

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL CHAMBER SUMMONS NO.167 OF 2017
WITH
COMMERCIAL NOTICE OF MOTION NO.619 OF 2017
IN
COMMERCIAL SUIT NO.308 OF 2017**

Brookfield Asset Management Inc.Applicant/Org. Def. No.4

IN THE MATTER BETWEEN :

Wind World (India) Limited and Anr.Plaintiffs

Vs.

En Wind Power Private Limited and Ors.Defendants

Mr. Vivek Dwivedi I/b. Manilal Kher Ambalal and Company for plaintiffs.

Mr. Nilesh Jain a/w. Ms. Juhi Mathur and Mr. Aditya Malhotra I/b. Shardul Amarchand Mangaldas for defendant no.4 and for applicant in CHSCD/167/2017.

Mr. Rahul Narichania, senior advocate a/w. Mr. Siddharth Ranade I/b. Trilegal for defendant no.3.

CORAM : K.R.SHRIRAM, J.

DATE : 26th NOVEMBER 2018

P.C.:

COMMERCIAL CHAMBER SUMMONS NO.167 OF 2017

1 This chamber summons is taken out on behalf of defendant no.4 for rejection of the plaint under Order VII Rule 11 (a) of the Code of Civil Procedure for non disclosure of cause of action.

2 With the assistance of the counsel for plaintiffs, this Court went through the entire plaint. The averments so far as defendant no.4 is concerned in the whole plaint are as under :

5. Defendant no.4 is also a company established in U.S.A. is in the business of Wind Energy. TerraForm Global has recently in

March 2017 transferred the ownership of the Defendant No.1 to Defendant No.4.

37. The Plaintiffs now verily believe, relying on an announcement made on 7th March 2017 that Defendant No.3 has also sold its stake in the Defendant No.1 company to Defendant No.4

38.While conducting an online search, Plaintiff No.1 also found that as late as 7th March 2017, Defendant No.3 had announced on its own website the sale of its ownership in all its assets which would obviously also include its stake in the Defendant No.1 to Defendant No.4. The arrangement as per the new release posted by the Defendant No.3 provides for acquisition of Defendant No.3 by Defendant No.4.

44. Despite the same, Plaintiff No.1 continued and continues to provide operation and maintenance services to Defendant No.1 without having realized the intention of Defendant No.1 having suppressed vital information and also allegedly terminating the contract so that a clean sale of entities is possible from Terraform Global to Defendant No.4.

59. Therefore, the Plaintiffs submit that, in the alternative to the aforementioned declaration, they are entitled to an order and decree directing the Defendants, both jointly and severally,

3 From the above, it is quite clear that plaintiffs have not disclosed any cause of action against defendant no.4 in the plaint. If one reads the plaint, it is a suit for damages for breach of contract by defendant no.1. According to the counsel for plaintiffs, agreements with defendant no.1 prohibited any party from transferring or assigning their rights and liabilities provided under the contracts to any third person without the prior written consent of the other party, which shall not unreasonably be withheld. It is plaintiffs' case that the shareholding in defendant no.1 changed from some persons, who were the shareholders of the company - defendant no.1 to defendant no.2, defendant no.2 sold the

controlling interest in defendant no.1 to defendant no.3 and defendant no.3 sold the controlling interest in defendant no.1 to defendant no.4. I am not for a moment making any observation on the merits of plaintiffs claim though it is settled law that a company is a different entity from its shareholders. Unless there is express transfer or assignment of an agreement by the company in favour of some other party it cannot be ordinarily said that there is assignment or transfer of the rights and obligations under the contract merely because there is transfer of shareholding. Plaintiffs may try to prove otherwise in the trial of the suit. I have to, however, make it clear that the plaint does not disclose any cause of action against defendant no.4.

4 In the circumstances, chamber summons is allowed and accordingly disposed in terms of prayer clauses – (a) and (b). The plaint as against defendant no.4 is rejected.

(K.R. SHRIRAM, J.)