

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. ADMIRALTY SUIT (L) NO.18631 OF 2022
WITH
INTERIM APPLICATION NO.2767 OF 2022**

The Phoenix Mills Limited ... Plaintiff

Versus

HBS Realtors Pvt. Ltd. and Anr. ... Defendants

Mr. Rahul Narichania, Senior Advocate with Mr. Huzefa Nasikwala, Mr. sujit Mashal i/by Nasikwala Law Office, for Plaintiff.

Mr. Rohan Sawant with Mr. Priyank Daga i/by Jayakar and Partners, for Defendants.

CORAM: N.J.JAMADAR, J.

DATE: 30th AUGUST, 2022

P.C.:

1. At the outset, the learned Advocate for the Defendants seeks leave to tender Vakalatnama on behalf of the Defendants in the Suit.
2. Leave granted.
3. Heard the learned Counsel for the parties.
4. The learned Counsels make a joint statement that the parties have amicably resolved the dispute and have executed Consent Terms. The Consent Terms are signed by Ms. Rishita Gandhi, Assistant General Manager of the Plaintiff's company, who is authorized by the company by its resolution dated 1st November, 2021, Mr. Karan Tolia, Director of Defendant No.1 who is authorized by the board of

Defendant No.1 by a resolution dated 4th January, 2021 and Mr. Sandeep Shah, Defendant No.2.

5. The signatories to the consent terms are present in Court.

6. Ms. Rishita Gandhi admits the contents of the consent terms and execution thereof. Upon being specifically inquired, Mr. Karan Tolia, director of Defendant No.1, submitted that the Defendant No.1 would abide by the undertakings in the consent terms to pay the amount as per the agreed schedule. Ms. Rishita Gandhi, authorized representative of the Plaintiff submits that the Plaintiff is agreeable to receive the amount as per the schedule.

7. It appears that the parties have worked out a comprehensive settlement of the dispute. The parties have executed the consent terms voluntarily and there is no coercion or duress. The Consent Terms dated 30th August, 2022 are taken on record and marked 'X' for identification.

8. Paragraph Nos.2 to 10 of the Consent Terms ('X') read as under :

"2. Defendant No.1 agrees and concedes that the Plaintiff and Defendant No.1 had validly entered into Agreement for placement of Inter Corporate Deposit dated 8th February, 2018 (ICD) as stated in the plaint.

3. Defendant No.1 submits to a decree in sum of Rs.2,60,00,000/- (Rupees Two Crores Sixty Lakhs only) together with interest thereon at 18% per annum from the date of suit till payment subject to what is stated hereinafter.

4. It is agreed between the Plaintiff and the Defendants and ordered by the Hon'ble Court that upon Defendant No.1 paying to the Plaintiff a gross

sum of Rs.1,80,52,000/- (Rupees One Crore Eighty Lakhs Fifty Two Thousand only) in the manner stated hereinafter punctually and without default, the monetary decree passed herein shall by way of concession, be marked fully satisfied, the concession which is to be strictly observed and performed by Defendant No.1, time being of the essence, is as follows :

- i. Defendant No.1 undertakes to pay a sum of Rs.80,52,000/- (Rupees Eighty Lakhs Fifty Two Thousand only) to the Plaintiff on or before 31st December, 2022 by any mode of banking; and
- ii. Defendant No.1 undertakes to pay a sum of Rs.1,00,00,000/- (Rupees One Crore only) on or before 31st March, 2023 by any mode of banking.

5. Upon the completion of payment of Rs.1,80,52,000/- (Rupees One Crore Eighty Lakhs Fifty Two Thousand only) by the Defendant No.1 in the manner stated herein, no further amounts will be payable out of the amount of Rs.2,60,00,000/- (Rupees Two Crores Sixty Lakhs only) as more particularly mentioned in the clause 3 hereinabove.

6. In the event Defendant No.1 commits any default in payment of Rs.80,52,000/- (Rupees Eighty Lakhs Fifty Two Thousand only) in full by the due date of 31st December, 2022 as set out in clause 4(i) hereinabove, Defendant No.1 undertakes to pay said sum of Rs.80,52,000/- (Rupees Eighty Lakhs Fifty Two Thousand only) along with additional amount of interest calculated at the rate of 18% on the said sum of Rs.80,52,000/- (Rupees Eighty Lakhs Fifty Two Thousand only) from 1st January, 2023 until payment/realization subject however, that the payment will be made on or before 31st March, 2023 and not thereafter.

7. In the event Defendant No.1 commits any default in payment of Rs.1,00,00,000/- (Rupees One Crore only) in toto by the due date of 31st March, 2023 as set out in clause 4(ii) hereinabove and/or fails to pay amounts mentioned in clause 6 hereinabove in toto, the entire decretal amount of Rs.2,60,00,000/- (Rupees Two Crores Sixty Lakhs only) along with interest on the said sum at the rate of R22% p.a. will become immediately due and payable by the Defendant No.1 to the Plaintiff (less any amount paid till then)

from date of suit till payment/realization, and the concession granted herein will stand withdrawn.

8. On the decree passed herein being fully satisfied, the Plaintiff and the Defendant No.1 hereby agree to irrevocably and fully release, waive and relinquish and forever discharge each other from their respective claims, if any, arising out of / relating to the subject matter of the said suit subject to due compliance of the consent terms.

9. The Plaintiff and the Defendant No.1 confirm that they have no further claims and/or disputes subsisting against each other in relation to the suit claim. It is clearly understood and agreed by the Plaintiff and the Defendant No.1 that all the letters, notices or other communication exchanged between the Plaintiff and the Defendant No.1 and/or their lawyers in relation to the subject matter of the said suit including all statements, allegations made and/or contentions raised therein shall stand withdrawn by the party at whose instance such letter / notice was issued. The Plaintiff hereby agrees to withdraw all applications, proceedings, etc. filed against the Defendants herein including the Interim Application No.2767 of 2022 pending before the Hon'ble High Court.

10. The Plaintiff and the Defendants pray to this Hon'ble Court to accept the undertakings given by the Defendant No.1 as an undertaking given to the Court.”

9. In view of the Consent Terms, the Suit stands decreed in accordance with the Consent Terms. The undertakings given in the Consent Terms are accepted as undertakings given to the Court.

10. The Plaintiff is entitled to refund of Court Fee, if any, in accordance with the rules.

11. Decree be drawn.

12. Interim Application No.2767 of 2022 also stands disposed.

(N.J.JAMADAR,J.)