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

+ CS(OS) 137/2018, IA No.4435/2018(u/O.XXXIX R-1&2 & O.XXXVIII R-5 CPC), IA No.4442/2018(for condonation of delay in re-fling the petition), IA No.12618/2018(u/S.8 r/w S-5 Arbitration & Conciliation Act, 1996), IA No.12693/2018(u/O.I R-10(2) CPC), IA No.613 /2019(u/S.149 r/w S.151 CPC), IA No.817 /2019 (u/O.I R-10(2) CPC), IA No.13784/2019 (u/O.I R-10(2) CPC), IA No.13785/2019(for condonation of 72 days delay in filing IA No.13784/2019) & IA No.16435/2019(u/O.I R-10(2) CPC)

SUNITA KUMARI & ORS Plaintiffs

Through: Mr. Nikhil Borwankar with Mr. David Thomas, Ms. Shimona Ghosh & Mr. Akshay Nain, Advs.

versus

SWO- INDIA LTD. & ORS Defendants

Through: Mr. Satyavan Kudalwal, Adv. for D-1, 3, 5, 6 & 7 along with Mr. Khazan Singh, Director of D-1.
Mr. Rakesh Dahiya, Adv. for D-4, 8 & 9.
Mr. Rohit Bhasin, Adv. for D-12 & 13.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.11.2019**

1. Pursuant to orders dated 30th September, 2019 and 16th October 2019, one Mr. Khazan Singh, claimed by the counsel for the defendants no. 1, 3, 5, 6 & 7 to be the Director of defendant no. 1, appears and on enquiry states (i) that he is a Director of the defendant no.1 SWO - India Ltd. and defendant

CS(OS) 137/2018

Page 1 of 3



no. 3 Sainik Welfare Organisation India Pvt. Ltd. but not a Director of defendant no.4 Koshu Buildcon Pvt. Ltd. or defendant no.12 Shree Sai Baba Infra Pro. Pvt. Ltd.; (ii) that he is a Director of defendants no. 1 and 3 since the year 2015; (iii) that at present, Saroj Rana, Rakesh Rana and he himself are the only Directors of defendants no. 1 and 3; (iv) that Rakesh Rana is behind bars since 21st January, 2016 and his wife Saroj Rana is behind bars for the last three months; (v) that he himself does not hold any shares, either of defendant no.1 or of defendant no.3 and was a salaried Director and since payment of his salary stopped, he has returned to his village; (vi) that he does not know anything about monies claimed to have been paid by the plaintiffs and does not have in his possession or custody any records, statutory or otherwise of defendants no. 1 and 3; (vii) that after the arrest of Rakesh Rana, the said records were in custody of Saroj Rana but after Saroj Rana was taken into custody, he does not know where the records are; and, (viii) that he does not know anything about the facts of this case.

2. It thus appears that the purpose with which the presence of Directors was sought, is not being served.

3. Mr. Satyavan Kudalwalk, Advocate appearing for defendants no. 1, 3, 5, 6 & 7 on enquiry as to whether the defendants 1 and 3 have any assets or not, states that he does not know.

4. I have enquired from Mr. Nikhil Borwankar, Advocate appearing for the plaintiffs, to whom the monies which the plaintiffs claim to have paid to the defendants, were paid. He states that all the plaintiffs paid monies to defendant no.1 company.



5. Mr. Nikhil Borwankar, Advocate is unable to suggest as to how the monies can be recovered except for stating that the suit may be proceeded with.
6. I have in the order dated 30th September, 2019 raised questions about the maintainability of the suit and even observed that though the plaintiffs being ex-servicemen have already suffered at the hands of defendant no.1, they are now continuing to suffer even after taking legal recourse.
7. Mr. Nikhil Borwankar, Advocate states that he is not fully ready to address on maintainability, because the matter is listed in short matters.
8. No purpose will be served in piecemeal hearing.
9. List on 30th March, 2020.

RAJIV SAHAI ENDLAW, J

NOVEMBER 27, 2019
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CS(OS) 137/2018

Page 3 of 3