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

\+ TR.P.(C.) 41/2017

MACHINO PLASTICS LTD & ORS ..... Petitioners

Through: Ms. Ranjana Roy, Mr.Pervinder, Mr. Vibhu Gaur, Mr. Vivek Kumar, Advocates for Petitioners No.1 & 4
Mr. Gaurav Mitra, Ms.Megha Mishra, Mr. Yashwardhan Bandi, Ms. Riya Singh, Mr.Adarsh Rai, Advocates for Petitioner No.2&3

Versus

CAPARO MARUTI LTD ..... Respondent

Through: Ms. Tanushree Ghosh, Mr.Upinder Singh, Mr. Ramanjit Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **09.11.2017**

1. Transfer, under Section 24 of the Code of Civil Procedure, 1908 (CPC), is sought of [(i) CS DJ No.11767/2016 titled "***Caparo Maruti Ltd. Vs. Machino Plastics Ltd. & Ors.***"; (ii) CS DJ No.166/2017 titled ***Machino Plastics Ltd. & Anr. Vs. Caparo Maruti Ltd. & Ors."***, both of the Court of Mr. Sonu Agnihotri, Additional District Judge (ADJ), Saket Courts, New Delhi; and (iii) CS No.8793/2016 titled "***M/s Caparo Maruti Ltd. Vs. Surya Kant Aggarwal***" of the Court of Mr. Ajay Gulati, ADJ, Saket Courts, New Delhi] to this Court, for trial along with CS(OS) No.756/2005 of this Court.

2. Notice of the petition was ordered to be issued and the counsel for the respondents appears.

3. The counsel for the petitioners at the outset states that though this petition was filed on behalf of four petitioners but the counsel is not receiving instructions from petitioner No.1 / Machino Plastics Limited and petitioner No.4 / Mr. Surya Kant Aggarwal and is now representing only petitioners No.2 and 3, namely, Machino Finance Pvt. Ltd. and Mr.M.D. Jindal.

4. The counsel for petitioners No.1 and 4 appears and on enquiry states that though the petitioners No.1 and 4 are now represented by a separate counsel, but as far as this petition is concerned, the petitioners No.1 and 4 are supporting the same.

5. The counsel for all the seven respondents states that Ms. Vijeta Mukherjee, Advocate is unwell and after some arguments seeks adjournment.

6. Transfer petitions cannot be kept pending indefinitely.

7. The counsels for the petitioners and the counsel for the respondents have been heard.

8. The counsels for the petitioners have contended (i) that the respondent No.1, namely, Caparo Maruti Limited is a joint venture company of petitioner No.3, Mr.M.D. Jindal and respondent No.2 Caparo India Ltd. (UK); (ii) that respondents No.3 to 7 are directors of the respondent No.1 as nominee of respondent No.2; (iii) that the respondent No.2 has cancelled the allotment of shares by the respondent No.1 in favour of petitioners No. 1 and 2 and which, according to the petitioners, was in pursuance to the joint venture agreement; (iv) that in proceedings initiated by the petitioners

before the Company Law Board, the shares of the petitioners Group were ordered to be purchased by the respondent No.2; (v) however the Supreme Court, in appeal, has made the said purchase subject to the outcome of the Suits which have been filed with respect *inter alia* to the cancellation of shares of the petitioners No.1 and 2 in the respondent No.1; (vi) that the three Suits of which transfer is sought were also earlier pending in this Court and were transferred to the subordinate courts on enhancement of the minimum pecuniary jurisdiction of this Court; (vii) that all the four Suits are ripe for recording of evidence and recording of evidence has already begun in all the Suits; (viii) that the Suit being CS(OS) No.756/2005 which is still pending in this Court and the plaint whereof is at Pg.133 of the paper book has been filed by the respondent No.1 against the petitioner No.3 only; (ix) that the respondent No.1 in the said Suit has sought the relief *inter alia* of declaration that no effect could be given to acts of omission and commission of petitioner No.3 Mr. M.D. Jindal with respect to respondent No.1 Caparo Maruti Limited; (x) that one of the acts of omission and commission cited is of allotment of shares in favour of petitioners No.1 and 2, namely, Machino Plastics Ltd. and Machino Finance Pvt. Ltd. as it is the contention of the respondents that under the joint venture, the shares of the respondent No.1 could be allotted in favour of Mr.M.D. Jindal only and not in favour of petitioners No.1 and 2 Machino Plastics Ltd. and Machino Finance Pvt. Ltd.

9. I have at this stage interrupted the counsels for the petitioners and have enquired as to how the reliefs affecting the shares held by Machino

Plastics Ltd. and Machino Finance Pvt. Ltd. in the respondent No.1 could be granted in the Suit pending in this Court without the said Machino Plastics Ltd. and Machino Finance Pvt. Ltd. being a party thereto.

10. The counsel for the petitioners has contended that the respondent No.1, Caparo Maruti Limited has, for the said purpose, instituted one of the Suits of which transfer is sought against Machino Plastics Ltd. and Machino Finance Pvt. Ltd. impleading Mr.M.D. Jindal and his sons Sanjeev Jindal and Rajeev Jindal and Surya Kant Aggarwal as parties thereto.

11. I have enquired from the counsel for the respondents, who is opposing the transfer, as to how the Suit which is pending before this Court is maintainable without impleading Machino Plastics Ltd. and Machino Finance Pvt. Ltd. which will definitely be affected if the relief claimed in the said Suit is allowed. Her answer also is that for that purpose, one of the Suits aforesaid of which transfer is sought, has been filed.

12. Therefrom, it appears that the possibility of conflicting reliefs in at least one of the Suits of which transfer is sought and the Suit pending in this Court cannot be ruled out.

13. I have next enquired from the counsel for the respondents as to the prejudice which would be suffered by the respondents by transfer.

14. The counsel for the respondents states that the cause of action for all the Suits is different and pecuniary limit of the Suits of which transfer is sought is below the minimum pecuniary jurisdiction of this Court.

15. The test to be applied for transfer is not on aforesaid parameters.

16. Even if the cause of action is different but if the possibility of conflicting decisions cannot be ruled out, it would still be a ground for

transfer. Similarly, it has been held by this Court in ***Shriram Pistons Vs. Manju Awasthy*** (1997) 68 DLT 112 and followed in ***Jitendra Kumar Gupta Vs. Bal Kishan Saini*** MANU/DE/0252/2010 that Section 15 of the CPC is not a bar to exercise of powers under Section 24 of the CPC.

17. The counsel for respondents has then contended that all the Suits are of as far back as 2005 and at no stage did any party seek consolidation and if need thereof was felt in the last 12 years, one of the parties would have sought so.

18. The counsels for the petitioners also agree that till now the Suits, even when were pending in this Court, were not consolidated but states that they were before the same Bench and were always listed for on the same date. It is further stated that the Suits when pending before this Court were being adjourned for reason of pendency of the proceedings before the Company Law Board, the appeals thereagainst and the proceedings in the Supreme Court thereagainst.

19. In view of the aforesaid, I am of the view that a case for transfer of the Suits as sought is made out.

20. As far as the aspect of consolidation of the Suits is concerned, the same is not in the domain of Section 24 of the CPC and it will be open to the counsels to, before this Court, post transfer, if entitled to, seek relief in that regard. All counsels, however agree to recording of evidence in the Suits on commission and the said recording to be expedited.

21. The petition is accordingly allowed. The Suits aforesaid are ordered to be transferred to this Court.

22. The transferor courts are requested to immediately physically transfer the files.

23. The transferred Suits to be listed before the same Bench before which CS(OS) No.756/2005 is stated to be listed, on 23rd November, 2017.

Dasti under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 09, 2017
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