IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.07.2019	Pronounced on: 12.07.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.NO.13326 OF 2019
& W.M.P.NO.13434 OF 2019

MAXIMUS ARC LIMITED,
A company Incorporated under Company's Act 2013,
Having registered and corporate office at,
No.59 A-18/1A-5A, 3rd floor,
Sri plaza, Teacher's Colony,
Patamata, Vijayawada - 520 008.
Rep by Assistant Vice President Shri K.Hari Krishna.
... Petitioner

/versus/

1.The Anna University,
Represented by its Vice Chancellor,
Kotturpuram, Chennai - 600 025.

2.Shri Devi Karumariamman Educational Trust,
Represented by its Trustee Mr.J.Kumaran,
Having Office at No.5, Chellammal Complex,
Janaki Nagar, Arcot Road,
Valasaravakkam,
Chennai - 600 087. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the 1st respondent to disaffiliate the colleges of the 2nd respondent and to prevent and restrain admission of students in the 2nd respondent college from this academic year 2019-2020.

For Petitioner : Mr.P.S.Raman, Senior Counsel for M/s.Nithyaesh and Vaibhav

For R1 : Mr.M.Vijayakumar

For R2 : Mr.S.Pushpakaran

O R D E R

The petitioner is a company incorporated by the Companies Act and registered as an Asset Reconstruction Company as stated under Section 3 of the SARFAESI Act 2002. For the loans availed by the 2nd respondent/ Shri Devi Karumariamman Educational Trust, from Central Bank of India and Bank of India. The properties of the Educational trust where, they are running Medical College, Engineering College and Management studies were hypothecated and mortgaged. Due to default for payment, the loan sanctioned to the 2nd respondent/Trust are classified as Non Performing Asset on 01.04.2015. The Central Bank of India and Bank of India jointly filed O.A.No.496 of 2016 before the DRT-II, Chennai, for recovery of Rs.136,29,48,050.76/- as an Asset Reconstruction Company. The petitioner acquired the debt of 2nd respondent from the Bank of India vide assignment agreement dated 02.01.2019, as per the provisions contained in Section 3 of the SARFAESI Act, 2002. The Petitioner/Maximus Arc Limited, got itself substituted in O.A.No.496/2016, thereby stepped into the shops of the Bank of India. Thereby, acquired all the rights and privileges, which are with the Bank of India, pertaining to the loan account of the 2nd respondent/Trust. In O.A.No.496 of 2016, before the DRT-II, appointed a Court receiver for collecting fees and other receivables of the 2nd respondent. Urging that Engineering College, run by the 2nd respondent/Trust should be barred from admitting students from the academic year 2019-2020. To protect the interest of the public in large, who may affect, if the creditors to the 2nd respondent/Trust decide to sell the College to recover the debt.

2. The contention of the petitioner in his affidavit is that the account of the 2nd respondent/Trust has been declared Non-Performing Asset. The Petitioner/Company is taking various steps to auction the movable and immovable properties of the 2nd respondent/Trust. In such eventuality, the future of the students admitted in the 2nd respondent/Trust will be put to jeopardy. The 2nd respondent/Trust, is unlikely to hold control of the College property anymore. It is diverting the cash flow of the college.

3. When this Writ Petition came up for admission on 30.04.2019 this Court considering the totality of the circumstances, ordered interim injunction restraining the 2nd respondent from admitting students for the academic year 2019-2020 onwards, pending disposal of the main Writ Petition. This interim order was passed taking note of future of the student's who may be let down, if the College is to be closed, due to action initiated by the creditors.

4. Aggrieved by this exparte interim order, the 2nd respondent/trust has preferred intra Court appeal before the

Hon'ble Division Bench in W.A.No.1737 of 2019. The Hon’ble Division Bench vide order dated 22.05.2019 in W.A.No.1737 of 2019, set aside the order of the single Judge restraining the Engineering college run by the 2nd respondent from admitting students for the academic year 2019-2020. Against this order, the petitioner herein has preferred C.A.No.5094 of 2019, before the Hon’ble Supreme Court. The Hon’ble Supreme Court, while considering the legality of the order passed by the Single Judge and same being reserved by the Division Bench, allowed the appeal preferred by the petitioner herein and in turn directed this Court to dispose of the main writ petition itself, within a period of one month.

5. The Learned Counsel appearing for the Petitioner would strenuously appeal to this Court that the 2nd respondent/trust which has borrowed the money and defaulted was running a Medical College and Engineering College besides, the College for Management and Pharmacy. It does not have requisite infrastructure or finance to provide adequate infrastructure as required under the regulations of the respective statute. Having entered into the shoes of the bank, which has advanced loan to the 2nd respondent/trust, virtually the petitioner has control over the property and any time in future, the property will be put to auction for the recovery of debt. Under the said circumstances, if new students are admitted to the petitioner Institute, their future will be badly affected.

6. Referring the closure of the Medical College run by the 2nd respondent/Trust and students being distributed to the other colleges at the intervention of the Court, the counsel submitted that to avoid repetition of it to the Engineering college run by the 2nd respondent/Trust, the petitioner seeks closure of the Engineering College run by the 2nd respondent/Trust.

7. To emphasis his submission and to show that the 2nd respondent/Trust has no sufficient wherewithal and financial stability to run the College, the learned counsel submitted that in the recovery proceedings before the Debt Recovery Tribunal, sensing misappropriation of fund and syphon of trust money collected during the admission in their colleges. Administrator was appointed and the trust was directed to route the entire admission fees through the account maintained by the bank. The Medical College run by the 2nd respondent become non-functional and the students perusing their studies in the said Medical College were distributed to other functioning Colleges.

8. The learned counsel appearing for the petitioner would also submit that pursuant to the order passed by the DRT, receiver was appointed to look into the transfer of funds, received by the 2nd respondent/Trust. The said receiver after scrutinising the accounts and summed up, “except the payment of Rs.1 crore, the Trustee did not pay any further payment to the

bank and also no efforts taken by them for further payment." Regarding the diversion of funds, the receiver has observed that, "a huge amount has been diverted to Kumaran [Trustee of the 2nd respondent] and also to the third party (Lingesan Govindan)." The learned counsel appearing for the 2nd respondent would submit that the said report is incorrect and is under challenged.

9. Per contra, the learned counsel appearing for the 2nd respondent/Trust in his counter, submitted that the 2nd respondent/Trust is engaged in imparting Education and running Engineering in the name and style of M/s.Arignar Anna Institute of Science and Technology, Management Institution in the name of M/s.Arignar Anna Institute of Management Studies and Computer Applications Institute in the name of M/s.Ariynar Anna Institute of Computer Applications and a 300 bedded Hospital to support the Medical College in the name of M/s.Annai Medical College and Hospital. All the aforesaid Institutions are independent units with separate assets, infrastructure. The infrastructure for each institution is separate, functioning with the approval of the respective statutory bodies and affiliated to the respective University.

10. This writ Petition is filed with ulterior motive to disaffiliate the Engineering College run by the 2nd respondent/Trust and interim injunction restraining the Trust from admitting students in their College. The prayer in the writ petition virtually seeks to shut down the Educational Institutes run by the 2nd respondent/trust, such a prayer cannot be sought for by the petitioner, who claims to be the assignee of one of the bank from which the 2nd respondent borrowed money. The 2nd respondent/Trust run into financial crisis when one of its founding trustee failed to cooperate and failed to extend financial assistance. The 2nd respondent/Trust was not able to re-pay the loan to its lenders in time. The 2nd respondent/Trust availed financial assistance from Central Bank of India and Bank of India through Consortium lending. The 2nd respondent/Trust borrowed money for setting up of Medical College in the name of M/s.Annai Medical College and Hospital. When the loans availed by the 2nd respondent/Trust for establishment of Medical College. Certain movables and immovables assets were mortgaged in favour of the banks. For recovery of the said loan, the Engineering College cannot be dis-affiliated or shutdown.

11. The 2nd respondent/Trust administer different Educational Institutions. The loans availed for those Institutes are separate and properties given as security are different. For the loan availed from Central bank of India, for the development of the Engineering College, the properties and buildings on which the College functioning are exclusively mortgaged with Central Bank of India vide memorandum of deposit of title deeds on 19.09.2008 and 16.05.2012. The loan availed

from Central bank of India and the properties mortgaged to the Central Bank of India have no connection or relationship to the loan availed from Bank of India. When the Bank of India itself has no right over the Engineering College of the 2nd respondent, the petitioner herein who claims itself as an assignee of the said loan can have no right over those properties. Out of Rs.25 crores borrowed by the 2nd respondent from Central Bank of India, a sum of Rs.8.7 crores alone is outstanding towards principal.

12. In the trial before the DRT, the Officer of the Central Bank of India has confirmed that the Bank of India does not have any right over the mortgaged properties and they cannot bring those properties for sale under SARFAESI Act 2002. The representation made by the writ petitioner herein that they have funded for Engineering College is a malicious misrepresentation of the factual position. The 2nd respondent/Trust has initiated a counter claim against Central bank of India and the petitioner Assets Reconstruction Company, for a sum of Rs.126 crores for serious allegation of fraud, mishandling of the loan account of the 2nd respondent, intentional attempts to syphon of the secured assets of 2nd respondent in order to cover up various illegalities committed by the banks.

13. The above writ petition is filed to arm-twist the 2nd respondent by creating a false image, as if, there has been diversion of funds and major default of payment. The alleged assignment of debt from Bank of India, in favour of the petitioner herein has taken place vide Assignment agreement dated 02.01.2019, the same has been registered only on 21.03.2019. The 2nd respondent started the Engineering College in the name of M/s.Arignar Anna Institute of Science and Technology in the year 1999-2000. Till date the Institution has imparted quality Education to over 25,000 successful students. The college has complied with every single norm and requirement of Anna University. It is permanently affiliated to the Anna University for B.E and B.Tech courses. When the 2nd respondent has fulfilled every requirement of the College and being a functional college, it cannot be closed down for non-payment of debt that to at the instance of the third party. The Institute run by the 2nd respondent is one among the 37 Institutions, which was granted permanent affiliation without pointing out any deficiency. The Writ petitioner in the capacity of the secured creditor has only to approach DRT, to enforce its legitimate claim for recovery of money. It cannot invoke the writ jurisdiction and seek for disaffiliation of the college which is established and running successfully for nearly 20 years. The malafide intention of the petitioner to close down the functional College is antithesis to the principal of Assets Reconstruction, for the purpose, the petitioner company established. The petitioner Company is not a substitute for the bank, it should first engage in business of Asset Reconstruction

and explore the possibility of Reconstruction of stress assets. Only if measures to revive the stress assets fails, they should invoke measures to liquidate the secured assets.

14. The approval of the petitioner Institute is within the domain of AICTE and the Affiliation of the Institute is within the domain of Anna University. Neither of these two statutory bodies, nor the students pursuing their studies have made any complaint about the Engineering College either about the financial stability or infrastructure. In such circumstances, the Writ Petition filed by the so called assignee of the bank, which has lend loan to the 2nd respondent/Trust cannot be entertained. The petitioner has no locus to interfere in the administration of the College either directly or indirectly, the writ petition has to be dismissed.

15. In brief the contention of the petitioner counsel is that the 2nd respondent/Trust is a chronic defaulter and about 200 crores rupees is outstanding. The Hon'ble Supreme Court has settled the issue insofar as admission of students for the academic year 2019-2020 in the following lines.

> "We cannot lose sight of the fact that if in the near future the colleges are ordered to be sold, then the entire future of the students would be put in jeopardy and they will have nowhere to go. These are private colleges and obviously they may be charging high fees from the students. There is no way that the amount paid by the students/their parents could be refunded to them when the colleges are said to owe huge amounts to the secured creditors. In this view of the matter, we are clearly of the view that the Respondent No.1-Trust should not have been permitted to admit students for the academic year 2019-2020 till the final decision is taken by the learned Single Judge on the Writ Petition."

16. All receivables of the trust is charged to the secured creditors. Further the process for sale of property under SARFAESI Act, 2002 is already underway and is in its final stages. The Engineering College run by the 2nd respondent/Trust has violated the Anna University regulation for affiliation in respect of financial stability, utilisation of funds, land and building requirement.

17. Contrarily, the learned counsel for the 2nd respondent submit that there is no privity of contract between the petitioner and the 2nd respondent. The petitioner who claim as assignee of Bank of India can only have say whatsoever in respect of property hypothecated to Bank of India. The land and building upon which the Engineering College established not hypothecated or mortgaged to Bank of India. Proceeding in DRT

has not reached a logical conclusion. The 2nd respondent/Trust has borrowed loan for establishment of Medical College. For the default of that loan, Engineering College cannot be closed.

18. Regarding the receiver report referred by the petitioner, the learned counsel for the 2nd respondent would submit that the said report is biased report without any basis and therefore, the said report has been objected and the matter is pending before the Debt Recovery Tribunal.

19. Considered the submissions made by the counsels and the documents referred and relied by them.

20. Shri Devi Karumariamman Educational Trust which is the 2nd respondent in this Writ Petition has established Engineering College, Medical College and Management Institute. For expansion of Engineering College it has borrowed loan of Rs.15 crores from Central Bank of India on 29.07.2008. It has mortgaged several properties including land and building of its Engineering College. Again on 06.01.2011 borrowed a further sum of Rs.10 crores as term Loan-II and Rs.61.30 crores as Term Loan-III. Like wise from Bank of India, the trust had sanctioned loan of Rs.50 crores. Later both Central Bank of India (CBI) and Bank of India (BOI) together as consortium had jointly entered into a memorandum of agreement on 16.05.2012 with the 2nd respondent/Trust. The 2nd respondent has redeposited all his title documents already encumbered with Central Bank of India and Bank of India with intent to create security by way of joint equitable mortgage. The 2nd respondent has failed to pay the dues to these two banks, so these two banks have jointly filed O.A.No.496 of 2016 before the Debt Recovery Tribunal-II, Chennai, for recovery of Rs.136,29,48,050.76/- under various heads of loan and interest payable. The petitioner has entered into the scene after the assignment agreement with Bank of India, one of the applicant in O.A.No.496 of 2016, pending before the DRT-II, Chennai. The petitioner claims through this assignment agreement deed, that it has entered the shoes of Bank of India.

21. Be it as it may, the question before this Court whether this will entitle the petitioner to file the present Writ Petition and seek prayer of disaffiliation of the College administered by the 2nd respondent on the ground it has lost financial stability. Anytime the land and building on which the college stands will be put to auction for recovery of dues. In such event, the students undergoing their studies in the 2nd respondent Engineering College will be put to peril.

22. The learned counsel for the petitioner harp heavily on the observation by the Hon'ble Supreme Court made while considering the Civil Appeal arising from the interim order passed in this Writ Petition. While, the Hon'ble Supreme

Court made the above observation, the view of University the first respondent was not available before the Supreme Court.

23. When this matter was under consideration by this Court, during the course of the hearing, this Court sought the view of the University about the financial stability of the College and how the interest of the students will be protected if by an event the College is closed midway of their Course. In response to the query the Registrar, Anna University has filed a sworn affidavit, which reads as below:

> 3. I humbly submit that as per the procedure the 1st respondent have granted affiliation periodically after due inspection following norms and guideline with respect of infrastructure facilities and other criteria as stipulated under regulations. The above said affiliation has been granted on basis of approval granted by the AICTE.
>
> 4. I humbly submit that the 1st respondent has specifically directed to answer whether the interest of the students are protected under the regulations of Anna University, and the 1st respondent would make alternative arrangement for the admitted students to pursue their curriculum, if any Judicial order regarding the closure of colleges run by the 2nd respondent herein. The 1st respondent submit that the interest of the students will be protected by way of alternative arrangements with coordination of the Government of Tamil Nadu and Directorate of Technical Education.
>
> 5. I humbly submits that in so far the financial stability concern, college has made prescribed deposit before the AICTE as per their norms.

24. The doubts expressed by the Hon'ble Supreme Court in its order, are clarified through the above affidavit filed by the Registrar, Anna University so from the affidavit of the University which is the affiliating authority, the Engineering College run by the 2nd respondent Trust is financially stable. It has complied all necessary facilities required under the regulation. In case of any eventuality of closure, the students will be accommodated in other Colleges.

25. Therefore, the petitioner contention that the 2nd respondent/Trust is in bad financial condition and its properties will soon be put to auction and the college will be closed are all imaginative and preposterous. Even if such

circumstances arise in future, if the Engineering College is functional, the land and building will be with added value and may fetch higher price in the auction. Further the probability of restructuring and turn around is also possible if the college is functional. The petitioner cannot prematurely draw inference that the 2nd respondent/Trust can never pay its debt and recover from its financial crisis and the only way is to put the Engineering College land and building into auction.

26. On the other hand even if the worst happens, then the University has given assurance that the students will be distributed to other colleges in co-ordination of Government and Directorate of Technical Education.

27. Even if there is some diversion of funds as observed by the receiver in its report to the DRT, closing down the college cannot be solution for it. The cure suggested by the petitioner is worst then the disease. For pilferage of funds, the source need not be stopped. It will be like killing the goose for its Golden Eggs.

28. Based on wishful presumption of bankruptcy, Court should not close an Education Institute which is otherwise eligible to admit students. For the said reason, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bsm

To,

The Vice Chancellor,
Anna University,
Kotturpuram,
Chennai - 600 025.

+2cc to M/s.Nithyaesh and Vaibhav,Advocate in sr.59437 (15.07.19)
+2cc to Mr.S.Pushpakaran, Advocate in sr.no.59566 (16.07.2019)

+1cc to Mr.M.Vijayakumar, Advocate in sr.no.59537 (08.08.2019)

W.P.No.13326 of 2019
& W.M.P.No.13434 of 2019

SSI(CO)
RRS(12/07/2019)
CS/15/07/2019