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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**
and
THE HONOURABLE Mrs.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A.No.12 of 2021

Estra Enterprises Private Limited
6th Floor, Tower C, Tek Meadows
No.51, Rajiv Gandhi Salai (OMR)
Sholinganallur, Chennai - 600 119
Represented by Mr.Chinna Thalakku Thevar Shakthivel .... Appellant

Vs

BWCI Pension Trustees Limited
As Trustee of the Deutsche Bank Group
International Pension Plan
P.O. Box No.68, Albert House
South Esplanade, St.Peter Port
Guernsey, GY13BY,
Represented by Mr.Michael McKay ... Respondent

Prayer : Original Side Appeal filed under Order XXXVI Rule 1 of the Madras High Court Original Side Rules r/w Clause 15 of the Letters Patent, praying to set aside the fair and decreetal order dated 21.02.2020 in Company Application No.80 of 2017 in C.P. No.93 of 2016 on the file of High Court, Madras.

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For Appellant : Mr.Naveen Kumar Murthi

For Respondent : Mr.R.Murari, Senior Counsel
Instructed by Ms.Meera Moganasundaram
of M/s.Samvad Partners

JUDGMENT

In the captioned intra-court Appeal i.e., 'Original Side Appeal' [hereinafter 'OSA' for the sake of brevity], Mr.Naveen Kumar Murthi, learned counsel for appellant 'Estra Enterprises Pvt. Ltd.,' [hereinafter 'ESTRA' for the sake of brevity] and Mr.R.Murari, learned Senior Counsel instructed by Ms.Meera Moganasundaram of M/s.Samvad Partners (Law Firm) on record for respondent 'BWCI Pension Trustees Ltd.,' ['BWCI' for the sake of brevity, convenience and clarity] are before us.

2. Aforementioned counsel and senior counsel submit that ESTRA and BWCI have arrived at a settlement, reduced to writing the terms of settlement vide a 'settlement agreement dated 11.01.2024' [hereinafter 'said settlement agreement' for the sake of brevity, convenience and clarity] and an addendum to said settlement agreement, which we are informed was executed on 15.04.2024. To be noted, addendum to said settlement agreement is only for the limited purpose of extending the time line vide Clause 9 read with Clause

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20 of said settlement agreement, to be noted time line lapsed on 27.03.2024, in and by the addendum {which we are informed is dated 15.04.2024} the time line now stands extended by 90 days i.e., upto 25.06.2024.

3. Both counsel on either side submit that, a closure to the captioned OSA may please be given by recording the said settlement agreement and aforementioned addendum to said settlement agreement. Therefore, it is really not necessary to dilate much on details, however facts (shorn of granular particulars) i.e., factual matrix in nutshell containing broad facts that are imperative for appreciating this consent closure order will suffice.

4. The factual matrix in nutshell is that the nucleus of lis is constituted by three Memoranda of Understanding dated 16.03.2012, 18.11.2015 and 03.02.2016, all of which collectively pertain to purchase of shares *inter alia* by ESTRA qua BWCI; that company petitions being C.P. Nos.92 and 93 of 2016 were moved by one 'Roverco Apparel Company Private Ltd.,' [hereinafter 'ROVERCO' for the sake of brevity] and ESTRA respectively with the same prayer i.e., a prayer to sanction a scheme of arrangement dated 01.04.2015; that these two company petitions were moved *inter alia* under

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Sections 391 to 394 of 'the Companies Act, 1956' [hereinafter 'Old Companies Act' for the sake of convenience] read with Section 52 of the 'Companies Act, 2013' [hereinafter 'New Companies Act' for the sake of convenience] read with Section 100 to 104 of Old Companies Act; that these two company petitions were disposed of by Hon'ble Single Judge presiding over a Company Court in and by a common order dated 01.06.2016; that thereafter BWCI moved an application in Company Application No.80 of 2017 *inter alia* seeking a prayer to direct ESTRA to implement the sanctioned scheme of arrangement; that this Company Application No.80 of 2017 was contested and it was concluded in and by order dated 21.02.2020 made by another Hon'ble Single Judge presiding the Company Court; that this 21.02.2020 order shall be referred to as 'impugned order' as this order is under challenge in the captioned OSA; that ESTRA and BWCI have now entered into aforementioned said settlement agreement and addendum and agreed to give quietus to captioned OSA vide the said settlement of agreement and addendum; that besides said settlement agreement and addendum thereto, an arbitration agreement captioned 'AGREEMENT RE ARBITRATION' dated 11.01.2024 was entered into between ESTRA and BWCI with regard to certain arbitral disputes; that both learned counsel

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submit that Hon'ble Supreme Court has appointed a former Hon'ble Judge of Supreme Court as Sole Arbitrator and arbitration is under way; that it is submitted in one voice in unison by learned counsel on both sides that the arbitral disputes will not come in the way of said settlement agreement and addendum thereat being recorded and giving quietus to captioned OSA; that this Court now proceeds to record said settlement agreement and addendum to said settlement agreement for giving a closure to the captioned OSA.

5. To be noted, Mr.V.V.Sivakumar of M/s.Dua Associates who is present in Court represents 'M/s.Axis Bank' [hereinafter 'said bank' for the sake of convenience and clarity].

6. A scanned reproduction of said settlement agreement is as follows :

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SETTLEMENT AGREEMENT

This **SETTLEMENTAGREEMENT** (this "Agreement") is entered into on this the 11th day of January2024, by and between:

(1) Estra Enterprises Private Limited, company incorporated and registered under the laws of India and having its registered office at 6th Floor, Tower C, Tek Meadows, No. 51, Rajiv Gandhi Salai (OMR), Sholinganallur, Chennai – 600 119 duly Represented by its Director Mr. Harinder Singh (hereinafter referred to as **"ESTRA"** which expression shall, unless it be repugnant to the context, include its successors and permitted assigns) on the **FIRST PART;**

AND

(2) BWCI Pension Trustees Limited as trustee of the Deutsche Bank Group International Pension Plan, Account Reference 1068/103 having office at Albert House, South Esplanade, St. Peter Port,

Mr.Harinder Singh
(Director)
Estra Enterprises Private Limited

Mr.Michael McKay
(Director)
For BWCI Pension Trustees Limited

Ms. Anna Gray
(Director)
For BWCI Pension Trustees Limited

ESTRA ENTERPRISES PVT. LTD. CHENNAI 600 119

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Guernsey, GY1 1AW duly Represented by its Directors Mr. Michael McKay and Ms. Anna Gray (hereinafter referred to as "**BWCI**" which expression shall, unless it be repugnant to the context, include his successors and legal heirs) on the **SECOND** PART;

The Party of the first part and the Party of the Second Part shall hereinafter be collectively referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS:

A. BWCI had subscribed to 16,896,084 (Sixteen Million Eight Hundred Ninety Six Thousand and Eighty Four Only) equity shares (hereafter, "**BWCIShares**") of the Company in the financial year 2006-2007 by investing an amount of INR 66,31,71,297 (Indian Rupees Sixty Six Crores Thirty One Lakhs Seventy One Thousand Two Hundred and Ninety Seven Only).

Mr.Harinder Singh
(Director)
Estra Enterprises Private Limited

Mr.Michael McKay
(Director)
For BWCI Pension Trustees Limited

Ms. Anna Gray
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ESTRA along with Ratha Holding Company Pvt Ltd, Sakh Holding Co LLP, Mahesh Investments Pvt Ltd, Travel Inn Pvt Ltd and BWCI entered into two MoUs for buyout of BWCI's stake in ESTRA which were executed in the years 2015 and 2016. Earlier, Ratha Holdings Pvt Ltd had also entered into an MoU for buyout of BWCI's stake in ESTRA which were executed in the year 2012. The third MoU dated 03.02.2016 was in supersession of the MoU dated 16.03.2012 and 18.11.2015 and for the purpose of ensuring exit of BWCI from ESTRA (hereinafter referred to as the "Third MoU"). The execution of the Third MoU was contingent upon BWCI's approval of a Scheme of Arrangement ("Scheme") between ESTRA and Roverco Apparel Company Private Limited. As per the Third MoU, ESTRA would buy back its equity shares from its shareholders including BWCI's shares and any reminder shares held by BWCI pursuant to the buyback under the Scheme would be purchased by Ratha Holdings Private Limited or one or more of its nominees on or before 31.05.2016.The Hon'ble High Court of Madras passed an order approving the Scheme on 1st June 2016 in Company Petition No. 92 of 2016 and 93 of 2016. Subsequent to the sanctioning of the Scheme, ESTRA failed to

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(Director)
Isim Enterprises Private Limited

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(Director)
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buy back the shares of BWCI and BWCI preferred a Section 9 Application under the Arbitration and Conciliation Act, 1996 vide O.A. No. 919 of 2016 for breach of the Third MoU. BWCI also filed C.A. No. 80 of 2017 in C.P. No. 93 of 2016 under Section 392 of the Companies Act 1956 for the enforcement of the Scheme sanctioned by the Madras High Court vide its order dated 1st June 2016. On 21st February 2020, the Learned Single Judge of the High Court in C.A. No. 80 of 2017 in C.P. No. 93 of 2016, was pleased to pass an order directing the buyback of equity shares of BWCI held in ESTRA. As ESTRA did not comply with the order, BWCI filed Contempt Petition No. 683 of 2020 against ESTRA in C.A. No. 80 of 2017 in C.P. No. 93 of 2016. ESTRA preferred an Appeal before the Division Bench of the High Court by filing O.S.A. No. 12 of 2021 against the order dated 21st February 2020 in C.A. No. 80 of 2017 in C.P. No. 93 of 2016.The Division Bench of the High Court, however refused to grant stay on the proceedings in Contempt Petition No. 683 of 2020.

ESTRA, aggrieved by the order dated 8th January 2021 in OSA No. 12 of 2021, filed an Appeal before the Hon'ble Supreme Court of India by filing Special Leave Petition (Civil) No. 15185 of 2021.

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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The Hon'ble Supreme Court vide order dated 25th October 2021 passed an order granting stay of all further proceedings in Contempt Petition No. 683 of 2020 pending disposal of OSA No. 12 of 2021 subject to the condition of depositing INR 15 crores by ESTRA within four weeks from the date of the said order and BWCI was permitted to withdraw such amounts without furnishing any security. ESTRA prepared demand drafts for the relevant amounts in the name of BWCI on 19th November 2022 and 20th November 2022. However, due to a mismatch in the name of the recipient (which should have been the Registry of the Hon'ble Madras High Court), it was not possible for ESTRA to deposit them within the custody of the Hon'ble Madras High Court within the deadline. As no deposits were made within the deadline, BWCI preferred a Contempt Petition (Civil) Diary No. 8292 of 2022 before the Supreme Court of India against the order dated 25th October 2021 in SLP (C) No. 15165 of 2021 and the Hon'ble Supreme Court of India vide order dated 9th May 2022 was pleased to direct ESTRA to deposit the Demand Draft of INR 15 crores in the Registry of the Hon'ble Madras High Court

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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within three days and directed the Registry of the Madras High Court to put it in Court's Account.

B. ESTRA deposited two demand drafts totaling to the sum of INR 15 crores drawn in favour of Registrar General, High Court of Madras (hereinafter referred to as "the Deposited Amount"). BWCI obtained certificate of funds in the above O.S.A. No. 12 of 2021 from the Madras High Court on 9th June 2022. BWCI preferred C.M.P. No. 9564 of 2022 for withdrawing the sum of INR 15 crores deposited with the Court and ESTRA preferred C.M.P. No. 9593 of 2022 seeking transfer of shares to the value of INR 15 crores from BWCI. Both these Application were disposed by the Hon'ble Madras High Court on 4th July 2022 wherein in C.M.P. No. 9564 of 2022, the Hon'ble Madras High Court allowed BWCI to deposit the share certificates with the Registry of the Madras High Court and on such deposit permitted BWCI to withdraw the amounts of INR 15 crores lying to the credit of the OSA. In C.M.P. No. 9593 of 2022 BWCI was directed by the Hon'ble Madras High Court to execute requisite documents as required under FEMA/RBI guidelines for transferring of INR 15

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crores to its account and to furnish FCTRS form duly signed by BWCI with the requisite particulars. On 10th August 2022, in compliance of the said Order BWCI deposited original share certificates bearing numbers 5 and 14 representing the BWCI Shares with the Registrar General of the Hon'ble Madras High Court and on the same day, BWCI requested ESTRA to provide FC-TRS form, buy-back form, KYC documents and other forms/mandates that may be required under FEMA and RBI guidelines.

C. Subsequently, the parties entered into discussions to amicably settle the disputes between themselves. After several rounds of negotiations, the Parties have agreed to enter into this Agreement, in order to settle the above-mentioned dispute and to record their understanding in connection with such settlement and for other matters incidental thereto.

It is agreed as follows:

I. DEFINITIONS

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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In this Settlement Agreement, unless defined within this Settlement Agreement or the context otherwise requires, the following terms shall have the following meanings:

a. "Arbitration" shall have the meaning ascribed to it under Arbitration and Conciliation Act 1996

b. "BWCI Distribution Amount" shall mean the amount of INR 57,67,49,810/- as defined in Clause 2(E) of the Third MoU;

c. "Deposited Amount" shall mean the amount deposited by ESTRA by way of two demand drafts totaling to the sum of INR 15 crores drawn in favour of Registrar General, High Court of Madras

d. "Deposited Money Transfer Deadline" shall mean a period of Two Weeks from the date of receipt of money by ESTRA from the Hon'ble Madras High Court Registry;

e. "Enhanced Interest" shall mean the interest at the rate of 15% per annum payable in the event of any delay in payment of the Remaining Principal by ESTRA in terms of Clause 7 of this Agreement;

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(Director)
Estra Enterprises Private Limited

Mr.Michael McKay
(Director)
For BWCI Pension Trustees Limited

Ms. Anna Gray
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f. "Final Principal Payment Date" shall mean six months' time from the date of obtaining a decree from the Hon'ble High Court of Madras in accordance with Clause 20 of this Agreement;

g. "Forms" shall mean all the letters and resolutions as required under law to meet its compliance requirements in terms of Clause 2 of this Agreement;

h. "Notice" shall have the meaning ascribed to in Clause 19 of this Agreement;

i. "Remaining Principal" shall mean the remainder of the BWCI Distribution Amount owed to BWCI after the payment of the Deposited Amount;

j. "Completed Payments Reconverted INR Value" shall mean the amount of INR 28,06,53,500/- as defined in Clause 4 (a) of this Agreement;

k. "Consent Decree" shall have the same meaning as ascribed to it under Order XXIII of Civil Procedure Code, 1908;

Mr.Harinder Singh
(Director)
Extra Enterprises Private Limited

Mr.Michael Mckay
(Director)
For BWCI Pension Trustees Limited

Ms. Anna Gray
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l. "Deposited Money Prevailing GBP Value" shall mean the value of GBP amount received by BWCI as on the date of said transfer;

m. "Deposited Money Reconverted INR Value" shall have the meaning as ascribed to it in Clause 4(b) of this Agreement;

n. "Remaining INR" shall have the meaning ascribed to it in Clause 4(c) of this Agreement;

o. "Prevailing Rate of Conversion" shall mean rate at which GBP (The British Pound Sterling) will be exchanged for INR (Indian Rupee) on the date of such transfer;

p. "Prevailing Rate GBP Value" shall mean the value of GBP (The British Pound Sterling) received by BWCI as on the date of said transfer;

q. "Reconverted INR Value" shall mean INR expression of the GBP equivalent payable to BWCI by Estra;

r. "Transfer Formula" shall have the meaning ascribed to the term in Clause 4 of this Agreement; and

Mr.Harinder Singh
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s. "Termination" shall have the meaning ascribed to the term in Clause 9 this Agreement;

1. This Agreement clarifies certain obligations under the Third MoU entered into between the parties on 03.02.2016. In case of any ambiguity, the terms in the Third MoU shall be read along with this Agreement.

2. BWCI shall cooperate with ESTRA to execute all the forms (letters and resolutions) as required under law for ESTRA to meet its compliance requirements with respect to the Deposited Amount (INR 15,00,00,000/- Rupees Fifteen Crores Only), subject to the understanding that all letters and resolutions shall contain language that the ultimate transfer of shares will only occur upon complete receipt by BWCI of the Deposited Amount and the Remaining Principal at the Prevailing Rate GBP Value (as opposed to the requirements of Regulation 13(4) of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside

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India) Regulations, 2017). ESTRA agrees to formally communicate and notify BWCI of all the Forms required under law to be executed by BWCI to enable BWCI to execute such forms.

3. Both Parties agree to seek before the Hon'ble Madras High Court that ESTRA be permitted to withdraw the Deposited Money and, subject to the approval of the Hon'ble Madras High Court, transfer the same directly to BWCI at the Prevailing Rate of Conversion of GBP to INR on the date of transfer to BWCI. Subject to the approval of the Hon'ble Madras High Court, such transfer of Deposited Money (INR 15,00,00,000/-) to BWCI by ESTRA shall be completed within a period of two weeks from the date of receipt of the money by ESTRA from the Hon'ble Madras High Court Registry ("Deposited Money Transfer Deadline"). BWCI shall cooperate with ESTRA to facilitate the withdrawal of the Deposited Money from the Hon'ble Madras High Court Registry. ESTRA agrees to take all steps to expeditiously

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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withdraw the Deposited Money and transfer the same to BWCI within the Deposited Money Transfer Deadline.

4. **Transfer Formula:**

a. Both Parties agree that, only for the purposes of this Agreement, the amounts transferred by Estra or its nominees from 13th September 2016 onwards shall first be calculated at thereferred (Prevailing Rate GBP Value). This Prevailing Rate GBP value shall be calculated in INR at the rate of INR 100 to 1 GBP to determine the extent of Estra's payment of the INR value of the BWCI Distribution Amount of INR 57,67,49,810/- (as defined in Clause 2(E) of the Third MoU) (Reconverted INR Value).

The following table shows the amounts already paid by Estra or its nominees to BWCI with the Portion of the BWCI Distribution Amount paid by Estra so far, for purposes of Agreement:

Mr.Harinder Singh
(Director)
Estra Enterprises Private Limited

Mr.Michael McKay
(Director)
For BWCI Pension Trustees Limited

Ms. Anna Gray
(Director)
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S.No	Payment Date	INR Amount actually paid (INR)	Exchange Rate on Date of Transfer	GBP amount actually received by BWCI as of date of transfer	Reconverted INR Value of the Portion of BWCI Distribution Amount Paid so far (for purposes of Agreement)
1	13-09-2016	Paid in GBP from Overseas		1,110,000/-	11,10,00,000/-
2	07-02-2017	5,00,00,000.00	84.1462	591,716/-	5,91,71,600/-
3	16-02-2018	10,00,00,000.00	90.4352	1,104,819/-	11,04,81900/-
Total				2,806,535/-	28,06,53,500/-

Accordingly, as on date, and solely for purposes of this Agreement, the Reconverted INR Value of Estra's payment compliance made towards the BWCI Distribution Amount

Mr.Harinder Singh
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Estra Enterprises Private Limited

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till date (Completed Payments Reconverted INR Value) shall be calculated as INR 28,06,53,500/-.

b. The Parties agree that once the Deposited Money is transferred to BWCI, the amount of the Deposited Money transferred to BWCI as on the date of transfer in GBP shall first be calculated at the value of GBP received by BWCI as on the date of said transfer (Deposited Money Prevailing GBP Value). This Deposited Money Prevailing GBP Value shall then be calculated in INR at the rate of INR 100 to 1 GBP to determine the extent of Estra's payment of the BWCI Distribution Amount through the transfer of the Deposited Money (Deposited Money Reconverted INR Value).

c. The INR value of the remaining amount payable by Estra (Remaining INR) shall be calculated as follows:

(BWCI Distribution Amount) – (Completed Payments Reconverted INR Value) – (Deposited Money Reconverted INR Value).

Mr.Harinder Singh
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d. The **Remaining Principal** shall be the GBP value of the Remaining INR at prevailing INR-GBP currency rates as on the date of transfer of the Remaining Principal

For example,

i. If Estra transfers the Deposited Amount to BWCI on 20th December 2023 and if the prevailing exchange rate on 20th December 2023 is INR 106 to GBP 1,

ii. Then, for the purposes of this agreement:

  a. The Deposited Money Prevailing GBP Value = GBP 1,415,094.34/-

  b. The Deposited Money Reconverted INR Value = INR 14,15,09,434/-

iii. Accordingly, the amount of Estra's payment compliance made towards the BWCI Distribution Amount on the date of transfer of the Deposited Money shall be calculated as (INR 28,06,53,500 + INR 14,15,09,434 = INR42,21,62,934/-)in INR terms.

iv. The Remaining INR is (INR 57,67,49,810/-) – (INR 42,21,62,934/-) = INR 15,45,86,876/-

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v. IfEstra transfers the Remaining Principal on 20th May 2024 and if the prevailing exchange rate on 20th May 2024 is INR 108 to GBP 1, then the value of the Remaining Principal shall be (Remaining INR = INR 15,45,86,876) / (Prevailing Currency Conversion Rate = 108) = GBP 1,431,359.96

5. ESTRA agrees to transfer the Remaining Principal in GBP in a single instalment to BWCI within six months' time from the date of obtaining a decree from the Hon'ble High Court of Madras in accordance with Clause 20 of this Agreement ("Final Principal Payment Date").

6. ESTRA agrees and consents that the final cumulative amount received by BWCI after all the transfers/payments made by Estra till the Final Principal Payment Date calculated at the INR-GBP conversion rate prevailing at the date of the corresponding transfer shall not be lower than GBP 5,767,498/- and to increase the value of the Remaining Principal correspondingly, if so required.

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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7. Estra agrees and consents that, during this time period until the Final Principal Payment Date, existing liabilities including those pertaining to interest under the Third MoU will continue i.e. from 01st June 2016 and for the entire duration of this Settlement Agreement.ESTRA agrees that, in the event of any delay in payment of the Remaining Principal as per this clause, interest at the rate of 15% per annum ("Enhanced Interest") shall be payable on the Remaining Principal or part thereof that is not paid to BWCI on a pro-rata basis. During the period for which the delay continues Enhanced Interest shall be applicable from the Final Principal Payment Date until the Remaining Principal has been paid in full. Such Enhanced Interest will not be applicable on ESTRA in the event of any injunction or stay imposed on the transfer of the Remaining Principal to BWCI by any Court, tribunal or government agency for the period during which the stay continues in force.

8. Both parties agree and consent that the existing rights and obligations under the Third MoU shall continue for the entire

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duration of this Settlement Agreement and that this Settlement Agreement does not supersede the existing rights and obligations of the parties under the Third MoU.

9. Both parties agree to cooperate and use best efforts to ensure that a decree in terms of Clause 20 of this Agreement is obtained from the Hon'ble Madras High Court within sixty days from the date of execution of this Settlement Agreement. Both parties agree that if no Decree in terms of Clause 20 of this Agreement is obtained from the Hon'ble Madras High Court within sixty days from the date of execution of this Settlement Agreement, this Settlement Agreement shall stand terminated unless extended by mutual agreement of the Parties. Such termination shall occur without any notice and it absolves the parties of any obligation created under this Settlement Agreement. The termination of this Settlement Agreement as per this Clause shall not affect BWCI's rights against Estra or any of the parties to the Third MoU. In the event of termination of this Settlement Agreement for any

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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reason, the parties shall continue to be bound by the Third MoU.

10. Both parties agree and consent that the ultimate transfer of shares will occur upon receipt of the RemainingPrincipal.

11. ESTRA agrees and consents to take all efforts to cooperate with BWCI for making any representations before the Hon'ble Madras High Court required to enable the transfer of the Deposited Amount from the Registrar General of the Madras High Court to BWCI. If for any reason, the Hon'ble Madras High Court orders that the Deposited Amount may not be so transferred, the Deposited Amount shall remain in the custody of the Hon'ble Madras High Court and be paid to BWCI along with the transfer of the Remaining Principal or at any point earlier when such order is lifted. In such event, the Deposited Amount and the Remaining Principal will be transferred to BWCI in accordance with the Transfer Formula.

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael Mckay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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12. BWCI agrees and consents that (i) all forms that are required and not provided for past transfers made and (ii) all forms which are required to implement the final transfer of the remaining principal, would be executed by BWCI and then submitted into the custody of the Madras High Court. BWCI consents to provide photocopies of the same to ESTRA.

13. ESTRA agrees and consents that the share transfer forms and other documents would only be withdrawn from the Madras High Court upon payment of the Remaining Principal(as defined in this Agreement) to BWCI. ESTRA further agrees that all shares will also be transferred to ESTRA from the Registry of the Madras High Court upon payment of the Remaining Principalto BWCI.

14. Both parties agree and consent to file Affidavits in the Hon'ble Madras High Court stating that this Settlement Agreement has been entered into and the forms have been executed with documentation agreed upon by the Parties and cooperate to

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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obtain a suitable order from the Hon'ble Madras High Court recording the same,

15. ESTRA agrees and consents to seek approval from the Hon'ble Madras High Court stating that the BWCI Shares will not be extinguished, and that they will be treated as such in the accounts and financial statements of ESTRA until the Remaining Principal is paid. BWCI agrees and consents to cooperate with ESTRA to obtain such order approving this arrangement between the Parties from the Madras High Court.

16. Both parties agree that two issues currently remain unresolved between the parties, namely:
    a. the issue regarding the quantum of interest that has accrued to BWCI as per Clause 8A of the Third MoU
    b. The issue regarding the interpretation of Clause 9A of the Third MoU and the final determination of the principal amount due to be paid to BWCI under the Third MoU

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Both Parties agree that these issues are to be kept open for determination by arbitration in accordance with clause 9C of the Third MoU. Both Parties agree to take all steps required to expedite the initiation and conclusion of arbitration proceedings within the swiftest timeline possible, subject to appropriate orders to be passed by the Court and the Arbitrator. The existence of these open issues shall not affect the transfer of shares by BWCI to Estra as per Clause 10 of this Agreement.

17. ESTRA represents warrants to BWCI that, as of the date of this Agreement:

a. Solvency: Estra is not insolvent and has not filed for bankruptcy or insolvency protection. Estra has the financial ability to meet its obligations under this Agreement.

b. No Undisclosed Liabilities: Estra has no undisclosed liabilities, contingent or otherwise, that may have a material adverse effect on its ability to perform its obligations under this Agreement.

Mr.Harinder Singh
(Director)
Estra Enterprises Private Limited

Mr.Michael McKay
(Director)
For BWCI Pension Trustees Limited

Ms. Anna Gray
(Director)
For BWCI Pension Trustees Limited

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c. Absence of Pending Legal Proceedings: There are no legal proceedings, claims, disputes, or investigations pending or, to the best of Estra's knowledge, threatened against Estra aside from those between BWCI and ESTRA that may have a material adverse effect on its ability to perform its obligations under this Agreement.

Estra shall promptly notify BWCI in writing if any of the above representations and warranties become untrue or inaccurate during the term of this Agreement. Any breach of these representations and warranties shall give BWCI the right to terminate this Agreement and seek any appropriate remedies available under applicable law.

18. Each Party warrants to the other Party that:

a. It has full power and authority to enter into this Agreement and to perform its obligations under this Agreement;

b. If applicable, the execution and delivery of this Agreement by it and the performance by it of its

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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obligations under this Agreement have been duly and validly authorized by all necessary corporate action on the part of such Party;

c. This Agreement constitutes a legal, valid and binding obligation of the Party and is enforceable against such Party in accordance with its terms; and

d. the execution, delivery and performance by such Party of this Agreement and the compliance by it with the terms and provisions hereof does not: (a) contravene any applicable law, any order, judgment or decree of any court or any order of any governmental authority; or (b) conflict with and is not inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which it is a party.

19. Estra shall provide prompt written Notice to BWCI of any events or circumstances that may materially impact its ability to perform its obligations under this Agreement, including but

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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not limited to financial difficulties, changes in corporate structure, orders passed by any Court, Tribunal or government agency, or other adverse conditions. Such Notice shall include a detailed description of the event or circumstance, its anticipated impact on Estra's performance, and any proposed measures to mitigate the impact or resolve the issue.

20. The parties agree that this Settlement Agreement shall be presented before the Court, with an Application to record the same and to pass a decree in O.A. No. 919 of 2016 and C.A. No. 80 of 2017 in C.P. No. 93 of 2016 and O.S.A. No. 12 of 2021 pending on the file of the Hon'ble Madras High Court recording this Settlement Agreement. Upon recording the same, parties agree that all pending proceedings before the Hon'ble Madras High Court may be kept in abeyance pending the final transfer of the Deposited Amount and the Remaining Principal, and shall be disposed of and closed upon both parties

Mr.Harinder Singh (Director) Estra Enterprises Private Limited	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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filing an affidavit before the Hon'ble Madras High Court reporting the receipt of the Deposited Amount and the Remaining Principaland seeking the recordal of a Consent Decree by the Hon'ble Madras High Court.

21. This Agreement shall be governed and interpreted by and construed in accordance with the laws of India and the courts in Chennai shall alone have exclusive jurisdiction in all matters under this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE DULY EXECUTED THESE PRESENTS THE DAY, MONTH AND THE YEAR FIRST ABOVE WRITTEN.

Mr.Harinder Singh (Director) For ESTRA ENTERPRISES PRIVATE LIMITED	Mr.Michael McKay (Director) For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

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7. Addendum to said agreement is as follows :

ADDENDUM TO THE SETTLEMENT AGREEMENT DATED 11th JANUARY 2024

THIS ADDENDUM TO THE SETTLEMENT AGREEMENT dated 11th January 2024 is entered on this the ---- day of April, 2024,

BY AND BETWEEN

1) Estra Enterprises Private Limited, company incorporated and registered under the laws of India and having its registered office at 6th Floor, Tower C, Tek Meadows, No. 51, Rajiv Gandhi Salai (OMR), Sholinganallur, Chennai – 600 119 duly Represented by its Director Mr. Harinder Singh (hereinafter referred to as "ESTRA" which expression shall, unless it be repugnant to the context, include its successors and permitted assigns) on the FIRST PART;

AND

2) BWCI Pension Trustees Limited as trustee of the Deutsche Bank Group International Pension Plan, Account Reference 1068/103 having office at Albert House, South Esplanade, St. Peter Port, Guernsey, GY1 1AW duly Represented by its Directors Mr. Michael McKay and Ms. Anna Gray (hereinafter referred to as "BWCI" which expression shall, unless it be repugnant to the context, include his successors and legal heirs) on the SECOND PART;

The Party of the first part and the Party of the Second Part shall hereinafter be collectively referred to as the "Parties" and individually as a "Party".

WHEREAS:

A. The Parties of the First and Second Part entered into a Settlement Agreement dated 11th January 2024 at Guernsey in order to settle the

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disputes described thereunder. The said Settlement Agreement was signed in counterpart by BWCI Pension Trustees Limited on 11th January 2024. The executed hardcopy of the Settlement Agreement was received in Chennai on 27th January 2024;

B. As per Clause 9 of the Settlement Agreement, the Parties agreed to use best efforts to obtain suitable orders from the Hon'ble Madras High Court within sixty days from the date of execution of the Settlement Agreement. It was also agreed that if no Decree in terms of Clause 20 of this Agreement is obtained from the Hon'ble Madras High Court within sixty days from the date of execution of this Settlement Agreement, this Settlement Agreement shall stand terminated unless extended by mutual agreement of the Parties. The sixty days' time limit as contemplated under Clause 9 of the Settlement Agreement lapsed on 27th March 2024;

C. Pursuant to such lapse, the Parties are entering into this Addendum in order to extend the terms of the Settlement Agreement dated 11th January 2024 for another ninety days from 27th March 2024 to enable the parties to obtain suitable orders from the Hon'ble Madras High Court in terms of Section 20 of the Settlement Agreement.

In view of the foregoing, the Parties hereby agree as follows:

1. Both the Parties agree and consent to cooperate and take all efforts towards expeditiously obtaining suitable orders from the Hon'ble Madras High Court in terms of Clause 20 of the Settlement Agreement.

2. Both Parties agree to extend the terms of the Settlement Agreement dated 11th January 2024 for another ninety days from the date of

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execution of this Agreement, retrospectively extending such terms to the period from 27th March 2024 till the date of execution of this agreement, to enable the parties to obtain suitable orders from the Hon'ble Madras High Court in terms of Section 20 of the Settlement Agreement.

3. Both parties agree and consent that the terms of the Settlement Agreement dated 11th January 2024 will continue to bind the parties.

4. Both parties agree that this Addendum to the Settlement Agreement is entered into between the parties voluntarily and free from any coercion.

IN WITNESS WHEREOF, THIS ADDENDUM IS EXECUTED AS FOLLOWS ON THE DAY AND YEAR FIRST HEREINABOVE WRITTEN.

Mr. Harinder Singh (Director) For ESTRA ENTERPRISES PRIVATE LIMITED	Mr. Michael McKay (Director)For BWCI Pension Trustees Limited	Ms. Anna Gray (Director) For BWCI Pension Trustees Limited

for BWCI Pension Trustees Limited

8. As would be evident from the narrative thus far, both learned counsel submitted that the date of aforementioned addendum is 15.04.2024. It has become necessary to write this, as the scanned reproduction gives only the month and year and we are informed that this was owing to transmission

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and re-transmission between the parties i.e., ESTRA and BWCI.

9. Before we conclude, it has become necessary to advert to two aspects of the matter owing to Clauses 2, 10 and 13 of the said settlement agreement. Two aspects are payment out of deposit lying in Court and handing over of transfer certificates.

10. We are giving the following directions to the Registry :

(a) As regards Clause 2, Rs.15.0 crores lying to the credit of captioned OSA will now be paid out to ESTRA without filing a separate payment out application but subject to ESTRA and its counsel adhering to the prescribed procedure;

(b) The payment out will be subject to statutory deductions if any. The payment out shall be made as expeditiously as the business of the Registry would permit but within one week i.e., by 25.06.2024;

(c) As regards Clauses 10 and 13, i.e., ultimate transfer of shares to ESTRA subject to receipt of remaining principal by BWCI, Mr.Naveen Kumar Murthi, learned counsel for appellant and Mr.R.Murari, learned senior counsel representing respondent, on

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instructions submit that 'Axis Bank' will be an escrow agent with regard to share certificates which are lying in the Registry of this Court;

(d) The share certificates in its entirety lying in the Registry as regards captioned OSA will be returned to Mr.V.V.Sivakumar, learned counsel for the said bank under due acknowledgement as expeditiously as the business of the Registry would permit but in any event within one week from today i.e., by 25.06.2024. Learned counsel shall adhere to any prescribed procedure in this regard.

11. We are informed that Rs.15.0 crores is lying idle. In other words, it is not in interest yielding deposit.

12. As regards the above directives, Axis Bank will be the escrow agent and as both parties have agreed that said bank will act as escrow in its professional capacity, it will be entitled to collect requisite charges, which shall be borne by ESTRA and BWCI in equal moieties but escrow agents function will obviously stand governed by the agreement between the parties i.e., said settlement agreement and addendum, dated 11.01.2024 and

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15.04.2024.

13. By consent of both sides, captioned OSA is disposed of on the above terms and the aforementioned said settlement agreement and addendum thereat dated 11.01.2024 and 15.04.2024 shall form part of the decree. There shall be no order as to costs.

[M.S.,J.] [K.G.T.,J.]
18.06.2024
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Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order
ds

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M.SUNDAR. J.,
and
K.GOVINDARAJAN THILAKAVADI.J.,

ds

O.S.A.No.12 of 2021

18.06.2024