

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CAPP No. 36 of 2014(O&M)

Date of Decision: 8.12.2014

Crown Packages Pvt. Ltd.

... Appellant

Versus

Export & Import Bank

... Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. Anand Chhibbar, Sr. Advocate, with
Mr. Gaurav Mankotia, Advocate,
for the petitioners.

Mr. Tribhuvan Dahiya, Advocate,
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIVE BHALLA, J.

The appellant-company has filed an appeal impugning order dated 29.8.2014 passed in CP No.87 of 2012 directing admission of the petition for winding up. During pendency of the appeal, the appellant was directed to deposit \$1,00,000.00.

Counsel for the appellant submits that parties have resolved their differences in terms of agreement dated 5.12.2014, in the following terms:-

“(1)These **Consent Terms** are entered into as of the 5th day of December 2014, by and between:

- a. The Export Import Bank of United States, an agency of the Government of United States of America, duly constituted and organised under the laws of the United States of America with an address at 811 Vermont Avenue, N.W., Washington D.C., USA 20571, represented by its agent Global Recovery Group LLC

(“GRG”) located at 950 Herndon Parkway, Suite 410, Herndon VA 20170, United States, represented by its CEO, Donald Bean, Jr. (hereinafter referred to as the “CREDITOR”) and

- b. Crown Milk Specialties Private Limited, C-169 Industrial Area. Phase VIII-B, S.A.S. Nagar, Distt. Mohali, 160071, (Punjab), India, represented by its Managing Director Tarsem Kansal (hereinafter referred to as the “DEBTOR COMPANY”)
 - c. Crown Packages Private Limited, Registered Office at # 1721, Sector 33D, Chandigarh, 160020 (UT), India, represented by its Wholetime Director Meena Kansal (hereinafter referred to as “GUARANTOR No1”).
 - d. Mr. Tarsem Kansal, Resident of # 1721, Sector 33-D, Chandigarh-160 022 (UT), India, (hereinafter referred to as “GUARANTOR No.2”). (GUARANTOR No1 and GUARANTOR NO.2 are hereinafter referred to collectively as the “GUARANTORS;” and the DEBTOR COMPANY together with the GUARANTORS are hereinafter referred to collectively as the “OBLIGORS.”)
- (2) The CREDITOR is The Export Import Bank of United States, an agency of the Government of United States of America, duly constituted and organised under the laws of the United States of America, operating at 811 Vermont Avenue, N.W., Washington D.C., USA 20571 Claimant is referred to hereinafter as “Ex-Im Bank.”
 - (3) The DEBTOR COMPANY is Crown Milk Specialties Private Limited, having its registered office at # 1721, Sector 33-D, Chandigarh-160-020 (UT), India & the First Guarantor is Crown Packages Private Limited, having its registered office at # 1721, Sector 33-D, Chandigarh-160-020(UT), India, and the Second Guarantor is Mr. Tarsem Kansal, having residence at # 1721, Sector 33-D, Chandigarh-160 020 (UT).

- (4) The DEBTOR COMPANY is incorporated on 22.4.2003, with the Registrar of Companies, Punjab, Himachal Pradesh & Chandigarh under Certificate of Incorporation No. U15203CH2003PTC25941. The DEBTOR COMPANY has availed credit facilities from General Electric Capital Corporation (“GE Capital”). On or about November 30, 2007, the 1st Respondent executed a promissory note of even date (the “Promissory Note”) in the amount of Six Hundred Seven Thousand Two Hundred Thirty Seven and No/100 United States Dollars (US\$ 607,237.00) payable to the order of GE Capital, to evidence the loan (hereinafter referred to as the “Loan”) extended by GE Capital to the DEBTOR COMPANY, which was secured, *inter alia*, by the continuing unlimited guarantee (hereinafter referred to as “the Guarantee”) of Mr. Tarsem Kansal, the GUARANTOR NO.2 herein. The Loan was guaranteed by Ex-Im Bank pursuant to a Master Guarantee Agreement, as amended, modified or supplemented from time to time (hereinafter collectively referred to as “the Ex-Im Bank Master Guarantee Agreement”), by and between Ex-Im Bank and GE Capital.
- (5) The DEBTOR COMPANY has paid interest through November 15, 2008 of Twenty One Thousand Seventy Two and Fifty Five/100 US Dollars (USD \$21,072.55)
- (6) GE Capital endorsed the Promissory Note to Private Export Funding Corporation (“PEFCO”) pursuant to a certain PEFCO Commitment Letter dated of November 15, 2007.
- (7) Subsequently, the DEBTOR COMPANY defaulted in their obligations and as a result, on or about March 16, 2009, Ex-Im Bank paid PEFCO the amount of Six Hundred Thirteen Thousand Eight Hundred Forty Five and Eighty One/100-United States Dollars (US\$613,645.81).
- (8) In consideration of Ex-Im Bank’s payment of the said amount under the Master Guarantee Agreement Policy,) GE

Capital assigned to Ex-Im Bank all of its rights, title and interest in and to the Loan, the promissory notes, the guarantees, and the related documents, pursuant to an assignment dated February 23, 2009, and PEFCO endorsed the Promissory note to Ex-Im Bank pursuant to an endorsement dated February 25, 2009 (Collectively “the Assignment”).

- (9) Thereafter, the DEBTOR COMPANY and the GUARANTOR NO. 2 could not make the payment of outstanding amount under the Loan.
- (10) The CREDITOR appointed Global Recovery Group, LLC (“GRG”) as its agent pursuant to a power of attorney dated April 1, 2009 to recover on the Loan.
- (11) Thereafter, an Amendment to Promissory Note and Credit Agreement dated January 8, 2010 was entered into among the CREDITOR and the OBLIGORS vide which the OBLIGORS agreed to pay the principal sum of USD Five Hundred Eighty Seven Thousand Nine Hundred Fifty Two and Nineteen/100 US Dollars (USD \$587,952.19), (the “Settlement Amount”) to CREDITOR as full and final settlement of their obligations under the Loan. It was agreed that the Settlement Amount, along with interest, would be paid in fourteen (14) installments, commencing on February 26, 2010 and ending on June 30, 2013. Further, the Managing Director, Shri Tarsem Kansal reaffirmed his obligations as a Guarantor for payment of Settlement Amount, and Crown Packages Pvt. Ltd. jointly and severally, unconditionally and irrevocably guaranteed the Obligations of the DEBTOR COMPANY.
- (12) Even thereafter, the OBLIGORS could not make the payment of the amounts outstanding. In such circumstances, the following amounts remained due and payable by the Respondents to Ex-Im Bank, as on July 29, 2011.

Principal:

\$607,236.57

Interest: \$ 46,997.49
Total Debt as of July 29, 2011 \$654,234.06

Interest on the Total Debt accrues at the current rate of \$33.72 per day.

- (13) The OBLIGORS have been negotiating for settlement of the dues to the CREDITOR under a Payment Term Settlement. The DEBTOR COMPANY AND GUARANTOR NO. 2 had several rounds of meetings with the representatives of the said GRG. The OBLIGORS have been negotiating with the GRG in its capacity as agent for the CREDITOR to restructure the entire liabilities of the OBLIGORS towards the CREDITOR.
- (14) Since no consensus could be reached at that juncture, the CREDITOR issued a statutory notice dated November 15, 2011 to the DEBTOR COMPANY and the Guarantor No. 1, through its Legal Counsel and Advocates. Subsequently, the CREDITOR filed Petitions (CP No. 87/2012 and CP No. 88/2012) in the Hon'ble Punjab and Haryana High Court, Chandigarh (INDIA), for Winding Up of the DEBTOR COMPANY and of the GUARANTOR NO. 1 under Sections 433(e) & (f), 434(1)(a) & 439(1) (b) of the Companies Act, 1956 which had been admitted vide order dated 29 Aug. 2014. The CREDITOR also proposed to take action under the Civil Law for recovery of its dues.
- (15) In such circumstances, the parties resumed the negotiation for a payment terms, wherein they were able to arrive at a mutual agreement. Accordingly, the following has been agreed between the parties as below:
- That the OBLIGORS have offered to settle, and the CREDITOR has agreed to receive, the sum of US\$ 607,236.57 as full and final satisfaction of all its claims against the OBLIGORS.
 - That this sum of Six Hundred Seven Thousand Two Hundred Thirty Six and Fifty Seven/100 US Dollars (US\$ 607,236.57) would be paid to the CREDITOR as follows. The OBLIGORS

would first make a good faith payment to the CREDITOR in the amount of One Hundred Thousand US Dollars (USD \$100,000) on or before December 29, 2014, and then pay the remaining sum of Five Hundred Seven Thousand Two Hundred Thirty Six and Fifty Seven/100 US Dollars (USD \$507,236.57) in quarterly instalments as indicated below and in the attached payment schedule, beginning on or before February 27, 2015 ending August 30, 2017. The repayment schedule is as follows:

- Payment Date	Payment Amount USD
1	12/29/2014
	\$100,000.00 (Good Faith Payment)
2	02/27/2015
3	05/30/2015
4	08/30/2015
5	11/30/2015
6	02/27/2016
7	05/30/2016
8	08/30/2016
9	11/30/2016
10	02/28/2017
11	05/30/2017
12	08/30/2017
	\$ 40,000.00
	\$ 40,000.00
	\$ 40,000.00
	\$ 40,000.00
	\$ 40,000.00
	\$ 45,000.00
	\$ 45,000.00
	\$ 45,000.00
	\$ 45,000.00
	\$ 50,000.00
	\$ 50,000.00
	\$ 67,236.57
Total United States Dollars	\$ 6,07,236.57

- That the payments shall be made by wire transfer to Ex-Im Bank pursuant to the following wiring instructions:

Beneficiary Name	:	Export-Import Bank
Beneficiary's Bank	:	U.S. Treasury Department
Beneficiary's Account	:	00004984
Number	:	
ABA Number	:	021030004
Branch Address	:	33 Liberty Street, New York, New York, 10045
Additional Information	:	G013943, Crown Milk Specialties Private Limited

- (16) It has further been agreed between the parties that time is the essence of this Settlement/Agreement, and that the OBLIGORS would jointly and severally effect payment to the CREDITOR of the above mentioned amounts within the

dates stipulated in the manner stipulated above without fail.

- (17) Since the remittances are to be made in US Dollars into a foreign account, it has been agreed to between the parties that it is bounden duty of the OBLIGORS to secure the requisite approvals, including approval from the RBI, for remitting the agreed amount (USD \$607,236.57) in favour of the CREDITOR as stipulated in this agreement. It has been represented by the DEBTOR COMPANY AND GUARANTORS to the CREDITOR that the original lending having been duly approved by the RBI, re-payment of the same under this Settlement would also be approved without any impediments. Besides, they are taking all required steps promptly and diligently to obtain the requisite approvals in time, and that remittance of the good faith money and the instalments shall start with effect from the agreed date as per the schedule without any default. In fact, the good faith money in the form of bank draft bearing no.1151131 (under memo 6322SMD00000115) dated 1 Oct.2014 amounting US \$100,000 favouring the CREDITOR drawn on the JP Morgan Chase Bank NA has been kept by the OBLIGORS in custody of the Hon'ble Punjab and Haryana High court at Chandigarh to be handed over to the CREDITOR as per orders of the Hon'ble Court .A copy of the SWIFT copy is attached hereto as **Annexure-A Colly**. It has also been agreed to between the parties that the payment of USD Six Hundred Seven Thousand Two Hundred Thirty Six and Fifty Seven/100 US Dollars (USD \$607,236.57) in favour of the CREDITOR shall be a net payment. The payment shall be exclusive of all taxes, fees, set offs, exchange fees, or any other charges for approvals, remittance, etc., any of which would be to the account of the DEBTOR COMPANY only. It has further been agreed to between the parties that the OBLIGORS shall not seek any concessions, modifications or extensions from the CREDITOR and/or the Court on any ground

whatsoever in re-payment of the agreed amount as per the schedule of payment.

- (18) It is agreed between the parties that once such payments are made as aforesaid, the CREDITOR will have no further claim or cause of action as against the DEBTOR COMPANY and GUARANTORS and the DEBTOR COMPANY and GUARANTORS would be relieved of all further liability to the CREDITOR, its successors, agents or nominees.
- (19) Further, provided the OBLIGORS duly and timely effect the payments as aforesaid, the CREDITOR would desist from initiating any suit or action for recovery of its dues against the DEBTOR COMPANY and GUARANTORS, and further report before the Hon'ble High Court in the Winding Up petitions (CP No. 87/2012 and CP No. 88/2012) that its dues have been settled.
- (20) The OBLIGORS admit and acknowledge that they are liable to pay to the CREDITOR a sum of Six Hundred Fifty Four Thousand Two Hundred Thirty Four and Six/100 US Dollars (USD \$ 654,234.06) as on July 29, 2011 with further interest on the Total Debt accruing at the rate of \$33.72 per day as claimed in their statutory notice, against which the Settlement of US\$ 607,236.57 had been arrived at. If the DEBTOR COMPANY and GUARANTORS omit or fail to make payment of a sum of US\$ 607,236.57 under the this settlement agreement in the manner aforesaid, within the time frame above stipulated, the DEBTOR COMPANY and GUARANTORS agree and undertake that they shall become jointly and severally liable to pay the entire claim of the CREDITOR, with interest right up to the date of actual payment, as stipulated in para 12 above. And the CREDITOR shall have the right to enforce the claim, as above, by getting revived the Winding Up petitions, CP No. 87/2012 titled *Export Import Bank, USA Vs. Crown*

Packages Pvt. Ltd., and CP No. 88/2012 titled *Export Import Bank, USA Vs. Crown Milk Specialities Pvt. Ltd.*, from the 'admission' stage, and get the factum of admission of the petitions published in terms of the order dated 29 Aug. 2014 passed by the Hon'ble High Court.____

- (21) Additionally, the Winding Up petition action shall remain open until the settlement amount is timely paid in full according to the payment schedule set up herein above. The petitions, Company Petition NO.87/2012 and Company Petition No. 88/2012, can be revived from 'admission' stage, on the option of the CREDITOR, if any of the due instalments is not paid/remitted by the OBLIGORS as per the agreed schedule of payment. The CREDITOR will withdraw the Winding Up petition when the settlement amount is paid in full in accordance with the terms of this Settlement.
- (22) It is further agreed to by the DEBTOR COMPANY and GUARANTORS and CREDITOR that these Consent Terms/Agreement would be submitted before the Hon'ble High Court for passing of appropriate orders in terms thereof.
- (23) The Parties hereto have agreed that time is the essence of this agreement and no extension of time would be permissible on any account whatsoever.
- (24) The Parties hereto have agreed that this agreement and the rights and obligations arising hereunder shall be governed by and construed in accordance with the Laws of India, and that the Courts in Chandigarh shall have exclusive jurisdiction with respect to the same.

The CREDITOR has accepted to receive the said time bound payment in full and final settlement of its claim against the OBLIGORS.

The parties, through their authorised representatives and personally (wherever applicable), have arrived at these

Settlement Terms of their own free will. No coercion or force of any kind was applied to arrive at the Settlement. The terms of Settlement bind the parties', their assignees and successors, respectively. The power of attorney dated April 1, 2009 from CREDITOR to GRG, together with the DEBTOR COMPANY'S and GUARANTOR 1'S authorisation Resolutions dated 13th November 2014 empowering them to enter into this agreement, are collectively attached herewith as **Annexure-B Colly.**"

Sh. Tarsem Kansal, Managing Director, M/s Crown Packages Pvt. Ltd., has filed an affidavit dated 8.12.2014 in support of agreement and deposed in the following terms:-

"2. That during the pendency of the present appeal the appellant entered into in agreement/compromise dated 5.12.2014 and had settled the dispute with the respondent. Copy of the compromise deed dated 5.12.2014 along with all the relevant documents are annexed as AnnexureA-1.

3. That the appellant company during the pendency of the appeal had made the payment of Rs.1 lac U.S. Dollar which is lying with the Registrar, of this Hon'ble Court.

4. That in view of the compromise arrived between the parties the appellant has no objection to release the payment of Rs.1 lac U.S. Dollar to the respondent company.

5. That the appellant further undertaken to comply with the payment scheduled as mentioned in para no.15 of the compromise deed annexure A-1.

6. That since the matter in dispute is settled between the parties in view of annexure A-1 the present appeal may be allowed and the impugned order dated 29.8.2014 is set aside and company petition filed by the respondent company be disposed of accordingly."

Counsel for the respondent acknowledges the terms and

conditions of the agreement and submits that the respondent has no objection if the appeal is allowed, the order of admission is set aside and the company petition is dismissed in terms of the compromise.

We have heard counsel for the parties and upon perusal of the compromise, affidavit filed by Sh. Tarsem Kansal, Managing Director, M/s Crown Packages Pvt. Ltd., and statement made by counsel for the respondent are satisfied that parties have resolved their differences and brought an end to the controversy.

Consequently, we allow the appeal, set aside order dated 29.8.2014 in terms of the agreement and dismiss the company petition. The Registrar shall hand over demand Draft bearing No. 115131, dated 1.10.2014, amounting to \$1,00,000.00 to the appellant for presentation/payment to the respondent in accordance with the terms of the agreement. A photocopy of the draft shall be retained on record. If the appellant defaults in complying with terms and conditions of the settlement, the respondent shall be at liberty to seek revival of the company petition, in accordance with law.

The appellant shall deposit Rs.25,000/- as costs of these proceedings with the Punjab and Haryana High Court Legal Services Committee, within fifteen days.

**(RAJIVE BHALLA)
JUDGE**

08.12.2014
monika

**(B.S. WALIA)
JUDGE**