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IN THE HIGH COURT OF DELHI AT NEW DELHI

- + CS(COMM) 1348/2016 & IAs No.14350/2017 (of D-3 u/O XXXVII R-3 CPC), 14351/2017 (for condonation of 101 days in filing application for leave to defend), 14352/2017 (for condonation of 84 days delay in re-filing leave to defend), 6294/2018 (u/O XXXVII R-3 CPC), 6339/2018 (of D-1 u/O XXXVII R-3 CPC), 6340/2018 (of D-1 for condonation of 11 days in re-filing), 8612/2018 (of D-1 for condonation of 4 days in filing), 12173/2018 (of D-1 u/O XXXVII R-3 CPC), 12174/2018 (of D-1 for condonation of 6 days in re-filing), 12175/2018 (of D-2 u/O XXXVII R-3(5) CPC) & 12176/2018 (of D-2 for condonation of 6 days delay in re-filing)

IFCI FACTORS LIMITED

..... Plaintiff

Through: Mr. Anupam Srivastava and Mr.
Dhairya Gupta, Advs.

Versus

H.M. INFORMATICS PVT LTD & ORS

..... Defendants

Through: Mr. Manish Pratap Singh, Mr. Sumeet
Kaul and Ms. Rukmini Mukherjee,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

13.11.2018

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1. The plaintiff instituted this suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.5,78,94,378.55 paise jointly and severally from the three defendants i.e. (i) H.M. Informatics Pvt. Ltd., (ii) Manoj Kaul and (iii) Samridh Sharma.

2. The suit was entertained and summons for appearance and on the defendants entering appearance, summons for judgment were issued to the defendants. The three defendants have separately filed IAs No.14350/2017, 6339/2018 & 12173/2018 & 12175/2018, all for leave to defend the suit and which applications are for consideration today.

3. The counsel for the plaintiff states that the defendant No.2, in his application for leave to defend has taken a plea of the dispute subject matter of the suit being subject of an arbitration agreement; the defendant No.1, in his application for leave to defend, has merely adopted the pleas in the application for leave to defend of the defendant No.2; thus, it is the plea of the defendants No.1&2 that the parties are to be referred to arbitration. Though the defendant No.3 in his application for leave to defend has not taken any such plea but according to the claim of the plaintiff, the defendant No.1 is the principal debtor and the defendants No.2&3 are the guarantors. It is stated that the defendants No.2&3 are also the Directors of the defendant No.1. The counsel for the plaintiff states that the plaintiff is agreeable to the parties being referred to arbitration and in view of the dicta of the Supreme Court in *Ameet Lalchand Shah Vs. Rishabh Enterprises* 2018 SCC OnLine SC 487, all claims of the plaintiff against all the defendants are referable to arbitration.

4. Though Mr. Manish Pratap Singh, Advocate appearing for all the three defendants has himself taken the aforesaid plea of arbitration but when faced with the stand of the counsel for the plaintiff, appears to be in a quandary. It seems that the plea was taken in a routine manner, without intending any weightage to be given to it. He however does not dispute that

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the claim against the defendant No.1 is as a principal debtor and the claim against the defendants No.2&3 is as guarantors and there exists an arbitration clause in the agreement between the parties. He however contends that in terms of *IFCI Factors Limited Vs. Gangotri Iron & Steel Co. Ltd.* 2018 SCC OnLine Del 6697, the suit is not maintainable under Order XXXVII of the CPC.

5. I have enquired from Mr. Manish Pratap Singh, Advocate that even if the suit is not maintainable under Order XXXVII of the CPC, it will still be tried as an ordinary suit, and the plea of arbitration is thus to be considered.

6. Mr. Manish Pratap Singh, Advocate, after consulting with Mr. Sumeet Kaul, Advocate and Ms. Rukmini Mukherjee, Advocate accompanying him, states that he does not press for arbitration.

7. The counsel for the plaintiff controverts the contention that the suit is not maintainable under Order XXXVII of the CPC.

8. Mr. Manish Pratap Singh, Advocate, on being asked to argue on the leave to defend applications, again states that the parties be referred to arbitration.

9. Though in the manner aforesaid, a mockery has been made of the legal process and which has to be deprecated but the fact remains that in view of the plea of the defendants and it being not disputed by the plaintiff that there is an arbitration agreement and the defendants having not disputed that the arbitration agreement would cover the claim, if any of the plaintiff against all the three defendants, the parties have to be referred to arbitration in terms of Section 8 of the Arbitration and Conciliation Act, 1996.

10. Resultantly, the suit is disposed of referring the parties to arbitration.
11. On assurance of the counsel for the defendants that he will be careful in future, I am refraining from imposing any costs.
12. A certificate entitling the plaintiff to get refund of the court fees paid on the plaint less Rs.20,000/- be issued and handed over to the counsel for the plaintiff.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 13, 2018

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