

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6503 of 2019

and

W.M.P.Nos.7313, 9056 and 9060 of 2019

M/s.Nitin Ispat Private Limited(NIPL)
Rep.by its Authorised Signatory,
Masudul Hasan
S/o.Shri Abdul Samad
Having its registered office at
No.85/71, Afim Kothi,
Kanpur - 208 003,
Uttar Pradesh.

..Petitioner

vs

- 1.M/s.Edelweiss Asset Reconstruction
Company Ltd.,
Rep.by its Authorized Officer,
Edelweiss House,
Off C.S.T.Road,Kalina, Mumbai - 400 098.
- 2.The Thasildar,
Cuddalore Taluk,
Cuddalore District,
Cuddalore - 607 001.
- 3.The District Collector,
Cuddalore District,
Cuddalore - 607 001.
- 4.VLS(P) Ltd Thozhilalar Vazhvurimai Sangam,
Rep.by its Secretary,
No.135, Kallukadai Street,
Pachayankuppam,
Cuddalore O.T. Cuddalore District.
- 5.Vardhman life Sciences(P) Ltd.,
Rep.by its Managing Director,
A-7, SIPCOT Industrial Complex,
Cuddalore - 607 005.
Registered Office:412, B-8,
GDITL Tower, Nethaji Subash Place,
Pitampura.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd Respondent made in Na.Ka.A2.281-2019 dated 28.02.2019 and quash the same as illegal, arbitrary and nonest in law and pass such further or any other appropriate order as this Hon'ble Court may deem fit and proper to the circumstances of this case and thus render justice.

For Petitioner : Mr.S.Ravindran, Senior counsel
For M/s.B.Vijay

For Respondents: M/s.S.Indumathi Ravi for R1

Mr.A.Zakir Hussain
Government Advocate for R2 & R3

Mr.P.R.Thiruneelakandan for R4

No Appearance for R5

O R D E R

The order passed by the 2nd respondent / The Tahsildar in proceedings dated 28.02.2019, preventing the writ petitioner company from removing the writ petitioner's goods already purchased from the 1st respondent, which all are lying in the 5th respondent company is under challenge in the present writ petition.

2. The learned Senior counsel appearing on behalf of the writ petitioner made a submission that Vardhman Life Sciences Private Limited has secured a loan of Rs.1,75,00,000/- (Rupees One Crore Seventy Five Lakh only) from Public Sector Banks viz., State Bank of India, State Bank of Patiala, EXIM Bank and State Bank of Hyderabad by mortgaging immovable properties and movable assets of the company. The Borrower Company / writ petitioner company has committed serious default in repayment of loans and loan accounts were classified as non-performing assets. The aforesaid consortium of financial banks has executed a separate deed of assignment in favour of 'Edelweiss Asset Reconstruction Company' [hereinafter referred to as 'EARC'] assigning the debts of the Borrower Company. Hence, by executing EARC is continued to recover debts of Borrower Company under the Section 5(1)(b) of the "Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002" [hereinafter referred to as "SARFAESI Act"]. The authorized officer of the EARC has issued a Public Sale Notice for auctioning of immovable and movable assets of the Borrower company under the provisions of the SARFAESI Act. The petitioner company namely M/s.Nitin

Ispat Private Limited has submitted its bid for purchase of movable assets of the Borrower Company including plant and machineries etc., The 1st respondent EARC has declared the petitioner Company was a successful bidder for the purchase of movable secured assets. The petitioner company has paid a sum of Rs.4,00,02,750/- (Rupees Four Crores Two Thousand Seven Hundred and Fifty only) to the EARC in pursuance of declaration of highest bid. The petitioner company has entered into a Memorandum of Understanding with EARC in regard to modes of removal of secured assets from the factory premises. The EARC has directed the petitioner Company to remove the entire movables from the site within 8 months from the date of handing over of physical possession of the site and the movable assets. The 1st respondent has handed over physical possession of the site and the movable assets to the petitioner Company. The petitioner Company has commenced its activity of removing movable assets from the site by engaging sub contractors and other workers. The petitioner Company had already removed 97 trucks loads of movable from the site between 22.09.2018 to 22.02.2019. The transportation and lifting of movable assets are being evidenced by the E-way bill generated by the official website of the Government of India.

3. The erstwhile workers of the Borrower Company formed a Trade Union namely VLS Private Limited, Thozhilalar Vazhvurimai Sangam. The Trade Union has instituted a Civil Suit in O.S.No.73 of 2018 on the file of District Munsif Court, Cuddalore, for permanent injunction restraining the Borrower Company / writ petitioner and EARC / 1st respondent from alienating and encumbering the suit property without settling the dues of the workers. The Trade Union had also instituted an Impleading Application in I.A.No.93 of 2019 in O.S.No.73 of 2013 on the file of Principal District Munsif Court, Cuddalore without even arraying the petitioner Company as party to the suit claiming an interim injunction restraining the defendants from removing the movable assets from the factory premises. However, the learned District Munsif Court declined to grant any ex parte interim order and subsequently, the suit itself was dismissed on 25.03.2019.

4. Under these circumstances, the petitioner Company has lodged a Police complaint before the Superintendent of Police, Cuddalore and the Inspector of Police, SIPCOT Police Station seeking police protection for the purpose of lifting the assets without any hindrance. At the intervention of the Police, the writ petitioner Company was able to transport the movable assets for sometime. However, the workers also had instituted an industrial dispute before the Labour Court, Cuddalore, by arraying the Borrower Company as Respondent for reinstatement of services and for settlement of dues. The Labour Court passed an

ex parte order that the claim may be considered if the Borrower Company is to be merged with the EARC. It is stated that neither the EARC nor the writ petitioner Company was arrayed as Respondents in the Labour Court proceedings. Thus, the Labour Court order has no binding effect as far as the writ petitioner Company is concerned.

5. The Tahsildar conducted an enquiry that the representatives of the writ petitioner Company did not participate in the enquiry proceedings, the writ petitioner Company submitted their representation / objections in respect of the claim set out by the workman before the Tahsildar. However, the Tahsildar, passed an order in proceedings dated 28.02.2019, stating that there is a possibility of Law and Order problem in the event of removing the movables from the 5th respondent Company. Further, the Tahsildar has stated that the issues between the Employees and the Management are also to be resolved and only after resolving the issues with the employees, the writ petitioner Company shall be permitted to move the movable goods from the Company premises.

6. The learned Senior counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner Company is noway connected with the issues in relation to the employer- employee relationship. The writ petitioner Company is a bonafide bidder and entered into an agreement with the 1st respondent for the purpose of removing the movables lying in the 5th respondent Company. The writ petitioner Company had already paid the entire consideration of Rs.16,00,11,000/- (Rupees Sixteen Crore and Eleven Thousand only) and therefore, they are entitled to remove the entire goods. This apart, it is contended that the rights of both the employers-employees also can be protected in view of the fact that the 1st respondent has already taken over the entire assets both movable and immovable and under these circumstances, the writ petitioner company may be permitted to remove the remaining goods as per the terms and contracts entered into between the writ petitioner as well as by the 1st respondent.

7. The learned counsel appearing on behalf of the 1st respondent raised an objection by stating that the 1st respondent is also no way connected with the dispute between the 5th respondent and their employees. They are the Assets Reconstruction Company and they entered into an agreement and based on that, they have taken over the assets of the Company and they are empowered to sell the property belongs to the Company. Accordingly, they have sold the movables to the writ petitioner and the writ petitioner had already removed 75% of the movables and 25% alone is yet to be removed from the 5th respondent Company premises.

8. This Court is of the considered opinion that a balanced approach is required in order to protect the interest of the workmen also. It is not as if Court can shut its eyes in respect of the claim of the workmen against the 5th respondent company. Admittedly, the 5th respondent Company is a chronic defaulter and the 1st respondent has taken over the assets of the 5th respondent Company. The 1st respondent is a Reconstruction Company and they are now dealing with the movable and immovables belong to the 5th respondent Company. The workmen also raised a dispute and the issues are now pending adjudication before the Labour Court. The learned Senior counsel as well as the learned counsel appearing on behalf of the workman made submissions that the claim petitions are filed to settle the amount of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakh only) approximately. Thus, the interest of the workman is also to be protected. In this regard, the learned Senior counsel appearing on behalf of the writ petitioner states that large extent of immovable properties are available and therefore, adequate protections are already available with the 1st respondent Reconstruction Company and all suitable arrangements can be made for settlement of dues to the workman in the event of passing any award by the Labour Court. However, those disputes cannot be adjudicated in this writ petition as they are unconnected.

9. This apart, the industrial dispute is now pending before the Labour Court, Cuddalore. It is open to the parties to adjudicate and resolve the issues in the manner known to law. However, the interest of the writ petitioner is concerned, the same has no link with the disputes now pending before the Labour Court and therefore, their rights are to be protected by this Court without affecting the rights of the workman, who all are already before the Labour Court. Under these circumstances, this Court is inclined to pass the following order:

(1) The 1st respondent Company / EARC is directed to deposit Rs.1,00,00,000/- (Rupees One Crore only) in any one of the Nationalized Bank in the credit of industrial dispute now pending before the Labour Court in I.D.No.47 to 61 of 2017. The said amount is directed to be deposited in an interest bearing deposit scheme within a period of six (6) weeks from the date of receipt of a copy of this order.

(2) The writ petitioner is permitted to remove the balance materials as per the certificate of sale issued in favour of the writ petitioner and all the remaining goods are directed to be removed within a period of four months from the date of receipt of a copy of this order.

(3) In view of the order passed above, the impugned

order passed by the Tahsildar, Cuddalore in proceedings Na.Ka.A2.281-2019 dated 28.02.2019 stands quashed. Further, the 4th respondent / Union is directed not to cause any hindrance or inconvenience to the writ petitioner Company for removal of the balance materials, which all are lying in the 5th respondent Company premises.

10. Accordingly, the writ petition stands allowed with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Post this writ petition under the caption "For Reporting Compliance" on 18.10.2019.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Thasildar,
Cuddalore Taluk,
Cuddalore District,
Cuddalore - 607 001.

2.The District Collector,
Cuddalore District,
Cuddalore - 607 001.

+1cc to Mr.Indumathi Ravi, Advocate, S.R.No. 76008

+1cc to the Government Pleader, S.R.No. 76505

W.P.No.6503 of 2019

MG (CO)
GN(30/09/2019)