

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

SUIT NO.15 OF 2017

Mark D'souza

..Plaintiff

Vs.

M/s Excel Exim Service India Pvt Ltd. & Ors

..Defendants

Mr. J. M. D'silava for Plaintiff

Mr. Mark D'Souza plaintiff present

Mr. Jaideep Mitra I/b Mr. Biran D'lima for Defendants

Mr. Luis D' Souza Defendant No.2, Director of Defendant No.1 and Constituted Attorney of Defendant No.4; Ms Janet D'souza for Defendant No.3, Ms Rathik D'silva for Defendant No.6 and Director of Defendant No.5, Mr. Lynette D'souza for Defendant No.7 and Ms Thelma D'souza Defendant No.8 are present in court

CORAM : K.R.SHRIRAM, J.

DATE : 20th MARCH, 2019

P.C.:

1 At the outset, Mr. D'silva tendered draft amendment to plaint, which is also been signed by Mr. D'lima. Draft amendment is taken on record and marked "X" for identification. Leave granted. Amendment to be carried out during the course of today. Re-verification dispensed with.

2 For ease of reference, a scanned copy of draft amendment is reproduced hereinbelow :

DRAFT AMENDMENT

SCHEDULE

1 In the cause title to the Plaint, after the Defendant No. 7, delete the word "Defendants" and add Defendant No. 8 and 9 as follows:-

- | | | |
|----|--|-----------------|
| 8. | Mrs. Thelma D'Souza, |) |
| | Of Mumbai, Indian Inhabitant, residing |) |
| | at Row House No. 5, Powai Vihar |) |
| | Complex, Adi Shankaracharya Marg |) |
| | Mumbai 400 070. |) |
| 9. | Red IT Freight & Logistics Pvt. Ltd., |) |
| | a company incorporated under the |) |
| | Companies Act, 1956 and having its |) |
| | registered office at 510, Sagar Tech |) |
| | Plaza A, Andheri Kurla Road, |) |
| | Saki Naka, Mumbai 400072. |) :- Defendants |

[Signature]
 Plaintiff
 8 & 9

[Signature]
 Defendant
 1 to 4

3 Parties have entered into consent terms dated 20th March 2019. The consent terms signed by plaintiff, defendants and their respective advocates, is taken on record and marked as "X-1" for identification.

4 For ease of reference a scanned copy of the consent terms is reproduced hereinbelow:

X-1
5/15/2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 15 OF 2017

Mark D'Souza
Vs
Excel Exim Services India Pvt. Ltd. & Ors.

Plaintiff
Defendants

Consent - K.R. Shrivastava, J.
Date - 20 MAR 2019
Marked as X-1 for
Identification in
5/15/2019

CONSENT TERMS

- The Plaintiff (Mark D'Souza) and his wife, the Defendant No. 8 (Mrs. Thelma D'Souza), do hereby agree to accept a sum of Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only), towards buyback of 30,000 shares of Rs. 10 each of the Defendant No. 1 Company (Excel Exim Services India Pvt. Ltd.) and in full and final settlement of all their claims against the Defendant Nos. 1 to 7, in the above suit, for and on behalf of themselves and also on behalf of the Defendant No. 9 (Rediff Freight & Logistics Pvt. Ltd.) under the Memorandum of Understanding dated 14th May, 2012 (Exhibit 'A' to the Plaint) and, that on payment of the aforesaid sum of Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only) neither the Plaintiff, nor the Defendant Nos. 8 and 9 company, will have any further claims of whatsoever nature against the other Defendants in the above suit.
- The Plaintiff and the Defendant No. 8 hereby clarify and confirm that they are duly authorized by the Defendant No. 9 company (i.e. Rediff Freight & Logistics Pvt. Ltd.) to enter into these Consent Terms, and on behalf of the Defendant No. 9, and that on receipt of the aforesaid payment of Rs. 85,00,000/- (Rupees eighty five lakhs only) the Defendant No. 9 confirms that it has no claim in future of whatsoever nature against the Defendant Nos. 1 to 7 herein.

K.R. Shrivastava
K.R. Shrivastava
K.R. Shrivastava
K.R. Shrivastava
K.R. Shrivastava

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3. The Defendant No. 2 shall within one week from today, pay the aforesaid sum of Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only), to the Plaintiff and the Defendant No. 3, in the following manner:-

- i) a sum of Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) by Demand Draft or RTGS, in the name of the Plaintiff (Mark D'Souza), in his HDFC Bank, Powai Branch, Account bearing No. 50100224691444, towards buyback of his 15000 equity shares of the Defendant No. 1 Company bearing Distinctive Nos. 1-10, 11-5000 and 10001-20000 under Share Certificate Nos. 001, 002 and 004 respectively; and
- ii) a sum of Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) by Demand Draft or RTGS, in the name of the Defendant No. 3 (Mrs. Thelma D'Souza), in her HDFC Bank, Powai Branch, Account bearing No. 50100224567342, towards buyback of her 15000 equity shares of the Defendant No. 1 Company bearing Distinctive Nos. 5001-10000 and 20001-30000 under Share Certificate Nos. 003 and 005 respectively.

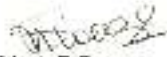
4. On entering into these Consent Terms, and the same being filed on record of this Hon'ble Court, the Plaintiff and his wife, the Defendant No. 5, shall simultaneously hand over their original Share Certificates for the said 30,000 shares, along with the share Transfer Forms and all other documents to effect the share transfer, to Mr. Anandak Davar, the Learned Mediator appointed by this Hon'ble Court, who shall not release the same to the Defendant Nos. 1 to 7, until and unless, full and final payments mentioned in Clause 3 above is

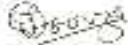
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is confirmed by Mr. J.M. D'Silva, the Advocate for the Plaintiff, who shall instruct the Learned Mediator, Mr. Anushak Datta, in writing, to release the said shares and all other documents, to Shri Brian A. D'Lima, Advocate for the Defendant Nos. 1 to 7, for the said transfer to the names of the Defendant Nos. 2 and 3 respectively.

5. The parties withdraw the allegations made against each other. The Plaintiff and his wife (the Defendant No. 8) and the Defendant No. 9 declare that the above amount of Rs. 85 lakhs is in full and final settlement, and there will be no future claims against the Defendant.
6. Decree in terms of these Consent Terms be directed to be drawn up accordingly.
7. Refund of Court Fees, as per Rules.
8. The above suit and the Notice of Motion bearing No. 211 of 2017 be disposed of in terms of these Consent Terms, with the parties to bear their own Advocates' costs.

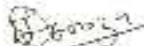
Mumbai dated this 20th day of March, 2019.


Mark D Souza,
PLAINTIFF


Mrs. Thelma D Souza
DEFENDANT NO. 8

For REDIF FREIGHT & LOGISTICS PVT. LTD.

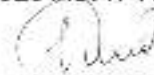

Mark D Souza
Director

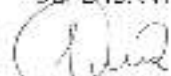

Thelma D Souza
Director
DEFENDANT NO. 9

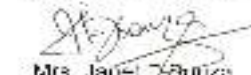

Identified by me:
J.V. D'Silva
Advocate for the Plaintiff

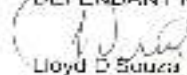
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FOR EXCEL EXIM SERVICES INDIA PVT. LTD.


 LOUIS D'SOUZA
 Director
 DEFENDANT NO. 1


 Louis D'Souza
 DEFENDANT NO. 2


 Mrs. Janet D'Souza
 DEFENDANT NO. 3


 Lloyd D'Souza
 Through his father &
 C.A. Louis D'Souza
 DEFENDANT NO. 4

FOR EXCEL GLOBAL LOGISTICS (I) PVT. LTD.


 Rathik D'Souza
 Director,
 DEFENDANT NO. 5


 Rathik D'Souza
 DEFENDANT NO. 6


 Lynelle D'Souza
 DEFENDANT NO. 7

Identified by me:


 BRIAN A. D'ALMA
 D'Alma & Associates,
 Advocates for the Defendant Nos. 1 to 7

5 Mr. D'lima states that he has spoken to Mr. Anoshak Davar, an
Advocate practicing in this court, who was appointed as mediator, who has
agreed to what is stated in paragraph 4 of the consent terms.

6 Order in terms of consent terms.

7 All statements are accepted as an undertaking to this court.

8 Suit accordingly stand decreed. Drawn up decree dispensed
with.

9 Refund of court fees as per rules.

10 Suit as well as notice of motion stand disposed with no order as
to costs.

11 All interim orders stand vacated.

12 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)