OCD-2

ORDER SHEET

**CS 24 of 2023**
IA No.GA 1 of 2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

CREDIT SUISSE (SWIZTERLAND) LIMITED
VS.
SOFTEL OVERSEAS PRIVATE LIMITED AND OTHERS

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 10th February, 2023.

Mr. Abhrajit Mitra, Sr. Adv., Mr. Rachit Lakhmani, Mr. Srinivas Atreya, Ms. Sarah Navodia, Mr. Arnab Sardar, Advocates for plaintiff.

The Court : The proposed plaintiff which is a foreign bank intends to institute the suit for a money claim jointly and severally against the defendants after obtaining leave under Order II Rule 2 of the Code of Civil Procedure, 1908, Clause 12 of the Letters Patent, 1865 and Section 12A of the Commercial Courts Act, 2015. At the stage of presentation of the plaint and admission thereof for instituting a suit in the Commercial Division of this Court it is first necessary to see whether the formalities under the provision of Section 12A can be dispensed with as it has now been held to be mandatory as the Court assumes jurisdiction in respect of a suit arising out of commercial dispute under the Commercial Courts Act, 2015 only thereafter on dispensation being allowed. Leave under Clause 12 of the

Letters Patent, 1865 if sought for has to be gone into after the Court is satisfied to dispense with the formalities under the provision of Section 12A of the Commercial Courts Act, 2015. In the instant case as appears from the averments in the plaint one Vincom Commodities Limited (in short 'Vincom') based in United Kingdom (UK) entered into a credit facility agreement with the proposed plaintiff. Documents were executed between Vincom and the proposed plaintiff. Default is alleged against Vincom. In order to take care of such default on 14th March, 2017 a tripartite Collateral Management Agreement (in short 'CMA) was executed between the proposed defendant no.3, Vincom and the proposed plaintiff. The proposed plaintiff says that the suit is in respect of the consignment of goods which were contracted to be supplied to the defendant no.1 by Vincom and financed by the proposed plaintiff under the CFA. On the proposed defendant no.1 having unauthorisedly taken possession without making payments for the same to the proposed plaintiff money fell due. It further appears from the plaint that on 9th January, 2018 the proposed plaintiff had issued a notice to the proposed defendant no.3 as per the CMA. The plaint thereafter proceeds to state that Vincom went into liquidation which came to the notice of the proposed plaintiff on 18th January, 2018 for which the proposed plaintiff started investigation into the facts and conduct of the proposed defendants vis-à-vis the pledged goods. The proposed plaintiff thereafter issued a notice on 14th March, 2018 to the proposed defendant no.1. Subsequent thereto three civil suits were filed by the proposed defendants before this Court. The proposed plaintiff also made a criminal complaint on 6th April, 2018 before the police authorities apprehending misappropriation of the pledged goods by the proposed defendant no.3 which culminated into registration of a First Information Report (in short 'FIR') being no.88 of 2018 and thereafter converted into West Port Police Station Case no.88 of 2018 against the proposed defendant nos.1 and 3. The plaint thereafter states that on 22nd May, 2018 the proposed defendant no.3 was arrested which resulted in filing of anticipatory bail by the proposed defendant nos.1 and 2. As a security for anticipatory bail, a sum of Rs.10 crores had to be deposited by the proposed defendant no.2 with the Registrar of this Court. The proposed plaintiff thereafter obtained an order to withdraw the said sum of Rs.10 crores. The final report of investigation in respect of the FIR lodged by the proposed plaintiff was filed on 30th May, 2020 which came to the notice of the proposed plaintiff on 14th August, 2020. The proposed plaintiff has filed a protest petition (Naraji) on 11th May, 2022. All other incidents pleaded in the plaint also appear to have taken place prior to February, 2020. The proposed plaintiff has issued a legal notice on 20th January, 2023 and has filed this suit in the computer department of this Court on 4th February, 2023. The proposed plaintiff in support of its prayer for dispensing with the formalities under Section 12A has pleaded the grounds in paragraphs 39, 40, 41 and 42 of the plaint. None of the averments in those paragraphs impresses this Court even prima facie that the suit sought to be instituted by the proposed plaintiff contemplates urgent interim relief as envisaged under Section 12A(1) of the Commercial Courts Act, 2015. If the proposed plaintiff could wait from 2018 when the alleged misappropriation of pledged goods had come to the notice of the proposed plaintiff resulting in making the police complaint and realise Rs.10 crores, the proposed plaintiff shall exhaust the pre-institution mediation. The suit does not contemplate urgent interim relief at this stage.

Leave and/or dispensation with the formalities under the provision of Section 12A of the Commercial Courts Act, 2015 is refused. The plaint has not entered the record of the Court and is only at the presentation stage after having been filed in the computer department and a number being allotted thereto. The plaint is, therefore, directed to be returned along with the court fees so that the proposed plaintiff after exhausting the remedy under Section 12A(1) of the Commercial Courts Act can seek to institute a suit against the proposed defendants on the self-same cause, if so advised using the court fees already paid provided the same is permissible in law. The department shall take necessary steps for returning the plaint after observing the requisite formalities.

(ARINDAM MUKHERJEE, J.)

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