

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. No.139 of 2016

- 1.M/s.VenturEast Proactive Fund
LLC, IFS Court, Twenty Eight,
Cybercity, Ebene, Mauritius.
- 2.M/s.VenturEast SEDCO Proactive
Fund LLC, IFS Court, Twenty Eight,
Cybercity, Ebene, Mauritius.
- 3.M/s.Ventureast Fund Advisors India
Private Limited, No.5B, Ramachandra
Avenue, Seethammal Colony,
First Main Road, Alwarpet,
Chennai 600 018.
- 4.M/s.Ventureast Trustee Company
Private Limited, 20B, ASCI College
Park, Road 3, Banjara Hills,
Hyderabad 500 034. .. Appellants

-vs-

C.Mohan Ram .. Respondent

Appeal filed under Order XXXVI Rule 1 O.S. Rules and Clause 15 of the Letters Patent against the order dated 03.08.2015 in Appl. No.139 of 2013 in I.N.No.57 of 2013 on the file of original side of this Court.

For Appellants : Mr.H.Karthik Seshadri

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by
The Hon'ble Chief Justice)

The appeal is directed against the impugned order of the learned Single Judge dated 03.08.2015 dismissing the application filed by the appellants under Section 9 (5) of the Presidency Towns Insolvency Act, III of 1909 (hereinafter referred to as 'the said Act'), as not maintainable.

2.At the inception, we may state that we would have sympathy for the appellants because their investment is stuck, but the remedy they have chosen is certainly not what is available to the appellants and we, thus, fully agree with the conclusion of the learned Single Judge.

3.The controversy arises from the investments made by the appellants in equity and compulsorily convertible cumulative participating preference shares and the allegation that the amounts have been siphoned off by the respondent resulting in C.P.No.32 of 2010 being filed before the Company Law Board (CLB), Chennai, making the prayer of conducting a Special Audit by an independent Chartered Accountant and formulate a scheme for the exit of the appellants as per a price to be fixed by the CLB. This petition, however, did not lead to its natural conclusion, but the parties settled their disputes mutually by a Compromise Deed, which they then sought to file before the CLB. The nature of compromise being quite different, the Company Law Board merely recorded that the mutually agreed out of Court settlement was taken on record to form a part of the order and disposed of the petition.

4.In terms of the mutual compromise, the respondent agreed to make a payment of Rs.5.92 crores to the appellants or their nominees / designates towards the investment made by them, which was to the tune of Rs.10.3 crores originally. A sum of Rs.20 lakhs was paid at the time of signing of the terms and the balance of Rs.5.72 crores was to be paid in six quarterly instalments, as specified in the compromise. On the payment of the full amount, the shares in question of the appellants were to be transferred to the respondent or his nominees / designates with all related documents and till such payment was made, there was a negative mandate making it clear that no shares held by the appellants were to be transferred.

5.The parties did envisage the possibility of there being breach in the payment, the consequences of which have been set out in clause 10, which reads as under:

'10.If there is default of one instalment, the respondent will be given one more month or 30 days to make good the default, in case if he defaults after that extended period, the agreement shall stand terminated. The petitioners are entitled to pursue the Company Petition being C.P.No.32 of 2010 and that all the payments made to the petitioners or its nominee shall be held by the petitioners subject to the final outcome of the petition.'

6.The aforesaid, thus, makes it clear that the consequences of breach was that the agreement would stand terminated and the appellants were entitled to pursue the same Company Petition.

7.Unfortunately, there was breach from the very inception by the respondent and not a penny was paid over and above the initial amount of Rs.20 lakhs. Learned counsel for the appellants has also drawn our attention to the letter dated 07.01.2013 sent to the Attorneys of the appellants by the authorised representative of the respondent seeking re-scheduling of instalments without extension of the last date and once again reiterating the commitments of the respondent to meet their obligations towards payment. It was further agreed to share any operational or business information with the appellants. However, the fact remains that the position did not improve, which resulted in filing of the application under the provisions of the said Act by the appellants.

8.The respondent raised an objection to the maintainability of that application filed by the appellants submitting that though the defaults had occurred, the appellants had the only option to revive the Company Petition as the transactions stood terminated. The consequences of non-payment were also provided for. It was also submitted on behalf of the respondent that the arrangements inter se the parties was for transfer of shares for consideration and on the same having fallen through, the appellants would continue to hold the shares and revive the Company Petition.

9.The aforesaid submission of the learned counsel for the respondent found favour with the learned Single Judge in coming to the conclusion that the sum of Rs.5.92 crores agreed as per the compromise was not a debt liable to be paid by the respondent to the appellants but only consideration towards purchase of shares with consequences provided for.

10.We are in full agreement with the view adopted by the learned Single Judge, as it is quite apparent from the compromise that instead of proceeding with the option of pressing for a Special Audit and a price fixation for shares of

the appellants for their exit, the parties mutually agreed to settle that price for transfer of shares by the appellants to the respondent. On non-payment of the amount, the consequences were also specified that the appellants would continue to enjoy the rights under the shares and could revive the Company Petition. In such a situation, the proceedings for insolvency could not be maintained on the basis of the quantified debt.

11. We may notice that the contention of the learned counsel for the appellants is that the amount has been quantified and an option was given to the appellants to revive the Company Petition. In our view, that amount quantified was the consideration for the transfer of shares and no doubt the appellants had the option to revive the Company Petition. We are not commenting on the aspect as to whether the appellants can sue for specific performance of such an agreement or not as one of the questions which may arise would be as to how the compromise agreement was to be construed taking into consideration the fact that the consequences of default was provided in it.

12. We are also unable to agree with the submission of the learned counsel for the appellants that any decree has been passed by the Company Court for quantified payment of amount which is liable to be enforced through proceedings under the said Act, since the Company Court merely took the mutual settlement on record and that settlement, in turn, was not for payment of a debt, but for an agreed consideration for transfer of shares.

13. We, thus, find no merit in the appeal.

14. Original Side Appeal, accordingly, stands dismissed. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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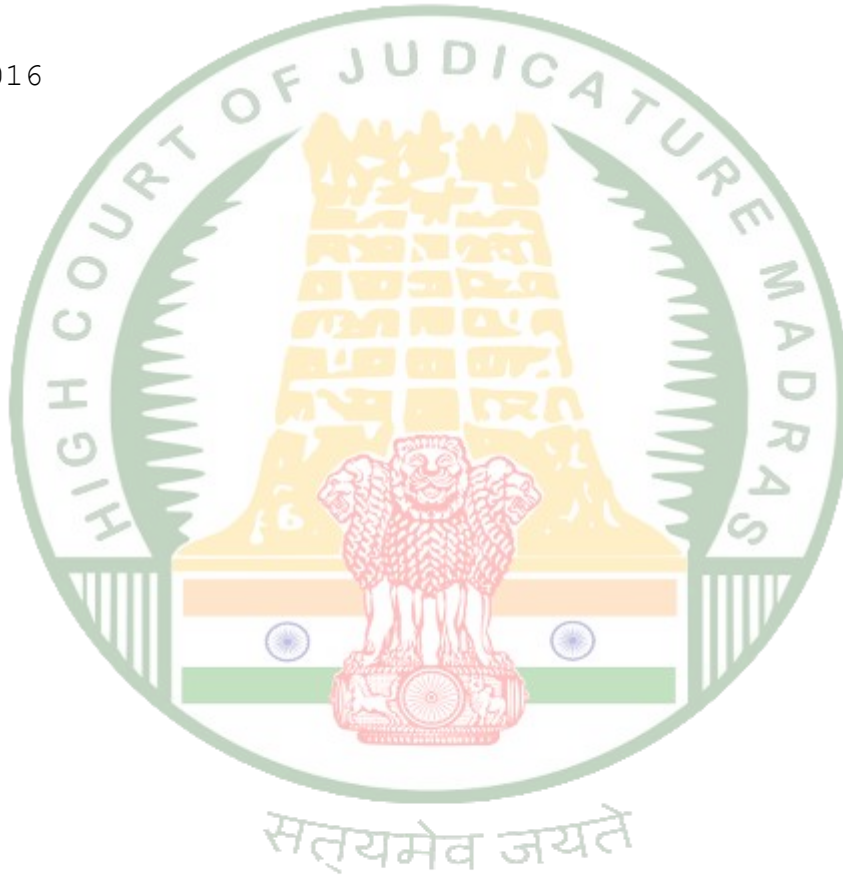
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To

The Sub-Assistant Registrar,
Original Side, Madras High Court,
Chennai.

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