

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Eighth day of August Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE T.RAJA

REV.APPL NO.123 OF 2019

IN CMA.NO.3092 OF 2018

AND CMP.NO.13763 OF 2019

1 VENKATESH COKE AND POWER LTD., [PETITIONERS / APPELLANTS]
NO.6926A/D1 CHANDRAWAL ROAD, NEW DELHI.

2 RAVI AGARWAL
S/O. LATE SHRI TARA CHAND AGARWAL,
NO.6926A/D1 CHANDRAWAL ROAD, NEW DELHI.

3 SHRI ARUN KUMAR SWARUP
S/O. LATE SHRI HARI RAJ SWARUP, NO.6926A/D1
CHANDRAWAL ROAD, NEW DELHI.

Vs

M/S.OTTO INDIA PVT LTD., [RESPONDENT / RESPONDENT]
NO.32 EZARA STREET, 7TH FLOOR, KOLKOTTA,
BY TRANSFEREE OF THE DECREE M/S. PAPATHI
TRAVELS, REP BY ITS PARTNER SHRI
A. NARAYANAM, NO.138 TH ROAD, CHE

Review application under order 47 Rule 1 of C.P.C. filed against Review Petition to review the Order dated 19.02.2019 passed in CMA.3092/2018 (in REV.APPL.No.123/2019)and;

(ii) to stay all further proceedings in EP.No.128/2017, pending on the file of the I Additional District Judge, Tiruvallur (in CMP.NO.13763/19) in REV.APPL.No.123/19 respectively.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.RAVI KUMAR PAUL Senior Counsel M/S.S.RAJMAKESH, Advocate for the Appellants/Petitioners and of on

behalf of the Respondents the court made the following order:-

Notice through Court as well as privately to the respondent returnable in three weeks.

2.Mr.Ravikumar Paul, learned senior counsel appearing for the applicants argued that when the C.P. No.255 of 2003 was filed before the High Court of Delhi against the applicants, by virtue of Section 446 of the Companies Act (hereinafter referred to as 'the Act'), no stay or other proceedings shall be commenced. When this is the legal position, the suit filed in C.S. No.196 of 2005 by the respondent M/s.Otto India Private Limited on 09.08.2005 for recovery of money against the applicants cannot be proceeded with. Contrary thereto, an exparte order was obtained on 25.01.2006 and the Provisional Liquidator was also appointed by the Delhi High Court on 14.09.2006 in the C.P. No.255 of 2003. Learned senior counsel appearing for the Review applicants would further submit that without even impleading the Provisional Liquidator, at the time of filing the Execution Petition in the month of February 2018, the learned Principal District Judge, Thiruvallur, should not have taken up the E.P. on file by virtue of Section 446 of the Act. However, the E.P. No.12 of 2008 was dismissed for default on 19.06.2009 due to non filing of sale papers by the decree holder and the same was also restored back to file on 22.11.2011.

3.While so, when the E.P. No.12 of 2008 was restored back to file, the E.A. No.562 of 2016 filed by the applicants ought not to have been dismissed by stating erroneous reason that the E.P. was dismissed and when factually the E.P. was pending, this was not adverted to by this Court.

4.As a matter of fact, when the Review Applicants' Company was facing winding up proceedings before the Delhi High Court in C.P. No.255 of 2003, in all fairness, the effect of Section 446 of the Companies Act would come into operation. But this fact has been completely overlooked in the impugned order, therefore, the matter requires consideration, Mr.Paul pleaded.

5.I also prima facie, find some force on the said pleas. Firstly, when C.P. No.255 of 2003 was pending before the Delhi High Court, the suit for recovery of money filed by M/s.Otto India Private Limited came to be decreed exparte on 25.01.2006. After the exparte decree was passed, when E.P. No.12 of 2008 was filed in February 2008, the Provisional Liquidator was appointed by the Delhi High Court on 14.09.2006 in C.P. No.255 of 2003. Therefore, on the date of filing the E.P. No.12 of 2008, Section 446 of the Companies Act would come into operation. In this context, it is useful to refer Section 446(1) of the Companies Act as under:

'Suits stayed on winding up order - (1)When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the (Tribunal) and subject to such terms as the (Tribunal) may impose.

6.Secondly, the decree holder could have impleaded the Provisional Liquidator which has not been done. Thirdly, when the E.P. was dismissed for default on 19.06.2009 due to non filing of the sale papers by the decree holder, it was subsequently restored back to file on 22.11.2011. While so, it is not known why the Execution Court has passed an order holding that the E.A. filed by the applicants became infructuous. This plea was overlooked by this Court in the impugned order, hence, the same requires consideration.

7.For the above reasons, there shall be an order of interim stay for a period of three weeks. Post the matter after three weeks.

-sd/-
08/08/2019
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE I ADDITIONAL DISTRICT JUDGE,
THIRUVALLUR.

C.C. to M/S.S.RAJMAKESH Advocate SR.NO.9889

Order
in
REV.APPL.123/2019
IN CMA.NO.3092 OF 2018
AND CMP.NO.13763 OF 2019
Date :08/08/2019

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SDR 14.08.2019