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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2600/2014**

M/S. GLOBAL EDUCATION FOUNDATION Petitioner

Through: **Mr. Kailash Vasudeva, Sr. Advocate**
with **Mr. Amit Sinha, Advocate**

versus

ARCIL & ORS.

..... Respondent

Through: **Mr. Mohit Arora, Advocate for**
NBCC
Mr. Rajesh Mahajan, ASC

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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10.08.2016

By this writ petition, the petitioner – M/s Global Education Foundation, seeks a writ of certiorari to quash the order dated 28.11.2014 passed by the learned CMM in the matter of ARCIL & Anr. Vs. Narender Impex Ltd. & Ors. in CC No. 102/IS under Section 14 of the SARFAESI Act ('the Act'). A further direction is sought to quash the possession notice dated 15.12.2014 passed by the learned Receiver.

The case of the petitioner is that the petitioner is a tenant under M/s Narender Impex Ltd. in the property admeasuring 78350 sq. ft. on the ground floor and first floor (50% on the east side) with 81 car parking in basement (on ownership basis) and 37 open car parking space at the ground level (on right to use basis) in NBCC Plaza, Pushp Vihar, Sector V, near Saket, New Delhi, under a tripartite agreement dated 28.06.2010 entered

into between the petitioner, Narender Impex Ltd. and Indian Overseas Bank. Under the tripartite agreement, the entire rent had to be paid by the petitioner to Indian Overseas Bank and Punjab National Bank ('PNB').

In relation to the debts of Narender Impex Ltd. owed to Indian Overseas Bank, which were assigned to ARCIL, respondent No. 1 and 2 initiated proceedings before the learned CMM under Section 14 of the Act, wherein the impugned order dated 28.11.2014 was passed, inter alia, directing dispossession of the petitioner/tenant from the aforesaid property. The petitioner has, consequently, preferred the present petition to assail the order dated 28.11.2014, as well as the possession notice dated 15.12.2014 issued by the Receiver.

During the course of hearing, it is pointed out that the petitioner has been in default of payment of rent since the beginning. Learned counsel for respondent No. 1 submits that as on date, the outstanding rental liability of the petitioner is to the tune of Rs. 141 crores. The submission of the Ld. Sr. Counsel for the Petitioner is that there are differences between the Petitioner and the landlord Narender Impex Ltd. Thus no rent is payable.

It is clear from a perusal of the tripartite agreement itself that the petitioner and M/s Narender Impex are creations of the same persons, and the same set of persons are controlling them. The authorized signatory of the petitioner and M/s Narender Impex in the tripartite agreement is the same viz. Shri Rakesh Garg. He is a Chairman of the Petitioner and, at the same time the Director of M/s Narender Impex.

Pertinently in the present petition, respondent No. 2, PNB has filed its Counter Affidavit. Along with the same, PNB has filed as Annexure R-7 the extract of Minutes of Meeting of the Trustees of the petitioner dated

26.06.2010, wherein it is recorded “...*Rakesh Kumar Garg be and is hereby authorized to sign and execute all the documents and to do all such acts as may be required from time to time.....*”. This extract has been signed by R.K. Garg in his capacity as the Chairman of the Trust. Equally pertinent is the fact that the Petitioner and M/s Narendra Impex have filed a joint written statement in OA No. 141/2012, filed by PNB, wherein M/s Narendra Impex was the Defendant No. 1 and the petitioner was the Defendant No. 3.

In the above background, the so called differences and distinction sought to be drawn by the Petitioner, with M/s Narendra Impex are clearly an eyewash and farcical. The fact that M/s Narendra Impex is seeking to protect the interest of M/s Global Education Foundation, by filing the connected writ petition i.e. W.P. (Crl) 1037/2015 and praying that the dispossession notice issued by the Receiver on 15.12.2014 be quashed, further shows that the petitioner and M/s Narendra Impex are one and the same entity.

The aforesaid being the position, in my view, the petitioner is not entitled to invoke the extra ordinary writ jurisdiction of this Court. The petitioner has not come to the court with clean hands. The petitioner is in default of payment of rent which was to go to the Indian Overseas Bank and PNB and, therefore, cannot claim protection from this Court to perpetuate its possession. On this ground alone, the petition is liable to be dismissed. It is, accordingly, dismissed.

VIPIN SANGHI, J

AUGUST 10, 2016

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