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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 436/2016**

M/S AGV ALFAB LIMITED

.....Plaintiff

Through: Ms.Sujata Kashyap Advocate with
Punit Kumar Sharma (A.R) of
Plaintiff Company

versus

M/S REALTECH CONSTRUCTION PVT LTD & ORS

.....Defendants

Through: Mr. Raj Vardhan and Ms. Rashmi
Raj Vardhan, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

07.01.2025

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CS(COMM) 436/2016, I.A. 45768/2024, I.A. 3310/2020

1. This application under Order XXIII Rule 3 CPC has been jointly filed by the parties for recording of compromise.
2. The instant suit is one for decree of payment of a sum of Rs.2,49,58,632/- along with *pendent lite* and future interest to the Plaintiff @9% p.a. by the Defendant from the date of the suit till the actual date of payment by the Defendant.
3. Pending the suit, the parties have entered into a Memorandum of Understanding dated 25.09.2023 which has been amended on 12.11.2024. The Memorandum of Understandings dated 25.09.2023 and 12.11.2024 reads as under:-



“MEMORANDUM OF UNDERSTANDING

*This **MEMORANDUM OF UNDERSTADING** ('MOU') is made and executed at New Delhi on this 25th day of September 2023 between*

M/S REAL TECH CONSTRUCTIONS PVT. LTD., a Company incorporated under the provisions of Companies Act, 1956 having its registered office at D - 22, Defence Colony, New Delhi - 110024 and Corporate Office at LGF, Veritas Business Suits, Sector - 53, Golf Course Rod, Gurugram - 122011, acting through its Director and Authorized Signatory i.e. Mr. Pankaj Dayal, (hereinafter referred to as "First Party", which expression shall unless repugnant to the context or meaning thereof, deemed to mean and include its successors and permitted assigns) of the **ONE PART**;

AND

MIS AGV ALFAB LTD., a Company incorporated under the provisions of Companies Act, 1956 having its registered office at A-203, Vikas Tower, PVR Complex, Vikas Puri, New Delhi - 110018, acting through its Director and Authorized Signatory i.e. Mr. Punit Kumar Sharma, (hereinafter referred to as "Second Party", which expression shall unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) **of the OTHER PART**;

WHEREAS Second Party was engaged by First Party to carry out the facade glass and aluminum work for the then upcoming mall known as City Emporium Mall at Chandigarh by its owners First Party.



AND WHEREAS disputes arose between the parties due to which the SECOND PARTY filed a Commercial Suit No. CS (Comm.) 436/2016 against the FIRST PARTY titled "AGV Alfab Ltd. Vs. Real Tech Constructions Pvt. Ltd. & Anr." claiming a sum of Rs. 2 crores towards unpaid material, labour installation, etc. and the said case is pending before the Hon'ble Delhi High Court. That in order to save time and efforts and for the sake of peaceful resolution of the disputes, Parties have mutually discussed the matter and have reached an amicable accord to settle the aforesaid disputes between the Parties on the terms and conditions written hereof, now Parties wish to commit the terms of their accord into this Memorandum of Understanding.

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE THIS ACCORD WITNESSETH THE TERMS ARRIVED BETWEEN THE PARTIES TO THIS MEMORANDUM OF UNDERSTADING AS UNDER:-

First Party shall pay Rs. 1,40,00,000/- (Rupees One Crore Forty Lacs Only) to the Second Party towards Full and Final Settlement of all its claims, disputes, grievances, rights, lien or interest, demands, damages etc. raised in relation to work executed by it at City Emporium Mall, Chandigarh. Rs.5,00,000/- Lacs has been paid by First Patty to the Second Party at the time of execution of the present MoU, the receipt of which is duly acknowledged by the Second Patty and the balance payment of Rs.1,35,00,000/- shall be paid by First Patty in the following manner/instalments:-



No.	Cheque No.	Date	Bank	Amount
1.	000508	05.12.2023	ICICI Bank, Gurgaon Dronacharya Branch	Rs. 5,00,000/-
2.	000509	05.01.2024	"	Rs. 10,00,000/-
3.	000510	05.02.2024	"	Rs. 15,00,000/-
4.	000511	05.03.2024	"	Rs. 15,00,000/-
5.	000512	05.04.2024	"	Rs. 15,00,000/-
6.	000513	05.05.2024	"	Rs. 15,00,000/-
7.	000514	05.06.2024	"	Rs. 20,00,000/-
8.	000515	05.07.2024	"	Rs. 20,00,000/-
9.	000516	05.08.2024	"	Rs. 20,00,000/-

That an Application under Order 23 Rule 3 seeking Compromise Decree incorporating the terms of the settlement shall be jointly moved by both the parties before February, 2024.

That upon refund of the entire amount as mentioned above, First Party shall be discharged of all its obligations towards Second Party in respect of the work executed by it at City Emporium Mall, Chandigarh and Second Party undertakes not to initiate any fresh Litigation/Civil or Criminal action/file claim/complaint/proceedings etc. in respect of the aforesaid disputes and differences before any Civil Authority against First Party or its Directors, Employees, Representatives in future and Second Party agrees that in any event, if any other complaint is pending, the same shall be deemed to be withdrawn for all purposes.

That in case of any default in making payments to the Second Party or dishonor of cheque/s, First Party shall be liable to pay penal interest @ 12% per annum on the defaulted amount from the date such amount was due till the date the said amount is not fully paid.



Further, in addition to the interest on the defaulted amount for the default period, in case of any breach of payment by First Party, they shall become liable for contempt, both civil and criminal.

That the Parties to this settlement have settled all their disputes, differences against each other and now all disputes, differences etc. against each other shall stand settled and no dispute of any sort exists between the Parties and claim of all the Parties against each other and their Directors and Employees stand fully satisfied in all respects.

That this Memorandum of Settlement is final and irrevocable and binding upon the parties and their respective successors, assigns, and representatives and is being executed by the Parties on their own free will and without any undue influence, force, fraud and / or coercion.

All the parties have signed this Memorandum of Understanding on the 25th day of September, 2023 first mentioned above after fully understanding the mean and purpose of the present Memorandum of Understanding”

“AMENDED MEMORANDUM OF UNDERSTANDING

This AMENDED MEMORANDUM OF UNDERSTADING ('MOD') is made and executed at New Delhi on this 12th day of November 2024 between

M/S REAL TECH CONSTRUCTIONS PVT. LTD., a Company incorporated under the provisions of Companies Act, 1956 having its registered office at D - 22, D 405 Defence Colony, New Delhi – 110024 and Corporate Office at LGF, Veritas Business Suits,



*Sector - 53, Golf Course Rod, Gurugram - 122011 , acting through its Director and Authorized Signatory i.e. Mr. Pankaj Dayal, W 21I 16 Sainik Farms, New Delhi 110062 (hereinafter referred to as "First Party", which expression shall unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) **of the ONE PART;***

AND

MIS AGV ALFAB LTD.,** a Company incorporated under the provisions of Companies Act, 1956 having its registered office at A-20 , Vikas Tower, PVR Complex, Vikas Puri, New Delhi - 110018 , acting through its Director and Authorized Signatory i.e. Mr. Punit "Kumar Sharma, (hereinafter referred to as "**Second Party**", which expression shall unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) **of the OTHER PART;

WHEREAS Second Party was engaged by First Party to carry out the facade glass and aluminum work for the then upcoming mall known as City Emporium Mall at Chandigarh by its owners First Party.

AND WHEREAS disputes arose between the parties due to which the SECOND PARTY filed a Commercial Suit No. CS (Comm.) 436/2016 against the FIRST PARTY titled "AGV Alfab Ltd. Vs. Real Tech Constructions Pvt. Ltd. & Anr." claiming a sum of Rs. 2 crores + Interested towards unpaid material, labour installation, etc. and the said case is before the Hon'ble Delhi High Court.

That in order to save time and efforts and for the sake of peaceful resolution of the disputes, Parties mutually discussed the matter and reached an amicable accord



*to settle the aforesaid disputes between the Parties and entered into a **Memorandum of Understanding dated 25.09.2023** as per which the entire payment of Rs. 1,40,00,000/- was to be made by First Party to the Second Party by 05.08.2024 however payment of only Rs.25,00,000/- was made by the First Party to the Second Party.*

Now on the terms and conditions written hereof, Parties wish to commit the terms of their accord into this Amended Memorandum of Understanding.

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE THIS ACCORD WITNESSETH THE TERMS ARRIVED BETWEEN THE PARTIES TO THIS AMENDED MEMORANDUM OF UNDERSTANDING AS UNDER:-

First Party shall pay balance amount of Rs. 1,15,00,000/- (Rupees One Crore Fifteen Lacs Only) to the Second Party towards Full and Final Settlement of all its claims, disputes, grievances, rights, lien, demands, damages etc. raised in relation to work executed by it at City Emporium Mall, Chandigarh maximum within a period of 4 (Four) months with interest. The First Party shall also pay penal interest @12% per annum on the already defaulted amount from the date such amount was due till the date the said amount is not fully paid.

That an Application under Order 23 Rule 3 seeking Compromise Decree incorporating the terms of the settlement shall be jointly moved by both the parties immediately upon execution of the present Amended Memorandum of Understanding.

That upon refund of the entire amount with interest as mentioned above, First Party shall be discharged of all its obligations towards Second Party in respect of the



work executed by it at City Emporium Mall, Chandigarh and Second Party undertakes not to initiate any fresh Litigation / Civil or Criminal action / file claim / complaint / proceedings etc. in respect of the aforesaid disputes and differences before any Court / Authority against First Party or its Directors, Employees, Representatives in future and Second Party agrees that in any event, if any other complaint is pending, the same shall be deemed to be withdrawn for all purposes.

That in case of any further default in making payments to the Second Party or dishonor of cheques , First Party shall be liable to pay penal interest @ 12% per annum on the defaulted amount from the date such amount was due till the date the said amount is not fully paid. Further, in addition to the interest on the defaulted amount for the default period, in case of any breach of payment by First Party, they shall become liable for contempt, both civil and criminal. Mr. Pankaj Dayal is bound by this MoU in his personal capacity also.

That the Parties to this settlement have settled all their disputes, differences against each other and now all disputes, differences etc. against each other shall stand settled and no dispute of any sort exists between the Parties and claim of all the Parties against each other and their Directors and Employees stand fully satisfied in all respects. That this Amended Memorandum of Understanding is final and irrevocable and binding upon the parties and their respective successors, assigns, and representatives and is being executed by the Parties on their own free will and without any undue influence, force , fraud and / or coercion.

All the parties have signed this Amended Memorandum



*of Understanding on the 12th day of November 2024
first mentioned above after fully understanding the
mean and purpose of the present Amended
Memorandum of Understanding:*

4. The parties are present in Court and they have given their respective statements to the effect that they will abide by the terms of the Memorandum of Understanding dated 12.11.2024 .
5. It is stated by the Plaintiff that the Memorandum of Understanding dated 12.11.2024 has been entered into between the parties without any coercion and he has entered on his own will. He also states that he shall not file any other suit for the same claim.
6. It is stated by the Defendant that he would also abide by the terms of the Memorandum of Understanding dated 12.11.2024 and would pay the amount as undertaken by him in the Memorandum of Understanding dated 12.11.2024 i.e. before March, 2025.
7. The statements of the parties have been recorded separately.
8. In view of the Memorandum of Understanding dated 12.11.2024, this Court is inclined to dispose of the suit in terms of the Memorandum of Understanding dated 12.11.2024 entered into between the parties.
9. Accordingly, the instant suit is disposed of along with pending application(s), if any.
10. It is made clear that in case the amount is not paid by the Defendant in terms of the Memorandum of Understanding dated 12.11.2024, the default clause will be invoked which will be binding on the parties in terms of the Memorandum of Understanding dated 12.11.2024.
11. In view of the fact that the parties have entered into a settlement



agreement, they will be entitled to the refund of the court fee under Section 16 of the Court Fees Act.

12. The application is allowed.

13. The Registry is directed to take appropriate steps for refund of court fee.

14. Let decree sheet be drawn up in terms of the Memorandum of Understanding dated 12.11.2024.

SUBRAMONIUM PRASAD, J

JANUARY 07, 2025

RJ