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

+ **CS(COMM) 567/2021 & I.A. 1619/2023**

**NOVATEUR ELECTRICAL & DIGITAL SYSTEMS PVT
LTD** Plaintiff

Through: Ms. Mamta Rani Jha and Mr.
Shakti Priyan Nair, Advs.

versus

V-GUARD INDUSTRIES LTD Defendant
Through: Mr. Sachin Gupta, Ms. Swati
Meena, Mr. Manan Mandal and Ms. Yashi
Agrawal, Advs.

**CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR**

% **ORDER**
27.01.2023

I.A. 1619/2023 (under Order XI Rule 1(4))

1. This application seeks permission to place certain additional documents, filed under index dated 24th January 2023, on record. Though the application has been filed under Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015, it is treated as an application under Order XI Rule 1(5), following the principle that citing of an erroneous provision cannot be regarded as fatal to the application.

2. The ground for filing the additional documents on record have been provided thus, in paras 8 and 9 of the application:

“8. Subsequent to the Order of the Ld. Single Judge dated 17.01.2023 dismissing the Defendant's review petition, the Defendant conducted extensive enquiries internally and also with its OEM manufacturer NIPA in order to find out as to when the prototypes of Concept 6 design were created. The Defendant came



across the below mentioned documents, which the Defendant wishes to place on record by way of the present Application to show that even the prototypes of the design in question came in existence before the Plaintiff's design application.

9. It is most respectfully submitted that the Defendant maintains that a prototype/actual use by way of a physical product is not a precondition to constitute design as under Section 4(b) as was opined by the Ld. SJ while disposing of the Plaintiff's injunction application. However, since the Defendant now has the above mentioned documents in its possession, it is prayed that the same be taken on record.

ADDITIONAL DOCUMENTS

a. True copy of email dated 29.06.2017 between Mr. Kapil Sharma of Nipa and Ms. Priti Thakkar of Protosys Technologies placing the purchase order under No. PO-001126 qua procurement of 3D printing components/prototypes (Concept 6) having Item Codes E-00084840 (cover plate) and E-00084841 (grid plate).

b. True copy of email dated 30.06.2017 sent by Mr. Kapil Sharma to Ms. Priti Thakkar attaching relevant 3D data file, namely '60-30 June'17 3M Plates For Photo.rar' (cover and grid plate) (concept 6) enclosing 3D data namely, E-00084840-P.stp and E-00084841.stp for the purpose of procurement of prototypes/3D printing components as ordered qua PO-001126.

c. True copy of Email dated 23.01.2023 sent by Mr. Lalit Mohan Arora from NIPA to Mr. Sundaresh Holla of Defendant company enclosing relevant invoice for Prototype/3D printing components numbered 00084840 and 00084841 under Invoice No. M00216/2017-18 dated 12.07.2017 and M00236/2017-18 dated 21.07.2017, respectfully."

3. In any event, as the trial in the suit is yet to commence, following the judgment of Supreme Court in ***Sugandhi v. P. Rajkumar***¹, the Court is required to liberally deal with such applications as they do not result to any prejudice to the opposite side.

4. Ms. Mamta Rani Jha, learned Counsel for the plaintiff seeks permission, in the event that these documents are being taken on

¹ (2020) 10 SCC 706
CS(COMM) 567/2021



record to place additional documents from the side of the plaintiff, if so advised.

5. She is permitted to do, so in accordance with provisions to Order XI Rule 1(10) of the CPC as amended by the Commercial Courts Act.

6. For the aforesaid reasons, the application is allowed.

7. The additional documents filed under index dated 24th January 2023 are permitted to be taken on record.

8. Mr. Gupta is granted a week's time to provide certificate under Section 65B of the Indian Evidence Act in support of these documents.

C.HARI SHANKAR, J

JANUARY 27, 2023

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