

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

**C.S.No. 39 of 2020**

- 1.Manjula Surender
- 2.Supriya Surender
- 3.Shwetha Surender

... Plaintiffs

**Vs.**

1. Kothari Industrial Corporation Limited  
(KICL)  
Rep. by its Chairman  
“Kothari Buildings”, No.114/117,  
Uthamar Mahatma Gandhi Salai  
Nungambakkam  
Chennai-600 034.

2. Pradip D.Kothari  
Chairman  
Kothari Industrial Corporation Limited  
(KICL)  
“Kothari Buildings”, No.114/117,  
Uthamar Mahatma Gandhi Salai  
Nungambakkam  
Chennai-600 034

3. Rafiq Jinnah

...Defendants

R3 amended as per order dated 18.12.2020 in A.No.3159 of 2020

**PRAYER:** This Civil Suit is filed under Order IV Rule 1 O.S. Rules read with Order VII Rule 11 of CPC, praying for a judgement and decree against the defendants jointly and severally, for a sum of Rs.5,54,88,488/- as of 31.12.2019 with future interest @ 18% per annum on Rs.1,80,00,000/- on monthly rests till the date of realization and for costs.

\*\*\*

For Plaintiffs : Mr.B.Arvind Srevalsa

For Defendants : Mr. S.Sivaraman - D1  
Mr.P.Backyalakshmi - D2

**JUDGMENT**

The suit has been filed for a judgement and decree against the defendants jointly and severally, for a sum of Rs.5,54,88,488/- as of 31.12.2019 with future interest @ 18% per annum on Rs.1,80,00,000/- on monthly rests till the date of realization and for costs.

WEB COPY

2. When the matter is taken up for hearing, a joint memo of compromise duly signed by the parties and attested by their counsel, has been filed. The parties are also present before this Court through video conference.

3. Learned counsel for the plaintiffs as well as the defendants submits that the suit may be decreed in terms of the joint memo of compromise dated 19.12.2020. The terms and conditions of the said joint memo of compromise read as under:

**“ 1. The plaintiff humbly submits as follows:**

- (i) The 1<sup>st</sup> plaintiff is Manjula Surender,  
W/o.Late.B.Surender**
- (ii) The 2<sup>nd</sup> plaintiff is Supriya Surender, D/o.Late  
B.Surender**
- (iii) The 3<sup>rd</sup> plaintiff is Shwetha Surender, D/o.Late  
B.Surender, represented by her Power Agent Manjula  
Surender (1<sup>st</sup> plaintiff herein)**
- (iv) The plaintiffs 1 to 3 here are residing at No.7, Gajapathi  
Road, Kilpauk, Chennai 600 010.**

WEB COPY

**2. The 1<sup>st</sup> Defendant is Kothari Industrial Corporation Limited (KICL), represented by its Chairman, having registered office at “Kothari Buildings”, No.114/117, Uthamar Mahatma Gandhi Salai,**

**Nungambakkam, Chennai 600 034.**

**3. The 2<sup>nd</sup> defendant is Pradip D.Kothari, Chairman, Kothari Industrial Corporation Limited (KICL), represented by its Chairman, having registered office at “Kothari Buildings”, No.114/117, Uthamar Mahatma Gandhi Salai, Nungambakkam, Chennai 600 034.**

**4. The 3<sup>rd</sup> defendant is Rafiq Jinnah, aged about 47 years, S/o.Jinnah, No.8, 2<sup>nd</sup> street, Zamalia, Perambur High Road, Perambur, Chennai 600 012, impleaded as the 3<sup>rd</sup> defendant vide order dated 07.12.2020 passed in Application No.2858 of 2020.**

**5. The plaintiffs have filed the above suit as against the defendants to jointly and severally pay the plaintiffs a sum of Rs.5,54,88,488/- (Rupees Five Crores Fifty Four Lakh Eighty Eight Thousand Four Hundred and Eighty Eight Only) with future interest at 18% per annum on Rs.1,80,00,000/- (Rupees One Crore Eighty Lakhs Only) on monthly rests till the date of realisation and costs.**

6. In the above suit, the plaintiffs have filed O.A.Nos.414 of 2020 and 415 of 2020 praying for the following reliefs:

“Pass an order directing the respondents/defendants to furnish security to the extent of suit claim of Rs.5,54,88,488/- at the first instance, failing which pass an order of attachment before judgment of immovable property, more fully described in the judge's summons;

Pass a prohibitory order as against Garnishees/Respondents 3 & 4 from paying the rents payable by them to the Respondents 1 & 2/ Defendants 1 & 2, thereby directing the Garnishees to remit the rents payable by them to the credit of the suit pending disposal of the above suit;”

7. In Application No.415/2020, an order of interim injunction was granted exparte, vide order dated 30.01.2020. The 1<sup>st</sup> defendant Company has filed its Counter Affidavit in A.No.415/2020. In A Nos.414 and 415/2020, arguments were heard by this Hon'ble Court and the same are pending.

8. While things stood thus, the 2<sup>nd</sup> defendant, who had personally undertaken the suit transaction with the plaintiffs during his tenure as the Managing Director of the 1<sup>st</sup> Defendant Company, has agreed to resolve

WEB COPY

the disputes forming the subject matter of C.S.No.39 of 2020 amicably and has undertaken the responsibility to make payments to the plaintiffs.

9. After extensive discussions and negotiations between the plaintiffs, defendants, the parties have agreed to amicably settle the issues forming subject matter of the present suit based on the following terms and conditions:

A. The 2<sup>nd</sup> defendant shall pay the sum of Rs.1,80,00,000/- (Rupees One Crore Eighty Lakhs Only) to the plaintiffs (hereinafter referred to as the 'Decretal Amount'), in full and final settlement and satisfaction of all the plaintiffs' claims as against the defendants 1 and 2 in 36 monthly equal installments of Rs.5,00,000/- each.

B. The plaintiffs confirm that other than the aforementioned sum of Rs.1,80,00,000/- being payable by the defendants, the plaintiffs do not have any claim any further amounts from defendants 1 to 3.

**C. The 2<sup>nd</sup> defendant hereby undertakes and confirms his liability to pay the plaintiffs the decretal amount, the aforementioned sum of Rs.1,80,00,000/- (Rupees One Crore Eighty Lakhs Only) being the decretal amount at the rate of Rs.5,00,000/- (Rupees Five Lakhs Only) per month in 36 equal installments.**

**D. The payment of the installment amounts of Rs.5,00,000/- (Rupees Five Lakhs only) shall be made on or before the 10<sup>th</sup> day of every month based on the English Calendar.**

**E. In the event of default by the 2<sup>nd</sup> defendant in payment of the decretal amount by way of monthly instalment, as set out above, the 3<sup>rd</sup> defendant in his personal capacity undertakes to pay the monthly instalment on or before the 10<sup>th</sup> day of the same month of default committed by the 2<sup>nd</sup> defendant. In other words, the 3<sup>rd</sup> defendant, in his personal capacity undertakes to pay the plaintiffs, the installment of Rs.5,00,000/- on or before the 10<sup>th</sup>**

day of the same month in the event of default committed by the 2<sup>nd</sup> defendant.

F. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly and severally undertake and confirm that in the event of default in paying any installment the following month's due shall include the installment payable for defaulted month or months apart from the installment due for that month.

G. The 1<sup>st</sup> defendant Company is totally exonerated from its liability to the plaintiffs in any manner whatsoever since the liability is to be discharged by the defendants 2 and 3 in their personal capacity in the manner morefully stated hereinabove.

H. In the event of default in payment of any three installments either by the 2<sup>nd</sup> or 3<sup>rd</sup> defendant, as referred to in Clauses (D) and (E) hereinabove, the entire Decretal Amount, payable under the decree shall become due and payable to the plaintiffs/decreet holders, at once and the same shall become

payable in one lumpsum, after giving credit to the payments made in pursuance to this compromise and decree passed in terms thereof.

I. The unpaid decretal amount referred to in Clause H hereinabove, shall carry an interest at the rate of 12% per annum from the date of such default till the date of realisation of the entire decretal amount, besides the costs incurred by the plaintiffs towards this litigation.

J. The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiff authorise the 1<sup>st</sup> plaintiff to receive the aforementioned decretal amount of Rs.1,80,00,000/- and the 36 monthly instalment of Rs.5,00,000/- shall be paid in favour of the 1<sup>st</sup> plaintiff. The Bank details for remittance of the decretal amount by way of RTGS/NEFT in favour of the 1<sup>st</sup> plaintiff is as follows:

**Name : MANJULA SURENDER**

**Bank : Kotak Mahindra**

**Branch : Teynampet**

**Account No : 1113706254**

**IFSC : KKBK0000462**

**10. In view of the compromise reached between the parties hereto, the interim order granted in Application No.415 of 2020 in C.S.No.39 of 2020 dated 30.01.2020 shall stand vacated and Application Nos.414 and 415 of 2020 shall stand closed. In the event of default in payment of the decretal amount or any portion thereof, the plaintiffs are entitled to implement/execute/enforce the decree in C.S.No.39 of 2020 in accordance with law.**

**11. The suit may be decreed on the terms of the Joint Memorandum of Compromise and the Joint Memorandum of Compromise may kindly be read as part and parcel of the decree.**

**12. The parties shall bear their respective costs”.**

**4. Accordingly, the suit stands decreed in terms of the joint memo of**

compromise and the joint memo of compromise shall form part of the decree.

No costs.

23.12.2020

dpq

Index : Yes / No

Internet : Yes

Speaking Order/Non-Speaking Order.



WEB COPY

**N. SATHISH KUMAR, J.**

dpq



**C.S.No.39 of 2020**

**WEB COPY**

**23.12.2020**