IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4468 of 2019
and
W.M.P.No.5046 of 2019

Reflection Investments,
Rep. by its Managing Partner,
Vijay Sambrani,
15/1 First Cross Street,
Besant Nagar, Chennai - 600 090. ... Petitioner

Vs.

1.The Stock Holding Corporation of India Ltd.,
301, Centre Point,
Dr.Babasahed Ambedkar Road,
Parel, Mumbai - 400 012.

2.ICICI Bank,
119, 1st Floor,
Nungambakkam High Road,
Chennai - 600 034.

3.IDBI Bank,
Khivraj Complex I,
3rd Floor, No.480, Anna Salai,
Nandanam, Chennai - 600 035.

4.Bank of Maharashtra,
No.1, 31st Cross MG Road,
Besant Nagar,
Chennai - 600 090.

5.DCB Bank
Nungambakkam Branch,
Old No.37/1, New No.2/1,
Jambulingam Street,
Nungambakkam, Chennai - 600 034. ... Respondents

Writ petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Demand Notice dated 06.02.2019, quash the same and direct the 1st respondent to withdraw the letter dated 07.02.2019 issued to respondents 2 to 5, invoking the Bank Guarantees given by the petitioner.

For Petitioner: Ms.L.Maithili

For Respondents: Mr.P.H.Aravind Pandian, Senior Counsel for Ms.P.Meghana Nair for R1

O R D E R

This writ petition is filed challenging the proceedings of the 1st respondent dated 06.02.2019, wherein and whereby, the petitioner was advised to repay the entire amount of shortfall in margin along with the applicable interest not later than 24 hours of receiving the said communication.

2. According to the 1st respondent, the petitioner has not deposited the shortfall in margin with the 1st respondent for a prolonged period of time and such margin shortfall as on 06.02.2019 is of Rs.16,96,59,890.65/-.

3. Heard Ms.L.Maithili, learned counsel for the petitioner and Mr.P.H.Aravind Pandian, learned Senior Counsel appearing for the 1st respondent.

4. The petitioner is engaged in stock broking business and is registered Trading Member with National Stock Exchange. The 1st respondent is a Government of India undertaking and registered with SEBI as Professional Clearing Member (PCM). The petitioner entered into "Clearing Member-Trading Member" Agreement with the 1st respondent on 03.03.2014 for availing the services of clearing and settling of the deals executed by it on the Trading System of NSEIL and for discharging its duties and its obligations towards NSCCL on its behalf.

5. During the course of such business between the petitioner and the 1st respondent and in pursuant to the agreement entered into as stated supra, it appears that the 1st respondent has made the shortfall claim through the impugned communication. It is further stated that in pursuant to the impugned communication, the 1st respondent has also invoked the bank guarantee given by the petitioner, since the petitioner has not complied with the requirement of paying the shortfall in margin as claimed by the 1st respondent in the impugned proceedings.

6. Though, the present writ petition is filed by raising very many contentions on the merits of the dispute between the parties and the learned counsel for the petitioner also insisted that this Court can come to the rescue of the petitioner, I am not inclined to entertain this writ petition for the sole reason

that in the agreement entered into between the parties viz., the petitioner and the 1st respondent, contains an arbitration clause for resolving the disputes, differences or questions between the parties arising out of or in relation to the agreement under Clause-12 therein. It is further seen that under Clause-13, the agreement shall be subject to the exclusive jurisdiction of the Courts in Mumbai. When an arbitration Clause is provided in the agreement between the parties as stated supra, needless to say that it is for the petitioner to work out their remedy through Arbitration only and not by way of filing a writ petition, as has been done in this case.

7. Therefore, without expressing any view on the merits of the contention raised by both the parties for and against the impugned proceedings and the cause of action for issuing the same, this Writ Petition is disposed of by giving liberty to the petitioner to work out their remedy by raising an arbitral dispute. No costs. Consequently, connected miscellaneous petition is closed.

15.02.2019

Speaking/Non Speaking
Index : Yes/No
Internet : Yes/No
gsi/vsi

To

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+1 CC to Ms.L.Maithili , Advocate sr 14887.
+1 CC to Ms.Meghana Nair, Advocate sr 14252

W.P.No.4468 of 2019

SP(22/02/2019)