

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

O.S.A.No.345 of 2011 and
M.P. Nos.2 of 2011 and 5 of 2012

M/s NEPC India Limited
(Formerly known as
M/s NEPC Micon Limited)
rep. By its Director,
Tirupathi Kumar Khemka,
having its office
at No.36, Wallajah Road,
Chennai - 600 002

... Appellant

Vs.

M/s Indian Oil Corporation Limited
Rep. By its Manger (Law)
T.Dhandapani
No.139, Nungambakkam High Road,
Chennai - 600 034

...Respondent

Prayer: Original Side Appeal filed under Order 36 Rule 9 of
O.S.Rules r/w Section 483 of Companies Act and Clause 15 of
Letters Patent to set aside the order dated 30.09.2011 made in
C.P.No.232 of 1998 and thereby dismiss the Company Petition and
this company Petition is filed under section 433(e) read with
section 434 of the Companies Act 1956

a) to Wind up the Respondent Company

b) to appoint the official Liquidator
High Court, Madras as Liquidator of the Respondent Company under
the provisions of the companies Act 1956.

For Appellant

: Mr.S.R.Rajagopal for Mr.P.Elango

For Respondent

: Mr.M.Ravindran, Sr.Counsel
for Mr.P.S.Subramaniam

J U D G M E N T

[Judgment of the Court was made by M.VENUGOPAL, J.]

The Appellant / Respondent has focussed the instant Original Side Appeal before this Court [as an aggrieved person] as against the Order dated 30.09.2011 in Company Petition No.232 of 1998.

2. Earlier, the Learned Single Judge while passing the Impugned Order at Paragraph No.74 had observed the following:

"74. There, this is a fit case where the company is to be wound up. Accordingly, this petition is allowed and the respondent company is ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Liquidator of the respondent company. He is directed to take charge of the assets of the respondent company. The Ex-Directors of the company are directed to file their statement of affairs before the official Liquidator within a period of 21 days. The petitioner shall deposit a sum of Rs.20,000/- towards initial expenses with the Official Liquidator."

3. Pending O.S.A.No.345 of 2011 filed by the Appellant, it comes to be known that M.P.No.4 of 2012 was filed by the Respondent / Indian Oil Corporation and this Court, on 26.11.2012, at Paragraph No.10 to 13 had observed the following:

"10. Materials available on records show that the 1st Respondent and its sister concern have entered into a tripartite agreement on 06.05.1997 with the Petitioner, in and by which, the 1st Respondent has agreed to guarantee due repayment of the dues from M/s NEPC Micon Limited. Petitioner has already filed a Civil Suit against the 1st Respondent on the strength of the tripartite agreement and the deed of hypothecation. The claim together would come to a sum of Rs.19.00 Crores.

11. The Petitioner is a Public Sector Undertaking. The 1st Respondent has already obtained an order of status quo and it was only for the purpose of granting such an interim protection, a sum of Rs.5,30,00,000/- was directed to be deposited. The Petitioner has agreed to redeposit the amount in the case the appeal is allowed.

12. In view of the fact that the Civil Suits filed

by the Petitioner claiming a sum of Rs.19.00 Crores are now pending and taking into account the order of status quo granted by this Court, subject to the deposit of Rs.5,30,00,000/-, we are of the view that the Petitioner should be permitted to withdraw the said amount on condition of filing an undertaking to redeposit the amount in case the Appellant succeeds.

13. Accordingly, we permit the Petitioner to withdraw a sum of Rs.5,30,00,000/- (Rupees Five Crores and Thirty Lakhs only) along with the accrued interest lying in the Court deposit, subject to filing an affidavit of undertaking before the Registry, agreeing to redeposit the entire amount, in case the appeal is allowed or the Court directs for such deposit." and resultantly allowed the said Miscellaneous Petition.

4. Being dissatisfied with the order dated 26.11.2012 in M.P.No.4 of 2012 in O.S.A.No.345 of 2011, the present Appellant, as a Petitioner, filed Petition(s) for Special Leave to Appeal (Civil) No(s).37966/2012 before the Hon'ble Supreme Court of India against the Respondent / Indian Oil Corporation and on 12.12.2012, the Hon'ble Supreme Court had passed the following the Order:

"Taken on board.

Heard learned counsel for the petitioner.

Special leave petition is dismissed.

However, we record and accept the statement of Mr.Gaurab Banerji, learned senior counsel for the respondent, that in the even of the court asking the respondent - M/s Indian Oil Corporation Ltd., to re-deposit the entire amount, M/s Indian Oil Corporation Ltd., shall re-deposit the said amount with interest at the rate as may be directed by the court."

5. It transpires that the amount of Rs.5,30,00,000/- [Rupees Five Crores and Thirty Lakhs only) was deposited by the Appellant to the credit of C.P.No.232 of 1998 and the same was withdrawn by the Respondent, as per Orders of this Court dated 26.11.2012 in M.P.No.4 of 2012, and the said order in M.P.No.4 of 2012 in O.S.A.No.345 of 2011 passed by this Court was affirmed by the Hon'ble Supreme Court of India Petition(s) for Special Leave to Appeal (Civil) No(s).37966/2012 on 12.12.2012.

6. When that be the facts situation, on behalf of the Respondent, a memo is filed to close the Company Petition No.232 of 1998, since the amount was purported to be adjusted towards the principal amount in C.S.No.998 of 1999 on the file of this Court. Further, the Respondent has agreed to restrict its claim in regard to the interest portion in C.S.No.998 of 1999 on the file of this Court. It is to be pertinently pointed out by

this Court that on behalf of the Respondent, a Memo is filed to close the Company Petition No. 232 of 1998, since the amount was purported to be adjusted towards the principal amount. Admittedly, as on today, the Civil Suit in C.S.No.998 of 1999 is pending.

7. In view of the fact that the sum of Rs.5,30,00,000/- was deposited on various dates to the credit of C.P.No.232 of 1998, the same being withdrawn from the Office of the Registry of this Court and added further, the said amount was adjusted towards the principal amount in C.S.No.998 of 1999, this Court closes the Company Petition No.232 of 1998 and resultantly disposes of the present Original Side Appeal, since nothing survives for further adjudication.

8. Before parting with the case, this Court makes it lucidly clear that both the parties are directed to adhere to the orders passed by this Court in true letter and spirit. The appointment of Official Liquidator (attached to this Court), as Liquidator of the Appellant / Respondent Company by this Court's order in C.P.No.232 of 1998 shall stand automatically vacated. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Official Liquidator
High Court, Madras
(For favour of information and
necessary action)

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

+1 cc to Mr.P.Elango Advocate sr 15852

+1 cc to Mr.P.S.Sivasubramanian Advocate sr 18110

O.S.A.No.345 of 2011 and
M.P. Nos.2 of 2011 and 5 of 2012

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