

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.06.2017
CORAM:
THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
Writ Petition Nos.9351 & 9352 of 2017
and
W.M.P.Nos.10326 & 10327 of 2017

B.S.RajNarain ...Petitioner in W.P.No.9351 of 2017

C.AroTaffline ...Petitioner in W.P.No.9352 of 2017

Vs

1.Axis Bank Ltd.,
Credit Management Centre,
First Floor, Karumuttu Nilayam,
No.192, Anna Salai,
Chennai 600 002.

2.Brand Portrait Consulting Pvt. Ltd.,
Rep. by its Director, Venu Gopal Nair

3.Mr.Venugopal Nair,
Director, Brand Portrait Consulting Pvt. Ltd.,

4. Mr.SubashRambhavBhokre
Director, Brand Portrait Consulting Pvt. Ltd., ... Respondents
1 to 4 in both W.Ps.

5.C.AroTaffline ... 5th Respondent in W.P.9351 of 2017

6.B.S.RajNarain ... 5th Respondent in W.P.9352 of 2017

(R2 to 5 were given up (in WP.No.9351/17))
(R2 to 4 were given up (in WP.No.9352/17))

Prayer in W.P.No.9351 of 2017: Writ petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records culminated in the order dated 24.03.2017 passed by the Debts Recovery Appellate Tribunal, Chennai in I.A.No.1022 of 2015 in A.I.R.No.847 of 2015 on the file of Debt Recovery Appellate Tribunal and quash the order dated 24.03.2017 passed in I.A.No.1022 of 2015 in A.I.R.No.847 of 2015 by the Hon'ble Debts Recovery Appellate Tribunal, Chennai.

Prayer in W.P.No.9352 of 2017: Writ petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records culminated in the order dated 24.03.2017 passed by the Debts Recovery Appellate Tribunal, Chennai in I.A.No.73 of 2016 in A.I.R.No.848 of 2015 on the file of Debt Recovery Appellate Tribunal and quash the order dated 24.03.2017 passed in I.A.No.73 of 2016 in A.I.R.No.848 of 2015 by the Hon'ble Debts Recovery Appellate Tribunal, Chennai.

For Petitioner
in both W.Ps

: Mr.Akhil R.Bhansali
for M/s.BFS Legal

For R - 1
in both W.Ps

: Mr.R.Nagasundram
for Mr.M.R.Uma Vijayan

For RR2 to R5
in both W.Ps

: Given up

COMMON ORDER

Seeking to quash the order passed by the Debts Recovery appellate Tribunal in I.A.No.1022 of 2015 in A.I.R.No.847 of 2015 dated 24.03.2017, the petitioner is before this Court with W.P.No.9351 of 2017.

2.Seekig to quash the order passed by the Debts Recovery appellate Tribunal in I.A.No.73 of 2016 in A.I.R.No.848 of 2015 dated 24.03.2017, the petitioner is before this Court with W.P.No.9352 of 2017.

3.The petitioners are partners of M/s.Brand Portrait Consulting Pvt. Ltd., among other partners. The said company had availed credit facility from the first respondent Bank. In this regard, the Directors of the said Company had also executed personal guarantees for the credit facility sanctioned by the first respondent. Further, a deed of hypothecation of Machinery and other movable fixed assets, a deed of hypothecation of current assets, a letter of arrangement for cash credit and a demand promissory note dated 27.07.2007 were also executed by the Directors of the said company, in which, the petitioners herein have also signed the same in the capacity of Directors of the said company.

4.It is submitted by the learned counsel for the petitioners that Mr.B.S.RajNarain, the petitioner in W.P.No.9351 of 2017 resigned as a Director of the said company on 25.02.2008 and the

same was also accepted unconditionally by the company. In fact, the Company also filed Form 32 with the Registrar of Companies notifying the resignation of Mr.B.S.RajNarain.

5.It is submitted by the learned counsel for the petitioners that Mr.C.AroTaffline, the petitioner in W.P.No.9352 of 2017 resigned as a Director of the said company on 22.02.2008 and the same was also accepted unconditionally by the company. In fact, the Company also filed Form 32 with the Registrar of Companies notifying the resignation of Mr.C.AroTaffline.

6.In this regard, the petitioners herein sent an e-mail communication to the first respondent Bank on 22.02.2008 itself. Thus, according to the petitioners, the first respondent was well aware of fact that the petitioners had resigned from the Company as early in February 2008 itself. Further, the first respondent and the other Directors of the company were also informed by the petitioners that there are no out standings as on the date of the resignation of the petitioners.

7.Thereafter, M/s.Brand Portrait Consulting Pvt. Ltd had sought for an increase in the credit facility from 25 lakhs to 100 lakhs. The same was not however, sanctioned by the first respondent since, the petitioners herein raised objection. The first respondent Bank also entered into a renewed guarantee agreement with the continuing Directors since, the petitioners had resigned. This according to the petitioners establishes that the first respondent Bank had knowledge about the resignation of the petitioners herein.

8.Further, on 25.10.2008, the first respondent Bank sanctioned credit facility to M/s.Brand Portrait Consulting Pvt. Ltd. At that time, the petitioners were not Directors. Hence, personal guarantees were signed by the continuing Directors and not by the petitioners herein. Further, the personal guarantees executed by the petitioners herein on 27.07.2007 were also expired on 26.07.2008 and the same were also not renewed further. Thus, according to the petitioners, for the credit facility availed by the continuing Directors of M/s.Brand Portrait Consulting Pvt. Ltd., the petitioners cannot be held responsible.

9.However, the first respondent had issued a legal notice on 12.04.2010 to the Directors of M/s.Brand Portrait Consulting Pvt. Ltd including the petitioners herein. The petitioners herein sent reply notices also for the same thereby denying the contents of the legal notices. Despite the same, the first respondent Bank filed O.A.No.183 of 2010 before the Debts Recovery Tribunal - I against the petitioners and others seeking a sum of Rs.25,44,107.25/- together with interest therein @ 15.25% per annum with monthly rests from 09.07.2010 till the

date of realization, in full. In the mean while, the said O.A., was transferred from the file of the Debts Recovery Tribunal - I to Debts Recovery Tribunal - II and re-numbered as O.A.No.237 of 2015.

10.In I.A.Nos.1022 of 2015 & 73 of 2016, in AIR Nos.847 & 848 of 2015 respectively in O.A.No.237 of 2015, the Appellate Tribunal has passed the following order:-

"In the present case, I hold the debt amount to be Rs.25.44 lakhs and direct the Appellant to make pre-deposit of Rs.6.40 lakhs within a period of four weeks from today with the Registrar of this Tribunal, failing which Appeal stands dismissed automatically without making any reference from this Tribunal."

Challenging the same, the petitioners are before this Court with these writ petitions.

11.Heard the learned counsel for the petitioners and the learned counsel for the first respondent. The petitioners have given up the respondents 2 to 5 herein.

12.The contention raised by the petitioners is that for the credit facility availed by M/s.Brand Portrait Consulting Pvt. Ltd., during the relevant point of time, in which, they were not Directors, they cannot be held responsible.

13.During the relevant point of time, the petitioners were Directors of M/s.Brand Portrait Consulting Pvt. Ltd., or not, is a question of fact which cannot be gone into by this Court, at this stage. Further, since, the conditional orders passed by the Appellate Tribunal have not been complied with by the petitioners herein, we are inclined to pass the following order.

14.In the result, the orders passed by the Appellate Tribunal in I.A.Nos.1022 of 2015 & 73 of 2016, in AIR Nos.847 & 848 of 2015 in O.A.No.237 of 2015 dated 24.03.2017 are modified to the effect that the petitioners shall deposit a sum of Rs.3 lakhs each instead of Rs.6.4 lakhs as directed by the Appellate Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Appellate Tribunal is directed to proceed with the matters further, in accordance with law.

15.With the above directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jbm

To

1.Axis Bank Ltd.,
Credit Management Centre,
First Floor, Karumuttu Nilayam,
No.192, Anna Salai,
Chennai 600 002.

2.The Debts Recovery Appellate Tribunal,
Chennai.

+1 cc to M/s.Uma Vijayan Advocate sr 40219

+1 cc to M/s.BFS Legal, Advocate sr 40245

W.P.Nos.9351 & 9352 of 2017

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