

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM :

The Hon'ble Dr.VINEET KOTHARI, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P. Nos.30664 of 2005 and 5096 of 2015

ICICI Bank Limited
represented by its
Assistant General Manager,
Mr.P. Ananda Krishna Kumar,
ICICI Bank Towers,
No.93, Santhome High Road,
Chennai - 600 028

... Petitioner in WP No.30664 of 2005

Madras Petrochem Employees Union
(Regd No.212/CPT)
rep by its General Secretary
T. Kannan
No.29/13, Thiruvalluvar Street,
Balakrishna Nagar,
Thiruvotriyur
Chennai - 19

.... Petitioner in WP No.5096 of 2015

-vs-

1. The Commercial Tax Officer,
Thiruvattiyur Assessment Circle,
Chennai - 600 019

2. The Manager,
Reserve Bank of India,
Kamarajar Salai,
Chennai - 600 009

3. M/s Madras Petrochem Limited,
No.16, Nariman Bhavan,
Plot No.227, Vinay K Shah Marg,
Nariman Point,
Mumbai - 400 021

4. Kotak Mahindra Bank Ltd.,
No.39, Ceebros Centre,
1st Floor, Montieth Road,
Egmore, Chennai - 600 008
5. Alchemist Asset Reconstruction Company Ltd.,
(formerly DHIR & DHIR Asset Reconstruction and
Securitisation Company Limited),
having its Registered Office at
D-54, First Floor, Defence Colony,
New Delhi - 110 024

(R.5 impleaded as per Order dated 05.08.2015
in MP No.79/2015 in WP No.30664/2005)

6. M/s Madras Petro-Chem National Employees
Union rep by its General Secretary
A. Gnanamoorthy,
NO.6, Thamaraikulam 2nd Street,
Periyathoppu, Manali,
Chennai - 600 068
R.6 impleaded as per Order dated 30.03.2016
in WMP No.7327/2016 in WP No.30664 of 2015

.. Respondents in W.P.No.30664 of 2005

1. The Authorised Officer,
ICICI Bank Ltd,
Cenatoph Road,
Teynampet,
Chennai - 600 018
2. The District Collector,
Thiruvallur District,
Thiruvallur
3. The Official Liquidator,
attached to the Bombay High Court,
Bank of India Building, 5th floor,
70/80, M.G.Road, Fort,
Mumbai - 400 023
4. Alchemist Assets Reconstruction Company Ltd.,
D.54, 1st floor, Defence Colony,
New Delhi - 110 024

... Respondents in W.P.No.5096 of 2015

Prayer in W.P.No.30664 of 2005: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records relating to the proceedings bearing RC No.1985/91/A3/dated 23.11.2004 and RC 1985/91/A3/dated 29.03.2005 proceedings bearing Rc.1985/91/A3/dated 29.08.2005 and B-6 notice bearing No.Rc.1985/91/A3/dated 29.08.2005 on the file of the first respondent and quash the same.

Prayer in W.P.No.5096 of 2015: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the first respondent to deposit the amount of Rs.4,65,00,000/- along with accrued interest thereon with the official liquidator and also to direct the 2nd respondent to conduct public auction for the sale of 15.54 acres and to deposit the sale proceeds with the official liquidator.

W.P.No.30664 of 2005

For Petitioner in : Mr.Jayash Dolia
: for M/s Aiyar & Dolia
For R.1 : Ms.G. Dhanamandhri
Govt. Advocate (Taxes)
For R.2 : Mr.T. Poornam
For R.3 : Mr.S.R. Sundar
For R.5 : Mr.Ohm Prakash
Senior Counsel for
Mr.K. Hari Shankar
For R.6 : Mr.R. Dhamodaran

W.P.No.5096 of 2015

For petitioner : Mr.V.P. Rajendran
For R.1 : Mr.Jayash Dolia
: for M/s Aiyar & Dolia
For R.2 : Ms.G. Dhanamandhri
Govt. Advocate (Taxes)
For R.3 : Mr.S.R. Sundar
(Official Liquidator)

For R.4

: Mr.Ohm Prakash
Senior Counsel for
Mr.K. Hari Shankar

C O M M O N O R D E R

(Order of the Court was made by The Hon'ble Acting Chief Justice)

W.P.No.30664 of 2005 has been filed by ICICI Bank Limited against the Commercial Tax Officer, Chennai, whereas, W.P.No.5096 of 2015 has been filed by Madras Petrochem Employees Union, represented by its General Secretary against the Authorised Officer, ICICI Bank Limited.

2. The controversy raised in the present case is that M/s Madras Petrochem Limited has been wound up and liquidation proceedings are pending before the Bombay High Court. The Official Liquidator attached to Bombay High Court is seized of liquidation proceedings of the said M/s Madras Petrochem Limited.

3. The said Company was ordered to be wound up by the Bombay High Court by its Order dated 30.08.2007 in C.P.No.1180/2002 and C.P.No/813/2003. We are informed that the Bombay High Court is seized of the matter even now.

4. In W.P.No.30664 of 2005, the petitioner/ICICI Bank Limited claims that the priority of moneys, realised from sale of movable and other securities. The amounts have been kept in a fixed deposit, pursuant to the order of this Court. In WP No.5096 of 2015, the Madras Petrochem Employees Union claims that as per the provision of Section 529-A of the Companies Act, 1956 in case of a Company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of Section 529 of the Companies Act, 1956 may retain the sale proceeds of his secured assets after depositing the workmen's dues with the Liquidator in accordance with the provisions of Section 529-A of that Act.

5. Ms.G. Dhanamandhri, learned Government Advocate, appearing for Commercial Tax Department has also submitted before this court that the controversy regarding the priority

of the claim is pending before the Hon'ble Supreme Court by way of S.L.P (Civil) Diary No.20471/2017 (Assistant Commissioner (CT), Anna Salai, III Assessment Circle vs Indian Overseas Bank and another) in which, by an Order dated 16.03.2018, the Division Bench of the Hon'ble Supreme Court of India has directed Status quo, as it exists to be maintained by the parties and the matter has been directed to be tagged with SLP (C)No.D 42264 of 2017. The learned Government Advocate has also produced a copy of the said Order dated 16.03.2018. Same is taken on record.

6. The Petitioner/ICICI Bank has filed an affidavit of Mr.Naveenkumar, S/o A.V. Ramakrishnan, in which, the details of deposit, kept in fixed deposit has been furnished and the total amount, as on date is Rs.10,06,39,826/- and the affidavit filed on behalf of the petitioner is extracted hereunder for ready reference:

AFFIDAVIT FILED ON BEHALF OF THE PETITIONER

" I Naveenkumar A R Son of A V Ramakrishnan, Hindu, aged about 38 years, having office at ICICI Bank, Santhome High Road, Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I am the Branch Manager of the Petitioner herein and I am well acquainted with the facts and circumstances of the case.
2. I submit sale proceeds of movables sold pursuant to the notice of intended sale deed 16.08.2004 to the tune of Rs.4,83,40,000/- has been kept in fixed deposit pursuant to the order of this Hon'ble Court in the subject matter. The said deposit has been renewed from time to time as per the bank's norms and as on date, the total amount available is Rs.10,06,39,826/- and the details of which are given are below:-

S.No	Account Number	Amount	Due on
1.	021214047174	Rs. 36,155,00	22.11.2020
2.	021210007895	Rs. 6,18,522.00	25.10.2019
3.	021214010015	Rs. 33,61,802.00	11.03.2020
4.	021214010014	Rs. 3,80,86,374.00	26.03.2020

5.	021213002647	Rs.	38,692.00	15.11.2018
6.	021213002648	Rs.	8,33,746.00	13.12.2019
7.	021210000290	Rs.	5,75,89,752.00	10.10.2019
8.	021213002645	Rs.	74,783.00	22.01.2020

The petitioner is prepared to abide by any further orders of this Hon'ble Court to transfer the amount to the Official Liquidator, Mumbai, if so directed by the Hon'ble Court.

In the above circumstances, it is prayed that this Hon'ble Court may be pleased to pass appropriate orders and thus render justice.

For ICICI Bank Limited
Authorised Signatory
R.A. Puram Branch,
Chennai-600 028

Solemnly affirmed at Chennai on
this 8th day of November 2019 and
signed his name in my presence

Before me

Advocate, Madras

7. Learned counsel for the petitioner/ICICI Bank submitted before us that the Bank has no objection to transfer the amount of Rs.10,06,39,826/-to the Official Liquidator of Bombay High Court and the communication will be sent by Speed Post with acknowledgment due and a copy of the communication will be sent to all the counsel. The said undertaking is recorded.

8. After hearing the learned counsel for the petitioner/ICICI Bank, learned counsel for the Workmen Union and the learned Government Advocate appearing for Commercial Tax Department, we are of the opinion that these two writ petitions can be disposed since Bombay High Court is seized of liquidation of M/s Madras Petrochem Limited and the issue regarding the priority of the claims has to be settled by the Bombay High Court in the pending liquidation proceedings subject to the outcome of SLP filed by the Assistant Commissioner (CT) in SLP No.20471/2017.

9. All questions relating to the prioritising of rival claims as well as approving of the claims is to be undertaken by the Official Liquidator, attached to the Bombay High Court. The petitioner/ICICI Bank shall keep all the 8 (eight) Fixed Deposits renewed pending such exercise.

10. Therefore, we dispose of both the writ petitions with the aforesaid observations and relegating the parties to make their submissions before the Official Liquidator, attached to Bombay High Court in accordance with law. The Official Liquidator, attached to Bombay High Court, will examine the same in accordance with the provisions of the Companies Act.

11. No costs.

12. Copy of this Order shall be made available to all the counsels as well as the Official Liquidator, attached to this High Court and the Bombay High Court and the Registrar General of Bombay High Court.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sr

To

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Chennai - 600 019
2. The Manager,
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1st Floor, Montieth Road,
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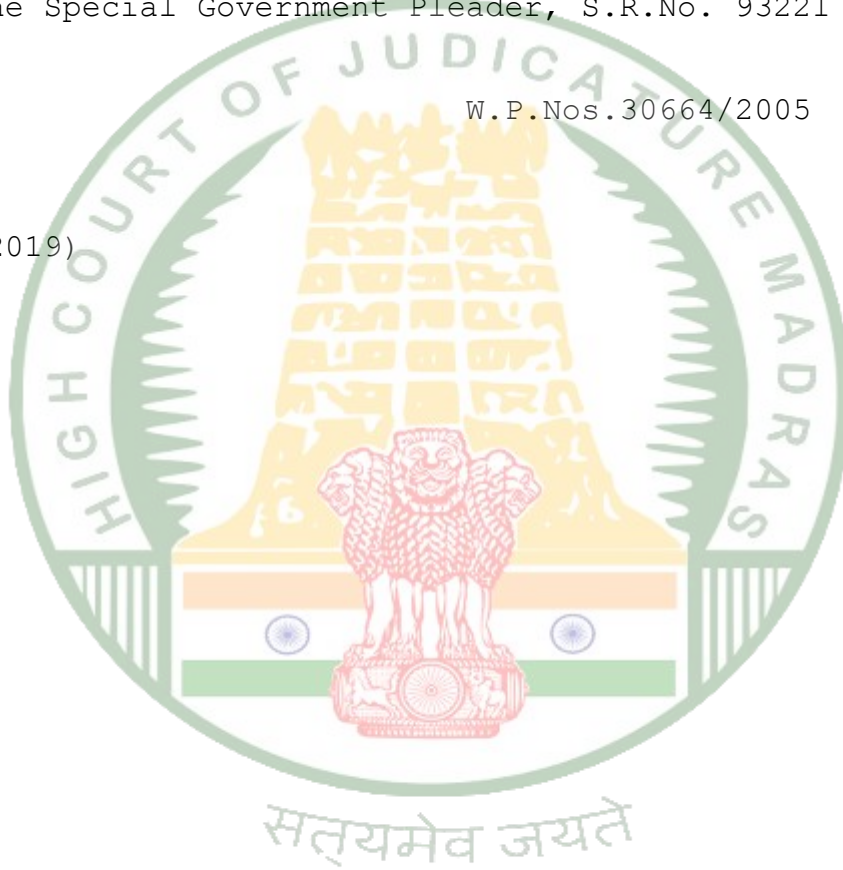
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13.The General Secretary,
Madras Petrochem Employees Union
T. Kannan
No.29/13, Thiruvalluvar Street,
Balakrishna Nagar,
Thiruvotriyur
Chennai - 19

+2cc to Mr.Ramalingam & Associates, Advocate, S.R.No.93552
+2cc to Mr.S.R.Sundar, Advocate, S.R.No. 93275
+2cc to Mr.K.Harishankar, Advocate, S.R.No. 92881
+1cc to the Special Government Pleader, S.R.No. 93221

W.P.Nos.30664/2005 & 5096/2015

CP (CO)
GN (05/12/2019)



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