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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 77/2017**
UCS BROADBAND PVT LTD

..... Appellant

Through : Mr.Pradeep K.Bakshi and Ms.Sweta
Rani, Advs.

versus

M/S DEN ENJOY CABLE NETWORK PVT LTD & ORS

..... Respondent

Through : Mr.Neeraj Malhotra, Sr. Adv. with
Ms.Priya Puri and Mr.Vibhav
Srivastava, Advs. for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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09.05.2017

CM No.17457/2017 in FAO(OS) (COMM) 77/2017

The appeal is directed against an order in OMP(I)(COMM) No.129/2017 in Section 9 proceedings, preferred by the first and second respondent (hereinafter referred to as 'Den Enjoy'). The facts briefly are that Den Enjoy filed application under Section 9 seeking a restrain against the appellants and the third respondent in any manner soliciting or doing any favourable business competing with its business. The learned Single Judge considered the submissions of the parties and was of the prima facie opinion that the shareholding pattern of the appellant indicated that total 16,500 shares were held

by respondent No.3 and his wife. On the basis of these materials the learned Single Judge was of the prima facie opinion that the third respondent was attempting to avoid contractual obligations by using 'corporate' facade of the seventh respondent for improper purpose. During the course of the proceedings the appellant has furnished documents to say that the inference so drawn even at the prima facie level is unfounded and not justified because the shares in fact been transferred by the third respondent's spouse. It is also submitted that it is unclear as to whether other contesting respondents have been served, the uncertainty about the matter proceeding further under Section 9 on the date scheduled i.e. 11th May, 2017.

We have considered the submissions. The materials which the appellant seeks to rely upon to dispute the prima facie view have been brought on record of this appeal. The respondent/applicant (in the Section 9 proceedings) disputes that they are of any relevance. Nevertheless the Court is of the opinion that these aspects past impugned order developments, in the sense that materials and documents were brought on record of this appeal and were not part of the record in Section 9 proceedings. In the light of these it would be more appropriate that the appellant urges the submissions based on these documents and the other materials which it wishes to press before this Court, under Section 9 proceedings which was scheduled to be listed on 11th May, 2017. Learned Single Judge, needless to

say, would consider them on their merits and pass appropriate orders, specifically on the issue prima facie expressed in paragraphs 10 to 13 of the order dated 21.3.2017. It is open for the appellant to contend that this material can be the basis of alteration or variation of the existing interim order, likewise right of the respondents herein to contest such submissions is also reserved.

The appeal along with the application is disposed of in above terms.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

MAY 09, 2017

VLD