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

+ **CS(OS) No. 822/2011**

SHRI KANWAL KANT CHAGTI

..... Plaintiff

Through: Mr. Amardeep Singh, Mr. Dinesh Kr. Masant and Mr. Ambuj Saraswat, Advocates.

versus

HOTEL QUEEN ROAD PRIVATE LIMITED

..... Defendant

Through: Mr. Kush Sharma, Mr. Kshitiz Ahuja, Mr. Sagar Mehrotra, Ms. Madhvi Khare, Ms. Radhika Chugh Arora and Mr. Jayant Mehta, Advocates.

+ **CS(OS) No. 823/2011**

UPPER INDIA TRADING CO. (DELHI) PRIVATE LIMITED Plaintiff

Through: Mr. Amardeep Singh, Mr. Dinesh Kr. Masant and Mr. Ambuj Saraswat, Advocates.

versus

HOTEL QUEEN ROAD PRIVATE LIMITED

..... Defendant

Through: Mr. Kush Sharma, Mr. Kshitiz Ahuja, Mr. Sagar Mehrotra, Ms. Madhvi Khare, Ms. Radhika Chugh Arora and Mr. Jayant Mehta, Advocates.

+ **CS(OS) No. 824/2011**

SH. GULSHAN RAI

..... Plaintiff

Through: Mr. Amardeep Singh, Mr. Dinesh Kr. Masant and Mr. Ambuj Saraswat, Advocates.

versus

HOTEL QUEEN ROAD PVT. LTD

..... Defendant

Through: Mr. Kush Sharma, Mr. Kshitiz Ahuja, Mr. Sagar Mehrotra, Ms. Madhvi Khare, Ms. Radhika Chugh Arora and Mr. Jayant Mehta, Advocates.

+ **CS(OS) No. 3057/2011**

SUDARSHAN DHOOP PRIVATE LIMITED

..... Plaintiff

Through: Mr. Amardeep Singh, Mr. Dinesh Kr. Masant and Mr. Ambuj Saraswat, Advocates.

Versus

HOTEL QUEEN ROAD PRIVATE LIMITED

..... Defendant

Through: Mr. Kush Sharma, Mr. Kshitiz Ahuja, Mr. Sagar Mehrotra, Ms. Madhvi Khare, Ms. Radhika Chugh Arora and Mr. Jayant Mehta, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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03.03.2016

I.A. No.2539/2013 (for seeking consolidation) in CS(OS) No.822/2011
I.A. No.2538/2013(for seeking consolidation) in CS(OS) No.823/2011
I.A. No.2518/2013(for seeking consolidation) in CS(OS) No.824/2011
I.A. No.2537/2013 (for seeking consolidation) in CS(OS) No.3057/2011

1. These applications are filed by the defendant in the four suits.
The defendant is the same M/s Hotel Queen Road Pvt. Ltd.
2. Suits being CS (OS) Nos. 822/2011, 823/2011 and 3057/2011 are suits for recovery of monies on the ground of plaintiff of the suits granting loans to the defendant. CS(OS) No. 824/2011 is a suit filed by the plaintiff seeking recovery of share application money given by the plaintiff to the defendant for allotment of shares of the defendant.
3. The four suits being CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 are sought to be consolidated with CS(OS) No. 161/2012 and which is filed by M/s Hotel Queen Road Pvt. Ltd, and which is the defendant in the aforesaid four suits. This suit filed by M/s Hotel Queen Road Pvt. Ltd seeks relief of declaration, cancellation, injunction etc alleging corporate fraud by 29 defendants in the suit. Four of the 29 defendants being

the defendant nos. 26 to 28 and defendant no.12 are the four plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011.

4. The memo of parties in CS(OS) No. 161/2012 and the prayer clauses of this suit reads as under:-

MEMO OF PARTIES

"IN THE MATTER OF:

1. M/s H.Q.R.P. Limited
(M/s Hotel Queen Road Pvt. Ltd.)
Through Authorised Representative
Registered Office at:
19, Ashok Road,
New Delhi-110001.
2. Mr. Ashok Mittal
S/o Late Sh. Gurdas Rai Mittal,
106, Free Press House,
10th floor, Nariman Point,
Mumbai-400 021.

Also At: 42, Ashoka Avenue,
Sainik Farms,
New Delhi-110062.
3. M/s. Hillcrest Realty SDN. BHD.
Through Sh. Nand Kishore Chaturvedi,
Authorised Representative
Regd. Office at Level 16, 1 Sentral,
Jalan Stesen Sentral 5, KL Sentral, Kuala Lumpur,
Wilayah Persekutuan, 50470, Malaysia. Plaintiff

VERSUS

1. M/s M.T.I.Limited.
(M/s Moral Trading and Investment, Limited)
Through Chairman/MD
Thapar Chamber-II, 4TH Floor

Opp. Kalindi Colony,
New Delhi-110014.

Also at:

81, Sainik Farms, M.B.Road,
New Delhi-110062.

2. Mr. Ram Parshotam Mittal,
S/o Late Sh. Gurdas Rai Mittal,
81, Sainik Farms, M.B.Road,
New Delhi-110062.

3. Mrs. Sarla Mittal,
W/o Mr. Ram Parshotam Mittal
81, Sainik Farms, M.B.Road,
New Delhi-110062.

4. Mr. Sumaj Jain
S/o Mr. M.P.jain
85, Sainik Farms,
Central Avenue,
New Delhi-110062.

Also at:

287, Panchsheel Park,
New Delhi-110017.

5. Mr. N.P.Gupta
S/o Late Omprakash Gupta,
Resident of:: W-20, G.K-II,
New Delhi-110048
6. Jyoti Kesri,
Wife of Mr. Manoj Kesri
Resident of:: 74A, Sainik Farms,
Central Avenue,
New Delhi-110062.
7. Bhawna Gupta
Daughter of Mr. R.P.Mittal
Resident of:: W-20, Greater Kailash-II
New Delhi-110048.
8. Sapna Jain
Daughter of Mr. R.P.Mittal
Resident of:: 85, Sainik Farms,

Central Avenue,
New Delhi-110062.

Also at:
287, Panchsheel Park,
New Delhi-110017.

9. Vandana Mittal
Daughter of Mr. R.P.Mittal
81, Sainik Farms, M.B.Road,
New Delhi-110062.

Also at:
B-316, New Friends Colony,
New Delhi

10. Manoj Kesri
Son of Mr. Kedar Nath
74A, Sainik Farms,
Central Avenue,
New Delhi-110062.
11. J.J.International Private Limited
Through Managing Director,
74 A, Central Avenue
Sainik Farm
New Delhi-1100 062.
12. Sudarshan Dhoop Private Limited
Through Managing Director
4-5, G.I.A., G.T.Karnal Road,
Azadpur,
Delhi-110 033.

Also at:
74A, Central Avenue,
Sainik Farms,
New Delhi-100 062.

13. Mahashian Di Hatti Limited
Through Managing Director
9/44, Industrial Area,
Kirti Nagar
New Delhi

14. Prerna Singh
W/fe of Mr. Ankit Singh
Resident of:: Shiv Sushil Bhavan
D-219, Vivek Vihar,
New Delhi-11 0095.
15. Ankit Singh
Son of Mr. Indraj Singh
Resident of:: R-2/61, Raj Nagar,
Ghaziabad.
16. Nitin Singh
Son of Mr. Indraj Singh
Resident of:: R-2/61, Raj Nagar,
Ghaziabad.
17. Seema Family Trust
Through Trustee Mr. Ankit Singh
AT:: Shiv Sushil Bhavan
D-219, Vivek Vihar,
New Delhi-11 0 095.
18. Mr. Rajiv Gulati
Son of DharamPal Gulati
Resident of::E-6/6, Vasant Vihar,
New Delhi-110 057.
19. Aroma Eatables Pvt. Ltd.
Through Managing Director,
At:: D-219, Vivek Vihar, Phase-I
New Delhi 110 095.
20. Acme resources Limited
Through Managing Director
At:: 1, Crooked Lane,
Room No.107, 1st Floor,
Kolkata-700069 (West Bengal)
21. Abhipra Capital Limited
Through Managing Director
Abhipra Complex
At:: A-387, Dilkhush Industrial Area,
G.T.Karnal Road, Azadpur
Delhi-110033.

22. Bathla & Company Pvt. Ltd.
Through Managing Director
At:: BGF-1, Dilkhush Industrial Complex,
G.T.Karnal Road, Azadpur
Delhi-110033.
23. Mr. Vinod Kumar Bindal
Son of Mr. Sushil Kumar Bindal
Resident of:: Shiv Sushil Sadan,
B-2, Vivek Vihar Phase-I
New Delhi-110095
24. Mr. V.D.Aggarwal
Son of Late Sh. R P Aggarwal
Resident of : 2-12, Model Town,
Delhi-110 009.
25. M/s V.D.Aggarwal & Co.,
Chartered Accountants,
Through partner
Mr. V.D. Aggarwal
Son of Late Sh. R.P.Aggarwal
Resident of:: 2-12, Model Town
Delhi-110 009.
26. Mr. Kanwal Kant Chhagti
Proprietor of M/s Green Transport Corporation
Son of Mr. Gulshan Rai,
1418, Nicholson Road,
Kashmere Gate,
Delhi-110 006.
27. Mr. Gulshan Rai
Proprietor of M/s Hotel Green Castle
Son of Mr. Nand Lal,
1418, Nicholson Road,
Kashmere Gate,
Delhi-110006.
28. Upper India Trading Company (Delhi) Pvt. Ltd.
Through Managing Director
1/1662, Lothian Road
Kashmere Gate, Delhi-110 006.
29. M/s R.N.Khemka Enterprises (P) Ltd.

Through Managing Director
302, Adarsh Complex
Wazirpur Industrial Area, Ring Road
Delhi-110 052.

...Defendants

PRAYER CLAUSES

- A. Pass a Decree of Declaration, Declaring that Defendant no.2 alongwith other defendants is guilty of malfeasance and misfeasance and breach of trust in relatin to the Plaintiff No.1 Company and the they rae guilty of retention of the property/records/documents/electronic records etc. and the money of the company, And
- B. Pass a decree Directing Defendant no. 2 along with other defendants to repay/restore the property including documents and records of the company respectively or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as this Court thinks just, And
- C. Pass a Decree Declaring the alleged transaction/arrangement/agreement/understanding mentioned in Para no.14 of the present suit, along with the respective documents thereto, as null and void and unenforceable in law in following terms, viz.
- i. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 17.09.2007 and 20.11.2007, entered between Defendant no. 2 (usinge the name of Plaintiff No. 1) with J J International Pvt. (Defendant no. 11), along with the respective documents (*including cheque(s), if any*) thereto, as null and void and unenforceable in law, AND
 - ii. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 05.06.2008/06.05.2008, entered between Defendant No. 2 (using the name of Plaintiff No. 1) with Mahashian Di Hatti (Defendant No. 13), along with the respective documents *including cheques(s), if any* thereto, as null and void and unenforceable in law, AND
 - iii. Press a Decree Declaring the alleged transaction/ arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (using the name of Plaintiff No. 1) with Preme singh (Defendant No. 14), along with the respective documents

- (including cheque(s), if any) thereto, as null and void and unenforceable in law, AND
- iv. Press a Decree Declaring the alleged transaction/arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (using the name of Plaintiff No. 1) with Ankit Singh (Defendant no. 15), along with the respective documents (including cheque(s), if any) thereto, as null and void and unenforceable in law, AND
 - v. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (suing the name of Plaintiff No. 1) with Nitin Singh (Defendant no.16), along with the respective documents (including cheque(s), if any) thereto, as null and void and unenforceable in law, AND
 - vi. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 21.08.2008, entered between Defendant no. 2 (using the name of plaintiff No. 1) with Seema Family Trust (Defendant No. 17), along with the respective documents (including cheque(s), if any) thereto, a null and void and unenforceable in law, AND
 - vii. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 04.04.2008/ 14.04.2008, entered between Defendant no.2 (suing the name of Plaintiff of Plaintiff No. 1) with Rajiv Gulati (Defendant no. 18), along with the respective documents (including cheque(s), if any) thereto, as null and vid and unenforceable in law, AND
 - viii. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 26.12.2007, entered between Defendant no. 2 (using the name of Plaintiff No.1) with Aroma Eatables (Defendant no. 19), along with the respective documents thereto, as null and void and unenforceable in law, AND
 - ix. Pass a Decree Declaring the alleged transaction/arrangement/agreement dated 6.5.2008, entered between Defendant no. 2 (suing the name of Plaintiff No.1) with Acme resources (Defendant no. 20), along with the respective documents including cheques No. 622281 and 622282 both dated 6.05.2009, as null and void and unenforceable in law, AND
 - x. Pass a Decree Declaring the alleged transaction/understanding dated 25.11.2006, entered between Defendant no.2 (using the name and books of Plaintiff No. 1) with Abhipra Capital (Defendant no. 21), along with the respective documents, if

- any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, AND
- xi. Pass a Decree declaring the alleged transaction/understanding dated 25.11.2006, entered between Defendant No.2 (using the name and books of Plaintiff No.1) with Bathia (Defendant no. 22), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, AND
 - xii. Pass a Decree declaring the alleged transaction/understanding dated March 2007, entered between Defendant no. 2 (suing the name and books of Plaintiff No. 1) with Kanwal Kanth Chagti (Defendant no. 26), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, AND
 - xiii. Pass a Decree Declaring the alleged transaction/understanding dated March, 2007 to October, 2008, entered between Defendant no.2 (using the name and books of Plaintiff No. 1) with Gulshan Rai (Defendant No. 27), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, AND
 - xiv. Pass a Decree Declaring the alleged transaction/understanding dated November, 2007 to December, 2007, entered between Defendant no. 1 (using the name and books of Plaintiff No. 1) with Upper India Trading Company (Delhi) Pvt. Ltd. (Defendant No.28), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and unenforceable in law, AND
 - xv. Pass a Decree Declaring the alleged transaction/understanding dated November, 2007 to December, 2007, entered between Defendant no.2 (using the name and books of Plaintiff No.1) with M/s R.N.Khemka Enterprises (P) Ltd (Defendant no.29), along with the respective documents, if any, being part of conspiracy to cheat the company, as null and void and enforceable in law, AND
 - xvi. Pass a Decree Declaring the alleged transaction/understanding dated Feb. 2007 to July 2008, entered between Defendant no.2 (using the name and books of Plaintiff No.1) with Sudarshan Dhoop Private Limited (Defendant No.12), along with the

respective documents, if any, being part of conspiracy to cheat the company, as null and void and enforceable in law, AND

- D. Pass a Decree of damages to the extent of Rs.61 Crores against the Defendants declaring them liable to pay the damages jointly and severally in terms of the present suit, And
- E. Pass a Decree of Permanent and Mandatory injunction, injuncting the defendants to refer to and/or rely upon the alleged transaction/arrangement/agreement/cheques etc. mentioned on para No.14 of the present suit, And.
- F. Pass a decree of Recovery of Sum of Rs.31 lacs as on 31.3.2009 against Defendant No.1 M/s Moral Trading and Investment, Limited along with the interest @ 18%, And
- G. Pass a decree of Recovery of Sum of Rs. 34,44,128/- against Defendant no.11 M/s JJ International Pvt. Ltd. Along with the interest @ 18% from 14.1.2009 till disbursal., And
- H. Pass a decree of awarding Cost of the present litigation: and/or
- I. Pass any other appropriate orders, directions that this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

5. No doubt, object of consolidation is to ensure that if there are same issues between the parties who are parties to different pending suits, the suits should be tried together, however, consolidation is not an automatic right and a mandatory requirement of law. Putting it in other words, passing an order of consolidation is discretionary and is dependent on a host of factors with one main factor being that there should not be grave prejudice to any party. In fact, on a subsequent suit being CS(OS) No.161/2012 being filed where issues are common with an earlier filed suit or suits, then in fact the subsequent suit may have to be stayed under Section 10 of the Code of Civil Procedure, 1908 instead of allowing consolidation. In the opinion of

this Court merely because some issues are common in the four suits being CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 with CS(OS) No. 161/2012 does not mean that these five suits have to be consolidated. If consolidation takes place then in the facts of these four suits there will be caused grave prejudice to the plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011, inasmuch as, their suits are only simple suits for recovery of monies on the ground of having granted loans to the defendant M/s Hotel Queen Road Pvt Ltd and which will get unnecessarily entangled with various other unrelated issues of CS(OS) No. 161/2012 which has as many as 25 other defendants than the four defendants who are the plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011. Facts of each case have to be examined carefully with respect to requirement of consolidation, and it should not be that in the guise of consolidation strategies are played out which will cause unnecessary prejudice and delay in deciding of suits filed by certain plaintiffs which have limited scope, and this principle squarely applies in the present cases because all the plaintiffs in the four suits being CS (OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 were never in any manner connected to the management of the company M/s Hotel Queen Road Pvt Ltd as the four plaintiffs of the four suits being

CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 are complete strangers to the company M/s Hotel Queen Road Pvt. Ltd. Also, consolidation is ordinarily not to be granted if all the defendants in all the suits or most of the defendants in most of the suits are not common. Definitely the 25 defendants in CS(OS) No.161/2012 have no commonality of issues with the other four defendants no. 12 and 26 to 28 and who are the plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011.

6. Learned counsel for the applicant sought to place reliance upon the judgment of a learned Single Judge of this Court, Hon'ble Mr. Justice R.C. Lahoti (as he then was), in the case of ***S.C. Jain Vs. Bindeshwari Devi 1997 (67) DLT 189***, but, there is no dispute to the proposition of law laid down in the said judgment that consolidation can take place of suits, however whether or not consolidation should take place of suits depends on individual different facts of those cases/suits which are to be consolidated. The judgment in the case of ***S.C. Jain (supra)*** does not hold that there is mandatory and automatic consolidation of suits merely because some issues are common and that too only between some parties and whose other suits are pending. As already stated above, four plaintiffs in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 have filed suits on their

limited causes of action on the grounds of loans to M/s Hotel Queen Road Pvt Ltd and giving share application money to M/s Hotel Queen Road Pvt Ltd and such suits cannot be defeated by delaying them by consolidating these suits with the very wide suit containing wide causes of action against various defendants in CS(OS) No.161/2012, whose memo of parties and relief clauses have already been reproduced above. It may also be noted that the plaint in CS(OS) No.161/2012 runs into around 115 pages whereas the plaints in CS(OS) Nos. 822/2011, 823/2011, 824/2011 and 3057/2011 are just about five odd pages each on the simple causes of action of grant of loans which are pleaded to have not been repaid by M/s Hotel Queen Road Pvt Ltd or M/s Hotel Queen Road Pvt. Ltd. not refunding the share application monies received for allotment of shares although shares were not allotted.

7. In view of the above, the applications for consolidation of suits being CS(OS) Nos.822/2011, 823/2011, 824/2011 and 3057/2011 with CS(OS) No.161/2012 are wholly misconceived, abuse of the process of the law and hence dismissed.

CS(OS) Nos.822/2011, 823/2011 & 824/2011

8. An Office Order dated 24.11.2015 has been issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi

High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court. Accordingly, these suits are transferred for decision to the jurisdictional Court under the District & Sessions Judge, Patiala House Courts, New Delhi.

9. Let parties appear before the District & Sessions Judge, Patiala House Courts, New Delhi on 8th April, 2016. Suit files be made available to the District & Sessions Judge, Patiala House Courts, New Delhi, on the date fixed.

CS(OS) No. 3057/2011

10. List for further proceedings on 14th July, 2016.

VALMIKI J. MEHTA, J

MARCH 03, 2016/ib