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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 111/2020 & CM APPLs. 3712/2020, 3713/2020**

BERGER PAINTS INDIA LTD Petitioner

Through: Mr. Raman Kapoor, Sr. Advocate
with Mr. Ayush Agarwal & Mr.
Debeyan Gosh, Advocate (M-
9958455974)

versus

SYNCHORNIZED SUPPLY SYSTEMS LTD Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **29.01.2020**

1. The petition challenges the impugned order dated 19th September, 2019 and order dated 21st December, 2019 which in effect have closed the right of the Petitioner/Defendant (*hereinafter*, “*Defendant*”) to file the written statement in the matter. A suit was filed before the Saket District Court seeking recovery of a sum of Rs.11,30,701/- against the Defendant. The Defendant moved an application under Section 10 CPC raising various pleas, both on merits and seeking stay of the suit in view of the earlier proceedings commenced before the Calcutta High Court. The Section 10 application was dismissed by the Trial Court, and thereafter four weeks’ time was granted on 19th September, 2019 to file the written statement subject to payment of Rs.40,000/- as costs. The operative portion of the said order reads as under:

“Application u/o 8 R 10 CPC relates to passing judgment in view of non filing of written statement. There is primarily no explanation for not filing written statement. Application u/s 10 CPC does not give

occasion for non filing of written statement. At the best further proceeding is to be stayed if application is allowed but there was no occasion for non filing of written statement. Keeping in view disposal of the suit on merits, I deem it proper to grant one opportunity to file written statement within four weeks with advance copy to the opposite counsel subject to cost of Rs. 40,000/-."

2. As per the above order, four weeks' time was granted to file the Written Statement which was not filed. Since no written statement was filed, the Trial Court has closed the right of the Defendant to file the written statement vide the impugned order.
3. The proceedings are of a commercial nature and would be governed by Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015. The time for written statement cannot be extended in view of the judgment of the Supreme Court in ***SCG Contracts India Pvt. Ltd vs. K.S. Chamankar Infrastructure Pvt. Ltd Civil Appeal No. 1638 of 2019, Decided on 12th February, 2019.***
4. However, a perusal of the application under Section 10 shows that all the contentions of the Defendant on merits have also been pleaded in the Section 10 application. The defence of the Defendant, as pleaded in the Section 10 application shall be read as the defence to the suit. The suit would now proceed further to trial. No further orders are called for in this matter.
5. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 29, 2020

Rahul