O.A. No. 710 of 2019
and
A.No.5159 of 2019
in
CS. No.442 of 2019

SENTHILKUMAR RAMAMOORTHY, J.

These applications are filed for an interim injunction to restrain the respondent and persons acting through the respondent from debiting any further amounts from the current account maintained by the applicant/plaintiff bearing No. 432445575 in respect of the alleged dues payable by M/s. Chakiat Agencies Pvt. Ltd., and for an interim decree for a sum of Rs.1,78,85,315/-.

2. I heard the learned counsel for the applicant in both the applications and the learned counsel for the respondent/Chennai Port Trust in both the applications.

3. The learned counsel for the applicant / plaintiff submitted that the suit is filed for rendition of accounts, for the recovery of a sum of Rs.1,78,85,315/- and for a permanent injunction to restrain further debits from the current account of the applicant / plaintiff. He pointed out that the applicant / plaintiff is entitled to various concessions from the respondent / Chennai Port Trust, but the said concessional amounts were debited from the current account of the

applicant for the reason that there are amounts due and payable by another company, namely, M/s. Chakiat Agencies Pvt. Ltd., to the respondent. In this connection, he submitted that M/s. Chakiat Agencies Pvt. Ltd. is the holding company of the applicant / plaintiff but the said entities are distinct and separate entities. Consequently, he submitted that the current account of the applicant / plaintiff was unlawfully debited in respect of the alleged dues that are payable by M/s. Chakiat Agencies Pvt. Ltd. He also referred to the notice dated 23.04.2019 that was issued by the applicant / plaintiff so as to call upon the respondent / Chennai Port Trust to pay the sum of Rs.1.78 crores to the applicant. In spite of such notice, he submitted that the amount was not paid and that, therefore, the applicant was constrained to file the suit and take out the present applications so as to prevent further debits from the current account of the applicant. As regards the other application, namely, the application under Order XII Rule 6 of CPC, he submitted that it is the admitted position that the debits have been resorted to with regard to amounts that are allegedly due and payable by M/s.Chakiat Agencies Pvt. Ltd., and not by the applicant/plaintiff. Therefore, he submits that there is no dispute at all with regard to the liability of the respondent to pay the sum of Rs.1.78 crore.

4. In support of the said submissions, the learned counsel for the applicant / plaintiff referred to and relied upon the judgment of the Hon'ble Andhra Pradesh High Court in ***Walnut Packaging Private Limited vs. The Sirpur Paper Mills Limited and others reported in 2009(1) APLJ (HC) 155*** and, in particular, to paragraph No. 7 of the said judgment so as to contend that the subsidiary company, namely, the applicant / plaintiff in this case, is not liable in respect of the alleged dues of the holding company.

5. In response, the learned counsel for the respondent submitted that the container storage charges were revised by the respondent / Chennai Port trust with effect from 1994 and that such revision was challenged. Eventually, the Tariff Authority for Major Ports (TAMP), by order dated 15.01.2016, fixed the revised container storage charges. On that basis, demand notices were issued to all the entities specified in paragraph 9 of the counter of the respondent, including M/s. Chakiat Agencies Pvt. Ltd. demanding a sum of Rs.2,89,49,179/- towards the revised container storage charges for the period extending from July 1994 to August 2001. He further pointed out that several demand notices were issued to M/s. Chakiat Agencies Pvt. Ltd. demanding the said sum. The said company did not remit even a portion of the

total claim of about Rs.2.89 crores. He also pointed out that the respondent ascertained from the website of the Ministry of Corporate Affairs that the applicant / plaintiff is a wholly owned subsidiary of M/s. Chakiat Agencies Pvt. Ltd. and that, therefore, the concession amounts that were payable to the applicant / plaintiff were adjusted against the dues of M/s. Chakiat Agencies Pvt. Ltd. The learned counsel also pointed out as to how the judgement of the Hon'ble Andhra Pradesh High Court, which was cited by the learned counsel for the applicant, also recognised the principle of lifting or piercing the corporate veil as evidenced by paragraph 30 of the said judgment.

6. By way of a brief rejoinder, the learned counsel for the applicant contended that piercing the corporate veil can be resorted to only in cases of evasion of taxes or fraudulent activities, whereas this is not such a case.

7. The submissions of the learned counsel for the applicant and the respondent were considered and the records were examined. The question that arises for consideration is whether the interim order that was previously granted should be continued. The admitted position in this case is that the sum of about Rs.2.78

crores is said to be due from M/s. Chakiat Agencies Pvt. Ltd. and not from the applicant / plaintiff. However, the respondent's case is that it is entitled to debit this amount from the current account of the applicant / plaintiff in view of the fact that the applicant is a subsidiary of M/s. Chakiat Agencies Pvt. Ltd. The debiting of amounts by the respondent from the current account of the applicant / plaintiff can be resorted to only by piercing the corporate veil. For such purpose, it would be necessary to enter a finding that the applicant / plaintiff has been used as a device to enable the fraudulent evasion of the container terminal charges. Needless to say, such a determination cannot be made at the interlocutory stage. Therefore, the applicant / plaintiff has made out a prima facie case for the continuation of the interim order restraining the respondent from making further debits from its current account. The balance of convenience is evidently in favour of such an order as the respondent has already debited a substantial amount and unless such an order is passed, further debits would be made and irreparable hardship would be caused to the applicant. Accordingly, it is just and necessary that the order of interim injunction is made absolute until the disposal of the suit.

8. As regards the application under Order XII Rule 6 of CPC, I

do not find any unequivocal admission of liability by the respondent in the counter affidavit or in the correspondence. As stated earlier, the case of the respondent is that it is entitled to debit the account of the applicant/plaintiff towards the amounts payable by M/s. Chakiat Agencies Pvt. Ltd. The correctness or otherwise of the position of the respondent cannot be determined at this stage. Consequently, a case is not made out for allowing the application under Order XII Rule 6 of CPC.

9. In the result, the following orders are passed.

(i) O.A.No. 710 of 2019 is allowed and the interim injunction restraining the respondent and the persons acting through the respondent from debiting any further amounts from the current account of the applicant / plaintiff bearing No. 432445575 in respect of the alleged dues of M/s. Chakiat Agencies Pvt. Ltd. is made absolute pending disposal of the suit.

(ii) The Application No. 5159 of 2019 is hereby dismissed.

09.12.2019

bga

SENTHILKUMAR RAMAMOORTHY, J.

bga

O.A. No. 710 of 2019
and
A.No.5159 of 2019
in
CS. No.442 of 2019

09.12.2019