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

+ CS(COMM) 128/2022 & I.A. 3102/2022 & I.A. 16410/2022 & I.A. 21082/2022 & I.A. 1754/2023 & I.A. 4163/2023 & I.A. 4637/2023 & I.A. 7982/2023 & I.A. 8065/2023 & I.A. 8068/2023 & I.A. 8092/2023 & I.A. 8100/2023 & I.A. 8111/2023 & I.A. 8112/2023 & I.A. 9173/2023 & I.A. 10671/2023 & I.A. 12719/2023 & I.A. 13999/2023 & I.A. 2858/2024 & O.A. 71/2022 & O.A. 80/2022

**ASIAN HOTELS NORTH LTD.**

..... Plaintiff

Through: Mr. Nankani, Senior Advocate with  
Mr. Sidhant Kumar, Ms. Manyaa  
Chandok, Ms. Ishita Deswal, Ms.  
Molly Aggarwal, Ms. Satakshi Singh  
and Dr. Joginder Singh, Advocates

versus

**YES BANK LTD & ORS.**

..... Defendants

Through: Mr. Raunak Dhillon and Mr. Nihaad  
Dewan, Advocates  
Mr. Sudhir K Makkar, Sr. Advocate  
with Mr. Nishant Awana, Ms. Rini  
Badoni, Ms. Nitya Sharma,  
Advocates along with Mr. Vaibhav  
Yadav, Law Officer for D-6  
Mr. Nishant Awana, Ms. Rini Badoni  
and Ms. Nitya Sharma, Advocates for  
D-8  
Mr. Tanmay Mehta and Mr. Sanyam  
Khetrapal, Advocates for  
Applicant/D-9

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**06.02.2024**

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**I.A. 4163/2023 (Under Order XXXIX Rule 1 and 2)**

1. The instant application Under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 has been filed on behalf of the plaintiff/applicant seeking the following reliefs:

- “a. Stay the operation and effect of the Minutes of the Joint Lenders Meeting dated 23.01.2023 and restrain the parties from acting upon the said Minutes, including but not limited to taking any recovery action based on the consent of proposed Defendant No. 5 recorded in the meeting and the appointment of M/s S.S. Periwal & Co. as the forensic auditor;*
- b. Restrain the Proposed Defendant No. 5 from acting as, or holding themselves out as Lenders of the Plaintiff Company, pending an adjudication on the legality of the Assignment of debt by Defendant No. 1 to Proposed Defendant No. 5 by this Hon'ble Court;*
- c. Appoint a reputed Auditor from the list of Empaneled Forensic Auditors For Conducting Forensic Audit of Borrowal Accounts having exposure above Rs. 50 Crores (valid upto 27.08.2023) published by the Indian Banks Association to conduct Forensic Audit as well as Cash Flow Monitoring of the Applicant Company;*
- d. Pass any other order or orders that may deemed fit and proper in the interest of justice.”*

2. At this juncture, learned senior counsel appearing on behalf of the applicant prays for allowing the prayer (c) and requests this Court to appoint a reputed Auditor for conducting forensic Audit of the borrower accounts.

3. The learned senior counsel also submitted that the other prayers are not pressed at this stage as the same are also part of the other applications and therefore he may be given liberty to take the plea pertaining to prayers (a) and (b) along with other pending applications at an appropriate stage.

4. Learned senior counsel appearing for the applicant shared a list of

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approved Auditors and prayed that the Auditor for forensic audit may be appointed from the list provided by him.

5. Mr. Makkar, learned senior counsel appearing for the non-applicant does not have any objection to the said submissions made by the learned senior counsel for the applicant. After perusal of the list of auditors provided by the learned senior counsel for the applicant, he consented for appointment of the auditor by this Court from the said list on joint request.

6. Pursuant to consent between both the parties, the prayer (c) in the instant application is allowed and this Court, after perusing the said list, ***Jain Jagwat Kamdar and Co*** (no. 86 in the list) is appointed as auditor for the purpose of Forensic Audit, as prayed in the instant application.

7. It is also made clear that the cost of the said audit shall be borne by the plaintiff/applicant and they are also directed to fully cooperate with the auditors appointed by this Court.

8. The Auditor i.e. ***Jain Jagwat Kamdar and Co*** is directed to complete the forensic audit and file a report before this Court expeditiously and preferably within four weeks.

9. Accordingly, as prayed, the application to the extent of prayer (c) is allowed without prejudice to the contentions of the respective parties and liberty is granted to the applicant to take the plea pertaining to prayers (a) and (b) in other applications at an appropriate stage.

10. The present application stands disposed of.

**I. A. (to be numbered) filed vide Diary No. 292055/2024**

1. Mr. Tanmay Mehta, learned counsel appearing on behalf of the applicant informed this Court that instant I. A. has been filed vide Diary No. 292055/2024, and prayed that the same be placed before this Court for

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adjudication on the next date of hearing.

2. Learned counsel appearing on behalf of the non-applicant has no objection to the same.

3. Accordingly, the Joint Registrar is directed to place the aforesaid I. A. on record before the next date of hearing.

4. List on 1<sup>st</sup> March, 2024 at 2:30 P. M.

**I.A. No. 16410/2022, 9173/2023, 7982/2023 and 13999/2023**

1. Arguments heard in part.

2. The parties are directed to file a convenience compilation before the next date of hearing.

3. List on 1<sup>st</sup> March, 2024 at 2:30 P. M. for further arguments.

4. Interim order, if any, to continue till then.

**I.A. No. 10671/2023 (Under Order VI Rule 17)**

1. The instant application under Order VI Rule 17 of the Code of Civil Procedure, 1908 has been filed on behalf of the plaintiff/applicant seeking the following reliefs:

- “a) Pass an order allow the present Application seeking amendment of the Complaint in the captioned matter;*
- b) Pass an order taking on record the Amended Complaint filed along with this Application; and*
- c) Pass any other order or orders that may be deemed fit and proper in the interest of justice.”*

2. Learned Senior counsel, Mr. Nandkani, appearing on behalf of the applicant submitted that the instant IA may be heard before the application for vacation of stay as well as the application filed under Order VII Rule 11 of the Civil Procedure Code, 1908.



3. In support of his arguments, learned senior counsel also relied upon the judgment in the case of **Anita Kumari Gupta v. Ved Bhushan, 2014 SCC OnLine Del 2895**, passed by the Division Bench of this Court whereby it was held that the application for amendment of plaint should be adjudicated before dealing with the issue regarding rejection of the plaint under Order VII Rule 11 CPC.

4. Therefore, the learned senior counsel submitted that the instant I. A. which pertains to the issue regarding amendment of plaint should be heard first.

5. Learned senior counsel, Mr. Makkar and learned counsel, Mr. Rattan, appearing on behalf of the non-applicants vehemently opposed the submissions made by the learned senior counsel appearing on behalf of the applicant submitting to the effect that it is not necessary that the present application be heard prior to any other applications.

6. List on 1<sup>st</sup> March, 2024 at 2:30 P.M. for further hearing.

**CM APPL. No.2858/2024 (Under Order XXXIX Rule 4)**

1. The instant application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 has been filed on behalf of the defendant no. 6/applicant seeking the following reliefs:

*“A. Allow the present application;  
B. Recall the Order dated 03.03.2023 passed in IA No. 1746 of 2023 and vacate the stay granted therein;  
C. Pass any other or further relief (s) in favour of the Defendant No. 6 as this Hon’ble Court deems fit in the interest of and good conscience.”*

2. Heard

3. Issue notice to the non-applicant.

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4. Mr. Sidhant Kumar, learned counsel appearing on behalf of the non-applicant accepts notice and prayed for two weeks' time to file reply to the application. Let the same be filed within a period of two weeks as prayed. Rejoinder, if any, be filed within two weeks thereafter.

5. List on 1<sup>st</sup> March, 2024 at 2:30 P.M. for further hearing.

**CS(COMM) 128/2022**

List on 1<sup>st</sup> March, 2024 at 2:30 P. M.

Interim order, if any, to continue till then.

**CHANDRA DHARI SINGH, J**

**FEBRUARY 6, 2024**

**SV/gs/av**

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