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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 2979/2012**
M/S AADHAR STUMBH TOWNSHIP PVT LTD Plaintiff
Through Mr. Rishikant Mishra, Advocate

versus

NATIONAL BUILDING CONSTRUCTION
CORPORATION LTD Defendant
Through Ms. Anushka Ashok, Advocate
Mr. Harish Kumar Garg and Ms.
Puran Kumari, Advocates for
proposed defendant NDMA

CORAM:

SH. RAJESH KUMAR SINGH (DHJS), JOINT REGISTRAR

ORDER

% 09.01.2017

IA No. 7868/2016 (under Order I Rule 10 CPC filed by defendant)

Learned counsel for proposed defendant NDMA submits that copy of the paper book was supplied by the defendant / applicant on 22.11.2016. Learned counsel further submits that reply has been filed by him today vide diary number 5184 and copy of the reply supplied to the parties to the suit. Learned counsel for the applicant was present in the first call but none has appeared in the second call. Arguments of learned counsel for plaintiff and arguments of Learned counsel for proposed defendant heard.

Put up for order at 04:00 pm.

RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR

JANUARY 09, 2017/ms



IA No. 7868/2016 (under Order I Rule 10 CPC filed by defendant)

By way of this IA, defendant has prayed that NDMA be impleaded as party to the suit. Plaintiff has filed this suit for recovery of ₹.1,16,36,958/-. Work for construction, retrofitting and renovation at NDMA, Safdarjung Enclave, New Delhi was awarded to the plaintiff by the defendant vide letter dated 21.08.2007. Plaintiff claims that certain deductions were wrongly made by the defendant. Therefore, the present suit has been filed.

It is stated in para 5 of the IA that in the letter dated 21.02.2008 by which the work was awarded to the defendant, it was mentioned that NDMA will be an integral part of the agreement between the plaintiff and the defendant. Copy of letter dated 21.02.2008 has not been filed by the defendant along with the IA. Learned counsel for plaintiff as well as learned counsel for proposed defendant also submitted that they have not received copy of letter dated 21.02.2008.

The contract which is subject matter of the suit was between the plaintiff and the defendant. Payments were made to the plaintiff by the defendant and the deductions were also made by the defendant. Inspection and supervision of the work was to be done by the defendant. From the written statement filed by the defendant, it is clear that there is no privity of contract between plaintiff and the NDMA. There were some terms involving NDMA such as clause 37.3 of the general conditions of contract (GCC) mentioned at page



11 of the written statement which has reference to NDMA. Under this clause, the defendant could delay the payment to the plaintiff in case of delay in receipt of payment by it from NDMA. However, these conditions do not create any privity of contract between the plaintiff and NDMA. Defendant has failed to show that NDMA is either a necessary or a proper party for adjudication of the dispute in this suit. Accordingly, the IA is dismissed.

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Matter to now come up for admission / denial of documents. Affidavit of admission / denial of documents be filed by the parties within four weeks.

Adjourned to 14th March, 2017 for concluding admission / denial of documents.

**RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR**

JANUARY 09, 2017
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