. Hence the Company application is dismissed with no order as to costs.

(R I. CHAGLA, J.)