

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.40130 of 2015
and MP.Nos.1 & 2 of 2015
and WMP.No.2490 of 2016

Gemini Communication Limited
Rep. by its Managing Director
No.1 Dr. Ranga Road 2nd Street
Alwarpet Chennai-600 018

... Petitioner

Vs

- 1 Reserve Bank of India
Represented by its Authorised Officer
Corporation Debt Restructuring Cell
IDBI Tower 19th Floor Cuffe Parade
Mumbai-400 005
- 2 State Bank of India
Represented by its Manager
Stressed Assets Management Branch
Red Cross Buildings No.32 Montieth Road
Egmore Chennai-600 008
- 3 State Bank of India
Represented by its Manager
Industrial Finance Branch
No.155 Anna Salai
Chennai-600 002
- 4 Bank of India
Represented by its Manager
IV Floor Tarapore Towers
No.826 Anna Salai Chennai-600 002
- 5 Union Bank of India
Represented by its Manager
Post Box No.3753
152 Mount Road Branch Agurchand Mansion
Anna Salai Chennai-600 002
- 6 Punjab National Bank
Represented by its Manager
No.10 Raja Street Chennai-600 017

- 7 Central Bank of India
Represented by its Manager
Corporate Finance Branch Addison Buildings
No.803 Anna Salai Chennai-600 002
- 8 IDBI Bank
Represented by its Manager
Anna Salai Branch No.115 Anna Salai
Saidapet Chennai-15
- 9 Phoenix ARC Private Limited
Represented by its Manager Trustee of
Phoenix Trust - FY 14-9 Dani Corporate Park
7th Floor 158 CST Road Kalina
Santa Cruz (E) Mumbai-400 098
- 10 Edelweiss Asset Reconstruction
Company Limited Represented by its Manager
Edelweiss House Off CST Road Kalina
Mumbai-400 098
- 11 SREI Equipment Finance Limited
Rep by its Manager Plot No. Y-10 Block-EP
Sector- V Salt Lake City Kolkata-700 091
- 12 Karvy Financial Services Limited
Represented by its Manager
No.762 Building No.7 6th Floor Solitaire Park
Andheri (East) Mumbai-400 093 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents 2 to 12 to accept the Corporate Debt Restructuring Scheme dated 27.11.2015 by submitting the same to respondent No.1 for acceptance thereon.

For Petitioner: Mr. ARL. Sundaresan, Senior Counsel
for M/s. Shalini Kaul

For RR1 to 10 : Mr. M. L. Ganesh
For R11 : Mr. M. K. Kannan
For R12 : No appearance

O R D E R

The petitioner has come forward to file this writ petition seeking writ of mandamus directing the respondents No.2 to 12 to accept the Corporate Debt Restructuring Scheme dated 27.11.2015. Pending the writ petition, today an application has been filed in WMP.No.2490 of 2016 seeking a direction to the respondents No.2 to 12 to convene a Joint Lenders Forum in

accordance with the RBI Circular dated 25.06.2015 and consider the CDR package of the petitioner.

2. From the counter affidavit filed, it is seen that for the outstanding debt payable by the petitioner to the consortium, all banks have filed the following original applications before the DRT-II, Chennai as follows:

- (a) OA.No.65 of 2014 re-numbered as OA.No.228 of 2014 by SBI before DRT-II, Chennai against the petitioner for a recovery of Rs.87,54,12,175.03 as on 31.01.2014.
- (b) OA.No.189 of 2014 by SBI before DRT-I, Chennai against M/s.Pointred Telecom Ltd for a recovery of Rs.19,88,81,362.55 as per the DRC.
- (c) OA.No.254 of 2013 by PNB consortium banks against M/s.Pointred Telecom Ltd. for a recovery of Rs.202,48,62,595/- as on 09.11.2013 as per the DRC.
- (d) OA.No.114 of 2013 re-numbered as OA.No.227 of 2014 by Bank of India before DRT-II, Chennai against the petitioner for a recovery of Rs.98,01,37,648.49 as on 01.07.2013.
- (e) OA.No.81 of 2014 filed by Union Bank of India for a sum of Rs.13,20,19,529.95 as on 13.05.2013.
- (f) Axis Bank also filed OA before DRT, Chennai.

3. This is the factual situation governing the case. The learned Senior Counsel appearing for the petitioner primarily contended that the Joint Lenders Forum mechanism is mandatory and it has to be followed by the respondents and therefore, the Corporate Debt Restructuring Scheme provided by the petitioner dated 27.11.2015 has to be considered by the consortium. The application made by the petitioner cannot be rejected at the threshold, instead of considering it on merit. The petitioner is in a better position financially and therefore, this Court has extend its discretion.

4. The learned counsel appearing for the respondents, based upon the counter affidavit filed, submitted that the outstanding is mounting. There are two consortiums. As against the total outstanding dues of Rs.500 Crores as per CDR, the petitioner's asset is only worth about Rs.10 Crores. Master Circular of the CDR has to be convened, only when the project is found to be viable by the lenders and they did not come under the doubtful category. Furthermore, there would be satisfaction of minimum of 75% of creditors [by value] and 60% creditors [by number] on the qua, the viability of the account. The said position would be applicable to the cases, in which recovery proceedings have already been initiated. At the time of hearing the writ petition, the proposals have already been rejected not only by the respondent No.3, but all other members of the consortium as well, since the applications has been made individually. Therefore, no interference required.

5. Admittedly, the application made by the petitioner has been rejected not only by the respondent No.3, but other banks as well. A perusal of the CDR Master Circular, especially Clause 5.2 Category II and 6.3 coming under the category of eligibility criteria, makes the position very clear that the petitioner is not entitled to ask for consideration, as a matter of right. Apart from the same, as per clause 2[B], the petitioner will have to show the imminent stress.

6. In a matter like this, the role of the Court is very limited. Furthermore, the prayer sought in the writ petition no longer survives, even on the date on which it was entertained. Resultantly, the prayer sought for in WMP.No.2490 of 2016 also cannot be considered, since the request made by the petitioner has been rejected already. Therefore, looking from any angle, this Court is not inclined to extend its discretion in favour of the petitioner, whose liability towards the respondents keeps increasing at astronomical proportion day by day. In the result, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gya

5 ccs to M/s.M.L. Ganesh, Advocate, Sr. 46851
1 cc to M/s.M.K. Kannan, Advocate, sr. 5416
1 cc to M/s. Shalini Kauyl, Advocate, Sr. 4875

W.P.No.40130 of 2015

VD (CO)
kk 8/2

WEB COPY