IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

C.P.No.127 of 2015
and Comp.A.No.1248 of 2015

C.P.No.127 of 2015
M/s. LIC Housing Finance Ltd.,
Rep. by its Area Manager,
"Harrington Chambers", Block No.C,
No.30/1A, Abdul Razack, 1st Street,
Saidapet, Chennai - 600 015. .... Petitioner

...Vs....

M/s.Riverside Infrastructure (India) Pvt. Ltd.,
4/318, MARG Axis, Futura Building,
5th Floor, Rajiv Gandhi Salai,
Kottivakkam, Chennai - 600 0041 .... Respondent

Petition filed under Sections 433 (e) and 434 (i) (a) of the Companies Act, Act 1 of 1956, r/w Order II (a) Rule 5 of the Company Court Rules, for winding up of the respondent company.

For Petitioner : Mr.P.Elaya Rajkumar
for M/s.Ramalingam and Assoc.
For Respondent : Mr.K.Rajasekaran

C.A.No.1248 of 2015
M/s. LIC Housing Finance Ltd.,
Rep. by its Area Manager,
"Harrington Chambers", Block No.C,
No.30/1A, Abdul Razack, 1st Street,
Saidapet, Chennai - 600 015. .... Petitioner

...Vs....

1. M/s.Riverside Infrastructure (India) Pvt. Ltd.,
4/318, MARG Axis, Futura Building,
5th Floor, Rajiv Gandhi Salai,
Kottivakkam, Chennai - 600 0041

2. Edelweiss Asset Reconstruction Company Limited,
15th Floor, Off. C.S.T.Road Kalina,
Mumbai - 400 098. .... Respondents

Prayer: To implead the second respondent / proposed respondent as the second respondent in the Company Petition.

For Petitioner	: Mr.P.Elaya Rajkumar for M/s.Ramalingam and Assoc.
For Respondents	: Mr.K.Rajasekaran (for R1) Mr.S.Ravi (for R2) for Mrs.Indumathi Ravi

ORDER

M/s. LIC Housing Finance Limited, represented by its Area Manager, Chennai has filed the Company Petition No.127 of 2015, seeking for an order of winding up of M/s.Riverside Infrastructure (India) Private Limited, Chennai.

2. M/s. LIC Housing Finance Limited, Chennai has submitted that they are the leading Housing Finance Company and engaged in the field of Housing and Project Finance from the year 1989 and they advance loans for project development and housing requirement against mortgage of immovable properties. As a part of business, M/s. LIC Housing Finance Limited, Chennai is also advancing loans against

mortgage of immovable properties to corporate companies, for execution of projects of business development and infrastructure.

3. The respondent company is a subsidiary of Marg Limited, with the said parent company holding major shares in excess of 70%. The respondent company has an authorized share capital of Rs.170 crores as 17,00,00,000/- equity shares of Rs.10/- each. The paid up capital of the Respondent company is Rs.163 Crores which has been subscribed as Rs.16,30,00,000/- equity shares of Rs.10/- each, fully paid up. The respondent company is involved in the premium commercial development of a proposed Mall complex named, "Marg Junction" at Karapakkam, Old Mahabalipuram Road, Chennai.

4. The respondent company was promoted by Mr.G.R.K.Reddy and Mrs.Rajini Reddy, promoters of Marg Limited, with the conceived project of establishing a Mall with multiplexes. The respondent company had originally availed funding from HUDCO and commenced the project in the year 2008. During the course of their business activities the respondent approached the petitioner, for part funding to develop the said commercial complex with a proposal to seek for consortium lending. State Bank of Patiala and Syndicate Bank agreed

to fund the project by way of Project Term Loan of Rs.217 Crores by all three lenders including M/s. LIC Housing Finance Limited, Chennai, against mortgage of immovable properties.

5. In terms of the request made by the respondent company, M/s. LIC Housing Finance Limited, Chennai and the two other financial institutions viz., State Bank of Patiala and Syndicate Bank had sanctioned a project Term Loan in the year 2011 for the completion of construction of a Mall cum Multiplex Complex at Karapakkam OMR, Chennai. The details of the loan which had been sanctioned by the petitioner and the other consortium bankers are as follows:

LIC HFL	- Rs.100 Crores
State Bank of Patiala	- Rs. 67 Crores
Syndicate Bank	- Rs. 50 Crores
Total	- Rs.217 Crores.

6. The salient features of the lending and the terms and conditions to be complied with the respondent company, are as follows:

"(a) The proceeds of all amounts borrowed shall be applied in or towards the implementation and development of the project, mall cum multiplex at Karapakkam, OMR, Chennai, only and no other purpose.

(b) Commercial Operation Date or COD was April 2012

(c) The Borrower shall repay the loans to the lenders as set out in the letters of sanction issued by each lender.

7. The petitioner has stated that the aforesaid Project Term Loan was availed by the Respondent Company on 21.04.2011. In consideration of availing and to secure the said loan the under mentioned loan documents were executed by the Respondent Company in favour of the petitioner and the consortium Bankers.

(a) Common Loan Agreement entered into between the respondent, petitioner and the consortium bankers viz., State Bank of Patiala and Syndicate Bank.

(b) Common Deed of Hypothecation executed by the respondent in favour of the Security Trustee under the Common Loan Agreement viz., State Bank of Patiala.

(c) Inter Creditor Agreement entered into between the petitioner and other consortium lenders.

(d) Security Trustee Agreement entered into between the petitioner, consortium lenders and the respondent.

8. The petitioner has further submitted that in respect of the Project Term Loan availed by the respondent, one M/s.Marg Ltd., a sister concern of the Respondent company, stood as the Corporate

Guarantor by executing a Deed of Corporate Guarantee dated 21.04.2011 pursuant to the Board Resolution dated 22.10.2010. Further, the Director of the respondent Company viz., Mr.G.R.K.Reddy also stood as the guarantor in his individual capacity for the Project Term Loan availed by the respondent by executing a Guarantee Deed dated 21.04.2011. STATE BANK OF PATIALA is the Lenders Agent and Security Trustee, pursant to the Lenders Agreement dated 21.04.2011 entered into between the lenders and the Respondent Company.

9. The petitioner has further stated that the said Project Term Loan which was availed by the Respondent Company was secured by hypothecation of the entire fixed and current assets of the Company. Further, the Respondent Company had also created mortgage over the Immovable Property which is the project site, together with all buildings, structures standing as on date and / or under construction thereon being the huge commercial complex / establishment known as MARG Junction Riverside Mall of OMR, being an extent of Acres 7.30 1/2 cents comprised in various survey umbers of Karapakkam Village, in an by a Mortgage Deed dated 23.05.2011 executed by them in favour of the Security Trustee and the other consortium bankers viz., State Bank of Patiala and Syndicate Bank. The said Mortgage Deed

was registered as Document No.3077 of 2011, on the file of the SRO, Neelankarai. The details of the mortgaged property are set out in the mortgage deed.

10. It is also contended that in terms of the Common Loan Agreement the respondent company had to repay the loan amount to the petitioner in a bulleted payment of Rs.100.00 Crores on 31.03.2012 along with interest. Whereas, the respondent company, having availed the loan did not came forward to repay the dues as agreed upon either to the petitioner or to the other consortium lenders. Further the project though commenced, was delayed, varied and is yet to be completed and commissioned. In breach of the terms and conditions of the Common Loan Agreement and the covenants made to the consortium lenders, including the Petitioner, the respondent had delayed the completion of the Project.

11. Added further that the respondent company had also deviated from the original plan of construction and had modified the project without the consent of the lenders. In the result there was an over run and the project could not be completed on account of the conversions and modifications made. Further the respondent company

having availed the loan amount did not adhere to the repayment schedule. On account of the default in repayment of the dues as agreed upon, the loan account of the respondent with the petitioner was classified as Non-performing Asset in accordance with the Directions and guidelines of the Regulatory Bodies of the lenders.

12. It is also the contention of the petitioner that on account of the irregularity in the account of the respondent company, a total of Rs.1,17,64,21,463.39 had become due and payable to the petitioner as on 01.01.2013, including the unpaid interest from 01.05.2012. Similar defaults were committed with the other consortium lenders, forcing the petitioner and the consortium lenders to initiate proceedings as against the respondent company by enforcing the mortgage on the secured Asset, under the provisions of the SARFAESI Act. State Bank of Patiala as the lead banker had issued Demand Notice dated 06.05.2013 under Sec.13(2) of SARFAESI Act calling upon the respondent company to pay the total outstanding sum of Rs.250,66,51,688.47p, as on 28.02.2013 due and payable to all the lenders. In response to the said Demand Notice, the respondent company sent a reply, which was considered and a rejoinder was also sent by State Bank of Patiala. Even thereafter as the Respondent

company had not taken any prospective steps to clear off the dues, the Authorised Officer of State Bank of Patiala, as the lead banker had initiated further measures under Sec-13(4) of the SARFAESI Act by taking symbolic possession of the secured asset, on 15.02.2014 and issued the possession notice. All procedures as contemplated under the Act and Rules have been complied with in the measures taken under SARFAESI.

13. As the respondent company has huge arrears, not able to honour the committed and accepted the liability, a statutory notice dated 07.01.2015, has been issued under Section 433 of the Companies Act, 1956. Notice has been acknowledged on 01.02.2015. So far no amount has been paid. According to the petitioner as on 28.02.2015, the respondent has to pay a sum of Rs.174,74,78,295.88p to the petitioner along with further interest and costs. In the abovesaid circumstances, M/s. LIC Housing Finance Limited, Chennai has filed this Company Petition under Section 433 of the Companies Act, 1956, for the following prayer:

> "a) Directing the Respondent Company, M/s.Riverside Infrastructure (India) Private Limited, be wound up under the provisions of the Companies Act, 1956.
>
> b) Appoint the Official Liquidator, High Court, Chennai as the

Liquidator of the Respondent Company.

c) Directing the costs of this petition come out from the estate of the respondent company M/s.Riverside Infrastructure (India) Private Limited."

14. On 15.12.2015, when the matter came up for hearing, this Court passed the following orders

"On behalf of M/s.Riverside Infrastructure (India) Private Limited, though, a counter affidavit has been filed by Mr.K.Rajasekaran, learned counsel for the company sought to be wound up submitted that they are willing to sell the land and building and discharge the entire outstanding loan of M/s.LIC Housing Finance Limited as well as Syndicate Bank & State Bank of Patiala.

M/s.Edelweiss, is the Asset Reconstruction Company for the above lenders.

Mr.Omprakash, learned counsel for the petitioner seeks time to take steps for impleading the Assets reconstruction company viz., M/s.Edelweiss.

Post on 22.12.2015."

15. Accordingly, impleading application in Comp.A.No.1248 of 2015, is filed. Edelweiss Asset Reconstruction Company Limited, Mumbai, the proposed 2nd respondent, in its counter affidavit has submitted that State Bank of Patiala and Syndicate Bank have under

the Consortium lending advanced a total sum of Rs.117 Crores to the 1st respondent for construction of a Multiplex Mall at Karapakkam, IMR, Chennai. The 1st respondent mortgaged the Multiplex Mall as security by way of equitable mortgage with the Consortium lenders for the loan sanctioned. With the passage of time, the 1st respondent was not able to repay the amount of loan taken from aforesaid consortium lenders and therefore, its account in the books of said banks was classified as Non performing Assets (NPA).

16. That State Bank of Patiala being a secured creditor and the leader of consortium issued a notice dated 6th May 2013 under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to the 1st respondent, calling upon it to pay a sum of Rs.250,66,51,688.47/- (Rupees Two Hundred Fifty Crores Sixty Six Lakhs Fifty One Thousand Six Hundred and Eight and Forty Seven Paise only) as on 28.02.2013 along with further interest, charges and expenses within a period of 60 days from the date of the said notice, which is payable by the 1st respondent to State Bank of Patiala, Syndicate Bank and LIC Housing Finance Limited collectively.

17. Since M/s.Riverside Infrastructure Pvt. Ltd., failed to clear dues as demanded vide aforesaid Demand Notice, the State Bank of Patiala was left with no other option but to take measures under Section 13(4) of SARFAESI Act, i.e. to take possession of secured assets of the company. The authorized officer of State Bank of Patiala has taken symbolic possession of the secured assets on 15th February 2014.

18. In the mean time vide Assignment Agreement dated 26.06.2014 and 28.06.2014 entered into with the answering respondent, the State Bank of Patiala and Syndicate Bank respectively assigned all its right, title and interest in and to the financial assistance granted by them to 1st respondent alongwith underlying securities thereto in favour of the answering respondent.

19. As per the said Assignment Agreements, the answering respondent has become the full and absolute owner and as such the only person legally entitled to recover the financial assets as any part thereof including the right to file a suit or nay such other proceedings in its own name and to take such other action as may be necessary for the purpose of recovering the said financial assets.

20. The proposed 2nd respondent has further stated that under the provisions of Section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002), the answering respondent has become the lender and all rights, title and interest of the Consortium Lenders viz., State Bank of Patiala and Syndicate Bank in respect of the said debt of the 1st respondent is now vested with the answering respondent.

21. The proposed 2nd respondent has all the rights, title and interest in the Financing Documents apart from all collateral security, undertaking, security interest and / or pledges created to secure and/or guarantees issued in respect of the repayment of loans. The answering respondent has got the right to enforce such Security Interests, pledges and /or guarantees and appropriate the amount realized there from towards the repayment of loans and to exercise all other rights in relation to such security interest, pledges and/or guarantees.

22. When the matter came up for hearing, an additional affidavit dated 18.01.2016 has been filed by M/s.Riverside

Infrastructure (India) Private Limited, Chennai, accepting the liability. In addition to the above at paragraph Nos. 5 to 7, M/s.Riverside Infrastructure (India) Private Limited, Chennai, has averred as follows:

> *"5. I submit that in these circumstances, I am filing this affidavit to the effect to handover possession of the secured assets of the company upon completion and confirmation of the auction sale to be proceeded under the SARFAESI Act.*
>
> *6. I submit that the 1st respondent Company is always ready and willing to settle the loan amounts due to the respondents and to cooperate with the Asset Reconstruction Company for the amicable settlement by restructuring the Financial Assets and to appropriate the amount realized there from towards repayment of the loans. In this regard the 1st respondent company would make a request for convening a joint meeting with the consortium banks to fix a modality to restructure the loan so as to enable the 1st respondent company to continue with the progression of the project and sale of the same.*
>
> *7. I further submit that without prejudice to the rights of the 1st respondent company available under the SARFAESI Act and all other statutes, including the*

right of the 1st respondent Company to bring its own creditors / investors for the rescue of the 1st respondent company to discharge the loans outstanding to the consortium banks, the 1st respondent company undertakes to handover physical possession of the secured assets upon completion and confirmation of the auction sale to be proceeded under the SARFAESI Act."

23. Added further, submissions have also been advanced by the learned counsel for the petitioner and Edelweiss Asset Reconstruction Company, Mumbai, that consent has been given by the respondent company to recover the amounts due and payable to M/s. LIC Housing Finance Limited, Chennai, by resorting to the provisions under SARFAESI Act. Symbolic possession has already been taken. In the light of the above submissions, impleading application in Comp.A.No.1248 of 2015 is ordered. Registry is directed to make necessary amendments in the company petition and other applications.

24. In the light of the consent given by the 1st respondent, what remains to be considered is to the sale of the assets of the company for realisation of the loan amount to State Bank of Patiala, Syndicate Bank and M/s. LIC Housing Finance Limited, Chennai. Company sought

to be wound up has also now filed an affidavit dated 18.01.2016, undertaking that they would handover physical possession of the secured assets upon completion and confirmation of the auction sale to be proceeded under the SARFAESI Act.

25. All the parties before this Court have consented for sale of the property by Edelweiss Asset Reconstruction Company, Mumbai under the provisions of the SARFAESI Act, and for distribution of the amounts due and payable to the abovesaid three creditors viz., State Bank of Patiala, Syndicate Bank and M/s. LIC Housing Finance Limited, Chennai.

26. Submission of learned counsel for all the parties is placed on record. Thus, in the light of the consensus, this Court directs that Edelweiss Asset Reconstruction Company, Mumbai, the 2nd respondent, shall take measures in the manner known to law, under the provisions of the SARFAESI Act to sell the assets of the company and take steps to get the sale confirmed as expeditiously as possible. No sooner the sale is confirmed, M/s.Riverside Infrastructure (India) Private Limited, Chennai, shall handover the possession of the assets as per the affidavit of undertaking dated 18.01.2016, without demur

or objections. The whole exercise has to be completed within four months from the date of receipt of a copy of this order.

27. With the above direction, the Company Petition is closed.

19.01.2016

Index : Yes/No
Internet : Yes/No

Note to office:
Issue copy of the order by 27.01.2016
ars

S.MANIKUMAR, J,

ars

C.P.No.127 of 2015
and Comp.A.No.1248 of 2015

19.01.2016