

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 09TH DAY OF MARCH 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.Nos.2060 & 2061 of 2018

in

C.S.No. 678 of 2017

QD Seatoman Designs Pvt.Ltd
5th Floor, Status Quo,
38, Sterling Road,
Nungambakkam, Chennai 600 034
Represented by its Director
Mr.Syed Layak Ali

...Plaintiff

-vs-

1.Lifestyle Equities CV,
PrinsBerhaardplein, 1097JB
Amsterdam, The Netherlands

2.Eli Haddad,
27, Shadowo Lawn Drive,
Oakhurst, New Jersey 7755
United States of Amercia

3.Laura G.Wilson,
100 Bay Side Court,
Richmond, California 98404
United States of Amercia

4.Apparel FZCO,
P.O.Box No.261873 Jebel Ali Free
Zone, South Dubai, UAE

5.Major Brands India Pvt.Ltd
No.401, 4th Floor,
Skyline Icon,
Near Mittal Industrial Estate,
Andheri Kurla Road,
Acheri East, Mumbai 400 059

6.Impulse International Pvt.Ltd
Impulse Corporate Tower,
41, Echelon Institutional Area,
Sector 32, Gurgaon 122001
Haryana, India 122001

7.Krayons Sourcing Limited,
House No.7/1, Road No.7471
Gulhan-02, Dhaka 1212
Bangladesh
also at
Krayons Sourcing Limited,
D-21, Sarna Towers-2
Infocity-2
Sector -33,
Gurgaon, 122001
Haryana, India

8.Lifestyle Licensing BV,
PrinsBerhaardplein 200
1097 JB Amsterdam
The Netherlands

...Defendants

A.Nos.2060 & 2061 of 2018:

Lifestyle Equities CV,
PrinsBerhaardplein, 1097JB
Amsterdam, The Netherlands
Represented by their Power of attorney
Holder, Mr.Abhishek Kotnala

...Applicant/Applicant

-vs-

1.QD Seatoman Designs Pvt.Ltd
5th Floor, Status Quo,
38, Sterling Road,
Nungambakkam, Chennai 600 034
Represented by its Director
Mr.Syed Layak Ali

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 Infocity-2
 Sector -33,
 Gurgaon, 122001
 Haryana, India

8.Lifestyle Licensing BV,
 PrinsBerhaardplein 200
 1097 JB Amsterdam
 The Netherlands

...Respondents/Respondents

A.No.2060 of 2018:

Application praying that this Hon'ble Court be pleased to modify paragraph 3 of the order dated 22.02.2018 to the effect that a clarification of the order of the Hon'ble Supreme Court of India dated 13.02.2018 is not being sought at the sole insistence of Applicant and Respondent Nos.2 to 8 herein.

A.No.2061 of 2018:

Application praying that this Hon'ble Court be pleased to modify paragraph 3 of the order dated 22.02.2018 to the effect that no submission has been made on behalf of Respondent Nos.2 to 8 herein to be joined as parties to the arbitration proceedings that would ensue between the applicant and Respondent No. 1 pursuant to the order of the Hon'ble Supreme Court of India dated 13.02.2018.

These Application coming on this day before this court for hearing the court made the following order:

This is in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 22.02.2018, which reads as follows:

"C.S.No.678 of 2017
&A.No.6729 of 2017
&O.A.Nos.846 to 848 of 2017
&O.A.No.1242 of 2017

Mr.P.S.Raman, learned senior counsel leading Mr.Vijayan Subramanian, counsel on record for the plaintiffs and Mr.Sathish Parasaran, learned senior counsel leading Mr.Thriyambak Kannan, counsel on record for the defendants are before this Commercial Division. To be noted, there are eight defendants in all in this suit and Mr.Thriyambak Kannan has entered appearance on behalf of all eight defendants.

2. Both the learned senior counsel placed reliance on order of Hon'ble Supreme Court dated 13.02.2018 made in S.L.P (Civil) Nos.32569 of 2017 and 36311 of 2017 and made submissions.

3. After some submissions, the position that emerged is as follows:

The plaintiffs undertook to seek a clarification from Hon'ble Supreme Court qua the instant suit before this Commercial Division in the light of the order of the Supreme Court dated 13.02.2018, as to whether this lis can

continue before this Commercial Division or should go before the one member Arbitral Tribunal. The defendants sought time to seek direction from Hon'ble Supreme Court regarding the entire lis in this suit also going before the one member Arbitral Tribunal as according to them, defendant Nos.2 to 8, who are not parties to the arbitration agreement, are also willing to submit themselves to the jurisdiction of the Arbitral Tribunal.

4. Plaintiff and defendants seek time to pursue the above course in Hon'ble Supreme Court and they requested me to adjourn the suit by four weeks.

List the suit on 21.03.2018."

2. Today, these two applications have been filed with prayers to modify paragraph 3 of the aforesaid proceedings regarding seeking a clarification of the order of the Hon'ble Supreme Court of India dated 13.02.2018 and regarding submissions made about respondents 2 to 8 being joined as parties to the arbitration proceedings.

3. These two applications are supported by an affidavit sworn to by counsel on record for the applicant. To be noted counsel on record for the applicant is counsel on record for defendants 1 to 8 in the main suit.

4. An averment has been made in paragraph 4 of the affidavit to the effect that "....no submission was made concerning making respondent Nos.2 to 8 parties to the arbitration agreement between the Applicant and Respondent No.1." However, in the hearing today, learned counsel lead by Mr.Sathish Parasaran, learned Senior

Counsel submits that it is incorrect to say that no submissions were made regarding respondents 2 to 8 being made parties to the arbitration agreement. It is agreed by both counsel that submissions were in fact made. It is clarified that no consent was given for respondents 2 to 8 submitting themselves to arbitration.

5. Equally with regard to seeking clarification from the Hon'ble Supreme Court of India, it is submitted by learned counsel for plaintiff in the main suit that if the defendants do not want to seek clarification, the plaintiff does not want to seek clarification either.

6. To my mind, both submissions made on both sides are at variance with submissions made earlier.

7. It will suffice to clarify that there was no consent from defendants 2 to 8 in the main suit for submitting themselves to the arbitral proceedings. Equally plaintiff insists that these issues have to be heard only in the suit and that they also do not want the issues in this suit with regard to defendants 2 to 8 to be heard by Arbitral Tribunal. Even this clarification is not necessary as I am recalling my earlier proceedings dated 22.02.2018 in its entirety. However, this has been done to put at rest discrepancies in this regard.

8. It needs to be placed on record that there was an intra Court appeal being O.S.A.Nos.216 and 249 of 2017 arising out of an order in Section 9 application, which ultimately culminated in the Supreme Court proceedings. I was party to the Division Bench, which heard the aforesaid intra Court appeal. In fact I had authored the judgment for the Division Bench. Therefore, when this matter was first listed before this Commercial Division, the matter was taken up only after both counsel submitted that there is no objection in this Commercial Division

presided over by me hearing this matter. This is being set out here only to complete the facts and the trajectory of the hearing thus far.

9. Be that as it may, in the light of the narrative supra, I deem it appropriate to recall my earlier order dated 22.02.2018 in its entirety. Accordingly, both the applications are disposed of. I also deem it appropriate to recuse myself from this matter.

10. In the light of my recusal, Registry is requested to place this matter before Hon'ble Chief Justice for suitable orders.

Sd./- M.S.J

09.03.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.
R.s/03.04.2018

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.