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

\+ CM(M) No.1016/2017 & CM No.33664/2017 (for stay).

SAHARA FINCON PVT LTD ..... Petitioner

Through: Mr. Sanjeeev Sahay and Ms. Himangi Kapoor, Advs.

versus

VIDEOCON INDUSTRIES LTD & ORS ..... Respondents

Through: Ms. Swagata Bhuyan, Adv. for R1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **15.09.2017**

CM No.33665/2017 and CM No.33666/2017 (both for exemption).

1. Allowed, subject to just exceptions.

2. The applications stand disposed of.

CM(M) No.1016/2017 & CM No.33664/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 23rd August, 2017 in Civil Suit No.5700/16 of the Court of Additional District Judge-04 (South), Saket Courts, New Delhi) of dismissal of the application under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner for impleadment in the suit filed by the respondents no.1&2 namely Videocon Industries Limited and Value Industries Limited against the respondents no.3 to 6 namely M/s. Triupati Ceramics Ltd. (Company), Sanjay Bhandari, Ram Raj Bhandari and Jay Gee Auto Pvt. Ltd. for declaration that the respondents no.1&2 / plaintiffs are owners of 30,00,000/- equity shares of the respondent no.3 M/s. Triupati Ceramics Ltd. (Company) and to restrain the respondents no.4 to 6 from dealing with the said shares.

4. The petitioner applied under Order I Rule 10 of the CPC claiming to have financed the purchase by the respondents no.4 to 6 of the said shares from the respondents no.1&2 / plaintiffs.

5. The learned Additional District Judge has in the impugned order recorded (i) that the counsel for the respondents no.1&2 / plaintiffs and the counsel for the respondents no.4 to 6 were seeking time to amicably settle the matter and refer the same to Mediation; and, (ii) that the contention of the counsel for the petitioner was that if any settlement is arrived at between respondents no.1&2 / plaintiffs on the one hand and respondents no.4 to 6 on the other hand, behind the back of the petitioner, the same will be prejudicial to the petitioner and held that the petitioner is neither a necessary nor a proper party.

6. Upon enquiry, whether not the remedy of the petitioner for protection of his interest is to institute an independent suit to restrain the respondents no.4 to 6 from entering into any agreement including by way of settlement with the respondents no.1&2 in the suit aforesaid, the counsel for the petitioner first stated that the petitioner is a proper party. However, merely stating that a person is a proper party does not become a ground for allowing the impleadment. It has to be justified that the presence of the applicant is necessary or proper for decision of the suit.

7. In the present case, the right of the petitioner is only as financer of the respondents no.4 to 6 and the petitioner by financing such purchase cannot lay any claim to the shares and would only be entitled to enforce the terms of his agreement of finance. In a suit filed by the respondents no.1&2 / plaintiffs, disputes if any, between the petitioner on the one hand and the

respondents no.4 to 6 whom the petitioner claimed to have financed, on the other hand, cannot be adjudicated.

8. The counsel for the petitioners has then contended that the respondents no.1&2 / plaintiffs have no objection to the impleadment and it is the respondents no.4 to 6 who are objecting thereto.

9. Consent orders contrary to law cannot be obtained. Without the counsel for the petitioner satisfying this Court of the petitioner being a necessary or proper party to the suit *inter se* the respondents, the petitioner cannot become a party thereto and which impleadment would create complications in the suit.

10. The counsel for the petitioner has next contended that the petitioner was impleaded in the proceedings before the Board for Industrial & Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) with respect to respondent no.3 Company.

11. Considerations before the BIFR, which in any case has ceased to exist, are not akin to that in a Civil Suit and the said argument is also no argument in law.

12. The counsel for the petitioner states that the petitioner, if made to file his own suit, there would be a possibility of conflicting decisions.

13. Without the petitioner filing a suit and the written statement coming therein, no opinion in this regard can be given at this stage. Moreover, even if such a position emerges, there are remedies therefor.

14. No other argument has been raised.

15. There is no merit in the petition.

16. Dismissed.

17. No costs.

18. The counsel for the petitioner at this stage states that the agreement between the petitioner and the respondents no.4 to 6 is not of finance but of sale by the respondents no.4 to 6 of the shares to the petitioner in terms of oral agreement.

19. The same would also not make a difference in the reasoning hereinabove.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 15, 2017
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