BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.1018 of 2017
and
C.M.P.(MD) No.10539 of 2017

International Asset Reconstruction
Company Private Ltd,
A-508, 5th Floor, 215 Atrium
Kanakia Spaces,
Opposite Divine Child High School,
Andheri Kurla Road,
Andheri East, Mumbai-400 069
Maharastra ... Appellant

Vs.

1. M/s.Technology Development Board,
Department of Science and Technology,
Ministry of Science and Technology,
Wing-A, Ground Floor,
Vishwakarma Bhawan,
Saheed Jeet Singh Marg,
New Delhi - 110 016.

2. M/s.Samudra Biopharma (P) Limited,
1,4th East Street, Kamaraj Nagar,
Thiruvanmiyur, Chennai - 600 041. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 37 of the Arbitration Act, to set aside the fair and decretal order dated 29.04.2017 made in E.A.No.30 of 2014 in E.P.No.19 of 2014 on the file of the Principal District Judge, Tuticorin and dismiss E.A.No.30 of 2014 in E.P.No.19 of 2014.

For Appellant : Mr.V.V.Sivakumar
For Respondents : Mr.G.V.Vairam Santhosh for R1

JUDGMENT

Heard the learned counsel on either side.

2.Technology Development Board is a statutory body coming under the Department of Science and Technology, Government of India. It was set up with adequate funds to consolidate and further develop the technology in the country. The second respondent herein viz., M/s.Samudra Biopharma (P) Limited, Chennai - 41 had approached the Technology Development Board for financial assistance. A sum of Rs.350 lakhs was advanced by the Board by way of a loan on 24.07.2000. The first respondent Board would assert that the second respondent herein had created a mortgage over their immovable properties in favour of the first respondent Board by deposit of title deeds and also entered into a loan agreement on the same date.

3.It is further contended that a charge was created in favour of Technology Development Board on 21.06.2005 and the same is duly reflected in the register of charges. Since the borrower committed default, the first respondent Board initiated Arbitration proceedings. An award dated 28.05.2010 was passed in favour of the first respondent Board against the second respondent. In order to enforce the said arbitration award, the first respondent Board filed E.P.No.19 of 2014 before the Principal District Judge at Tuticorin. Since the first respondent Board came to know that the appellant herein is attempting to sell away the properties mortgaged with them, they filed E.A.No.30 of 2014 for restraining the appellant from alienating the mortgaged properties and for directing them to deposit the original title documents/deeds in respect of the scheduled property to the Court.

4.It is the case of the first respondent Board that there was correspondence between them and the appellant herein in respect of the recovery measures to be initiated against the second respondent. It is specifically alleged by the first respondent herein that they had parted with the title deeds on the request of the appellant herein and the understanding between them was that they would equally share the cost of execution and that 25% of the sale proceeds can go to the appellant and 75% of the sale proceeds can go to the first respondent herein. Since the appellant did not take any consequential action, the first respondent was constrained to move the executing Court for interim protection of their interests. The appellant herein filed their counter affidavit opposing the prayer made in E.A.No.30 of 2014. The learned Principal District Judge, Tuticorin however allowed E.A.No.30 of 2014 by order dated 29.04.2017. The appellant was restrained from alienating or encumbering the schedule property and was also directed to deposit the original title documents to the Court on or before 09.06.2017. Aggrieved by the said order, the appellant has filed this present appeal.

5.Mr.V.V.Sivakumar, learned counsel for the appellant contended that the second respondent herein had originally borrowed a sum of Rs.266.51 lakhs from UCO bank. The loan portfolio was taken over subsequently by UTI/Axis bank from them. There was an assignment in favour of the appellant herein. The assignment in favour of the appellant took place on 10.02.2011. In the meanwhile, O.A.No.211 of 2010 was filed before the Debts Recovery Tribunal No.2, Chennai by

Axis bank. The said O.A was allowed. Subsequently, recovery certificate was also issued in favour of the appellant on 13.12.2013.

6.The learned counsel for the appellant would contest the various factual assertions made by the learned counsel for the first respondent Board.

7.This Court does not propose to go into the rival contentions of the appellant and the first respondent with regard to the priority of their respective debts or claims. The only issue that is gone into is whether the executing Court at Tuticorin should have allowed E.A.No.30 of 2014 filed by the first respondent herein. Admittedly, as on date, the appellant is having recovery certificate issued by DRT. While it is true that on 23.10.2017, an order of attachment was issued in favour of the Board, it is a matter of record that pursuant to the order made by DRT, an attachment was issued in favour of the appellant as well on 02.01.2015. In any event, when a financial institution has been issued with a recovery certificate and there are rival claims, particularly, with regard to priority, it is only the DRT which alone is competent to go into the matter.

8.The learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court reported in ***(2000) 4 SCC 406 - Allahabad Bank Vs. Canara Bank and another***. The Hon'ble Supreme Court has held that adjudication of liability and the recovery of the amount by the execution of the certificate are within the exclusive jurisdiction of the Debts Recovery Tribunal and no other Court or authority can go into the said questions relating to the liability and recovery. It was also further held that in respect of the monies realised under the RDB Act, the question of priorities among the banks and financial institutions and other creditors can be decided only by the Tribunal under the RDB Act.

9.In view of the said categorical pronouncement by the Hon'ble Supreme Court, the Principal District Judge at Tuticorin acting as executing Court could not have passed the order impugned in this appeal. The appellant herein had filed their counter dated 13.11.2014 in E.A.No.30 of 2014 in E.P.No.19 of 2014. In paragraph No.2 of the counter, the appellant has specifically referred to the issuance of recovery certificate by the Derbts Recovery Tribunal on 13.12.2013. Therefore the executing Court clearly erred in assuming jurisdiction which it clearly did not possess. This Court therefore sets aside the order dated 29.04.2017 passed by the Principal District Judge in E.A.30 of 2014. This civil miscellaneous appeal therefore has to be necessarily allowed.

10.But, this Court cannot merely stop at allowing this appeal. It is beyond doubt that the first respondent is a statutory body. They had advanced loan to the second respondent herein. An arbitration award has been passed in their favour. The first respondent would claim that they are having first charge over the immovable properties of the second respondent herein. In these circumstances, it is only just and proper that the first respondent is allowed to file an impleading application in D.R.T.No.214 of 2013 in O.S.No.211 of 2010 on the file of the Debt Recovery Tribunal No.2, Chennai. The Recovery of DRT No.2, Chennai has then to go into the rival claims projected by the appellant and the first respondent herein. The issues of priority and rateable distribution would then to be decided by the Recovery Officer. The first respondent is given time till 10.04.2018 to file an impleading application in the recovery proceedings pending before the Recovery Officer, DRT No.2, Chennai. The Recovery Officer is directed to dispose of the rival claims arising between the appellant and the first respondent within a period of three months thereafter.

11.I could see from the correspondents now placed before me that there was some kind of agreement arrived at between the parties viz., the appellant and the first respondent herein for amicably settling the matter. This Court can only express its hope that the matter is amicably settled by the contesting parties. It is made clear that the appellant shall not take any steps to unilaterally bring the second respondent's properties to sale.

12.With the above observation and direction, this civil miscellaneous appeal is allowed. The order dated 29.04.2017 made in E.A.No.30 of 2014 in E.P.No.19 of 2014 on the file of the Principal District Judge, Tuticorin is set aside. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge, Tuticorin

2. The Record Keeper, V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+ 1 CC TO Mr.G.V.VAIRAM SANTHOSH, ADVOCATE IN SR No. 91104

ARUL
TE/SKN-RSK/SAR-4 : 09/03/2018 : 4P/5C

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