

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM:

THE HON'BLE JUSTICE C.V.KARTHIKEYAN

C.S.No.348 of 2020
and O.A.No.654 of 2020
and A.No.74 of 2021

M/s. Yantra Fintech (I) Ltd.,
Having its Office at
No.8, Karpagam Garden,
6th Cross Street,
Adyar, Chennai - 600 020

Represented by its Managing Director,
Mr.N.S.Balamukundan,
Son of Late.Sri.N.S.Parthasarathi

... Plaintiff

..Vs..

1.M/s. Biomax Fuels Limited,
Having its registered Office at
Plot No.S & T Visakhapatnam
Special Economic Zone,
Duvvada, Vishakapatnam - 530 049
State of Andhra Pradesh.

2.M/s. IMC Limited,
Having its registered Office at
P.T.Lee Chengalvaraya Naicker Maaligai,
3rd Floor, Rajaji Salai,
Chennai - 600 001.

... Defendants

PRAYER: Plaintiff filed under and Order VII Rule 1 CPC Read With Order IV Rule 1 of Original Side Rules and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, prayed for a Judgment and Decree against the defendants:-

(a) granting permanent injunction restraining the defendants herein their men, servants or agents or anyone claiming under them from in any manner interfering with the right of the plaintiff to remove and transport 2211.854 MT of Biodiesel processed by the first defendant for the plaintiff lying in tank IMC-16 of the second defendant herein at Vishakapatnam Port.

(b) direct the defendants to pay the plaintiff the costs of the suit.

For Plaintiff : M/s.ARL.Sundaresan,
Senior Counsel
Assisted by Ms.AL.Ganthimathi
and Mr.A.R.Karthick Lakshmanan

For Defendant 1 : Mr.S.R.Sundar

For Defendant 2 : Mr.Vijay Narayan, Advocate
General for Mr.K.Gowtham Kumar

J U D G M E N T

A Joint Memo of Compromise under Order 23 Rule 1 of the Code of Civil Procedure dated 26.01.2021 had been presented in Court earlier in the day to day / 27.01.2021.

2. Heard Mr.ARL.Sundaresan, learned senior counsel on behalf of the plaintiff, Mr.S.R.Sundar, learned counsel for the first defendant and Mr.Vijay Narayan, learned Advocate General on behalf of the second defendant. Mr.ARL.Sundaresan was instructed by Ms.AL.Ganthimathi and Mr.A.R.Karthick Lakshmanan and the learned Advocate General was instructed by Mr.K.Gowtham Kumar, learned counsel.

3. This Joint Memo of Compromise had been signed by the Managing Director on behalf of the plaintiff and by the Authorized Signatory on behalf of the first defendant and by the Authorized Signatory on behalf of the second defendant.

4. The terms of the Joint Memo of Compromise are extracted below:

"2. The Plaintiff has initiated the above suit for release of Biodiesel stored by the 1st defendant in the tanks of the 2nd defendant. The 2nd defendant has claimed lien over the said product stored in the tanks towards the outstanding amounts due from the 1st defendant. The total amount outstanding and payable by the 1st defendant to the 2nd defendant as on 31st December 2020 is Rs.4,26,76,835/- (Rupees Four Crores Twenty Six Lakhs Seventy Six Thousand Eight Hundred Thirty Five). The plaintiff has agreed, in the light of urgency for release of the Biodiesel stored in the tanks of the 2nd Defendant, to pay a sum of Rupees Four crores ten lakhs (Rs.4,10,00,000/-) till 31st December 2020 under the Terminalling Services Agreement (TSA) dated 6th January 2020 between the 1st and 2nd defendant in terms of the present JMOC.

3. The 2nd Defendant has agreed to receive a sum of Rupees Four Crores and Ten Lakhs (Rs.4,10,00,000/-) from the plaintiff towards the dues payable by the 1st defendant to the 2nd defendant till 31st December 2020 in terms of the present JMOC. The balance amount of Rupees Sixteen Lakhs Seventy Six Thousand Eight Hundred Thirty Five only (Rs.16,76,835/-) outstanding and payable by the 1st defendant upto 31st December 2020 under the TSA is being adjusted from the advance available with the 2nd defendant from the 1st defendant. The balance advance of Rupees Five Lakhs Eighteen Thousand Four Hundred and Nineteen only (Rs.5,18,419/-) that is lying with the 2nd Defendant is adjusted towards the charges payable by the 1st Defendant under the TSA for the period from 1st January 2021 to 15th February 2021.

4. The Plaintiff agrees to pay the sum of Rs.4,10,00,000/- (Rupees Four Crores and Ten Lakhs only) to the 2nd defendant in the following manner:

*a. Rs.3,10,00,000/- (Rupees Three Crores and Ten Lakhs only) shall be paid by the plaintiff to the 2nd defendant immediately after the execution of this agreement to the credit of Current Account Number 00040330005354 in the name of the 2nd defendant (IMC Limited) with HDFC Bank Limited at the branch of 759, ITC Centre, Anna Salai, Chennai - 600 002, IFSC Code of the bank branch for RTGS or NEFT is **HDFC00000004**; and*

b. The plaintiff agrees that Rs.1,00,00,000/- (Rs.One Crore only) which was deposited by the plaintiff to the credit of Registrar General, Madras High Court

*pursuant to the order passed by Hon'ble
Madras High Court dated 08.12.2020 shall be
paid to / withdrawn by the 2nd defendant
under this JMOC.*

*5. Upon receipt of payment mentioned in Clause
4(a) above the 2nd defendant, without awaiting the actual
receipt of amount in Clause 4(b), shall release Bio-diesel
currently stored at Tank IMC 16 as per the directions of
the plaintiff.*

*6. The 1st defendant unconditionally,
unequivocally and irrevocably agrees and acknowledges
that the plaintiff is paying the sum of Rs.4,10,00,000/-
(Rupees Four Crores and Ten Lakhs only) on its behalf to
the 2nd defendant. The said amount shall be repaid by the
1st defendant to the plaintiff on or before 31st March 2021
together with interest at 22% p.a., and that the 1st
defendant shall execute such deeds, documents or writings,*

as is called upon by the plaintiff for securing the said payment with interest, failing which the plaintiff is entitled to initiate suitable civil and criminal proceedings against the 1st defendant including for contempt of the orders of this Hon'ble Court. In the event of failure of the 1st defendant to make the said payment within the stipulated period, the plaintiff is entitled to recover the same from the 1st defendant, without recourse to the 2nd defendant. The present JMOC does not in any manner prejudice the rights of the plaintiff to proceed against the 1st defendant for recovery or such other claims as is available to it under the law.

7. The plaintiff and the 1st defendant shall have no claim against the 2nd defendant or any of its subsidiaries, group companies, towards demurrages, dead freight or any other charges or claims, in respect of the Vessel MT.TIRTASARI or any other vessel or any other issues between the parties including quality of the Bio-

Diesel. The 2nd defendant shall have no claims against the plaintiff or the release of Bio-diesel in Tank IMC-16 after receipt of payment as per Clause 4. The plaintiff and 2nd defendant agree that the statements made in the pleadings in the above suit, and issues raised in the notice issued by the parties are also resolved as between themselves and they shall have no claims against each other in that respect.

8. As regards the UCO stores by the 1st defendant in Tank Nos. JRE 9, JRE 13 and IMC 5, it is agreed amongst the parties that UCO presently lying at JRE 9 and JRE 13 shall be transferred to IMC 5. The parties have agreed that the 1st defendant shall pay the 2nd defendant a sum of Rupees Ten Lakhs Ninety Seven Thousand Two Hundred and Forty Nine only (Rs.10,97,249/-) on or before 15th February 2021 and only upon payment of the said amount within the said date the 2nd defendant shall release the UCO on the directions

of the 1st defendant. In the event of any default of this Clause the 2nd defendant shall have the rights to proceed against the 1st defendant in terms of the TSA.

9. The 1st defendant agrees, confirms and undertakes to fully cooperate for the completion of all the terms of this JMOC.

10. In light of the above, it is prayed that this Hon'ble Court be pleased to record this Joint Memorandum of Compromise and dispose of the suit and all connected applications in terms of this Joint Memorandum of Compromise and thus render justice.

11. It is prayed that this Joint Memorandum of Compromise may be treated as part of the records.

Dated at Chennai on this the 26th day of January 2021.

sd/-

sd/-

sd/-

Plaintiff

1st Defendant

2nd Defendant

sd/-

sd/-

sd/-

Counsel for Plaintiff

*Counsel for
1st Defendant*

*Counsel for
2nd Defendant"*

5. When the matter was called up earlier in the day to day, Mr.N.S.Balamukundan, Chairman and Managing Director of the plaintiff also appeared through Video Conferencing. The first defendant was represented by Mr.Ravinder, Chairman / Managing Director and the second defendant was represented by the Chief Executive Officer A.Beer Ali and also by its Legal Officer Mr.Lakshmi Narasimhan, who were also present through Video Conferencing. They and learned senior counsels / counsels affirmed the Memo of Compromise.

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6. In view of the Joint Memo of Compromise, the suit is decreed in accordance with the same.

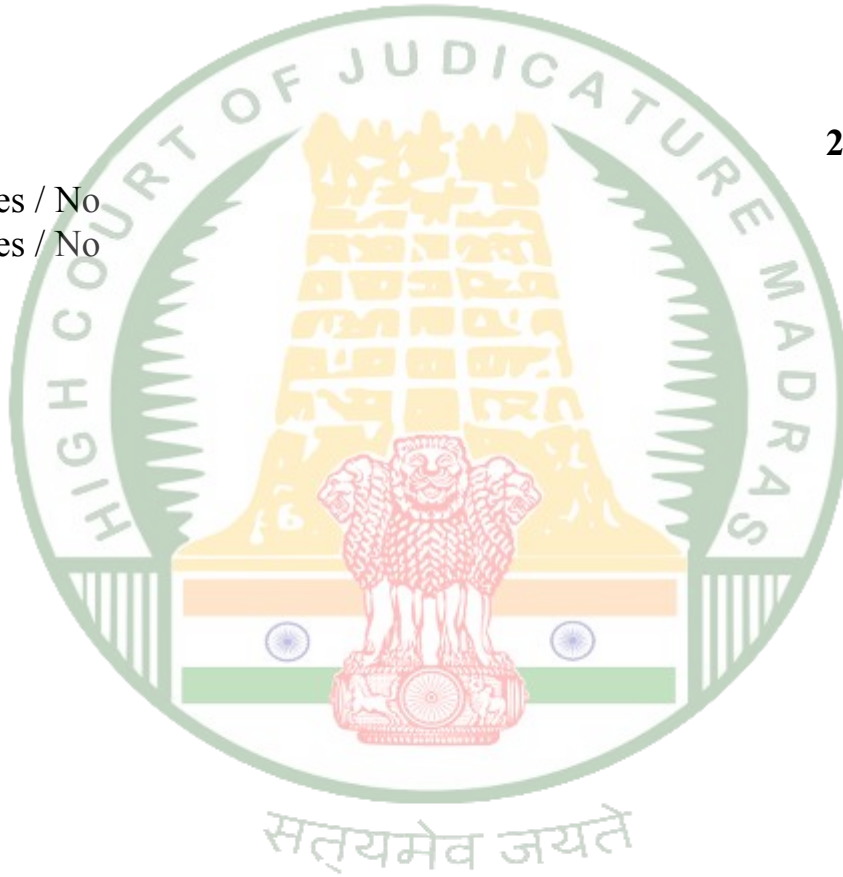
7. There is also another issue. The plaintiff had deposited a sum of Rs.1,00,00,000/- (Rupees One Crore only) to the credit of the suit by direction dated 08.12.2020. In para 4(b) of the Joint Memo of Compromise extracted above, the plaintiff had agreed that the said amount shall be paid to / withdrawn by the second defendant.

8. Accordingly, the Registry may, after following due procedure, release the said amount now lying to the credit of the suit in C.S.No.348 of 2020 to the sum of Rs.1,00,00,000/- (Rupees One Crore only) which has been deposited to the plaintiff and issue a cheque in favour of the second defendant M/s. IMC Limited / without insisting on a separate application to be presented by the second defendant in this regard. The cheque may be issued to a responsible Officer duly authorized for such purpose by the second defendant on proper identification and necessary undertaking given by the said Officer who receives the cheque on behalf of the second defendant. The cheque may also be issued, in the alternative to the learned counsel on record for the second defendant.

9. The suit is decreed in accordance with the Joint Memo of Compromise. No order as to costs. Consequently, the O.A.No.654 of 2020 closed and A.No.74 of 2021 also closed. The Joint Memo of Compromise shall form part of the decree.

27.01.2021

Index : Yes / No
Web : Yes / No
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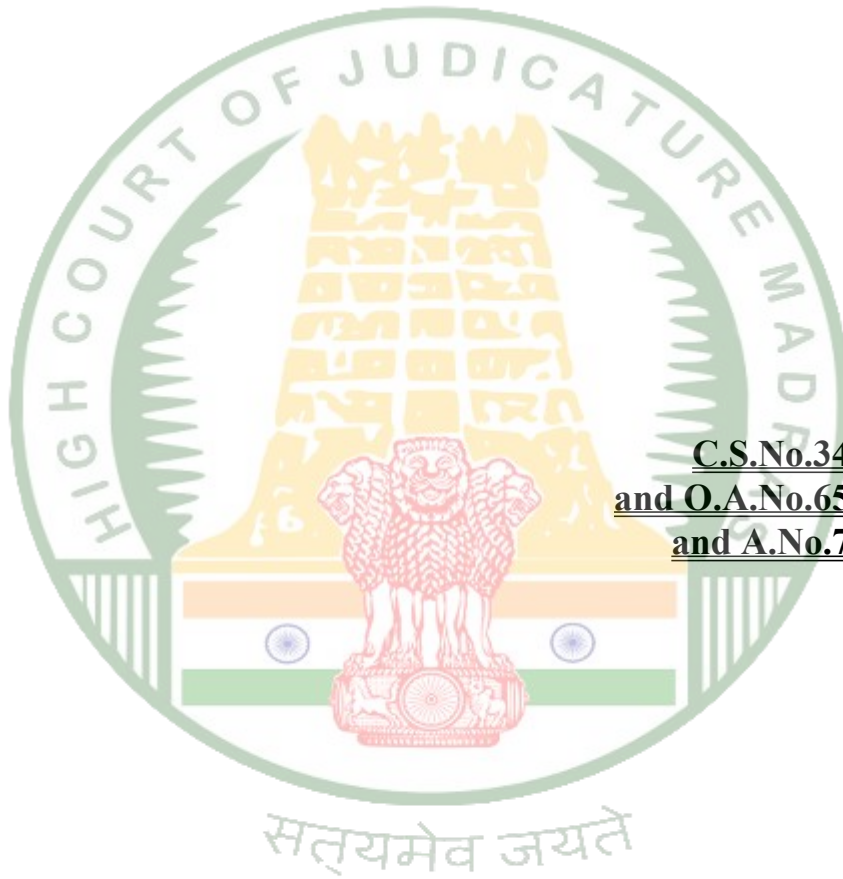


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C.V.KARTHIKEYAN, J

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