IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

C O R A M

THE HONOURABLE **MR.JUSTICE S. MANIKUMAR**
AND
THE HONOURABLE **MRS.JUSTICE V. BHAVANI SUBBAROYAN**

Writ Petition No.14055 of 2014
M.P.No.1 of 2014

Ravi Shankar Mangipudy ... Petitioner

v.

1. The Authorised Officer,
   Central Bank of India,
   Mid Corporate Branch,
   Chennai 600 008.

2. The Central Bank of India,
   Rep. by its Assistant General Manager,
   Mid Corporate Branch,
   Chennai 600 008.

3. M/s.General Nice Mineral Trading Pvt. Ltd.,
   Rep., by its Director, Mr.Lau Yu,
   No.90, Chamiers Road,
   Chennai 600 018.

4. M/s.General Nice Resources (Hong Kong) Ltd.,
   Rep., by its Chairman, Mr.CAI Sui Xn,
   7th and 20th Floor,
   Lippo Leighton Tower,
   103, Leighton Road,
   Causeway Bay, Hong Kong.

5. M/s.Amalagiris,
   Rep., by its Partner,
   Mr.Philip Jacob,
   S-14/15, 2nd Floor,
   Alfran Plaza, M.G.Road,
   Panjim, Goa 403 001.

6. Export Credit Guarantee Corporation of India,
   Rep., by its Executive Officer,
   756-L, Anna Salai,
   3rd Floor, Overseas Tower,
   Chennai 600 002.

7. M/s.Edelweiss Asset Reconstruction Co. Ltd.,
   Rep., by its Associate Director,
   15th Floor, Edelweiss House,
   Off. C.S.T Road,
   Kalina, Mumbai 400 098. ... Respondents

(7th respondent has been impleaded,
as per the order, dated 12.01.2015,
made in M.P.No.2 of 2014)

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing respondents 1 and 2 to initiate appropriate action, against respondents 3 and 4, in the light of the representation, sent by the petitioner, dated 18.04.2014 and consequently, direct respondents 1 and 2 to initiate appropriate recovery proceedings, against respondents 3 and 4, with regard to Corporate Guarantee, provided by 4th respondent for and on behalf of the 3rd respondent.

For Petitioner : Mr.M.Velmurugan

For Respondents 1 and 2 : Mr.F.B.Benjamin George

For 3rd Respondent : Mr.Balasubramaniam,
for M/s.BFS Legal

For 6th Respondent : Ms.Harini,
for M/s.Giridhar Prasad

O R D E R

(Order of the Court was made by **S. MANIKUMAR, J.**)

The petitioner has sought for a Mandamus, directing respondents 1 and 2 to initiate appropriate action, against respondents 3 and 4, in the light of the representation of the petitioner, dated 18.04.2014 and consequently, direct respondents 1 and 2 to initiate appropriate recovery proceedings, against respondents 3 and 4, with regard to Corporate Guarantee, provided by the 4th respondent, for and on behalf of the 3rd respondent.

2. Material on record discloses that M/s.General Nice Mineral Trading Pvt. Ltd., has availed a loan of Rs.25 Crores each, for Export Packing Credit (H) (Upto 120 Days) and Export Bills Negotiated (LC) Demand Bills/Usance bills of tenor not exceeding 90 days from the date

of Bill of Landing, respectively. The Company has defaulted in payment. As on 12.11.2013, a sum of Rs.22,23,60,606.58, was due and payable. Therefore, Central Bank of India, Chennai, 2nd respondent, has issued a notice, dated 13.11.2013, under Section 13(2) of the SARFAESI Act, 2002, to both the petitioner and M/s.General Nice Resources (Hong Kong) Ltd., Hong Kong, 4th respondent herein, to pay the said sum with interest. In the said notice, the Bank has also cautioned that if the abovesaid amount, has not been paid within 60 days, the Bank would be constrained to take action, under Section 13(4) of the said Act, against the secured asset.

3. Material on record further discloses that responding to the notice, under Section 13(2) of the SARFAESI Act, the writ petitioner-guarantor of the borrower, 3rd respondent, has sent a reply, dated 17.01.2014, under Section 13(3-A) of the SARFAESI Act, 2002, to the Central Bank of India. Thereafter, the Central Bank of India, has issued a letter, dated 22.01.2014, to M/s.General Nice Resources (Hong Kong) Ltd., Hong Kong, 4th respondent herein, as hereunder:

> "(a) As M/s.General Nice Mineral Trading P. Ltd., failed to pay the overdues in the account, inspite of our various

oral and written requests, the account was classified as NPA on 22.07.2013 and the amount due as on NPA date was Rs.20,73,69,851/-.

(b) We had sent a recall notice, dated 31.08.2013, asking the borrower as well as the guarantors for repayment of the entire dues to the Bank.

(c) Section 13(2) of SARFAESI notice was sent on 13.11.2013 (copy enclosed for ready reference) and the said notice was acknowledged by you. Amount due as on 12.11.2013 is Rs.22,23,60,606.58.

(d) As you have not responded to our notice, we have also appropriated a sum of Rs.2,85,06,566.42 being the proceeds of Fixed Deposits kept as collateral security with us.

(e) After such appropriation, the balance amount due as on 22.01.2014, is Rs.17,95,22,322.98 along with contractual rate of interest with monthly rests, costs, charges, expenses, etc.

(f) In the circumstances, we hereby invoke the guarantee, dated 15.03.2012, executed by you at Chennai for Rs.50.00 Crores. The said guarantee was executed on behalf of your company company by Mr.Lau Yu, CEO/Director/Authorised Signatory.

(g) This demand is made in accordance with the guarantee, dated 15.03.2012, executed by you, at Chennai and you are hereby called to liquidate the entire outstandings within a week's time.

(h) The amount in USD be credited in our NOSTRA a/c CITIUS33 (Citi Bank, New York) with swift code CBININBBOSB (Central Bank of India, Overseas, Mumbai, India) Local A/c.No.3175901877.

(i) If no amount is received, we shall be constrained to take such legal action as deemed fit in accordance with the laws of India."

4. The Authorised Officer, Central Bank of India, Chennai, has sent a letter, dated 28.01.2013, reiterating the notice, under Section 13(2) of the SARFAESI Act, 2002, wherein, a demand to the tune of Rs.22,23,60,606.58, has been made as on 27.01.2014. The above has been followed with a possession notice, dated 07.02.2014. Thereafter, the writ petitioner is stated to have sent a representation, dated 18.04.2014 to M/s.Central Bank of India, Mis Corporate Branch, Chennai, to proceed exclusively against M/s.General Nice Resources (Hong Kong) Ltd., Hong Kong, 4th respondent herein.

5. On this day, when the matter came up for hearing, Mr.F.B.Benjamin George, learned counsel appearing for respondents 1 and 2 submitted that the entire loan has been assigned to M/s.Edelweiss Asset Reconstruction Co. Ltd., the 7th respondent herein. He further submitted that in view of the said assignment, the 2nd respondent-Bank,

to whom, a representation, dated 18.04.2014, is stated to have been sent, is no longer obligated to consider the said representation. He further submitted that as a guarantor, liability of the writ petitioner, is co-extensive and that the relief sought for, is misconceived.

6. We have also heard Ms.Harini, learned counsel appearing for the 6th respondent.

7. As rightly contended by Mr.F.B.Benjamin George, learned counsel appearing for respondents 1 and 2, when the loan has been assigned to 7th respondent, mandamus cannot be issued, as against respondents 1 and 2. Equally, when the petitioner, guarantor for the 3rd respondent, borrower, for the loan facilities availed, he cannot be

S. MANIKUMAR, J.
AND
V. BHAVANI SUBBAROYAN, J.

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absolved from liability to repay. It is trite law that the guarantor's liability is co-extensive with the principal borrower, the 3rd respondent.

8. In the light of the above discussion, prayer sought for is misconceived and it cannot be granted. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (V.B.S., J.)

07.08.2017

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To

The Debt Recovery Appellate Tribunal,
Chennai.