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

+ **CS(COMM) 1103/2016**

M/S J.S. FURNISHING PVT LTD Plaintiff

Represented by: Mr. Sachin Puri, Sr. Advocate
with Ms. Namitha Mathews,
Advocate.

versus

**M/S MIDDLE EAST HOTEL COMPANY
PVT LTD** Defendant

Represented by: Mr. Kunal Vats advocate for
defendant No. 1, 2, 4 and 5.
Mr. Khowaja Siddiqui advocate
for defendant No. 6.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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14.09.2017

I.A. No. 10368/2017 (under Order XXIII Rule 3 CPC)

1. This is a joint application by plaintiff and defendant No. 1 seeking decree of the suit in terms of the settlement.
2. Application is disposed of decreeing the suit qua defendant No. 1 in terms of the settlement arrived at between the parties.

CS(COMM) 1103/2016

1. Disputes between the plaintiff and defendant No. 1 have been settled on the following terms as incorporated in IA 10368/2017 under Order XXIII Rule 3 CPC:-

a) The Defendant Nos. 1 shall pay to the Plaintiffs a sum of ₹20,58,433/- (Rupees twenty lacks fifty eight thousand four hundred thirty three only) in the form of a full and final

settlement. The payment of the same shall be made in the manner as details herein-below:

- i) The defendant above-named has paid by Demand Draft 75% of the amount viz., ₹15,43,824/- (Rupees fifteen lakhs forty three thousand eight hundred and twenty four only) to the Plaintiffs upon signing of the present Settlement Agreement before the Ld. Mediator in the Mediation proceedings, receipt of which the Plaintiff hereby acknowledges, copy of the said Demand Draft is annexed herewith as Annexure-C.*
- ii) The defendant above-named shall pay by Demand Draft the remaining 25% of the amount viz., ₹5,14,609/- (Rupees five lakhs fourteen thousand six hundred and nine only) before the Hon'ble Court at the time of disposal of CS(OS) No. 990 of 2009 now CS(COMM) 1103/2016.*
- b) That the defendant No. 1, undertakes to file a joint application/petition to withdraw/quash the pending criminal proceedings in FIR No. 446/2009 PS Kadavanthra, Cochin and allow Crl. M.C. No. 1087/2010, pending in Kochi against the plaintiffs herein (referred to as the "criminal proceedings") not later than 45 days from the date of signing of the present settlement agreement. The parties agree to file an appropriate application under Order 23 Rule 3 CPC in CS (OS) No. 990 of 2009 now CS(COMM) 1103/2016 within 7 days of withdrawal/quashing of pending criminal proceedings.*
- c) Plaintiff agrees to withdraw its complaint before the National Human Right Commission, filed by Mr. Jagdish Khandelwal against the Defendant, within 45 days from the signing of the present settlement agreement and provide to the Defendant proof of filing/dispatch of withdrawal letter/order.*
- d) That on receipt of the payment as aforementioned and implementation of para 6 (a). (b) and (c) above all disputes*

between the parties shall stand settled. The plaintiffs undertake to give up their claims against Defendant Nos. 1, 2, 4 and 5 towards interest and/or damages. The defendant Nos. 1, 3 and 4 confirm and give up all claims against the Plaintiffs for the alleged fraud/cheating and/or collusion.

e) The Hon'ble Court may consider refund of the court fees to the Plaintiff in terms of the Section 16 of the Court Fees Act 1870 read with Section 89 of CPC, 1908.

2. The application is duly supported by the affidavit of Shri Jagdish Khandelwal, plaintiff No. 2 and authorised representative of plaintiff No. 1, authorisation in whose favour is at page 15 of the application. Application is also signed by Shri Saurabh Jain on behalf of defendant No. 1 authorisation on whose favour has been placed on record at pages 16 to 19 of the application.
3. Learned counsel for the plaintiff seeks leave to withdraw the suit in respect of the remaining defendants that is defendant Nos. 2 to 6 and a decree as against defendant no. 1 in terms of the settlement.
4. Defendant No. 1 has handed over a demand draft bearing No. 006731 dated 17th July, 2017 drawn on HDFC Bank for a sum of ₹5,14,609.00, the balance outstanding payment. Learned counsel for the plaintiff submits that the plaintiff has now received the entire payment in satisfaction of the decree.
5. Suit is decreed in favour of the plaintiff and against the defendant No.1 in terms of the settlement as noted above and is withdrawn in respect of defendant Nos.2 to 6.
6. Decree sheet will incorporate the terms of settlement.

7. Court fee be returned to the plaintiff, in terms of Section 16A Court Fee Act.

MUKTA GUPTA, J.

SEPTEMBER 14, 2017

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