

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2016

Coram:

The Hon'ble Mr.Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.No.153 of 2015
& M.P.No.1 of 2015

Refex Energy Ltd.,
No.67, Bazullah Road
T.Nagar, Chennai 600 017

.. Appellant

vs.

1. Vama Energy Pvt.Ltd.,
117,Mittal Chambers
Nariman Point,
Mumbai 400 021
2. The Official Liquidator
High Court, Madras
(as Provincial Liquidator of
M/s.Refex Energy Ltd.,
UTI Bhavan,
No.29, Rajaji Salai
Chennai 1

(Cause title accepted vide order of court
dated 4.8.2015 made in M.P.No.1 of 2015
in OSA Sr.No.6432 of 2015.

.. Respondents

This Appeal is preferred under Order XXXIX Rule 1/11 of O.S.Rules r/w Clause 15 of the Letters Patent against the order of this Court dated 15.7.2015 in C.P.No.329 of 2014.

CP.329/14: Filed u/s.433(e) & R/w 434/(1) (a) & cc & 439(1) (b) of the companies Act 1956.

This petition praying this Court

(i)to direct the the respondent company namely Refex Energy Limited be wound up under the provisions of the companies Act 1956 (1)

(ii)To appoint the Official Liquidator, High Court, Madras to take charge of the assets of the respondent company namely Refex Energy Ltd., and

(iii)to direct the respondent company to pay the costs.

For Appellant	: Mr.P.H.Aravind Pandian Senior Counsel for M/s.Hari Shankar Mani
For Respondents	: Mrs.Chitra Narayan for R1 R2 - Official liquidator

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED
BY A.SELVAM, J.)

This Original Side Appeal has been directed against the order dated 15.7.2015 passed in Company Petition No.329 of 2014 by the learned Single Judge of this Court.

2. The first respondent herein, as petitioner, has filed Company Petition No.329 of 2014 for the relief sought therein, wherein the present appellant has been shown as sole respondent.

3. The learned Single Judge, after considering the divergent contentions raised on either side, has admitted the Company Petition No.329 of 2014 by way of imposing the following conditions:-

- (1)Notice on the Court Notice Board/Company
- (2)Notice to the respondent
- (3)Notice to the Registrar of Companies, Chennai
- (4)Affixture of notice at the premises of the registered office of the respondent company
- (5)The petitioner is directed to publish the Company Petition in one issue of Tamil Daily "Dinamani" and in one issue of English daily "New Indian Express" (both having circulation in and around Chennai) and in the Tamil Nadu Government Gazette fixing the date of hearing on 15.09.2015.
- (6)The petitioner is directed to publish the Company Petition giving at least 21 days clear advance notice
- (7)The Official Liquidator, High Court, Madras, is appointed as Provincial Liquidator and is directed to take charge of the assets of the respondent company. The Ex-Directors of the respondent company are directed to file their statement of affairs before the Official Liquidator within a period of 21 days. The Company shall deposit a sum of Rs.20,000/- towards initial expenses before the Official Liquidator in this matter."

Against the order passed by the learned Single Judge, the present Original Side Appeal has been filed.

4. The learned counsel appearing for the appellant has strenuously contended that the amount claimed on the side of the first respondent/petitioner is Rs.1,54,00,000/- and the appellant/respondent is ready to give bank guarantee, but the learned Single Judge, without considering the present status of the appellant/respondent, has imposed the 7th condition and thereby appointed the Official Liquidator, High Court as provincial liquidator. Under the said circumstances, the 7th condition imposed in the impugned order is liable to be modified.

5. The learned counsel appearing for the first respondent/petitioner has also contended that as per agreement entered into between the parties, the appellant/respondent is liable to pay Rs.1,54,00,000/- to the respondent/petitioner. Under such circumstances, Company Petition No.329 of 2014 has been filed on the file of this Court and the learned Single Judge, after considering the nature of transaction entered into between the parties, has rightly admitted the same and also imposed usual conditions and therefore, the order passed by the learned Single Judge does not call for any interference.

6. The learned counsel appearing for the appellant/respondent has admitted the condition Nos.1 to 6. The only gravamen expressed on the side of the appellant/respondent is in respect of the 7th condition. The 7th condition is that the Official Liquidator has been appointed as provincial liquidator.

7. Considering the contentions put forth on the side of the appellant/respondent, this Court is of the view to pass the present conditional order. With the above observations, this Original Side Appeal is liable to be allowed in part.

In fine, this Original Side Appeal is partly allowed and the Condition No.7 found in the impugned order dated 15.7.2015 passed by the learned Single Judge in Company Petition No.329 of 2014 is conditionally set aside. The appellant/respondent is strictly directed to furnish bank guarantee to the tune of Rs.1,54,00,000/- (Rupees One Crore and Fifty four Lakhs only) within a period of two weeks from today, failing compliance, Condition No.7 will stand upheld. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To
1.The Sub Assistant Registrar,
Original Side,
high Court, Madras.

2.The Official Liquidator
High Court, Madras

+1 cc to Mr.Chitra narayan, advocate,sr.45015.

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krd 18/8

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