IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.28907 of 2017
and
W.M.P.No.31127 of 2017

Asset Reconstruction Company(India) Limited,
rep.by its Chief Manager,
Mr.S.Saravanan ... Petitioner

vs.

1.The Assistant Commissioner(Commercial Tax),
Commercial Tax Office,
No.138/130, Javulikkadai Street,
Dharapuram Taluk,
Erode-638 656

2.The Sub-Registrar,
Sub-Registrar's Office,
Dharapuram Taluk,
Ponnivadi Village,
Erode-638 673

3.M/s.Muthukumarasamy Textiles Limited,
rep.by the Official Liquidator,
High Court, Madras,
As the Liquidator of Muthukumarasamy Textiles
Limited (In liquidation),
Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai,
Chennai-600 001 ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus, calling for the records of the first respondent culminating in the proceedings bearing reference number Na.Ka.101/2011/A3 dated 21.01.2011 and attaching the secured property mortgaged to the petitioner situated at S.F.No.1635, New sub-division in S.F.No.1635/1, and New RSF No.67, Ponnivadi Village, Dharapuram Taluk, Erode District and quash the same and further direct the respondent No.2, to raise the attachment over the secured property mortgaged to the petitioner found in the aforesaid Na.Ka.No.101/2011/A3, dated 21.01.2011.

For Petitioner : Mr.V.V.Sivakumar
For Respondents : Mr.J.Pothiraj,Spl.G.P. For R1
Mrs.Narmadha Sampath,A.A.G.
Assisted by M/s.G.Dhana Madhri for R2
Ms.J.Madhuri for R3

ORDER

Heard Mr.V.V.Sivakumar, the learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader for the first respondent, Mrs.Narmadha Sampath, learned Additional Advocate General, assisted by Ms.G.Dhanam Madhri, for the second respondent and Ms.J.Madhuri, learned counsel for the Official Liquidator.

2.The petitioner is a Asset Reconstruction Company, who holds a first charge over the properties owned by the third respondent. Pursuant to action initiated under the provisions of the SARFAESI Act, the petitioner had taken steps to bring the subject property for sale. At that juncture, they found that there is an order of attachment by the first respondent dated 21.1.2011, attaching the subject property for recovery of the Sales Tax arrears to the tune of Rs.78,58,967/- for the years 2007-08 to 2008-09. The matter was heard on several dates and the Court directed the petitioner to file an affidavit setting out as to how they intend to proceed with the matter and how the interest of the Sales Tax Department would be protected.

3.An affidavit to the said effect is filed by the authorised representative of the petitioner, dated 04.06.2018. At this juncture, it would be relevant to quote paragraph No.5 of the affidavit, which reads as follows:

> "5.It is submitted that without prejudice to the rights and contentions raised in the present writ petition, the petitioner is willing to bring the property for sale under the provisions of SARFAESI Act and out of the sale proceeds realised from the sale of the said secured property, the petitioner will deposit the first respondent's claim of Rs.78,58,967/- in an

interest bearing no lien account. It is further submitted that if the first respondent succeeds in the SLP (Civil) Diary No.20471 of 2017 filed before the Hon'ble Supreme Court, the said demand of Rs.78,58,967/- would be disbursed to the first respondent in accordance with law."

4.The learned Additional Advocate General, on instructions from the Second respondent, would submit that if the Court issues necessary direction, pursuant to the affidavit filed by the petitioner, as referred above, the interest of the Revenue will be protected and the amount will be retained in a bank deposit instead of a non-lien account.

5.The learned counsel for the petitioner submitted that it is normal practice to retain the amount in an interest bearing no-lien account, but however, the petitioner would not have any objection to deposit the money in terms of the direction issued by this Court.

6.The learned counsel appearing for the Official Liquidator would submit that an escrow account may be directed to be opened and the amount may be directed to be deposited in the said escrow account.

7.The above request cannot be acceded to, as the amount of Rs.78,58,967.00 is towards the arrears of Sales Tax and admittedly as on date, the Official Liquidator has not received any claims either from the workmen or from the third parties.

8.The learned counsel for the petitioner would fairly submit that if there are any statutory dues payable by the defaulting company, obviously, the same has to be settled and later it would have precedence. This statement is taken on record. Accordingly, the writ petition is disposed of with the following directions:

(i)The first respondent is directed to lift the order of attachment dated 21.01.2011, within a period of three weeks from the date of receipt of a copy of this order. The first respondent is directed to intimate the second respondent about the order passed by this Court and the second respondent shall consequently delete the encumbrance created over the property, which is subject to the conditions of this order.

(ii)On the attachment being lifted, the petitioner shall bring the subject property for sale by following the proper procedure and the sale notice shall indicate that there is an arrears of due to the Commercial Taxes Department to the tune of Rs.78,58,967/- and about the order passed by this Court in this writ petition.

(iii)On the property being sold, the petitioner shall deposit the sum of Rs.78,58,967/- to the credit of this Writ Petition, before the Indian Bank, High Court Branch and the same shall be retained in an interest bearing account and abide by the orders to be passed by the Hon'ble Supreme Court in S.L.P. (Civil) Diary No.20471 of 2017. The said S.L.P. has been filed by the State of Tamil Nadu challenging the order dated 10.11.2016, passed by the Full Bench of this Court in W.P.No.2675 of 2011. In the said S.L.P., an order of status-quo has been granted and the cases are to be heard by the Hon'ble Supreme Court.

(iv)It is open to the Official Liquidator to move the Company Court for necessary relief.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

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No.29, Rajaji Salai,
Chennai-600 001

+1cc to Mr.V.V.Sivakumar, Advocate sr.no.45161
+2cc to Ms.J.Madhuri, Advocate sr.no.45156
+1cc to Special Government Pleader sr.no.45843

W.P.No.28907 of 2017

bs(co)
nr 25/07/2018