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

+ **CS(COMM) 780/2018**

QUALITY BUILDCON PVT. LTD

.....Plaintiff

Through: Mr. Shivank S. Singh, Adv.

versus

DELHI METRO RAIL CORPORATION & ANR

.....Defendant

Through: Mr. Tarun Johri & Mr. Vishwajeet Tyagi, Advs. for D-1/DMRC (Mob. No. 9811745013).

Mr. Agniwesh Singh, Proxy Counsel for D-2 (through VC).

CORAM:

JOINT REGISTRAR (JUDICIAL) SH. DEVENDER

KUMAR GARG (DHJS)

ORDER

28.03.2024

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I.A. No. 18250/2022 (u/O I Rule 10(2) CPC for deletion of name of defendant no.2 from array of defendants, moved by defendant no.2).

1. By this order, I shall decide the captioned IA moved on behalf of the defendant no.2 for deletion of its name from array of defendants.
2. Brief facts necessary for disposal of the captioned IA are that the plaintiff at the instructions of defendant no.1 was inducted as sub-contractor in one of the project of defendant no.1 for procuring Ready Mix Concrete for pre-casting of girders, paraets and cable trough elements at other areas of construction in Inder Lok – Mundka Corridor of Phase II. It is further averred that the plaintiff



has filed copy of sub-contract dated 17.08.2009 executed between defendant no.2 and plaintiff at the instance of defendant no.1. It is further averred that clause 11 of the contract stipulates that the defendant no.1 shall directly make the payment to the plaintiff for the work it has executed in terms of subject contract dated 17.08.2009. It is further averred that work order was issued by the defendant no.2 in favour of the plaintiff at the instance of the plaintiff and defendant no.1 and no invoices were ever raised by plaintiff on the defendant no.2 and the defendant no.2 was neither the real and actual beneficiary of the work allegedly executed or services allegedly provided by the plaintiff in 2009 nor was obligated to make any payment to the plaintiff in respect thereof. It is further averred that no specific relief or prayer has been sought in present suit and all prayers have been directed against defendant no.1 in the captioned suit. It is further averred that Hon'ble NCLT, Bengaluru Bench vide order dated 29.03.2019 admitted the application filed by the financial creditor u/S 7 of Insolvency Bankruptcy Code, 2016 and appointed Mr. Velayudham Jayavel as the Interim Resolution Professional of the defendant no.2 and subsequently confirmed as the Resolution Professional. It is further averred that the Resolution Professional was confirmed as liquidator of defendant no.2 and hence, he is legally authorized to represent defendant no.2 before all courts and/or tribunal(s) under Insolvency & Bankruptcy Code, 2016.

3. No reply to the captioned IA has been filed on behalf of the plaintiff as well as defendant no.1. Ld. Counsels for



plaintiff and defendant no.1 have argued the application straightaway.

4. I have already heard arguments from Ld. Counsels of both the parties and perused the entire material available on record carefully.
5. Ld. Counsel for applicant/defendant no.2 has submitted that no relief has been claimed against defendant no.2 in the present matter. He has further submitted that an independent contract had arisen between the plaintiff and defendant no.1 and further contended that the payment was to be made by the defendant no.1 to the plaintiff directly. He has further submitted that the applicant/defendant no.2 is not a necessary party.
6. Ld. counsel for defendant no.1 has opposed the captioned IA and he has contended that no independent contract had taken place between plaintiff and defendant no.1. He further contended that work was to be executed by the plaintiff under the supervision with strict quality control and safety of defendant no.2.
7. Ld. Counsel for plaintiff has contended that there are necessary averments against the defendant no.2 in his plaint and has further contended that there was no independent contract between the plaintiff and defendant no.2 and further contended that there was no tripartite contract between the plaintiff and both defendants. He has further contended that the defendant no.2 is necessary party in the present matter. He has relied upon judgment titled as “Elecon Engineering Company Limited Vs. Energo Engineering Projects Limited and Others”, 2022 SCC OnLine Del 2860.



8. The relevant provision i.e. Order I Rule 10 of CPC reads as under: -

“10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

9. During course of arguments, Ld. Counsel for defendant no.2 has drawn the attention of the undersigned towards letter dated 18.8.2009 stating that sub-contract agreement between defendant no.2 and plaintiff was approved by defendant no.1.
10. The said letter dated 18.08.2009 was replied on behalf of defendant no.1 *inter alia* stating that they had no objection to approve M/s Quality Buildcon Pvt. Ltd. for this work, provided the work is executed under your (defendant no.2) direct supervision with strict quality control and safety.
11. Perusal of letter dated 27.11.2009 issued on behalf of the defendant no.1 to defendant no.2 would show wherein 14



days notice was given w.e.f. 27.11.2009 to terminate the contract under clause 11.4.2 sub clause (g) of General Conditions of Contract (GCC). Further, one letter dated 23.11.2020 written on behalf of defendant no.1 to the defendant no.2 is on record wherein it is *inter alia* stated that in respect of encashment of bank guarantees, you (defendant no.2) have still to pay dues to DMRC. The above said correspondences between defendant no.2 and defendant no.1 would show that the defendant no.1 had not accepted the sub contract between the plaintiff and defendant no.2 as an independent contract and that would also show that the original contract did not end between the defendants no.1 and 2. When the defendant no.1 had approved the sub-contract between the plaintiff and the defendant no.2, that was approved with condition of direct supervision with strict quality control and safety on behalf of the defendant no.2.

12.Perusal of para 17 of the plaint would show wherein it is *inter alia* mentioned that it was informed that since dispute between the defendant no.1 and defendant no.2 is pending and its upon confirmation by defendant no.1, the payment shall be made. It is also averred in the aforesaid para that it was also informed in June/July 2014 that decision shall be taken by defendant no.1 to include the claim of plaintiff in the Arbitration Proceedings held between the defendants. In para 21 of the plaint, it is *inter alia* averred that legal notice was duly received by the defendant no.1, which was replied vide reply dated 08.04.2016 in which contrary and frivolous pleas were taken by defendant no.1 stating that DMRC had released



the payment to the plaintiff only on certification and authentication of the bill of the plaintiff by defendant no.2. It is further *inter alia mentioned* in para 24 of the plaint that since defendant no.2 has failed to make payment as per clause 12 of the contract dated 17.8.2009, it was obligatory to defendant no.1 to pay that amount, however, the defendant no.1 has claimed the amount from defendant no.2 without releasing the payment to the plaintiff. Thus, there is averments against the defendant no.2 also in the plaint and there is reference of some dispute with respect to payment between the defendants no.1 and 2.

13.Thus, keeping in view the documents filed in the present matter and averments made in the plaint, the undersigned is of the view that the defendant no.2 is a necessary and proper party to the present suit for effectually deciding the lis on merits. The present application is without any merit and same stands dismissed accordingly.

14.It is clarified that the observation made in the present order have been made for deciding the captioned IA and nothing stated herein shall tantamount my opinion on the merits of the case.

15.The captioned IAs stand disposed off accordingly.

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16.The present matter is at the stage of admission/denial of documents.

17.Soft copy of fresh Joint Document Schedule has already been filed. Hard copy of the same has not been filed. Time sought. Let the same be filed at least two weeks before the next date of hearing.



- 18.Ld. Counsel for plaintiff had submitted that he has already filed hard copies of his documents and the same are on record.
- 19.Hard copies of documents not filed on behalf of the defendants. Time sought. Let the same be filed at least two weeks before the next date of hearing.
- 20.Re-notify the matter for admission/denial of documents and further proceedings on **19th July, 2024.**

DEVENDER KUMAR GARG (DHJS)
JOINT REGISTRAR (JUDICIAL)

MARCH 28, 2024/v

Click here to check corrigendum, if any