IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 19th DAY OF NOVEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

A.No.5165 and 5166 of 2018
in
A.No.26 Of 2017
and
Comtempt Petition No.2312 of 2017
and
Sub Application Nos.74 and 421 of 2018

A.No.26 of 2017:

In the matter of Section 9 of the Arbitration and Conciliation Act, 1996.
&
Shareholders Agreement dated November 18, 2005 between India Growth Fund, Paramount Airways Private Limited, Mr.M.Thiagarajan, Mrs.Lakshmi Murugesan and Paramount Mills Private Limited.
&
Award dated 24.12.2016 by Sole Arbitrator, Hon'ble Mr.Justice N.K.Sodhi Rtd.Chief Justice, P & H High Court.)

India Growth Fund, through its Trustee
Kotak Mahindra Trusteeship Services Limited
a unit scheme of Kotak SEAF India Fund, a Trust
registered as a Venture Capital Fund under the
Securities and Exchange Board of India
(Venture Capital Fund) Regulations, 1996
having its 27 BKC, Plot C27, Block G
Bandra Kurla Complex, Bandra East, Mumbai 400 051

....Applicant

-Vs-

1.Mr.M.Thiagarajan
S/o.Mr.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.
2.Mrs.Lakshmi Murugesan
W/o.Mr.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

3.M/s.Paramount Mills Pvt Ltd
Rep.by its Director
Rajapalayam Road, N.H.208
T.Pudapatti Post, Thirumangalam - 635 704.

4.M/s.Paramount Textile Mills Private Ltd
Rep.by its Director
Thirali Tirumangalam
Madurai district, Tamil Nadu.

5.M/s.T.M.Thiyagarajan Trust
Through its Trustee, Mrs.Lakshmi Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

6.Mr.M.Ramu
S/o.Mr.Murugesan
Director, M/s.Paramount Textiles Mills Pvt.Ltd
Thirali Tirumangalam
Madurai District, Tamil Nadu.

7.Mr.Essakai Thangappandi
S/o.Mr.Esakiapillai
Door No.12, Krishnarayar Theppakulam West
Madurai 625 001.

8.Mrs.R.Sivagami
W/o.Mr.M.Ramu
A21, Lankaram Street
Thirunagar, Madurai 625 006.

9.M/s.Parkerford Garments Pvt.Ltd
No.36, B-2 Balaji Colony
Street No.3, Ramanathapuram
Coimbatore - 641 005.

10.M/s.Golden Lotus Textiles Pvt.Ltd.
Rep by its Director
Door No.12, Krishnarayar Theppakulam West
Madurai 625 001. ...Garnishees

A.No.5165 of 2018 & A.No.5166 of 2018:

India Growth Fund, through its Trustee
Kotak Mahindra Trusteeship Services Limited
a unit scheme of Kotak SEAF India Fund, a Trust
registered as a Venture Capital Fund under the
Securities and Exchange Board of India
(Venture Capital Fund) Regulations, 1996
having its 27 BKC, Plot C27, Block G
Bandra Kurla Complex, Bandra East, Mumbai 400 051

....Applicant

-Vs-

1.Mr.M.Thiagarajan
S/o.Mr.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

2.Mrs.Lakshmi Murugesan
W/o.Mr.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

3.M/s.Paramount Mills Pvt Ltd
Rep.by its Director
Rajapalayam Road, N.H.208
T.Pudapatti Post, Thirumangalam - 635 704.

4.M/s.Paramount Textile Mills Private Ltd
Rep.by its Director
Thirali Tirumangalam
Madurai district, Tamil Nadu.

5.M/s.T.M.Thiyagarajan Trust
Through its Trustee, Mrs.Lakshmi Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

6.M/s.Parkerford Garments Pvt.Ltd
No.36, B-2 Balaji Colony
Street No.3, Ramanathapuram
Coimbatore - 641 005.

7.M/s.Golden Lotus Textiles Pvt.Ltd.
Rep by its Director
Door No.12, Krishnarayar Theppakulam West
Madurai 625 001.

...Respondents

A.No.5165 of 2018:

Application praying that this Hon'ble Court be pleased to permitting the Applicant to take possession of the share certificates deposited with the Registry pursuant to the order dated 25.07.2017 passed in A.No.26 of 2017 and evidenced in Affidavit dated 16.08.2017 of Mr.R.Subbiah and Affidavit dated 12.09.2017 of Mrs.Lakshmi Murugesan.

A.No.5166 of 2018:

Application praying that this Hon'ble Court be pleased to direct the fourth respondent to effect transfer of the said shares in favour of the Applicant by entering the name of the Applicant in the register of members of the fourth respondent company to enable the Applicant to liquidte the same or give credit to the value towards realization of the Award amount.

Contempt Petition No.2312 of 2017:

India Growth Fund, through its Trustee
Kotak Mahindra Trusteeship Services Limited
a unit scheme of Kotak SEAF India Fund,
A trust which is registered as a Venture Capital Fund
under the Securities and Exchange Board of India
(Venture Capital Fund) Regulations, 1996
and having its registered office
at 36-36A, Nariman Bhavan
227, Nariman Point
Mumbai -400 021.
Rep.by its Authorize Signatory
Mr.Shagoota Rashid Khan

....Petitioner

-Vs-

1.Mr.M.Thiagarajan
S/o.Mr.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

2.Mrs.Lakshmi Murugesan
W/o.Mr.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

...Respondents

Contempt Petition praying that this Hon'ble Court be pleased to punish proceedings for Contempt as against the Respondent for having willfully disobeyed the orders of this Hon'ble Court dated 20.03.2013 passed in O.A.No.942 of 2011 and Appln.No.5740 of 2011, issue notice to them and punish them for contempt.

Sub Application No.74 of 2018:

1.Mrs.M.Thiagarajan
W/o.Mr.T.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

...Applicant

-Vs-

1.India Growth Fund, through its Trustee
Kotak Mahindra Trusteeship Services Limited
a unit scheme of Kotak SEAF India Fund,
A trust which is registered as a Venture Capital Fund
under the Securities and Exchange Board of India
(Venture Capital Fund) Regulations, 1996
and having its registered office
at 36-36A, Nariman Bhavan
227, Nariman Point
Mumbai -400 021.
Rep.by its Authorize Signatory
Mr.Shagoota Rashid Khan

...Ist Respondent/Petitioner

2.Mr.M.Thiagarajan
S/o.Mr.T.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

...2nd Respondent/Ist Respondent

Contempt Petition praying that this Hon'ble Court be pleased to discharge this petitioner from the contempt petition No.2312 of 2017 filed by the 1st respondent/Petitioner.

Sub Application No.421 of 2018:

1.India Growth Fund, through its Trustee
Kotak Mahindra Trusteeship Services Limited
a unit scheme of Kotak SEAF India Fund,
A trust which is registered as a Venture Capital Fund
under the Securities and Exchange Board of India
(Venture Capital Fund) Regulations, 1996
and having its registered office
at 36-36A, Nariman Bhavan
227, Nariman Point
Mumbai -400 021.
Rep.by its Authorize Signatory
Mr.Shagoota Rashid Khan

...Applicant/Petitioner

1.Mr.M.Thiagarajan
S/o.Mr.T.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

2.2.Mrs.Lakshmi Murugesan
W/o.Mr.T.Murugesan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

...Respondents/Respondents

3.Mr.T.Murugesan
S/o.Mr.M.Thiagarajan
A21, Lankaram Street
Thirunagar, Madurai 625 006.

...Proposed Party

Contempt Petition praying that this Hon'ble Court be pleased to implead the proposed party as the 3rd respondent in contempt petition no.2312/2017.

This application coming on this day before this court for hearing, the court made the following order:

The applicant has filed the following Applications and Petitions:-

i. Application No. 5165 of 2018 in Application No. 26 of 2017 to permit the applicant to take possession of the share certificates deposited with the registry pursuant to order dated 25.7.2017 in Application No. 26 of 2017.

ii. Application No. 5166 of 2018 in Application No. 26 of 2017 has been filed to direct the fourth respondent to effect transfer of the shares in favour of the applicant by entering the name of the applicant in the register of the members of the fourth respondent company to enable the applicant to liquidate the same or give credit to the value towards realisation of the award amount.

iii)Cont.P.No.2312 of 2017 has been filed to punish the respondents No.1 and 2 herein for wilful failure to comply with the order dated 20.03.2013 in O.A.No.942 of 2011 and A.No.5740 of 2011.

iv) Sub Application (OS).No.74 of 2018 has been filed to discharge the 2nd respondent in Applications Nos.5165 and 5166 of 2016 (petitioner in the present petition) from the Contempt Petition No.2312 of 2017 filed by the 1st respondent/petitioner.

v) Sub Applications(OS).No.421 of 2018 has been filed by the applicant to implead Mr.T.Murugesan as the proposed party as the 3rd respondent in Contempt Petition No.2312 of 2017.

2.These applications have been filed under Section 9 of the Act, while Contempt Petition has been filed under Section 27(5) of the Arbitration and Cpnciliation Act, 1996.

3. The applicant and the respondents have a chequered history before this court. The applicant had filed O.A No. 941-946 of 2011. The applicant later also filed Application No.5740 of 2011 and thereafter filed Application Nos. 1339-1344 of 2012. The applicant also filed Contempt Application Nos. 1509-1510 of 2012.

4. The Respondents Nos. 1 to 3 are the promoters of a company by name Paramount Airways Private Limited which has been now ordered to be wound up and is under liquidation. The 1st respondent was its Managing Director while the 2nd respondent his mother was appointed as its Executive Director.

5.Respondent Nos.1-3, who were promoters in the said Company, collectively held about 63.69% of the shares the said company.

6. The applicant had invested in the company based on the representations and warranties of the promoters on the projections made. The applicant claims to have invested about 30,00,10,000/-(Rupee Thirty Crores Ten Thousand only) by subscribing to its shares and entered into share subscription agreement and the shareholders agreement. In addition to the applicant, 3rd respondent also invested an amount of Rs.10 crores in the said company.

7.However, the promoters of the company namely respondent No.1to 3 breached the terms of the agreement forcing the applicant to issue termination notice dated 25.11.2011 and issued a "put notice" dated 25.11.2011 and called upon the promoters namely respondent No 1 and 2 to buy back the shares of Paramount Airways Private Limited at a price arrived in accordance with the agreement and called upon them to deposit an amount of Rs.112,86,00,000/-(Rupees Hundred and Twelve Crores and Eighty Six Lakhs only) within 60 days of the said notice.

8.As the promoters failed to comply with the notice, the applicant herein filed Application No. 5740 of 2011 under section 9 of the Arbitration and Conciliation Act, 1996 to direct the Respondents No. 1-3 to furnish security to the applicant and to pay the purchase consideration by directing and ordering the respondent's to deposit the purchase consideration and in the event of failure attach the assets listed in the annexure.

9. By a common order dated 20.3.2013, O.A Nos. 942 to 946 of 2011, Application Nos. 5740 to 5744 of 2011 and Application Nos. 1340 to 1344 of 2012 were disposed. The operative portion of the order reads hereunder:

> "...*That the respondents 1 to 3 herein be and are hereby directed either to furnish security or to deposit amount equivalent to the full extent of the applicant's right and the obligations of the respondents 1 to 3 herein to purchase the applicant's shares in the 4th respondent company at the purchase consideration rate calculated in terms of the pricing formula set out in the shares subscription and shareholders agreement in question and Memorandum of Articles of Association of 4th respondent company, within 6 weeks from the date of receipt of the copy of this order.*
>
> *2.That in default of complying with the direction within a time as mentioned in clause (1) supra, list of assets of the*

promoter group morefully set out in Schedule A and B in Annexure II hereunder, shall stand attached.

3.That (1)M.Thiagarajan, (2)Lakshmi Murugesan and (3)Paramount Mills Pvt. Ltd., the respondents 1 to 3 herein, be and are hereby restrained till the compliance of the conditional order as mentioned in clause 1 supra from in any manner dealing with or by creating third party right or interest by alienating or encumbering the properties morefully setout in the schedule Annexure II hereunder.

4.That in the event of the conditional order being complied with, as mentioned in clause 1 supra injunction order stands terminated and any failure to comply with the conditional order, injunction order is to continue till the conclusion of the arbitration proceedings...”

10.Later Application Nos. 4804 and 4805 of 2013 in Application No. 5740 of 2011 were again filed under Section 9 of the Act.

11. By an order dated 12.11.2014, this court directed the 1st and the 2nd respondent to deposit share certificates pertaining to the properties described in Annexure ll to Schedule A in name of the 2nd respondent in

the 4th respondent company within a period of two weeks time from the date of receipt of the order and thereafter it was posted for compliance.

12.Under these circumstances, the 1st and the 2nd respondent filed a compliance report dated 22.12.2014. Paras 6 to 8 and 17 to 20 read as under:

> "6.It is submitted that this Hon'ble Court vide order dated 20.03.2013 directed the Respondent to furnish security or to deposit amount equivalent to the full extent of the Applicant's right and the obligations of the Respondents herein to purchase the Respondent's shares in M/s.Paramount Airways Ltd. At the purchase consideration rate calculated in terms of the pricing formula set out in the shares subscription and shareholders agreement in question, Memorandum of Association of the M/s.Paramount Airways Ltd within 6 weeks failing which to attach the list of assets morefully set out in the Schedule A & B in Annexure II.
>
> 7.It is submitted that the Respondents were not holding any shares in any of the group companies and as such the Respondents were not in a position to comply the order dated 20.03.2013 passed by this Hon'ble Court. However, with a sole intention to harass these Respondents, the Applicant filed A.No.4804 & 4805 of 2013 to attach the list of assets

morefully set out in the Schedule A& B in Annexure II.

8.It is submitted that during arguments in the said applications it was specifically mentioned that the Respondents do not hold any shares in all the companies mentioned in the Schedule A & B in Annexure II. **It was also highlighted that 3rd Respondent (Paramount Mills Private Limited) in A.No.5740 of 2011 it was brought to the notice of this Hon'ble Court that the 1st respondent held only one qualifying share in the said Company and that the 2nd respondent had transferred her shares as early as on 13.12.2010. To substantiate the statements the Respondents have enclosed here with Annual Returns. Hence the allegation that 10,101 shares are held by the 1st Respondent out of the total 10,202 shares in Paramount Mills Private Limited with 99.01% holding as on 27th September, 2010 are not correct. The 1st Respondent is left only with one token share and the 2nd Respondent is left with no share in Paramount Mills Private Limited.**

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17.It is submitted that the alleged 5000 shares held by the 1st Respondent out of the total 175,990 shares in 13th respondent/3rd Party **(Paramount Textiles Mills Private Limited)** ((the 4th respondent herein) with 2.84% holding as on 15th September, 2010. The said shares were pledged with a third party, M/s.Golden Lotus Textiles Private Ltd., for raising a loan, vide Share Hypothecation Agreement dated **31.03.2008** for Rs.14,77,403/- to be repaid together with interest in 3 years. In the said agreement, it was specifically agreed that in the event of default M/s.Golden Lotus Textiles Private Ltd., (the 7th respondent herein) would be entitled to transfer the share hypothecated, in its name, utilising the share transfer forms submitted along. Since the loan remained unpaid, the said M/s.Golden Lotus Textiles Private Ltd., caused a notice on the respondents and the matter is pending thereof. The 1st Respondent is left with no shares.

18.It is submitted that the alleged 5,000 shares held by the 2nd Respondent out of the total 10,000 shares in 7th Respondent/3rd Party (Paramount Legacy Fashions Private Limited) with 50% holding as on 29th April 2008 were pledged with a third party, M/s.Parker Ford Garments (India) Private Ltd., for raising a loan, vide a Supplemental Share Hypothecation Agreement dated 05.05.2010. The said Supplemental Share Hypothecation Agreement reflects the above statement. The 2nd respondent is left with no shares.

19.**I submit that the alleged 70,450 shares held by the 2nd Respondent out of the total 1,75,990 shares in 7th Respondent/3rd Party (Paramount Textile Mills Private Limited) (the 4th respondent herein) with 40.03% holding were pledged with a third party, M/s.Parker Ford Garments (India) Private Ltd., (the 6th respondent) for raising a loan, vide Share Hypothecation Agreement dated 14th December 1999. The said share Hypothecation Agreement reflects the above statement. The 2nd Respondent is left with no shares.**

20.As regard the 500 shares alleged to have been held by the 2nd respondent out of the total 1000 shares in 8th respondent/3rd Party (Paramount Foundations Private Limited) with 50% holding as on 8th September, 2004. The said shares were pledged with a third party, M/s.Parker Ford Garments (India) Private Ltd., for a pending loan, vide Supplemental Share Hypothecation Agreement dated 05.05.2010 Further, the said Company is not carrying any operation for the last several years and has zero networth. The 2nd Respondent is left with no shares."

Under these circumstances, it was stated as follows:

"21.It is submitted that the 1 share alleged to be held by the 2nd Respondent out of the total 545,107 shares 14th respondent/3rd Party (Colour, Yarns Limited) with 0.002% holding as on 21st September, 2011 s a single qualifying share which got miscplaced and is not traceable.

22.It is submitted that this Hon'ble Court had directed to file documents to substantiate the above submissions made and the Respondents had collated all the documents pertaining to the group companies to be filed on 12.11.2014. However, the counsel for the Respondents was unable to file these documents to substantiate his arguments on the said date as he could not be present at the time when the matter was taken up for hearing. This Hon'ble Court taking into consideration the fact that the documents were not filed directed the Respondents to deposit the share certificates pertaining to the properties described in the Annexure II to Schedule A, within 2 weeks from the date of receipt of the order and further directed to post the matter for compliance."

23.It is submitted that in view of the fact that the 1st respondent alone holds 1 qualifying shares each in M/s.Paramount Mills, M/s.Paramount Flight Services Private Limited, M/s.Paramount Frieght Private Limited, M/s.Bluebird Publications Private Limited, M/s.Paramount Holdings Private Limited, M/s.Paramount Beverages Private Limited and M/s.Paramaount Rewards Private Limited and the 2nd respodent old 1 qualifying share in M/s.Colour Yarns Limited (currently not traceable), the share certificates pertaining to these companies are deposited in compliance of the order dated 12.11.2014 along with the supporting documents to substantiate the submissions made by the Respondents."

13.Thereafter, award dated 24.12.2016 came to be passed by the learned arbitrator in the dispute between the parties hereto. Thereafter, the contesting respondent herein have filed petitions under section 34 of the Arbitration and Conciliation Act, 1996.

14.OP.No. 229 of 2017 was filed by the 2nd respondent herein while OP.No. 501 of 2017 was by 1st respondent under Section 34 of the Arbitration and Conciliation Act, 1996.

15.During the interregnum, the applicant had filed

Application Nos. 25 and 26 of 2017 while the 2nd respondent filed Application No. 1692 of 2017 in OP No 229 of 2017. Order dated 25.7.2017 came to be passed in Application Nos. 25 and 26 of 2017 and Application No. 1692 of 2017 in OP No 229 of 2017 to secure the interest of the applicant and interim direction was given to the effect that 70450 shares held by Respondent No. 2 in Respondent No.4 company namely Messer's Paramount Textile Mills Private Limited pledged with the Respondent No. 9 therein (6th respondent herein) be deposited with the Registrar General of this Court within a period of one week from the date of receipt of said order.

16. By an order dated 15.3.2018 in O.P.Nos.229 and 506 of 2017 and O.A.Nos.7,49 and 627 and A.Nos.25, 26, 28, 254 to 258, 1692, 3305, 3742, 3746, 4752, 4820 and 4821 of 2017, it was held as under-:-

> "..*That the interim order granted in pursuance of the order dated 13.06.2017 made in O.A.Nos.7 and 49 of 2017, A.Nos.26, 28, 254 to 257 of 2017 and A.Nos.3072, 1692 of 2017 in O.P.No.229 of 2017 directing the parties thereto maintain status quo with respect to al the assets shall continue till the completion of the execution petitions.*

2. That the prohibitory order granted in pursuance of the order dated 04.01.2017 made in A.No.28 of 2017 prohibiting the respondents 1,2,9 to 10 from in any manner transferring, alienating or dealing in any manner with the share holdings of the respondents 1 and 2 in the 4th respondent company shall continue till the completion of the execution petitions.

3. That the interim order granted in pursuance of the order dated 19.01.2017 made in O.A.No.49 of 2017 restraining the 2nd respondent and her men, from in any manner dealing with or encumbering the property morefully setout in the schedule thereunder shall continue till the completion of the execution petitions.

4. That the undertaking given by the 4th respondent as per order dated 28.02.2017 made in A.No.254 of 2017 "undertaking not to issue any additional shares, convertibles, warrants to the existing shareholders" shall continue till the completion of the execution petitions.

5. That the prohibitory order granted in pursuance of the order dated 02.02.2017 made in A.No.255 of 2017 prohibiting the 4th respondent from making any payment, more particularly, by way of divident, salary, remuneration, commission or otherwise to *the second respondent shall continue till the completion of the execution petitions.*

6.That other Application Nos.26, 256 and 258, 1692, 3305, 3742, 3746, 4752, 4829 and 4821 of 2017 and O.A.No.627 of 2017 do stand closed, with the observation that the first respondent herein shall be at liberty to raise a contention before the Execution Court that transfers, transactions and other activities indulging the petitioner and the second respondent are deliberate and willful and in order to defeat the fruits of the award.

7.That for the aforesaid reason, the first respondent herein shall also implead the third parties, if so advised..."

17.During the course of the proceeding the 6th respondent claims to have filed a suit against 2nd respondent to recover the amount secured by a pledge of the shares in the name of respondent No. 2.

18. Meanwhile O.S.No.86 of 2018 was filed by the respondent No. 9 against the respondent No. 2 herein. A copy of the plaint in the above case has been filed by the respondent No.2. It is alleged that they entered into an Share Hypothecation deed dated 14.12.1999 wherein 70450 equity shares in respondent No.4 of the second respondent were hypothecated by respondent No.2 for the

amounts that were borrowed between 1996 and 1999.

19. It is alleged that respondent No.2 failed to clear the outstanding together with accrued interest thereon. Under these circumstances, Supplemental Agreement of Share Hypothecation Deed dated 5.5.2010 was signed wherein respondent No.2 acknowledged and accepted the liability to repay a sum of Rs.55 lakhs together with interest thereon at 36% per annum from 14.12.1999 till the date of repayment.

20. It is further submitted that Respondent No.2 also hypothecated shares held by in M/S. Paramount Legacy Fashion Private Limited, M/S.Paramount Foundation Private Limited as additional security for the amounts outstanding in the aforesaid suit. Respondent No. 9 has prayed for recovery of Rs.3,55,31,366 .60/- and for incidental relief thereon.

21. It has been prayed that failing payment of aforesaid amount, District Court, Madurai, be pleased to bring the shares for sale through public auction to satisfy the amount due.

22. Now the applicant has filed the present application for transfer of the shares which are in the custody of this court pursuant to the directions dated

25.07.2017 of this court, in the above Application Nos.25 and 26 of 2017.

23. Respondent No. 2, 4 and 6 have filed their respective counters.

24.Heard Mr.Ohm Prakash, learned senior counsel appering for M/s.Ramalingam Associates, learned counsel for the applicant and Mr.R.Ashwine for Mr.M.Sathiveli, learned counsel for 1st respondent, Mr.M.Ramakrishnan, learned counsel for Waraon and Sairam, leanred counsel for 2nd and 5th respondents, Mr.Anirudh Krishnan, learned counsel for 4th and 7th respondents and Mr.A.Umashankar, learned counsel for 6th and 8th respondents.

25. The learned senior advocate Mr Ohm Prakash appeared for the applicant and made elaborate submissions stating that there was no whisper about the pledging of the shares by the 2nd respondent with Respondent No.6 of the 4th respondent Company and it is only after the award came to be passed it has been stated that the shares have been hypothecated with the 6th respondent.

26.According to the learned senior counsel these are fabricated and manufactured documents to deny the applicant the right to enforce the award passed by the arbitrator.

27. Learned counsel Mr N. Ramakrishnan for 2nd respondent states that there was no suppression and the fact that the shares had been pledged with respondent No. 6 was something which was disclosed as early as 2014 as is evident from compliance report filed by respondent No. 1 and 2 on 22.12.2014 in Application No.4804-05 of 2013 in Application No. 5740 of 2011. He referred to in paragraph 19 which reads as under:-

> *"I submit that the alleged 70,450 shares held by the second respondent out of total one, 75, 990 shares in the 7th respondent/3rd party (Paramount Textile Mills the Private Limited) 40.03% holding were placed a third party M/s. Parker Ford Garments (India) Private Limited for raising a loan, vide Share Hypothecation Agreement dated 14th December 1999. The said Share Hypothecation Agreement reflects the above statement. The second respondent is left with no shares."*

28. This compliance report was signed by the first and second respondent, though the 6th respondent herein was directed to comply with the directions. Needles to state the compliance report is ipso facto and the Court had no occasion to examine the correctness of the averments.

29.The principal attack to the applications filed by the applicants is that jurisdiction of this court under section 9 of the Arbitration and Conciliation Act, 1996 (for granting interim relief) cannot be converted into that of an execution court.

30.It is further stated that by an order dated 25.7.2017, the Court directed that the interest of the applicant be secured and the original share certificates be deposited with the Registrar General of this Court in one week's time and that the Registrar General was to hold them in custody till the disposal of O.P.Nos. 229 and 506 of 2017.

31. It is further submitted that the 6th respondent complied with the direction and has filed an affidavit on 16.8.2017 reserving the rights and subject to the subsisting hypothecation in their favour. Para 5 of the affidavit of the 6th respondent herein reads as under:

> "I further submit that the 2nd Respondent Mrs.Lakshmi Murugesan Had hypothecated the said shares in favour of the 9th respondent vide Agreement of Share Hypothecation dated 14th December 1999, as security for a loan of Rs.55,00,000/- given by the said Company to the 2nd Respondent. It is submitted that since the 2nd Respondent

failed to settle the loan amount together with interest thereon, she had executed a Supplementary Agreement of Share Hypothecation dated 05th May 2010 where under she had renewed the hypothecation of 70450 shares held by her in the 4th Respondent Company in addition to further hypothecating certain shares held by her in certain other companies as additional security for the outstanding loan amount and interest."

32. The learned counsel for the 2nd respondent further submits that already a suit in respect of the shares have now been filed to enforce the rights against the 2nd respondent by the 6th respondent herein vide O.S.No.86 of 2018 and therefore the relief sought for cannot be allowed.

33.It was further submitted that the applicant cannot blindly have the share transferred merely because an award has been passed. This can be done only in an execution proceeding in a manner known to law. The learned counsel for the 2nd respondent at the same time stated that the 2nd respondent would have no objection for retention of the certificates pending disposal of collateral proceedings.

34. The learned counsel for the 4th respondent Mr.Anirudh Krishnan, submitted that the present

application is barred by constructive res judicata and since the award has attained finality with the dismissal of O.P number 229 2017, the applicant is not entitled to invoke the jurisdiction of this court under section 9 Of the Arbitration and Conciliation Act, 1996.

35. Learned counsel for the 4th respondent submitted that the applications were barred as there was issue estoppel and in any event the applicant ought to exercise their right under Order 21 Rule 76 of CPC.

36. Learned counsel for the 6th respondent Mr. Uma Shanker submitted that there is no privity of contract between the applicant and the 6th respondent herein.

37.He referred to Order 21 Rule 21 of CPC to the effect that only if there is a decree the shares can be sold. Here the award is not for sale of shares and therefore the applicant has no remedy especially when the shares were hypothecated to the 6th respondent herein.

38. The learned counsel drew my attention to the supplemental agreement dated 5.5.2010 to agreement dated 14.12.1999 between the 2nd and 6th respondent, particularly to clause which reads as under:-

> *"In consideration of the said loan, the borrower has by an agreement dated 14th December, 1999 (hereinafter called*

> *"the Principal Agreement") & absolutely to the lender all the rights, title and interest in and to the hypothecated shares under the said principal Agreement and the full benefit granted thereby and all stipulations that to contained and all remedied for enforcing the same as security for the repayment of the said loan".*

39. I have gone through the affidavits in the counter affidavits filed by the respective parties and considered the arguments advanced by the learned senior counsel for the applicant and the councils on behalf of the second, fourth and the sixth respondent herein.

40. The 1st respondent remains absent. The respondent's have made a concerted effort dismiss application and have made legal submissions based on the documents that are before this court.

41. In my view the prayer sought for in Application No. 5165 of 2018 to allow the applicant to take possession of the share certificate deposited with the Registrar General pursuant to order dated 25.7.2017 in Application No.26 of 2017 and the prayer in Application No. 5166 of 2018 to direct the 4th respondent to effect transfer of the said shares in favour of the applicant by entering the name of the applicant in the register of members of the 4th respondent to enable the applicant to

liquidate the same or give credit to the value of the award amount cannot be granted under Section 9 of the Arbitration and Conciliation Act, 1996. Section 9 is intended to protect the interest as an interim measure.

42.For the present, the interest of the petitioner is secured by interim order dated 25.07.2017 in Application Nos.25 and 26 of 2017 and Application No.1692 of 2017 in O.P.No.229 of 2017 and by order dated 15.03.2018 in O.P.Nos.229 and 506 of 2017 and O.A.Nos.7, 49 and 627 and A.Nos.25, 26, 28, 254 to 258, 1692, 3305, 3742, 3746, 4752, 4820 and 4821 of 2017 and under taking given on behalf of the learned counsel for the 2nd respondent. The applicant has a remedy under section 36 of the Arbitration and Conciliation Act, 1996 to enforce the award and therefore has to work out the remedy in the manner known to law. Therefore, Application Nos.5165 and 5166 of 2018 in Application No.26 of 2017 are dismissed without prejudice to the rights of the applicant. No costs.

43.Contempt Petition in Cont.P.2312 of 2007 filed to punish the respondents for their willful failure to comply with the directions dated 20.03.2013 in O.A.No.942 of 2011 and A.No.5740 of 2011 is no lonter required, in view of subsequent compliance by the second respondent.

In view of the same, the above contempt petition is liable to be dismissed. Consequently, the sub pplication filed are also liable to be dismissed.

44.Accordingly,

(i)Application Nos.5165 and 5166 of 2018 in Application No.26 of 2017 are dismissed without prejudice to the rights of the applicant.

(ii)the Contempt petition is dismissed and the sub applications are also dismissed without prejudice to the rights of the applicant to enforce their right under Section 36 of the Arbitration and Conciliation Act, 1996., to recover the amaount due from the contesting respondents.

No costs.

Sd/.C.S.N.J.
19.11.2018

//Certified to be a true copy//

Dated this the th day of 2018.

DL/03.12.2018 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.