IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Nineteenth day of September Two Thousand Seventeen

PRESENT

THE HON`BLE MR JUSTICE M.SATHYANARAYANAN

and

THE HON`BLE MR JUSTICE N.SESHASAYEE

CMP.No.13293 of 2017

in OSA.No.245 of 2016

M/S MARG LTD [PETITIONER]
REP BY ITS AUTHORISED SIGNATORY
MR.G.SUDARSHAN REDDY, NO.4/318 MARG AXIS,
RAJIV GANDHI SALAI, KOTTIVAKKAM, CH-41

Vs

1 RIVERSIDE INFRASTRUCTURE [RESPONDENTS]
PVT LTD,4/318,MARG AXIA,FUTURE BUILDING,
5TH FLOOR,RAJIV GANDHI SALAI,
KOTTIVAKKAM,
CHENNAI-41

2 M/S.LIC HOUSING FINANCE LTD
REP.BY ITS AREA MANAGER,
HARRINGTON CHAMBERS,BLOCK NO.C,
NO.30/1A,ABDUL RAZACK
1ST STREET, SAIDAPET,CHENNAI-15

3 EDELWEISS ASSET RECONSRUCTION
COMPANY LIMITED,15TH FLOOR,
OFF CST ROAD, KALINA,MUMBAI-98

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to implead the petitioner herein as the 3rd respondent in OSA.No.245/2016 (in CMP.No.13293/2017) pending disposal of the above OSA.No.245/2016.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.N.MURALIKUMARAN, for M/S MC GAN LAW

FIRM, Advocate for the petitioner and of M/S.AKHIL R.BHANSALI Advocate for the 1st respondent and of M/S.OM.PRAKASH, for M/S.RAMALINGAM ASSOCIATES for the 2nd respondent and of M/S.P.S.RAMAN, Senior Counsel Assisted by M/S.S.INDUMATHI RAVI, Advocate for the 3rd respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.,

The petitioner is a third party and in the affidavit filed in support of this petition, would aver among other things that the petitioner being a Public Limited Company and 100% shareholder of the first respondent/appellant and that it has also invested some money in the first respondent company for purchase of land and other construction, which has not been funded by the lenders namely, the second respondent and other financial institutions. It is further stated that in the event of the first respondent being wound up, the petitioner and its' 20,000 shareholders would be severely prejudiced and they would also be subject to irreparable loss and hardship. It is also the stand of the petitioner that it had also invested in the construction of hotel and mall, which was not even funded by the lenders. It is further submitted that the petitioner-company had already invested Rs.104.00 crores and it has further agreed to invest 39.38 crores on upfront basis, in the Joint Leaders Meeting to resolve the issue .

2. The petitioner also took a stand that the repayment has to begin only from the commercial date of operation and the said date was interlinked to the initial disbursement of the loan and any delay in initial disbursement of loan would also delay the commercial date of operation and further the lenders, which also include the second respondent, took unreasonable amount of time to sanction and disburse the loan and never considered the extension of commercial date of operation. In sum and substance, it is the stand of the petitioner that it has invested a huge sum of money and that, on account of the belated sanction and disbursement of loan, the default had occurred and the default period can be taken note of only from the commercial date of operation; but, it never took place, and as such, the classification of assets of the first respondent-company is non-performing, is contrary to the prescribed norms and hence, prays for impleadment as a party in this Original Side Appeal in OSA.No.245 of 2016.

3. The third respondent has filed a counter affidavit tracing the history of ligation and took a stand that the first respondent exhausted all the available resources to bring him any further settlement proposals and in order to stall the proceedings, the petitioner has now filed the present petition for its impleadment, only on the ground that it is a cent percent shareholder of the first respondent/appellant and in the event of the first respondent/appellant being wound up, the shareholders would be put

to grave prejudice, hardship and irreparable loss and the same is unsustainable in the light of the counter affidavit dated 18.01.2016 filed by the first respondent before the Company Court in C.P.No.127 of 2015 . The third respondent would further state that if really, the petitioner is genuine in protecting the interest of 20,000 shareholders, it ought to have taken steps to repay the dues instead of giving reasons and imposing conditions upon the lenders and would contend that the present petitioner has no locus standi to get impleaded as a party in O.S.A.No.245 of 2016 for the reason that the arrangement between the petitioner and the first respondent, is no way connected with the recovery process initiated by the third respondent and prays for dismissal of the petition.

4. Mr.N.Muralikumaran, learned counsel appearing for the petitioner/proposed party sought to be impleaded would vehemently contend that the petitioner was aware of the proceedings in C.P.No.127 of 2015 and did not seek for impleadment for the reason that the said petition is yet to be admitted and that it has also funded the first respondent company to the tune of Rs.104.00 crores. It is the further submission that in the Joint Meeting, to find out the possibility of amicable settlement, it was agreed to invest further sum of Rs.39.38 crores and in the event of further proceedings taking place in pursuant to the impugned order passed in C.P.No.127 of 2015, the petitioner company as well as its shareholder are bound to suffer grave hardship and irreparable loss and therefore, in all fairness, it should be impleaded as a party in the appeal filed by the first respondent.

5. The learned counsel appearing for the first respondent/appellant would submit that they have no serious objection in impleading the petitioner as a party.

6. The learned counsel appearing for the second respondent, on instructions, would submit that they are adopting the counter affidavit filed by the third respondent.

7. Mr.P.S.Raman, learned Senior Counsel assisted by Ms.Indumathi Ravi, learned counsel appearing for the third respondent, apart from inviting the attention of this Court to the counter affidavit, would submit that the petitioner is in collusion with the first respondent and to stall the proceedings for effecting the recovery of nearly a sum of rupees 400 crores, sought to be due and payable to the lenders, which includes the second respondent also, the present petition is filed. It is the further submission of the learned Senior Counsel appearing for the third respondent that the second respondent had filed C.P.No.127 of 2015, for winding up of the first respondent company and for the reason that the first respondent was due to pay a sum of Rs.174,74,78,295.88 as on 28.02.2015 to the State Bank of Patiala,

being one of the secured creditors as well the leader of consortium invoking Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short as SARFAESI Act), issued a notice dated 06.05.2013, calling upon the first respondent to pay a sum of Rs.250,66,51,688.47p along with future interest, charges and expenses within a stipulated period and since the first respondent has failed to clear the sum, further action was taken under Section 13(4) of SARFAESI Act. The lenders namely the State Bank of Patiala and Syndicate Bank has entered into Assignment Agreements dated 26.06.2014 and 28.06.2014 with the third respondent, assigning their interest which include the recovery and thereafter, the third respondent filed C.A.No.1248 of 2015 in C.P.No.127 of 2015 for impleading himself in C.P.No.127 of 2015, and it was also ordered on 06.10.2016. It is also the submission of the learned Senior Counsel appearing for the third respondent that the first respondent has filed counter affidavit dated 18.01.2016, accepting his liabilities towards the lenders and in paragraph Nos.5 and 7 of the said affidavit, it has agreed and undertook to handover physical possession of the secured assets upon completion and confirmation of the auction sale under the SARFAESI Act by the third respondent and accordingly, the third respondent has brought the secured asset for auction, by issuing an auction notice dated 25.04.2016 and only one person has participated in the auction and when the auction property was inspected, it was found that it was not maintained in a good condition. Thereafter, the third respondent had filed C.A.No.866 of 2016 in C.P.No.127 of 2015 seeking for a direction, to direct the first respondent to hand over physical possession of the secured assets to the third respondent, and vide order dated 06.10.2016, this Court, after taking into consideration its earlier order dated 19.01.2016, has directed the first respondent to handover physical possession of the property within a period of two weeks from the date of receipt of a copy of the order and challenging the order dated 19.01.2016, the present appeal was filed and status quo was directed to be maintained and on the pendency of the same, the first respondent proposed to settle out the dues, but it was rejected by the third respondent on 03.07.2017, for the reason that the dues payable to the third respondent are around Rs.270.24 crores, which represent 54% debt of the total debt of all the lenders, would come around Rs.500.44 crores. Therefore, in order to effect recovery, fresh auction was sought to be conducted and at that juncture, the first respondent is utilising the service of the petitioner, seeks to stall the further proceedings. In sum and substance, it is the submission of the learned Senior Counsel appearing for the third respondent that the present application is nothing but an abuse of process of law and filed to stall the recovery proceedings and prays for dismissal of the same with exemplary costs.

8. This Court has paid its attention to the rival submissions and also perused the materials placed before it.

9. Admittedly, the petitioner herein is very well aware that C.P.No.127 of 2015 was filed by the second respondent for winding up of the first respondent Company under the Companies Act, but the explanation offered by the learned counsel appearing for the petitioner is that since the said petition was not admitted, they were not able to file a petition for impleadment.

10. It is the case of the petitioner that they have funded the first respondent to the tune of Rs.104.00 crores and in the event of winding up of the first respondent, the petitioner-company as well as the other shareholders would be put to grave hardship and irreparable loss. It is pertinent to point out at this juncture that the lenders of the first respondent which include the State Bank of Patiala and Syndicate Bank had assigned its' debts through Assignment Agreements dated 26.06.2014 and 28.06.2014 in favour of the third respondent, who subsequently got impleaded in C.P.No.127 of 2015. In this proceedings, the first respondent themselves filed an affidavit dated 18.01.2016, accepting their liabilities towards lenders and also undertook to handover possession of the secured assets upon completion and confirmation of the auction sale under the SARFAESI Act by the third respondent and admittedly, the first auction proceedings initiated by the said Act became unsuccessful and the third respondent is contemplating to go for fresh auction under the provisions of SARFAESI Act.

11. In the considered opinion of the Court, whatever be the right of the petitioner in respect of his claim against the first respondent, it is for them to work out their remedy before the competent forum in accordance with law and they have no locus standi to get impleaded as a party in OSA.No.245 of 2016 and therefore, this Court is of the view that this petition has been filed only to stall the recovery proceedings being initiated by the third respondent. The third respondent by virtue of the Assignment Agreements, is exercising his powers under the provisions of SARFAESI ACT and it cannot be stalled by the petitioner, under the guise that it had invested some money.

12. The present petition is devoid of merit and substance and therefore, it is dismissed.

-sd/-
19/09/2017

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SUB ASST. REGISTRAR,
ORIGINAL SIDE,
HIGH COURT, CHENNAI-104

C.C. to M/S MC GAN LAW FIRM Advocate Sr.No.12319.

C.C. to M/S.AKHIL R.BHANSALI Advocate Sr.No.12334.

C.C. to M/S.RAMALINGAM ASSOCIATES Advocate on payment of necessary charges

C.C. to M/S.S.INDUMATHI RAVI, Advocate Sr.No.12329.

Order

in
CMP.13293/2017

in
OSA.245/2016

Date :19/09/2017

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KP(03.10.2017)