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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 386/2019 & CAV. No. 446/2019 and CM. Nos. 19904/2019 and 19905/2019

M/S FIBCOM INDIA LTD Appellant
Through: Mr. Anuj Kumar and Mr. Vikram
Gulliya, Advs.

versus

M/S INTEC INFONET PVT LTD Respondent
Through: Mr. Rahul Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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29.04.2019

CAV. No. 446/2019

As the learned counsel for the caveator appears, caveat stands discharged.

CM. No. 19905/2019 (for delay)

This is an application filed by the applicant / appellant seeking condonation of 6 days delay in filing the appeal.

For the reasons stated in the application, delay of 6 days in filing the appeal is condoned.

Application stands disposed of.

RFA 386/2019

1. With the consent of the counsel for the parties, the appeal is taken up for hearing.
2. The challenge in this appeal is to the order dated December 18, 2018 passed by Sh. Sumit Dass, ADJ-01, Patiala House Courts, New Delhi whereby the Suit filed by the respondent herein has been decreed for a sum

of Rs.13,05,663/- with interest @ 10% *per annum*. It is made clear in the impugned Judgment that the interest however shall enure on or shall be due on 50% of Rs.13,05,663/- w.e.f June 20, 2014 till realization.

3. Two submissions have been made by the learned counsel for the appellant, firstly one witness namely Shekhar Aggarwal, PW1 has deposed in the Suit without any authority and resolution of the Board of Company. Secondly that pursuant to the contract, respondent was required to give performance guarantee, which admittedly was not given by it, which aspect i.e. the effect thereof has not been considered by the trial Court.

4. In so far as the first plea of the appellant is concerned, learned counsel for the respondent has relied upon the Judgment of the Coordinate Bench of this Court in the case of ***Pawan Kumar Dalmia and Ors. v. HCL Infosystems Ltd. and Ors. RFA Nos. 180, 235 and 239/2004*** to contend that there is no requirement of having a Board resolution in favour of a witness for him to appear and depose. In so far as the plea of the learned counsel for the appellant with regard to the non-submission of performance guarantee is concerned, learned counsel appearing for the respondent would submit that this aspect was considered by the learned Trial Court and the effect of non-

submission of performance guarantee has been dealt with in Paras 14.1, 14.2 and 14.3 of the impugned Judgment. In other words, it is his submission that the effect of non-submission of the performance guarantee has been considered in favour of the appellant herein.

5. Having noted the submissions made by the counsel for the parties, in so far as the first submission of the learned counsel for the appellant is concerned, suffice it to state that the Coordinate Bench of this Court in Para 10 of ***Pawan Kumar Dalmia and Ors. (supra)*** has held as under:

“10. One other argument urged on behalf of the appellant was that the witness who deposed on behalf of the defendant no.1/respondent no.1- company was not authorized by any board resolution to give evidence. This argument is misconceived inasmuch as evidence of a person is governed by the Evidence Act, 1872, and any person who is aware of the facts of the case and whose evidence would be a relevant evidence in terms of the Evidence Act, 1872, is competent to depose. A witness can depose as per facts in his knowledge or as per records. There is no provision in the Companies Act, 1956 or in the Evidence Act, 1872 which requires that a witness who appears on behalf of the company can only depose if there is a resolution of the Board of Directors of the company permitting him to depose on behalf of the company. This argument of the appellant is therefore rejected.”

6. So, the first plea raised by the learned counsel for the appellant is covered by the ratio of judgment in ***Pawan Kumar Dalmia and Ors. (supra)***. That apart, I find that this aspect was not even dealt with by the learned trial court in the impugned judgment. On a specific query to the

learned counsel for the appellant, whether such a plea was made before the Trial Court, the answer was in the affirmative. On a further query by the Court to the counsel to point out from the appeal whether such an averment has been made in the body of the appeal; the same could not be pointed out. It appears, such a plea has not been made by the appellant. In view of the Judgment of the Coordinate Bench of this Court in ***Pawan Kumar Dalmia and Ors. (supra)*** this plea is rejected.

7. In so far as the second submission of the learned counsel for the appellant is concerned, I agree with the submission made by the counsel for the respondent that the Court has considered the non-submission of the performance guarantee and effect thereof and restricted the quantum of interest in the impugned judgment to the extent of 50% of the amount of Rs.13,05,663/- w.e.f June 20, 2014 till realization. Keeping in view the limited submissions made by the counsel for the appellant, I do not see any merit in the appeal. The same is dismissed.

CM. No. 19904/2019 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 29, 2019/jg