

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Original Side Appeal Nos. 212 to 215 of 2018

O.S.A. No. 212 of 2018

1. Kanmuru Raghu Rama Krishna Raju
Son of Sri. V.K. Suryanarayana Raju
Director, Ind-Bharath Powergencom Limited
S.No.1-3, having office at
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035
2. Ganta Ambedkar Rajkumar
Son of Ganta Arun Kumar
Director, Ind-Bharath Powergencom Limited
S.No.1-3, having office at
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035
3. Bopanna Sowjanya
Son of Bopanna Srinivasa Rao
Additional Director
Ind-Bharath Powergencom Limited
S.No.1-3, having office at
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035

... Appellants

Versus

1. Trimex Industries Private Limited
represented by its Vice-President - Legal
Mr. Sudhakaran
Trimex Towers, No.1, Subbaraya Avenue
C.P. Ramaswamy Road, Alwarpet
Chennai - 600 018.

2. Adani Enterprises Limited
7-A, Halls Road, Second Floor
Egmore, Chennai - 600 008
represented by its Authorised Signatory
Mr. P. Annamalai
DGM (Marketing - Coal Trading)

3. Ind-Bharath Powergencom Limited
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035
(3rd respondent given up)

... Respondents

O.S.A. No. 213 of 2018

1. Kanmuru Raghu Rama Krishna Raju
Son of Sri. V.K. Suryanarayana Raju
Director, Ind-Bharath Thermal Power Limited
S.No.1-3, having office at
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035

2. Sitaram Komaragiri
Son of Kmoaragiri Sambasiva Rao
Additional Director
Ind-Bharath Thermal Power Limited
S.No.1-3, having office at
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035

3. Bopanna Sowjanya
Son of Bopanna Srinivasa Rao
Additional Director
Ind-Bharath Thermal Power Limited
S.No.1-3, having office at
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035

... Appellants

Versus

1. Adani Enterprises Limited
7-A, Halls Road, Second Floor
Egmore, Chennai - 600 008
represented by its Authorised Signatory
Mr. P. Annamalai
DGM (Marketing - Coal Trading)

2. Ind-Bharath Thermal Power Limited
New No.20, Old No.129
Chamiers Road, Nandanam
Chennai - 600 035
(2nd respondent given up)

... Respondents

O.S.A. No. 214 of 2018

Ind-Bharath Powergencom Limited
Through its Managing Director
New No.20, Old No.129
Chamiers Road, Nandanam
Nandanam, Chennai - 600 035

... Appellant

Versus

1. Trimex Industries Private Limited
represented by its Vice-President - Legal
Mr. Sudhakaran
Trimex Towers, No.1, Subbaraya Avenue
C.P. Ramaswamy Road, Alwarpet
Chennai - 600 018

2. Adani Enterprises Limited
7-A, Halls Road, Second Floor
Egmore, Chennai - 600 008
represented by its Authorised Signatory
Mr. P. Annamalai
DGM (Marketing - Coal Trading)

... Respondents

O.S.A. No. 215 of 2018

Ind-Bharath Thermal Power Limited
New No.20, Old No.129
Chamiers Road, Nandanam
Nandanam, Chennai - 600 035

... Appellant

Versus

Adani Enterprises Limited
7-A, Halls Road, Second Floor
Egmore, Chennai - 600 008
represented by its Authorised Signatory
Mr. P. Annamalai
DGM (Marketing - Coal Trading)

... Respondent

O.S.A. No. 212 of 2018:- Original Side Appeal filed under Order XXXVI Rule XI of the Original Side Rules against the order and Decretal order dated 26.04.2018 passed by this Court in Application No. 3281 of 2018 in C.S. No. 844 of 2017.

O.S.A. No. 213 of 2018:- Original Side Appeal filed under Order XXXVI Rule XI of the Original Side Rules against the order and Decretal order dated 26.04.2018 passed by this Court in Application No. 2487 of 2018 in C.S. No. 843 of 2017.

O.S.A. No. 214 of 2018:- Original Side Appeal filed under Order XXXVI Rule XI of the Original Side Rules against the order and Decretal order dated 26.04.2018 passed by this Court in Application No. 3281 of 2018 in C.S. No. 844 of 2017.

O.S.A. No. 215 of 2018:- Original Side Appeal filed under Order XXXVI Rule XI of the Original Side Rules against the order and Decretal order dated 26.04.2018 passed by this Court in Application No. 2487 of 2018 in C.S. No. 843 of 2017.

O.S.A. No. 212 of 2018

For Appellants : Mr. M.S. Krishnan, Senior Advocate
for Mr. Anirudh Krishnan

For Respondents : Mr. T.V. Ramanujun, Senior Advocate
for M/s. AAV Partners for R!

Mr. P.S. Raman, Senior Advocate
for Mr. T. Gowthaman for R2

O.S.A. No. 213 of 2018

For Appellants : Mr. M.S. Krishnan, Senior Advocate
for Mr. Anirudh Krishnan

For Respondents : Mr. P.S. Raman, Senior Advocate
for Mr. T. Gowthaman for R1

O.S.A. No. 214 of 2018

For Appellant : Mr. M.S. Krishnan, Senior Advocate
for Mr. Anirudh Krishnan

For Respondents : Mr. T.V. Ramanujun, Senior Advocate
for M/s. AAV Partners for R1

Mr. P.S. Raman, Senior Advocate
for Mr. T. Gowthaman for R2

O.S.A. No. 215 of 2018

For Appellant : Mr. M.S. Krishnan, Senior Advocate
for Mr. Anirudh Krishnan

For Respondent : Mr. P.S. Raman, Senior Advocate
for Mr. T. Gowthaman

COMMON JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

The appellants in O.S.A. No. 212 and 213 of 2018 are Directors of M/s. Ind-Bharath Powergencom Limited and M/s. Ind-Bharath Thermal Power Limited respectively. The appellant in O.S.A. No. 214 and 215 are filed by M/s. Ind Bharath Powergencom Limited and M/s. Ind-Bharath Thermal Power Limited respectively. The appellants have filed these intra-court appeals questioning the validity and/or correctness of the common order dated 26.04.2018 passed by the learned single Judge in (i) Application No. 3281 of 2018 in C.S. No. 844 of 2017 (ii) Application No. 2487 of 2018 in C.S. No. 843 of 2017 (iii) Application No. 3281 of 2018 in C.S. No. 844 of 2017 and (iv) Application No. 2487 of 2018 in C.S. No. 843 of 2017. By the said order dated 26.04.2018, the learned single Judge not only dealt with the aforesaid applications but also other applications filed by the Creditors of the two companies claiming a total sum of Rs.532 Crores as outstanding amount due from the two companies.

2. As the appellants in O.S.A. Nos. 212 and 213 of 2018, who are the Directors of the companies, were not parties to the Application No. 3281, 2487, 3281 and 2487 of 2018, they have filed application seeking leave to prefer these Appeals and after obtaining leave, the present Original Side Appeals are filed.

3. It is seen from the records that the learned Single Judge had passed several interim orders on various dates, either directing the garnishee/ TANGEDCO to deposit the amount claimed in the civil suits and in some cases, prohibited the Garnishee from effecting any payment to the two companies namely M/s. Ind Bharath Thermal Power Limited and M/s. Ind Bharath Powergencom Limited.

4. The grievance of the appellants in the present appeals is that the learned single Judge, while passing the common order dated 26.04.2018, in para No.9, directed the appellants herein to file encumbrance certificate with respect to the freehold land and also file separate affidavits on 21.06.2018 furnishing the particulars of the assets in their possession together with encumbrance made and until such affidavits are filed, the appellants herein were prohibited from making any further encumbrance over the assets of the company.

5. Mr. M.S. Krishnan, learned Senior counsel appearing for the appellants would contend that in so far as the direction issued by the learned single Judge, directing the appellants company to file an affidavit with regard to their assets is concerned, they have no grievance. However, the direction issued by the learned single Judge directing the Directors of the company to file an affidavit with regard to the assets is not legally sustainable especially when the Directors of the company were not made parties to the suit. Further, there is no allegation made as against the Directors of the appellants company with respect to misfeasance or malfeasance of the funds of the company. While so, the learned single Judge ought not to have directed the Directors of the appellants company to file an affidavit disclosing the assets in their possession and therefore, he prayed for setting aside the orders, which are impugned in these appeals.

6. Per contra, Mr. T.V. Ramanujun, learned Senior counsel appearing for the first respondent in O.S.A. Nos. 212 and 214 of 2018 would contend that even though the Directors of the two companies were not parties to the application, the learned single Judge in his judicial discretion, directed the directors of the appellants company to file an affidavit before the Court disclosing the assets of the company held in their possession. Such a direction was issued by the learned single Judge to ascertain what is the nature of assets held by the individual directors so as to settle the whooping outstanding left by the company to the creditors to the tune of Rs.532 crores. The learned single Judge is therefore wholly justified in issuing the direction, directing the Directors of the appellants company to file an affidavit to know the assets of the company held by them. The Court has got such discretionary power to direct the Directors of the Company in dispute to file an affidavit and it was rightly exercised by the learned single Judge to lift the corporate veil. It is further submitted that the direction issued by the learned single Judge to furnish the particulars of assets held by the Directors of the company by way of an

affidavit as an interim measure cannot be said to be arbitrary. After receipt of such affidavits, the Court may pass appropriate orders and if any direction issued by the Court is found to be adverse or prejudicial to the interest of the individual Director, then they can resort to question such an order in a manner known to law. The learned Senior counsel therefore submitted that these appeals are pre-mature and prayed for dismissal of these appeals.

7. On the above contention, we have also heard Mr. P.S. Raman, learned Senior counsel appearing for some of the respondents in these appeals.

8. By way of reply, the learned Senior counsel for the appellants brought to our notice that when a similar direction was given by the learned single Judge of this Court restraining the Directors of the aforesaid Companies from transferring the shares, the appellants have filed O.S.A. No. 319 to 321 of 2017 and by a Judgment dated 30.11.2017, the Division Bench of this Court set aside the directions issued by the learned single Judge. Therefore, the learned Senior counsel for the appellants would contend that the directions issued by the learned single Judge, directing the Directors of the appellants company to file an affidavit, is not necessary in the light of the facts and circumstance of the case and prayed for allowing the appeals.

9. We have heard the learned Senior counsel appearing on either side and perused the materials on record. Keeping the submissions of the learned Senior counsel on either side, we are of the view that in the absence of any allegation made against the Directors of the Companies in question, either with respect to misfeasance or malfeasance of the funds of the company, that too when they were not even made as a parties to the lis, it is not necessary to issue direction, directing the Directors of the companies to file an affidavit disclosing the assets of the company held in their possession. In such view of the matter, we set aside the direction issued by the learned single Judge in para No.9 of the order dated 26.04.2018, in so far as it implies the Directors of the appellants company to file encumbrance certificate with respect to the freehold land and also to file separate affidavits furnishing the particulars of the assets in their possession together with encumbrance made.

10. We therefore allow the Original Side Appeals to the extent indicated above. No costs. It is made clear that it is open to the parties to the applications to file appropriate

application (s) to implead the Directors of the appellants company as party respondents in the Civil Suit and if any such application (s) is filed, we request the learned single Judge to dealt with the same in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

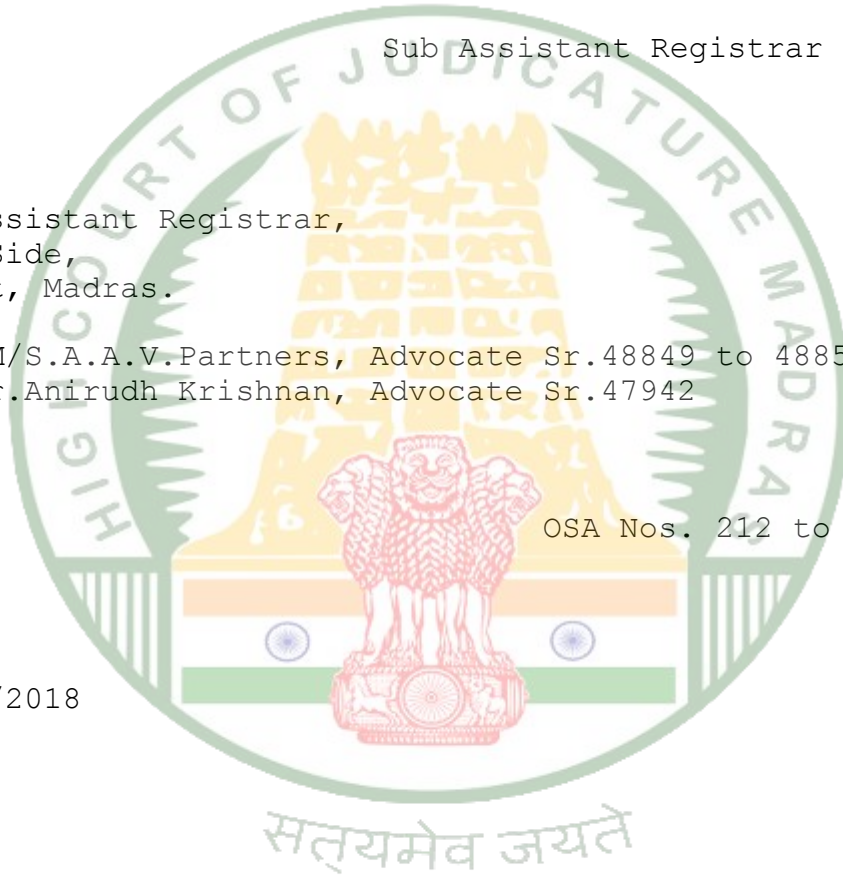
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+4ccs to M/S.A.A.V.Partners, Advocate Sr.48849 to 48852
+1cc to Mr.Anirudh Krishnan, Advocate Sr.47942

OSA Nos. 212 to 215 of 2018

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