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OSA(CAD) No.102 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.(CAD) No.102 of 2021
and C.M.P.No.17724 of 2021

Tamil Nadu Civil Supplies Corporation,
rep. by its Managing Director,
No.12, ThambuSamy Road, Kilpauk,
Chennai-600 010.

.. Appellant

Vs

1.M/s. A1 Champdany Industries Limited,
No.25, Princep Street,
Kolkatta-700 072.

2.T.Vijayalakshmi
No.13, 3rd Street,
Malangandapuram,
Pallavaram,
Chennai-600 043.

.. Respondents



OSA(CAD) No.102 of 2021

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Prayer : Appeal under Section 13(1) of the Commercial Courts Act read with Section 37 of the Arbitration and Conciliation Act, 1996 read with Clause 15 of the Letters Patent to set aside the decree and judgment dated 21.2.2019 in O.P.No.730 of 2015 and allow the Original Side Appeal.

For Appellant : Mr.M.K.Kabir
Senior Counsel
for Mr.K.Raghuraman

For Respondents : Mr.S.Raghunathan
for M/s.B.Giridhar Rao

: Mr.A.Annadurai
Managing Director
Tamil Nadu Civil Supplies
Corporation

[Present in Court]

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Further to the orders passed by this Court, the last one being on 9th



OSA(CAD) No.102 of 2021

WEB COPY

December, 2024, the parties have amicably settled the matter. Appellant has agreed to pay, in full and final settlement of all claims of respondent No.1, a sum of Rs.65.00 lakhs, which respondent No.1 has agreed to accept.

2. Shri Kabir states that, by an order dated 2nd September, 2023, the XXV Assistant City Civil Court, Chennai in Execution Petition No.1371 of 2020, prohibited the withdrawal of the amount of Rs.65,00,624/- from the Account No.10242276559 lying in the State Bank of India, Meenambakkam Branch to the credit of appellant. Shri Kabir states the said amount can be paid over to respondent No.1 in full and final settlement by rounding off to Rs.65.00 lakhs. The certified true copy of the resolution dated 12th December, 2024 and the consent of the Managing Director also dated 12th December, 2024, are taken on record and marked as “X” and X-1”, respectively. The same are also scanned and reproduced for ease of reference:



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OSA(CAD) No.102 of 2021

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Post Box : 751		Phone 26426773 &
Tele Address : Unavipural		26424571
Fax : 044-26422657		26422254
044-26403269		26421150

TAMIL NADU CIVIL SUPPLIES CORPORATION
(Tamil Nadu Government Undertaking)
Head Office : No.12, Thiruvananthapuram Road, Chennai - 12
Head Office : CMRL, Adyar Building, Annamalai High Road,
Koyambedu, Chennai - 600 107

CERTIFIED TRUE COPY OF THE RESOLUTION NO. 362031 PASSED BY
THE BOARD OF DIRECTORS OF TAMIL NADU CIVIL SUPPLIES
CORPORATION ON 12.12.2024.

Sub: Purchase of 100 Lakhs number of 50 Kg. Capacity 'B' Twill New Rule Gunnies - Purchase orders issued to M/s.A1 Champdany Industries Limited, Kolkata - belated supply noticed Liquidated damages imposed - Arbitration award passed by Arbitrator in favour of the supplier - Original Side Appeal filed against the Arbitral award rejected by the Court - Subject placed before the Board to authorize the Managing Director to settle an amount of Rs.65,00,000 to M/s.A1 Champdany Industries Limited, Kolkata.

(BS47400/2008)

RESOLVED THAT the Board of Directors be and is hereby authorized the Managing Director to make one time settlement of an amount of Rs.65,00,000- (Rupees Sixty Five Lakh only) to M/s.A1 Champdany Industries Limited, Kolkata, as advised by Mr. M. K. Raghavan, Advocate-at-Law dated: 09.12.2024 towards the Liquidated Damages imposed by TNCSC against the belated supply made by M/s.A1 Champdany Industries Limited, Kolkata vide purchase order BS47400/2008, Dt:20.10.2006 of 50 Kg Capacity 'B' Twill New Rule Gunnies.

For Tamil Nadu Civil Supplies Corporation,

Company Secretary



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OSA(CAD) No.102 of 2021

PROCEEDING OF THE MANAGING DIRECTOR : TNCSG:
POONAMALLEE HIGH ROAD : KOYAMBAHILL : CHENNAI - 600 107.
CHENNAI - 600 107.

PRESENT : THIRU. A. ANNAPPAI, I.A.S.,

Proceedings No.882/47400/2008

Date: 12.12.2024

Subj: Purchase of 100 Lakhs number of 50 Kg. Capacity 'D' Twill New Dale Gunnies — Purchase orders issued to M/s.A1 Chamudany Industries Limited, Kolkata - belated supply notified Liquidated damages imposed — Arbitration award passed by Arbitrator in favour of the supplier — Original Side Appeal - Filed against the Arbitral award rejected by the Court. — One time settlement of an amount of Rs.55,00,000 to M/s.A1 Chamudany Industries Limited, Kolkata - orders issued.

- Read: 1. Board Agenda No.202, held on 15.12.2008
2. This Office Memo: No.386/47400/2008 dated 20.1.2009
3. Agreement dated 19.01.2009
4. Board Agenda Minutes No.111, dated 20.05.2009.
5. Arbitration award dated 10.04.2013.
6. O.P.No.730 of 2015 dated 31.02.2019.
7. E.P.No.1371/2020 order dated 04.04.2024
8. Board resolution No.86 dated 12.12.2024
9. And other connected records.

ORDER

The tender for purchase of 50 Kg 'D' Twill New Dale gunnies was called for on 11.11.2008 and the Tender was opened on 15.12.2008 and the Tender was opened on 15.12.2008 for the purchase of 100 lakh numbers of 50Kg capacity 'D' Twill New Dale Gunnies. M/s.A1 Chamudany's Industries Ltd. Kolkata was the successful Tenderer. In terms of the Resolution passed by the Board, order item No.202 of 210 - Board Meeting held on 30.12.2008 orders were placed with the



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OSA(CAD) No.102 of 2021

2

said Industry for the supply of the said quantity within a time frame. Accordingly an Agreement dated 19.01.2009 was entered into between the parties.

During the Course of supply, the said Industry failed to adhere to the time lines stipulated in the contract, citing force majeure as the reason for the same. The same was not accepted by the Corporation and therefore, liquidated damages was levied in terms of Clause 10 of the Agreement dated 19.01.2009. The said action was taken as the said Industry failed to produce relevant proof pertaining to the force majeure Clause pleaded by it. The Corporation has also took into consideration the details of the dispatches made by the Industry during the relevant period between 16.02.2009 and 26.02.2009. The amount of liquidated damages which was levied amounts to Rs.35,86,294/- (Rupees Thirty Five Lakhs Eighty Six Lakhs Two Hundred and Four only) vide proceedings No.RS4/47400/2008 dated 20.07.2009.

Aggrieved by the said Imposition, the Claimant instituted Arbitral proceedings and the Arbitrator by Award dated 10.04.2013 held that the imposition of liquidated damages is unfair and therefore, directed the refund of the sum of Rs.35,86,294/- (Rupees Thirty Five Lakhs Eighty Six Lakhs Two Hundred and Four only) being the liquidated damages imposed without any interest. The Corporation instituted O.P.No.730 of 2015 under Section 34 of the Arbitration and Conciliation Act, challenging the said Award. The said challenge was dismissed by the Hon'ble High Court of Madras by order dated 21.02.2019. Aggrieved by the same the Corporation has preferred



OSA(CAD) No.102 of 2021

WEB COPY

3

O.S.A.No.102 of 2021 under Section 37 of the Arbitration and Conciliation Act.

Pending disposal of the above Appeal the contractor filed Execution Petition No.1371 of 2020 before the XXV Assistant City Civil Court, Chennai for enforcing the Award under Section 36 of the Arbitration and Conciliation Act. The Learned Judge by order dated 02.09.2023 prohibited the withdrawal of the amount of Rs.65,00,624/- (Rupees Sixty Five Lakhs Six Hundred and Twenty Four only) from the Account No.10242276559 in the State Bank of India, Meenambakkam Branch.

When the Original Side Appeal was listed for Arguments, the Hon'ble High Court of Madras called upon the Counsels on either side to explore the avenue for arriving at an amicable settlement. Taking into consideration the prohibitory order passed by the executing Court, the Senior Counsel engaged by the Corporation suggested that the matter can be settled by releasing the sum attached being rounded off to Rs.65,00,000/- (Rupees Sixty Five Lakhs only). The counsel on record has also forwarded his request to place the matter before the Board for obtaining its concurrence.

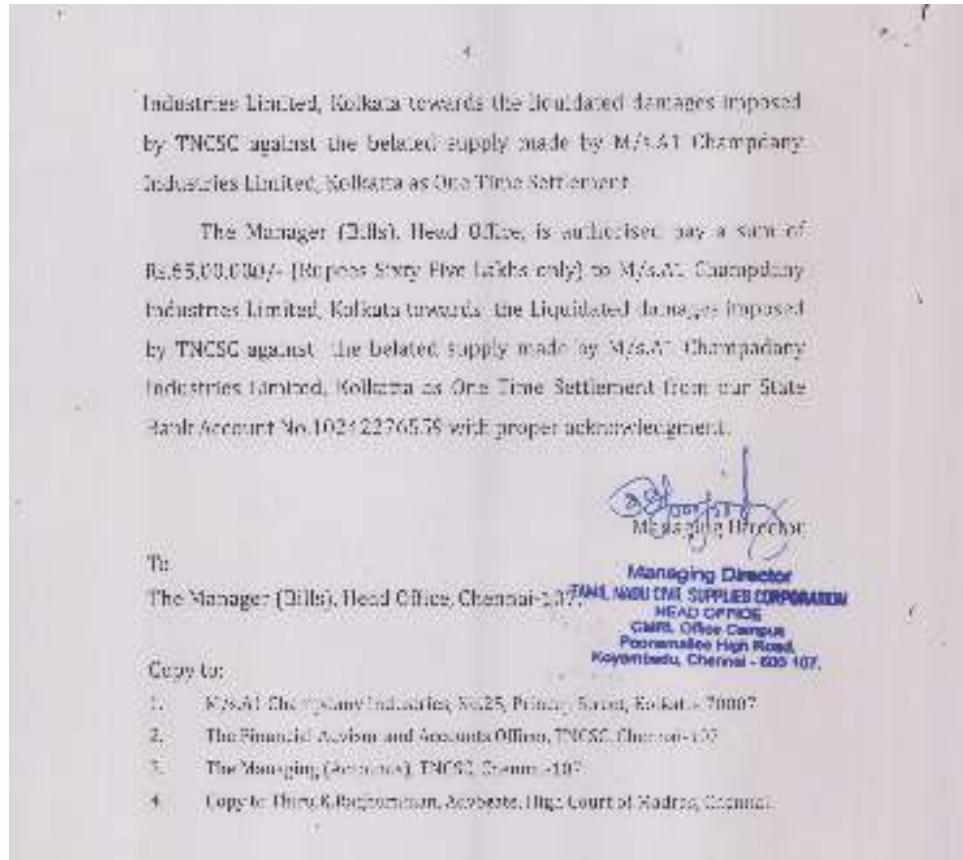
Accordingly, the matter was placed before the Board of Directors and the Board by Resolution No.36/2024 dated 12.12.2024 has authorised the Managing Director to make a One Time Settlement of the amount of Rs 65,00,000/- (Rupees Sixty Five Lakhs only) to M/s.A1 Champdany Industries Ltd, Kolkatta. In furtherance to the aforesaid resolution sanction is hereby accorded for a sum of Rs 65,00,000/- (Rupees Sixty Five Lakhs only) to be paid to M/s.A1 Champdany



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OSA(CAD) No.102 of 2021



3. Accordingly, we noted the settlement between the parties. The State Bank of India, Meenambakkam Branch, is directed to release the amount of Rs.65,00,000/- (Rupees Sixty Five Lakhs only) out of Rs.65,00,624/-, being frozen pursuant to the order dated 2nd September, 2023, to the credit of the following account number of respondent No.1:



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OSA(CAD) No.102 of 2021

Beneficiary's Name: A1 Champdany Industries Ltd
Account No. : 60120668677
Bank Name : Bank of Maharashtra
N S Road Branch
Kolkata-700 001
IFSC Code : MAHB0000455

The balance amount of Rs.624/- be released to appellant. The amount shall be released within one working day of receiving a copy of this order from advocate for respondent No.1. The bank shall act on the copy of this order authenticated as true copy by the Court Master of this Court.

4. Shri Ragunathan says once the amount is received by respondent No.1, the award be noted as satisfied.

5. Appeal is, accordingly, disposed of. There shall be no order as to costs. Consequently, interim application stands closed. .

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY,J.)

16.12.2024

Index : Yes/No

NC : Yes/No

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OSA(CAD) No.102 of 2021

To

The Sub-Assistant Registrar (OS)
High Court, Madras.



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OSA(CAD) No.102 of 2021

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY,J.

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O.S.A.(CAD) No.102 of 2021

16.12.2024