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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 829 OF 2018
IN
EXECUTION APPLICATION NO. 1642 OF 2018**

Kotak Mahindra Bank Ltd	...Applicant
<i>In the matter between</i>	
Kotak Mahindra Bank Ltd	...Plaintiff
<i>Versus</i>	
Ridge Innovation Private Limited	...Defendant
<i>And</i>	
Maharashtra State Electricity Distribution Company Ltd	...Garnishee

Ms SI Joshi, with Ms Jalpa Pithadia, i/b SI Joshi & Company, for the Applicant.
Mr Mukul Taly, with Mr Aziz Shaikh, for the Defendant.

CORAM: G.S. PATEL, J
DATED: 27th August 2018

PC:-

1. Heard.

2. The Decree Holder, Kotak Mahindra Bank Limited (“KML”) is the assignee of an Arbitral Award originally passed in

favour of Tata Finance Limited (“**Tata Finance**”). The Award is dated 16th July 2001. That Award was challenged but ultimately resulted in a settlement of disputes by Consent Terms dated 7th March 2005 (AP Shah and SJ Vazifdar JJ, as each of them then was). The Consent Terms modified the Arbitral Award. These Consent Terms are sought to be put into execution.

3. The present Respondent, Ridge Innovations Private Limited (“**RIPL**”) is the resultant company after the original Award Debtor, Datar Switchgear Limited (“**Datar Switchgear**”) was dissolved without winding up by a scheme sanctioned by the Board of Industrial and Financial Reconstruction (“**BIFR**”). The resultant company was DSL Enterprises Private Limited (“**DSL Enterprises**”). The name of this company was then changed to RIPL.

4. Datar Switchgear, later DSL Enterprises, had a prolonged arbitration against the Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”). DSL Enterprises obtained an award against MSEDCL.

5. MSEDCL filed several petitions and applications against or in respect of the award, and its execution. One of these, by means of Chamber Summons (L) No. 246 of 2018 in DSL Enterprise’s Execution Application, was before me on 13th March 2018. It was extensively argued. By an order and judgment of that day, I dismissed the Chamber Summons. I also made an award of costs against MSEDCL.

6. KML first filed this Execution Application on 25th June 2018. It also filed Commercial Chamber Summons No. 829 of 2018. At the time of filing, the Execution Application and the Chamber Summons were directed against DSL Enterprises said to be the successor of Datar Switchgear. It sought to move against the amounts payable by MSEDCL, described as a garnishee.

7. Once it was pointed out by Ms Mallika Taly on 8th August 2018 that Datar Switchgear no longer existed, I gave KML the liberty to amend. This was done, and RIPL was substituted in both the Execution Application and the Chamber Summons.

8. There is an Affidavit in Reply filed by RIPL today, represented by Mr Taly. I am leaving aside and not taking up for consideration the various other defences taken by the RIPL. Specifically, I am not dealing with the submissions in regard to limitation, that is to say, the submission that KML's Execution Application is barred by limitation under Article 137 of the schedule to the Limitation Act.¹ I am also not considering today Mr Taly's submission that the Execution Application itself is not maintainable since it was brought against a non-existent legal entity, or that the mere substitution of RIPL does not make the Execution Application maintainable.

9. The reason for putting this aside is the nature of the scheme sanctioned by the BIFR on 5th December 2006. A copy of the

1 *Chunilal Motiram v Shivram Naguji Ghule*, 1951 ILR 65 (FB), per Chagla CJ.

scheme is at Exhibit “B” to the Affidavit in Reply.² Some things are to be noted from this record. First, that KML was represented before the board of BIFR. Ms Joshi submits that KML was present before BIFR in its capacity as the transferee of a debt from ICICI Bank and not in its capacity as the transferee from Tata Finance, the original Award Holder. It is however in its capacity as the transferee from Tata Finance that KML has come to this Court in execution today. She submits that even if KML was present before BIFR, that will not operate to bar KML in its capacity as a transferee from Tata Finance from prosecuting the present Execution Application or the Chamber Summons.

10. Factually, this aspect of the matter appears to be correct. The Scheme shows that there was a debt from Datar Switchgear of Rs.1234 lakhs payable from ICICI Bank and that this was then transferred to KML.³ Paragraph 9.1.4 sets out the terms of KML’s acceptance of the scheme.⁴ This references Schedule XIII of the scheme, and in sub-clause (b) contains an agreement to waive the balance dues over and above Rs.1234 lakhs, i.e. the debt due to ICICI Bank. Schedule XIII itself shows against the name of KML a debt of Rs.1234 lakhs, viz., the ICICI-transferred debt.⁵

11. But this is not the limit of the provisions of the scheme nor the only provision in law. Clause 14 contains “other terms and

2 Affidavit in Reply, *p.* 132 onwards.

3 Affidavit in Reply, *p.* 143.

4 Affidavit in Reply, *p.* 154.

5 Affidavit in Reply, *p.* 215.

conditions” and sub clause (xiii)⁶ says that all liabilities not disclosed in the rehabilitation scheme would be the personal responsibility of the promoters.

12. KML obtained an assignment from Tata Finance on 31st March 2003, well before the scheme was sanctioned. One aspect of the matter is why KML did not bring to the notice of the BIFR the fact it had another debt that was due to it, but that is not an issue that can be revisited today. Even if Ms Joshi is correct in saying that the scheme does not cover KML *qua* a transferee of Tata Finance, clause 14(xiii) would nonetheless operate. This is also in consonance with Section 18(8) of the amended Sick Industrial Companies (Special Provisions) Act (“SICA”), which in effect states that once the scheme is sanctioned, all provisions of that scheme bind the company, the resultant or transferee company or other company as the case may be, and, importantly for our purposes, also the shareholders, creditors, guarantors and employees.

13. The cumulative effect of this is that KML as a transferee of Tata Finance is now not in a position in law to proceed against Datar Switchgear Limited, because that entity simply does not exist; nor against DSL Enterprises Private Limited because again that entity is not in existence; or even RIPL because it is entirely covered by the sanctioned BIFR scheme. What is open, *prima facie*, is KML’s application if permissible in law against the promoters in view of clause 14(xiii) of the sanctioned scheme.

6 Affidavit in Reply, *p.* 165.

14. On all other points indicated above, I am keeping contentions on both sides expressly open. However, the Chamber Summons in the present form cannot possibly survive because what KML is now seeking to do is to move against MSED SL as a garnishee in respect of its award liability to RIPL. But this claim is in execution of a assigned decretal debt that (a) may yet be subjected to considerations of limitation and maintainability and (b) is fully covered by the sanctioned BIFR scheme.

15. Ms Joshi seeks leave to amend the Execution Application accordingly. I will grant her leave to file a substantive Chamber Summons, as I expect this will also be contested. The present Chamber Summons will necessarily have to be dismissed. However that dismissal is without prejudice to KML's rights, and keeping all contentions open. The dismissal of the Chamber Summons is not be read against KML in any application that it chooses to file against the promoters of RIPL.

16. The present Commercial Chamber Summons No. 829 of 2018 is dismissed with these observations.

17. Liberty to KML to mention the matter as and when they file a Chamber Summons for amendment of the Execution Application.

(G. S. PATEL, J)