

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO.11 OF 2018
IN
COMPANY APPLICATION NO.145 OF 2017
IN
COMPANY PETITION NO.901 OF 2014**

Emnet Samsara Media Pvt Ltd.

..Petitioner

Vs.

Verve Compusoft Pvt Ltd & Ors

..Respondents

Mr. Rohn Cama a/w Mr. Shanay Shah and Mr. G. Mohanty I/b Mohanty and Associates for Petitioner

Mr. Jigar Joshi Authorized representative of Petitioner present

Ms Noelle-Ann-Park a/w Mr. Rohmin Aref and Ms Nikita Mary-Abraham I/b Noelle-Ann-Park for Respondents

Mr. Dhaval Chandan – Respondent No.2 and Mr. Kunal Chandan – Respondent No.3 are present

CORAM : K.R.SHRIRAM, J.

DATE : 19th JULY 2019

P.C.:

1 Parties have entered into consent terms dated 19.07.2019. The consent terms signed by Director of petitioner, respondent no.2 for himself and authorised signatory of respondent no.1, respondent no.3 and their respective advocate is taken on record and marked "X" for identification. Both counsel state that the signatories to the consent terms are present in Court and identify them.

2 For ease of reference, the consent terms without resolutions attached thereto, is scanned and reproduced hereinbelow:

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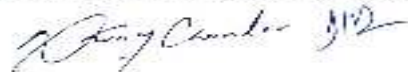
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 11 of 2018
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United Sansara Media Pvt. Ltd. ... Petitioner
Vs.
Verve Corporation Pvt. Ltd. & Ors. ... Respondents

CONSENT TERMS

1. The parties had tendered the 1st Consent Terms dated 28th April 2015, which were taken on record vide the self-operative order dated 28th April 2015, passed by this Hon'ble Court. The Parties had also tendered the 2nd Consent Terms dated 16th March 2017, which were taken on record in the order of the same date passed by this Hon'ble Court. The said proceedings emanated from transfer of rights allotted by Brihanmumbai Electricity Supply and Transport Undertaking ("BEST"), by the Petitioner to the Respondent No.1 under a Business Transfer Agreement dated 11.07.2011. This Agreement, which was to subsist till December 31, 2019 was prematurely and peremptorily terminated by BEST on September 8, 2017. The Parties to the above proceedings agree to the terms mentioned in these Consent Terms, which modify the earlier agreed terms set out in the Consent Terms dated 28th April 2015 and 16th March 2017.
2. The Respondents admit and confirm that they have made payments of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the Petitioner under the 1st Consent Terms dated 28th April 2015. The Respondents further





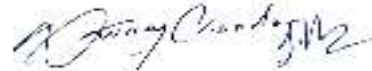
admit and confirm that they have made payments in terms of the 1st Consent Terms dated 16th March 2017 of a sum of Rs.67,50,000/- (Rupees Sixty Seven Lakhs Fifty Thousand only) to the Petitioner out of a total amount of Rs. 6,20,00,000/- (Rupees Six Crores and Twenty Lakhs only).

3. Given the hardships expressed by the Respondents, particularly the abrupt termination by BEST on September 8, 2017 of the BEST Agreement i.e., within less than 6 months of the 2nd Consent Terms, the Petitioner has as a concession, agreed to reduce the amounts owed to it, as highlighted below. In return, Respondent Nos. 2 and 3 agree to accept that monies are due and payable by the Respondents irrespective of how the business of Respondent No. 1 has fared and Respondent Nos. 2 and 3, on behalf of the other Respondents, agree to accept the aforesaid liability, unconditionally and unequivocally. Hence, Respondent Nos. 2 and 3 agree, accept, confirm, admit and undertake to this Hon'ble Court to pay a sum of Rs.3,63,60,000/- (Rupees Three Crores and Sixty Three Lakhs Sixty Thousand Only) to the Petitioner in full and final settlement of the claims due from the Respondents (subject to compliance with Clauses 5 and 8 below) as set out hereinafter:

(a) An upfront payment of Rs. 9,60,000/- (Rupees Nine Lakhs Sixty Thousand only) vide RTGS through HDBF Bank Ltd. has been made on 18th July 2019;

(b) A monthly payment of Rs.14,75,000/- (Rupees Fourteen Lakhs Seventy Five Thousand Only) will be paid on the 15th of every month starting from 15th August, 2019 and up to and including 15th July, 2021 (i.e. 24 months) for a sum total of Rs.3,54,00,000/- (Rupees Three Crores and Fifty Four Lakhs only);

No additional payments and amounts are due from the Respondents, on fulfilling the obligation in the above-mentioned Clause 3. Respondent Nos. 2 and 3 accept that payments are to be made:

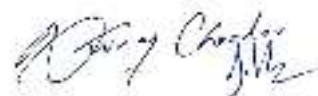



personally through Respondent Nos. 2 and 3 and they accept full and personal liability, jointly and severally, for the amounts mentioned in Clause 3 on behalf of Respondent No. 1 and others. If Respondent Nos. 2 and 3 do not make the payments as per the terms agreed herein, the original amount due as per the Consent Terms dated 16th March 2017, shall stand revived and be payable.

4. The Respondent Nos. 2 and 3 further agree, accept, confirm and undertake that in case the amount set out in Clause 3(i) above are not paid on the 15th of each month, it shall carry an interest of 9% p.a. on that unpaid installments till the actual payment of the said amount is made by them. This shall be in addition to any/all remedies available to the petitioner in law for the breach / non-compliance.
5. For due compliance of the above terms, Respondent Nos. 2 and 3 have provided 24 post-dated cheques (PDCs) to the Petitioner in the following manner:

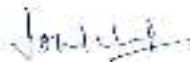
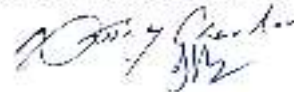
- a. Nine PDCs from Respondent No. 2 for amounts of Rs.14,75,000/- (Rupees Fourteen Lakhs Seventy Five Thousand only) each, bearing cheque Nos. 000816 dated 15.08.2019, 000817 dated 15.09.2019, 000818 dated 15.10.2019, 000819 dated 15.11.2019, 000820 dated 15.12.2019, 000821 dated 15.01.2020, 000822 dated 15.02.2020, 000823 dated 15.03.2020, & 000824 dated 15.04.2020, all drawn on HDFC Bank.

- b. Fifteen PDCs from Respondent No. 3 for amounts of Rs.14,75,000/- (Rupees Fourteen Lakhs Seventy Five Thousand only) each, bearing cheque Nos. 151295 dated 15.05.2020, 151296 dated 15.06.2020, 151297 dated 15.07.2020, 187821 dated 15.08.2020, 187822 dated 15.09.2020, 187823 dated 15.10.2020, 187824 dated 15.11.2020, 187825 dated 15.12.2020, 187826 dated

15.01.2021, 187827 dated 15.02.2021, 187828 dated 15.03.2021, 187829 dated 15.04.2021, 187830 dated 15.05.2021, 187831 dated 15.06.2021, & 187832 dated 15.07.2021, all drawn on Axis Bank.

6. Respondent Nos. 2 and 3 undertake to this Hon'ble Court that the aforementioned cheques would be honoured on presentation and that they would not stop payment and/or close the Bank Accounts, from which the post-dated cheques are issued by them, respectively. Further, in the event any of the aforementioned cheques are dishonoured, the Petitioner would be entitled to proceed against the Respondents in terms of Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, in addition to all / any other remedies available to them, in law for the breach / non-compliance.
7. Respondent No. 2 shall pay a sum of Rs. 3,00,000/- (Rupees Three Lakhs only) to the Advocates for the Petitioner at the time of signing of these consent terms.
8. Notwithstanding the consequences of default referred to above, in the event Respondent Nos. 2 and 3 (i) defaults in making timely payments of any two (2) installments under Clause 3(b) hereinabove, in a given period of contiguous 3 calendar months or (ii) does not pay the entire amounts set out in clause 3 hereinabove on or before 15th July 2021, the appointment of the Official Liquidator, High Court Bombay as the Provisional Liquidator in terms of the Consent Terms dated 28th April 2015 and 16th March 2017 shall stand revived and the Official Liquidator shall, without further reference to the Hon'ble Court take charge of the assets as well as movable and immovable properties of Respondent No. 1. Further the Court Receiver, High Court, Bombay, shall forthwith, without further reference to the Hon'ble Court stand appointed as Receiver for all movable and immovable properties of Respondent Nos. 2 to 7, additionally the original amounts mentioned in the Consent Terms dated 16th March 2017 (i.e. Rs. 6,20,00,000) shall stand revived, and be payable together with interest thereon as

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agreed taking into account payments already made by the Respondents.

9. Respondent No. 2 undertakes to this Hon'ble Court that he shall not dispose of, sell, transfer, alienate or create third party rights of whatsoever nature and / or part with possession or create any further charge on his property viz Siddesh Dardhan Tower, 20th Floor, opposite 10 Khetwadi, Khetwadi Main Road, Mumbai 400004, which at present is mortgaged to Bombay Mercantile Bank, and if needed, proceeds from this sale shall be used to pay the debt of the Petitioner, after clearing the dues of Bombay Mercantile Bank. The Respondent No.2 further undertakes not to create any additional encumbrance on this property even post repayment of Bombay Mercantile Bank.

10. In view of the above, the appointment of the Official Liquidator, High Court Bombay in terms of consent order dated 28th April 2015 and 18th March 2017 may be requested to be stayed for the present.

11. The Contempt Petition may be requested to be disposed of on the above terms mutually agreed upon by and between the parties.

Dated : 19th / 7 / 19



Respondent No. 1
DEEPAK CHANDAN
(Authorized Signatory)

Respondent No. 2

Respondent No. 3

Advocates for the Respondents

Mohd. Anwar

EMNET Samsara Media Pvt. Ltd.

J.H. Joshi
Petitioner
Director

CHANDAN
DEEPAK

G.C. Chaudhary
Advocates for the Petitioner

3 Order in terms of the consent terms. All undertakings given in the consent terms are accepted and so ordered. All statements are accepted as undertaking to this Court.

4 Appointment of the official liquidator is stayed for the present.

5 Eight respondents in contempt petition have filed affidavits expressing regret and unconditional apology to the court for breach of undertaking. In view of these affidavits and in view of the fact that the parties have entered into consent terms, the show cause notice issued stands discharged and contempt petition accordingly stands disposed.

6 I have to note that this is the third time respondents are committing breach of undertaking given to this court. Therefore, the eight respondents are directed to give jointly donation of a sum of Rs.50,000/- to **Dean pbcf kem hospital**, K.E.M. Hospital, Dr. E. Borges Road, Parel, Mumbai-400012 and this amount shall be paid and affidavit of proof of payment of respondent no.1 shall be filed within one week from today, under advice to petitioner's advocates.

(K.R. SHRIRAM, J.)