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

+ **CM(M) 670/2023**

M/S VICTRONICS COMMUNICATION PVT LTD Petitioner

Through: Mr. Amit Gupta, Mr. Dhruv Chaudhary, Mr. H.S. Mahapatra and Mr. Shiv Verma, Advocates

versus

M/S ATA FREIGHT LINE (I) PVT LTD Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **26.04.2023**

[The proceeding has been conducted through Hybrid mode]

CM APPL. 20828/2023

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM(M) 670/2023 & CM APPL. 20827/2023 (Stay)

3. The petitioner challenges the order dated 13.04.2023 passed in CS(COMM) No. 310/2021 titled *M/s ATA Frieght Line (I) Pvt. Ltd Thru MD/Director vs. Victronics Communications Pvt. Ltd & Ors Thru MD/Sec/AR* whereby the learned Trial Court, on the assumption that the petitioner/defendant had neither filed any list of witnesses nor affidavit of evidence of witnesses despite having been given an opportunity to do so, has closed the right of the petitioner/defendant to lead evidence and posted the matter for final arguments.



4. Mr. Amit Gupta, learned counsel appearing for the petitioner/defendant invites attention of this Court to page 45 and 48 of the petition, which is the list of witnesses filed by the petitioner/defendant, as directed *via* e-portal of the District Court on 29.03.2023.
5. Learned counsel also draws attention of this Court to page 50 of the petition, which is the affidavit of evidence of the defendant, which was filed on 05.04.2023 through the web portal of the District Court. Learned counsel also submits, by referring to page 56 that the cost of Rs.3,000/- also stood paid to the counsel for the respondent, as directed vide the orders of learned Trial Court.
6. Learned counsel submits that having regard to the aforesaid facts, the learned Trial Court could not have passed the impugned order without considering that the compliance was carried out diligently by the petitioner.
7. Learned counsel also submits that the learned Trial Court has also erroneously closed the right of the petitioner/defendant to cross-examine the plaintiff's witnesses.
8. The closure of the right to lead evidence would cause grave prejudice to the stand of the petitioner/defendant, moreso for the reason that the impugned order arises out of a commercial suit.
9. Issue notice. On petitioner taking steps within a week, notice may be served upon the respondent through all permissible modes. Additionally, through learned counsel appearing for the respondent before the learned Trial Court.
10. Reply, if any, be filed within four weeks from the date of service. Rejoinder thereto, if any, be filed within two weeks thereafter.
11. In the meanwhile, learned Trial Court shall defer its proceedings



stated to be listed for 08.05.2023 to a date beyond the date fixed by this Court.

12. List on 08.09.2023.

TUSHAR RAO GEDELA, J

APRIL 26, 2023

Aj