

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.P.No.707 of 2016

1.M/s.Madhav Structural Engineering Ltd.,
represented by its Director
Laxman Mahadev Chavan
having its registered office at
29/1, Juhu Supreme Shopping Centre
JVPD Scheme, Mumbai – 400 049

2. M/s. Yogesh Construction P.Ltd.
Represented by its Director
Yoyesh R.Chavan
having its registered office at
29/1. Juhu Supreme Shopping Centre
JVPD Scheme, Mumbai – 400 049

3.Mr.Laxman Mahadev Chavan
Adult Mumbai Indian Inhabitant
having address at
29/1. Juhu Supreme Shopping Centre
JVPD Scheme, Mumbai – 400 049

4. Mr.Ramesh Mahadev Chavan
Adult Mumbai Indian Inhabitant
having address at
29/1. Juhu Supreme Shopping Centre
JVPD Scheme, Mumbai – 400 049

5. Mr.Arun Mahadev Chavan
Adult Mumbai Indian Inhabitant
having address at
29/1. Juhu Supreme Shopping Centre

JVPD Scheme, Mumbai – 400 049

6. Mr.Ram Mahadev Chavan
Adult Mumbai Indian Inhabitant
having address at
29/1. Juhu Supreme Shopping Centre
JVPD Scheme, Mumbai – 400 049

... Petitioners

Vs.

M/s.India Cements Capital Ltd.,
having its registered Office at Dhun Building
3rd and 4th Floor, 827, Anna Salai
Chennai – 600 002

... Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the impugned award passed by the learned Sole Arbitrator dated 27.01.2016 in proceedings bearing ACP No.7 of 2008 and to order costs of the present petition.

For Petitioners : Ms.Deepika Murali

For Respondent : Mr.Aravind Subramaniam

ORDER

Ms.Deepika Murali, learned counsel on record for six petitioners and Mr.Aravind Subramaniam, learned counsel for sole respondent are before me in this web-hearing on a video-conferencing platform.

2.Captioned Original Petition is listed under the cause list caption 'FOR REPORTING SETTLEMENT', pursuant to earlier proceedings dated

03.08.2020, 24.08.2020 and 07.09.2020, which read as follows:

'Proceedings dated 03.08.2020

'Ms.Deepika Murali, learned counsel for six petitioners and Mr.Aravind Subramaniam, learned counsel for sole respondent are before me in this web-hearing on a video-conferencing platform.

2.Adverting to earlier proceedings dated 25.02.2020 made by Hon'ble Predecessor Judge, both the learned counsel submit that the matter is heading for settlement, but both learned counsel request for some time. At request, adjourned by three weeks.

List under the caption 'FOR REPORTING SETTLEMENT' on 24.08.2020.'

'Proceedings dated 24.08.2020

Mr.Aravind Subramaniam, learned counsel for sole respondent, adverting to earlier proceedings dated 03.08.2020 submits that settlement is in the anvil and requests for a week's time.

List under the same caption on 07.09.2020. '

'Proceedings dated 07.09.2020

It is submitted by both sides that the settlement has been concluded, but learned counsel on both sides seek ten days time to file Memorandum of Compromise in the Registry and bring it on Board.

List under the same caption on 17.09.2020.'

3. Today, aforementioned two learned counsel on record submit that the six petitioners and the sole respondent have arrived at a settlement and have

reduced the same into writing by way of a document in the name and style 'MEMORANDUM OF SETTLEMENT' dated 19.08.2020' (hereinafter 'said settlement memorandum' for the sake of convenience and clarity).

4. Scanned reproduction of said settlement memorandum is as follows:



2. Mr. Laxman Mahadev Chavan, aged 63 years and residing at B-12, Park Dorchan, Lalibhai Park, Andheri West, Mumbai - 400 058;

3. Mr. Ramesh Mahadev Chavan, aged 58 years and residing at No.4, Home Worth, Model Town, Gulinohar Cross Road, WPD Scheme, Mumbai - 400 049;

4. Mr. Arun Mahadev Chavan, aged 58 years and residing at No.4, Home Worth, Model Town, Gulinohar Cross Road, WPD Scheme, Mumbai - 400 049;

5. Mr. Ram Mahadev Chavan, aged 60 years and residing at No.4, Home Worth, Model Town, Gulinohar Cross Road, WPD Scheme, Mumbai - 400 049.

hereinafter collectively referred to as the "Parties of the First Part" which expression shall, unless it be repugnant to the subject, meaning or context thereof, be deemed to mean, and include its successors to the said persons;

India Cements Capital Ltd., a Company incorporated under the Companies Act, 1956, represented by its Assistant Manager, R. Deepak, and having registered office at Dhun Building, 3rd and 4th Floor, 5, Anna Salai, Chennai - 600 002; the Party of the Second Part, which expression shall, unless it be repugnant to the subject, meaning or context thereof, be deemed to mean, and include its successors in title and assigns.

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For INDIA CEMENTS CAPITAL LTD.

R. DEEPAK
Assistant Manager

The Party of the First Part/MSEL and the Party of the Second Part/ICCL, shall hereinafter be collectively referred to as "Parties".

WHEREAS:

1. Madhav Structural Engineering Ltd (hereinafter referred to as "MSEL") was engaged in the business of construction of infrastructure projects and had large work contracts;
2. MSEL procured 'APOLLO' Model WM-100 Wet Mix Plant of capacity 100 TPH consisting of four hand feeders, single deck vibrator, elevated plug mill type mixing unit, 25 ton mix storage silo, water tank of 20,000 litres capacity, control cabin with panel with other accessories (hereinafter referred to as 'said Machinery');
3. India Cements Capital Ltd., the party of the 2nd Part (hereinafter referred to as 'ICCL'), agreed to finance the cost of the said Machinery which was approximately Rs.22,62,000/- (Rupees Twenty-Two Lakhs and Sixty-Two Thousand Only);
4. MSEL paid an amount of Rs.4,62,320/- (Rupees Four Lakhs and Sixty-Two Thousand Only) to the manufacturer of the said Machinery as margin money and the balance sum of Rs.18,00,000/- (Rupees Eighteen Lakhs) was financed by ICCL;
5. ICCL added an amount of Rs.6,06,320/- (Rupees Six Lakhs Six Thousand Three Hundred and Twenty) by way of finance charges and made an agreement of Hire Purchase for a total sum of Rs.24,06,320/-. The said amount of Rs.24,06,320/- was payable in 35 monthly instalments of Rs.68,752/- commencing from 11/10/2001 to 11/10/2004.

For INDIA CEMENTS CAPITAL LTD.

6. The said Hire Purchase Agreement (hereinafter referred to as the "Agreement") was entered into between the Parties on 11.09.2001;

AND WHEREAS

7. Due to various events that transpired after entering into the Hire Purchase Agreement, certain disputes arose between the Parties;

8. ICCL initiated criminal proceedings under Sec.138 of the Negotiable Instruments Act against the Party of the First Part and the said criminal proceedings were closed pursuant to a compromise arrived at in the year 2007 wherein the Party of the First Part made a payment of a compromise amount of Rs.4,12,512/- in full and final settlement of the dues payable to ICCL by them;

9. ICCL issued a legal notice dated 30.07.2007 and filed a Company Petition for winding up of MSEL before the High Court of Judicature at Bombay. The said Company Petition was dismissed vide order dated 14.08.2008 as it was held to be time-barred under the law of limitation;

10. ICCL thereafter preferred an appeal before the Hon'ble Division Bench of the Hon'ble High Court of Judicature at Bombay and the said appeal was also dismissed vide order dated 22.04.2009;

11. ICCL also initiated arbitration proceedings against the Party of the First Part and appointed one Mr.K.R.Veeraragavan as arbitrator at Chennai. The Party of the First Part opposed the said appointment. Thereafter, Mr.K.R.Veeraragavan was replaced by Mr.N.C.Vijayaragavan in the year 2015 as the arbitrator. The Party of the First Part also placed its objections and opposed the appointment of Mr.N.C.Vijayaragavan. Thereafter, the arbitration proceedings continued and an Arbitral Award came to be passed on 27.01.2016;

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12. The Arbitral Award was passed in favour of the Claimant in the arbitral proceedings, being ICCL and the Parties of the First Part were directed to, jointly and severally, make payment of Rs.90,84,802/- (Rupees Ninety Lakhs Eighty Four Thousand Eight Hundred and Two) together with interest at 18% per annum from the date of award until final settlement to ICCL.

13. The Parties of the First Part, aggrieved by the said Arbitral Award, filed O.P.No.707 of 2016, under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the said arbitral award. The said O.P.No.707 of 2016 is pending on the file of the High Court of Judicature at Madras.

14. During the stage of final arguments in the said O.P., the Parties, out of their own free will and volition, initiated settlement talks in order to give a quietus to the disputes that have arisen between them.

15. As a result of the settlement talks and discussions, the Parties have now decided to enter into this Memorandum of Settlement, out of their own free will and volition.

NOW THEREFORE, in consideration of the promises and mutual promises contained herein, the Parties agree as follows:

1. The Party of the First Part, shall ~~now~~ pay a sum of Rs.9,00,000/- (Rupees Nine Lakhs Only) to the Party of the Second Part towards full and final settlement of all dues arising out of the Hire Purchase Agreement and in full and final settlement of claims ~~arising~~ out of the Arbitral Award dated 27.01.2016.



For INDIA CEMENTS CAPITAL LTD.

2. The Party of the First Part shall make the full and final payment of Rs.9,00,000/- (Rupees Nine Lakhs) to ICCL in 4 equated instalments in the following manner:

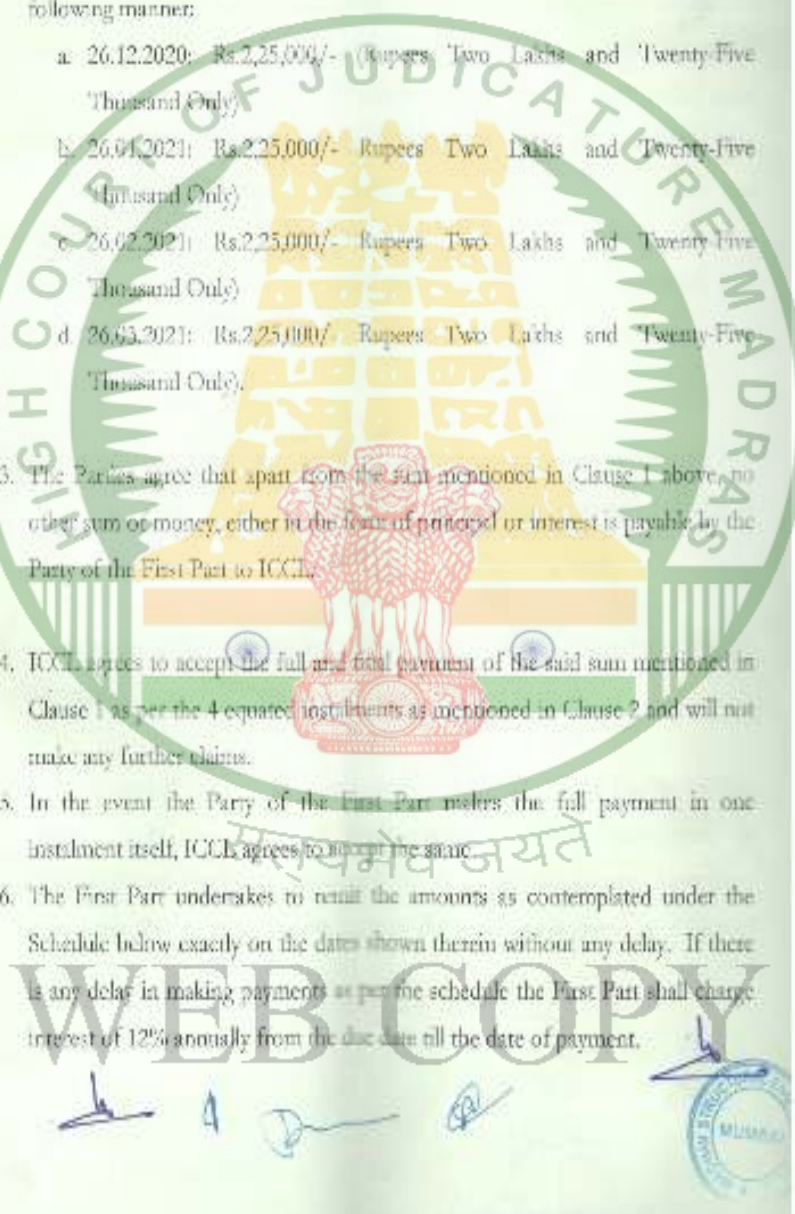
- a. 26.12.2020: Rs.2,25,000/- (Rupees Two Lakhs and Twenty-Five Thousand Only)
- b. 26.01.2021: Rs.2,25,000/- (Rupees Two Lakhs and Twenty-Five Thousand Only)
- c. 26.02.2021: Rs.2,25,000/- (Rupees Two Lakhs and Twenty-Five Thousand Only)
- d. 26.03.2021: Rs.2,25,000/- (Rupees Two Lakhs and Twenty-Five Thousand Only).

3. The Parties agree that apart from the sum mentioned in Clause 1 above, no other sum of money, either in the form of principal or interest is payable by the Party of the First Part to ICCL.

4. ICCL agrees to accept the full and final payment of the said sum mentioned in Clause 1 as per the 4 equated instalments as mentioned in Clause 2 and will not make any further claims.

5. In the event the Party of the First Part makes the full payment in one instalment itself, ICCL agrees to accept the same.

6. The First Part undertakes to remit the amounts as contemplated under the Schedule below exactly on the dates shown therein without any delay. If there is any delay in making payments as per the schedule the First Part shall charge interest of 12% annually from the due date till the date of payment.

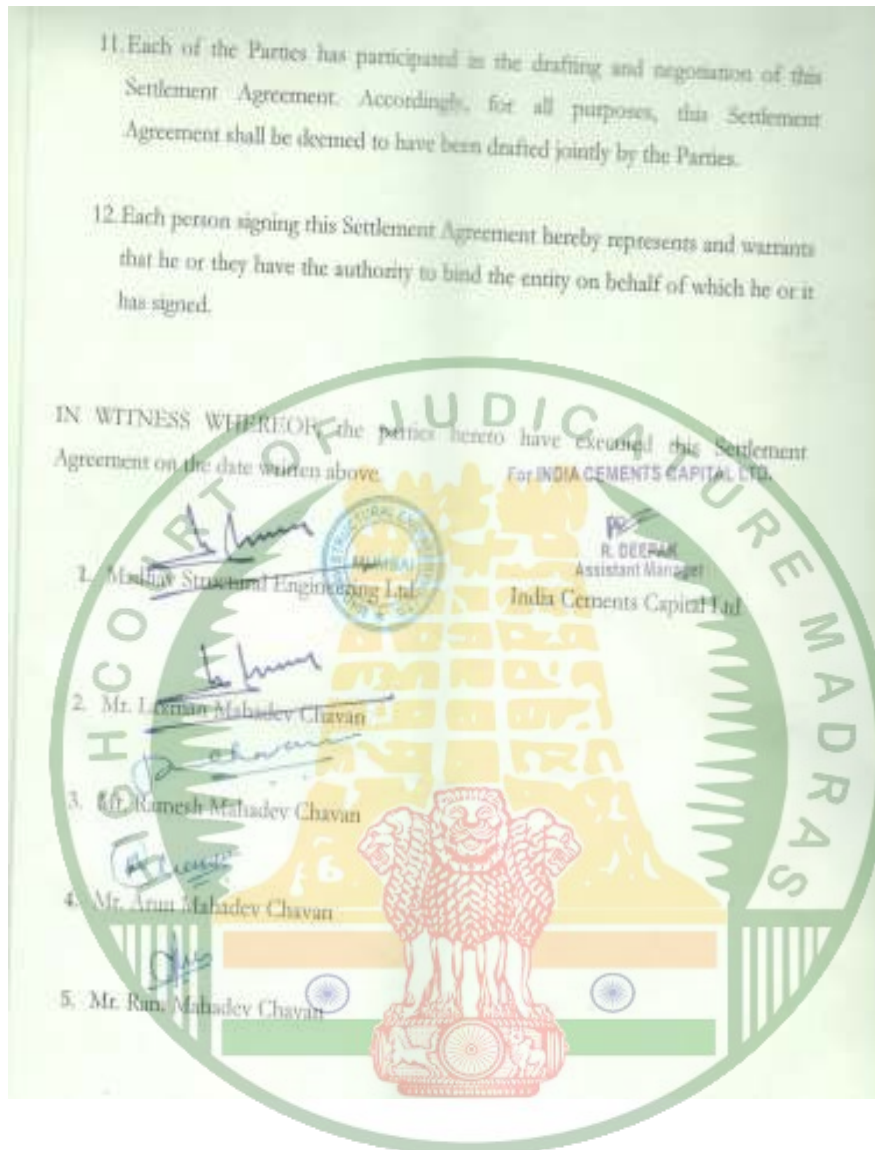


Four handwritten signatures in blue ink are present at the bottom of the page, corresponding to the parties involved in the agreement.



7. In the unlikely event that the Party of the First Part is unable to service any of the 4 instalments within the stipulated time period mentioned in Clause 2, the Party of the First Part will strive to make payment of the same as soon as possible and will prioritize the payment to ICCL above all other payments. The Party of the Second Part accepts that in the event of a default in payment of the amount as per the schedule this Memorandum of Understanding shall stand terminated and the sum paid in terms hereof shall be adjusted towards the dues payable by the First Part to the Second part in respect of the subject hire purchase agreement / arbitral award and the Second Part shall be at liberty to continue the existing civil / criminal proceedings or initiating any fresh legal proceedings against the First Part.
8. Upon the payment of the full and final settlement, the Party of the First Part agrees and undertakes to withdraw O.P.No.707 of 2016, pending on the file of the Hon'ble High Court of Judicature at Madras.
9. Upon receipt of the full and final settlement amount, ICCL agrees to withdraw all pending litigation initiated against the Party of the First Part.
10. This Settlement Agreement is entered into by each of the Parties without reliance upon any statement, representation, promise, inducement, or agreement not expressly contained herein. This Settlement Agreement constitutes the entire agreement between the Parties concerning the aforesaid settlement and release of claims.

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5. Aforementioned learned counsel on record on both sides make a request that captioned OP can be disposed of by holding that said settlement memorandum will substitute the impugned arbitral award dated 27.01.2016. In other words, instead of impugned award dated 27.01.2016, said settlement memorandum will operate as the award between the parties, is the common say of both sides. Considering that this is a virtual hearing, both sides make a joint request for dispensing with the presence of the parties and this request is acceded to.

6. Captioned OP is disposed of on following terms:

a) Said settlement memorandum i.e., MEMORANDUM OF SETTLEMENT dated 19.08.2020 (scanned copy reproduced supra) shall substitute / replace impugned award dated 27.01.2016 made in ACP No.7 of 2008;

b) On and from today, said settlement memorandum will govern the parties instead of impugned award dated 27.01.2016.

c) There shall be no order as to costs.

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17.09.2020

gpa

O.P.No.707 of 2016

M.SUNDAR.J.,

gpa



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17.09.2020

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