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

\+ CM(M) 611/2017

NOPAL I.T. SERVICES PVT. LTD. ..... Petitioner

Through: Mr.Zeyaul Haque, Advocate

versus

NOPAL I.T. SERVICES PRIVATE LTD. & ORS. ..... Respondents

Through: Mr.D.Hasija, Advocate with Mr.Animesh Singh & Mr.Shashwat V.Dubey, Advocates for R-1
Mr.Kashish Narang, Advocate for Mr.Punit K.Bhalla, Advocate for ICICI Bank Ltd./R-2

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

<u>O R D E R</u>

% **30.05.2017**

<u>CM(M) 611/2017</u>

1. The petitioner herein and respondent No.1 herein both are Nopal I.T.Services Pvt. Ltd. While the petitioner is Nopal I.T.Services Pvt. Ltd. through Mr.Mohammad Azmi, respondent No.1 Noapl I.T.Services Pvt. Ltd. has been impleaded through Mr.Ziauddin Khan.

2. This petition has been filed by Sh.Mohammad Azmi, claiming himself to be original Director of Nopal I.T.Services Private Ltd., invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India with the following prayers:-

(i) set aside the impugned judgment and order dated 22.03.17 and uphold the order dated 01.03.17 of the Trial Court in toto;

(ii) pass directions to call for the trial Court record for its perusal.

3. The Civil Suit No.211.2017 was filed by M/s. Nopal I.T.Services Pvt. Ltd. (through Mr.Ziauddin Khan) pleading that Mr.Mohammad Azmi (petitioner herein) was the erstwhile Director of the plaintiff Company. The earlier Directors of the plaintiff Company M/s.Nopal I.T. Services Pvt. Ltd. were changed after the earlier Directors were paid off and their resignations were obtained with the purpose of purchasing the company and this transaction was done in November-December, 2016.

4. Pursuant to the change of Directors, a request was made to the defendant No.1 – ICICI Bank (respondent No.2 herein) to change the authorised signatory, which was declined by the bank by scribbling a note on the request letter itself that since complaints have been made to E.D. and E.O.W. a request was made by existing Directors not to entertain any request for modification

5. In the above civil suit, interim relief in mandatory form was prayed which was declined by the learned Trial Court observing as under :-

> *'Even otherwise, the relief in the present case is not regarding preserving status quo but mandatory injunction has been prayed for directing the defendant no.1 to accept the change in management as also to authorise the present Directors to operate the bank account. In the interim application, the prayer made is also to the same effect i.e. that the defendant no.1 be directed to allow the new Directors to operate the bank account. Therefore, the interim relief is also mandatory in nature as it would envisage firstly, accepting the change in management and therefore, also changing the aurthorised signatory in its record. Interim mandatory*

injunction is to be granted in rare cases. Even otherwise, if this prayer is allowed, it would amount to decreeing the suit itself as this is exactly the prayer which has been finally sought. Where prayer in the main suit and prayer in the interim application are one and the same, only relief for maintaining status quo may be considered in appropriate cases but in cases where mandatory injunction is prayed the interim relief definitely cannot be granted at this stage, without giving an opportunity to the defendant to file reply. Reliance is placed upon the decision in ***J.DAulat Singh vs. Delhi Golf Club,*** *AIR 2002 Delhi 501; also see Eagle Copters Ltd. vs. Azal Azerbaijan Aviation LTd. AIR 2002 Bom 284.*

Needless to say that the insistence that the plaintiff be allowed to use the very same account does not also satisfy the test of irreparable loss or injury inasmuch as separate bank account can always be opened if permissible in law. There is no agreement placed on record whereby the plaintiff is mandated to only pay the alleged amount of ₹10,00,000/- from the very same account The letter of one Supreme Electrocaste Pvt. Ltd. though records a demand the basis whereof is not borne from the record.'

6. Feeling aggrieved by the above order declining ad-interim relief, the plaintiff filed MCA No.12/2017 which was allowed vide impugned order dated 22nd March, 2017. The concluding paragraphs No.26 and 27 of the impugned order are extracted hereunder:-

'26. Now in view of my discussion made in various preceding paras, I am of the view that appellant company has been able to show on basis of documents filed and verified till date and compared as observed that it has strong prima facie case in its favour. During course of arguments, it was submitted before court that appellant company has got contract worth Rs. 13 Crores from Supreme Electro Cast Pvt. Ltd. and as per necessary terms of contract, appellant company is to deposit amount of Rs. 10 Lacs in account of appellant company

and though this loss can be compensated in terms of money but loss caused because of loss of this contract on account of non fulfillment of necessary condition of deposit of amount of Rs. 10 Lacs into account of appellant company will cause irreparable loss which can not be compensated in terms of money on account of loss of reputation and goodwill of appellant company appears to be reasonable and it can be said that loss on account of loss of reputation and goodwill of appellant company can not be compensated in terms of money. Balance of convenience can also be said to be in favour of appellant company as documents as on date are existing in favour of so called present Directors of appellant company.

27. In view of my above done discussion, I am of the view that present case is a fit case of grant of interlocutory Mandatory Injunction till inquiry into complaint given by Mohd. Azmi is completed by respondent No.2. Order dated 01.03.2017 passed by Trial Court is not in accordance with law so far as it concerns refusal of grant of interim relief to appellant company is concerned. So it is set aside to that extent. Trial court is directed to decide interim application of appellant company as soon as practically feasible. Till interim application of appellant company is decided by trial court on basis of inter alia result of inquiry into complaint given by Mohd. Azmi to be conducted by respondent No.2, I am of the opinion that respondent No.1 should be directed to allow appellant company with so called present Directors to operate account No. 004605500502 and it is accordingly directed. It is however, directed that present judgment has been passed on basis of prima facie view taken by this court and nothing said herein shall effect decision of interim application or main suit before Trial Court on merits. In order to protect rights of Mohd. Azmi and other so called earlier directors of appellant company, it is also directed that in case documents produced by appellant company later on turn out to be forged, appellant company through its present so called Directors shall compensate so called earlier Directors of appellant company to the tune of loss caused to them including interest *prevalent for commercial transactions. Respondent no. 2 is directed to conclude inquiry into complaint given by Mr. Mohd. Azmi expeditiously. Appeal filed by appellant company stands disposed of as allowed to the extent mentioned in this judgment.*

Appeal file be consigned to record room.

TCR be sent back to Trial Court along with copy of this judgment.'

7. During hearing of this petition, after some arguments, learned counsel for the parties jointly submit that since the application seeking interim relief is yet to be disposed of by the learned Trial Court, this Court may direct the learned Trial Court to dispose of the injunction application expeditiously.

8. Learned counsel for parties submit that it would be enough safeguard for the parties of this litigation that all the transaction including the one referred to in para 26 of the order impugned which require deposit of ₹10 lacs in fulfilment of the contractual obligation, shall be documented.

9. Learned counsel for respondent No.1 submits that the respondent No.1 has already filed a petition impugning the order 1st March, 2017 passed by learned Trial Court whereby the petitioner has been ordered to be impleaded as a proper party. Learned counsel for the respondent No.1 further submits that he will withdraw the same from the Registry and will not challenge the order impleading Mohd.Azmi as defendant in the Civil Suit No.211/17.

10. In view of the above submissions made by learned counsel for the parties, this petition is dismissed as not pressed.

11. The above order has been passed as the parties have agreed to await the outcome of the injunction application filed before the learned Trial Court and avail their remedy thereafter. The parties have also agreed that they will

not seek unnecessary adjournments and will co-operate in speedy disposal of the injunction application

12. It is hoped and expected that the learned Trial Court shall dispose of the injunction application expeditiously.

13. A copy of this order be sent to the learned Trial Court and be also given dasti to learned counsel for the parties, as prayed.

CM No.20596/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 30, 2017

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