

Neutral Citation NO : 2022/DHC/004311

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

% Judgment delivered on: 13.10.2022

+ **FAO(OS) (COMM) 142/2022**

KKR INDIA FINANCE LIMITED Appellant
versus

ALTICO CAPITAL INDIA LIMITED & ORS. Respondents

Advocates who appeared in this case:

For the Petitioners: Dr. Abhimanyu Chopra, Mr. Tanmay Sharma and Mr. Aman Chaudhary, Advocates.

For the Respondents: Mr. Akshat, Mr. Surya Kapoor and Mr. Tanmay Arora, Advocates for R-1
Ms. Pooja M. Saigal and Mr. Simrat Singh Pasay, Advocates for R-5

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant in the suit is aggrieved by two observations in the impugned order dated 12.01.2021 with regard to the resolution of a Board of Directors dated 20.04.2018 which was filed by the appellant in the suit along with an application seeking impleadment.

2. Learned counsel for the appellant submits that in the impugned order it has been observed that the resolution dated 20.04.2018 is not a

genuine document and is a fabricated document. He submits that there is no foundation for such an observation in the impugned order for the reason that no opportunity of leading evidence was provided to the parties.

3. He further submits that by the impugned order application under Order 39 Rules 1 and 2 CPC filed by the plaintiff and the two applications filed by the applicant/defendant no. 4; one under Order 39 Rule 4 and other under Order VII Rule 11 CPC were disposed of. He submits that at the stage of disposal of an application under Order 39 Rules 1 and 2 CPC and under Order 39 Rule 4 CPC, the Court has to return a prima facie finding and while disposing an application under Order VII Rule 11 CPC, only the plaint and its enclosed documents are to be adverted to.

4. He submits that there was no evidence on record to show that the resolution dated 20.04.2018 was a forged or fabricated document. He, however, fairly submits that a doubt on the said resolution was raised by defendant no. 4 but there was no conclusive evidence on record for the Court to have returned the said finding.

5. It is noticed that the observations in the impugned order that the resolution of Board of Directors dated 20.04.2018 is not a genuine document and is a fabricated document is not based on any evidence or other material on record except for the averments of defendant no. 4 doubting its genuineness.

6. We observe that the appellant/defendant no. 15 in response to the said allegations was not given an opportunity to lead any evidence and the said observations do not have any foundational basis in any other evidence/material on record.

7. We note that the observation of the learned Single Judge that the said document is not a genuine document and is a fabricated document could at best be taken as only prima facie observation.

8. In view of the above, the appeal is disposed of clarifying that the observation in paragraph 14 that the resolution dated 20.04.2018 is not a genuine document and in paragraph 29 that the said resolution is a fabricated document are only prima facie and not conclusive final findings based on any evidence. Consequently, the said observations would not be binding in any proceedings, *inter-se* the parties.

9. It is further clarified that this would also not come in the way of defendant no. 4 to impugning the said resolution or establishing that the same is forged or fabricated document.

10. Appeal is accordingly disposed of. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

OCTOBER 13, 2022/‘rs’