

\$~29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 110/2017**
SOUTH DELHI MUNICIPAL CORPORATION

..... Plaintiff

Represented by: Mr. Rakesh Mittal, Adv.

versus

DELHI GURGAON SUPER CONNECTIVITY LIMITED &ORS.

..... Defendant

Represented by: Mr. Ashish Dholakia, Mr. Gautam
Bajaj, Adv. for D-1.
Mr. Neeraj Malhotra, Sr. Adv. with
Mr. Ajit Warriar, Mr. Angad
Kochhar, Mr. Sharad Kharra, Mr.
Devansh Agarwal, Advs. for D-2.
Mr. Ajit Warriar, Mr. Angad
Kochhar, Mr. Sharad, Mr. Devansh,
Advs. for D-3.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
25.02.2020

%

O.A. 31/2020

1. Notice. Learned counsel for the plaintiff and defendant No.1/ non-applicants accept notice.
2. By this application the defendant No.2 challenges the order dated 28th January, 2020 passed by the learned Joint Registrar whereby the application of the defendant No.2 being I.A. 7663/2017 was dismissed and it was held that there was no ground for deletion of defendant No.2 from the array of parties.

CS(OS) 110/2017

Page 1 of 5

3. Defendant No.2 filed I.A. 7663/2017 under Order VII Rule 11 CPC which came up before this Court and vide order dated 25th April, 2019 this Court noted that as per the averments in the application the defendant No.2 essentially wanted to plead that in the plaint there is no cause of action against the defendant No.2, hence defendant No.2 be deleted from the array of parties. Thus, the application was wrongly filed under Order VII Rule 11 CPC as the plaint could not have been rejected piecemeal and in case there was no cause of action against the defendant No.2, it could be deleted from the array of parties. This Court, thus, directed the learned Joint Registrar to treat I.A. 7663/2017 as an application under Order I Rule 10 CPC and listed the same before the learned Joint Registrar. After hearing the parties the learned Joint Registrar passed the order impugned on 28th January, 2020 discussing the application.

4. Case of the defendant No.2/applicant is that the defendant No.2 is neither a proper nor a necessary party to the suit even on the contents of the plaint being read by way of a demurer. It was stated that paras 5, 18, 21, 23, 25 and 29 to 32 of the plaint do not disclose any cause of action against the defendant No.2. Thus the presence of defendant No.2 in the present suit was not necessary for complete and final adjudication of all the issues involved in the suit. Defendant No.2 was not a party to the MOUs dated 15th May 2008, 12th August 2010, and the amendment to the Concession Agreement dated 19th May 2014. Further, the plaintiff was not a party to the agreements dated 17th February 2014 and 19th May, 2014 and thus there being no privity of contract between the plaintiff and defendant No.2, the defendant No.2 could not be arrayed as a party in the suit.

5. Plaintiff i.e. South Delhi Municipal Corporation (in short the SDMC) has filed the present suit inter alia praying for a decree of recovery for a sum of ₹15,73,95,405/- as on 31st December, 2016 from defendant No.1,2 and 3 jointly and severally as also interest pendent-lite and future. The defendant No.1 in the suit is M/s. Delhi Gurgaon Super Connectivity Limited (in short DGSCCL earlier known as M/s. Jaypee-DSC Ventures Limited), defendant No.2 being Infrastructure Development Finance Company Ltd. (in short IDFC Limited) and defendant No.3 is M/s. Millennium City Expressways Private Limited (in short MCEPL).

6. The plaint is based on the facts that a Concession Agreement was executed between National Highways Authority of India (NHAI) and defendant No.1, whereby the defendant No.1 was awarded a concessionaire of the road project of NHAI for conversion of NH-8 to 6/ 8 lanes on BOT basis. A State support agreement was entered into between the GNCTD, State of Haryana, NHAI and defendant No.1, as the said road traverses through both the lands in GNCTD and State of Haryana. MOU/ agreements were executed between defendant No.1 on the one part with erstwhile MCD on the second part which would now be the plaintiff i.e. SDMC and M/s. PKSS Infrastructure Ltd. on the third part. As per the agreement it was decided that the rates of service charges will be decided by the RITES Ltd. (PSU). An agreement was also entered into with the erstwhile MCD and M/s. SMS-AAMW Tollways Pvt. Ltd. for toll collection services. An MOU dated 18th September, 2012 was finally entered into between NHAI, defendant No.1 and defendant No.2 wherein NHAI agreed to withdraw its

termination notice dated 7th December, 2011 and subsequent termination order dated 18th February, 2012. Thereafter defendant No.1 consented for constitution of a Board vide order dated 15th March, 2013 and statement was made by counsel for the defendant No.1 to pay tax collected to SDMC within a minimum of fortnight, whereafter, a Bilateral Agreement was entered into between defendant No.1 and defendant No.2 on 17th February, 2014 whereby the defendant No.2 took over all the liabilities and responsibilities of the earlier concessionaire i.e. defendant No.1.

7. The relevant Clause of the MOU dated 17th February, 2014 between defendant No.1 and defendant No.2 being Clause 1.5 reads as under:

“1.5 Subject to clause 1.2 above, the Senior Lender confirm and agree that DGSCCL stand duly discharged of all claims, liabilities and obligations, existing and future, under the Concession Agreement with NHAI dated 18.04.2002 and the liabilities/obligations relating to NHAI, labour cess of ₹4.5 crores paid by NHAI, Municipal Corporation of Delhi (MCD), and taxes relating to payments to NHAI and MCD, which liabilities/ obligations shall be taken over/ borne by the Senior Lenders/ the Selectee. The Senior Lenders/ the Selectee hereby agree to indemnify and keep indemnified DGSCCL with respect to all liabilities/ obligations as assumed in this clause 1.5”

8. It is by virtue of this Bilateral Agreement that defendant No.2 steps into the shoes of defendant No.1 as its agent accepting to take over its claims, liabilities and obligations, existing and future that the plaintiff has impleaded the defendant No.2 in the present suit.

9. The defendant No.2 having agreed with defendant No.1 vide MOU dated 17th February, 2014 to take over and discharge all its claims, liabilities and obligations existing and future under the Concession Agreement with

NHAI dated 18th April, 2002 besides the liabilities/ obligations relating to NHAI, labour cess of ₹4.5 crores paid by NHAI, MCD and the taxes relating payment to NHAI and MCD, it cannot be said that there is no cause of action in the suit pleaded against defendant No.2 and that defendant No.2 is neither a necessary nor a proper party to the suit.

10. The grievance of learned counsel for the defendant No.2 is that by virtue of the findings of the learned Joint Registrar an obligation has been cast on the defendant No.2 and a finding returned that defendant No.2 would be liable to pay all the existing as well as future liabilities of tax payments relating to MCD. This, of course, was only a prima facie view of the learned Joint Registrar based on Clause 1.5 of the MOU dated 17th February, 2014 and the parties would be at liberty to lead their evidence to accept or deny any liability or claim inter-se them.

11. Thus, this Court finds no merit in the present appeal and the same is dismissed however, it is clarified that the observations made by the learned Joint Registrar while dismissing the application in regard to liabilities of any of the parties were tentative and will have no bearing on the final adjudication of the suit on merits.

MUKTA GUPTA, J.

FEBRUARY 25, 2020
‘ga’