THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL Nos.
647, 648 and 688 of 2016

16.09.2016

Between:

M/s.The Bank of New York Mellon, London Branch,
United Kingdom

..Appellant

And

M/s.Gati Limited, Secunderabad

..Respondent

Counsel for the appellant: Mr.S.Ravi, senior counsel

Counsel for the respondent: Mr.S.Niranjan Reddy

The Court made the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These Civil Miscellaneous Appeals arise out of the common order, dated 01.06.2016, on the file of learned I Additional Chief Judge, City Civil Court, Secunderabad. C.M.A.No.647 of 2016 is filed against the order in I.A.No.5308 of 2014, C.M.A.No.648 of 2016 is filed against the order in I.A.No.5311 of 2014 and C.M.A.No.688 of 2016 is filed against the order in I.A.No.5309 of 2014.

2. The appellant filed the aforementioned I.As. in O.S.No.247 of 2014 filed for passing a decree in respect of multiple reliefs, which include a decree directing the respondent to convert 2011 bonds into equity shares in the manner as prayed for by the appellant. Pending the suit, the appellant filed I.A.No.5308 of 2014 to restrain the respondent from taking a new debt in any form, without the consent of the bondholders. It has filed I.A.No.5309 of 2014 to restrain the respondent from moving cash to any related parties, without the consent of the bondholders. It has also filed I.A.No.5311 of 2014 to restrain the promoters/insiders of the respondent from selling their shares in the respondent to any third party, without the consent of the bondholders. All the aforementioned I.As. having been dismissed, the appellant filed these appeals.

3. At the outset, we need to mention that Mr.S.Ravi, learned senior counsel appearing for the appellant, has fairly submitted that his client is not intending to press C.M.A.Nos.648 and 688 of 2016.

4. Therefore, both C.M.A.Nos.648 and 688 of 2016 are dismissed as not pressed.

5. As regards C.M.A.No.647 of 2016, Mr.S.Ravi, learned senior counsel for the appellant, and Mr.S.Niranjan Reddy, learned counsel for the respondent, have made extensive submissions.

6. The mainstay of the arguments of Mr.S.Ravi, learned senior counsel for the appellant, is that on the respondent's own showing, (*vide* para 5 of the counter-affidavit filed by Mr.Hansraj Singh, Assistant Manager in Secretarial Department of the respondent, in C.M.A.M.P.No.1332 of 2016 in C.M.A.No.647 of 2016) the aggregate of the paid up share capital and free reserves of the respondent amounts approximately to Rs.350 crores as on the date of filing the counter-affidavit, whereas the money already borrowed by the respondent is Rs.290 crores as on the date of filing the counter-affidavit including FCCB liability to be repaid in December, 2016 and that as long as the new debt to be availed by the respondent does not exceed aggregate of the paid up share capital and free reserves, a special resolution is not required and that in the face of its own aforenoted averment, the respondent needs a special resolution for contracting any debt above Rs.350 crores and in the event, the respondent is not prevented from contracting a new debt pending the suit, in its ultimate success in the suit, there is a likelihood of the appellant's interests suffering on account of the respondent contracting debts beyond Rs.350 crores. The learned senior counsel has further submitted that if the respondent seeks to contract debt exceeding the aggregate value of the paid up share capital and free reserves to the tune of Rs.350 crores, it may give the appellant 60 days notice to the appellant before such decision is implemented.

7. Mr.S.Niranjan Reddy, learned counsel for the respondent, has opposed the above submissions by relying upon para 8 of the same counter-affidavit, wherein it is stated that already a special resolution for availing a loan to the extent of Rs.500 crores was passed by the shareholders of the respondent in the year 2015 itself and that therefore, even if the appellant succeeds in the suit, it cannot undo the said resolution. The learned counsel has further submitted that in C.M.A.No.442 of 2016, which was filed against the same common order, which is the subject matter of the present appeals, a consensus was reached between the parties based on which, this Court rightly disposed of the said appeal *vide* judgment, dated 04.08.2016. He relied upon para 2 thereof, which reads as under:

> "After detailed arguments were advanced by both learned senior counsel Sri D.Prakash Reddy, appearing for the appellant, and Sri S.Ravi, appearing for the respondent, a consensus was reached between the parties. It is agreed among the parties that the injunction granted by the lower Court shall be confined to the appellant passing any resolution for issuance of fresh equity only. The appellant is left free to take decisions on any other aspect relating to the company and in the event such decision pertains to merger or de-merger, it shall put the respondent to 60 days notice before such decision is implemented. The order under appeal is, accordingly, modified to the above effect. Both parties are given liberty to mention for an early hearing of the suit."

He has further submitted that since the special resolution was already passed for contracting debt up to Rs.500 crores, the respondent will not pass any fresh resolution for contracting debt in excess of Rs.500 crores.

8. We have carefully considered the submissions of the learned counsel for the parties with reference to the record.

9. The concern of the appellant pertains to the running of the affairs of the respondent company in a proper manner, so that in the event of its success in the suit, the value of the shares, which it is likely to get by way of conversion from the bonds will not fall. In the context of contracting fresh equity, this Court disposed of C.M.A.No.442 of 2016. One of the stands taken by the appellant in the said appeal as well as before us in the present appeals is that had the respondent agreed for conversion of the bonds into equity as per the understanding between the parties in the relevant clauses in the trust deed, it would have acquired 25% of the equity share, in which event, it would have prevented the passing of the special resolutions on any aspect, if the appellant feels that such resolution is not in its interests. As far as the contracting of the debt is concerned, as noted hereinbefore, in para 8 of the counter-affidavit filed on behalf of the respondent, it was specifically averred that to the extent of contracting debt up to Rs.500 crores, a special resolution was passed by the shareholders in the year 2015 itself. This averment is not specifically denied by the appellant. Therefore, we find merit in the submission of the learned counsel for the respondent that even if the appellant succeeds in the suit filed in the present form, it will not be in a position to undo the special resolution already passed for contracting debt up to Rs.500 crores.

10. Apart from the above, in para 2 of our order in C.M.A.No.442 of 2016 as referred to above, we have placed on record the consensus reached between the parties to the effect that the injunction granted by the Court below in favour of the appellant and against the respondent (appellant in the said C.M.A.) shall be confined to the passing of any resolution for issuance of fresh equity only and the respondent was left

free to take decisions on any other aspect relating to the company and in the event such decision pertains to merger or demerger, it shall put the appellant to 60 days notice before such decision is implemented. This order, thus, enables the respondent to take decisions on any aspect other than passing of resolution for issuance of fresh equity and only if such decision pertains to merger or demerger, the respondent shall put the appellant to 60 days notice before such decision is implemented.

11. Therefore, as rightly submitted by Mr.S.Niranjan Reddy, learned counsel for the respondent, already a consensus was reached between the parties, by which the respondent is left free to take any decision and if such decision pertains to merger or demerger, then only the appellant is entitled to 60 days notice before such decision is implemented. In the face of the order, dated 04.08.2016, in C.M.A.No.442 of 2016, which was passed based on the consensus reached between the parties, the appellant cannot insist that even in case of the respondent contracting debt in excess of Rs.350 crores, the latter is under obligation to put the former to 60 days notice.

12. In the light of the above discussion, C.M.A.No.647 of 2016 is disposed of in the following terms:

(1) The respondent shall be free to implement the special resolution for contracting debts, which in all shall not exceed Rs.500 crores, taking into consideration the value of paid up share capital and also free reserves; and

(2) The respondent is restrained from passing any special resolution in respect of any fresh debt.

13. As a sequel, C.M.A.M.P.Nos.1332, 1333 and 1409 of 2016 filed in C.M.A.Nos.647, 648 and 688 of 2016 respectively, by the appellant for interim reliefs shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

16th September, 2016
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