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

% *Date of Judgment: 12th March, 2019*

\+ FAO(OS) (COMM) 32/2019

AMRIT JAL VENTURES PVT. LTD. & ORS. ..... Appellants
Through Mr. Rahul Malhotra and Mr. Varun Garg, Advocates

versus

IFCI VENTURE CAPITAL FUND LTD. ..... Respondent
Through Mr. Prashanto Chandra Sen, Senior Advocate with Mr. Nitin Dahiya and Mr. Kaustubh Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. ***(ORAL)***

1. The present appeal is directed against the order dated 11.02.2019 passed by a learned Single Judge of this Court by which an application being IA.10481/2018, seeking modification of the order dated 22.11.2017 to the extent that plaintiff no.1 would no longer remain bound by the statement undertaking given on 22.11.2017 to the extent that the outstanding amounts under the Investment Agreement dated 20.07.2011 would be repaid on or before 30.11.2018, has been rejected. The learned Single Judge while allowing the appellant/ plaintiff to withdraw the statement vacated the interim order dated 22.11.2017.

2. Learned counsel appearing for the appellant submits that the appellant had entered into a Corporate Loan Agreement with the respondent on

28.03.2014. As per the agreement, the respondent had agreed to lend to appellant no.1 an amount of Rs.13.80 Crores for a period of 39 months. Out of the sanctioned amount of Rs.13.80 Crores, an amount of Rs.12.62 Crores was disbursed to appellant no.1. Vide a separate agreement being Investment Agreement, the respondent under its Green India Venture Fund sanctioned financial assistant to the appellant no.1 by way of subscription of Rs.30 lakhs optionally convertible debentures of Rs.100/- each for cash at par aggregating to an amount of Rs.30.0 Crores. It is the case of the appellant that the loan facility with respect to the entire Corporate Loan Agreement stands cleared, however out of the 38,00,000 shares pledged arising out of the Corporate Loan Agreement, the respondent has illegally sold approximately 12,00,000 shares prior to the undertaking dated 22.11.2017 and thereafter sold approximately 24.2 lakhs shares as of date.

3. The main grievance of the appellants is that the shares belong to appellants no.2 to 7, whereas the Investment Agreement was entered into between the appellant no.1 and the respondent and thus, the respondent would have no lien over the shares of the appellants no.2 to 7, with whom there is no privity of contract between the respondent.

4. Mr. Sen, learned Senior Counsel appearing for the respondent has placed reliance on a communication addressed by the appellant no.1 to the respondent dated 10.06.2016 to submit that the appellants had, in fact, pledged these shares with respect to the Investment Agreement as well, which is strongly refuted by the counsel for the appellants. Be that as it may, learned counsel for the appellants submits that the

appellant/plaintiff had filed an application being IA.13060/2017 under Order XXXIX Rules 1 and 2 of the Civil Procedure Code along with plaint is pending and has not been considered or decided on merits till date. Learned counsel for the appellant further submits that serious prejudice has already been caused to his rights inasmuch as out of 38,00,000 shares pledged to secure the Corporate Loan Agreement, approximately 36.2 lakhs shares already stand sold. The counsel thus submits that the respondent should now be restrained from selling the balance 1.80 shares till the application being IA.13060/2017 under Order XXXIX Rules 1 and 2 of the Civil Procedure Code is not decided by the learned Single Judge and no prejudice is likely to be caused to the rights of the respondent as the appellant had already sold 36.2 lakhs shares.

5. We have heard the learned counsels for the parties and examined the order passed by the learned Single Judge of this Court.

6. When the matter was listed before the learned Single Judge on 22.11.2017, the following order was passed:

> **"CS(COMM) 774/2017**
>
> Mr.P.V.Kapur, learned senior counsel for the plaintiff, on instructions, states that the remaining/outstanding amount under the Investment Agreement dated 20th July, 2011 shall be repaid on or before 30th November, 2018.
>
> Mr.Kapur is directed to file affidavit of the plaintiffs giving an assurance to this Court that the outstanding amount under the Investment Agreement dated 20th July, 2011 shall be repaid on or before 30th November, 2018.

Learned counsel for the defendant-IFCI is directed to file an affidavit disclosing as to how much amount has been recovered by sale of pledged shares of Gati Ltd.

Till further orders, the defendant is directed not to sell any further shares of Gati Ltd. after 11.05 A.M. today.

List on 08th December, 2017.
Order dasti."

7. Subsequently, the appellant/plaintiff no.1 had sought to withdraw the undertaking given and accordingly the learned Single Judge by an order dated 11.02.2019 vacated the stay so granted.

8. From the date of order dated 22.11.2017 till now, out of 38,00,000 shares, approximately 36.2 lakhs shares already stand sold leaving only 10% shares available. The learned counsel for the appellant has strongly urged before us that he has a strong case on merits as the shares were pledged by appellants no.2 to 7 to secure a Corporate Loan Agreement and they are not parties to the Investment Agreement, as they did not pledge their shares as security for the Investment Agreement, and this aspect is yet to be considered by the learned Single Judge. Thus, in case the balance 1.8 lakhs approximately shares are allowed to be sold, the appellants rights would be seriously affected.

9. We find force in the submission of the learned counsel for the appellants. Admittedly, an application being IA.13060/2017 under Order XXXIX Rules 1 and 2 of the Civil Procedure Code is yet to be decided by the learned Single Judge. To balance the equities we bind the appellants to the statement made in Court and restrain the

appellants and the respondents from selling the balance shares till the application filed under Order XXXIX Rules 1 and 2 of the Civil Procedure Code is decided by the learned Single Judge. All the rights and contentions of both the parties are kept open. The learned Single Judge would decide the application unaffected by any of the observations made by this Court.

10. The matter is stated to be listed before the learned Single Judge on 02.05.2019. Both the parties agree not to seek any adjournment in the matter.

11. The appeal stands disposed in above terms.

<u>CM.APPL 6684/2019(stay)</u>

12. The application stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J.

JYOTI SINGH, J.

MARCH 12, 2019
pst