The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Civil Miscellaneous Appeal No.689 of 2016

Date: 23.09.2016

Between:

M/s.The Bank of New York
Mellon, London Branch,
United Kingdom
in its capacity as Trustee

… Appellant

and

M/s.Gati Limited
Secunderabad

…Respondent

Counsel for the Appellant: **Mr.S.Ravi, Senior Counsel for Mr.Ch.Pushyam Kiran**

Counsel for the respondent: **Mr.S.Niranjan Reddy for Mr.Avinash Desai**

The Court made the following:

Judgment: **(Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This Civil Miscellaneous Appeal (CMA) arises out of Common Order, dated 01-06-2016, in IA.Nos.5310 of 2014 and batch in OS.No.247 of 2014, on the file of the learned I Additional Chief Judge, City Civil Court, Secunderabad.

Before referring to the merits of the CMA, we need to mention that the respondent has filed CMA.No.442 of 2016 against the aforesaid common order to the extent it pertains to IA.No.5312 of 2014 whereby the lower Court has granted injunction restraining it from passing any resolution for issuing fresh equity or for forming joint ventures or regarding merger or de-merger or for voting in support of such resolution in respect of subsidiaries, which are in any way detrimental to the interests of the bondholders covered by Exs.P.3 and P.4.

The said CMA was disposed of by us, on a consensus reached between the parties, by Order, dated 04-08-2016. Paragraph 2 of the said Order 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."

After dismissal of CMA.No.442 of 2016, the respondent therein has filed the present CMA and also CMA.Nos.647, 648 and 688 of 2016. After hearing both sides, this Court has, on concession, dismissed CMA.Nos.648 and 688 of 2016, but disposed of CMA.No.647 of 2016, which pertains to contracting of debts, by Order, dated 16-09-2016, the relevant portion of which reads as under:

> "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 fact of order, dated 04-08-2016, in CMA.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, CMA.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 exdceed 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."

In IA.No.5310 of 2014, out of which the present CMA arises, the appellant has prayed for an *ad interim* injunction restraining the respondent from passing, giving effect to or taking any action pursuant to any resolution contrary to Condition Nos.3.1 and 3.2 of the Trust Deed and restraining the respondent from voting at any meeting of any of its subsidiaries in favour of a resolution for passing, giving effect to or taking any action pursuant to any resolution contrary to the aforesaid conditions without the consent of the Bondholders. The lower Court has dismissed this IA.

Mr.S.Ravi, learned Senior Counsel appearing for the appellant, submitted that the lower Court has got confused between Condition Nos.3.1 and 3.2 of terms and conditions contained in Schedule IV of the Trust deed and Clauses 3.1 and 3.2 of the Trust deed and that instead of looking into Condition Nos.3.1 and 3.2 of Schedule IV of the said Trust Deed, the lower Court has committed a serious mistake in considering Clauses 3.1 and 3.2 of the Trust Deed and dismissing the said application.

Mr.S.Niranjan Reddy, learned Counsel for the respondent, submitted that if the lower Court has committed the mistake of not looking into the terms and conditions of Schedule IV of the Trust Deed, the appellant alone has to be blamed, as nowhere in the affidavit filed in support of the IA or the prayer sought therein, Condition Nos.3.1 and 3.2 of Schedule IV of the Trust Deed have been referred to. He has also argued on merits of the case.

In ordinary course, it would have been appropriate for us to set aside the order of the lower Court and remand the IA for fresh consideration. However, we have felt it not necessary to follow this course for the reason that as noted above an order was already passed by us on a consensus reached between the parties in CMA.No.442 of 2015 filed by the respondent. At the time of disposal of the said appeal, the appellant- Bank has not brought to our notice that it is intending to file appeals. On the contrary, Paragraph 2 of our order reproduced above would leave us in no doubt that a comprehensive understanding was reached between the parties based on which CMA.No.442 of 2016 was disposed of. Indeed, while disposing of CMA.No.647 of 2016, we have accepted the submission of Mr.S.Niranjan Reddy, learned Counsel for the respondent, that a consensus was already reached between the parties by which the respondent was left free to take any decision and that if such decision pertains to merger or demerger, the appellant is entitled to 60 days' notice before such decision is implemented. Referring to the said consensus, we have made the observations in Paragraph 11 as reproduced above. In our opinion, the said order also covers the aspect relating to the borrowings falling under Condition Nos.3.1 and 3.2 of Schedule IV of the Trust Deed executed between the parties.

In the premises as above, the Civil Miscellaneous Appeal is dismissed.

As a sequel to dismissal of the Civil Miscellaneous Appeal, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 23rd September, 2016
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