

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

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.

IA No. GA/16/2021

In

CS 144 of 2016

Square Four Assets Management & Reconstruction Co. P. Ltd & Ors.

Vs

Orient Beverages Ltd. & Ors.

For the Plaintiffs	:	Mr. Ratnanko Banerji, Sr. Adv. Mr. Rajarshi Dutta, Adv. Mr. Zeeshan Haque, Adv. Ms. Sristi Barman Roy, Adv. Mr. Dhillon Sengupta, Adv. Mr. Subranil Dey, Adv. Ms. Sudipta Paul, Adv.
For the Defendant No. 1	:	Mr. Kaushik Banerjee, Adv.
For the Defendant No. 8	:	Mr. Arnab Chakraborty, Adv. Ms. Pragya Bhowmick, Adv.
Last Heard on	:	22.09.2022.
Delivered on	:	03.11.2022.

Moushumi Bhattacharya, J.

1. The plaintiffs seek a decree for a sum of Rs. 16,01,89,691/- along with interest at 15% from 1.10.2015 against the defendant no. 8, Engineering

Projects India Ltd. (EPI). The basis of the plaintiffs' claim against the defendant no. 8 is an alleged admission on the part of the defendant no. 8 in a Minutes of the Meeting held on 1.10.2020 for negotiation of rate for the premises occupied by EPI. The present application has accordingly been filed for judgment upon admissions under Order XII Rule 6 of The Code of Civil Procedure, 1908.

2. According to learned counsel appearing for the plaintiffs/ applicants, EPI has acknowledged in the Minutes of the Meeting that a sum of Rs. 16,01,89,691/- is payable in three equal installments to the applicants on account of arrears being outstanding rent, mesne profits, maintenance and car parking charges and GST at 18% per annum from 1.10.2015 till the date of the Meeting held on 1.10.2020. Counsel submits that the Meeting was attended by senior officials of the EPI who agreed to and acknowledged that payments were due to the plaintiffs on account of the aforesaid heads of payments. Counsel refers to the tabular chart contained in the Minutes. Counsel submits that the admission made by EPI is a severable promise as opposed to a reciprocal promise and is independent and unconditional. Counsel relies on section 28 (a) of the Indian Contract Act, 1872 to contend that an agreement is void to the extent of restricting a party from enforcing his rights under the contract by the usual legal proceedings. Section 57 of the Contract Act is also relied upon to urge that reciprocal promises where parties agree to do certain illegal acts amounts to a void agreement. Counsel submits that EPI vacated the premises after 5.4.2022 by an order of Court whereas the Minutes of 1.10.2020 record that EPI was to vacate the premises by 31.12.2020. Counsel submits that the

plaintiffs were hence constrained to file separate proceedings for a direction on EPI to deposit occupational charges and mesne profits for being in illegal and unauthorised occupation of the leased premises which forms the balance amount claimed over and above the admitted amount mentioned in the Minutes dated 1.10.2020.

3. Learned Counsel appearing for the defendant no. 8 EPI, opposes the contention that MoM of 1.10.2020 contains any unequivocal or unconditional admission made by the EPI. Counsel submits that the MoM records a mutual agreement containing unseverable and reciprocal obligations between the parties to resolve all disputes by way of an out-of-court settlement. Counsel submits that both the parties agreed to a total amount of Rs. 16,01,89,691/- as full and final amount under the different heads of claim as a result of mutually agreed negotiations. The plaintiffs have hence agreed to a rate towards all its claims, namely, occupational charges, mesne profits, maintenance charges, car parking charges and GST. Counsel places emphasis on the fact that the said amount was agreed to be payable by EPI in three equal monthly installments immediately after withdrawal of the suit by the plaintiffs against EPI. Counsel submits that contrary to the contention that EPI vacated the premises after much delay, it was the plaintiffs who were responsible for the delay by filing applications from 2020 onwards. Counsel relies on an order passed by a learned Single Judge on 8.2.2022 whereby EPI surrendered possession in terms of the said order without prejudice to its rights and contentions. It is submitted that the plaintiffs however unsuccessfully

challenged the said order before the Division Bench and the appeal was dismissed on 5.4.2022. Counsel urges that the plaintiffs seek to split up and enforce the beneficial part of the MoM by refusing to perform their reciprocal promise as recorded in the MoM but claim the amount of Rs. 16,01,89,691/-.

4. The Minutes of Meeting between the petitioner and the defendant no. 8 held on 1.10.2020 for rate negotiation of the premises at 50, Chowringee Road, Kolkata-700071, occupied by the defendant no. 8 forms the crux of the matter. The petitioner Square Four relies on the admission on the part of the defendant no. 8 as recorded in the said Minutes and seeks a judgment on that basis while defendant no. 8 contends that the alleged admission, if at all, was one half of the reciprocal promises made by the parties and cannot result in a judgment until and unless the petitioners perform their part of the promises.

5. To understand the relevance of the competing submissions, the material part of the Minutes of the Meeting held between the parties is required to be set out.

SL. NO	Heads of Payment	Asking Terms	Asking Amount	Agreed Terms	Agreed Amount	Remarks
2.0	Area under consideration for payment	SBU of 21,000 square feet.		On actual SBU Area of 20,670 square feet.		--
3.0	Maintenance Charge	Rs. 6.0/- per sq. ft.	78,13,260/-	Rs. 3.50/- per sq. ft.	45,57,735/-	--
4.0	Car Parking Charge for 06 nos. of cars	Rs. 12,000/- per car	45,36,000/-	Rs. 6,025/- per car.	22,77,450/-	Total of 06 nos. of Car Parking Space is allotted to EPI.

5.0	Interest w.e.f. 01.10.2015	18.00%	10,90,62,677/-	Waived Off	0.00	--
6.0	Payment Terms	Three Instalments – First and Second Instalments of Rs. 5.0 Cr. Each. Balance amount in Third Instalment.		In three equal monthly instalments.		--
7.0	Corporation/Property Tax	To be paid by EPI on actual basis.		EPI will pay all dues towards Property Tax to Kolkata Municipal Corporation till 31.12.2020.		--
8.0	GST @ 18.00%	Rs. 4,08,98,504/-		Rs. 2,44,35,716/-		EPI will get Input Credit on this entire GST payable by EPI
Total		Rs. 37,71,75,091/-		Rs. 16,01,89,691/-		

The tabulated part of the Minutes was followed by a recording of what the parties mutually agreed to. These are:

“It has also been mutually agreed that EPI, Kolkata will vacate both the 8th & 9th Floor of 50, Chowringhee Road, Kolkata – 700071 by 31st December, 2020.

It has also been mutually agreed that the present Court Case at the Hon’ble High Court of Calcutta between M/s Square Four Assets Management & Reconstruction Company Pvt. Ltd. Vs EPI will be withdrawn by M/s. Square Four Assets Management and Reconstructions Co. Pvt. Ltd. after signing of the Minutes of the Meeting dated 01.10.2020.

It was also agreed that the first instalment towards payment of all outstanding dues by EPI to M/s Square Four Assets Management and Reconstruction Company Pvt. Ltd. will be paid after withdrawal of the said Court Case.

IN WITNESS WHEREOF, the parties hereinto have set their hands on these presents, which shall be of full force and effect and binding on the parties hereinto.”

The following facts are deducible from the extracted portion of the Minutes;

- i) The parties mutually agreed to record certain terms for negotiation of rate of the premises occupied by the defendant no.8.
- ii) Both the petitioner as well as the defendant no. 8 were represented by their respective Directors/high officials who were authorised to represent the parties at the said meeting.
- iii) The Minutes were signed and stamped by both the parties.
- iv) The Heads of Payment containing the asking terms and asking Amounts and the agreed terms and agreed Amounts were agreed to by the Director of the petitioner.
- v) The petitioner agreed to the payment of Rs.16,01,89,691/- from the defendant no.8.
- vi) The petitioner also agreed to waiving of interest with effect from 1.10.2015.
- vii) The defendant no.8 agreed to vacate the 8th and 9th floors of the premises by 31.12.2020.
- viii) The petitioner will withdraw the Court Case (suits) filed by the petitioner in this Court after signing of the Minutes.
- ix) The defendant no. 8 will pay the first installment of its outstanding dues to the petitioner after withdrawal of the Court Case by the petitioner.

6. The Minutes reflect a clear intention on the part of both the petitioner and the defendant no. 8 to be bound by certain mutually agreed terms in respect of the money to be paid by the defendant no. 8 to the petitioner as

occupational charges for the premises in question. The agreement of the parties to the Heads of Payments and the time frame and conditions on which such payment was to be made by the defendant no. 8 to the petitioner was clearly reduced in writing in the form of the Minutes.

7. There is little doubt that the petitioner and the defendant no. 8 agreed to do certain things on a back-to-back basis and conditional upon the other party fulfilling its part of the bargain. The two parts forming the said reciprocal promises is that the petitioner will withdraw the proceedings filed by the petitioner before this Court after which the defendant no. 8 will pay the first installment of the agreed amount of Rs. 16,01,89,691/- which is stated as the agreed composite amount due to be paid by the defendant no. 8 to the petitioner. The respective obligations to be performed by the parties were clearly intertwined and completed the settlement, so to speak, between the parties with regard to the occupational charges payable by the defendant no. 8. The Minutes further set out the sequence of performance of the obligations. The sequence consists of 3-stages; first, the parties will sign the Minutes of the meeting dated 1.10.2020; second, the petitioner will withdraw the Court Case pending before this Court; and third, the defendant no. 8 will make payment of the first installment of the total outstanding dues to the petitioner.

8. Hence, the contention that the respective promises can be seen as severable and not reciprocal in nature cannot be accepted. It therefore follows that the admission on the part of the defendant no. 8 to pay Rs. 16.01 crores to the petitioner does not have an independent standing of its own. The

agreement to pay the amount to the petitioner was clearly conditional upon fulfillment of the petitioner's part of the bargain, namely, withdrawal of the pending Court proceedings. The two parts of the composite settlement are wholly dependent on each other and cannot be dissected for giving effect to one but not to the other.

9. The inescapable conclusion which follows is that the admission on the part of the defendant no. 8 was conditional upon the petitioner withdrawing the Court case. The admission is not unequivocal, unconditional or separate and independent from the other parts of the agreement arrived at in the Minutes of Meeting.

10. Having failed to withdraw the suit being CS 144 of 2016 filed in this Court and having resiled from the agreed terms, the petitioner cannot now seek to enforce only one of the reciprocal promises which is advantageous to the petitioner. The petitioner has admittedly kept the suit and all other applications pending for seeking various reliefs against the defendant no. 8. However, the petitioner cannot re-write the Minutes or interpret the Minutes in a manner which would clearly be inconsistent with the understanding of the parties of the agreed terms on the date when the Minutes were signed. The petitioner and the defendant no. 8 would have to be confined within the contours of the agreed terms and seek such relief which are in consonance with the agreed terms.

11. The statutory premise of Order XII Rule 6 of The Code of Civil Procedure, 1908- “Judgment on Admissions” - is that a party making an admission of fact in a pleading or otherwise whether in an oral or written form will be held to it on the application of the other party or the Court on its own motion. The admission so made may be transformed to an order or judgment by the Court subject to its discretionary considerations and solely confined to such admission. The pre-condition to a judgment being pronounced on the admission made by a party is that the admission must be capable of standing on its own and sustain its life and form even when taken out of the context. In other words, the admission, relied on by the party, who seeks to enforce it against the party which made the admission, must not be emasculated when pulled out of its surrounding circumstances. The admission used for pronouncing judgments must be unequivocal, independent and unconditional. It cannot be an admission which would fulfill the aforesaid conditions only when placed in conjunction with other conditions closely intertwined with the admission. Since Order XII Rule 6 empowers the Court to pronounce judgments on the admission without waiting for determination of the other questions between the parties, the admission must remain true to the spirit in which it has been used in the Code.

12. In the present case, admission made on behalf of the defendant no. 8 with regard to the amount payable by it to the plaintiffs becomes unmistakably deflated without the corresponding obligation of the plaintiffs to withdraw the suit. This is all the more so since the payment was to be made only *after*

withdrawal of the suit. Hence, given the legislative object behind Order XII Rule 6 of the CPC, the admission of the defendant no. 8 becomes conditional and one-half of reciprocal promise in the absence of the plaintiffs failing to withdraw the suit.

13. Both *Shin Satellite Public Co. Ltd. vs. Jain Studios Ltd.*; (2006)2 SCC 628 and *B.O.I Finance Ltd. vs. Custodian*; (1997)10 SCC 488 dealt with agreements which were capable of being dissected. The Supreme Court was hence of the view that it is the duty of the Court to separate trivial or technical part by retaining the main or substantial part and giving effect to the other part if the other part is found to be lawful and otherwise enforceable. *Uttam Singh Dugal & Co. Ltd. vs. Union Bank of India*; (2000) 7 SCC 120 dwelt on the object of Order XII Rule 6 where a court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on an admitted claim. The Supreme Court however noted that the admission should be a clear admission of fact where it is impossible for the party making such admission to succeed in an application under Order XII Rule 6. In *Birendra Nath Mallick vs. Brahma Brata Roy*; 1950 CWN 439, a Single Bench of this Court (decision of 5th March, 1946) frowned upon a situation where the plaintiff was seeking to split the admission made by the second defendant so as to take advantage of one part of it and to repudiate the other part. The Court noted that in doing so, the plaintiff sought to avail himself of the admission of liability while ignoring the conditions thereof, although the condition was an essential part of the admission made. The Court relied on *Motabhoj Mulla Essabhoj vs. Mulji Haridas*; L.R. 42 I.A. 103 p. 109 :

s.c. 19 C.W.N 713 (1915) where Lord Dunedin in delivering the judgment of the Judicial Committee stated as follows:

“But an admission in pleading cannot be so dissected, and if it is made subject to a condition it must either be accepted subject to the condition or not accepted at all.”

14. This Court is inclined to accept the principle as laid down in *Birendra Nath Mallick*. It would also not be out of place to state that judgments on admissions are matters of discretion and are entered subject to the particular facts before the Court. It should also be stated that the point taken on behalf of the plaintiffs with regard to sections 28(a) and 57 of The Indian Contract Act, 1872 are not relevant to the present application since the plaintiffs have not been restrained from enforcing its rights in respect of any contract. The reciprocal promise in this case does not contain any illegal component (section 57).

15. The admission must then be enforced as against the defendant no. 8 in conjunction with the conditions which were attached to the admission. Both the conditions form the crux of the Minutes of the Meeting and the parties must hence be directed to act in accordance with the terms which were mutually agreed by them. The application partly succeeds.

The parties are accordingly directed to do the following :-

- i) The defendant no. 8 shall pay a sum of Rs. 16,01,89,691/- + Rs. 12,89,18,790/- = Rs. 28,91,08,481/- to the plaintiffs in the

manner directed. The payment shall be made in three equal monthly installments; the first installment shall be paid within 4 weeks from the date of this judgment followed by two other equal installments payable within 3 weeks and 6 weeks respectively from the date of payment of the first installment.

- ii) The defendant no. 8 shall pay occupational charges on a monthly basis from 1.10.2020 to 15.4.2022 calculated at the applicable market rate pertaining to the area and location. The plaintiffs shall be at liberty to undertake an appropriate exercise through a valuer/surveyor and inform the defendant no. 8 of the market rate as in September-October, 2022.
- iii) The defendant no. 8 shall pay interest at the rate of 18% from 1.10.2020 to 15.4.2022 on the sum of Rs. 28,91,08,481/- within 6 weeks from the date of this judgment.

(15.4.2022 has been taken as the closing date and the directions calculated on that basis since the plaintiffs state that the defendant no. 8 vacated the premise occupied by it after 4.4.2022 and was directed to hand over possession of the said premises to the plaintiffs by an order of Court dated 5.4.2022)

- iv) The plaintiffs shall withdraw the suit being CS. No. 144 of 2016 and all pending applications within 2 weeks from receiving the full payment from the defendant no. 8 as directed in this judgment.

16. The points taken on behalf of defendant no. 8 with regard to third party interest, Thika Tenancy and authorisation of the signatories to the Meeting are not being gone into since the Court has come to a finding with regard to the worth of the admission made by the defendant no. 8.

17. G.A 16 of 2021 is disposed of in terms of the findings and directions contained in the judgment.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)