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

% **Date of decision: 23rd September, 2020**

\+ **FAO (OS) (COMM) 116/2020**

OAKS ASSET MANAGEMENT PRIVATE LIMITED (ERSTWHILE ALPHA CAPITAL ADVISORS PRIVATE LIMITED) & ANR. .....Appellants

Through: Mr. Bishwajit Dubey, Mr. Gaurav Singhi, Ms. Srideepa Bhattacharya, Mr. Aman Singhania, Advocates

versus

JUST BUY LIVE ENTERPRISE PRIVATE LIMITED & ORS. .....Respondents

Through: Mr. Bhavya Sethi and Ms. Gyanika, Advocates for respondent No.1&2

Mr. Uday Gupta for respondent No. 3

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M. Appln. No.23663/2020 (Exemption from filing certified copy of the impugned order dated August 14, 2020, legible copies of dim documents, underlined documents and documents not having requisite font size)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

FAO (OS) (COMM) 116/2020

3. The appeal impugns the order, dated 14th August, 2020 of the Commercial Division of this Court, of dismissal of I.A.No. 6891/2020, filed by the appellants in disposed of O.M.P.(I) (COMM.) 228/2019 under Section 9 of the Arbitration and Conciliation Act, 1996 (Act), for clarification of the order dated 6th February, 2020 disposing of the O.M.P.(I)(COMM.)228/2019.

4. The counsel for the respondent Nos. 1 and 2 and the counsel for the respondent No. 3 appear on advance notice.

5. We have heard the counsels, without going into the aspect of the maintainability of this appeal.

6. Though O.M.P.(I)(COMM.)228/2019 under Section 9 of the Act *supra* was filed claiming several reliefs but the counsel for the appellants/petitioners, when the said petition came up before the court on 6th February, 2020, confined the reliefs therein to appointment of an auditing firm as Forensic Auditor to conduct forensic audit of the accounts of the respondent No.1 company.

7. On the counsel for the appellants/petitioners so confining the reliefs, the counsel for the respondents stated that he had no objection if an independent auditor was appointed to conduct forensic audit of the accounts of respondent No.1 Company for the years 2017-2018 and 2018-2019 and the charges therefor were to be borne by the appellants/petitioners.

8. From a reading of the order dated 6th February, 2020 it appears that the counsel for the appellants/petitioners did not have any objection to the aforesaid and accordingly the petition was disposed of giving liberty to the appellants/petitioners to appoint one of the four named auditing firms, to conduct forensic audit of the accounts of respondent No.1 Company for the years 2017-2018 and 2018-2019.

9. Today, the counsels have informed that pursuant thereto the appellants/petitioners appointed an Auditor and forensic audit is going on and the respondents have provided all the requisite information**,** including passwords for all emails, to the auditor, for the purposes of the said audit.

10. The appellants/petitioners thereafter filed I.A.No.6891/2020 seeking that the audit should be also for the years 2015-2016 and 2016-2017, besides for the years 2017-2018 and 2018-2019 already ordered. The said application came up before the Commercial Division on 14th August, 2020, when recording that during the hearing on 6th February, 2020, the years 2017-2018 and 2018-2019 were mentioned and to which the respondents agreed, the O.M.P.(I)(COMM.)228/2019 was disposed of and the appellants/petitioners were in effect seeking review of the order, the application was dismissed.

11. The counsels for the respondents**,** on enquiry though have fairly stated that they have nothing to hide and have already

cooperated to the maximum, have contended that the audit underway, in spite of all information having been provided, is extending endlessly and the respondents are being asked to bear certain expenses and which the respondents are not willing to bear. It is stated that the respondent No.1 Company has stopped all businesses and has no activity and its Directors, being respondents No. 2 and 3 are being put to unnecessary harassment during the course of the forensic audit.

12. However, on it being proposed to counsels for the respondents that the time-limit for the forensic audit as well as the number of inquiries which can be made from the respondents can be limited and directed to be specific and in writing, with the respondents being required to submit written answers and that the respondents will not have to bear any expenses, the counsels for the respondents have agreed.

13. In the circumstances, without going into the question of maintainability of this appeal, the appeal is disposed of with the following directions:

a) That the Forensic Auditor already appointed shall be entitled to conduct the forensic audit, also for the years 2015-2016 and 2016-2017 but the audit for the entire period, from 2015 to 2019, shall be concluded on or before end of February 2021 and the respondents shall not be asked to pay/bear any expenses therefor.

b) The counsels for the respondents state that they have already provided access to all accounts and data of the years 2015-2016 and 2016-2017 also to the Auditor already appointed. The Auditor shall**,** on or before 31st October, 2020, by a communication in writing to the respondents**,** ask particulars of other accounts/data, if any required, for the additional two years.

c) The respondents shall**,** on or before 30th November, 2020, respond thereto, alongwith all the data requested and if the same is not available**,** stating so and giving reasons therefor and whereabouts thereof.

d) Thereafter, the Auditor shall be entitled to make queries, if any**, only** in writing, from the respondents, only twice and to which the respondents shall furnish replies in writing within 10 days of receipt of each set of queries. No other communication or inquiries shall be made by the Auditor from the respondents.

e) No inquiries beyond the replies to the second set of questionnaire shall also be made.

f) If it is the claim of the appellants/petitioners that the respondents have evaded to answer any queries or furnish any data, the appellants/petitioners shall be entitled to plead so in the arbitration proceedings, if any initiated and if entitled to, raise adverse presumption therefrom.

14. On enquiry, it is stated that arbitration has not commenced as yet and if the appellants/petitioners are satisfied with the report of the Forensic Auditor appointed, the occasion for arbitration may not arise.

15. The appeal is disposed of.

RAJIV SAHAI ENDLAW
(JUDGE)

ASHA MENON
(JUDGE)

SEPTEMBER 23, 2020
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