IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY THE 28th DAY OF MARCH 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A. Nos.2215 & 2527 of 2018
in
C.S.No.161 of 2018

M/s. Gimpex Private Ltd.,
formerly known as M/s. Gimpex Ltd.,
Rep.by its Authorised Signatory
Mr.K.Raja
S/o. Mr.Kothandaraman
No.282, Linghi Chetty Street,
Chennai 600 001. : Plaintiff

Vs.

1. M/s. Empee Sugar and Chemicals Limited
Rep.by its Chairman and Managing Director
Mr.M.P.Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002.

2. M/s. Empee Distilleries Limited
rep.by its Joint Managing Director
Ms.Nisha Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002.

3. M/s. Appollo Alchobev Limited
Rep.by its Joint Managing Director
Ms.Nisha Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002. : Defendants

A.No. 2215 of 2018

M/s. Gimpex Private Ltd.,
formerly known as M/s. Gimpex Ltd.,
Rep.by its Authorised Signatory
Mr.K.Raja
S/o. Mr.Kothandaraman
No.282, Linghi Chetty Street,
Chennai 600 001. : Applicant/Plaintiff

Vs.

1. M/s. Empee Sugar and Chemicals Limited
Rep.by its Chairman and Managing Director
Mr.M.P.Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002.

2. M/s. Empee Distilleries Limited
rep.by its Joint Managing Director
Ms.Nisha Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002.

3. M/s. Appollo Alchobev Limited
Rep.by its Joint Managing Director
Ms.Nisha Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002.
: 1st to 3rd Respondents/Defendants

4. The Tamil Nadu State Marketing Corporation (TASMAC)
No.8, CMDA Tower 4th Floor,
Gandhi Irwin Bridge Road, Egmore,
Chennai 600 008. : 4th Respondent/Garnishee

Application praying that this Hon'ble Court be pleased to pass a prohibitory order against the 4th respondent/Garnishee prohibiting them from paying any amount to the tune of Rs.19,54,29,693.00 (Rupees Nineteen Crores Fifty four lakhs twenty nine thousand six hundred and ninety three only) to the 2nd respondent/defendant and direct the 4th respondent /Garnishee to deposit the said amount to the credit of this suit and pending disposal of above suit.

A.No.2527 of 2018

1. M/s. Empee Distilleries Limited
rep.by its Joint Managing Director
Ms.Nisha Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002. : Applicant/2nd Respondent/
2nd Defendant

2. M/s. Empee Sugar and Chemicals Limited
Rep.by its Chairman and Managing Director
Mr.M.P.Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002. :Applicant/1st Respondent/1st
Defendant

3. M/s. Appollo Alchobev Limited
Rep.by its Joint Managing Director
Ms.Nisha Purushothaman
No.59, Harris Road, Pudupet,
Chennai 600 002. :Applicant/3rd Respondents/ 3rd Defendants

-Vs.-

1. M/s. Gimpex Private Ltd.,
formerly known as M/s. Gimpex Ltd.,
Rep.by its Authorised Signatory
Mr.K.Raja
S/o. Mr.Kothandaraman
No.282, Linghi Chetty Street,
Chennai 600 001. : Respondent/Applicant/Plaintiff

2. The Tamil Nadu State Marketing Corporation (TASMAC)
No.8, CMDA Tower 4th Floor,
Gandhi Irwin Bridge Road, Egmore,
Chennai 600 008. : Respondent/ 4th Respondent / Garnishee

Application praying that this Hon'ble Court be pleased to vacate the prohibitory order passed on 13.03.2018 in application No. 2215 of 2018 in C.S.No.161 of 2018 pending disposal of the above suit.

These Applications coming on this day before this court for hearing the court made the following order:-

This common order shall govern both the aforesaid applications. When the suit was moved emergently, A.No.2215 of 2018 was moved with a prayer for prohibitory order qua the garnishee .

2. An interim order was granted by me on 13.03.2018 in A.No.2215 of 2018 and I deem it appropriate to extract and reproduce the same.

"Sole plaintiff in the main suit is the lone applicant in this application. Defendant Nos.1, 2 and 3 in the main suit are respondent Nos.1, 2 and 3 respectively in this application. Respondent No.4 in this application i.e., The Tamil Nadu State Marketing Corporation ('TASMAC' for brevity) is not a party to the main suit, but has been arrayed as a garnishee in this application.

2. Parties in this application are referred to by their respective ranks in the main suit for the sake of convenience and clarity. TASMAC is referred to as 'garnishee'.

3. Plaintiff has supplied coal to defendant No.1 company and defendant No.1 has defaulted in payment of liabilities. Thereafter, after some cheques issued by defendant No.1 were dishonoured, an agreement styled as Settlement Agreement dated 21.11.2014 came to be executed between plaintiff and defendant Nos.1, 2 and 3. Inter alia the covenants in the said Settlement Agreement are to the effect that defendant No.2 has passed a Board Resolution taking over the liability of defendant No.1 qua the plaintiff. Notwithstanding the above scenario, the payments towards coal supplied by plaintiff remain unpaid. Hence, this suit. This is the lis in a nutshell according to the plaintiff and this short narration will suffice considering the nature and scope of this application.

4. The instant application has been taken out stating that garnishee/TASMAC has *approximately Rs.24,00,00,000/- (Rupees Twenty Four Crores only) in its hands being moneys payable to defendant No.2. Prayer in the instant application is for a prohibitory order prohibiting the garnishee/TASMAC from paying moneys to the tune of suit claim (Rs.19,54,29,693/- Rupees Nineteen crores Fifty Four lakhs Twenty Nine Thousand Six Hundred and Ninety Three only) to defendant No.2. Second limb of the prayer seeks a direction to the garnishee to deposit the said amount to the credit of this suit.*

5. At this ex-parte stage, having heard Mr.A.L.Somayaji, learned Senior Counsel representing counsel on record for plaintiff and having perused the affidavit, plaint and relevant plaint documents, particularly the aforesaid Settlement Agreement dated 21.11.2014, which has been placed before me as plaint document No.35 in the suit file, I am convinced that the plaintiff has made out a prima facie case and that there should be a prohibitory order restraining respondent No.4/garnishee i.e., TASMAC from paying any amount upto Rs.19,54,29,693/- (Rupees Nineteen crores Fifty Four lakhs Twenty Nine Thousand Six Hundred and Ninety Three only) being the suit claim to defendant No.2 until further orders from this Court. Balance of convenience also is in favour of grant of such an order in the light of the aforesaid narrative.

6. With regard to the second limb of the prayer seeking direction to garnishee to *deposit the said amount to the credit of this suit, the same will be decided post notice to the defendants and the garnishee.*

7. Notice to defendants i.e., respondent Nos.1 to 3 in this application and respondent No.4 in this application, returnable by four weeks i.e., returnable by 03.04.2018. Private notice is also permitted.

8. List this matter on 03.04.2018."

3. Post impugned order, counsel has entered appearance on behalf of all the three defendants and Mr.J.Ravindran, learned counsel is before me. With regard to the plaintiff Mr.A.L.Somayaji, learned Senior Counsel leading counsel on record Mr.Abdul Hameed is before me. With regard to garnishee i.e., TASMAC, Standing Counsel for TASMAC Mr.Sathishkumar is before me.

4. TASMAC has filed a counter affidavit, which has been sworn to by one Mr.P.Krishnadhas, who has been described as the Chief Accounts Officer of TASMAC. The counter affidavit is dated 27.03.2018.

5. Paragraph Nos.4 to 7 of the counter affidavit are of relevance and I deem it appropriate to extract and reproduce the same, which read as follows:

"4. The respondent further submit that TASMAC has received Notice in Form-U dated

15.03.2018 for recovery of sales tax (value added tax dues) under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and rules made thereunder from the Commercial Taxes Department of Government of Tamil Nadu informing that the 2nd defendant herein has arrears of tax due for the months from August 2017 to October 2017 and from December 2017 to February 2018 for a sum of Rs.112,24,40,583/- (Rupees One Hundred and Twelve Crores Twenty Four Lakhs Forty Thousand Five Hundered and Eighty Three only). Further in the covering letter to the Notice in Form U, it was mentioned that U/s.45 of the Tamil Nadu VAT Act, 2006, r/w Revenue Recovery Act, (TASMAC is) requested by them to withhold any amount equal to the arrears of the Tax amounting to Rs.112,24,40,583/- Rupees One Hundred and Twelve Crores Twenty Four Lakhs Forty Thousand Five Hundered and Eighty Three only) out of the amount to be payable to the dealer towards the cost of Alcoholic Beverages supplied by them to the Corporation and transfer the same to the Commercial Taxes Department. Further they (Commercial Taxes Dept.) have given an exemption for releasing funds towards payment of Excise Duty by the 2nd defendant while taking indents from the Corporation for the supply of IMFS.

5. It is submitted that this respondent made a payment to M/s.Empee Distilleries Limited, the 2nd defendant, last *on 20.02.2018 for Rs.3,45,82,781/- vide SBI Cheque No.498430 dated 20.02.2018 and thereafter no money was paid to them. Since the Notice in Form-U was issued by the Commercial Taxes Department, if any money becoming due/being held by this respondent, excluding the amount towards Excise Duty, the whole money shall be paid in favour of the Deputy Commissioner (Sales Tax), Large Tax Payers Unit, payable at Chennai or remittance into Government Treasury at Chennai, failing which the amount will be a charge on the properties and would be recovered as if it were an arrear of land revenue from this respondent. Therefore, this respondent has paid a sum of Rs.7,48,33,981/- through various cheques dated 19.03.2018 in favour of Deputy Commissioner (Sales Tax) Commercial Taxes Department, Chennai.*

6. It is further submitted that as on date no outstanding amount due to M/s.Empee Distilleries Limited, the 2nd defendant, since they have not submitted invoices for the supply effected from 09.02.2018. The arrears to the Commercial Taxes Department against Notice in Form-U is Rs.104,76,06,602/- and same is to be remitted to the Department by this respondent as and when the bills become due.

7. In view of the above said facts this respondent bound to pay under the provisions of the Tamil Nadu Value Added Tax

> *Act, 2006 and rules made thereunder, the revenue dues to the State Government for a sum of Rs.104,76,06,602/- on behalf of M/s.Empee Distilleries Limited, the 2nd defendant against submission of pending bills and if any further supply and invoice to be raised thereupon by the 2nd defendant."*

6. To be noted, there is some disagreement about the date on which, the interim order of this Court dated 13.03.2018 was served on TASMAC. While Standing Counsel for TASMAC submits that it was served on them only on 19.03.2018, Mr.A.L.Somayaji, learned Senior Counsel, on instructions from the Instructing counsel, submits that it was dispatched on 16.03.2018 and it should have been served on TASMAC earlier. This assumes some significance because a payment to the Deputy Commissioner of Sales Tax has been made on 19.03.2018. Learned counsel for TASMAC has produced the files. In the files, though the communication sent by the counsel for plaintiff is available, the envelope, in which it was sent is not available. Therefore, this aspect of the matter alone is left open for the parties to agitate the same, if they choose to do so, at a later stage in the main suit.

7. Be that as it may, learned Senior Counsel appearing for the plaintiff draws my attention to paragraph No.6 of the counter affidavit and submits that the second

defendant has not raised any invoices for the supplies effected from 09.02.2018. Whether there were some transactions at all are matters, which may not be readily discernible from the records placed before this Court as of today. Therefore, suffice to say that in the light of submissions of counsel for TASMAC that the order of the Court was served on them only on 19.03.2018, if any money is payable or becomes payable to the second defendant or to any entity on behalf of the second defendant by TASMAC with regard to supplies effected upto 19.03.2018, the same shall not be processed or paid out.

8. With the above caveat, recording the stand of TASMAC articulated in paragraph Nos.4 to 7 of the counter affidavit, which have been extracted and reproduced supra, both the applications are closed holding that no further orders are necessary.

Sd/.M.S.J

28.03.2018

//Certified to be a true copy//

Dated this the day of 2018.

jj 13/04/2018

COURT OFFICER