

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2017

CORAM

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.M.P.NO.6449 OF 2017
IN M.P.DIARY NO.34933 AND 34934 OF 2016
O.S.A.NO.253 OF 2015

M/S. SHARON SOLUTINS LTD.
HAVING ITS REGISTERED OFFICE AT :
GROUND FLOOR, JEENA HOUSE,
No.520 M.K.N. ROAD, ALANDUR,
CHENNAI - 600 016. Petitioner

Vs.

IFCI VENTURE CAPITAL FUNDS LTD.
REP BY ITS AUTHORISED SIGNATORY,
HAVING ITS OFFICE AT
"IFCI TOWER",
61 NEHRU PLACE,
NEW DELHI 110 019. Respondent

PRAYER: Petition filed under Order XIV, Rule 8 of the Original Side Rules read with Order IV, Rule 9(6) of the Appellate Side Rules, praying to condone the delay of 300 days in representing the petition in M.P.(SR) No.34933 and 34934 of 2016 in O.S.A.No.253 of 2015. सत्यमेव जयते

For Petitioner : Mr.S.R.Raghunathan

For Respondents : Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

O R D E R

(Order of the Court was made by RAJIV SHAKDHE, J.)

1. This is an application seeking condonation of delay in representing the petition in M.P.(SR) Nos.34933 and 34934 of 2016 in filing O.S.A.No.253 of 2015.

2. Admittedly, O.S.A.No.253 of 2015, was disposed of, finally, by an order passed by a Division Bench of this Court on 06.04.2016.

2.1. The operative part of the directions issued by the Division Bench are contained in paragraph 4, which, for the sake of convenience, is extracted hereafter :

"..... 4. In view of the aforesaid, the following agreed order is passed :-

(1) The order of admission of the winding up dated 12.11.2014, will kept under suspension till 31.07.2016.

(2) The appellant will pay a sum of Rs.1.00 Crore (Rupees One Crore) to the respondent on or before 30.04.2016 and a further sum of Rs.1.00 Crore (Rupees One Crore) on or before 30.06.2016. The non-compliance of any of these payment within the time stipulated would automatically remove the suspension order.

(3) In the meantime, the appellant will work out with Finance and see if they can locate someone to purchase the shares as acceptable to the respondent and the consideration for the same would be deposited with the respondent.

(4) Any further monitoring in this behalf would be within the purview of the learned Company Judge."

3. Mr.S.R.Raghunathan, who appears for the petitioner concedes that the time line fixed for paying the sum of Rs.2,00,00,000/- (Rupees two crores only) in the order dated 06.04.2016, was not adhered to.

3.1. It is in this background that the petitioner has approached the Court by way of petitions, which are yet to be numbered, on account of the pendency of the captioned petition seeking condonation of delay of 300 days.

3.2. Mr.Raghunathan, submits that the respondent herein had invested a sum of Rs.24.99 Crores in the Compulsory Convertible Debentures (CCD) floated by the petitioner company. According to the counsel, the promoter Directors of the petitioner

company, in turn, had, apparently, pledged 33% of the equity share capital held by them in favour of the respondent.

3.3. Learned counsel further informs us, that the respondent, in 2013, initiated recovery proceeding against the petitioner company by approaching the Debt Recovery Tribunal (DRT), Delhi. This proceeding, according to the learned counsel, was numbered as : O.A.No.97 of 2013.

3.4. It is also the stand of Mr.Raghunathan that the respondent in O.A.No.97 of 2013, preferred a claim in the sum of Rs.47.39 crores.

3.5. We are further informed that while, the proceedings in DRT, Delhi, were pending, the respondent preferred a company petition, which was numbered as : C.P.No.14 of 2014.

3.6. According to the learned counsel, the respondent company in order to square off the debt owed by the petitioner company to it, transferred the pledged shares to, one, Ms.Poonam Garg, and therefore, no debt survives as against the petitioner company.

3.7. It is also the learned counsel's contention that as on the date of transfer, the value of each pledged share was Rs.148.50. It is, thus, submitted that the respondent stood to gain a sum of Rs.51,00,00,000/- (Rupees Fifty one crore only), approximately, by invoking the pledge and transferring the shares in favour of Ms.Poonam Garg. In this behalf, learned counsel refers to Section 176 of the Contract Act.

4. On the other hand, learned counsel for the respondent, says that neither the captioned petition for condonation of delay nor the unnumbered petitions are sustainable, and that, if at all, any remedy is available to the petitioner, it lies, before the learned Single Judge. It is his contention that the delay in representing the petitions is far too long, and that, if, the petitioner company was keen on seeking extension of time, provided in order dated 06.04.2016, it should have approached this Court at an earlier date.

5. We have heard the learned counsels for the parties.

5.1. We are of the view that condonation of delay in representing will not help the cause of the petitioner company. This is besides the fact that the delay is inordinate and explained unsatisfactorily. If, the contention of the petitioner company is correct, which is, that no debt exists, then, the appropriate remedy would be to approach the learned Single Judge, to seek recall of the order, whereby, the company petition was admitted.

5.2. As indicated above, the petitioner company claims that there is, in fact, no debt in existence, having regard to the fact that the respondent has already invoked the pledge and transferred the subject shares, and thereby, enured to itself a benefit, which in excess of the outstanding debt.

6. For all these reasons, we are not inclined to entertain the petition. It is, accordingly, dismissed. Therefore, the Registry need not number the accompanying petitions.

7. Needless to say, the dismissal of the captioned petition will not come in the way of the petitioner company approaching the learned Single Judge by way of an appropriate application, albeit, in accordance with law.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Assistant Registrar (O.S.),
Madras High Court, Chennai.

+1cc to M/s.Aiyar and Dolia, Advocate, S.R.No.83401
+2ccs to Mr.S.R.Rajagopal, Advocate, S.R.No.83731

C.M.P.No.6449 of 2017
in M.P.Diary No.34933 and 34934 of 2016
O.S.A.No.253 of 2015

AD(CO)
CS/19/12/17

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