(2010) 12 DEL CK 0117

In the Delhi High Court

Case No : FAO (OS) No''s. 405 and 461 of 2009 and CM No''s. 12908 and 14117/09 and 10475/10

Walchandnagar Industries Ltd. APPELLANT

Vs

Saraswati Industrial Syndicate Ltd.
 Overseas Infrastructure Alliance India Pvt. Ltd. Vs Uttam Sucrotech International Pvt. Ltd. RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 3, Order 1 Rule 9, Order 2 Rule 2
Constitution of India, 1950 — Article 3, 4
Delhi High Court Act, 1966 — Section 10, 5(2)

Citation : (2011) 3 AD 11 : (2011) 178 DLT 768 : (2011) 2 ILR Delhi 23

Hon'ble Judges : Vikramajit Sen, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Sunil Gupta and Jatin Zaveri, Gaurav Aggarwal and Tanmaya Aggarwal, in FAOOS No.405/09 and CM Nos.12908/09 and 10475/10 Ramji Srinivasan and Jatin Zaveri, Gaurav Aggarwal and Zeyaul Haque, in FAOOS No.406/09 and CM Nos.12911/09, 6093/10 Arun Bhardwaj, Manish Sharma, Amit Bhardwaj and Vishal Malhotra, in FAOOS Nos. 461 and 462/2009 and CM No. 14117 and 14122/09, for the Appellant; P.V. Kapur and Ekta Kapil, Gaurav Chauhan for Respondent No.1 in FAO(OS) No.405/09 and CM Nos.12908/09, 10475/10 and 462/09 CM No.14122/09 and Arun Bhardwaj and Manish Sharma, Amit Bhardwaj, Vishal Malhotra for Respondent No.2 in FAO(OS) No.405/09 and CM Nos.12908/09, 10475/10 and 406/09, CM Nos.12911/09, 6093/10 and 406/09 and CM Nos.12911/09, 6093/10 and A.S. Chandhiok Chetan Sharma and Pragyan Sharma Rupesh Gupta for Respondent No. 1 in FAO(OS) Nos. 406/09 and CM Nos.12911/09, 6093/10 and 461/2009 and CM No.14117/09 and Ramji Srinivasan and Jatin Zaveri, Gaurav Aggarwal, Tanmay Aggarwal for Respondent No.3 in FAO(OS) Nos. 461/2009 and CM No.14117/09 and 462/09 CM No.14122/09, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—The facts germane for a decision in these Appeals are that in respect of a Sugar Mill Project to be established in Ethiopia, funding has been made available by the Government of India through the aegis of EXIM Bank. The Project has been sub divided into seven sub-projects for which separate and independent tenders were floated. These are - (1) Steam Generation (2) Process House (3) Juice Extraction (4) Power Generation (5) Diesel Generation (6) Factory Workshop and (7) Plant Water System. It was further decided that for ease and facility of implementation of the Project, instead of dealing separately with all the successful Tenderers, the Tenderer who had been awarded the largest number of projects, would act as the lead party; a single Engineering, Procurement and Construction (EPC) contract would be entered into with this party. Saraswati Industrial Syndicate Ltd. was the Successful Tenderer in respect of Steam Generation; Uttam Sucrotech International Pvt. Ltd. in respect of Process House; and since in respect of Juice Extraction and Power Generation the successful Tenderer was OIA, it was agreed that Overseas Infrastructure Alliance India Pvt. Ltd. (OIA) would act as the single EPC Contractor.

2. The Appellants assert that a completed contract had already evolved in their favour, whereas OIA contends that while Saraswati Industrial Syndicate Ltd. and Uttam Sucrotech International Pvt. Ltd. were successful Tenderers, a contract between them was required to be executed and this had not transpired. It is not in controversy that OIA had demanded fifteen per cent commission/charges from the Appellants and all other successful Tenderers ostensibly to cover expenses that OIA would inevitably have to incur as the single EPC Contractor. The Appellants assert that Walchandnagar Industries Ltd. was illegally introduced into the subject Sugar Mill Project by OIA by engineering the removal of both Saraswati Industrial Syndicate Ltd. and Uttam Sucrotech International Pvt. Ltd. owing to their reluctance to make the payment of the said fifteen per cent commission/charges. The Ethiopian party, namely, TENDAHO Sugar Factory Project has not contested either the suit or this Appeal.

3. Saraswati Industrial Syndicate filed a Suit for perpetual and mandatory injunction, being CS(OS) No. 1368/2008, pleading, inter alia, in paragraph 16 that OIA "has failed and/or neglected to execute the formal contract document with the plaintiff and is threatening to introduce a third party in place of the plaintiff". Most significantly, in paragraph 7 of the original Plaint, it has been pleaded that on or about 7th December, 2007, TENDAHO reiterated in writing to OIA that "the winning bidders of other packages are to be retained as sub contractors without any alteration in the agreed technical and financial aspects as already finalized with the individual bidder". This averment has not been denied but in response to the said paragraph, OIA has pleaded as follows:

The correct position, however, is that the right and the power to fix a sub contract on terms and conditions to be negotiated between the answering Defendant and the sub contractors is a matter which is entirely within the domain of the answering Defendant''s function as the main EPC contractor. The Defendant No. 1 after signing of contract dated 10.01.2008 and addendum No. 1

dated 21.02.2008 of contract had tried to persuade the plaintiff by verbal and writing communication to sign the contract at the earliest so that the project should not be jeopardized. The answering Defendant may also at this stage point out that since the plaintiff was dillydallying the finalization of the terms of the sub contract to be executed, the said matter was therefore brought to the notice of the Defendant No. 2 vide letter dated 13th June 2008 as also by letter dated 16th June 2008 in pursuance of which clear cut instructions were issued to the answering Defendant to finalize the sub contract agreement with all the sub contractors by 27th June, 2008 with a view to avoid any further delay in the start of the work. A copy of the minutes is being filed by the answering Defendant in the list of documents and shall be referred to at an appropriate stage. Pursuant to the said instructions, the answering Defendant requested the plaintiff to finalize the contract by the 27th of June 2008. As submitted earlier the plaintiff failed to settle the terms of the contract and therefore in order to save the project from being jeopardized on account of price and other relevant factor entered into a Memorandum of Understanding dated 8th July, 2008 with M/s Walchandnagar Industries Limited (WIL) which has agreed to undertake the construction of the Steam Generation Plant for the Tendhao sugar factory project. Further, the answering Defendant No. 1 has signed a definite contract with Messrs WI, Mumbai for execution of Project as a sub-contractor to answering Defendant on 12.07.2008. The answering Defendant has thereafter proposed the name of Messrs WI, Mumbai as proposed sub-contractor to Defendant no2 vide letter dated 11th of June 2008. In light of these developments, it is futile for the plaintiff to allege that the sub contracts had already come into existence between the plaintiff and the answering Defendant or Defendant No. 2 for that matter.

4. The similar position obtains so far as Uttam Sucrotech International Pvt. Ltd is concerned which has filed Suit No. 1447/2008 averring, inter alia, that while it had been extending all cooperation to OIA, the latter "has been illegally trying to avoid the conclusion of any such contract and is delaying the process unnecessarily for its vested interests of ousting them from the contract completely and illegally replacing it with its own parties". In the Plaint, there are allegations kindred to those of Saraswati Industrial Syndicate Ltd., namely, that OIA "has threatened to introduce a third party in place of the plaintiff". Uttam Sucrotech International Pvt. Ltd has also asserted that a concluded contract has already emerged between itself and TENDAHO. OIA pleads in the Written Statement as follows:

The answering Defendant further submits that the plaintiff failed to meet the deadline and settle the terms of subject contract resulting in the answering Defendant entering into a memorandum of understanding with Walchandnagar Industries Ltd. on 8.7.2008 for the construction of the process house project. Defendant No. 2 vide their letter reference No. TSPFOI/12/201 dated 5.8.2008 accepted the substituted offer for process house package of TSPF in favour of OIA and Walchandnagar Industries Ltd. on the basis of the substituted technical offer submitted by answering Defendant dated 18.7.2008.

5. Both the plaintiffs assert that the contract with Walchandnagar Industries Ltd. was predated with the purpose of defeating the interim orders passed by the learned Single Judge. Contempt proceedings have been initiated by the plaintiff and are presently pending.

6. It is at this juncture that Saraswati Industrial Syndicate filed IA No. 13366/2008 in CS(OS) No. 1868/2008 under Order VI Rule 17 read with Order I Rule 10 read with Section 151 of the CPC (CPC for short) praying for amendment of the Plaint to be "taken on record''; and for Walchandnagar Industries Ltd. as well as EXIM Bank to be allowed to be impleaded as Defendant Nos. 3 and 4. The amendments have been allowed and the impleadment of only Walchandnagar Industries Ltd. has been permitted in terms of the impugned Order. OIA and Walchandnagar Industries Ltd. have filed separate Appeals.

7. Uttam Sucrotech International Pvt. Ltd. has, in familiar fashion, filed IA No. 1938/2009 in CS(OS) No. 1447/2008 under Order VI Rule 17 read with Order I Rule 10 read with Section 151 of the CPC. Reliefs similar to Saraswati Industrial Syndicate have been made which have been also allowed in the impugned Order, declining, however, to implead EXIM Bank.

8. It seems to us that because a composite application had been filed by both the plaintiffs praying for the amendment of the Plaint as well as for impleadment of parties, notice thereof came to be issued to the party proposed to be impleaded, namely, Walchandnagar Industries Ltd. In the normal course, it is a contradiction in terms to issue notice of an application seeking the impleadment of a party to the party proposed to be so impleaded. If the Court is convinced by the plaintiffs'' submission of the necessity and expediency of impleading the proposed parties, the proposed party should be impleaded and notice would thereafter be issued to it. There is no scope, nor is this the practice, for obvious reasons, at the very first instance and at the very initiation of the suit to show cause why it should be arrayed as a Defendant. Of course, it is always open to the Defendant as it would be available to a party impleaded in the course of litigation to file an application under Order I Rule 10(2) of the CPC for striking it out of the array of parties. We must immediately clarify that this relief is not available in the present cases since Walchandnagar Industries Limited has already been extensively heard on the question of whether it should be impleaded as a party to the respective suits.

9. The refusal by the learned Single Judge in the impugned Order to implead EXIM Bank was also challenged by Uttam Sucrotech International Pvt. Ltd. in the form of FAO(OS) No. 460/2009. However, on 18.11.2009 the Appeal was dismissed as withdrawn.

10. In the course of the hearing of the two composite applications for amendment of the plaint as well as for the impleadment of Walchandnagar Industries Ltd. and EXIM Bank, learned Counsel for OIA had uncontrovertibly

been conceded on 30.7.2009 that the amendments prayed for by Saraswati Industrial Syndicate in paragraph 15(1) and paragraphs 18A to 18K may be permitted to be incorporated in the amended Plaint. On that date, it was specifically noted that - "insofar as amendments to the prayer clause are concerned, counsel submit that he is seriously opposing the same. In this view of the matter, list on 3.8.2009 at 2:30 P.M. for further argument on the remaining reliefs prayed for in the application". However, the impugned Order categorically mentions that learned Counsel for OIA has no objection to the amendments being carried out. The learned Single Judge recorded that "as far as the prayer for amendment is concerned, it need not detain me for long and the reason is that after the application had suffered lengthy arguments, for and against, the learned Counsel for Defendant No. 1 conceded that the amendment sought could be allowed subject to liberty to it to raise such objections as may be available to it and to this, it may be noted, the learned Counsel for the plaintiff had no objection". In other words, the reservation viz.-a-viz., the amended Prayers was abandoned and given up.

11. The same sequence of events occurred in the Suit and Application filed by Uttam Sucrotech International Pvt. Ltd. The learned Single Judge has recorded in the Order dated 30.7.2009 that counsel for OIA "states that without prejudice to its rights and contentions, he has no objection if the proposed amended plaint except the reliefs claimed in the prayer clause is taken on record. Insofar as prayer clause is concerned, he states that he is opposing the amendments proposed therein". The learned Single Judge records in the impugned Order thus - "it is time now to come straight to the application for amendment and impleadment. Should it be allowed? As far as prayer for impleadment is concerned, it need not detain me for long and the reason is that after the application had suffered lengthy arguments, for and against, learned Counsel for Defendant No. 1 conceded that the amendments sought should be allowed subject to liberty to it to raise such objections as may be available to it and to this, it may be noted, the learned Counsel for the plaintiff has no objection. Keeping this in view and keeping also in view the nature of the amendments and so also the fact that the amendments have their seed in subsequent developments, the amendments sought are allowed". As already noted, it is palpably clear that the earlier objection to the Court allowing the Prayers to be augmented was not agitated any longer.

12. In view of the recorded concession, we are unable to appreciate how the present Appeals are maintainable since on the face of it they endeavour to reverse orders passed on concession. Learned Senior Counsel appearing for the Appellants/Defendants have strenuously contended that complete and total concession, as mentioned in the impugned Order, had not been expressed. We are firmly of the opinion that it is not open to the Appellants to take this plea. The proper course would have been to file a Review before the learned Single Judge articulating therein the factum of the Appellants/Defendants allegedly having steadfastly made only a partial concession and having opposed the

inclusion of the amended prayers on the date on which orders were reserved. We need not go further than Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder Singh and Others, in which their Lordships have held that an Appeal is not maintainable against a consent Decree having regard to the specific bar contained in Section 96(3) of the CPC and that the proper course to adopt was to approach the Court which passed the consent Decree with a view to establishing that there was no compromise. On a parity of reasoning, we are of the view that the Appellants should have filed Review Petitions before the learned Single Judge on this aspect and having failed to do so are foreclosed from contending that the impugned Order records the position incorrectly.

13. Since, however, lengthy arguments have already been heard on the merits of the amendments, we think it proper to return a complete and comprehensive answer to the amendment of Plaint controversy. The facts which stand incorporated in the respective plaints, concededly on the concessions of the Respondent/Defendant, speak voluminously and extensively of Walchandnagar Industries Ltd.

Pleadings in unamended Plaint (Saraswati Industrial Syndicate Ltd.)

15. The Defendant No. 1, thereafter, began to threaten the plaintiff that they would inform Defendant No. 2 that plaintiff was delaying execution of a formal contract. The plaintiff meanwhile drafted a contract that was acceptable to the plaintiff and in line with the agreement arrived at between all parties on 19th and 20th December, 2007 and the concluded contract terms and conditions between Defendant No. 2 and the plaintiff which was forwarded to the Defendant No. 1 on June 28, 2008.

18. In the agreement between Defendant No. 1 and Defendant No. 2 and/or the plaintiff, there exists a positive covenant coupled with an implied negative which the Defendant No. 1 is threatening to breach. This Hon''ble Court ought to grant injunction to perform the negative covenant. The implied negative covenant is contained in letter dated 7.12.2007 from Defendant No. 2 to Defendant No. 1 as under:

The winning bidders of other packages are to be retained as sub contractors without any alteration in the agreed technical and financial aspects as already finalized with the individual bidder.

Further in letter dated 7.12.2007 from Defendant No. 2 to plaintiff:

You, as winning Bidder of Steam Generation Plant Bid Tender No. TSFP-F/002/06/SG, will be retained as sub-contractor to the main EPC Contractor without any alteration in the agreed technical and commercial aspects including the time schedule, as already negotiated and finalized.

Further, in the joint meeting, inter alia, plaintiff, Defendant No. 1 and Defendant No. 2:

All winning bidders were informed that as per the directive from the Government of Ethiopia, the managements of TSFP and FSF intend to appoint one single EPC contractor and all other winner bidders shall work as sub contractor to the proposed single EPC contractor.

Contract agreement between EPC contractor and winner bidder shall be seamless and address all issues as per original tender documents including GCC, SCC and other financial conditions.

The aforesaid clauses clearly stipulates that the Defendant No. 1 is by way of an implied negative covenant not permitted to modify and/or attempt to modify any agreed technical, commercial including price aspects already finalized between the plaintiff and Defendant No. 2.

Pleadings in amended Plaint

15. The Defendant No. 1, thereafter, began to threaten the plaintiff that they would inform Defendant No. 2 that plaintiff was delaying execution of a formal contract. The plaintiff meanwhile drafted a contract that was acceptable to the plaintiff and in line with the agreement arrived at between all parties on 19th and 20th December, 2007 and the concluded contract terms and conditions between Defendant No. 2 and the plaintiff which was forwarded to the Defendant No. 1 on June 28, 2008.

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You, as winning Bidder of Steam Generation Plant Bid Tender No. TSFP-F/002/06/SG, will be retained as sub-contractor to the main EPC Contractor without any alteration in the agreed technical and commercial aspects including the time schedule, as already negotiated and finalized.

Further, in the joint meeting, inter alia, plaintiff, Defendant No. 1 and Defendant No. 2:

All winning bidders were informed that as per the directive from the Government of Ethiopia, the managements of TSFP and FSF intend to appoint one single EPC contractor and all other winner bidders shall work as sub contractor to the proposed single EPC contractor.

Contract agreement between EPC contractor and winner bidder shall be seamless and address all issues as per original tender documents including GCC, SCC and other financial conditions.

The aforesaid clauses clearly stipulates that the Defendant No. 1 is by way of an implied negative covenant not permitted to modify and/or attempt to modify any agreed technical, commercial including price aspects already finalized between the plaintiff and Defendant No. 2.

18(A). That this Hon''ble Court on 23.7.2008, passed an Order that, "having regard to the facts of the case and taking the consideration the documents placed on the record, till the next date of hearing, the Defendant No. 1 shall not take any measures to introduce a third party in respect of the tender floated by Defendant No. 2 for Steam Generating Plant for which the plaintiff has been accepted by the Defendant No. 2 as the successful bidder". The said order was duly served on the Defendant No. 1 on 24.7.2008 and has also been served on Defendant No. 2. The Defendant No. 1 has filed its written statement on 4.8.2008 wherein it has alleged in paragraph 1 of the Preliminary Objections that the Defendant No. 1 has already singed a definite contract with Defendant No. 3 for execution of the power project as a Sub-contractor for construction of the steam generation plant for the Tendaho Sugar Factory Project (purportedly just about 11 days before the passing of the ex parte injunction order). Therefore, in light of the said development, it has been alleged that the said suit filed by the plaintiff has become infructuous. A copy of the purported Sub-Contract Agreement between Defendant No. 1 and the said Defendant No. 3 has been filed by the Defendant No. 1

18(B). The said purported Sub-Contract Agreement is clearly antedated and has been fabricated with a view to frustrate the injunction order dated 23.7.2008 and/or to overreach the Order dated 23.7.2008 passed by this Hon''ble Court.

18(C). The first telltale sign is in the Written Statement itself where in para 7, it has been alleged that a Memorandum of Understanding (MOU) was signed between Defendant No. 1 and Defendant No. 3 on 8th July, 2008 and thereafter, a definite purported contract was signed on 12th July, 2008, i.e. within 4 days of the MOU despite the MOU being valid for a period of 30 days - seemingly, a tearing hurry indeed. However, the Defendant No. 1 proposed the name of Defendant No. 3 to Defendant No. 2 long after 12th July 2008.

18(D). It is also relevant to note that in the alleged sub-contract Agreement dated 12th July, 2008 filed by the Defendant No. 1, Defendants Nos. 1 and 3 have purported to create a definition of "contract documents" which includes documents that have not yet been finalized but are only "proposed''. One of the documents forming part of Contract document is "Minutes of Package Negotiations meeting (proposed) to be held between Employer and Sub-Contractor (WIL), for the Package Facilities on technical aspects". Firstly, there cannot be a meeting or minutes of a meeting which are qualified as "proposed".

Secondly, there cannot be minutes of a meeting which is yet "to be held". It is obvious that the documents have been prepared in a hurry only to be produced before this Hon''ble Court with a view to mislead this Hon''ble Court and to frustrate and overreach the orders of this Hon''ble Court.

18(E). That even as late as on 5th August, 2008, in the meeting between the Defendant No. 1 and Defendant No. 2, there is no mention that a definite contract had been signed with Defendant No. 3. In fact Defendant No. 1 informed Defendant No. 2 that only negotiations were being conducted with Defendant No. 3.

18(F). Further and in any event, the Defendant No. 2 has not been shown to have ever authorized appointment of the said Defendant No. 3 as a Sub-Contractor in substitution of the plaintiff. This is apparent from the letter dated 30.6.2008 written by Defendant No. 2 to its Board of Management on 30.6.2008 alongwith the legal opinion and the opinion of the consultant which clearly reveal that the minutes dated 19.6.2008 and 20.6.2008 and the letter dated 12.6.2008 sought to be relied upon by the Defendant No. 1 did not constitute any approval of substituting the plaintiff as alleged by the Defendant No. 1. The Defendant No. 1 is clearly suppressing all material facts as the aforesaid documents are within the knowledge of Defendant No. 1 who has chosen to conceal the same from this Hon''ble Court. Neither the negotiations nor the minutes and/or any alleged MOU can be given effect to in teeth of the order dated 23.7.2008 passed by this Hon''ble Court and the Defendant No. 1 ought not to be permitted to defeat the bonafide rights of the plaintiff and/or overreach this Hon''ble Court.

18(G) It is relevant to note that in a similar contract, which relates to another Govt. of Ethiopia company known as Wonji Shoa Sugar Factory, the plaintiff had a bid for a Juice Extraction Plant. The EPC Contractor in that case is one M/s. Uttam Sucrotech International Pvt. Ltd. The said M/s. Uttam Sucrotech International Pvt. Ltd. has signed a Sub-Contract with the plaintiff without making any demand for 15% of contract price for discharge of its obligations as a lead EPC/Contractor. It has now come to the knowledge of the plaintiff that Defendant No. 1 was not even entitled to become the EPC contractor and the Defendant No. 1 and 2 have manipulated records to make Defendant No. 1 become the EPC contractor who is demanding unreasonable and absolutely uncalled for 15% of the contract price from plaintiff and other similarly placed sub-contractors. That Defendant Nos. 1, 2 and the said Walchandnagar Industries Ltd. are acting in concert and are attempting to defeat the order of this Hon''ble Court and perpetrate a fraud which they cannot be permitted to do.

18(H) In fact, Defendant No. 1 has itself subsequently filed a letter dated 5th August, 2008 purportedly issued by Defendant No. 2 permitting the Defendant No. 2 to substitute the plaintiff (the authenticity of the said letter is denied). Clearly the said letter dated 5th August, 2008 shows that there could be no contract between Defendant No. 1 and the said Defendant No. 3 prior thereto and further that Defendant No. 1 and 2 were acting in concert and in teeth of the order dated 23rd July, 2008 passed by this Hon''ble Court which is in force even till date.

18(I). The attempt of Defendant No. 1 of clandestinely introducing the purported Sub-Contractor who did not even participate in the tender, is not only contrary to the entire tender process but is also malafide and an attempt to overreach this Hon''ble Court. Further, till date no termination of plaintiff''s sub-contract has been communicated.

18(J). The aforesaid facts clearly reveal that the purported sub-contract Agreement dated 12rth July ,2008 which was allegedly entered into within four days of signing the Memorandum of understanding which was valid for 30 days is clearly ante dates with a view to defeat the injunction order passed by this Hon''ble Court. The said purported sub-contract Agreement cannot be permitted to be implemented and be proceeded with and being in teeth of the order dated 23rd July, 2008 is void ab initio. Even the purported permission dated 5th August, 2008 cannot be acted upon and is void ab initio as Defendant No. 2 was also informed of the order dated 23rd July, 2008.

18(K). As stated in the plaint, the Defendant No. 2 is proceeding with modernization essentially financed by credit line from the Exim Bank of India. The said Exim Bank of India being State is bound to act fairly and not to act in violation of the order of Hon''ble Court. In any event, Exim Bank of India being a banking institution has a duty of care and cannot allow fraud to be perpetrated by Defendant No. 1 and/or 2 and cannot approve substitution of the plaintiff by the said Defendant No. 3 contrary to the order of this Hon''ble Court.

18(L). That Defendant Nos. 1, 2 and 3 are acting in concert and are attempting to defeat the order of this Hon''ble Court and perpetrate a fraud which they cannot be permitted to do.

Unamended Pleadings (Uttam Sucrotech International Pvt. Ltd.)

7. That vide the letter dated 7.12.2007, the Defendant No. 2 also informed the plaintiff in writing that as per the requirement of Exim Bank''s disbursement schedule it was decided to proceed through a single EPC Contract method, that is, any bidder who won two or more bid package amongst the four major bids viz. Juice Extraction Plant, Steam Generation Plant, Power Generation Plant and Process House Plant will become eligible to act as "Single EPC Contractor''. Since, the Defendant No. 1 won two bids, it was appointed to act as "Single EPC Contractor''. It was further conveyed to the plaintiff that the plaintiff who was the winning bidder of the Process House bid, would be retained as sub-contractor to the EPC Contractor without any alternation in the agreed technical and commercial aspects including the time schedule already finalized. The relevant excerpt of the said letter has been extracted hereunder for ready reference:

You as winning Bidder of Process House Bid Tender No. TSFP-F/007/07/PG, will be retained as sub-contractor to the main EPC Contractor without any alternation in the agreed technical and commercial aspects including the time schedule, as per our bid document and subsequent clarifications given by our Consultant JPMA.

10. That therefore the Defendant No. 1 clearly agreed to the unanimous decision taken in the aforementioned meetings dated 19th and 20th of December to the effect that the contract shall be seamless and that the rights of the winning bidders and their bid award prices shall be adequately protected in the sub-contractor agreement. In view thereof, the Defendant No. 1, was under a legal obligation to finalize the modus of implementing all the various packages (sub-contracts) of the project along with his own award of work/contract. The Defendant No. 1 was further required to do so at the earliest and on the same terms and conditions as agreed to between the parties in the aforementioned meetings.

11. That subsequently it was also revealed that on 20th February, 2008 a contract was executed between the Defendant No. 2, Ehiopia on behalf of Government of Federal Democratic Republic of Ehiopia and the Defendant No. 1. In the said agreement also it has been agreed that there shall be a contract between the contractor and the sub contractor and that the agreement shall be entered into without any alternation in the agreed technical and commercial aspects of the original tender documents including the price of the bids. It is pertinent to mention herein that the plaintiff has been mentioned as a sub-contractor in Appendix 5 of the contract dated 20th February, 2008.

12. That therefore in accordance with the procedure agreed and settled on 19th December and 20th December, 2007 and also in view of the directions of the Defendant No. 2, a formal seamless contract was required to be entered into between the plaintiff and the Defendant No. 1 at the earliest, on the same terms and conditions as those of the original tender documents.

15. That the plaintiff, vide their letter dated 26.3.2008 replied to the aforesaid letter dated 6.3.2008 issued by the Defendant No. 1 specifically stating that the demand of the Defendant No. 1 directing the plaintiff to discount its offer price at least by 15%, is absolutely illegal and contrary to the terms agreed between the parties including the Defendant No. 1,2 and the plaintiff in the meetings dated 19th December and 20th December, 2007.

Amended Pleadings (Uttam Sucrotech International Pvt. Ltd.)

7(ii) Para 2 of the Plaint would stand amended as follows:

That the Defendant No. 1 is a company incorporated under the Companies Act, 1956 having its registered office at 1205, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi-110001. The Defendant No. 2 is a company incorporated under the laws of Ethiopia having its principal office at Addis Ababa and is owned and/or controlled by the Government of Federal Democratic Republic of Ethiopia. The Defendant No. 3 is a company incorporated under the Companies Act, and having its registered office at 3 Walchand Terracesopp Air

Conditioned Market, Tardeo, Mumbai, Maharashtra-40034 and branch office at 201, Milap Niketan (2nd Floor) 8-A, Bahadur Shah Zafar Marg, New Delhi: 110002. That the Defendant No. 4 is the Exim Bank having its registered office at Centre One Building, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai.

(ii) After para 7 the following para needs to be added:

Para 7A: As is evident from the internal letter dated 3.12.2007 issued by TSFP to TSFP Management Board Addis Ababa, Defendant No. 1 had been trying to defeat the rights of the plaintiff at very stage so as to oust the plaintiff from the subject project completely. The said letter clearly reveals that apart from the Process House Package which was allotted to the plaintiff, vide Defendant No. 2''s letter dated 7.12.2007, the plaintiff was also the lowest bidder in the Power Generation Plant which also ought to have been awarded to the plaintiff. So plaintiff was awarded both the Process House and Power Generation plant bid and was eligible to be appointed as a EPC Contractor. However, strangely, just about 4 days later i.e. on 7.12.2007, facts and records were illegally pruned to a large extent and the plaintiff was declared winning bidder only in the Process House Package and not in the Power Generation Package.

(iv) Para 10 of the plaint would be amended as under:

That therefore the Defendant No. 1 clearly agreed to the unanimous decision taken in the aforementioned meetings dated 19th and 20th of December to the effect that the contract shall be seamless and that the rights of the winning bidders and their bid award prices shall be adequately protected in the sub-contractor agreement. In view thereof, the Defendant No. 1, was under a legal obligation to finalize the modus of implementing all the various packages (sub-contracts) of the project alongwith his own award of work/contract. The Defendant No. 1 was further required to do so at the earliest and on the same terms and conditions as agreed to between the parties to the said meetings inter alia the plaintiff. Defendant No. 1 and the Defendant No. 2 in the aforementioned meetings. Further an agreement dated 10.1.2008 was entered into between the Defendant No. 1 and Defendant No. 2, wherein the name of the plaintiff was clearly mentioned as a sub contractor albeit only for Process House Package. The said Contract contains Technical Bid Commitments and Tender Bid Prices, which have been clearly conducted between the plaintiff and the Defendant No. 2, and which form an integral part of the said Contract between the Defendant No. 1 and Defendant No. 2. In fact, in the Process House Packages technical and commercial annexures, it is clearly stated that these are as submitted by USIPL (short for Uttam Sucrotech International Private Limited) and form an integral part of the contract. In the said contract it had been specifically agreed that there shall be a contract between the contractor and the sub contractor and that the agreement shall be entered into without any alteration in the agreed technical and commercial aspects of the original tender documents including the price of the bids. It has been alleged that the terms of the said Agreement dated

10.1.2008 were changed without the consent of the plaintiff vide an Addendum No. 1 dated 21.2.2008. Therefore, without prejudice, the mother contract of 10.1.08 could not have been altered vide any addendum as alleged, without involving the plaintiff and obtaining its consent, and any such addendum subsequently altering the terms and conditions of the said agreement is illegal, null and void.

(v) Para 11 of the Plaint would be amended as under:

That subsequently it was also revealed that on 20th February, 2008 a contract was executed between the Defendant No. 2, Ethiopia on behalf of Government of Federal Democratic Republic of Ethiopia and the Defendant No. 1. In the said agreement also it has been agreed that there shall be a contract between the contractor and the sub contractor and that the agreement shall be entered into without any alteration in the agreed technical and commercial aspects of the original tender documents including the price of the bids.

(vi) Para 12

That therefore in accordance with the procedure agreed and settled on 19th December and 20th December, 2007 and also in view of the directions of the Defendant No. 2, a formal seamless contract was required to be entered into between the plaintiff and the Defendant No. 1 at the earliest, on the same terms and conditions as those of the original tender documents. It is further pertinent to mention herein that a binding contract had already come into existence between the Defendant No. 2 and the plaintiff vide the letter dated 7.12.2007 which was preceded by detailed technical and commercial meetings between Defendant No. 2 and plaintiff and also the contract dated 10.1.2008 on the same terms and conditions as per the original bid documents on the basis of which the plaintiff had prepared and put in its bid. Therefore, no alterations whatsoever could have been made in the same.

(v) para 15

That the plaintiff, vide their letter dated 26.3.2008 replied to the aforesaid letter dated 6.3.208 issued by the Defendant No. 1 specifically stating that the demand of the Defendant No. 1 directing the plaintiff to discount its offer price at least by 15%, is absolutely illegal and contrary to the terms agreed between the parties including the Defendant No. 1,2 and the plaintiff in the meetings dated 19th December and 20th December, 2007 and also vide the letter dated 7.12.2007, which created a formal concluded and binding contract between the plaintiff and the Defendant No. 2 in terms of the instruction to Bidders issued along with the tender documents.

(ii) After para 16 Para 16A

The Defendant No. 2 is also acting malafide and is acting in concert with other Defendants to perpetrate a fraud on the plaintiff and defeat and disobey the orders of this Hon''ble Court.

(iii) Para 17

That even, the draft of agreement received from the Defendant No. 1 by the plaintiff on 16.4.2008, failed to consider the submissions made by the plaintiff. The said draft was contrary to the agreement arrived at in the Joint Session Meeting held on 19th and 20th December, 2007, and the same was pointed out to the Defendant No. 1 by the plaintiff. The Defendant No. 1, most significantly, attempted to renegotiate the contract price to be able to receive a part thereof for discharging its obligation of a lead contractor. Not only the renegotiation of price was contrary to the mandate of Defendant No. 2 and the agreement between the plaintiff and the Sugar Factory Project as well as the minutes of 19th and 20th December, 2007, and also the letter dated 7.12.2007 but also the Defendant No. 1 is stopped from claiming any moneys from the plaintiff to discharge his own obligations to the Defendant No. 2 as a lead contractor after having accepted the said contract/duty without recourse to additional consideration from the plaintiff expressly and/or by conduct.

17. That even, the draft of agreement received from the Defendant No. 1 by the plaintiff on 16.4.2008, failed to consider the submissions made by the plaintiff. The said draft was contrary to the agreement arrived at in the Joint Session Meeting held on 19th and 20th December, 2007, and the same was pointed out to the Defendant No. 1 by the plaintiff. The Defendant No. 1, most significantly, attempted to renegotiate the contract price to be able to receive a part thereof for discharging its obligation of a lead contractor. Not only the renegotiation of price was contrary to the mandate of Defendant No. 2 and the agreement between the plaintiff and the Sugar Factory Project as well as the minutes of 19th and 20th December, 2007, but also the Defendant No. 1 is stopped from claiming any moneys from the plaintiff to discharge his own obligations to the Defendant No. 2 as a lead contractor after having accepted the said contract/ duty without recourse to additional consideration from the plaintiff expressly and/ or by conduct.

The plaintiff submits that there is already a concluded contract between the Defendant No. 2 and the plaintiff and the Defendant No. 1 cannot renegotiate the terms thereof. In any event, the Defendant No. 1''s consideration for managing the entire project as a lead contractor must necessarily be included in his consideration of the contract with Defendant No. 2 and Defendant No. 1 cannot insist on consideration from the plaintiff as execution of a contract between the plaintiff and the Defendant No. 1 is a mere formality for due implementation of a project and/or a condition imposed by the Defendant No. 2 which has been accepted by the Defendant No. 1 without any protest or demur. Further and/or in any event, the consideration received by Defendant No. 1 from Defendant No. 2 includes the discharge of obligation by Defendant No. 1 as a lead contractor. Without prejudice, it is further submitted that the same is a matter between the Defendant No. 1 and the Defendant No. 2 and the plaintiff is neither involved nor concerned with it, however, the same cannot be allowed to prejudicially affect the plaintiff. The Defendant No. 1 is estopped from claiming to the contrary. The Defendant No. 1 is attempting to jeopardize the agreement between the plaintiff and the said Defendant No. 2 and cause irreparable loss including loss of reputation of the plaintiff. The Defendant No. 1 is attempting to interfere in the implementation and/or performance of the contract between the plaintiff and the Defendant No. 2 tortuously by attempting to deliberately induce a third party instead, which the Defendant No. 1 is not entitled to do. The Defendant No. 1 is bound and liable to give effect to the concluded contract between the plaintiff and Defendant No. 2 and sign the formal contract between the plaintiff and Defendant No. 1 in regard thereto. The plaintiff has spent huge amount of monies and manpower time in preparation of discharge of its obligations including more than 25 man-visits by Senior Officers to Ethiopia at exorbitant cost. The Defendant No. 1 cannot jeopardize the interest of the plaintiff. It is further submitted that if the Defendant No. 1 is allowed to proceed in its malafide intentions it would not only be illegal, it would also render the plaintiff without any remedy whatsoever for the colossal losses that would be caused to it.

20A. In the agreement between Defendant No. 1 and Defendant No. 2 and/or the plaintiff, there exists a positive covenant coupled with an implied negative which the Defendant No. 1 is threatening to breach. This Hon''ble Court ought to grant injunction to perform the negative covenant. The implied negative covenant is contained in letter dated 7.12.2007 from Defendant No. 2 to Defendant No. 1 as under:

The winning bidders of other packages are to be retained as sub contractors without any alteration in the agreed technical and financial aspects as already finalized with the individual bidder.

Further in letter dated 7.12.2007 from Defendant No. 2 to plaintiff:

You, as winning Bidder of Steam Generation Plant Bid Tender No. TSFP-F/002/06/ SG, will be retained as sub-contractor to the main EPC Contractor without any alteration in the agreed technical and commercial aspects including the time schedule, as already negotiated and finalized.

Further it is evident from the joint meeting, inter alia, plaintiff, Defendant No. 1 and Defendant No. 2:

All winning bidders were informed that as per the directive from the Government of Ethiopia, the managements of TSFP and FSF intend to appoint one single EPC contractor and all other winner bidders shall work as sub contractor to the proposed single EPC contractor.

Contract agreement between EPC contractor and winner bidder shall be seamless and address all issues as per original tender documents including GCC, SCC and other financial conditions.

The aforesaid clauses clearly stipulates that the Defendant No. 1 is by way of an implied negative covenant not permitted to modify and/or attempt to modify any agreed technical, commercial including price aspects already finalized between the plaintiff and Defendant No. 2.

20B. That the purported MOU dated 8th July 2008 and the sub-contract Agreement of 12 July 2008 between Defendant No. 1 and Walchandnagar Industries are clearly antedated and have been fabricated with a view to frustrate and/or to overreach the injunction Order dated 30.7.2008 passed by this Hon''ble Court.

20C. That in the Written Statement filed by the Defendant No. 1 it has been alleged that a Memorandum of Understanding (MOU) was signed between Defendant No. 1 and Walchandnagar Industries Ltd. on 8th July, 2008 and thereafter, a definite purported contract was signed on 12th July, 2008, i.e. within 4 days of the MOU despite the MOU being valid for a period of 30 days, and not withstanding that the Defendant No. 1 proposed the name of Defendant No. 3 to Defendant No. 2 long after 12th July 2008.

20D. The alleged sub-Contract Agreement dated 12th July, 2008 filed by Defendant No. 1, Defendants Nos. 1 and 3 have purported to create a definition of "contract documents" which includes documents that have yet not been finalized but are only "proposed''. One of the documents forming part of Contract document is "Minutes of Package Negotiations meeting (proposed) to be held between Employer and Sub-contractor (WIL), for the Package Facilities on technical aspects". Firstly, there cannot be a meeting or minutes of a meeting which are qualified as "proposed". Secondly, there cannot be minutes of a meeting which is yet "to be held". It is obvious that the documents have been prepared in a hurry only to be produced before this Hon''ble Court with a view to mislead this Hon''ble Court and to frustrate and overreach the orders of this Hon''ble Court.

20(E). In fact, Defendant No. 1 has itself subsequently filed a letter dated 5th August, 2008 purportedly issued by Defendant No. 2 permitting the Defendant No. 2 to substitute the plaintiff(though the authenticity of the said letter is denied).

The said letter clearly reveals that even as late as on 5th August, 2008, in the meeting between the Defendant No. 1 and Defendant No. 2, there is no mention that a definite contract had been signed with Walchandnagar Industries Ltd. In fact Defendant No. 1 informed Defendant No. 2 that only negotiations were being conducted with Walchandnagar Industries Ltd.

20(F). That the contents and tenor of the letter dated 5.8.2008 issued by the Defendant No. 2 to the Defendant No. 1 clearly substantiates the fact that the alleged MOU dated 8.7.2008 and also the alleged sub contract agreement dated 12.7.2008 have been fabricated and antedated with the malafide intention. The letter dated 5.8.2008 specifically states that it was only in a joint meeting dated 10.7.2008 held under the Chairmanship of the Minister of Trade, that it was decided to consider substitute Sub-contractor proposed by OIA. The letter clearly states thus:

We refer to the joint meeting dated July 10, 2008 held under the Chairmanship of His Excellency the Minister of Trade and Industry, where by it was decided to consider substitute Sub-Contractors/Consortium Partners proposed by OIA and conduct technical evaluation of substitute offers for the subject packages.

However, as stated by the Defendant No. 1themselves in their written statement, they had entered into an MOU on 8.7.2008 (which is even two days prior to the proposed decision to substitute which was only taken on 10.7.2008). It is submitted that the decision to consider substitute Sub-Contractors/Consortium Partners was taken only on 10.7.2008 and thus there could have been no MOU on 8.7.2008 between the Defendant No. 1 and WIL inasmuch as the Defendant No. 1 had no authority to enter into any agreement with WIL prior to the alleged approval of Defendant No. 2 for changing the sub-contractor. Therefore, this clearly reveals that the alleged MOU was illegal and void ab initio.

20G. That, the letter dated 5.8.2008 further states as under:

In line with the above, TSFP has given original bid documents and invited OIA to submit substitute technical offers for the subject packages on July 11, 2008. Substitute offers were opened in the presence of Tender committee of TSFP, Consultant''s and Bidder''s representatives on July 18, 2008.

Strangely, Defendant No. 2 gave the original bid documents and invited/directed the Defendant No. 1 to submit substitute technical officers for the packages on 11.07.2008 i.e. just one day after the Defendant No. 2 decided to consider substitute sub-contractors.

20(H) The letter further states thus:

TSFP is pleased to inform you that our top management has hereby accepted your substitute technical offer dated 18th July 2008 for above packages with Walchandnagar Industries Ltd. (WIL) as Sub-Contractor abiding to technical specifications given in or bid documents and minutes of technical negotiation meeting held on August 4 and 5 2008, for turnkey supply, erection and commissioning with manpower training for both phase I and II of the project.

As stated above the sub-contractor agreement was allegedly executed on 12.7.2008. The technical offer allegedly accepted only on 5.8.2008. Glaring infirmities and illegalities in the alleged agreement dated 12.7.2008 and further highlighted by the fact that the offers of WIL bidding as OIA''s sub-contractor was opened and accepted by the Defendant No. 2 only on 5.8.2008, so how could a contract between Defendant No. 1 and WIL (Defendant No. 3) as contractor and sub contractor can claimed to have been entered into on 12.7.2008 which is completely arbitrary and devoid of any merits. This clearly demonstrates that the Defendant No. 1 has filed a false affidavit and has committed an act of perjury. This further reveals the glaring infirmities and illegalities in the alleged sub contractor agreement dated 12.7.2008.

20I. Furthermore, the contract dated 12.7.2008 is not only antedated, it is void inasmuch as it fraught with false and misleading contents, which is clearly evident from Clause 4 of the said agreement, which provides as under:

Article 4 Technical Conditions The technical aspects of the project as already agreed between the Employer and the Sub-contractor shall not be altered and shall be adhered to by the Sub-contractor.

The said clause portrays as if the technical aspects had already been agreed upon prior to 12.7.2008, whereas allegedly the technical aspects of the project was agreed only allegedly vide the Letter dated 5.8.2008. This fact clearly demonstrates that the said sub-contract was antedated inasmuch as on 12.7.2008, the technical aspects of the project between the Employer and the sub-contractor qua the project in question was never accepted.

20J. That even as late as on 4th or the 5th August, 2008, in the meeting between the Defendant No. 1 and Defendant No. 2, there is no mention that a definite agreement had been signed with Walchandnagar Industries Ltd. In fact the letter dated 5.8.2008 clearly states that the technical negotiation meetings were held on August 4 and 5, 2008 with OIA-WIL experts. It is further revealed from the minutes of the tender committee meeting dated 5.8.2008, that on 5.8.2008, the evaluation report submitted by the consultants was forwarded to the General Manager for approval of substitute offers of Defendant No. 1 - Defendant No. 3. Therefore, there is no way in which a definite contract could have been entered into with WIL. And even if assuming but not admitting that a contract was entered into between OIA and WIL such a contract prior to 5.8.2008, would be illegal, null and void in the eyes of law.

20K. The minutes of the tender committee meeting dated 5.8.2008 further record as follows:

(e) Detailed technical and commercial negotiations were held thoroughly between OIA-WIL, TSFP technical committee members and consultants team regarding the deviations specified in the tender documents by OIA.

Therefore, this clearly reveals that the Defendant No. 1 has been deliberately violating the stay order dated 30.7.2008 passed by this Hon''ble Court and in complete violation of the same has been taking active measures to substitute Defendant No. 3 instead of the plaintiff. It is further pertinent to mention herein that the Defendants actively participated in the technical negotiations meeting held on 4.8.08 and the minutes of the said meeting clearly bears the signatures of the representatives of the Defendant No. 1 and the stamp of the Defendant No. 1.

20L. That assuming but not conceding the alleged sub-contract agreement dated 12.07.2008, as per its own terms and conditions could not become effective without approval from the employer, which was allegedly granted only on 5.8.2008. The said approval on the face of it is Nullis juris and in the teeth of the injunction operating.

20M. That Article 3 of the alleged agreement dated 12.7.2008 clearly demonstrates that the same has been ante-dated. In fact, the said agreement has not become effective even today and hence has no legal validity. Article 3 has been extracted hereunder to illustrate the point further:

Article 3 Effective Date

The subcontract Agreement shall become effective when all of the following conditions are fulfilled to the satisfaction of the EPC Contractor:

(a) This Contract Agreement has been duly and validly executed by both parties and a duly authorized counter copy is exchanged between the parties hereto.

(b) The subcontractor has submitted to the Employer (through the EPC Contractor) the Performance Security and the Advance Payment Guarantee as specified in Appendix 9-10 attached herein for the value defined in SCC and GCC;

(c) The EPC contractor has paid 10% of the Contract value to the Sub contractor as the advance payment d) Technical and commercial approval of WIL by the Employer.

It is submitted that Sub-clause (b), (c) and (d) of the said Article 3 is yet to be fulfilled till date inasmuch as inter alia the performance security and the advance payment as stipulated under the Agreement has not been made and neither have the technical and commercial approvals as required been granted. It is submitted that the alleged technical approval as required under the clause was granted if at all, only 5.8.2008 and not before and the same was in blatant disregard and violation of the order dated 30.7.2008 passed by this Hon''ble Court. No commercial approval of the appropriate value was granted. No payment has been made by the Defendant No. 2 to WIL.

20N. Furthermore, despite being specifically restrained by this Hon''ble Court, the Defendant No. 1, in furtherance of its malafide intention of appointing M/s. Walchandnagar Industries Ltd., deliberately violated the said Order and attended the technical negotiation meetings on 4th and 5th August, 2008. The Minutes of the meeting dated 4.8.2008 bears the signatures of representatives of the Defendant No. 1 and the Delhi office stamp of the Defendant No. 1. Therefore, the alleged technical approval dated 5.8.2008 being in clear disregard to the Order passed by this Hon''ble Court is illegal and bad in law, which consequently also implies that another essential criteria stipulated under Article 3(d) of the agreement dated 12.7.2008 also has not been fulfilled.

20O. That further, assuming but not conceding that the alleged contract dated 12.7.2008 had been entered into, and the approval was granted on 5.8.2008, yet the said contract is invalid and null and void in the eyes of law. It is submitted that the alleged approval dated 5.8.2008 clearly states that the prices for the substitute packages shall be as per the main contract dated 10th January 2008 executed between Defendant No. 2 and Defendant No. 1, which is admittedly US$ 65 million, however, under the said agreement dated 12.7.2008 it has been specifically provided under Clause 2.1 as only 2.1 million. Therefore, there are huge discrepancies and contradictions between the terms of the approval and the contract dated 12.7.2008 and it is not known as to where would these monies which are actually public Indian funds be used for is not known.

20P. That clearly the said letter dated 5th August, issued by Defendant No. 2 permitting the Defendant No. 2 to substitute the plaintiff shows that there could be no contract between Defendant No. 1 and the said Walchandnagar Industries Ltd. prior thereto and further that Defendant No. 1 and 2 were acting in concert and were completely aware of the order dated 30th July, 2008 passed by this Hon''ble Court which is in force even till date.

20Q. Further, and in any event, the Defendant No. 2 has not been shown to have ever authorized till end June/July 2008, appointment of the said Walchandnagar Industries Ltd. as a Sub-Contractor in substitution of the plaintiff. This is also apparent from the letter dated 30.6.2008 written by Defendant No. 2 to its Board of Management on 30.6.2008 which clearly reveal that the minutes dated 19.6.2008 and 20.6.2008 and the letter dated 16.6.2008 sought to be relied upon by the Defendant No. 1 did not constitute any approval of substituting the plaintiff as alleged by the Defendant No. 1.

The Defendant No. 1 is clearly suppressing all material facts as the aforesaid documents are within the knowledge of Defendant No. 1 who has chosen to conceal the same from this Hon''ble Court. Assuming without conceding, neither the negotiations nor the minutes and/or any alleged MOU could have been entered into or be given effect to in view of clear restraint imposed by the order dated 30.7.2008 passed by this Hon''ble Court and the Defendant No. 1 ought not to be permitted to defeat the bonafide rights of the plaintiff and/or overreach this Hon''ble Court.

20R. The Petitioner recently discovered that a consortium Agreement dated 16.7.2008 was entered into between the Defendant No. 1 and Defendant No. 3, wherein it was agreed that the parties would enter into a definitive transaction agreement subsequently. The relevant clause of the said Consortium Agreement has been extracted hereunder:

(3) The parties shall enter into a "definitive transaction agreement" on being qualified by the Employer. The "definitive transaction agreement" shall include all terms and conditions to implement the packages including the payment mechanisms.

Therefore, a bare perusal of the said Consortium agreement clearly reveals that prior to 16.7.2008 no agreement had come into existence and in fact a subsequent agreement had to be entered into, which never happened. In fact, the agreement dated 16.7.2008 has actually been notarized on 28.7.2008, which is the date on which it becomes effective. The consortium agreement further reveals that till 28.7.2008 no price had been agreed to between the parties, whereas in the alleged contract dated 12.7.2008, the price has been specified under Clause 2.1 and 2.2 therein.

20S. That in furtherance of their illegal designs and malafide intentions Defendants No. 1 and 2 on 15.9.2008 made amendment in the contract agreement dated 10.1.2008 allegedly entered into inter-se in an attempt to oust the plaintiff from the entire project. The name of the plaintiff has been allegedly substituted by joint names of Defendant No. 1 and Defendant No. 3. In the garb of Defendant No. 3, it is Defendant No. 1 who has attempted to substitute the plaintiff.

20T. It is relevant to note that in a similar contract, which relates to another Govt. of Ethiopia company known as Wonji Shoa Sugar Factory, where the plaintiff has been appointed as the EPC Contractor, it has entered into contracts with the sub-contractors without making any demand for 15% of contract price for discharge of its obligations as a lead EPC/Contractor.

It has subsequently now come to the knowledge of the plaintiff that Defendant No. 1 was not even entitled to become the EPC contractor and the Defendant No. 1 and 2 have manipulated records to make Defendant No. 1 become the EPC contractor who is demanding unreasonable and absolutely uncalled for 15% of the contract price from plaintiff and other similarly placed sub-contractors. It is further submitted that Defendant Nos. 1, 2 and the said Walchandnagar Industries Ltd. are acting in concert and are attempting to defeat the order of this Hon''ble Court and perpetrate a fraud which they cannot be permitted to do.

20U. The attempt of Defendant No. 1 of clandestinely introducing the purported Sub-Contractor who did not even participate in the tender, is not only contrary to the entire tender process but is also malafide and an attempt to overreach the orders passed by this Hon''ble Court. Further, till date no termination of plaintiff''s sub-contract has even been communicated.

20V. The aforesaid facts clearly reveal that the purported sub-contract Agreement dated 12th July, 2008 which was allegedly entered into within four days of signing the Memorandum of Understanding which was valid for 30 days is clearly ante dated with a view to defeat the injunction order passed by this Hon''ble Court. The said purported sub-contract Agreement cannot be permitted to be implemented and be proceeded with and being in complete violation of the order dated 30th July, 2008 is void ab initio. Even the purported permission dated 5th August, 2008 cannot be acted upon and is void ab initio as Defendant No. 2 was also informed of the order dated 30th July, 2008.

20W. That Defendant Nos. 1, 2 and 3 are acting in concert and are attempting to overreach the issues pending before this Hon''ble Court and perpetrate a fraud which they cannot be permitted to do.

14. The original Plaint may not have contained their name yet the cause of

action, as pleaded therein, categorically expresses concerns of the contesting Defendant introducing a third party to the subject contracts to the detriment of the plaintiffs'' interests. It is Walchandnagar Industries Ltd. which is that very third party. This subsequence of events has come into the limelight because of pleadings in the Written Statement. Keeping the nature of the transactions in mind, it is difficult at this stage to come to a firm conclusion that the plaintiff was aware of the role of Walchandnagar Industries Ltd. at the time when the Plaint was filed. We can conceive of no reason for the plaintiff not to implead Walchandnagar Industries Ltd. had it been aware of the grant or the impending and likely grant of the contract to Walchandnagar Industries Ltd. vice the plaintiffs. The original reliefs are for mandatory injunction, that is, restraining OIA from orchestrating events with the objective that the plaintiffs are substituted by a third party, which in the sequence of events is Walchandnagar Industries Ltd. Learned Counsel for the Appellants/Defendants have voiced the view that the cause of action and nature of Suit has changed by inclusion of the new amendments. We are unable to find even an iota of substance in this submission. The plaintiffs have based their Suit on the tort of interference allegedly committed by OIA by interfering with their contract with TENDAHO and illegally conspiring to replace them with another party who, as per the Written Statement filed by Defendant No. 1, is Walchandnagar Industries Ltd. Black''s Law Dictionary defines "tortious interference with contractual relations'' as a third party''s intentional inducement of a contracting party to break a contract, causing damage to the relationship between the contracting parties. As soon as opposition to the proposed amendments stands withdrawn, the argument that the nature of the Suit has been transformed pales into significance. The case before us is not one where the sequence of events and additional pleas are barred from adjudication for any reason. A fresh suit could always have been filed. Therefore, upon a concession having been made, there can be no conceivable reason for the Court to decline leave to amend the plaint.

15. A reading of Order VI Rule 17 of the CPC reveals that, even without any motion having been filed by the plaintiff, it is more than just arguable that the Court ought to have suo moto impleaded Walchandnagar Industries Ltd. since its presence is undeniably necessary for determining the real question in controversy between the parties. This is especially so since the plaintiff has pleaded that the contract with Walchandnagar Industries Ltd. has been predated and that they are the co-conspirators and beneficiaries of the alleged tort.

16. Learned Counsel for the Appellants have also submitted that the relief is essentially in the nature of specific performance of a contract and such a relief cannot be granted in the form of mandatory injunction. This is altogether a different aspect of the case, not related in any wise with the conundrum of whether the amendments should be permitted. It would not be judicious to allow an unrelated aspect of the case to influence the decision on another aspect or nuance of the lis.

17. The Appellants assert that they had not given their consent vis-?-vis introduction of the additional prayers which stand introduced because of permitting the amendments. It is argued that Defendant No. 1 had only conceded to amendment of some of the pleadings but had seriously contested the inclusion of new prayers. It is argued that the learned Single Judge erred in allowing the amendments in the prayers as well, taking it as a fait accompli to the amendments in the pleadings, though it amounts to altering the entire complexion of the suit. In our opinion, however, the amendments in prayer clause would follow as a natural and essential consequence to the amendments in the Plaint. This is vital for a holistic determination of the dispute; it shall be allowed so as to avoid multiplicity of litigation amongst the parties. The details pertaining to Walchandnagar Industries Ltd. exist in the Plaint itself and it becomes obvious that the grant of an injunction against OIA is most certainly likely to affect Walchandnagar Industries Ltd., it would be a travesty of justice if the litigations were to continue without giving Walchandnagar Industries Ltd. complete opportunity to present its defence. The plaintiffs had prayed for various ad interim reliefs which would have had the effect of bringing the progress of the Project to a grinding halt. As we see it, this is the reason why both OIA as well as Walchandnagar Industries Ltd. are objecting even to its impleadment. Another attractive argument made by the Appellants to impugn the amendment is based on Order VII Rule 7 of the CPC which requires the plaintiff to specifically state the reliefs claimed by him in the Plaint. It is argued that by an amendment the plaintiff may claim new Reliefs which arise from the same cause of action and not on new facts and cause of action. A distinction is thereby sought to be made between qualitative changes and quantitative changes. Addition of new facts along with new Prayers is said to be a qualitative change. We are of the opinion that a new Prayer added on the strength of some new averments added by amendments will not qualitatively alter the suit in every case. Where an amendment prayer is sought to be added on the basis of facts which are intricately attached to the original cause of action and either happens subsequently or comes to the knowledge subsequently, such an amendment cannot be said to substantially alter the nature of the Suit, it would be allowed if no prejudice is caused to the other party and the plaintiff is not barred from filing a fresh suit for these reliefs. Our conclusion, therefore, is that amendment to the prayers is essential and unavoidable and the impugned decision must unequivocally be upheld.

18. The prayers, as they stood in the original Suit Nos. CS(OS) No. 1368/2008 and 1447/2008 and as they are after the amendments were allowed by the impugned Order, are reproduced for ease of reference:

Prayers in Original Suit

(a) Grant a decree of perpetual injunction restraining the Defendant No. 1 from interfering in the contract/award of contract between plaintiff and Defendant No. 2.

(b) Grant perpetual injunction restraining the Defendant No. 1 from modifying any technical and/or commercial terms including price agreed/finalized between the plaintiff and the Defendant No. 2.

(c) Grant perpetual injunction restraining the Defendant No. 1 from engaging any third party in respect of the Process House Project.

(d) Grant a decree of mandatory injunction directing Defendant No. 1 to execute the obligation of signing a formal contract with the plaintiff in accordance with the terms and conditions agreed between the plaintiff and Defendant No. 2 contained in letter dated 7.12.2007.

(e) Costs; and f) Pass such further order as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

Prayers in amended Suit

(a) Grant a decree of perpetual injunction restraining the Defendant No. 1 and Defendant No. 3 from interfering in the contract/award of contract between plaintiff and Defendant No. 2 as contained in letter dated 7th December 2007 including appointing/engaging any third party in respect of the Process House Project.

(b) Grant perpetual injunction restraining the Defendant No. 1 from committing a breach of the negative covenant enumerated in Para 20A above and restrain the Defendant No. 1 from modifying any technical and/or commercial terms including price agreed/finalized between the plaintiff and the Defendant No. 2.

(c) Grant a decree of mandatory injunction directing Defendant No. 1 to execute the obligation of signing a formal contract with the plaintiff in accordance with terms and conditions agreed between the plaintiff and Defendant No. 2 contained in letter dated 7th December 2007.

(d) Grant perpetual injunction restraining the Defendant No. 1 from modifying any technical and/or commercial terms including price agreed/finalized between the plaintiff and Defendant No. 2.

(e) Grant a decree of declaration that the purported sub-contract Agreement dated 12th July, 2008 between Defendant No. 1 and Defendant No. 3 is invalid and void ab initio.

(f) Declare that the alleged consortium agreement dated 16.7.08 entered into between the Defendant No. 1 and Defendant No. 3 is illegal and void ab initio and cancel the said Consortium Agreement dated 16.7.2008.

(g) Declare that the addendum No. 1 dated 21.2.2008 to the Agreement dated 10.1.2008 is illegal void ab initio and cancel the said addendum No. 1 dated 21.2.2008 to the Agreement dated 10.1.2008.

(h) Declare that the amendment dated 15.9.2008 to the agreement dated 10.1.2008 is illegal and void ab initio and cancel the said amendment dated

15.9.2008 to the agreement dated 10.1.2008.

(i) Grant a decree to the perpetual injunction restraining the Defendant No. 1 and 2 from taking any steps in furtherance of the amendment dated 15.9.2008 illegally made to the contract agreement dated 10.1.2008 allegedly entered into between Defendant No. 1 and Defendant No. 2 or crating any right in favour of Defendant No. 3.

(j) Grant a decree of perpetual injunction restraining Defendant No. 1, 2 and 3 from proceeding with and/or acting upon in any manner whatsoever on the purported sub-contract Agreement dated 12th July, 2008; or on any subsequent date.

(k) Grant a decree of declaration that the purported permission granted vide letter dated 5.8.2008 issued by Defendant No. 2 to Defendant No. 1 is invalid and/or void ab initio and cancel the said permission dated 5.8.2008.

(l) Declare that the amendment dated 15.9.2008 to the agreement dated 10.1.2008 is illegal and void ab initio and cancel the said amendment dated 15.9.2008 to the agreement dated 10.1.2008.

(m) Grant a decree of permanent injunction restraining Defendant No. 1, 2 and 3 from taking any action pursuant to the purported letter dated 5.8.2008.

(n) Grant a decree of mandatory injunction directing the Defendant No. 1 and 2 to undo the contemptuous and illegal acts done and status quo ante as on 30.7.2008 be restored.

(o) Grant a decree of perpetual injunction restraining Defendant No. 4 from disbursing any funds in the line of credit opened by it from the Government of Ethiopia.

(p) Costs; and q) Pass such further order/s as this Hon''ble Court may deem fit and proper in the facts and circumstances of this case.

Unamended prayers (Uttam Sucrotech International Pvt. Ltd.)

(a) grant a decree of perpetual injunction restraining the Defendant No. 1 from interfering in the contract/award of contract between plaintiff and Defendant No. 2.

(b) grant perpetual injunction restraining the Defendant No. 1 from modifying any technical and/or commercial terms including price agreed/finalized between the plaintiff and the Defendant No. 2.

(c) grant perpetual injunction restraining the Defendant No. 1 from engaging any third party in respect of the Process House project.

(d) grant a decree of mandatory injunction directing Defendant No. 1 to execute the obligation of signing a formal contract with the plaintiff in accordance with the terms and conditions agreed between the plaintiff and Defendant No. 2

contained in letter dated 7.12.2007.

(e) costs; and

(f) pass such further order as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

Amended Prayers (Uttam Sucrotech International Pvt. Ltd.)

(a) grant a decree of perpetual injunction restraining the Defendant No. 1 and Defendant No. 3 from interfering in the contract/award of contract between plaintiff and Defendant No. 2 as contained in letter dated 7th December 2007 including appointing/engaging any third party in respect of the Process House Project.

(b) grant perpetual injunction restraining the Defendant No. 1 from committing a breach of the negative covenant enumerated in Para 20A above and restrain the Defendant No. 1 from modifying any technical and/or commercial terms including price agreed/finalized between the plaintiff and the Defendant No. 2.

(c) grant a decree of mandatory injunction directing Defendant No. 1 to execute the obligation of signing a formal contact with the plaintiff in accordance with the terms and conditions agreed between the plaintiff and Defendant No. 2 contained in letter dated 7th December, 2007.

(d) grant perpetual injunction restraining the Defendant No. 1 from modifying any technical and/or commercial terms including price agreed/finalized between the plaintiff and the Defendant No. 2.

(e) grant a decree of declaration that the purported sub-contract Agreement dated 12th July, 2008 between Defendant No. 1 and Defendant No. 3 is invalid and void ab initio, and cancel the said Contract Agreement dated 12th July, 2008.

(f) declare that the alleged consortium agreement dated 16.7.08 entered into between the Defendant No. 1 and the Defendant No. 3 is illegal and void ab initio and cancel the said Consortium Agreement dated 16.7.2008.

(g) declare that the addendum No. 1 dated 21.2.2008 to the Agreement dated 10.1.2008 is illegal void ab initio and cancel the said Addendum No. 1 dated 21.2.2008 to the agreement dated 10.1.2008.

(h) declare that the Amendment dated 15.9.2008 to the agreement dated 10.1.2008 is illegal and void ab initio and cancel the said Amendment dated 15.9.2008 to the agreement dated 10.1.2008.

(i) grant a decree of perpetual injunction restraining the Defendant No. 1 and 2 from taking any steps in furtherance of the amendment dated 15.9.2008 illegally made to the contract agreement dated 10.1.2008 allegedly entered into between Defendant No. 1 and Defendant No. 2 or creating any rights in favour of Defendant No. 3.

(j) grant a decree of perpetual injunction restraining Defendant No. 1, 2 and 3 from proceeding with and/or acting upon in any manner whatsoever on the purported sub-contract Agreement dated 12th July, 2008; or on any subsequent date;

(k) grant a decree of declaration that the purported permission granted vide letter dated 5.8.2008 issued by the Defendant No. 1 is invalid and/or void ab initio and cancel the said permission dated 5.8.2008.

(l) grant a decree of permanent injunction restraining the Defendant Nos. 1, 2 and 3 from taking any action pursuant to the purported letter dated 5.8.2008.

(m) grant a decree of mandatory injunction, directing the Defendant No. 1 and 2 to undo the contemptuous and illegal acts done and status quo ante as on 30.7.2008 be restored.

(n) grant a decree of perpetual injunction restraining Defendant No. 4 from disbursing any funds in the line of credit opened by it from the Government of Ethiopia.

(o) costs; and

(p) pass such further order as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

We have reproduced in extensio the amendments to the Plaint as well as to the Prayers in order to make this judgment self contained as well as to adumbrate the fact that, in the sequence of events as they have unfolded, there cannot be any valid or substantial opposition to the amendments being followed.

19. The remaining nodus pertains to the impleadment of Walchandnagar Industries Ltd. as Defendant to the Suit. We reiterate that notice to Walchandnagar Industries Ltd. on the application for its impleadment was not in conformity with the logic or with law. This perhaps was done because of the compendious nature of the application filed by the plaintiffs since both the prayers, that is, amendment of pleadings as well as impleadment of Walchandnagar Industries Ltd. were combined in one. Learned Senior Counsel for the Appellant, Walchandnagar Industries Ltd. has contested the Order allowing impleadment of Walchandnagar Industries Ltd. on the grounds that Walchandnagar Industries Ltd. is not a necessary party for the Suit between plaintiffs and Defendants/OIA and that, at best, they could have been called as witnesses in the Trial and their presence is not necessary as parties. Secondly, it is urged that the impleadment of Walchandnagar Industries Ltd. is sought on an entirely new cause of action which does not form part of the Original Suit and, therefore, the plaintiffs are now seeking to alter the entire nature of suit by urging new causes of action and adding Walchandnagar Industries Ltd. as parties. Reliance is placed on Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, , Kasturi -vs- Iyammperumal (2005) 650 SCC 753 and Bharat Karsondas Thakkar Vs. Kiran Construction Co. and Others, to buttress the argument that a

third party or an outsider to a suit between plaintiff and Defendant, who is unrelated to the controversy between the parties to the suit, is not allowed to be impleaded as party.

20. In Anil Kumar Singh, the plaintiff sought to implead the Respondent who he alleged had obtained a collusive Decree in connivance with his sons and wife and had thus become a co-sharer to the property to be conveyed under the Agreement to Sell which was the bedrock of the Specific Performance Suit filed by him. Their Lordships, while rejecting his prayers for amendment and impleadment of the Respondent, noted that:

3 The obtaining of a decree and acquiring the status as a co-owner during the pendency of a suit of Specific Performance, is not obtaining, by assignment or creation or by devolution, an interest. Therefore Order 22 Rule 10 has no application to this case.

4. Equally, Order I Rule 3 is not applicable to the Suit for Specific Performance because admittedly, the Respondent was not a party to the contract...

5. In this case, since the Suit is based on agreement of sale said to have been executed by Mishra, the sole Defendant in the suit, the subsequent interest said to have been acquired by the Respondent by virtue of a decree of the Court is not a matter arising out of or in respect of the same act or transaction or series of acts or transactions in relation to the claims made in the Suit.

9. Sub-rule (2) of Rule 10 of Order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the Respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to Specific Performance cannot be determined.

21. In Kasturi, their Lordships were again dealing with impleadment of a third party in a Suit for Specific Performance of a contract. Relying on the ratio of Anil Kumar Singh, it was held that:

17. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would be open to the court to decide the question of possession of a third party or a stranger as first the lis to be decided is the enforceability of the contract entered into between the Appellant and Respondent 3 and whether contract was executed by the Appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the Appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from

that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In Amon v. Raphael Tuck and Sons Ltd.5 it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally.

22. In Bharat Karsondas Thakkar, the facts were that the High Court had granted leave to the plaintiff to amend his Suit for declaration to be virtually transformed into a suit for Specific Performance and had also allowed the impleadment of the subsequent purchaser. The Hon''ble Supreme Court applied the ratio of Kasturi and Anil Kumar Singh to hold that the plaintiff was trying to materially alter the suit and the impleadment of the subsequent purchaser sought by him could not be granted in law.

23. We do not appreciate any manner in which the rationale of these cases support the Appellants'' case. The Suits filed by the plaintiffs before us are of tortuous interference where the allegations are that OIA conspired and colluded with Walchandnagar Industries Ltd. to oust them from the contract with TENDAHO. The stage to test the merits of their claim has not come as yet, but since the Suit is one of tortuous interference containing allegations of conspiracy, the presence of the alleged co-conspirator, who is also the beneficiary as a party, is not only proper but also is necessary. The principles for impleadment for a Specific Performance of Immovable property will, therefore, not be attracted in these facts. As soon as the amended Plaint is perused, there can be no two opinions that an injustice would be caused to Walchandnagar Industries Ltd. if it were not be impleaded since there is always a likelihood of an order being passed which may be adverse to its interests. If efficacious interim orders had been passed, bringing the Project to a standstill, we are in no manner of doubt that the OIA as well as Walchandnagar Industries Ltd. would have come screaming to Court asking for impleadment of Walchandnagar Industries Ltd. Order I Rule 10 of the CPC postulates impleadment of a person whose presence is pertinent for the determination of the real matter in dispute, which is a consideration similar to that for permitting an amendment to pleadings. We may also add that since in the present form, Walchandnagar Industries Ltd. is very much a necessary party as reliefs are claimed qua it and the various interim relief sought are likely to affect Walchandnagar Industries Ltd.''s, the plaintiffs would have run the risk of being non-suited for non-joinder of a necessary party as stipulated under Order I Rule 9 of the CPC. The learned Single Judge, therefore, did not commit any error in ordering the impleadment of Walchandnagar Industries Ltd.

24. Finally, we must record our views on the question of maintainability of the Appeals. This question was raised at the very threshold of arguments. Section 10 of the Delhi High Court Act, 1966 reads as follows:

10. Powers of Judge

(1) Where a single Judge of the High Court of Delhi exercises ordinary original

civil jurisdiction conferred by Sub-section(2) of Section 5 on that Court, an appeal shall lie from the judgment of the Single Judge to a Division Court of that High Court.

(2) Subject to the provisions of Sub-section(1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.

Such like provisions do not create the right to appeal but are merely indicative of the forum which will hear the appeal. Letters Patent have become necessary because of orders passed in the High Court were appealable only before the Privy Council in England. This unnecessarily entailed not only Court expense but also the discomfort and difficulty in arranging legal counsel. If legal annals are comprehensively and meaningfully stated, it will become evident that this was why the need to provide for an appeal within India was found expedient. This should not be confused to hold that Appeals are maintainable even where the CPC does not provide for them. After Order XLIII Rule 1 of the CPC is read, it will be evident that appeals have been provided for in all those cases where a remedy by way of a second look at the controversy was expeditiously essential. We think this is why the word "judgment'' has been used in contradistinction to the word "order''; both in Letters Patent as well as Section 10 of the Delhi High Court Act. Judgment has been defined in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, This celebrated judgment also indicates in paragraph 116 that refusal to amend as well as refusal to implead are of such moment as would justify an appeal under Letters Patent or in the case of Delhi High Court under the Delhi High Court Act.

25. A catena of Judgments has been cited by both the adversaries on the aspect of principles to be adopted by the Civil Courts for amendment of pleadings. The Judgments cited in support of the amendments allowed by the learned Single Judge are Sampath Kumar Vs. Ayyakannu and Another, Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another, Andhra Bank Vs. Official Liquidator and Another, and Hindustan Poles Corporation Vs. Commissioner of Central Excise, Calcutta, and the ones cited to oppose by the other party are A.K. Gupta and Sons Vs. Damodar Valley Corporation, Kumaraswami Gounder and Others Vs. D.R. Nanjappa Gounder (dead) and Others, Bharat Karsondas Thakkar Vs. Kiran Construction Co. and Others, and Neena Khanna and Another Vs. Peepee Publishers and Distributors Pvt. Ltd., We have digested all these precedents and in our considered view the general principle adopted by the Courts while deciding an application for amendment of pleadings is that the exercise of discretion to allow an amendment has to be exercised liberally, unless serious injustice or irreparable loss is caused to the other party or the Court comes to the conclusion that the prayer of amendment is vexatious and mischievous. The true purpose of Order VI Rule 17 of the CPC is

to allow the parties to bring forth the true nature of dispute or controversy before the Court. The rule of pleadings that the parties have to confine their arguments and the evidence they adduce in support of their case to the averments in the pleadings, makes the provision for amendment further significant. At the stage of determining the merits of an amendment application, the Court is not supposed to go into the merits of the controversy itself and should confine itself to the merits of the amendment sought.

26. Grounds on which the Courts are reluctant to allow an amendment is where the plaintiff, through an amendment seeks to change the nature of the suit or change the cause of action originally pleaded in his Plaint, or seeks to claim a relief which stands time barred. This however, does not preclude the plaintiff to plead, through an amendment, additional grounds or cause of action, that came to his knowledge after filing of the Suit or those which happened subsequently but relate back to the original cause of action pleaded in the original Plaint.

27. The Court may also allow the plaintiff to add new prayers to the suit if, by doing so, no violence will be caused to the nature of the suit as it originally stood, nor a right, which gets vested in the Defendant on account of limitation or because of an admission by the plaintiff is taken away. Prevention of multiplicity of Suits, and a holistic disposal of a dispute are material considerations that the Courts consider while favourably receiving an amendment plea. The courts, while allowing the amendment, may balance the equities by awarding costs to the other party in case some prejudice is seen to be caused which can be adequately compensated in monitory terms.

28. There is such a plentitude of precedents on this aspect of law that making even the briefest and cryptic reference thereto will result in rendering these opinion avoidably prolix. We shall, therefore, restrict our reference to the most recent exposition and enunciation of the law which is to be found in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others,

Whether amendment is necessary to decide real controversy

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts'' discretion in grant or refusal of the amendment.

No prejudice or injustice to other party

59. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The courts have very wide discretion in the matter of amendment of pleadings but court''s powers must be exercised judiciously and with great care.

Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.

65. When we apply these parameters to the present case, then the application for amendment deserves to be dismissed with costs of Rs. 1,00,000 (Rupees one lakh) because the Respondents were compelled to oppose the amendment application before different courts. This appeal being devoid of any merit is accordingly dismissed with costs.

29. In this analysis, our conclusion is that even if the Appellants had not conceded to the incorporation in the Plaint of the amended Prayers, no sooner had the amended narration of facts and events been allowed in the Plaint, the logical consequence would be that the amended Prayers should also have been permitted. If this were not to be so, the plaintiffs would have been precluded from making these Prayers in a subsequent Suit because of the rigours of Order II Rule 2 of the CPC. The Prayers should also have been allowed in the interest of justice in order to avoid multiplicity of proceedings between the same parties. This is especially so since we are unable to discern any malafide advantage that

the plaintiffs would stand to gain on allowing amended Prayers to come on the record. Conversely, we are unable to locate any disadvantage that would visit the Defendants because of the presence of the amended Prayers. Indeed, it is in the interest of all the parties that all relevant facts, all complexions and hues of the cause of action, and all the Prayers should be decided by the Court within the circumference of a single comprehensive lis.

30. The Appeals are devoid of merit and are dismissed along with pending Applications with costs of ` 50,000/- in each Appeal, of which half shall be payable to the Prime Minister Relief Fund and the half to the Respondents, to be paid within four weeks from today.

