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

+ CS(OS) 218/2020 & IA. 7067/2020

M/S. KHANUJA EXPORT & FINANCE PVT. LTD Plaintiff

Through Col.R.Bala Subramanian, Sr.Adv.
with Mr.Devender Kumar Kaushik
and Mr.Deshraj, Adv.

versus

MR. KAPIL NAGPAL @ TRANJIT NAGPAL Defendant

Through Mr.Hari Krishan, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **11.02.2021**

This hearing is conducted through video conferencing.

1. This suit is filed for recovery of Rs.2,15,17,266/- plus other reliefs.
2. The case of the plaintiff is that it advanced a short term loan to the defendant, who is the real nephew of one of the directors of the plaintiff company, on the basis of the written signed requests of the defendant on 10.03.2010 and 10.11.2010 for a sum of Rs.60 lakhs and Rs.1 crore for construction of the project of the defendant, namely, 'Silver Greek, Maradu, Cochin, Kerala'.
3. Two separate Memorandum of Understandings were executed on 03.01.2011 between the parties. It is the case of the plaintiff that the sum of Rs.60 lakhs was refund by the defendant through RTGS dated 22.04.2014 leaving the principle of Rs.1 crore in terms of MOU plus interest.
4. Learned counsel for the defendant does not deny the said loan. However, he raises objection stating that in terms of MOA of the plaintiff company, the plaintiff company have no authority to grant any loan or give



friendly loan to any third party. Secondly, he submits that a criminal complaint was filed under section 138 of the Negotiable Instruments Act, 1881 which has been dismissed on the ground that the plaintiff lacks authority to grant any loan in view of Memorandum of Association of the plaintiff company.

5. Learned senior counsel appearing for the plaintiff denies the said submission that the criminal complaint under section 138 of the NI Act has been dismissed. He says that the same is pending.

6. Let a certified copy of the ordersheets of the criminal complaint be placed on record by the defendant.

7. The following issues are framed:

- i) Whether the present suit is not maintainable on account of there being no powers under MOA of the plaintiff company to grant any friendly loan to the defendant? OPD
- ii) Whether the present suit is barred under section 186 of the Companies Act? OPD
- iii) Whether the present suit is barred in view of the dismissal of the criminal complaint under section 138 of the NI Act by the concerned court? OPD
- iv) Whether Sh.Kuljeet Singh is not authorised to institute the present suit, sign and verify the plaint? OPD
- v) Whether the plaintiff is entitled to refund of a sum of Rs.1 crore from the defendant? OPP
- vi) If the answers to the above issues are in affirmative, whether the plaintiff is entitled to interest? If yes, at what rate? OPP
- vii) Relief.



8. Let the plaintiff file affidavit by way of evidence within four weeks from today.
9. List before the Joint Registrar for further proceedings on 24.03.2021.

IA No.7067/2020

List for arguments on 12.05.2021.

Interim orders to continue.

JAYANT NATH, J.

FEBRUARY 11, 2021/v