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

\+ CS(COMM) 663/2016

MAX NEW YORK LIFE INSURANCE CO. LTD. ..... Plaintiff

Through: Ms. Geeta Luthra, Sr. Adv. with Mr. Piyush Singhal and Mr. Altamish Siddiki, Advs.

Versus

VIGHNAHARTA DIRECT INSURANCE BROKING PVT LTD ..... Defendant

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **08.02.2018**

1. Yesterday, the following order was passed:

"1. The plaintiff instituted this suit, under Section XXXVII of the Code of Civil Procedure, 1908 (CPC), for recovery of Rs.7,94,42,409/-.

2. The defendant applied for leave to defend. Vide order dated 30th July, 2014, with the consent of the counsel for the plaintiff, the suit was ordered to be treated as an ordinary suit and pleadings ordered to be completed. On 16th March, 2016, the following issues were framed in the suit and the parties relegated to trial:

"(i) Whether the plaintiff is entitled to the suit amount from the defendant or any other amount? OPP

(ii) Whether plaintiff is entitled to interest, if so at what rate and for what period? OPP

(iii) Relief."

3. The defendant stopped appearing and was vide order dated 17th August, 2017 proceeded against ex-parte.

4. The plaintiff has led its ex-parte evidence and the suit is ripe for hearing.

5. On enquiry as to the basis of the money claim in the suit, the counsel for the plaintiff has stated, (i) the plaintiff is an insurance company operating in India; (ii) the defendant is a broker licensed with the Insurance Regulatory and Development Authority (IRDA); (iii) the defendant represented to the plaintiff that it has the necessary infrastructure and a large client base to solicit and procure life insurance business to the plaintiff; (iv) on such representations of the defendant, the plaintiff empanelled the defendant and two agreements were executed between the parties; (v) the first was the Broker Agreement dated 1st January, 2009 under which the defendant was authorised to procure life insurance business on behalf of the plaintiff and entitled to be paid brokerage in terms thereof; (vi) the second was the Minimum Guarantee Revenue Agreement dated 1st January, 2009 under which the defendant undertook to procure minimum guaranteed revenues for the plaintiff, as mentioned therein, Rs.39,44,00,000/-, Rs.1,00,00,00,000/-, Rs.1,60,00,00,000/- and of Rs.2,99,44,00,000/- in the successive years; (vii) Clause 2 of the Minimum Guarantee Revenue Agreement stipulated that failure to achieve the minimum guaranteed revenues by the defendant, would constitute a material breach of the agreement pursuant to which pre-agreed liquidated damages were agreed to be paid; and, (viii) Clause 3 of the Minimum Guarantee Revenue Agreement also stipulated that the amount of liquidated damages were a genuine pre-estimate of damage caused/likely to be caused to the plaintiff in the event of termination of the agreement on account of defendant's breach and that the compensation so agreed to be paid was reasonable.

6. The counsel for the plaintiff states that the claim in the present suit is for such compensation/liquidated damages under the Minimum Guarantee Revenue Agreement.

7. I have enquired from the counsel for the plaintiff as to what was the consideration for the defendant to guarantee minimum business/revenue to the plaintiff.

8. No answer has been coming from the counsel for the plaintiff. He now states that the two Agreements were co-terminous and the consideration is the brokerage paid under the first Agreement.

9. The same does not amount to consideration.

10. I have further enquired from the counsel for plaintiff, whether the plaintiff has pleaded and proved loss/damage suffered by the plaintiff for the reason of the breach by the defendant of the Minimum Guarantee Revenue Agreement.

11. The counsel for plaintiff has replied in the negative and further states that it is very difficult/impossible to evaluate such loss/damage and for this reason only a pre-estimate of such loss and damage was made and liquidated damages agreed to be paid.

12. I have yet further enquired from the counsel for the plaintiff, whether not the remuneration payable by the Insurance Companies, as the plaintiff is, to brokers and the other terms between Insurance Companies and brokers are governed by the IRDA and whether the Minimum Guarantee Revenue Agreement has sanction of law or of IRDA and whether not such an agreement amounts to violation by the plaintiff of rules and regulations relating to insurance business.

13. The counsel for the plaintiff now states that the suit is listed today only for 'directions', on closure of plaintiff's ex-parte evidence and he needs to prepare.

14. A perusal of the order sheet shows that the Joint Registrar, on closure of ex-parte evidence, posted the suit before this Court on 15th December, 2017. On 15th December, 2017, I was engaged in a COFEPOSA hearing and hence the suit was adjourned to 19th December, 2017. On 19th December, 2017, none appeared for the plaintiff on first call and post-lunch the lawyers were abstaining from work and hence the suit was posted to 21st December, 2017. On 21st December, 2017, I was not holding Court and hence the suit was posted for today.

15. There is no reason for the counsel for the plaintiff to today not come prepared.
16. Be that as it may, list tomorrow i.e. 8th February, 2018."

2. Today, the senior counsel for the plaintiff states that the plaintiff has since altered the agreements entered into with its brokers/agents and under instructions, withdraws the suit.

3. Dismissed as withdrawn.

No costs.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 08, 2018
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