

Tr.C.P.No.198 OF 2016

(C.P.NO.2 OF 2016)

IN THE MATTER OF M/s BEKO-KARE ENTERPRISES PRIVATE
LIMITED

Dr.Arivudai Nambi,
Son of Dr.G.Ramamoorthy,
residing at 19, Gransden Park,
Coleraine, North Ireland, United Kingdom.,
represented by his Father and
Power of Attorney Holder
Dr.G.Ramamoorthy.



.. Petitioner

/Versus/

1. M/s Beko-Kare Enterprises Private Limited,
having its registered office at
10, Appleby Road,
Wellington Bazaar Post,
The Nilgiris-643232.
2. Mr.Preetham Raman
Son of Raman,
residing at 10, Appleby Road,
Wellington Bazaar Post,
The Nilgiris.
3. Mrs.Saratha Preetham,
Wife of Mr.Preetham Raman,
residing at 10, Appleby Road,
Wellington Bazaar Post,
The Nilgiris.

.. Respondents

JOINT MEMORANDUM OF COMPROMISE FILED BY THE PARTIES

I. **PREAMBLE:**

1. The Company Petition has been filed by the Petitioner alleging acts of oppression and mis-management in the affairs of the Company. During pendency of the Company Petition, on orders

of this Honourable Tribunal, the Parties appeared in person before the Honourable Tribunal on 11th November 2016 and during the course of such hearing, broad Terms of Compromise between the Parties was reached. The Parties have subsequently arrived at a detailed terms of compromise binding on them, subject to orders of this Honourable Tribunal and such agreed terms are as follows:

II. **TERMS OF COMPROMISE:**

1. The 1st Respondent Company and the Petitioners hereby agree that the 1st Respondent Company shall buy back the entire shareholding held by Respondents 2 & 3 in the 1st Respondent Company, for consideration to be discharged and upon terms and conditions as setout hereinafter, in full and final settlement of all claims of the 2nd and 3rd Respondent towards their share of investment in the 1st Respondent Company and related entitlements. The Respondents 2 & 3 also hereby agree to resign from the Directorship of the 1st Respondent Company.
2. In consideration of the foregoing, the Petitioners and the 1st Respondent Company agree:
 - a) To cause the release of charge/mortgage existing in favour of Indian Overseas Bank, Chengalpet over the landed property of the Company along with the superstructures thereon,



(given as security for the borrowings of the 1st Respondent Company).

- b) To cause sale of the landed property of the 1st Respondent Company along with superstructures put up thereon in as is where is condition to the 2nd Respondent or his nominee, upon release of charge thereon by Indian Overseas Bank, Chengalpet. The registration of land shall be done, at the cost of 2nd Respondent as regards stamp duty and registration charges, before the Machinery specified in Clause 3 are moved out of the landed property. The Petitioner shall be permitted, notwithstanding such sale, to have ingress and egress for the purpose of maintaining the removing the plant and machineries in terms of this Compromise.
- c) To cause release of personal guarantee given by the 2nd and 3rd Respondent for securing the borrowings of the 1st Respondent Company.
- d) To indemnify and keep indemnified the 2nd and 3rd Respondent against any claim by the Indian Overseas Bank, Chengalpet in relation to and in respect of the liability of the 1st Respondent Company to the said Bank.
- e) To transfer all the other equipments, inventories and spares etc., apart from the specific machinery mentioned in clause 3 below, to the company of the choice of the 2nd and 3rd



Respondents, after verification by the auditors appointed in terms hereof, to confirm that the said machineries have not been funded from and out of the Bank loan. If any of such machines are found to be funded from and out of the Bank loan, the said machineries will enure and will be handed over to the Petitioner

3. The Petitioner and the 1st Respondent Company shall be entitled to cause the removal of the following specific Machinery of the 1st Respondent Company presently installed in the landed property of the Company, after technical evaluation, to a premises of the choice of the Petitioner (under EOU license No. 2368/MEPZ, as custom bonded warehouse under C.Ex no. 02/2015 - CUS). The petitioner shall obtain all necessary clearance and approval from the Excise and customs department along with MEPZ Chennai at his cost. The cost involved for such transport and transfer of machinery shall also be borne by the petitioner.

a) **ROFIN - LASAG NEEDLE DRILLING SYSTEM NA 302**

1NO INVOICE NO. S00545 , B.O.E. No. 8614576

b) **JOUHSEN LASER DRILLING LINE**

1NO

INVOICE NO. 250814 , B.O.E. No. 7758549

c) **POINT GRINDING MACHINE PG6**

1NO



d) JOUHSEN THREE FACE STAMPING

& THREE FACE GRINDING LINE

1NO

INVOICE NO. 130415 , B.O.E. No. 9448352

e) POLIGRAT ELECTROPOLISHING PLANT

POLILINE EP 1.000D

1NO

INVOICE NO. 370503 , B.O.E. No. 7735589

f) PSS PVT LTD., ETP PLANT (DOMESTIC)

1NO

INVOICE NO. 0207.

The Respondents 2 & 3 shall cause no hindrance for such removal and shall extend all requisite co-operation in the said regard. Until completion of such removal, the premises shall be subject to surveillance by security to be separately appointed by the Petitioner and the 2nd Respondent. The 2nd and 3rd Respondent shall cooperate in ensuring that no damage whatsoever is caused to the plant and machinery and that the same is kept in good condition and extend cooperation for removal of the machines. The Petitioner will be responsible for the safe removal of the above mentioned specific machinery so as to not cause any damage to the flooring and superstructure,



etc., at landed premises of Respondent, Any such damages would have to be borne by the Petitioner.

4. There shall be an evaluation on whether the machines enumerated in Clause 3 above have been put to any use (apart from trial run). Such evaluation shall be done using the services of the equipment suppliers viz Lasag, Jouhesen, Poligrat and Progressive Surface System and their findings in this regard shall be final, provided however, the monetary assessment thereof shall be subject to final assessment by the Auditors appointed as per this compromise. The dismantling and removal of the machines will be carried out using the services of the equipment suppliers viz Lasag, Jouhesen, Poligrat and Progressive Surface System. The evaluation and the dismantling would be at the cost of the petitioner. The parties shall be entitled to seek the independent Auditor nominated hereinafter to depute an observer to carry out such process.

5. Respondents 2 & 3 shall deliver up to the Petitioner the following:

4.1. All Books of Accounts, ledgers, documents, deeds, papers, vouchers, invoices, Balance Sheet, Profit & Loss Account, Ledger, Trial Balance etc complete in all respects until the date of handing over.



4.2. All documents, catalogues, literatures, drawings etc specifically in relation to the Machinery mentioned in clause 3, as provided by the suppliers.

4.3. All statutory approvals, licences, consents, permits, and contracts relating to the machinery mentioned in clause 3, as is available and relating to the Company.

4.4. Statutory Registers including Minutes Book, , Register of Members etc.

5. The Parties agree that M/S.Khumbhat & Co, Chartered Accountants shall be appointed as Independent Auditors to carry out a detailed and forensic Audit with appropriate expert assistance into the affairs and operations of the Company, for fees to be shared equally by the Petitioner and the 2nd Respondent, to ascertain:

- a) the expenditure incurred by Petitioner and Respondents 2 and 3 for the Company,
- b) loss if any caused to the Company by the 2nd and 3rd Respondent through unauthorized use of the machines (if any);
- c) To audit and arrive at the expenses incurred towards the specific machinery mentioned in



clause 3, by the 2nd Respondent through his own sources, not included in the company accounts.

and thereupon and based on final assessment as aforesaid, there shall be a Decree passed by the Honorable Tribunal either in favour of or against the Respondents 2 and 3 for monies as may be due from them or due to them, as the case may be.

6. The Petitioner and the 1st Respondent agree to cause the name of the Company to be changed so as not to retain the words "Beko" or their brands "SMILE" therein and the Respondents 2 and 3 will cooperate in this regard. The Petitioner will have no objection to the Respondents 2 and 3 using the name "Beko" for incorporating any other Company, from the date of the Order being passed in terms of this Memo of Compromise. The name change shall be effected at the earliest by the parties and forthwith on removal of the machines. The Petitioner also agrees not to raise any invoice or sale of products using the BEKO or SMILE name except for transfer of the land and building and additional equipment and inventory purchased by the company other than those mentioned in clause 3, to the Respondents 2 and 3.

7. The Parties agree that the time of completion of performance of obligations enumerated in paragraph 1 to 6 above shall be 30th day of April 2017.



8. The Parties agree to implement the MEMORANDUM OF COMPROMISE in good faith.

9. The Parties agree and confirm that this MEMORANDUM OF COMPROMISE will be filed by the Parties before the National Company Law Tribunal, Chennai and Orders prayed for in terms thereof and the Parties will strictly abide by such order as and when passed.



PETITIONER



RESPONDENTS 2 & 3

R. Vickrja Shankar
ADVOCATE FOR PETITIONER

Adv. R. A. Ganthimathi
J. C. A. RESPONDENTS 2 & 3