

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9893 OF 2017

(Arising out of S.L.P. (C) No.28074 of 2016)

Exide Industries Ltd.

Appellant(s)

Versus

Exide Technologies and Others

Respondent(s)

WITH

CIVIL APPEAL NO.9894 OF 2017

(Arising out of S.L.P. (C) No.28875 of 2016)

O R D E R

Leave granted.

Heard Mr. Arvind P. Datar, learned senior counsel for the appellant and Mr. Gaurav Sharma, learned counsel for the respondent.

A joint application for settlement/compromise has been filed containing the settlement agreement dated 19th May, 2017. The settlement agreement is reproduced herein-below:-

"SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made on May 19, 2017 by and between:

1. Exide Technologies, incorporated under the laws of the United States of America and having its registered office at 13000, Deerfield Parkway, Building 200, Milton, Georgia 30004 (hereinafter referred to as "Exide US", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors in

interest and permitted assigns).

2. Exide Industries Limited, incorporated under the laws of India and having its registered office at Exide House, 59E, Chowringhee Road, Kolkata - 700020 (hereinafter referred to as "Exide India", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors in interest and permitted assigns).

3. Tudor India Private Limited, incorporated under the laws of India and having its registered office at Plot No. 10-1, Kamalpur, National Highway No. 8, Prantij, Gujarat (hereinafter referred to as "Tudor", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors in interest and permitted assigns).

Exide US and Tudor are hereinafter referred to as the "Exide US Parties" collectively, and as an "Exide US Party" individually. The Exide US Parties and Exide India are hereinafter referred to as the "Parties" collectively, and as a "Party" individually.

WHEREAS

A. Certain Disputes (as defined hereinafter) have arisen between Exide India on one hand and Exide US and Tudor on the other hand regarding the ownership and use of the trademark "EXIDE" (the "Mark") in India.

B. Pursuant to mutual discussions, but without admitting or conceding any fault or liability, the Parties have agreed, subject to certain terms and conditions, to fully and finally settle all Disputes and their rights and obligations with respect to the Mark in the manner set out in this Agreement.

C. The consideration for the settlement, waivers and obligations of the Parties under this Agreement, is as set out hereunder, the sufficiency of which is hereby duly acknowledged by the Parties.

D. The Parties are desirous of recording their understanding and agreements in relation to the settlement proposed to be affected between the

Parties and have accordingly agreed to enter into and execute this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

1.1 Definitions

In this Agreement, unless specifically mentioned otherwise, the following words and expressions shall have the meanings assigned to them herein below:

"Application" has the meaning given to it in Clause 3.2(a) (i);

"Business Day" means a day (other than a Saturday or Sunday or public holiday) when commercial banks are open for ordinary banking business in Kolkata, India and in Georgia, United States of America;

"Claim" means actions (including any legal proceeding), causes of action, claims, costs, damages, demands, debts, expenses, fees (including any attorney or adviser fees), liabilities, losses, obligations of any kind and nature whatsoever, whether in law, equity or otherwise, whether known or unknown, discovered or undiscovered, direct or indirect, actual or contingent;

"Compromise Application" has the meaning given to it in Clause 3.2(c) (i);

"Confidential Information" has the meaning given to it in Clause 8.5;

"Cut-Off Date" means the date which is 180 (one hundred and eighty) days from the Execution Date or such other extended date as may be mutually agreed between the Parties in writing;

"Disputes" means the disputes that have arisen *inter se* the Parties in respect of the Mark in India, as a consequence of which the following legal actions and proceedings are currently pending *inter se* the Parties:

(a) Special Leave Petition No. 28074/2016 and Special Leave Petition No. 28875/2016, filed by Exide India before the Supreme Court of India, against *inter alia* Exide US and Tudor (the "Supreme Court Proceedings");

(b) Rectification proceedings filed by Exide US against Exide India before the High Court of Calcutta as follows:

(i) ATM 5 of 1998 in respect of the mark 'SILVER EXIDE' under Application No. 182629 in Class 9;

(ii) ATM 6 of 1998 in respect of the Mark under Application No. 287588 in Class 9;

(iii) ATM 7 of 1998 in respect of the Mark under Application No. 287589 in Class 11;

(iv) ATM 8 of 1998 in respect of the Mark under Application No. 366539 in Class 9;

(v) ATM 4 of 1999 in respect of the Mark under Application No. 694 in Class 9; and

(vi) ATM 5 of 1999 in respect of the mark 'IRONCLAD EXIDE' under Application No. 697 in Class 9; (collectively, the "Rectification Proceedings"); and

(c) Opposition No. KOL-107913 filed by Exide US against Exide India, objecting to the registration of the Mark under Application No. 848498 in Class 7, before the Registrar of Trademarks, Kolkata (the "Opposition Proceedings").

"Escrow Account" has the meaning given to it in the Escrow Agreement;

"Escrow Agent" means The Hongkong and Shanghai Banking Corporation Limited, Corporate Trust and Loan Agency, HSBC Securities Services, having its office at 11th Floor, Building No. 3, NESCO - IT Park, NESCO Complex, Western Express Highway, Goregaon (East), Mumbai 400 063;

"Escrow Agreement" means the escrow agreement of even date entered into amongst *inter alia* Exide India, Exide US and the Escrow Agent to govern the manner in which the Escrow Amount shall be

transferred to Exide US;

"Escrow Amount" has the meaning given to it in Clause 3.2 (b);

"Execution Date" means and refers to the date of this Agreement;

"Final Settlement" has the meaning given to it in Clause 2.1;

"Final Settlement Date" means the date on which Final Settlement occurs, being the date on which all the actions under Clause 3.2 are completed;

"IPAB" means the Intellectual Property Appellate Board;

"Mark" has the meaning given to it in Recital A;

"Notice" has the meaning given to it in Clause 8.7;

"Opposition Proceedings" has the meaning given to it in the definition of "Disputes";

"Person" means a corporation, association, unincorporated association, partnership (general or limited), joint venture, estate, trust, limited liability company, limited liability partnership or any other legal entity, individual or government, state or agency of a state;

"RBI" means the Reserve Bank of India;

"RBI Approval" has the meaning given to it in Clause 3.2(a) (i);

"Rectification Proceedings" has the meaning given to it in the definition of "Disputes";

"Settlement Amount" means USD 6,500,000 (United States Dollars Six Million Five Hundred Thousand) to be paid by Exide India to Exide US for full and final settlement of the Disputes;

"Subsidiary" with respect to any given Person, means any other Person of which such given Person, directly or indirectly, owns more than half of the share capital or other ownership interest giving the holders the right to elect the board of directors or other governing body of that other Person or otherwise direct the management and

policies of that other Person, and "Subsidiaries" shall be construed accordingly;

"Supreme Court Proceedings" has the meaning given to it in the definition of "Disputes";

"Transaction Documents" means the agreements entered into by the Parties in respect of or in connection with, the Final Settlement, including this Agreement and the Escrow Agreement (and the agreements, applications filed before various court and documents executed pursuant thereto);

"Tudor Directors" means collectively, the individuals named as parties in the Supreme Court Proceedings, the Opposition Proceedings and the Rectification Proceedings, in their capacity of directors of Tudor, and "Tudor Director" means any of them, individually; and

"USD" means the US Dollar being the legal currency of United States of America.

1.2 Interpretation

In the interpretation of this Agreement, unless the context otherwise requires:

(a) Reference to the singular includes a reference to the plural and vice versa.

(b) Reference to any gender includes a reference to all the genders.

(c) Reference to any statute or statutory provision shall include a reference to that statute or statutory provision as amended, consolidated or replaced from time to time (whether before or after the Execution Date) and includes any subordinate legislation made under the relevant statute or statutory provision.

(d) References to any Clauses or Schedule, are to clauses of, or schedule to, this Agreement. The Schedule forms a part of this Agreement.

(e) The headings are inserted for convenience only and do not affect the construction or interpretation of this Agreement.

(f) When any particular date prescribed in this Agreement is not a Business Day, the next

succeeding day which is a Business Day shall be considered as such date.

(g) References to "include" or "including" are to be construed without limitation.

(h) Any reference to "writing" or "written" means any method of reproducing words in a legible and non-transitory form (excluding, unless otherwise stated herein, e mail).

(i) A reference to any agreement, deed, document or instrument shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s).

(j) References to the words "hereof", "herein", "hereto", "hereunder" or similar expressions used in this Agreement shall mean and refer to this Agreement and not to any particular Clause of this Agreement.

(k) Time is of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

(l) The expression "in agreed form" means in the form agreed between the Parties and signed for the purposes of identification by or on behalf of each of the Parties.

2. EFFECT OF SETTLEMENT

2.1 On and from the Final Settlement Date, all rights, liabilities and obligations of the Parties, whether quantified or not and whether asserted or not, arising out of, under or in connection with the Disputes, shall stand fully and finally settled. In relation to the Disputes:

(a) no Party shall have any obligation or liability after the Final Settlement Date towards the other Parties (or their respective affiliates, directors, shareholders, officers or employees and their respective agents, successors, assigns, heirs or family members, as applicable), whether arising prior to or post the Final Settlement Date

except in respect of claims arising on account of breach of this Agreement;

(b) each Party (for itself and for its respective affiliates, directors, shareholders, officers or employees and their respective agents, successors, assigns, heirs or family members, as applicable) irrevocably waives on and from the Final Settlement Date any rights, causes of action or recourse (whether under law, equity, contract or otherwise) against the other Parties with the exception of claims to enforce, or for breach of, this Agreement;

(c) each Party (for itself and for its officers, directors, employees, affiliates, shareholders and their respective successors, assigns, agents and representatives, heirs and family members, as applicable) irrevocably and unconditionally forever releases, acquits and discharges on and from the Final Settlement Date the other Parties (and their respective officers, directors, employees, affiliates, shareholders and their respective successors, assigns, agents and representatives, heirs and family members, as applicable) from and against any and all Claims that such Party ever had, now have, or may hereafter have or acquire, against the other Parties whether specifically covered under this Agreement or not, including without limitation the claims, events or transactions alleged in the Disputes initiated by it against the other Parties, with the exception of claims to enforce, or for breach of, this Agreement; and

(d) the Parties agree that on and from the Final Settlement Date they (or their respective affiliates, directors, shareholders, officers or employees and their respective agents, successors, assigns, heirs or family members, as applicable) will not file, charge, claim, sue or cause or permit to be filed, charged, claimed or sued, any action for legal or equitable relief against any of the other Parties (or their respective affiliates, directors, shareholders, officers or employees and their respective agents, successors, assigns, heirs or family members, as applicable) involving any matter occurring at any time in the past, up to and including the Final Settlement Date, or involving any continuing effects or any acts or practices which may have arisen or occurred up to and including the Final Settlement Date or by reason of

the transactions, events, occurrences, acts, omissions or failures to act, of whatever kind or character whatsoever relating to any of the matters settled pursuant to this Agreement, with the exception of claims to enforce, or for breach of this Agreement.

The settlement between the Parties as set out in this Clause 2.1 shall be the "Final Settlement".

3. TERMS OF SETTLEMENT

3.1 Pursuant to discussions and in consideration of the rights and obligations of the Parties under this Agreement (and the other Transaction Documents), it is agreed that this Agreement (together with the other Transaction Documents) comprehensively and completely sets out the final understanding between the Parties, including the terms and conditions subject to which, an amicable, full, final and irrevocable settlement of the Disputes shall be achieved between the Parties.

3.2 To achieve the Final Settlement, Exide India on one hand and Exide US and Tudor on the other hand, shall undertake the following respective actions which shall each be pre-conditions to the Final Settlement unless waived in writing by the other Party, to the extent permissible under applicable law:

(a) RBI Application:

(i) Exide India shall submit an application, in agreed form, to the RBI through its authorised dealer within 10 (ten) Business Days of the Execution Date ("Application"), seeking an approval for the remittance of the Settlement Amount to Exide US and opening of the Escrow Account to facilitate the settlement recorded herein and shall endeavour to obtain written communication from the RBI either providing its approval in terms of the Application or specifically stating that the approval as sought for in terms of the Application is not required (in either case, the "RBI Approval") within the Cut-Off Date. Exide US shall provide reasonable support and assistance to Exide India as may be required in filing the Application and obtaining the RBI Approval.

(b) Escrow Account:

Exide India shall, within 10 (ten) Business Days of the date of receipt of the RBI Approval (or such other extended period as may be mutually agreed between the Parties in writing), open the Escrow Account pursuant to the terms of the Escrow Agreement and deposit therein an amount in Indian Rupees equal to USD 5,796,700 ("Escrow Amount") calculated on the basis of the exchange rate of the Escrow Agent prevailing on the date of such deposit after withholding USD 703,300 as taxes on the Settlement Amount/USD 6,500,000.

(c) Withdrawal of Disputes:

Within 10 (ten) Business Days of the completion of the actions specified in Clause 3.2(b) above (or such other extended period as may be mutually agreed between the Parties in writing), and simultaneously:

(i) the Parties shall file before the Supreme Court of India, a joint application for compromise in the format set out in the Schedule hereto, recording the terms of this Agreement, in order to withdraw/ terminate the Supreme Court Proceedings ("Compromise Application"). Provided that if the registry of the Supreme Court of India is not open for regular filings during the 10 (ten) Business Days period set out above, the Parties shall file the Compromise Application within 2 (two) Business Days of opening of the registry of the Supreme Court of India;

(ii) Exide US shall file before the High Court of Calcutta applications in order to withdraw or discontinue the Rectification Proceedings or before IPAB immediately, if directed by High Court of Calcutta. Provided that if the registry of the High Court of Calcutta or IPAB, as the case may be, is not open for regular filings during the 10 (ten) Business Days period set out above, Exide US shall file an application to withdraw or discontinue the Rectification Proceedings within 2 (two) Business Days of opening of the registry of the High Court of Calcutta or IPAB, as the case may be; and

(iii) Exide US shall file before the Registrar of Trademarks, Kolkata, an application or request in order to withdraw or discontinue the Opposition

Proceedings.

(d) First Tranche Payment:

Upon production to the Escrow Agent under the Escrow Agreement of an authenticated copy of the order from the Supreme Court of India granting the Compromise Application or recording the settlement, an amount equal to 50% (fifty percent) of the Escrow Amount, shall be released by the Escrow Agent to Exide US in accordance with the terms of the Escrow Agreement.

(e) Second Tranche Payment:

Upon production to the Escrow Agent under the Escrow Agreement of:

(i) a certified true copy of the order from the High Court of Calcutta or IPAB, as the case may be recording the withdrawal/ discontinuance of the Rectification Proceedings or the settlement; and

(ii) a certified true copy of the order from the Registrar of Trademarks, Kolkata recording the withdrawal/ discontinuance of the Opposition Proceedings or the settlement,

the balance 50% of the Escrow Amount, shall be released by the Escrow Agent to Exide US in accordance with the terms of the Escrow Agreement.

3.3 All actions contemplated in Clause 3.2 above are to be consummated sequentially and are inter-dependent, being part of the same transaction. The Final Settlement and the Final Settlement Date shall not be deemed to have occurred, unless all of the obligations to be complied with in Clause 3.2 and 3.3 are complied with and satisfied in all respects and are fully effective.

3.4 Each Party agrees and acknowledges that it may, subsequent to the Final Settlement, discover facts in addition to, or different from, those which it is now is aware of or believes to be true with respect to the Disputes, and the settlement and release hereunder shall be and remain in effect notwithstanding the discovery or existence of such additional or different facts.

3.5 The Parties acknowledge that this Agreement is being executed in connection with the settlement of

the Disputes between the Parties and that this Agreement and the actions taken pursuant hereto including, without limitation, payment of the Settlement Amount, do not constitute an acknowledgement or admission of liability for any matter or precedent upon which a liability may be assessed. Rather, each Party acknowledges that each Party has denied, and continues to deny, any liability for the allegations made in the Disputes, and it is the express understanding of the Parties that they are entering into this Agreement for the sole purpose of resolving all the Disputes between them and for avoiding the expenses and risks of litigation.

3.6 The Parties agree that in the event the Compromise Application is not filed with the Supreme Court of India within the time period specified in Clause 3.2(c) above except on account of delay attributable to Exide India and/or the applications for withdrawal/ discontinuance of the Rectification Proceedings and Opposition Proceedings are not filed by Exide US within the time period specified in Clause 3.2(c) above, Exide India shall be entitled to instruct the Escrow Agent under the Escrow Agreement to refund the Escrow Amount to Exide India and thereupon, this Agreement shall forthwith terminate and shall cease to have effect and be binding, in accordance with Clause 7 below.

3.7 On and from the Final Settlement Date, the Exide US Parties shall jointly and severally indemnify and keep indemnified Exide India and its officers, directors, employees, affiliates, shareholders (the "Indemnified Persons") from and against any and all losses, claims, actions, damages, demands, suits, proceedings, liabilities, costs and expenses suffered or incurred by any Indemnified Person, as a result of any action or claim from any Tudor Director in connection with the Disputes and/or the settlement recorded herein.

4. SETTLEMENT AMOUNT

4.1 The Exide US Parties acknowledge and agree that the payment of the Settlement Amount to Exide US in the manner and on the terms and conditions contained in this Agreement shall constitute the entire amount of monetary consideration due and payable for the Final Settlement, including for the full and final settlement of the Disputes and their covenants and undertakings under Clause 5.

4.2 The payment of the Settlement Amount shall be subject to deduction of USD 703,300 as applicable withholding taxes. Exide India shall provide to Exide US a tax deduction certificate in the prescribed form and within the time prescribed by applicable law, evidencing the tax deducted.

4.3 Upon payment of the Settlement Amount to Exide US, none of the Exide US Parties shall seek any further compensation from Exide India, and Exide India shall not be obliged to pay any further amounts, directly or indirectly, for any other claims, damages, costs or attorneys' fees in connection with the settlement proposed to be affected between the Parties regarding the Disputes pursuant to the terms and conditions of this Agreement.

5. COVENANTS AND UNDERTAKINGS

5.1 In addition to the specific settlement, obligations, waivers and undertakings of the Parties under the Transaction Documents, in consideration of the mutual settlement and considerations specified herein, each of the Parties agree, undertake and covenant to comply with their respective obligations under this Clause 5.

5.2 Subject to Clause 5.4 below, on and from the Final Settlement Date, Exide US and Tudor:

(a) irrevocably agree and acknowledge that the Mark belongs to and vests solely, absolutely, unconditionally and permanently with Exide India in India, in perpetuity, without any limitation of time and that Exide India shall have the exclusive right to initiate any action, claim or proceedings and/ or obtain relief in respect of any infringement or unauthorised use of the Mark in India;

(b) shall perpetually surrender and waive (and shall cause their Subsidiaries to perpetually surrender and waive) all rights (including proprietary rights), interests or claims (whether now existing or in future) to ownership and/ or use of the Mark in India, including the right to register or apply for registration of the Mark (or any other mark, label, logo or device which infringes or is likely to cause infringement of and/ or which is deceptively or confusingly similar to the Mark) in India in any and all classes of goods;

(c) except as expressly set out in Clause 5.4, shall not (and shall procure that their Subsidiaries shall not) use (or represent any association with any use) in India the Mark (including any device, label, logo, mark, trade dress or trading style consisting of or containing the Mark) and/ or any other mark, label, logo or device, including, as part of any ".in" country code top level domain (but excluding the global website of Exide US or its group companies), trade or corporate name, trading style, corporate stationery or variations of any of the foregoing which infringes or is likely to cause infringement of and/ or which is deceptively or confusingly similar to the Mark, in any form or manner whatsoever in India in relation to any business and goods and/ or as part of any advertisement or publication in print or digital form released, circulated, issued or distributed by Exide US, Tudor or any of their Subsidiaries in India, or in any other commercial capacity whatsoever;

(d) except as expressly set out in Clause 5.4, shall (and shall procure that their Subsidiaries shall) discontinue and refrain from making any reference whatsoever to the Mark in India in any public statements, filings (except if required under the laws of India), marketing material and/ or in connection with import, manufacture, marketing, sale and/or distribution of any kind of batteries in India; and

(e) shall not (and shall procure that their Subsidiaries shall not) dispute, interrupt, object or interfere in Exide India and/ or its Subsidiaries' quiet, unfettered, exclusive and absolute ownership and use of the Mark in India, all of which is hereby acknowledged by Exide US and Tudor.

5.3 Exide US and Tudor confirm and acknowledge the scope and duration of the covenants set out in Clause 5.2 above, and deem the mutual settlement and the consideration paid under this Agreement to be adequate and sufficient consideration, *inter alia*, for the undertakings and restrictions under the abovementioned clause. Exide US and Tudor further acknowledge and agree that the covenants contained in Clause 5.2 above are no more extensive than is reasonable to protect the Mark in India and the goodwill and business of Exide India and that any infringement, breach or violation thereof shall entitle Exide India to any injunctive or other relief to enforce its rights in and to the Mark in India,

including without limitation, immediate injunctive and mandatory reliefs.

5.4 On and from the Final Settlement Date, Exide US shall have the right, directly (or through its Subsidiaries) or through a third party venture, to manufacture, market, sell and/ or distribute batteries for transportation applications (including SLI and electric vehicles), as well as batteries for industrial applications in India, so long as such entity refrains from use of the Mark (or any other mark, label, logo or device which infringes or is likely to cause infringement of and/ or which is deceptively or confusingly similar to the Mark) in any form or manner including by way of references on the product and in marketing material or labels disseminated in India that such entity is connected to Exide US and/ or any proprietor of the Mark. Notwithstanding the foregoing, and only to the extent the laws of India or the country of export into India requires by law, the identification of the legal entity manufacturing such battery, Exide US may directly (or through its Subsidiaries) or through a third party venture include on the product label, invoice, warranty or other documentation, a reference to such entity, provided that such identification is not for the purpose of, or is not otherwise utilised as a substitute for marketing or publicity.

5.5 After the Final Settlement Date, no Party shall (and shall procure that its Subsidiaries shall not) export and/or market batteries bearing the Mark, or use the Mark in connection with its products, in any country in which the other Party (or its Subsidiaries) owns an active and valid registration for the Mark, except as set out otherwise in this Clause 5. Provided that, each Party (and/or its Subsidiaries) shall have the right to export and/or market batteries of any kind, or use the Mark in connection with its products, in any country in which:

(a) the other Party (or its Subsidiaries) has no legal rights to the Mark; or

(b) such Party, its Subsidiaries, group companies or associates own an active and valid registration for the Mark.

5.6 On and from the Final Settlement Date, Exide India shall have the right, directly (or through its Subsidiaries) or through a third party venture, to

manufacture, market, sell and/ or distribute its products in any jurisdiction outside India where Exide US or any of its Subsidiaries own an active and valid registration for the Mark, so long as such entity refrains from use of the Mark (or any other mark, label, logo or device which infringes or is likely to cause infringement of and/ or which is deceptively or confusingly similar to the Mark) in any form or manner including by way of references on the product and in marketing material or labels disseminated in India that such entity is connected to Exide India and/ or any proprietor of the Mark. Notwithstanding the foregoing, and only to the extent the laws of India (or the laws of the country of manufacture of such products, as the case may be) or the country of import from India (or from the country of manufacture of such products, as the case may be) requires by law, the identification of the legal entity manufacturing such products, Exide India may directly (or through its Subsidiaries) or through a third party venture include on the product label, invoice, warranty or other documentation, a reference to such entity, provided that such identification is not for the purpose of, or is not otherwise utilised as a substitute for marketing or publicity.

5.7 Each Party hereby covenants to the other Parties that:

(a) it shall, at its own cost, do, execute, send and/ or file without undue delay, or procure to be done and executed, sent and/ or filed without undue delay, all acts, deeds, documents and other things which may be reasonably required in order to give effect to the actions contemplated under this Agreement (including as may be reasonably required to ensure that the Compromise Application and other applications specified in Clause 3.2(c)) are lodged, approved and endorsed by the necessary courts expeditiously); and

(b) it shall, execute, send and/or file without undue delay, or procure to be done and executed, sent and/or filed without undue delay, all acts, deeds, documents and other things which shall be reasonably required in order to stay/ adjourn the Supreme Court Proceedings, Rectification Proceedings and Opposition Proceedings for the period commencing from the Execution Date and ending on (i) the date of filing of the applications specified in Clause 3.2(c); or (ii) the date of termination of this Agreement (if such termination occurs prior to the Final Settlement

Date or otherwise than on account of non-consummation of transactions thereunder).

5.8 Until the Final Settlement Date, the Parties shall refrain from taking any action with respect to the Supreme Court Proceedings, the Opposition Proceedings and the Rectification Proceedings which is inconsistent with or contrary to the terms of this Agreement.

6. REPRESENTATIONS & WARRANTIES

Each Party represents and warrants to the other Parties as on the Execution Date as follows:

(a) it has all the necessary capacity, power and authority to execute, deliver this Agreement and to perform its obligations and covenants hereunder. This Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement;

(b) it (not being an individual) is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;

(c) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not violate or conflict with (i) any law, judgment, order, writ, decree or injunction applicable to it; (ii) any contract, arrangement or instrument to which it is a party; or (iii) its constitutional documents; and

(d) other than the Supreme Court Proceedings, the Rectification Proceedings and the Opposition Proceedings, there are no claims, investigations or proceedings before any court, tribunal or governmental authority in progress or pending against or relating to it, which could reasonably be expected to prevent it from fulfilling its obligations set out in this Agreement.

7. TERMINATION

7.1 This Agreement shall be effective from the Execution Date and shall continue to be legally valid, binding and in force, unless terminated in accordance with the provisions of Clause 7.2.

7.2 This Agreement may be terminated at any time

prior to the Final Settlement Date:

(a) by any Party, for any material breach or non-performance of any material term or condition under this Agreement by the other Party(ies), which breach or non-performance is not cured or remedied within a period of 90 (ninety) Business Days from the date of receipt of a notice in respect thereof;

(b) by any of the Parties, if a court of competent jurisdiction or governmental authority shall have issued an order, decree or ruling permanently enjoining or prohibiting the consummation of the transactions contemplated under this Agreement irrespective of whether such order, decree or ruling shall have become final and non-appealable;

(c) by Exide India, pursuant to Clause 3.6;

(d) by any of the Parties, if the RBI Approval is not granted or is denied by the Cut-Off Date;

(e) by Exide US, if the Compromise Application is not filed with the Supreme Court of India within the time period specified in Clause 3.2(c) on account of delay attributable to Exide India; or

(f) pursuant to the mutual written consent of the Parties.

7.3 In the event of termination of this Agreement pursuant to Clause 7.2 above, this Agreement and the Transaction Documents shall become void and have no further force or effect. Clause 1 (*Definitions and Interpretation*), this Clause 7.3 and Clause 8 (*Miscellaneous*) shall survive the termination of this Agreement.

8. MISCELLANEOUS

8.1 Entire Agreement: This Agreement and the Transaction Documents, together with such other documents as the Parties may execute thereto, constitute the entire understanding and mutually agreed terms and conditions of the final settlement and arrangement between the Parties and supersede all prior agreements, discussions and understandings (oral or written) between the Parties (including the Term Sheet dated January 9, 2017 executed between the Parties).

8.2 Counterparts: This Agreement may be executed in

any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document, and any Party may execute this Agreement by signing any one or more of such originals or counterparts.

8.3 Variation: No variation or amendment of this Agreement shall be binding on any Party, unless such variation or amendment is in writing and signed by or on behalf of each Party.

8.4 Assignment of this Agreement:

(a) Except as set out in Clause 8.4(b) below, this Agreement is personal to each Party and shall not be capable of assignment, except with the prior written consent of the other Parties. However, this Agreement shall be binding upon and ensure to each Party hereto and its legal representatives, successors and permitted assigns.

(b) In the event of sale of the entire issued share capital of a Party (which is not an individual) or sale of that portion of the business undertaking of a Party that is covered by the subject matter of this Agreement, then such Party shall be entitled to assign this Agreement to such third party transferee, provided such third party transferee assumes all obligations of the transferring Party under this Agreement.

8.5 Confidentiality:

(a) Save as expressly provided in Clause 8.5(b), each Party shall treat as strictly confidential the factum of entering into this Agreement, the provisions of this Agreement and the other Transaction Documents and any and all proprietary and/or other information received or obtained by such Party relating to any of the other Parties, as a result of, or in connection with the negotiation, execution and consummation of the Transaction Documents ("Confidential Information").

(b) Notwithstanding the foregoing, a Party may disclose or permit the disclosure of Confidential Information if and to the extent that:

- (i) such Party has obtained the prior consent of the non-disclosing Party(ies) in writing, in respect of the disclosure of the Confidential Information;
- (ii) the disclosure is required by law or any securities exchange, regulatory or governmental authority, court or tribunal or any other forum for adjudication of disputes, or any order thereof; or
- (iii) the Confidential Information comes into the public domain other than as a result of a breach by such Party of this Clause 8.5.

8.6 No Strict Construction: The Parties have participated jointly in the negotiation and drafting on this Agreement. In the event of any ambiguity or question of intent or interpretation, this Agreement shall be construed as if drafted jointly by all Parties, and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any provision of this Agreement.

8.7 Notice:

(a) Any notice or other communication to be given under or in connection with this Agreement ("Notice") shall be in the English language in writing (which, for the purposes of this Clause 8.7, shall include electronic mail) and signed by or on behalf of the Party giving it. A Notice may be delivered personally or sent by pre-paid recorded delivery or international courier or electronic mail to the address and marked for the attention of the person specified below:

To Exide India:

Attention: The Company Secretary
Address: Exide House, 59E, Chowringhee Road,
Kolkata- 700020
Email: jitendrak@exide.co.in

To Exide US:

Attention: Office of the General Counsel
Address: 13000 Deerfield Parkway, Building
200, Milton, Georgia 30004
Email: brad.kalter@exide.com

To Tudor:

Attention: Office of the General Counsel
Address: 13000 Deerfield Parkway, Building
200, Milton, Georgia 30004
Email: brad.kalter@exide.com

A Notice shall be deemed to have been received:

(i) at the time of delivery if delivered personally; or

(ii) at the time of transmission if sent by electronic mail; or

(iii) 5 (five) Business Days after the time and date of posting if sent by pre-paid recorded delivery or international courier; or

(iv) 5 (five) Business Days after the time and date of posting if sent by courier,

provided that if receipt of any Notice occurs after 6.00 p.m. or is not on a Business Day, deemed receipt of the Notice shall be 9.00 a.m. on the next Business Day. References to time in this Clause 8.7 are to local time in the country of the addressee.

(c) A Party shall notify the other Parties of any change to its details in this Clause 8.7 in accordance with the provisions of this Clause 8.7 provided that such notification shall only be effective on the later of the date specified in the notification and 5 (five) Business Days after deemed receipt.

8.8 Severability: Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

8.9 Waiver: No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by the waiving Party. The right and remedies provided under this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

8.10 Governing Law and Jurisdiction: This Agreement shall be governed by and construed and enforced in accordance with the laws of India, and the courts of Kolkata, India, shall have exclusive jurisdiction in respect of all disputes arising out of, or relating to, this Agreement.

8.11 Specific Performance: The Parties hereby agree that damages may not be an adequate remedy and the Parties shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the other Parties from committing any violation or enforce the performance of the covenants and undertakings set out in this Agreement. These injunctive reliefs are cumulative and are in addition to any other rights and remedies the Parties may have under this Agreement, at law or in equity.

8.12 Costs and Fees: Each Party will bear the costs and fees of its respective counsel and other expenses that are in any way associated with the Disputes and the discussions pertaining to this Agreement and the other Transaction Documents including but not limited to drafting and signing of this Agreement and the other Transaction Documents.

8.13 Stamp Duty: Exide India shall pay the costs towards stamp duty on this Agreement.

8.14 Announcements: Subject to Clause 8.5(b)(ii), no announcement shall be made by or on behalf of any Party relating to this Agreement or the transactions and arrangements contemplated under this Agreement, without the prior written approval of the other Parties."

In view of the aforesaid settlement, RFA(OS) No.113 of 2012, pending before the High Court of Delhi and other connected proceedings mentioned in the settlement between the parties, are deemed to have been disposed of.

The appeals are disposed of accordingly. There shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

New Delhi,
July 28, 2017.

ITEM NO.56

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.28074/2016

(Arising out of impugned final judgment and order dated 02-08-2016 in RFA No. 113/2012 passed by the High Court of Delhi at New Delhi)

EXIDE INDUSTRIES LTD.

Petitioner(s)

VERSUS

EXIDE TECHNOLOGIES (EARLIER KNOWN AS
EXIDE CORPORATION USA)

Respondent(s)

(With appln.(s) for settlement/compromise)

WITH SLP(C) No. 28875/2016

Date : 28-07-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Mr. Arvind P. Datar, Sr. Adv.
Mr. Ankur Saigal, Adv.
Mr. Rajesh Kumar, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Ms. Bitika Sharma, Adv.
Ms. Deepshika, Adv.
Mr. Tejveer Singh Bhatia, Adv.
Mr. Gaurav Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the signed
order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Assistant Registrar

(Signed order is placed on the file)