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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 02.05.2022

+ **FAO(OS) 151/2019 and CM APPLs. 35293-94/2019**

RACHIT MALHOTRAAppellant
Through: Mr Rakesh Kumar with Ms Isha
Khanna, Advocates.

versus

ONE97 COMMUNICATIONS LTDRespondent
Through: Mr Nakul Mohta with Mr Gaurav
Baheti, Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE POONAM A. BAMBA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is directed against the order dated 26.04.2019, passed by the learned single judge in CS(OS) No.183/2018.
2. Mr Rakesh Kumar and Ms Isha Khanna, who appear on behalf of the appellant, say that the grievance of the appellant is with regard to the following observations made in paragraph 14 of the impugned order. For the sake of convenience, the relevant part of the said paragraph in the order dated 26.04.2019 is set forth below-

“.....Moreover, once the plaintiff agrees that ESOP Scheme so provides, no relief to the plaintiff in enforcement of the scheme can be given contrary to the scheme.”

- 2.1. According to Mr Kumar and Ms Khanna, this observation is inconsistent with the observations made by the learned single judge in paragraph 17 of the same impugned order. To be noted, paragraph 17 of the impugned order reads as follows:

“17. On request of the counsel for the plaintiff, it is recorded that though the observation in the order aforesaid of “....no relief to the plaintiff in enforcement of the scheme can be given



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contrary to the scheme is final, as far as the application is concerned, but it will be open to the plaintiff to at the time of final arguments argue that the scheme should not be interpreted as providing for lapsing.”

3. Having heard Mr Kumar and Ms Khanna, as well as Mr Nakul Mohta who appears on behalf of the respondent, we are of the view, that the apprehension in the mind of the appellant can be removed by simply observing that the aforementioned observation made in paragraph 14 of the impugned order dated 26.04.2019 [as extracted in paragraph 2 above] will not come in the way of the appellant establishing that his right to 1854 convertible equity shares did not lapse.
4. We may note that *via* order dated 25.02.2019, an issue to that effect had been framed by the learned single judge. The said issue reads as follows:

“(i) Whether the option available to the plaintiff under the aegis of scheme, for shares other than 2324 shares, had lapsed by passage of time?”

- 4.1. Issue no.1 is with respect to 1854 shares; something which was clarified by the learned single judge in paragraph 3 of the impugned order.
5. With these observations, the appeal is disposed of.
- 5.1. Accordingly, the interim order dated 07.08.2019 shall stand vacated.
6. To be noted, apart from what has been recorded hereinabove, nothing else has been argued before us by Mr Kumar and Ms Khanna.
7. Consequently, pending applications shall stand closed.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

MAY 2, 2022 / tr

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