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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 120/2017**
M/S. ABW - SUNCITY PROJECTS Plaintiff
Represented by: Ms.Anubha Agarwal, Adv. with
Mr.Ambuj Agarwal, Adv.

versus

M/S. AHLCONS INDIA PVT LTD AND ANR Defendant
Represented by: Mr.Abhay Gupta, Adv. for D1
Ms.Aditi Sharma, Adv. for D2

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
14.02.2020

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1. Suit was listed for hearing on the preliminary issue Nos. 2 and 3 on the prayer of learned counsel for the defendant No. 2, who had stated that issue Nos. 2 and 3 be treated as preliminary issues and no evidence is required to be led for the said issues.

2. Case of the defendant No. 2 is that even as per the plaint, the plaintiff had entered into an agreement with defendant No. 1 i.e. M/s. Ahlcons India Pvt. Ltd. awarding it a contract for supply and installation of Facade Curtains Wall Glazing Profiles, Glass, Spandrel Glazing and Aluminium Glazed Swing doors and installation of Shaft Louvers at "La Lagune" Group Housing being developed by it at Gurgaon vide work order dated 15th October, 2011.

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3. The plaintiff clarified to the defendant No. 1 that supplies of the toughened glasses to be installed be taken either from M/s. Asahi India Pvt. Ltd., defendant No. 2 or from M/s. Saint Gobain Pvt. Ltd.

4. Grievance of the plaintiff is that the defendant No. 1 committed breach of contract as it did not take the proper supplies from defendant No. 2 and got the supplies so taken from defendant No. 2 and got the glass toughened from a third party and since the glass was of inferior quality and the installation was also improper, the same broke.

5. Learned counsel for the defendant No. 2 vehemently argues that no role having been assigned to the defendant No. 2 and no relief having been sought against defendant No. 2, defendant No. 2 is neither a necessary nor a proper party and thus, deserves to be deleted from array of parties besides dismissal of the suit on this ground i.e. for mis-joinder of parties.

6. Learned counsel for the plaintiff draws attention of this Court to the reply to the show cause notice issued by plaintiff to defendant No. 1 wherein, defendant No. 1 clarified that though the defendant No. 1 on the express instructions of plaintiff, had to purchase the glass from M/s. Asahi India Pvt. Ltd., the defendant No. 1 was directed to effect the processes of getting the glass toughened from the authorized service provider i.e. Sigtuff (M/s. Structural Insulation and Glazing Company (P) Ltd.) of the authorized vendor i.e. M/s. Asahi India Pvt. Ltd. In other words, it was M/s. Asahi India Pvt. Ltd. who directed the defendant No.1 to get the glass toughened from its authorized service provider i.e. M/s. Structural Insulation and Glazing Company (P) Ltd. Whether the glass bought from defendant No. 2

was of proper quality or not and whether it was on the instructions of defendant No. 2 that defendant No. 1 was directed to get the same toughened from the third party, is a matter of evidence and at this stage, it cannot be said that either the defendant No. 2 be deleted from the array of the parties or that the suit be rejected for mis-joinder of the parties and as there was no privity of contract between the plaintiff and defendant No. 2. Consequently, the suit is now required to proceed for recording of the evidence.

7. List of witnesses and evidence by way of affidavit of the plaintiff's witnesses be filed within four weeks. List of witnesses and evidence by way of affidavit of the defendant Nos. 2's witness be filed within four weeks thereafter.

8. List before the learned Joint Registrar for fixing the dates of trial on 30th March, 2020.

9. List before Court for monitoring the recording of evidence on 13th July, 2020.

MUKTA GUPTA, J.

FEBRUARY 14, 2020/akb