

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.213 of 2015

Tasneem Patel .. Appellant

Vs

M/s.AAT Academy India Limited
(formerly known as Access Atlantech
Edutainment (India) Limited),
A Company registered under the
Companies Act, 1956,
having its Registered Office at
1176 Trichy Road, Ramanathapuram,
Coimbatore - 641 045. ... Respondent

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the judgment and decree
dated 04.08.2015 made in C.P.No.257 of 2013.

For Appellant .. Mr.P.Giridharan

For Respondent .. No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Aggrieved against the order dated 04.08.2015 made in
C.P.No.257 of 2013, whereby the company petition was dismissed
as not maintainable, the present appeal has been filed.

2.Heard the learned counsel appearing for the appellant.

3.As the learned counsel who represented the respondent
before the learned single Judge reported no instructions on the
earlier occasion, notice was directed to be served on the
respondent. Accordingly, it was sent and the name of the
respondent is printed. Despite the same, none appears for the

respondent and hence we are proceeding with the matter with the available records.

4.Learned counsel appearing for the appellant would submit that the Promoter/Director of the respondent company obtained loan, for which, the respondent stood as a guarantor. Incidentally, the shares of the respondent held by it in some other company were also pledged. The Director of the respondent company defaulted in making payment and accordingly, the pledged shares were sold towards the recovery of the money due. Since there was some more amount liable to be paid by the Director and the respondent company as a Guarantor for a sum of Rs.22,74,315/-, the company petition was filed.

5.Learned counsel appearing for the appellant further submits that the learned single Judge has committed an error in not appreciating the fact that the leave to sue sought for in the suit filed by the respondent seeking to declare the resolution passed by the company which resulted in offering of the guarantee in favour of the appellant on behalf of the Director as bad in law was dismissed by rejecting the application. This was also confirmed by the Division Bench. The financial position of the company is also in the negative networth as seen from the profit and loss account, which indicates that as on 31.03.2011, there is a loss of Rs.2,74,85,690.33. In view of the aforesaid position, the order requires interference.

6.We find considerable force in the submissions made. There is no contra material against the document filed with respect to the financial position of the respondent company. The receipt of the loan and the respondent's status as a guarantor cannot be questioned. The suit filed by the respondent was also dismissed and even in the suit, the ~~respondeen~~ neither disputed the loan nor the guarantee given but questioned the resolution, which resulted in the offering of guarantee. Even otherwise, there is no substantial suit, which was filed after the dismissal of the leave to sue application. Therefore, we are of the view that the order of the learned single Judge requires interference. Accordingly, the same stands set aside and the company petition in C.P.No.257 of 2013 is admitted.

7. In the result, the Original Side Appeal is allowed. No costs.

Sd/--

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.Giridharan, Advocate Sr.No.40114

MG(CO)
sm:23.7.2018

O.S.A.No.213 of 2015



WEB COPY