



\$~34

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

+ **CS(COMM) 352/2023**

**ASSETS CARE AND RECONSTRUCTION ENTERPRISES
LIMITED**

..... Plaintiff

Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Nikhil Mehndiratta, Mr.
Angad Varma, Mr. Toyesh Tewari,
Mr. Kevin Chadha, Advocates.

versus

SUPERTECH ORB PROJECT PRIVATE LIMITED & ORS.

..... Defendants

Through: Mr. Saurabh Kirpal, Senior
Advocate with Mr. Ishan Dewan,
Mr. V. Siddharth, Ms. Priyal
Bapna, Advocates for defendant
No.1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **26.05.2023**

I.A. 10476/2023 (for exemption)

The application for exemption is allowed, subject to the plaintiff granting inspection of the documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial.

The application stands disposed of.

CS(COMM) 352/2023

1. The plaint be registered as a suit. Summons be issued to defendant No.1 at this stage by all permissible modes on filing of process fee. Mr. Nikhil Mehndiratta, learned counsel for the plaintiff, reserves the right of



the plaintiff to seek issuance of summons to other defendants, who are directors of defendant No.1, if necessary at a future stage.

2. Mr. V. Siddharth, learned counsel for defendant No.1, enters appearance and waives formal service of summons. Written statement on behalf of defendant No.1 must be filed within thirty days from today. Defendant No.1 shall also file affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.

3. The plaintiff is at liberty to file replication thereto within fifteen days after filing of the written statement. The replication shall be accompanied by an affidavit of admission/denial in respect of the documents filed by defendant No.1, failing which the replication shall not be taken on record.

4. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

5. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

6. List before the learned Joint Registrar for marking of exhibits on 24.07.2023.

7. List before the Court on 28.08.2023.

I.A. 10475/2023 (application under Order II Rule 2 of the CPC)

1. Issue notice to defendant No.1 at this stage. Mr. V. Siddharth, learned counsel, accepts notice on behalf of defendant No.1.

2. Reply to the application be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

3. List on 28.08.2023.



I.A. 10474/2023 (application under Order XXXIX Rules 1 and 2 of the CPC)

1. Issue notice to defendant No.1 at this stage. Mr. V. Siddharth, learned counsel, accepts notice on behalf of defendant No.1.
2. The plaintiff has filed this suit as the assignee of a Facility Agreement dated 20.12.2017, entered into between its predecessor, Altico Capital India Limited [hereinafter, “Altico”] and defendant No.1. Under the Facility Agreement, Altico granted facilities of ₹430 crores to defendant No.1, out of which the sum of ₹349 crores was disbursed. The facilities were secured by mortgage of various properties. Several other instruments were also executed between the parties.
3. The immediate cause for filing the present suit is plaintiff’s apprehension that defendant No.1 is disposing of the mortgaged properties, contrary to Clause 4.6 of the Facility Agreement. Clause 4.6 requires any transfer to be undertaken only after obtaining No Objection Certificates [“NOC”] of the plaintiff and IDBI Trusteeship Services Limited [hereinafter, “ITSL”], which is the Security Trustee, appointed in terms of the arrangement between the parties.
4. In support of this contention, Mr. Rajiv Nayar, learned Senior Counsel for the plaintiff, refers me to a document, purportedly an NOC issued by ITSL in favour of defendant No.1, in respect of transfer of one unit in one of the mortgaged properties to a third party. The aforesaid document was forwarded to ITSL by Canara Bank for confirmation *vide* e-mail dated 21.03.2023. The plaintiff has placed on record the reply of ITSL addressed to Canara Bank, in which it is stated that ITSL has not issued the purported NOC. The purported NOC also refers to an e-mail



communication dated 02.03.2023, from the plaintiff to ITSL, the genuineness of which is also denied by the plaintiff.

5. Mr. Nayar seeks an order restraining defendant No.1 from any further transactions in the mortgaged properties without obtaining NOC of the plaintiff and ITSL.

6. Mr. Saurabh Kirpal, learned Senior Counsel for defendant No.1, who appears on advance notice, does not dispute the contents of the Facility Agreement or identity of mortgaged properties. However, he states, upon the preliminary instructions that he has obtained at this stage, that defendant No.1 does not have any knowledge of the purported NOC, filed alongwith the plaint. Mr. Kirpal, therefore, does not admit the allegations in that regard.

7. However, in view of the fact that the existence of mortgage on the properties in question, and the obligations under Clause 4.6 of the Facility Agreement, are not denied by defendant No.1, Mr. Kirpal states that defendant No.1 will not create any third-party interest in any mortgaged properties without obtaining NOC of the plaintiff and ITSL. However, he requests that the NOCs from the plaintiff ought not to be unreasonably withheld. Mr. Nayar accepts this submission on behalf of defendant No.1.

8. In order to obviate any further controversy with regard to the genuineness of any NOC issued by the plaintiff, learned counsel for the parties also agree that the request for NOCs and the response thereto will also be communicated to counsel appearing in this suit.

9. In view of the above submissions, it is directed that defendant No.1 will not create any third party interests in the mortgaged properties, without NOCs issued by the plaintiff and ITSL.



10. As far as NOCs to be issued by the plaintiff are concerned, the procedure to be followed is that any request for NOCs, alongwith requisite documents, will be transmitted by defendant No.1 to the plaintiff, as is being done in the normal course. A copy thereof will also be sent to learned counsel for the plaintiff, at the e-mail angad@duaassociates.com. The plaintiff will respond directly to defendant No.1, but defendant No.1 will not act thereupon without e-mail confirmation from learned counsel for the plaintiff, addressed to learned counsel for defendant No.1 at the e-mail address, v.siddharth15@gmail.com.

11. It is expected that the process of obtaining the plaintiff's NOC should not take more than ten working days from the date the request is made.

12. Mr. Nayar states that the plaintiff has, in past also, issued NOCs for the sale of mortgaged properties to defendant No.1 and submits that it will continue to do so, as may be commercially prudent.

13. It is made clear that this arrangement will hold the field until further orders of the Court.

14. Reply to the application be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

15. List on 28.08.2023.

PRATEEK JALAN, J

MAY 26, 2023

'vp'/'