

ORDER SHEET

IA No. GA/11/2023

In

CS/359/2012

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

TITAGARH WAGONS LTD.

-VS-

A. P. MOLLER-MAERSK A/S AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : June 26, 2023.

Appearance:

Mr. Gaurab Kumar Das, Adv.
... for the plaintiff.

Mr. Anuj Singh, Adv.
Mr. Ajit Kumar Chaubey, Adv.
Mr. Noorul Islam, Adv.
... for the defendants.

The Court: Counsel for the respective parties are present.

The plaintiff has filed an application being GA/11/2023 praying
for the following reliefs : -

- a) Leave be granted to the plaintiff to amend the cause-title of the present suit in the manner indicated in RED ink in a copy of the plaint being Annexure 'G' hereto;
- b) Department be directed to carry out the amendment within a period of two weeks from the date of the order to be made hereon;
- c) Leave be given to the plaintiff to re-verify and re-affirm the plaint;
- d) The compromise and/or settlement between the plaintiff and the defendants No.1 and 2 in the form of the said agreement, being Annexure 'D' hereto, be recorded, and a decree be passed

recording such settlement and/or compromise as recorded in the said agreement, being Annexure 'D' hereto be recorded;

- e) The suit be dismissed for non-prosecution against the defendants No.3 to 7;
- f) All and/or any interim orders passed in the suit, including the said order dated 7th March, 2014, forming part of Annexure 'C' hereto, be vacated;
- g) Leave be granted to obtain discharge and/or release of the said bank guarantee being no. 092BGFG123620001 dated 27th December 2012 for the sum of Rs.1,99,00,000/- issued by Syndicate Bank, Camac Street Branch and as renewed from time to time;
- h) Registrar, Original Side, High Court, Calcutta be directed to return the original Bank Guarantee being No.092BGFG123620001 dated 27th December, 2012 and all renewals thereof to the plaintiff;
- i) Order directing the Registrar, Original Side, High Court at Calcutta to release and/or disburse in favour of the plaintiff the entire amount lying to the credit of Special Term Deposit bearing no.32778621992 maintained with State Bank of India, Specialised Institutional Banking Branch;
- j) Registrar, Original Side, High Court, Calcutta be directed to disburse the sum of Rs.9,80,499/- deposited in terms of the order dated 4th February, 2013 with all accrued interest thereon to the plaintiff;

Counsel for the plaintiff submits that during the pendency of the suit, the plaintiff and the defendant nos.1 and 2 have settled their disputes and the same is recorded in writing which is appearing at page 39 to 43 of the present application being Annexure D.

Counsel for the plaintiff submits that the plaintiff and the defendant nos.1 and 2 have settled their disputes and the plaintiff do not

intend to proceed with the suit against the defendant nos. 3 to 7 and prays for dismissal of the suit against the defendant nos. 3 to 7.

Counsel for the plaintiff further submits that during the pendency of the suit, the name of the plaintiff company has been changed and the plaintiff intends to amend the name of the plaintiff company in the cause title of the plaint.

Counsel for the plaintiff submits that during the pendency of the suit the plaintiff has submitted Bank Guarantee for an amount of Rs.1.99 crore in favour of the Registrar, Original Side, High Court at Calcutta and also deposited a sum of Rs.1,21,81,938/- and Rs.9,80,000/- in terms of the order passed by this Court with the Registrar, Original Side of this Court and the said amount is lying in the Fixed Deposit. Counsel for the plaintiff submits that as per the terms of settlement entered between the plaintiff and the defendant nos.1 and 2, the plaintiff is entitled to get back the Bank Guarantee as well as the deposited amount which is lying with the Registrar, Original Side of this Court.

Counsel for the defendant nos. 1 and 2 submits that he has no objection if a final decree be passed in terms of the settlement by making the Terms of Settlement as part of the decree and by allowing the plaintiff to take back the Bank Guarantee as well as the Fixed Deposit amount lying with the Registrar, Original Side, High Court at Calcutta and the suit be dismissed as against the defendant nos. 3 to 7.

Counsel for the defendant nos. 1 and 2 further submits that the defendants have filed counter-claim but now as per the settlement made

between the parties, the defendants are not interested to proceed with the counter-claim and accordingly, the same may be dismissed.

In view of the submission made by the counsel for the respective parties, CS/359/2012 is disposed of by the following order :-

“THIS SETTLEMENT AGREEMENT is made on this 21st day of March, 2023.

BETWEEN

TITAGARH WAGONS LIMITED, a company within the meaning of the Companies Act, 2013 having its Registered Office at 756, Anandapur, Eastern Metropolitan Bypass, Kolkata – 700107, hereinafter referred to as the **PARTY OF THE FIRST PART** (which expression shall unless otherwise repugnant to the context or the subject shall be deemed to mean and include its successors, representatives and assigns) of the **ONE PART**

A N D

(1) A. P. MOLLER-MAERSK A/S, a company incorporated under the appropriate laws of Denmark, having its office at 50, Esplanaden, **DK- 1098, Copenhagen K Denmark, and**

(2) MAERSK LINE INDIA PRIVATE LIMITED, a company within the meaning of the Companies Act, 2013 having its eastern regional office at 401 A/B, 402 A/B, Jasmine Towers, 31, Shakespeare Sarani, 4th Floor, Kolkata 700 017 hereinafter referred to as the **PARTIES OF THE SECOND PART** (which expression shall unless otherwise repugnant to the context or the subject shall be deemed to mean and include its successors, representatives and assigns) of the **SECOND PART**.

WHEREAS

- A. The Party of the First Part has instituted a Civil Suit being C.S. No. 359 of 2012 before the Hon'ble High Court at Calcutta against the Parties of the Second Part and others.
- B. In the aforesaid suit various orders have been passed from time to time whereby and whereunder the Party of the First Part has furnished bank guarantee being no. 092BGFG123620001 dated 27.12.2012 for a sum of Rs.1,99,00,000/- in favour of the Registrar of the Hon'ble High Court at Calcutta and the same has been renewed from time to time and lastly on 01.08.2022 being BG No. 092BGFN181650001 dated 14.06.2018 and which is valid till 25.07.2023 as confirmed by the Party of the First part. The Party of the First Part has also made cash deposit of Rs.1,31,62,437/- (Rupees One Crore Thirty One Lacs Sixty Two Thousand Four Hundred Thirty Seven) only with the Registrar, Original Side, High Court at Calcutta for destuffing the containers forming the subject matter of disputes in compliance of conditions imposed by the Hon'ble High Court at Calcutta in the orders passed on an interlocutory application filed by the Party of the First Part.
- C. The Party of the First part and the Parties of the Second Part have now decided to settle all disputes pending between them in the aforesaid suits along with all connected and general applications filed from time to time by both the parties, inter alia, on the terms and conditions contained hereunder.

NOW THIS AGREEMENT WITNESSETH AS UNDER

- a. The Party of the First Part shall pay to the Parties of the Second Part a sum of Rs.2,34,82,000/- (Rupees Two Crore Thirty Four Lacs Eighty Two Thousand only) inclusive of Goods and Services Tax in full and final settlement of all claims of the Parties of the Second Part against the party of the First Part.
- b. The Parties of the second part hereby unconditionally and irrevocably agree that simultaneously with the execution of his

agreement the Party of the First Part shall hand over a demand draft number 632014 dated 09.03.2023 issued in the name of Maersk Line India Private Limited for sum of **2,34,82,000/-** (Rupees Two Crore Thirty Four Lacs Eighty Two Thousand) drawn on ICICI bank, to the authorized representative of the Parties of the Second Part who shall handover the agreement duly signed by the parties of the Second Part upon credit of the said settlement amount of Rs. 2,34,82,000/- (Rupees Two Crore Thirty Four Lacs Eighty Two Thousand Only) into the account of Maersk Line India Private Limited.

- c. Upon receiving the aforesaid documents from the Parties of the Second Part, the party of the first part shall be entitled to apply for withdrawal of the aforesaid suit including claim and counter claim of the Party of the First Part and Parties of the Second Part respectively and discharge of BG being no.092BGFG123620001 dated 27.12.2012 for a sum of Rs.1,99,00,000/- in favour of the Registrar of the Hon'ble High Court at Calcutta or any extension thereof and the party of the first part shall also be entitled to withdraw cash of Rs.1,31,62,437/- (Rupees One Crore Thirty One Lacs Sixty Two Thousand Four Hundred Thirty Seven) only which was deposited by the Party of the First Part and presently lying with the Registrar, Original Side, High Court at Calcutta along with accrued interest. The Parties of the Second Part hereby agree and undertake to consent and/or convey their 'No Objection' to such application to the Hon'ble High Court at Calcutta and for such purpose shall ensure that they are adequately represented by their counsel at the time of hearing of such application to be made by the Party of the First Part for the aforesaid purpose.
- d. The party of the First Part and the Parties of the Second Part shall apply for the said civil suit being C.S. No.359 of 2012 and the claim and counterclaim filed on behalf of the party of the First Part and Parties of the Second Part therein to stand dismissed as

withdrawn by the Party and the First Part and the Parties of the Second Part respectively including all connected applications made by the parties from time to time, in view of the present settlement and in terms thereof.

- e. The parties hereto hereby agree that this settlement resolves all disputes among the parties hereto and neither of the Parties shall have any further claim or shall be entitled to agitate any claim in dispute in C. S. No. 359 of 2012 and in the Counter Claim filed with regard thereto. It is further agreed that neither of the Parties and/or their assigns/affiliates/associates shall raise any of the issue involved in the subject legal proceedings in any forum hereafter and shall not have any claims whatsoever against each other.
- f. Upon the suit being C. S. No.359 of 2012 alongwith all connected and general applications including the contempt/other applications being disposed of in terms hereof, both the parties shall stand released and discharged to each other from all past, present and further claims, demands, actions and causes of action of any kind or nature, whether known or unknown, based on, arising from, or relating to all transactions, communications, acts, failure to act, incidents, and circumstances. The parties agree that there will be no disparaging statement issued directly or indirectly by the parties against each other.
- g. The party of the First Part also confirms that none of the other defendants in C.S. No. 359 of 2012 have filed any claim or counterclaim against the party of the First Part. The party of the First Part assures and undertakes that in the event of any future claim being raised against the Party of the First Part, though beyond limitation period, in respect of the self-same transactions being raised by any other party arrayed as defendant in C.S. No.359 of 2012, the Party of the First Part shall indemnify the

Parties of Second Part and the Parties of the Second Part shall not have any liability therefor.

IN WITNESS WHEREOF the parties hereto abovenamed have set and subscribed their respective hands and seals the day, month and year first above written.”

The Registrar, Original Side of this Court is directed to release the deposited amount of Rs.1,21,81,938/- and Rs. 9,80,000/- lying in the Fixed Deposits along with interest accrued thereon and the Bank Guarantee for an amount of Rs.1.99 crore in favour of the plaintiff with proper identification within a period of three weeks from carrying the amendment by the plaintiff.

The department is directed to carry out the amendment in terms of prayer (a) and (b) of the application and the plaintiff is directed to re-verify and re-affirm the plaint within a week thereafter.

CS/359/2012 is dismissed against the defendant nos. 3 to 7. The counter-claim filed by the defendant nos. 1 and 2 is also dismissed.

CS/359/2012 and the connected application being GA/11/2023 are disposed of in terms of the above order. Decree be drawn accordingly.

(KRISHNA RAO, J.)