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

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Date of decision: 09.05.2023

+ **FAO (COMM) 76/2023**

M/S AT ENTERPRISES Appellant

Through: **Mr.Kshitiz Garg, Adv.**

versus

M/S PICCADILY HOTELS PVT. LTD. & ORS Respondents

Through: **Mrs.Vikas Jain, Adv.**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T (oral)

1. Present petition has been filed seeking quashing and setting aside the impugned order dated 22.11.2022 passed by learned District Judge (Commercial Court), North District, Rohini Court, in Commercial Suit bearing CS(COMM) No.55/2019. Further seeks direction to restore the abovementioned commercial suit filed by the appellant.

2. Learned counsel appearing on behalf of the petitioner submits that earlier also similar issue came up before this Court in FAO(COMM) 56/2023 titled as "*Bharat Bhushan Sawhney vs. M/s Baso Hospitality LLP (Shree Rathnam) & Ors.*" and same was allowed vide order dated 07.03.2023 wherein recorded as under:

"Present appeal has been filed challenging the order dated 02nd

November, 2022 passed by the Ld. District Judge (Commercial Court), North District, Rohini Court in Commercial Suit in CS (Comm) No. 228/2019 on the ground that the learned District Judge (Commercial Court) has erroneously returned the plaint of the Appellant under Order VII Rule 10 of the Civil Procedure Code, 1908.

Yesterday, when the matter had been taken up for hearing, learned counsel for the appellant had stated that though the suit was initially filed as a commercial suit and the Non-Starter Pre-litigation Mediation Report had been enclosed, yet the plaint of the appellant was returned under Order VII Rule 10 CPC erroneously noting that the suit filed by the appellant herein was initially filed as a non-commercial suit.

While issuing notice, this Court had called for an explanation on the Administrative Side from the learned District Judge (Commercial Court), North District, Rohini Court, Delhi.

In pursuance to the said order, a report has been received from the Registrar (Vigilance) of this Court. The same is taken on record. In the said report, the learned District Judge (Commercial Court) has given an explanation stating that the Ahlmad of the Court had inadvertently tagged the Non-Starter Report in the file after page No.9 of the plaint instead of being tagged with page No.278. In the explanation, it is admitted that it appeared that the Non-Starter Report had escaped the attention of the learned District Judge (Commercial Court).

A bare perusal of the plaint reveals that the suit filed by the appellant herein was filed as a commercial suit after duly complying with the provision of the Commercial Courts Act, 2015 and the suit was duly registered as a commercial suit at the time of its inception.

This Court is also of the view that the nature of the suit could not have changed merely because the suit filed by the appellant herein was initially listed before the learned Additional District Judge-I, North District, Rohini Court and subsequently transferred to the Court of the learned District Judge (Commercial Court), the suit filed by the appellant cannot be said to have been filed as a non-commercial Suit.

Consequently, the impugned order is set aside and the matter is restored back to the file of the learned District Judge (Commercial Court), North District, Rohini Court, Delhi who is directed to decide the same expeditiously preferably within six months. The appellant-defendant shall be entitled to refund of the Court fee paid

in filing the present appeal. The learned District Judge (Commercial Court), North District, Rohini Courts is also directed to be more careful in the future while passing the orders. With the aforesaid direction, the present appeal stands disposed of.”

3. Learned counsel appearing on behalf of the appellant submits that in the said case also, category CS(COMM) was given as is given in the present case and the similar order was passed by the same Court/Judge, as has been passed in the present case.
4. Accordingly, without going into the controversy, we hereby dispose of the present appeal by setting aside order dated 22.11.2022 passed by learned District Judge (Commercial Court), North District, Rohini Court and direct the learned District Judge (Commercial Court) to pass afresh order based on the report and in view of the judgment dated 07.03.2023 in FAO (COMM) 56/2023 after giving opportunities to both the parties.
5. In view of above, appeal is disposed of.

(SURESH KUMAR KAIT)
JUDGE

(TUSHAR RAO GEDELA)
JUDGE

MAY 09, 2023/ab