IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 316 OF 2017
AND
CHAMBER SUMMONS NO. 317 OF 2017
IN
COMMERCIAL SUIT NO. 49 OF 2012

M/s.Interactive Avenues Pvt.Ltd. ...Plaintiff/Applicant
Vs.
Tikona Digital Network Pvt.Ltd. ...Defendant

Mr.J.P. Sen, Senior Advocate with Padmaja Dholakia I/b. Dholakia Law Associates for Plaintiff.
Mr.Kunal Dwarkadas with Viraj Maniar, Harsh Behany I/b. Maniar Srivastava Associates for Defendant No.1.
Mr.Mayank Bagla, Viraj Maniar, Harsh Behany I/b. Maniar Srivastava Associates for Proposed Defendant No.2.

CORAM : S.C. GUPTE, J.

DATE : 1 FEBRUARY 2018

P.C. :

Chamber Summons No.316/2017 seeks amendment of the plaint *inter alia* by adding the Respondent, one "Tikona Infinet Private Limited", as a Defendant to the suit and a prayer to recover the suit claim against the newly added Defendant jointly and severally with the original Defendant. The application for joinder is purportedly on the basis that by a Business Transfer Agreement, as claimed by the original Defendant's communication dated 2 November 2017, wireless broadband business of the Defendant and related assets, liabilities, employees and infrastructure, etc. were transferred by the original Defendant to the proposed Defendant with effect from 18 August 2017. Though it is the Plaintiff's case that the original Defendant is not entitled in law unilaterally and without the consent of the Plaintiff to transfer any pecuniary liability qua the Plaintiff, in view of the proposed transfer and the purported assumption of the obligation of the original Defendant by the proposed Defendant qua the Plaintiff, the Plaintiff seeks this joinder. Suitable averments are sought to be added in the plaint in this behalf.

2 The application is opposed by both the original Defendant and the proposed Defendant. The objection is basically on the footing that the Plaintiff cannot seek to recover the suit claim jointly and severally from both Defendants. It is submitted that the Plaintiff must make an election. If the Plaintiff accepts the transfer as between the Defendants, he must join only the transferee as a Defendant and claim a decree against him. On the other hand, if the Plaintiff does not accept the transfer, he must seek his remedy against the original Defendant, who is the purported transferor in the present case.

3 The Defendant's objection to impleadment has no merit. It is not for the Plaintiff to elect to sue either of the Defendants at this stage. The Plaintiff may well contest the purported transfer of liability and yet on the basis of the purported assumption of liability and particularly, the purported transfer of all related assets between the original Defendant and the proposed Defendant, implead the transferee and seek to recover the decretal dues jointly and severally from both Defendants. We are not of course concerned with the merits of such a plea. All that we are concerned with at this stage is whether the Plaintiff can be said to have a claim for relief against the proposed defendant so as to combine such claim with the existing cause of action, and whether there is anything in law which

prevents the Plaintiff from urging such a case. It is the Defendant who urges the case of transfer of liability and corresponding assets as between the Defendant and the Respondent who is proposed to be impleaded. The Plaintiff has every right to dispute that case and in the event of failing in such dispute, urge an alternative case against the Respondent. Even otherwise, the Plaintiff may have a case against the Respondent as an alleged transferee of the business of the creditor along with all related assets.

4 The chamber summons is accordingly allowed in terms of prayer clause (a). The amendment shall be carried out after three weeks and within four weeks from today.

5 Chamber Summons No.317/2017 is for inspection of two documents, namely, the agreement by which shareholding in the original Defendant is alleged to have been transferred to the proposed Defendant and the Business Transfer Agreement by which the wireless business of the original Defendant is alleged to have been transferred to the proposed Defendant. The application is objected to by the Defendant. As far as the first document is concerned, the objection is that there is no transfer of shareholding as between the original Defendant and the proposed Defendant. The transfer of shareholding is in favour of a third party. Secondly, it is submitted that this document is not relied upon by the Defendant in its pleadings. As for the second document, the objection is, firstly, on the ground that though this document is relied upon by the Defendant, a confidentiality clause contained in the document forbids the Defendant from disclosing this document to any third party. The second objection is that allowing such inspection requires the Defendant to bring

the document to Mumbai and that would involve payment of stamp duty which the Defendant objects to. Learned Counsel for the Defendant is prepared to give inspection of the redacted execution version of the document. Learned Counsel submits that by this means the disclosure of confidential portions of the document will be avoided and at the same time, the consequence of having to bring the original document to Mumbai could be averted.

6 Insofar as the first document is concerned, there is merit in the submissions of learned Counsel for the Defendant. This document is not relied upon by the Defendant in support of its defence to the commercial suit. Merely because there is a reference to this document in a communication by the Defendant to the Plaintiff, the Defendant is not obliged to give inspection of this document. The request for inspection of the first document is accordingly declined.

7 As regards the document of business transfer, the document certainly forms an intrinsic part of the contest between the parties. In view of the joinder of Defendant No.2 in the present suit, which itself is premised upon the Business Transfer Agreement claimed by Defendant No.1 itself and the document having been specifically relied upon in that behalf by Defendant No.1, the inspection of this document cannot be avoided. A redacted version will allow Defendant No.1 to choose portions of the document to be disclosed to the Plaintiff, leaving out the others. The Plaintiff, on the other hand, is entitled to rely on the document as a whole to construe the alleged transfer of business claimed by the Defendant. Merely because the document is confidential as between the parties thereto, the Plaintiff, who has a legal right to inspect the document,

cannot be prevented from doing so. The first objection on the ground of confidentiality, thus, has no merit. The second objection can be addressed and the controversy in connection therewith resolved, if the Defendant can arrange to give inspection of the document in Delhi and bear the expenses of such inspection. The Plaintiff is ready to have the document inspected in Delhi if the expenses are borne by the Defendant. The Defendant is also agreeable to do so.

8 Accordingly, the Defendant is directed to give inspection of the document mentioned at Serial No.2 in the schedule to the chamber summons to the Plaintiff. Such inspection shall be given in Delhi and the costs of such inspection, including the airfare of one representative of the Plaintiff and one Advocate on its behalf to and fro, shall be borne by the Defendant. The chamber summons is disposed of accordingly.

9 The suit to come up for directions after four weeks.

(S.C. GUPTE, J.)