

Cisco System Capital Vs. New Delhi Tele Tech (P) Ltd.

CC No. : 528094/16, 530584/16, 530583/16, 530582/16, 530014/16, 518150/16, 536843/16, 518701/16, 536842/16, , 523689/16, 523688/16, 515764/16, 517227/16, 524274/16, 524280/16, 524281/16, 5713/19, 523691/16, 521440/16, 525089/16, 518700/16527018/16 & 523690/16

12.07.2019

Present : Ld.Counsel for the complainant.

Accused no. 1 is a company.

Accused Mr.Adarsh Bagaria alongwith Ld.Counsel.

Ld.Counsel for accused Mr. Kapil Puri.

Accused Kapil Puri not present.

Accused Gaurav Puri has been dropped.

Mr. H.K.Shah alongwith Ld.Counsel.

Ld. Counsel for accused Adarsh Bagaria and Mr. H.K.Shah have filed a consolidated list of the cases in which they have been summoned as an accused, in compliance with the previous order of the court.

An exemption application has been filed on behalf of accused Mr. Kapil Puri alongwith relevant records and it has been stated by him that vide order dated 03.07.2019, accused Mr. Kapil Puri has been directed to obtain prior written permission from the Hon'ble Insolvency Court in order to leave the jurisdiction of the Insolvency court at Bombay. Ld. Counsel for the accused Mr. Kapil Puri has stated that he will file an appropriate application before the Hon'ble Insolvency court for seeking the said permission. The exemption application of Mr. Kapil Puri is accepted for today only.

On the LDOH, Summons were issued to OL with the relevant records to be present in the court as a defence witness. However, despite due service of summons, the OL is not present in the court today. Further, letter of the

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copy of the official liquidator is annexed alongwith summons wherein it has been stated by the OL that he has no personal knowledge of the present case against the accused company which was prior to the appointment of the OL for the accused company.

Perusal of record shows that the notice initially issued to the concerned OL was received back alongwith copy of the order of the Hon'ble High Court of Bombay dated 07.04.2016 in company petition number 434 of 1997 wherein the Hon'ble High Court has stated that in any event in a case when the personal presence of the OL may be necessary either for defending or for prosecuting proceedings against companies in liquidation, an appropriate leave or direction of the company court is required.

It is pertinent to mention that the order of the Hon'ble High Court of Bombay in company petition number 434/1997 was with respect to a different matter pending against M/s Cosmopolitan Hotels Ltd. Further, the order of the Hon'ble High Court of Bombay is only with respect to a situation where the personal presence of the OL is required for either defending or prosecuting the proceedings on behalf of the company undergoing liquidation.

In the present case, the presence of the OL is required as a witness and not for prosecuting or defending the proceedings. The application for summoning the OL as a witness has been filed on behalf of the accused Kapil Puri, which was allowed by the court vide order dated 06.03.2019.

On the last date of hearing, summons were issued to the concerned OL for appearing as a defence witness. However, despite due service of summons, the concerned OL is not present before the court. It was also stated that on the order dated 25.05.2019 that mere filing of the said letter by the OL is not sufficient, in case the OL is required as a witness to depose on oath.

In view of the same, issue fresh summons to the OL through the

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concerned department to appear as a witness. Copy of the order dated 25.05.2019 and today's order be attached with the summons.

At this stage after inspection of files, Id. Counsel for the complainant has stated that the list filed on behalf of Mr. Adarsh Bagaria is not correct since there are some matters mentioned in the list in which the accused Mr. Adarsh Bagaria has not been summoned at all.

Complainant was directed on the LDOH for filing a consolidated list mentioning the stage at which the 23 matters listed today are pending and the name of the accused involved in each of the matter.

Ld. Counsel for the complainant has sought some more time for the same.

One last opportunity is granted to the complainant to comply with the previous orders of the court. It is made clear that in the event the complainant fails to comply with the order of the court and file the said list on the NDOH, it shall be presumed that the complainant is not interesting in pursuing the matters and all the matters shall be dismissed for non prosecution.

Meanwhile, Mr. Adarsh Bagaria is directed to file the correct list with respect to the matters in which he is an accused and the respective stage at which all the matters against him are pending.

List the matter on 28.09.2019 at 12.00 PM for DE/further proceedings.

(Tista Shah)
Ld.MM, NI Act-06, THC
12.07.2019 KS