

OD-5

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA/3/2022
In CS/51/2016

CREDWYN HOLDINGS (INDIA) PVT. LTD.
Vs
JIMMY J. GAZADAR

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date: 25TH JANUARY, 2023.

Appearance:
Mr. Soumya Roy Chowdhury, Adv.
Mr. S. Ginodia, Adv.
Ms. Mini Agarwal, Adv.
..for the plaintiff

Mr. Rohan Thawan, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Rahul Auddy, Adv.
Mr. Sarbajit Mukherjee, Adv.
..for the defendant.

The Court: Counsel for the respective parties are present.

By an order dated 22nd February, 2022 this Court has allowed the prayer (a), (b) & (c) of settlement arrived between the parties and prayer (d) was kept in abeyance for compliance. Now the parties submit before this Court that prayer (d) has also been complied with. The executor has paid an amount of Rs.4,25,50,000/- by way of demand draft to the plaintiff and the plaintiff has accepted the sum and submits that the executor has also complied with the prayer (b) of the application with respect of GA No. 3 of 2022.

In view of the submission made by the Counsel for the respective parties, prayer (d) of GA No. 3 of 2022 is also allowed. Parties have filed the settlement before this Court with following terms and conditions :-

- (i) The Executor shall pay to the Plaintiff a sum of Rs.4,50,00,000/- (Rupees four crores fifty lakhs only) in full and final settlement of all disputes, differences and claims between the Plaintiff and the Defendant and/or the Estate of the Defendant, in the manner described herein below. The settlement amount of Rs.4,50,00,000 (Rupees four crores fifty lakhs only) shall consist of Rs.2,05,00,000/- (Rupees two crores five lakhs only) towards repayment of principal, and Rs.2,45,00,000 (Rupees two crores forty five lakhs only) towards payment of interest.
- (ii) The Executor will pay the settlement sum of Rs.4,50,00,000/- (Rupees four crores fifty lakhs only) to the Plaintiff out of the sum of Rs.6.26 crores (Rupees six crores twenty six lakhs only) lying deposited in Bank Account No.1445190899 held with the Kotak Mahindra Bank (Hyderabad – Somajiguda Branch) in the name of “Estate of the Late Mr. Jimmy Jal Gajdar Sale Re”, in the manner as mentioned below:
 - (a) By procuring a Demand Draft in the amount of Rs.4,25,50,000/- (Rupees four crores twenty five lakhs fifty thousand only) in favour of “Credwyn Holdings (India) Pvt. Ltd.”, and handing the same over to the Plaintiff in accordance with the terms specified herein below; and
 - (b) By making a Bank transfer by way of NEFT/RTGS of an amount of Rs.24,50,000/- (Rupees twenty four lakhs fifty thousand only) from Account

No.1445190899 held with the Kotak Mahindra Bank (Hyderabad – Somajiguda Branch) in favour of “Government of India a/c Income Tax” for crediting this amount (being the Tax Deducted at Source @ 10% on the interest amount of Rs.2,45,00,000/-), to the Plaintiff’s Income Tax Permanent Account Number being AABCCO552H, in accordance with the terms specified herein below.

- (iii) The Executor has procured the declarations copies whereof annexed hereto and marked **“A”** and **“B”** respectively from: (i) Mr. Cyrus Dinyar Oshidar, an Indian inhabitant and British national, having Income Tax Permanent Account No.AAPO2906M, residing at Shireen Mansions, B Block, 2nd Floor, Gamadia Colony, Tardeo Mumbai – 400007; and (ii) Mrs. Rita K. Mehta, an Indian National, having Income Tax Permanent Account No.AACPM6628C, residing inter alia at 25 Framroze Court, Marine Drove, Mumbai – 400020, in their respective capacities as the “major beneficiaries” / “main beneficiaries” under the registered Will dated 24th June, 2019 of the Defendant, Mr. Jimmy J. Gazdar (since deceased). The Executor shall deliver the original copies of such declarations to the Plaintiff within 1(one) week from the execution of the instant application. The Plaintiff has also obtained approval of its Board of Directors for entering into this settlement and making the present application, and a copy of the resolution passed by its Board of Directors is annexed hereto and marked **“C”**.
- (iv) Within 7 (seven) days of an Order being passed in terms of prayer (a) of the instant application, the Executor shall deliver a certified copy of the Order to the Kotak Mahindra Bank, and the Executor shall:

- (a) procure the Demand Draft of Rs.4,25,50,000/-
(Rupees four crores twenty five lakhs fifty thousand

only) in favour of “Credwyn Holdings (India) Pvt. Ltd.”, and provide written confirmation of receipt thereof to the Plaintiff along with a photocopy of the Demand Draft.

- (b) Instruct Kotak Mahindra Bank to transfer the amount of Rs.24,50,000/- (Rupees twenty four lakhs fifty thousand only) by way of NEFT/RTGS to “Government of India a/c Income Tax” for crediting this amount as Tax Deducted at Source under the Income Tax Act, 1961 to the credit of the Plaintiff’s Income Tax Permanent Account Number being AABCC0552H, and provide a photocopy of the challan evidencing payment thereof to the Plaintiff.
- (v) The Executor shall duly file Form No.26Q within the period prescribed under the Income Tax Act, 1961, reflecting credit of the TDS amount of Rs.24,50,000/- (Rupees twenty four lakhs fifty thousand only) to the Plaintiff’s Income Tax Permanent Account Number being AABCC0552H, and shall also obtain Form No.16A reflecting the same in favour of the Plaintiff and deliver a copy of such Form No.16A to the Advocates of the Plaintiff.
- (vi) Within 4 (four) weeks of an Order being passed in terms of prayer (a) of the instant application, the Executor shall produce the Demand Draft and payment challan mentioned in paragraph 10(iv) above before this Hon’ble Court and hand over the same to the Plaintiff towards full and final settlement of the claims of the Plaintiff in the present suit.
- (vii) Upon receipt of the said sum of Rs.4,50,00,000/- (Rupees four crores fifty lakhs only) in the manner as stated above, all disputes, differences and claims between the Plaintiff and its directors (on the one hand) and the Defendant and/or the Estate of the Defendant and/or the Executor (on the

other hand) shall stand fully and finally settled, and the Plaintiff and its directors (on the one hand) and the Defendant and/or the Estate of the Defendant and/or the Executor (on the other hand) shall have no claims or demands whatsoever against each other, and each of them they shall stand released and discharged absolutely and forever against any and all claims or demands of any nature whatsoever by the other(s).

(viii) After the amount of Rs.4,50,00,000/- (Rupees four crores fifty lakhs only) is paid to the Plaintiff in the manner described hereinabove, the Executor shall be permitted to withdraw the balance amount remaining in Bank Account No.1445190899 with Kotak Mahindra Bank (Hyderabad – Somajiguda Branch) in the name of “Estate of the Late Mr. Jimmy Jal Gajdar Sale Re” along with all accumulated interest, if any, and close the said account.

(ix) The Executor has represented, assured and warranted to the Plaintiff as set out below, and acknowledges that the Plaintiff is entering into the settlement recorded herein relying on such representations, assurances and warranties:

(a) The registered Will dated 24th June, 2019 of the Defendant Mr. Jimmy J. Gazdar (since deceased), recorded in Folio No. 40V to 47V of Book No. 342 of the Office of the Civil Registrar Cum Sub Registrar & Notary Ex Officio, Bardex, Mapusa, Goa (**“the said Will”**), is the last will and testament of the Defendant Mr. Jimmy J. Gazdar (since deceased), and there are no subsequent will(s) and/or codicil(s) executed by Defendant Mr. Jimmy J. Gazdar (since deceased);

- (b) Mr. Cyrus Dinyar Oshidar is the Sole Executor appointed in the said Will, and is the Sole Executor of the Estate;
- (c) The executor has full, legal and valid power and authority to execute this application, and to enter into the settlement recorded herein, and to perform the obligations hereunder; and the acts of the Executor (including the terms of the settlement recorded herein) are binding upon all beneficiaries under the said Will, including Mr. Cyrus Dinyar Oshidar and Mrs. Rita K. Mehta;
- (d) Execution of this application (and the settlement recorded herein) and performance of the obligations hereunder by the Executor does not and will not violate, breach or result in conflict of applicable law or any contract to which the Estate and/or the Executor is a party;
- (e) To the knowledge of the Executor, there are no proceedings, claims or actions of any nature pending in which: (a) the said Will (or any part or any provision thereof) has been challenged, contested or questioned by any person; and/or (b) the authority of the Executor to act as the Sole Executor of the Estate has been challenged, contested or questioned; and/or (c) the power and/or authority of the Executor to sell, dispose of, or deal with any asset or property forming part of the Estate has been challenged, contested

or questioned; and/or (d) an order, judgment, award, direction and/or prayer has been sought, passed and /or granted, which does or could prevent, prohibit and/or otherwise adversely impact the Executor's ability to execute this application (and the settlement recorded herein) and/or perform the obligations hereunder;

(f) This application (and the settlement recorded herein) does not in way or manner violate or prejudice any of the bequests and/or other stipulations contained in the said Will;

In view of the settlement arrived between the parties and the parties have complied the terms and conditions, thus CS No. 51 of 2013 is disposed of. Decree be drawn accordingly.

Though the matter is in connection with commercial division but inadvertently the matter is listed before this Court and thus, the suit is treated in the list of the commercial division.

(KRISHNA RAO, J.)