A.Nos.3621 & 3622 of 2019
and
OA.No.786 of 2019
in
CS.No.338 of 2019

K.KALYANASUNDARAM, J.

These applications have been filed (i) seeking interim direction directing the second respondent/second defendant to withdraw all pending proceedings in the light of the compromise reached in CS.No.256 of 2018 dated 09.07.2018; (ii) seeking interim direction directing the respondents/defendants 1 to 6 to discharge the liabilities debts payable in respect of the first applicant/first plaintiff or purported Guarantee or securities purported to have been offered by late J.Jeppiaar by liquidating the securities purported to have been offered by late J.Jeppiaar by liquidating the securities pending disposal of the above suit; and (iii)seeking interim injunction restraining the 9th respondent from enforcing or invoking or encashing the agreement of Guarantee amounting to Rs.92,50,00,000/- and Rs.48,50,00,000/- respectively executed by the respondents 1 to 8 in favour of the 9th respondent or such sum that may be due and payable under the alleged guarantees pending disposal of the suit respectively.

2. Mr.R.Thiagarajan, learned counsel for the applicants / plaintiffs would submit that the family members of Jeppiaar, except the third respondent have arrived a settlement in C.S.No.256 of 2018, agreeing to pay the entire loan amount availed by M/s.Jeppiaar Power Corporation Private Limited. Since it was not acted upon, the Bank is initiating action to recover the amount from the applicants/plaintiffs. It is further submitted that a Corporate Bank Guarantee of the first applicant has been created without knowledge of the other applicants. The first applicant is a running concern and the interest of the bank is protected by attachment of the properties by the Debt Recovery Tribunal and hence, the applicants are entitled for orders in these applications.

3. *Per contra*, it is contended by the learned Senior Counsels appearing on behalf of the respondents that the present suit has been filed on the basis of a Memorandum of Understanding, dated 18.11.2014. But that MOU was only an agreement for transfer of interest of the Company in favour of the plaintiffs. Since it was not acted upon in the stipulated time, a Supplemental Agreement, dated 30.10.2017 was entered into.

4. Mr.P.R.Raman, learned Senior Counsel, representing Mr.C.Seethapathy, learned counsel for the second and sixth defendants would submit that a case was already filed against the applicants for oppression and mismanagement of the Company, however, instead of facing the case, the present suit has been filed to inject the second defendant from proceeding further. He added that the National Company Law Tribunal has every jurisdiction to adjudicate the proceedings initiated by the respondents and hence, the applications deserve dismissal from this Court. It is further contended that his clients were in the Management of the Company and the applicants took over the management by back door entry, without knowledge of the other applicants itself is illegal.

5. Mr.V.Ayyathurai, learned Senior Counsel, representing Mr.V.B.Perumalraj, learned counsel for the third respondent / third defendant would urge that admittedly, MOU dated 18.11.2014 was not acted upon in view of the fact that the Management was not transferred within the stipulated period and in the Supplemental Agreement, dated 30.10.2017, one of the parties to the agreement viz., Dr.Jeppiaar has not signed and the third defendant was not at all a party to the Memorandum of Understanding, dated 18.11.2014 and the Supplemental Agreement, dated 03.10.2017 and hence, there is no cause of action to file the present suit against the third defendant.

6. Mr.V.Raghavachari, learned counsel for the first defendant would submit that even without filing a counter by the respondents, the suit itself can be struck off, as there is no cause of action to file the suit. According to the learned counsel, these applications have no merit.

7. Mr.Jayesh B Dolia, learned Standing Counsel for the ninth defendant-Bank would submit that the loan availed by M/s.Jeppiaar Power Corporation Private Limited has not been cleared as per the compromise and hence, the Bank is entitled to initiate proceedings to recover the amount and no interim order need be passed preventing the Bank from taking legal action, otherwise, the object and purpose of SARFAESI Act itself would be defeated.

8. Heard the rival submissions and perused the materials placed on record.

9. In the case on hand, it is not disputed that the applicants/ plaintiffs are not parties to the compromise said to have been entered into C.S.No.256 of 2018. It is further seen that in the earlier suit in C.S.No.256 of 2018, family members of Dr.Jeppiaar are said to have agreed to clear the loan availed for M/s.Jeppiaar Power Corporation Private Limited. It appears that the second

defendant has approached the NCLT under the Companies Act for necessary relief. Likewise, the Bank also initiated proceedings to recover the dues of the debtor, under relevant law. But no provision has been shown by the applicant to prevent the respondents from taking legal action against the applicants.

10. In the light of the above facts, the applicants / plaintiffs are not entitled for prayer sought for in these applications. It is for the applicants to approach the necessary forums for redressal of their grievance, if they are so advised.

11. With the above observations these applications are dismissed.

25.11.2019

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