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

% **Pronounced on: 23rd December, 2024**

\+ I.A. No.3178/2024 in CS(COMM) 128/2022

VSJ INVESTMENTS PVT. LTD. .....Applicant

Through: Mr.Tanmaya Mehta, Mr. Sanyam Khetarpal, Ms. Devika Mohan Ms. Prakriti Anand and Ms. Lisa Sankrit, Advocates for applicant.

Versus

EXCLUSIVE CAPITAL LIMITED. ...Defendant No.9/Non-applicant

Through: Mr.Dama Seshadri Naidu, Sr. Advocate with Mr. Madhur Dhingra, Ms.Harleen Kaur and Ms. Divya Narayanan, Advocates for D-9

In the matter of

CS(COMM) 128/2022

ASIAN HOTELS NORTH LTD ....Plaintiff

versus

YES BANK LTD & ORS. .....Defendants

CORAM:
HON’BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

I.A. 3178/2024 ***(application seeking substitution)***

1. The captioned application has been filed by the applicant under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter as 'CPC') seeking the following reliefs:

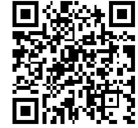
> *"(a) Pass an order substituting VSJ Investments Pvt. Ltd. as Defendant No.9 in place of Exclusive Capital Ltd. in CS (COMM) No. 128 of 2022;*
> *(b) Pass any other order that may be deemed fit and proper in the interest of justice."*

2. The applicant, M/s VSJ Investments Pvt. Ltd. is a company registered as a non-banking financial company under Section 45 IA of the Reserve Bank of India Act, 1934 and was impleaded in the proceedings pending before this Court in the captioned civil suit *vide* order dated 3rd March, 2023, by virtue of which, the registry was directed to place on record the captioned application filed by the applicant for adjudication.

3. The brief facts leading to filing of the captioned application in the instant suit are as follows:

(i) An entity named M/s Clover Media Pvt. Ltd. (hereinafter "Clover Media") extended a loan of Rs. 60 Crores to the defendant no.9 by entering into an Inter Corporate Loan Agreement (hereinafter as 'ICL agreement') dated 14th December, 2022.

(ii) It is stated that the said agreement laid down several terms and conditions, and it was agreed between the parties that any proceeds received by the defendant no.9 from the plaintiff in respect to the AHNL Debt (debt given to the plaintiff in the original suit) shall be



used towards repayment of the loan extended by the Clover Media.

(iii) It is stated in the application that pursuant to the default in the repayment obligations, Clover Media notified the defendant no.9 regarding the same.

(iv) Thereafter, Clover Media assigned the said rights to the applicant herein by a Registered Assignment Agreement dated 2nd February, 2024.

(v) In view of the defaults on part of the defendant no.9, the applicant has preferred the instant application for assignment of the AHNL debt to itself and substitute the defendant no.9.

4. Mr. Tanmay Mehta, learned counsel appearing on behalf of the applicant submitted that on 14th December, 2022, the answering defendant obtained a loan of Rs. 60 Crores from Clover Media pursuant to the ICL Agreement. The defendant no.9 used these funds to acquire the debt owed by the plaintiff to IndusInd Bank Limited.

5. It is further submitted that shortly thereafter, on 28th December, 2022, the defendant took over the AHNL debt from IndusInd Bank Limited by an Assignment Agreement and assumed the role of a lender to the plaintiff and the said facts are undisputed.

6. Mr. Mehta also submitted that the present application has been filed to substitute the defendant no.9 in the instant suit and the same has been done in consonance with the clause 3.1(f) and 11.2 of the ICL Agreement, whereby, it is clear that the applicant herein is entitled to all receivables due from the plaintiff in regard to the AHNL debt.

7. It is submitted that the Clover Media assigned its rights under the ICL Agreement to the applicant by the registered Assignment Agreement dated 2nd February, 2024. The defendant, admittedly, defaulted in its repayment obligations under the ICL Agreement. Accordingly, the AHNL debt has since been taken over by the applicant in terms of the ICL Agreement on account of the default by the defendant no.9.

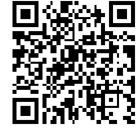
8. It is submitted that the defendant no.9 has not raised any objection to the said assignment agreement and a registration certificate under Section 60 of the Registration Act, 1908 which has also been issued in favor of the applicant and same is legally valid.

9. The learned counsel further submitted that it is an admitted position that the defendant no.9 acted upon the terms of the ICL agreement and the same is evident from the fact that the original documents pertaining to the AHNL debt were sent to Clover Media by one Mr. Achal Jindal, the director of defendant no.9 and the confirmation of the same was given vide an email dated 13th December, 2023.

10. During the course of proceedings, Mr. Mehta referred to another email dated 28th December, 2023, whereby, Mr. Jindal has specifically referred to the ICL agreement and sought to exercise the extension of the repayment tenure.

11. It is submitted that the terms of the ICL agreement stipulate the applicant to be entitled to all receivables, of whatsoever nature, due from the plaintiff in respect of the AHNL debt and the defendant no.9 was prohibited from offering the AHNL debt as security to any other party.

12. Mr. Mehta vehemently submitted that the AHNL debt is a security in favour of Clover Media and the said right has been assigned to VSJ



under the Assignment Agreement. The receivables from the AHNL debt are also to go to Clover Media or its assignee i.e. the applicant herein. Therefore, the learned counsel for the applicant submitted that the present application be allowed and the reliefs be granted as prayed for.

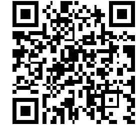
13. *Per contra,* Mr. Dama Seshadri Naidu, learned senior counsel appearing on behalf of the defendant no.9/non-applicant vehemently opposed the instant application submitting to the effect that the instant application is frivolous as the said debt was not assignable, therefore, making the same illegal.

14. It is submitted that the applicant is attempting to assign the loan facility to itself without following the procedure prescribed under The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter as 'SARFAESI Act'). Furthermore, the applicant's claim is devoid of any supporting document or Court order.

15. It is submitted that the alleged self assignment of the loan facility is unlawful and the defendant no. 9 never charged the loan facility in favor of the applicant or the clover media, therefore, the question of substitution of the defendant no.9 by the applicant does not arise.

16. It is also submitted that even if a debt is created as a charge on the AHNL debt, it would have specified the details regarding nature and value of the pledged debt as well as the terms as to when Clover media could claim the same, therefore, the instant application does not have any merit.

17. The learned senior counsel further submitted that the applicant and the Clover Media hatched a conspiracy to take over the AHNL debt and



the same was done in collusion with a former employee of the defendant no.9, where the former company secretary namely Mr. Harvinder Singh sent the AHNL debt documents to the Clover media, and even though it was discovered by the officials of the defendants, the said documents were being kept in order to not jeopardize the relationship between the parties.

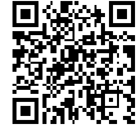
18. It is submitted that the alleged loan facility is not registered as a secured loan and the same is evident from the documents placed on record.

19. It is submitted that even though the applicant has alleged that the AHNL debt was charged in favor of the Clover Media, however, such charge was never mentioned in the accounts of the defendant no.9 and the said loan taken by the defendant is always considered as an unsecured loan.

20. It is submitted that the employee namely Mr. Harvinder Singh was appointed as the Company Secretary of the defendant on 23rd December, 2022 and was merely an employee of the defendant before the said date, therefore, he did not have any authority to enter into an agreement on behalf of the defendant.

21. It is submitted that the ICL Agreement also does not contain information about the board resolution authorizing either of the parties to execute the alleged agreement, therefore, the alleged debt facility is a concocted story and is done in furtherance of ill motive to dupe the defendant.

22. It is submitted that the defendant has also lodged a complaint dated 29th February, 2024 before the EOW (Economic Offences Wing) against



one Mr. Harvinder Singh, Clover Media and the applicant herein for entering into a criminal conspiracy to commit cheating, theft and forgery.

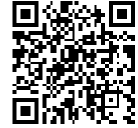
23. It is submitted that the debt owed by the plaintiff to the defendant no.9 is to the tune of Rs. 126.83 Crores, and the said amount is more than double of the amount received from the Clover Media, therefore, at best, the applicant herein is entitled to recover only Rs. 60 Crores which is principal amount of the agreement between the parties.

24. It is submitted that the basis of the Assignment Agreement dated 2nd February, 2024 between the Clover Media and the applicant is a fraudulent and fake ICL Agreement, therefore, the present application does not stand.

25. On the aspect of maintainability of the instant application, the learned senior counsel submitted that the present application has been filed under Order 1 Rule 10 of the CPC, whereas, the relief prayed by the applicant comes specifically under the ambit of Order 22 Rule 10 of the CPC, therefore, the instant application cannot be adjudicated due to procedural lapse by the applicant.

26. Therefore, in view of the foregoing submissions, the learned senior counsel for the non-applicant/defendant no.9 prayed that the instant application being not maintainable and bereft of any merit may be dismissed.

27. In rejoinder, Mr. Mehta rebutted the above said arguments by stating that the objections raised to the Assignment Agreement by the non-applicant/defendant no.9 are baseless mainly for three reasons, *firstly* being that the said assignment agreement is a registered document, therefore, having a statutory presumption of validity; *secondly*, that there



is no challenge to the Assignment Agreement in any Court of law, and *thirdly*, being the admission of debt on part of the defendant no.9 and acting upon the terms.

28. It is submitted that even though the application has been filed under Order 1 Rule 10 of the CPC, the contents and prayer are that of one filed under Order 22 Rule 10 of the CPC and therefore, he prayed that the instant application may be treated as one filed for substitution under Order 22 Rule 10 of the CPC.

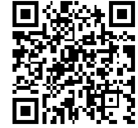
29. Heard the learned counsel for the respective parties and perused the record.

30. At the outset, this Court deems it appropriate to deal with the objection raised by the learned senior counsel on the aspect of maintainability of the instant application.

31. In the CPC, the various provisions provide for procedure to be adhered to for various applications, one such provision for addition or striking out a party is the provision of impleadment of necessary and proper parties in a suit by way of Court exercising its power under Order 1 Rule 10 of the CPC.

32. Under the said provision, the Courts are empowered to add the necessary and proper party to a case. On Contrary, the substitution under Order 22 Rule 10 of the CPC is attracted when there are reasons to replace an already existing party. The said provision reads as under:

> *"**Order 22 Rule 10. Procedure in case of assignment before final order in suit-***
> *(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by*



leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.
(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).”

33. Upon perusal of the aforesaid, it is clear that the said provision provides for continuation of the suit in case the interest has been devolved upon another party.

34. The preliminary objection in the present application is regarding the wrong provision under which the instant application has been filed, where the learned senior counsel has taken objections to the same and prayed for dismissal of the application.

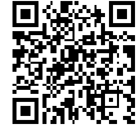
35. With regards to the same, the learned counsel for the applicant has made submission for this application to be treated as the one filed for substitution itself and prayed before this Court to invoke its inherent powers under Section 151 of the CPC.

36. Therefore, it becomes imperative for this Court to look into the settled position of law regarding treating an application as the one filed for substitution which is otherwise filed for impleadment.

37. The Full Judge Bench of the Orissa High Court delved into the said aspect in the case of ***Jagannath Mahaprabhu v. Pravat Chandra Chatterjee***[1] and held as under:

*“**10.** Assuming that he is not a proper party, he may be impleaded as an assignee under the provisions of O. 22, R. 10(1). Even if an application has been filed under O. 1, R. 10, labelling of the application being misconceived, the court should ignore the labelling of the application as one*

[1] **1991 SCC OnLine Ori 85**



under O. 1, R. 10 and treat the same as one filed under O. 22, R. 10(1), C.P.C., if the ingredients thereof are satisfied. This aspect of the law was not brought to the notice of the Division Bench which decided Pranakrushna's case (AIR 1989 Orissa 148) (supra) and rejected the application of the pendente lite transferee solely upon a consideration of the principles embodied in Order 1, Rule 10, CPC."

38. In ***Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya,***[2] the Hon'ble Supreme Court also shed light on the treatment of an application filed under different provisions and held as under:

> *"**10.** Order 1 Rule 10 of the Code enables the court to add any person as a party at any stage of the proceedings, if the person whose presence in court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the court to substitute a party in the suit who is a wrong person with a right person. If the court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.*
>
> ***11.** In Vijaykumar Motilal Hirakhanwala [Ramprasad Dagaduram v. Vijaykumar Motilal Hirakhanwala, AIR 1967 SC 278] , a Bench by majority held that the legal*

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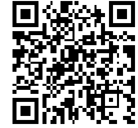
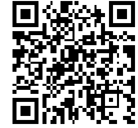
[2] **(2017) 9 SCC 700**



representatives of a party can be added under Order 1 Rule 10 of the Code, but the date on which they were impleaded shall be the date on which the suit was instituted by or against them. In the said matter, this Court on facts held that the suit was barred by limitation as per Section 22 of the Limitation Act, 1908. This Court, though it concluded that the Court has got the power to join a particular person as a party under Order 1 Rule 10 of the Code, did not interfere in the matter inasmuch as this Court found that the suit was barred by limitation. It is relevant to note that the said suit was of the year 1958. Since the Limitation Act, 1963 (now in force) was at that time not in existence, this Court applied the old limitation law and held that the suit was barred by limitation. As of now, the proviso to Section 21(1) of the Limitation Act, 1963 empowers the court to direct that the suit shall be deemed to have been instituted on an earlier date, where the omission to include a new plaintiff or defendant was due to a mistake made in good faith. Therefore, it is open to the plaintiff in the matter on hand to prove "good faith" on his part in not including the legal representatives of deceased Defendant 7, during the course of trial of suit.

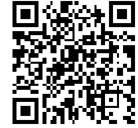
***12.** It would be relevant to note that in Bhagwan Swaroop v. Mool Chand [Bhagwan Swaroop v. Mool Chand, (1983) 2 SCC 132] , this Court observed thus : (SCC pp. 136-37, paras 4-5)*

"4. It is true that it was incumbent upon the appellants to implead the heirs and legal representatives of deceased Respondent 1 in time. It is equally true that the appellants were negligent in moving the proper application. We would not question the finding of the High Court that Appellants 2, 3 and 4 knew about the death of the deceased Respondent 1. This being a suit for partition of joint family property, parties are closely interrelated and it is reasonable to believe that at least some of the appellants must have attended the funeral of deceased Respondent 1, as contended on behalf of the contesting Respondent 2. There is some force in the contention that when a specific provision is



made as provided in Order 22 Rule 4, a resort to the general provision like Order 1 Rule 10 may not be appropriate. But the laws of procedure are devised for advancing justice and not impeding the same. In Sangram Singh v. Election Tribunal [Sangram Singh v. Election Tribunal, AIR 1955 SC 425] , this Court observed that a code of procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. This was reaffirmed in Kalipada Das v. Bimal Krishna Sen Gupta [Kalipada Das v. Bimal Krishna Sen Gupta, (1983) 1 SCC 14] .

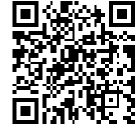
5. In a suit for partition, the position of plaintiffs and defendants can be interchangeable. It is that each adopts the same position with the other parties. Other features which must be noticed are that the appeal was filed somewhere in 1972. It has not come up for hearing and the matter came on Board only upon the application of the second respondent intimating to the Court that the first respondent had died way back and as his heirs and legal representatives having not been substituted, the appeal has abated. Wheels started moving thereafter. Appellants moved an application for substitution. The matter did not end there. Heirs of deceased Respondent 1 then moved an application for being brought on record. If the application had been granted, the appeal could have been disposed of in the presence of all the parties. The difficulty High Court experienced in granting the application disclosed with great respect, a hypertechnical approach which if carried to end may result in miscarriage of justice. Who could have made the most serious grievance about the failure of the appellants to substitute the heirs and legal representatives of deceased Respondent 1? Obviously the heirs of deceased Respondent 1 were the persons vitally interested in the outcome of the appeal. They could have contended that the appeal against them has abated and their share has become unassailable. That is not their case. They on the contrary, want to be impleaded and substituted as heirs and legal representatives of deceased Respondent 1. They had absolutely no grievance



about the delay in bringing them on record. It is the second respondent who is fighting both the appellants and the first respondent who wants to derive a technical advantage by this procedural lapse. If the trend is to encourage fairplay in action in administrative law, it must all the more inhere in judicial approach. Such applications have to be approached with this view whether substantial justice is done between the parties or technical rules of procedure are given precedence over doing substantial justice in Court. Undoubtedly, justice according to law; law to be administered to advance justice."

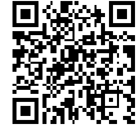
13. *This Court in Karuppaswamy v. C. Ramamurthy [Karuppaswamy v. C. Ramamurthy, (1993) 4 SCC 41] has permitted the plaintiff to modify the application filed by him under Order 22 Rule 4 of the Code to make it an application under the provisions of Sections 151 and 153 of the Code. In the said matter also the suit was filed against a dead person. This Court proceeded further to conclude that the plaintiff has shown good faith as contemplated under Section 21(1) of the Limitation Act and hence the impleadment of the legal representatives/heirs must date back to the date of the presentation of the plaint. In the said matter, it was observed thus : (SCC p. 45, paras 4-5)*

"4. A comparative reading of the proviso to sub-section (1) shows that its addition has made all the difference. It is also clear that the proviso has appeared to permit correction of errors which have been committed due to a mistake made in good faith but only when the court permits correction of such mistake. In that event its effect is not to begin from the date on which the application for the purpose was made, or from the date of permission but from the date of the suit, deeming it to have been correctly instituted on an earlier date than the date of making the application. The proviso to sub-section (1) of Section 21 of the Act is obviously in line with the spirit and thought of some other provisions in Part III of the Act such as Section 14 providing exclusion of time of proceeding bona fide in court without jurisdiction, when computing the period of limitation for any suit, and Section



17(1) providing a different period of limitation starting when discovering a fraud or mistake instead of the commission of fraud or mistake. While invoking the beneficent proviso to sub-section (1) of Section 21 of the Act an averment that a mistake was made in good faith by impleading a dead defendant in the suit should be made and the court must on proof be satisfied that the motion to include the right defendant by substitution or addition was just and proper, the mistake having occurred in good faith. The court's satisfaction alone breathes life in the suit.

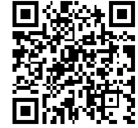
5. It is noteworthy that the trial court did not attribute any neglect or contumacy to the conduct of the plaintiff-respondent. It was rather observed that the plaintiff could have known the date of the death of the first defendant only by the counter filed to IA No. 265 of 1975. Normally, if he had known about the date of death of the defendant, he would have filed the suit in the first instance against his heirs and legal representatives. The trial court has also opined that the plaintiff was ignorant as to such death and that is why he filed IA No. 265 of 1975 under Order 22 Rule 4 CPC. The High Court too has recorded [C. Ramamurthi v. Karuppusami, 1978 SCC OnLine Mad 188 : (1979) 92 LW 41] a finding that there was nothing to show that the plaintiff was aware of the death of the first defendant and yet knowing well about it, he would persist in filing the suit against a dead person. In conclusion, the learned Single Judge held that since plaintiff-respondent had taken prompt action it clearly showed that he had acted in good faith. Thus the High Court made out a case for invoking the proviso to sub-section (1) of Section 21 of the Act in favour of the plaintiff-respondent. Sequelly, the High Court found no difficulty in allowing IA No. 785 of 1975 permitting change of the provision whereunder IA No. 265 of 1975 was filed and in allowing IA No. 265 of 1975 ordering the suit against the heirs and legal representatives of Defendant 1 to be dating back to 14-11-1974, the date on which the plaint was originally presented."



14. *In Banwari Lal v. Balbir Singh [Banwari Lal v. Balbir Singh, (2016) 1 SCC 607] , Defendant 1 (who was Respondent 1 in the first appeal), had expired 2 years prior to the decision in the first appeal, but no steps were taken to bring his legal representatives on record. The first appellate court decided in favour of the plaintiff. When the matter came up in second appeal, the legal representatives of Defendant 1 filed an application for condonation of delay and restoration. This Court though observed that the application ought to have been filed under Order 22 Rule 4 of the Code inasmuch as the death had occurred during the subsistence of the matter before the Court and the application under Order 1 Rule 10 of the Code was not maintainable, had proceeded to allow the application on the ground that it would be unjust to non-suit the applicant on the ground of technicalities. This Court permitted the legal representatives of Defendant 1 to convert the application into one filed under Order 22 Rule 4 of the Code.*

15. *In the cases relied upon by the respondents viz. Jayalaxmi Janardhan Walawalkar [Jayalaxmi Janardhan Walawalkar v. Lilachand Laxmichand Kapasi, 1998 SCC OnLine Bom 354 : (1998) 3 Mah LJ 618] and in Madhukar Ramchandra Keni [Madhukar Ramchandra Keni v. Vasant Jagannath Patil, 2013 SCC OnLine Bom 374 : (2013) 4 Mah LJ 403] , the death had occurred during the pendency of the matter and consequently the suit stood abated. The case of Arora Enterprises [Arora Enterprises Ltd. v. Indubhushan Obhan, (1997) 5 SCC 366] is also not applicable as it deals with the finality of an abatement order. In that context, the courts have concluded that the only course open to the appellant-plaintiff in case if the death occurs in a pending matter, is to file an application under Order 22 Rule 4 of the Code, and not under Order 1 Rule 10 of the Code or under Section 151 of the Code.*

16. *In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial*

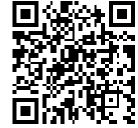


> *court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 CPC, in order to do justice between the parties. Merely because of the non-mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice."*

39. Therefore, it is clear that the Courts are empowered to treat an application as the one filed for substitution for dispensation of justice.

40. In the instant case, the careful reading of the application reveals that the contents and the prayer made thereof are similar to the ones made for substitution of a party and not the one filed for impleadment, therefore, the captioned application is treated as the one filed for substitution.

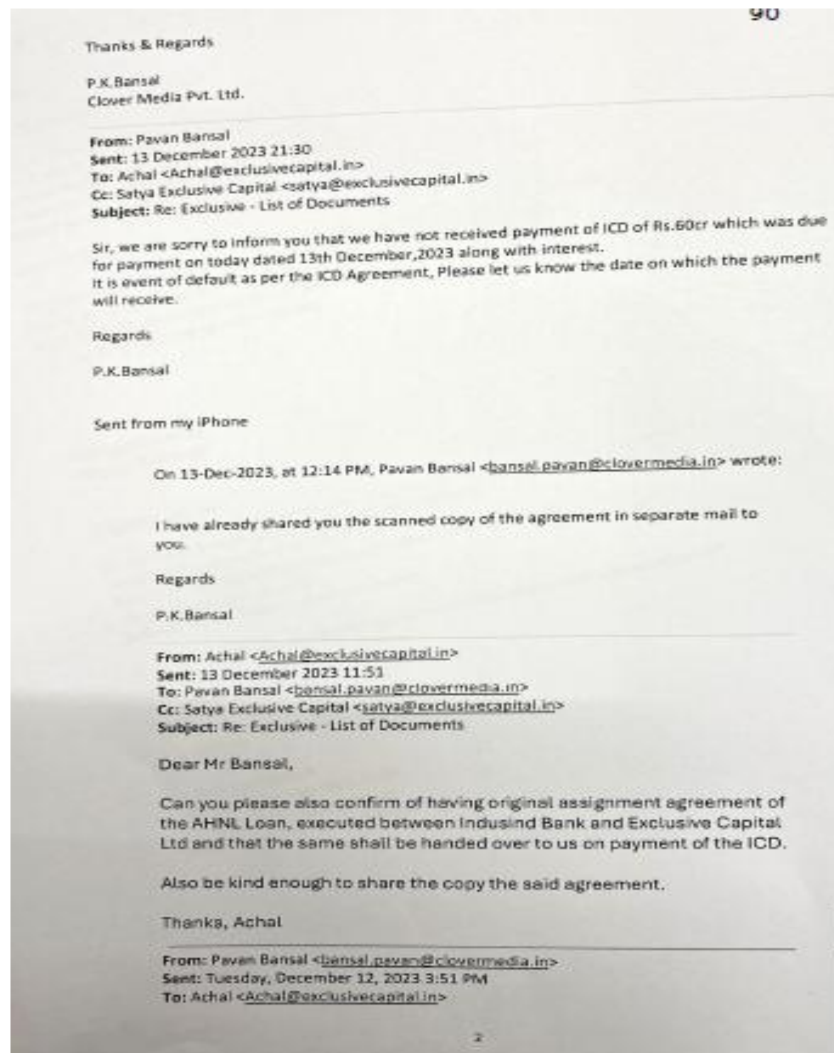
41. Now coming to the merits of the instant application, it is the case of the applicant that the AHNL debt as given to the Clover Media by the defendant no.9/non-applicant has been taken over by the applicant by virtue of the Assignment Agreement dated 2nd February, 2024.



42. Before delving into the said aspect, it is imperative for this Court to first examine if the AHNL debt was ever pledged with the Clover Media or not.

43. In support of the above statement, Mr. Mehta, learned counsel for the applicant referred to the email dated 13th December, 2023 and the fact that the documents pertaining to the AHNL debt were handed over by the official of the defendant no.9/non-applicant.

44. The relevant extracts of the e-mail dated 13th December, 2023 is as under:



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Thanks & Regards

P.K.Bansal
Clover Media Pvt. Ltd.

From: Pavan Bansal
Sent: 13 December 2023 21:30
To: Achal <Achal@exclusivecapital.in>
Cc: Satya Exclusive Capital <satya@exclusivecapital.in>
Subject: Re: Exclusive - List of Documents

Sir, we are sorry to inform you that we have not received payment of ICD of Rs.60cr which was due for payment on today dated 13th December,2023 along with interest.
It is event of default as per the ICD Agreement, Please let us know the date on which the payment will receive.

Regards

P.K.Bansal

Sent from my iPhone

On 13-Dec-2023, at 12:14 PM, Pavan Bansal <bansal.pavan@clovermedia.in> wrote:

I have already shared you the scanned copy of the agreement in separate mail to you.

Regards

P.K.Bansal

From: Achal <Achal@exclusivecapital.in>
Sent: 13 December 2023 11:51
To: Pavan Bansal <bansal.pavan@clovermedia.in>
Cc: Satya Exclusive Capital <satya@exclusivecapital.in>
Subject: Re: Exclusive - List of Documents

Dear Mr Bansal,

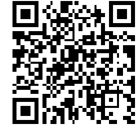
Can you please also confirm of having original assignment agreement of the AHNL Loan, executed between Indusind Bank and Exclusive Capital Ltd and that the same shall be handed over to us on payment of the ICD.

Also be kind enough to share the copy the said agreement.

Thanks, Achal

From: Pavan Bansal <bansal.pavan@clovermedia.in>
Sent: Tuesday, December 12, 2023 3:51 PM
To: Achal <Achal@exclusivecapital.in>

2



Cc: Satya Exclusive Capital <satya@exclusivecapital.in>
Subject: Re: Exclusive - List of Documents

As I had already communicated you that listed documents are with us, we will deliver you on receipt of the payment (principal and interest) and will need your confirmation of deposit of TDS deducted from interest amount.
Thanks
P.K.Bansal

Get Outlook for iOS

From: Achal <Achal@exclusivecapital.in>
Sent: Tuesday, December 12, 2023 3:10:00 PM
To: Pavan Bansal <bansal.pavan@clovermedia.in>
Cc: Satya Exclusive Capital <satya@exclusivecapital.in>
Subject: Re: Exclusive - List of Documents

Dear Mr Bansal,

Please confirm that the documents as per table below, held as security as confirmed by you are in your custody in original / copy as stated against each item number and shall be immediately returned to us on payment of ICD along with interest.

<image001.png>
<image002.png>

Regards, Achal

From: Pavan Bansal <bansal.pavan@clovermedia.in>
Sent: Sunday, December 10, 2023 6:17 PM
To: Achal <Achal@exclusivecapital.in>; Satya Exclusive Capital <satya@exclusivecapital.in>
Subject: RE: Exclusive - List of Documents

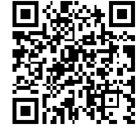
We are in possession of the documents listed in the attachment sent to you on 8th Dec.,2023

Regards.

P.K.BANSAL

From: Pavan Bansal
Sent: 08 December 2023 13:09
To: achal@exclusivecapital.in
Subject: Exclusive - List of Documents

45. Apart from the aforesaid communication acknowledging the receiving of AHNL debt, the contract between the defendant no.9/non-applicant is also placed on record to show that the Clover Media was



empowered to hand over the said debt to other party. The relevant clauses i.e. 3.3 and 17.4 of the ICL Agreement are of material use in this regard.

46. From the above said clauses, it is evident that the Clover Media was well within its right to further assign the said debt as the parties had agreed to provide such a right in favor of the Clover Media.

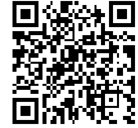
47. Now coming to the aspect of whether the ICL Agreement is legally valid or not. In this regard, the learned senior counsel for the non-applicant vehemently contended that the said ICL Agreement is sham and bogus as the same was done in collusion with the former employee of the non-applicant.

48. In this regard, the learned senior counsel has placed reliance upon the fact that the non-applicant had registered a complaint against the said employee as well as the Clover Media and the applicant herein.

49. It is also apposite to state that even though the learned senior counsel has alleged serious fraud on part of their employee and the applicant, there is no material to prove that the said fraud has taken place.

50. Furthermore, there has been no investigation with regard to the complaint made by the non-applicant, therefore, this Court is of the view that the said contention of the learned senior counsel does not hold any water as the said contention has not been substantiated with any evidence with regard to the same.

51. In any case, even if the allegations leveled against the applicant and the Clover Media are found to be true, the same would amount to initiation of criminal proceedings, and would not be part of the instant suit in any manner.



52. In the instant application, the limited question for adjudication is whether the applicant herein can be substituted in place of the defendant no.9 in view of the agreement entered between the non-applicant/defendant no.9 with one Clover Media and a subsequent assignment agreement between the applicant and the Clover Media.

53. To answer the above said question, it is imperative to test the validity of the said agreement as well as the validity of the claim made by the applicant herein.

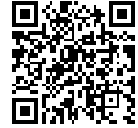
54. As reproduced earlier, the ICL Agreement was entered between the parties and Clauses 3 and 17.4 clearly grants right to the Clover Media to assign the said debt to the other parties.

55. In furtherance of the said agreement, the e-mail communication between the officials of the defendant no.9 and the Clover Media proves the *bona fides* of the ICL Agreement signed between both the parties.

56. Having examined the validity of the ICL Agreement and assignment of debt in favor of the Clover Media, the only question left for adjudication before this Court is whether the Assignment Agreement between the Clover Media and applicant herein meet the legal requirements or not.

57. In this regard, it is apposite to mention that the parties entered into the said Agreement on 2nd February, 2024 and the said document is a registered one.

58. Upon perusal, it is crystal clear that the Clover Media duly assigned the AHNL debt to the applicant herein and since it has already been established that the former had the right to do so, this Court does not find to take it otherwise and hold that the assignment of debt is unlawful.



59. In any case, as argued by the learned counsel for the applicant herein, the said agreement has never been challenged in any Court of law, therefore, it would not be appropriate for this Court to get into the legality of the same as it is not under challenge in the present case.

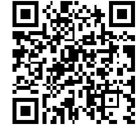
60. At last, this Court deems it appropriate to deal with another contention advanced by the learned senior counsel, whereby, it is stated that since the AHNL debt amount is twice the amount of debt taken by the defendant no.9 from the Clover Media, the applicant is only entitled to recover the amount to that extent.

61. This Court is of the view that the above said argument is misconceived as the same is against the rule of justice and would not serve any purpose as the ICL Agreement, empowering the Clover Media to take over the AHNL debt, does not provide for any cap on the amount to be transferred in case of any default.

62. In the absence of such a cap on the assignment, the argument taken by the learned senior counsel holds no value as the agreement was willfully signed by the officials of the defendant no.9 and it cannot retract from the terms of a legally binding agreement.

63. It is clear from the facts set out above that the defendant herein has acted upon the ICL Agreement by providing original documents to Clover Media. The defendant's Director namely Mr. Achal Jindal who has also filed reply to this application has also relied upon the terms of the ICL Agreement and referred to its existence in the e-mail correspondence between the parties.

64. Therefore, the objections, such as the absence of Board Resolution authorizing the institution of the ICL Agreement and allegations against



its former employee are clearly an afterthought since the defendant and its Director had consciously accepted the ICL Agreement by acting in its terms by providing original documents to Clover Media and relied upon the ICL Agreement in the undisputed e-mail correspondence.

65. The *mala fide* nature of the above said contentions is also evident from the fact that the defendant never challenged the ICL Agreement or actions taken thereunder, in any proceedings, before any forum till date.

66. Therefore, this Court is of the view that the applicant herein has established a strong case for its substitution in place of the defendant no.9 and this Court is inclined to allow the instant application.

67. In view thereof, the instant application is allowed and the applicant is substituted in place of the defendant no.9 in the captioned suit.

68. Let the amended memo of parties be filed within a period of one week.

69. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 23, 2024
RT/AV/RYP

Click here to check corrigendum, if any