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

+ CS(COMM) 194/2017 & I.A.No. 11576/2017 (U/o 7 Rule 11 CPC filed by the defendant) & I.A 11577/2017 (delay of 87 days in re-filing)

NCT MIDDLE EAST FZE

..... Plaintiff

Through: Mr. Preetpal Singh, Advocate.

versus

BAJAJ PRINTERS AND PACKERS

..... Defendant

Through: Mr. Saurabh Prakash, Mr. Kunal Gosain and Mr. Utsav Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **10.05.2018**

1. After arguments, this suit is allowed to be withdrawn as prayed inasmuch as the admitted fact is that in terms of the invoices raised it is the courts at Netherlands which would have jurisdiction to try the disputes between the parties and also that the laws of Netherlands will apply. This jurisdictional aspect has been considered by this Court in the case of ***Gupta Pigments and Chemicals Pvt. Ltd. Vs. Natpar Lines (S) PTE Ltd. & Anr. 176 (2011) DLT 176*** by referring to the judgment of the Supreme Court in the case of ***Modi Entertainment Network Vs. W.S.G. Cricket PTE. Ltd, (2003) 4 SCC 341***. The short judgment in ***Gupta Pigments (supra)*** is

reproduced as under:-

“1. The challenge by means of this present appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 5.9.1998 of the trial Court whereby the suit of the plaintiff has been dismissed on account of the fact of the agreement between the parties which provided that the laws of Singapore will apply and the Courts at Singapore will have jurisdiction and accordingly the Courts of New Delhi would not have jurisdiction to try the subject matter.

2. During the course of arguments, attention of the learned counsel for the appellant was drawn to the recent judgment of the Supreme Court in the case of ***Modi Entertainment Network v. W.S.G. Cricket PTE. Ltd., (2003) 4 SCC 341*** and in para 11 of which judgment the Supreme Court has categorically laid down the ratio that with respect to private international law, the parties are free to choose to get their disputes decided by laws of a neutral country and the Courts of such neutral country. Para 11 of this judgment reads as under:-

“11. In regard to jurisdiction of courts under the Code of Civil Procedure (CPC) over a subject-matter one or more courts may have jurisdiction to deal with it having regard to the location of immovable property, place of residence or work of a defendant or place where cause of action has arisen. Where only one court has jurisdiction, it is said to have exclusive jurisdiction; where more courts than one have jurisdiction over a subject-matter, they are called courts of available or natural jurisdiction. The growing global commercial activities gave rise to the practice of the parties to a contract agreeing beforehand to approach for resolution of their disputes thereunder, to either any of the available courts of natural jurisdiction and thereby create an exclusive or non-exclusive jurisdiction in one of the available forums or to have the disputes resolved by a foreign court of their choice as a neutral forum according to the law applicable to that court. It is a well-settled principle that by agreement the parties cannot confer jurisdiction, where none exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court; indeed in such cases the English courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a foreign court termed as a “neutral court” or “court of choice” creating exclusive or non-exclusive jurisdiction in it.”

3. In view of the aforesaid legal position, it is quite clear read alongwith the admitted clause of the Bill of Lading in question which requires

that laws applicable will be laws of Singapore and the Courts in which the matter will be tried are the Courts of Singapore, there cannot be found any fault with the impugned judgment. The relevant clause applicable reads as under:

“The contract evidenced by or contained in this Bill of Lading is governed by the law of Singapore and any claim or dispute arising hereunder or in connection herewith shall be determined by the Courts in Singapore and no other Courts.

All business is transacted only in accordance with the Singapore Freight Forwarders Association Standard Trading Conditions (1986). Copy will be furnished upon request or may be inspected at our premises.”

4. In view of the aforesaid, learned counsel for the appellant states the appellant will have no other option but to file the suit in appropriate Court and consequently says that the impugned judgment would have to stand.

5. In view of the above, the appeal is dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.”

2. In view of the aforesaid facts, this suit is allowed to be withdrawn with liberty to approach the competent court of jurisdiction.

3. Since the suit is withdrawn before leading of evidence, plaintiff is held entitled to refund of the 50% of the court fees in terms of Section 16-A of the Court Fees Act, applicable to Delhi. Registry will issue the necessary certificate in favour of the plaintiff.

VALMIKI J. MEHTA, J

MAY 10, 2018

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