

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.26904 of 2017
and W.M.P.No.28677 of 2017

M/s. Infinitas Energy Solutions Pvt. Ltd.
Khivraj Complex 1,
2nd floor, 480, Anna Salai,
Chennai - 600 035.

.. Petitioner

Vs.

1. Indian Bank, Guindy Branch,
No.131, GST Road,
Chennai - 600 032.
2. National Company Law Tribunal,
Corporate Bhawan (UTI Building)
3rd Floor, No.29, Rajaji Salai,
Chennai - 600 001.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for records relating to the order passed by the 2nd respondent in CP/558/(IB)(EB)/2017 dated 18.09.2017 and quash the same and to direct the 2nd respondent to give a fresh opportunity to the petitioner herein to submit its objections against the alleged letter dated 02.05.2017 based on which the application was admitted by the 2nd respondent.

For Petitioner : Mr.Karthik Ranganathan

For Respondents : Mr.N.Chandra Raj for R1
Tribunal (R2)

O R D E R

This writ petition is filed challenging the order of the 2nd respondent dated 18.09.2017 and consequently, to direct the 2nd respondent to give a fresh opportunity to the petitioner to submit its objection against the alleged letter dated 02.05.2017, based on which, the application was admitted by the 2nd respondent.

2. Originally, before numbering the writ petition, the Registry raised an objection with regard to the maintainability of the writ petition by stating that an appeal remedy is available to the petitioner before the National Company Law Appellate Tribunal. Hence, the matter was listed before this Court on 11.10.2017 under the caption 'for maintainability', on which day, the learned counsel for the petitioner Mr.Karthik Ranganathan, submitted that the grievance of the petitioner is that the National Company Law Tribunal has passed the impugned order in violation of principles of natural justice by relying on the letter dated 02.05.2017 which was neither placed before the Tribunal nor supplied to the petitioner so as to enable them to make their submissions on the merits of the said letter. He also relied on the decision of the Honourable Supreme Court reported in AIR 1958 SC 86 (State of Uttar Pradesh v. Mohammad Nooh) in support of his submission that availability of alternative remedy is not a bar for entertaining the Writ Petition. Based on the above said submission, this Court directed the Registry to number the writ petition also by specifically indicating that it is always open to the respondents to question the maintainability of the writ petition when a notice is ordered to them in the writ petition. Accordingly, when the matter was taken up on 13.10.2017 for admission, this Court ordered notice of motion returnable by 25.10.2017 also by passing an interim order, directing the petitioner as well as the respondents to maintain status quo as on that date. Thereafter, the matter was listed on 26.10.2017 and Mr.Chandra Raj, learned counsel for the 1st respondent appeared and sought time to file counter. Accordingly, the matter was adjourned for hearing today also by extending the status quo order granted already.

3. Today, the counter affidavit is filed by the 1st respondent along with the typed set of papers. It is stated in the counter affidavit by the 1st respondent that there was no such letter dated 02.05.2017 issued from their side to the writ petitioner nor referred to in the Company Application filed before the 2nd respondent and thus, by pointing out the same and they filed a memo before the 2nd respondent on 16.10.2017 pointing out such defects. It is further stated in the counter affidavit that the learned counsel for the 1st respondent was informed by the Registry of the 2nd respondent that the defects pointed out by the 1st respondent in the Memo was rectified and a rectified fresh certified copy was issued on 25.10.2017. In the typed set of papers filed by the 1st respondent copy of the rectification order is also filed.

4. Mr.Karthik Ranganathan, learned counsel for the petitioner submitted that still the petitioner can maintain the present writ petition as the rectification of the order was

passed without hearing the petitioner.

5. No doubt, the rectification was carried out without hearing the petitioner. But at the same time, when the very complaint of the petitioner is that the letter dated 02.05.2017 was referred to in the order which was not placed before the authority and such date of the letter was deleted in the impugned order, it is for the petitioner to agitate the matter on merits by filing an appeal before the Appellate Tribunal, namely, National Company Law Appellate Tribunal, since such statutory appellate remedy is available before such Tribunal. Therefore, I do not propose to entertain the writ petition any further for hearing the matter on merits. Accordingly, the writ petition is disposed of by granting liberty to the petitioner to file an appeal before the National Company Law Appellate Tribunal within a period of three weeks from the date of receipt of a copy of this order. As this Court has already granted status quo and the same is being continued till this date, the 1st respondent shall defer further proceedings for a period of three weeks. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

vsi

To

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No.131, GST Road,
Chennai - 600 032.
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3rd Floor, No.29, Rajaji Salai,
Chennai - 600 001.

+1 CC to Mr. Karthik Ranganathan, Advocate sr 76957.
+1 Cc to Mr.N. Chandraraj, Advocate sr 77011.

W.P.No.26904 of 2017

SP(10/11/2017)