Comp.A.No.21 of 2015

C.SARAVANAN, J.

This Company Appeal has been filed to set aside the order passed by the Company Law Board on 04.04.2012 in C.P.No.36 of 2008 declaring the prayer of the petitioners against the purported operation and mis-management of the first respondent company. The petitioners were the former Directors of the first respondent company who held 100% share in the said company.

2. It is the specific case of the petitioners herein that the first respondent who had borrowed the amounts from Salem Town Urban Co-operative Bank Limited and that the assets of the first respondent company was offered as a security for the loans to the said bank and since the bank had initiated proceedings under the SARFAESI Act. The petitioners herein as the directors of the first respondent company had approached the second respondent for financial arrangements to stave off the auction by the said Bank.

3. It is under these circumstances, four different agreements were signed. The three agreements were signed on 29.10.2004 followed by another agreement dated 30.10.2004.

4. It is the further case of the petitioners that the petitioners herein had handed over the blank share transfer form to the 8th respondent/Mr.S.Duraisamy and that the aforesaid amount was to be repaid over a period of two years and 11 months and that during the aforesaid period, the petitioners herein were to collect rental income from the property of the 1st respondent and remit a sum of Rs.1.25 lakhs per month and in return a sum of Rs.40,000/- was to be paid by the 2nd respondent Mr.C.Duraisamy to the petitioners herein.

5. It is further submitted that blank share transfer form were to be handed over to the 8th respondent as custodian. However, the 8th respondent appears to have transfer the cheque on 01.11.2004.

6. There is no dispute that the 2nd respondent as the proprietor of M/s.Raja Binding works has transferred a sum of Rs.1,99,94,597/- to the

Salem Town Urban Co-operative Bank Limited. After the purported transfer was made on 01.11.2004, the shares were transferred in favour of the 2nd to 6th sixth respondents. The petitioners have filed O.S.No.312 of 2007 before the District Munsif Court, Salem. During the course of the aforesaid proceedings, the dispute appears to have been settled. The petitioners along with one Mr.Ramanathan brother of the 2nd petitioner/son of the 1st petitioner has also received a sum of Rs.75,00,000/-. In all a further sum of Rs.6.45 crores is said to have been received by the petitioners along with the said Mr.Ramanathan over and above a sum of Rs.1,99,94,597/- which was directly paid to the Salem Town Urban Co-operative Bank Limited.

7. The arguments advanced by the learned Counsel for the petitioner further submits that the respondents had resorted political pressure to cajoled receipt of the aforesaid amount and pursuant to which the suit was compromised. It is further submitted that the assets of the 1st respondent company was sold to the 7th respondent on 03.01.2008 for a sum of Rs.24 crores is pending.

8. It is therefore submitted that the suit was dismissed has withdrawn

on 17.04.2008. It is therefore submitted that as against the dismissal of the suit as compromised on 17.04.2008, the petitioners herein attempted to revive the suit by filing an application to condone the delay of 1364 days in filing the application vide A.No.375 of 2018 which came to be dismissed by the Trial Court vide its order dated 16.04.2019 against which the petitioners approached this Court under Article 115 of the C.P.C., in CRP.No.3515 of 2019.

9. It is therefore submitted that although this Court had dismissed the Civil Revision Petition filed by the petitioners herein vide its order dated 22.02.2023, the petitioners herein have filed SLP Civil No.24476 of 2023 and the issue is larger regarding dismissal of the suit as being dismissed as compromised on 17.04.2008 is at large before the Hon'ble Supreme Court.

10. The learned Senior Counsel for the respondent would submit that the present Company Appeal is not maintainable. It is submitted that the order passed in the Civil Revision Petition is well reasoned does warrant no interference of this Court under Section 10F of the Companies Act, 1956.

11. The learned Senior Counsel for the respondent submits that the present Appeal as also the Civil Revision Petition filed before this Court in C.R.P.No.3515 of 2019 were not bonafide. Particularly, in the light of the fact that not only the amounts have been received by the petitioner on various dates apart from a sum of Rs.1,99,94,597/- that was directly paid to the said Bank to stave of the action of the assets of the 1st respondent. It is submitted that there is no merits in this Appeal.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Counsel for the respondents.

13. *Prima facie*, the present Company Appeal filed by the petitioners lacks bonafide as much as the petitioners have agreed for a compromise which view was also upheld by this Court vide its order dated 22.02.2023 in CRP.No.3315 of 2019. The petitioners have received a sum of Rs.6.45 crores during the pendency of the O.S.No.312 of 2007 before the District Munsif Court, Salem.

14. Considering the same, the petitioners are directed to deposit the

aforesaid sum of Rs.1,99,94,597/- together with interest at 12% from 30.10.2004 and on the aforesaid amount of Rs.6.45 crores at 6% from the date of payment to the credit of the present Company Appeal within a period of 12 weeks from the date of receipt of a copy of this order to prove their bonafide. Subject to such compliance, this will be taken up for hearing for further hearing. In case, the petitioner fails to comply with the order, this Company Appeal will be dismissed.

15. List this case after 12 weeks "for reporting compliance".

09.02.2024

jas

C.SARAVANAN, J.

jas

Comp.A.No.21 of 2015

09.02.2024