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

Reserved on: 21st August, 2024

Date of Decision: 19th November, 2024

+ CS(COMM) 386/2022

ADM CORPORATIONPlaintiff

Through: Mr. Siddhartha Iyer, Advocate

versus

REDINGTON INDIA LTD & ANR.Defendants

Through: Mr. Abdhesh Chaudhary, Ms. Geetanjali Setia, Ms. Manisha Suri and Mr. Vinayak Mishra, Advocates for D-1

Mr. Arjun Harkauli and Mr. Prateek Garg, Advocates for D-2.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 24807/2023 (Application under Order I Rule 10 CPC on behalf of Defendant No. 2 seeking deletion from array of parties)

1. This is an interlocutory application filed by Defendant No. 2, H.P sales India Ltd under Order I Rule 10 of the Code of Civil Procedure, 1908 ('CPC') seeking its deletion from the array of parties on the ground that there exists no contractual obligation between the Defendant No. 2 and Plaintiff; and Plaintiff has failed to make out any cause of action to implead Defendant No. 2 as a party in the present suit.

2. The brief facts as set out in the plaint, which are relevant to adjudicate on the application are as follows:-

2.1 Defendant No. 1, is an authorized pan India non-exclusive distributor of high-end printing machines manufactured under the label of Defendant No. 2.

2.2 Plaintiff and Defendant No. 1 entered into a Business Associate Agreement dated 07.09.2009 for the sale of products of Defendant No. 2 in lieu of the Overriding Commission (ORC) paid through Defendant No. 1. The term of the agreement was for a period of one year.

2.3 After the expiry of the period agreed in the Business Associate Agreement dated 07.09.2009, the commercial relationship between the Plaintiff and Defendant No. 1 continued for almost 13 years, without any formal written agreement. It is stated that the commercial terms and conditions during this extended period were settled by Defendant No. 1 in its letters/emails addressed to the Plaintiff.

2.4 It is stated that Plaintiff continued to sell the products of Defendant No. 2 through Defendant No. 1. It is stated that the critical role played by the Plaintiff was at all times under the knowledge of Defendant No. 2 as the said Defendant was duly marked on all e-mails exchanged between the Plaintiff and Defendant No. 1. It is stated that Defendant No. 2 actively participated in the discussions and the sales were completed with the clients with the express consent of Defendant No. 2. It is stated that Defendant No. 2 at all times remained copied in the transaction as the quantum of ORC payable to the Plaintiff was determined by Defendant No. 2.

2.5 It is stated that the products of Defendant No. 2 are high value products and the Plaintiff herein identified potential clients and nurtured the

said clients to persuade them to purchase the products of Defendant No. 2. It is stated that the list of potential clients identified by the Plaintiff were sent to Defendant Nos. 1 and 2 from time to time. The said potential client list was updated from time to time and is still valid and has been referred to as Funnel List. It is stated that the Plaintiff is entitled to commission for any sales made to the said clients enlisted in the Funnel List by the Defendants.

2.6 It is stated that Defendant No. 1 through an email dated 21.07.2020 unilaterally terminated its commercial relationship with the Plaintiff. It is stated that, however, on the assurance given by the officials of Defendant No. 2 the Plaintiff continued to work for Defendants thereafter. In this regard, the Plaintiff relies upon e-mails dated 12.03.2021 and 30.08.2021 received from Defendant No. 1.

2.7 It is stated that the dispute has arisen with respect to invoices for ORC raised by the Plaintiff for the sales effected on Plaintiff's clients i.e., namely Digital Print Hub, Jaipur, and Kuber Digital Studio, Meerut. It is stated that the sales were affected in November and December of 2021 and the Plaintiff is entitled to ORC at 4.5% on the net sale price after deducting service cost and other freebies.

2.8 The plaint has been filed for recovery of Rs. 3.05 crores which includes the aforesaid 4.5% ORC. The plaint inter-alia seeks a permanent and mandatory injunction against the Defendants from using the Funnel List and other proprietary information pertaining to the clients developed by the Plaintiff.

Submissions of Applicant/Defendant No. 2

3. Learned Counsel for the Defendant No. 2 stated that there is no contractual obligation between the Defendant No. 2 and the Plaintiff, and,

therefore, no cause of action exists against the Defendant No. 2. He states that the Defendant No. 2 has a pan India non-exclusive distribution agreement with Defendant No. 1, which authorizes Defendant No. 1 to sell its products, specifically high-end printing presses.

3.1 He stated that Defendant No.1 entered upon an agreement with the Plaintiff to find buyers for Defendant No. 2's product for which Plaintiff would be entitled for commission on every successful sale. He stated that each sale affected, is a commercial transaction between the Plaintiff and Defendant No. 1 and the Defendant No. 2 has no role to play or liability under this transaction qua the Plaintiff. He stated that, therefore, there is no privity of contract between the Defendant No. 2 and the Plaintiff.

3.2 He stated that perusal of all the invoices placed on record by the Plaintiff evidence's that the same are addressed to Defendant No. 1. He stated that, therefore, Defendant No. 2 has no role to play in this commercial dispute which has arisen between Plaintiff and Defendant No. 1 for the alleged non-payment of ORC.

3.3 He relied upon Order dated 22.03.2022 passed by MSEFC¹ wherein on an application filed by the Plaintiff to recover its ORC qua invoices, a direction was issued by MSEFC to Defendant No. 1; and an amount of Rs. 24,86,994/- was paid by Defendant No. 1. He stated that Defendant No. 2 was not made a party in the said proceedings as it has no privity with the Plaintiff.

3.4 He stated that Defendant No. 1 as well in its preliminary objections forming part of the written statement has categorically admitted that it is Defendant No. 1, who is solely concerned with all aspects of sales and

¹ Micro & Small Enterprises Facilitation Council

payments inter-se with the Plaintiff and the ORC compensation has to be decided by the Defendant No. 1.

3.5 He has relied upon the judgment of **Kasturi v. Iyyamperumal**², **Indu Bai v. Rajendra Kumar Bhandari**³, and **Deputy Commissioner Hardoi Vs. Ramakrishna**⁴.

Submissions of Plaintiff

4. Learned Counsel for the Plaintiff admitted that it is a matter of record that there is no privity of contract between the Plaintiff and Defendant No. 2. He fairly admitted that the invoices have always been raised by the Plaintiff on Defendant No. 1 for the ORC and the payments have also been made by Defendant No. 1.

4.1 He stated that, however, record evidence's that Defendant No. 2 played an active role in concluding the sale transaction after the potential client has been identified by the Plaintiff. He stated that evidence on record shows that the financial terms of the transaction were settled by Defendant No. 2, which included the final price payable by the client; the commission payable to Defendant No. 1 and the ORC payable to the Plaintiff. He stated that thus financial terms of each transaction including the quantum of ORC payable to the Plaintiff were settled by Defendant No. 2. He illustratively referred to Defendant No. 1's e-mails dated 07.09.2021 and 21.05.2019.

4.2 He stated that in the present plaint the claims raised towards ORC, though payable by Defendant No. 1, would require the sanction of Defendant No. 2 as in effect the ORC though payable by Defendant No. 1 is

² (2005) 6 SCC 733

³ 2009(5) ALD 402

⁴ AIR 1953 SC 521

borne by Defendant No. 2. He stated that thus the financial liability is borne by Defendant No. 2. He stated that thus Defendant No. 2 is a proper party.

4.3 He stated that the Funnel list of potential clients nurtured by the Plaintiff and forwarded to Defendant No. 1 has been used by Defendant No. 2 for making sales of its products after the termination of the agreement. He states that the Plaintiff is entitled to ORC on the said sales and/or injunction against the Defendants from approaching the said clients without acknowledging the right of the Plaintiff to receive ORC on the said sales. He states that for this claim as well Defendant No. 2 is a proper party. He states that the Plaintiff would be entitled to ORC on all sales made to the clients in the Funnel list at least for a period of three years after the termination. He states that Defendants are not being entitled to approach the clients enlisted in Funnel list for at least until three years after the termination of the agreement, if they dispute the Plaintiff's rights to receive ORC.

4.4 He relied upon the pleading in the written statement of Defendant No. 1, on page 23 wherein the Defendant No. 1 has stated that the rate of ORC is determined by the Applicant/Defendant No. 2 and no claim is maintainable without the approval of Defendant No. 2. The relevant portion of the pleading in the written statement of Defendant No. 1 reads as under:

“It has been clarified to you on several occasions that **the ORC margin is determined by HP for Redington and ORC Partners** on a product-to-product basis. Therefore, there is no legal or commercial basis for your claim of Pending ORC of 1% on Rs 54cr of HP Indigo 12000 sale for Rs 54 lacs.”

(Emphasis Supplied)

Submissions of Defendant No. 1

5. Learned Counsel for Defendant No. 1 supported the contentions put forward by the Defendant No. 2 and states that all the liability for payment

of commission to Plaintiff, if any, would lie exclusively upon the Defendant No. 1.

5.1 He stated that Plaintiff is not entitled to its claims for ORC unless prior approval is granted by Defendant No. 2. He stated that commission is paid by Defendant No. 2 to Defendant No. 1 and it is passed on to the Plaintiff.

5.2 He stated that contractually the liability to pay Plaintiff vests with Defendant No. 1 alone. He states however Plaintiff is not entitled to any ORC as the said claim has not been approved by Defendant No. 2.

Analysis and findings

6. This Court has considered the submissions advanced by the learned counsels for the parties and perused the record.

7. The Plaintiff has filed the present suit seeking permanent injunction against Defendant Nos. 1 and 2 from using the potential clients list curated by the Plaintiff through its efforts. The injunction is sought on the premise that the said clients were identified by the Plaintiff for the high-end products of Defendant No. 2 and, therefore, Plaintiff has a right to receive ORC on the sales made to the said clients.

8. The Plaintiff also seeks a mandatory injunction against Defendants No. 1 and 2 to disclose documents evidencing that sales were affected to the clients identified by the Plaintiff after the termination of the agreement. It is sated that Plaintiff is entitled to ORC on the sales affected on the clients post termination and for this purpose the Plaintiff relies on clause 1(j) of the Business Associate Agreement dated 07.09.2009, which governed the relationship between the parties.

9. The Plaintiff has estimated its monetary claims towards the ORC at Rs. 2.25 crores approximately and has also sought damages of Rs. 35 lakhs from the Defendants. The Plaintiff also has a monetary claim of Rs. 45.50 lakhs approximately towards investment in manpower for developing the client data used by Defendants.

10. The principal defence of Defendant No. 1 for opposing the monetary claim of ORC is that there is no sanction of the said claim by Defendant No. 2 in favour of the Plaintiff. Even during the course of arguments, learned counsel for Defendant No. 1 submitted that since commission is paid by Defendant No. 2 to Defendant No. 1 and the share to be passed on to the Plaintiff is also determined by Defendant No. 2; unless there is a prior approval of Defendant No. 2, the Plaintiff is not entitled to raise any claims on Defendant No. 1.

11. Defendant No. 1 also apprised the Court during the course of submission that as per the practice followed in the past, once the client is identified and the final price is settled by Defendant No. 2, the commission receivable by Defendant No. 1 and Plaintiff is also approved by Defendant No. 2. And, it is thereafter that Plaintiff raised an invoice on Defendant No. 1 for its claim of ORC. It is the stand of Defendant No. 1 that since Defendant No. 2 has not approved ORC for the claims made in the plaint, Defendant No. 1 is not liable to pay the Plaintiff.

12. In the considered opinion of this Court, a perusal of the averments in the plaint and the stand of the Defendant No. 1 shows that the Plaintiff's claims for ORC from Defendant No. 1 required prior approval of Defendant No. 2. Though, the contractual liability to pay the said amounts lay with Defendant No. 1, however, the prior approval of Defendant No. 2 before

release of the said payment was the practice followed. This was also for the reason that the cost of the ORC paid by Defendant No. 1 to the Plaintiff was borne by Defendant No. 2. The rate at which ORC was payable to Plaintiff was determined by Defendant No. 2 on the basis of the net final price settled with the client. In these facts, it is apparent that Defendant No. 2 is a proper party for adjudicating the monetary claims of the Plaintiff as the principal defence of Defendant No. 1 is the absence of any approval of Defendant No. 2 for the ORC margin on these sales to the Plaintiff for the alleged claims.

13. The Plaintiff has placed on record substantial documentary record evidencing direct interactions between Plaintiff and officials of Defendant No. 2 for closing sales to potential clients. The Plaintiff has also placed on record e-mails of Defendant No. 1 calling upon the Plaintiff to raise the claims of ORC margin directly with Defendant No. 2. The said documents thus evidence's that Defendant No. 2's approval for ORC margin was necessary for the Plaintiff to raise its claims from Defendant No. 1. The impleadment of Defendant No. 2 would, therefore, be necessary to effectively adjudicate upon the claims of the Plaintiff and the defence of Defendant No. 1.

14. The Plaintiff has also sought permanent and mandatory injunction against both Defendant Nos. 1 and 2 from dealing with the clients curated by the Plaintiff. The said prayer for injunction is based on the assertion that Plaintiff has a proprietary right over the Funnel list curated by the Plaintiff. The said relief for injunction is sought directly against both Defendant Nos. 1 and 2. For the purposes of the said relief, Defendant No. 2 is in fact a necessary party. In fact, there is no reference to the said reliefs sought against Defendant No. 2, in the captioned application.

15. The Supreme Court in **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others**⁵ has made pertinent observation about who is a proper party in a proceeding and the said observation are relied upon by this Court for deciding this application. In this judgment the Supreme Court also noticed its earlier judgment in **Kasturi (Supra)** and explained its ratio. The relevant paras 15 and 18 read as under:

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‘15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A **“proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively, and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.** If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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18. In **Kasturi** this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that **proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.**’

(Emphasis Supplied)

⁵ 2010 SCC OnLine SC 680

16. Thus, on an examination of the facts of this case this Court finds that the Defendant No. 2 is a necessary and a proper party for adjudicating the claims raised in the plaint.

17. This application is accordingly dismissed.

18. It is, however, clarified that all observations made in this order qua the claims and defences of the parties is not an expression on the merits of their claims and defences; the said observations have been made only for the purpose of deciding this application. The rights and contention of all the parties on the merits of the disputes raised in the plaint are left open.

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19. List on 18.12.2024, date already fixed for consideration on I.A No. 728/2023.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 19, 2024/hp/mt/AKT