

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.4.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.Nos.998 and 999 of 2018
and
C.M.P.Nos.8492 to 8494 of 2018

Phoenix ARC Private Limited,
Phoenix Trust on behalf of phoenix trust
FY 09-7 Trusty of phoenix Trust fy 11-01,
Trustee of phoenix
Trust FY 16-15,
5th Floor, Dani Corporate Park,
158, C.S.T Road, Kalina
Santacruz (E) Mumbai. rep. by its
Authorised Officer. ...Appellant/Petitioner/Petitioner

Versus

- 1 The Asst Provident Fund
Commissioner & Recovery Officer
O/o The Recovery Officer
Near Five Road Salem
1st and 2nd Floor S.J. Plaza
Anna Salai Swarnpuri Salem
- 2 M/s. MSTC Ltd
Leelavathi Building 2nd Floor,
No. 69 Armenian Street Chennai 600 001
- 3 M/s Salem Textiles Ltd
L.R.N. Building II Floor
Saratha College Road Salem 7
- 4 The District Collector
(District Magistrate) Salem Dist.
Salem Respondents/Respondents/Respondents

Prayer: Writ Appeals filed filed under Clause 15 of the Letters
Patent against the order dated 4.4.2018 passed in W.M.P.Nos.5236
and 5237 of 2018 in W.P.No.4259 of 2018 on the file of this
court.

PRAYER IN WMP.5236 OF 2018 IN WP.4259/2018:

This Petition filed Under Article 226 of the Constitution of India praying to grant an order of interim injunction restraining the first and second respondents from handing over of machineries/movables to the prospective purchaser in pursuant to the impugned auction sale notice dated 18.01.2018 in No.CB/SL/6517/RECY/CP-13/SLM/2017 and the auction held on 14.02.2018.

PRAYER IN WMP.5237 OF 2018 IN WP.4259/2018:

This Petition filed Under Article 226 of the Constitution of India praying to grant an order of interim stay of all further proceedings of the impugned auction sale notice dated 18.01.2018 No.CB/SL/6517/RECY/CP-13/SLM/2017 issued by the first respondent and auction held on 14.02.2018 respectively Pending WP.4259 OF 2018.

PRAYER WP.4259/2018:

This Petition filed Under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the first respondent culminating in the impugned proclamation of sale notice dated 18.01.2018 in No.CB/SL/6517/RECY/CP-13/SLM/2017 issued by the first respondent and quash the same as NULL and VOID being in derogation to the rights of the Petitioner under the SARFAESI Act

For appellant : Mr.Om.Prakash, Senior Counsel for
M/s.Ramalingam & Associates

For R1 : Mr.R.Thirunavukkarasu

For R4 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and the learned counsel, who appears, on caveat, for the first respondent and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, who takes notice on behalf of the fourth respondent.

2. The writ appeals are filed challenging the order passed by the learned Single Judge in the interim applications filed by the appellant seeking stay and injunction.

3. According to the learned Senior Counsel appearing for the appellant, the appellant had already moved the matter upto Supreme Court and ultimately, the attachment of the properties belonging the borrower has been confirmed by the Supreme Court however, all of a sudden, the first respondent had brought the movables viz., plant and machineries of the borrower to auction sale and thereby some auction purchaser is sought to be unduly benefitted and thereby the appellant is left in lurch. The learned Senior Counsel has relied upon section 31-B of the Recovery of Debts and Bankruptcy Act, 1993 which reads as under:-

"31-B Priority to secured creditors--
Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority."

and would contend that the appellant being a secured creditor, having advanced huge amounts as loan and entitled to recover to the tune of Rs.150 crores from the Company is already struggling to secure the amount from the borrower company and the matter is also pending before the BIFR and in such a situation, behind the back of the appellant, the first respondent had brought the plant and machinery worth about Rs.20 crores by confirming the auction sale to the tune of Rs.5 cores in a hasty manner and thereby tried to benefit some auction purchaser, which has been confirmed by the learned Single Judge which is erroneous in view of section 31-B of the Recovery of debts and Bankruptcy Act, 1993.

4. Per contra, learned counsel appearing for the Provident Fund Authority, by relying upon Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which reads as under:-

"11. Priority of payment of contributions over other debts--

... ..

(2) Without prejudice to the provisions of sub-section(1), if any amount is due from an employer, whether in respect of the employees'

contribution deducted from the wages of the employee or he employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

would submit that the Provident Fund Authority is the priority charge holder and it prevails over other debts.

5. Having heard the learned counsel appearing for the parties and perused the materials available on record in the light of both the provisions referred to above, we find that the learned Single Judge, considering the scope of the provisions, has taken a view that between those two provisions, the provisions of Employees Provident Fund Act prevails upon the provisions of the DRT Act, as such auction sale and its proceeds would be beneficial to more than five hundred employees of the borrower company and their families.

6. At this juncture, the learned Senior Counsel appearing for the appellant would submit that the first respondent has not followed proper procedure in bringing the properties to auction sale and confirming the sale in favour of the auction bidder by pointing out some discrepancies with regard to date of handing over of the properties to the auction purchaser.

7. Be that as it may, the learned Single Judge has confirmed the auction sale, considering the interest and welfare of the 500 employees and their families as a predominant factor. Further, apart from the plant and machineries, it appears that there are large extent of lands available, which the secured creditors can proceed against. If at all the appellant considers that the auction sale itself is a distressed one, they can very well work out their remedy in the manner known to law.

8. In such view of the matter, we do not find any illegality or irregularity in the order passed by the learned Single Judge. The writ appeals are disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ssk.

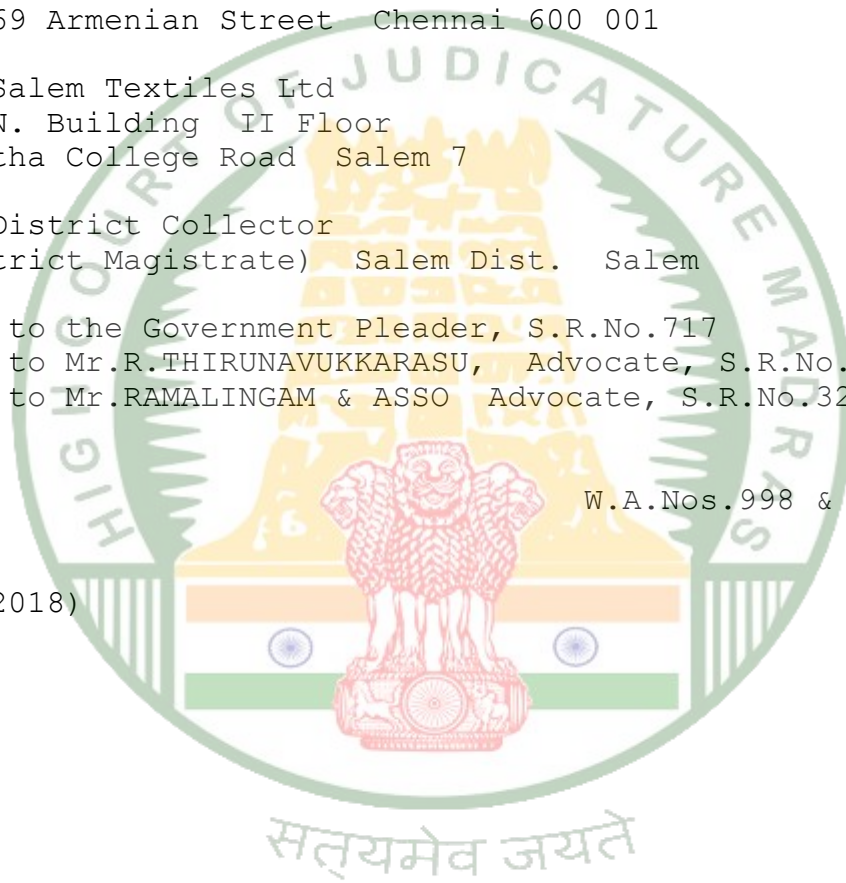
To:

- 1 The Asst Provident Fund
Commissioner & Recovery Officer
O/o The Recovery Officer
Near Five Road Salem
1st and 2nd Floor S.J. Plaza
Anna Salai Swarnpuri Salem
- 2 M/s. MSTC Ltd
Leelavathi Building 2nd Floor,
No. 69 Armenian Street Chennai 600 001
- 3 M/s Salem Textiles Ltd
L.R.N. Building II Floor
Saratha College Road Salem 7
- 4 The District Collector
(District Magistrate) Salem Dist. Salem

+1cc to the Government Pleader, S.R.No.717
+1cc to Mr.R.THIRUNAVUKKARASU, Advocate, S.R.No. 32147
+4cc to Mr.RAMALINGAM & ASSO Advocate, S.R.No.32208 &
32209

W.A.Nos.998 & 999 of 2018

SSD(CO)
TR(07/05/2018)



WEB COPY