

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORIGINAL JURISDICTION)

Friday, the 19th day of January 2018

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

COMP.APPLN.NO.475 OF 2017

IN

COMP.PETN.NO.63 OF 2013

In the matter of Section 433 of 434 of the Companies
Act, 1956 and

In the matter of M/s.Best & Crompton Engineering Limited

C.P.No.63/2013

IL & FS Financial Services Limited,
Wescare Towers, 3rd Floor,
No.16, Cenotaph Road, Teynampet,
Chennai 600 018
Represented by its authorized Signatory,
Mr.Goutham Kalathuru ..Applicant/Petitioner

Vs.

M/s.Best & Crompton Engineering Ltd.
No.28, Industrial Estate (North),
Amabttur,
Chennai 600 098 .. Respondent/Respondent

C.A.No.475/2017

IL & FS Financial Services Limited,
498,Karumuttu Centre, 3rd Floor,
South Wing, Anna Salai, Nandanam,
Chennai 600 035 ..Applicant/Petitioner

Vs.

The Official Liquidator,
High Court, Madras,
Provisional Liquidator of
M/s. Best & Crompton Engg Ltd.
(In provisional liquidation),
2nd Floor, Corporate Bhavan, Rajaji Salai.
Chennai 600 001 ..Respondent/Respondent

The Company Applicant praying this Court:-

a)To direct the Official Liquidator to hand over
possession of the secured assets of the Respondent Company

as set out in the Judges Summons, to the Applicant within a date to be fixed by this Hon'ble Court under the Provisions of the SARFAESI Act to enforce the secured assets.

The Company Application coming on this day before this Court for hearing in the presence of M/s.Menon Karthik Advocate for the applicant herein and of Mr.P.Atchutha Ramaiah, Official Liquidator, High Court, Madras, for the Respondent herein and upon reading the Judge's Summons and Affidavit of Goutham kalathur filed herein, the Court made the following order:-

"This application has been filed by the applicant, who is the secured creditor of the company in liquidation, seeking to handover possession of the secured assets.

*2.From the submissions made, it is not in dispute that the assets are secured with the applicant being the secured creditor. Therefore, as per the law laid down by the Apex Court in **Pegasus Assets Reconstruction Private Limited Vs. Haryana Concast Limited and Another ((2016) 4 SCC 47)**, when the applicant takes a stand to stand outside the winding up proceedings, being the secured creditor, seeking to proceed against the secured assets independently, the same cannot be objected to. In the case on hand, already proceedings have been initiated by the applicant under the SARFAESI Act. This factum is also acknowledged by the learned Official Liquidator. Therefore, consequent thereon, the possession will have to be handed over.*

3. Learned Official Liquidator would further submit that for more than a year, the secured assets are under the custody of the Official Liquidator, who, in the process, has incurred expenses by engaging security agency. Secondly, it is submitted that office furniture and I.T. equipments do not form part of the secured assets and therefore, while taking possession, they will have to be returned. In other words, it is submitted that except the secured assets, other assets will have to be returned to the Official Liquidator.

4. In such view of the matter, the application stands ordered by directing the Official Liquidator to hand over possession, after realising the expenses incurred in maintaining the secured assets through security agency and expenses incurred for preparing valuation report and after retaining the possession of other assets other than the secured assets".

Schedule

I. Immovable Property:

All that pieces and parcels of the property being land, building land, building, shed, office administrative premises and factory building at Plot No.28A (NPP, Industrial Estate, Ambattur, Chennai 600 098, the total land in possession of the Borrower admeasuring 12.99 acres as per the sale deed dated 28/07/1993 and as per patta the

land admeasuring 11.58 acres, comprised in TS Number 19 (corresponding old Survey Nos.143 part, 153/1 part,153/3 part) of Pattravakkam Village, T.S.No.32 (corresponding to old Survey Nos.143 part, 144 part, 145 part, 147 part and 148 part) of Pattravakkam Village, T.S.No.44 (corresponding to old survey Nos.826 part, 821,823,828,835 part) of korattur Village, Ambattur Taluk, Thiruvallur District in Ward No.E and Block No.55 and bounded on the:

North by	: Railway Land
East by	: 30ft.I Road (Diary Farm Road)
South by	: Plot No.28-B
West by	: SIDCO sheds

and situate within the Sub-Registration District of Konnur and Registration District of Chennai North, together with all buildings and structures thereon and fixtures and fittings, whether attached to the earth or permanently fastened to anything attached to the earth.

II.Hypothecated Assets:

All the movable capital equipment, plant and machinery, machinery spares, tools and accessories which are purchased and/or to be purchased by the Borrower which are lying or stored in or about all the Borrower's factories, offices, premises and godowns or wherever the same may be or are being held by the Borrower or in course of transit or on high seas or otherwise in possession or control and belonging to the Borrower either by way of substitution or addition, both present and future.

All the Borrower's stocks of raw materials, semi-finished and finished goods, consumable stores, cash, bank

balances, loans advances, book debts and such other current assets, both present and future as may be required in the ordinary course of business.

WITNESS, The Hon'ble Ms.Indira Banerjee, The Chief Justice of Madras High Court, as aforesaid this the 19th day of January 2018.

Sd/-

JOINT REGISTRAR (O.S)

//CERTIFIED TO BE A TRUE COPY//

DATED THIS THE

DAY OF

2018.

COURT OFFICER.

From 25th September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decree in this format.

TE-16.05.2018

COMP.APPLN.NO.475 OF 2017
IN
COMP.PETN.NO.63 OF 2013

ORDER DATED:19/01/2018

THE HON'BLE MR.JUSTICE
M.M.SUNDRESH

FOR APPROVAL ON:17/05/2018

APPROVED ON:21/06/2018

To:

The Official Liquidator,
High Court, Madras.