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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 50/2024

TECHFAB INTERNATIONAL PRIVATE LIMITEDPlaintiff

Through: Mr. Joby P. Varghese, Mr. Shreesh
Chadha and Mr. P. Varghese, Advs.

versus

MIDIMA HOLDINGS LIMITED

.....Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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29.08.2024

**I.A. 1299/2024 (Order XXXIX Rule 1 & 2 by the plaintiff) & CS
(COMM) 50/2024**

1. The learned counsel appearing on behalf of the plaintiff submits that despite service the defendant has not been appearing in the present matter.
2. In support of his contention the learned counsel has drawn the attention of the Court to the order dated 02.05.2024, the relevant part of which reads as under:

“7. In the circumstances, this court is satisfied that having been sufficiently served in the matter, the defendant has chosen not to be represented in these proceedings.

8. Be that as it may, by way of abundant indulgence, let a copy of this order be served by the plaintiff upon the defendant by e-mail, within 10 days. Let an affidavit of service to that effect be filed before the next date.

9. It is made clear that if the defendant remains unrepresented on the next date, the court will proceed to set them ex-parte.”

3. He submits that despite having been sufficiently served in the matter,



this Court had granted further indulgence to the defendant and had directed the plaintiff to serve the defendant by e-mail within 10 days and to file affidavit of service to that effect.

4. He submits that this direction has also been complied with by the defendant by serving the defendant with the order and an affidavit of service has been filed. The said affidavit of service dated 27.08.2024 is on record.

5. He further invites the attention of the Court to e-mail dated 22.01.2024 of Mr. Sundra Rajoo, the sole arbitrator before whom arbitration proceedings initiated by the defendant were pending. The said proceedings were stayed *vide* order dated 19.01.2024. A perusal of the mail shows that the defendant, who is the claimant before the learned Arbitrator, is aware of the restraint order dated 19.01.2024 passed by this Court. The relevant part of the said mail which has been addressed to the learned counsel for the parties to the arbitration, reads as under:

“Sundra Rajoo sundra@sundrarajoo.com
To: Joby Varghese lawjpv@gmail.com

Dear Colleagues,

I refer to the above matter and the reconvened Case Management Conference (CMC) held today at 09:00 IST attended by the Claimant’s Representative, Mr Wanangwa Hara and the Respondent’s Representative, Mr. Joby P Varghese.

As you are aware, on the day prior to the reconvened CMC, I received an email from the Respondent’s counsel enclosing the Court Order from the High Court of Delhi pertaining to interim order in favour of the Respondent restraining the Claimant from proceeding further with the arbitration proceedings.



During this reconvened CMC, Mr. Joby P Varghese submitted that there is a High Court Order to restrain the Claimant from pursuing the present arbitration proceedings until the next hearing on 2 May 2024. This was confirmed by the Claimant's counsel. In light of this development, I acknowledge the request to adjourn the arbitration proceedings until the restraining order is lifted. I have asked both parties to keep me informed about any changes to the status of this restraining order.

As soon as you are able to confirm that it has been lifted, we will discuss and determine an appropriate date to resume the arbitration proceedings.

*For the record, the required deposits for the arbitration have not yet been paid by both parties.
Thank you so much and sincerely,*

*Datuk Professor Sundra Rajoo
Sundra Rajoo Arbitration Chambers Sdn Bhd”*

(emphasis supplied)

6. Despite the knowledge of the present proceeding, as well as, the service of the order passed by this Court on 02.05.2024, there is no appearance on behalf of the defendant even today.
7. In view of the above, the defendant is proceeded against *ex parte*.
8. List the matter before the learned Joint Registrar on 06.11.2024 for *ex parte* evidence of the plaintiff.

VIKAS MAHAJAN, J

AUGUST 29, 2024/N.S. ASWAL