



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.11.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

W.P.No.29773 of 2019
& W.M.P.No.29669 of 2019

VCAN Active Carbon Private Limited,

Rep. by its Director,

Kanniah Vikram Dixit,

Plot No.21, Door No.6, Vaishnavi Apartments,

3rd Cross Street, Shastri Nagar,

Adyar, Chennai - 600 020.

... Petitioner

/versus/

1. The Managing Director,
Tamil Nadu Industrial Investment Corporation,
No.692, Anna Salai,
Nandanam, Chennai.

2. The Branch Manager,
Tamil Nadu Industrial Investment Corporation,
DDDC Building Upstairs,
Pennagram Road,
Dharmapuri - 636 702.

3. J.S.Rajkumar,
S/o.Jayachandran,
1st Floor, No.L-89/2,
Kirloskar Colony Next,
Near Arabindo School,
Basaveswara Nagara,
Bangalore - 79.

4. J.Arunpadmanaban,
The Director, M/s.VCAN Active Carbon Private Ltd.,
S/o.D.Jayachandran,
Plot No.21, No.6, Vaishnavi Apartment,
3rd Cross Street, Sasthiri Nagar,
Adyar, Chennai - 600 020.

... Respondents

R4-impleaded as per order dated 22.11.2019 made in
W.M.P.No.32803 of 2019 in W.P.No.29773 of 2019 by Dr.GJJ.

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, praying to issue Writ of Mandamus,
directing the respondents 1 and 2 to allow the petitioner

company, to remove the machineries, plants and generators and other materials, which are not hypothecated to respondents 1 & 2 and which are not listed in the auction notice dated 10.11.2018, from the factory premises, "M/s.Vcan Active Carbon Private Limited", at Plot No.116, Sipcot, Parandapalli Village, Pochampalli, Krishnagiri District and to refund a sum of Rs.75,17,718/- to the petitioner company and the surety documents, pertaining to the Term Loan dated 02.02.2013 and working capital Loan dated 05.03.2014 and

For Petitioner : Mr.P.Raja,

For R1 & R2 : Mr.I.Sathish, Standing Counsel

For R3 : Mr.N.Vijaya Baskar

For R4 : M/s.R.S.Maitreya

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner claiming to be the Director of M/s.Vcan Active Carbon Private Limited, is aggrieved by the attempt of the auction purchaser/3rd respondent herein to remove the property which are not hypothecated to the 1st and 2nd respondents and brought to the auction sale on 10.11.2018, laying in the factor premises M/s.Vcan Active Carbon Private Limited.

3. As far as the contention of the petitioner is concerned, the property of the said company was brought to action by "TIIC Limited" for non-payment of the loan amount and the 3rd respondent/Rajkumar is the successful bidder. However, they are trying to remove the machineries and plants which does not form part of the action notice and the petitioner would also contend that, due to delay in payment of the auction money by the successful bidder, the "TIIC Limited" charged interest recoverable from the petitioner. Though the petitioner is at no fault for the 3rd respondent delayed payment of the auction money.

4. On perusing the counter affidavit filed by the TIIC Limited as well as the affidavit filed by the implead respondent, who is one of the Director of the petitioner Company, incidentally also brother of the successful auction purchaser/3rd respondent, this Court finds that for the default of loan amount, the land and machinery of the petitioner company

was brought to auction and the 3rd respondent is the successful bidder. Earlier, when there was some difficulty in completing the contract, the Writ Petition was filed by the 3rd respondent and this Court in W.P.No.18735 of 2019, dated 07.08.2019, has directed the "TIIC Limited", to receive the balance 75% of the bid amount and proceed further in the process of executing the necessary documents. As of now, it is stated that, the 3rd respondent has paid the entire sale amount and only impediment is taking possession of the land and machineries which are subject matter of the auction.

5. Regarding the allegation of the petitioner that some of the materials which are not part of the auction are attempted to be taken by the 3rd respondent, the Learned Counsel for the respondents/TIIC Limited, has furnished the list of machineries lying in the premises and machineries which were subjected to auction. In the Remarks, the "TIIC limited" has said that, the list of machineries in Serial Nos.i to xii were not financed by the "TIIC Limited" and hence there is no objection to handover the above machineries to the petitioner company. In respect of Serial Nos.xiii to xv, they were financed to "TIIC Limited" and hence, it has to be handed over to the auction purchaser. In this regard, except Serial No.ii, the parties are agreeable to the statement by the "TIIC Limited" i.e., Serial No.ii, is set out as Pre-Heater (1 set).

6. According to the Learned Counsel for the 3rd respondent, Pre-Heater is an accessory and it is a part of Waste Heat Conversion Device producing Energy, which has been listed as one of the item of machineries which was subjected to auction-cum-tender notice.

7. Per contra, the Learned Counsel for the petitioner would state that, the Pre-Heater was never subject matter of hypothecation and it cannot be brought to auction by the TIIC Limited, when it is not subject matter of the hypothecation by the Company. This Court finds from the auction notice that Pre-Heater is also part of item No.6, show in the list of machinery put for auction. Hence, this Court finds no merit in the petitioner's contention.

8. The petitioner Company is entitled to retain only Serial Nos.i, iii to xii as found in the list below:-

Sl. Nos.	Description of Machinery
i	Pre Activation Plant
iii	Vibro Screener Wooden Frame without mesh

Sl. Nos.	Description of Machinery
iv	Steel Barrels
v	Pilot-Truck 2T capacity with accessories
vi	Steel Structure outside the compound wall
vii	Roofing Sheets, SS Pipes & MS Channels lying inside the factory compound
viii	Welding Machine
ix	Weighing Scales
x	Fork Lift
xi	Scrap Water Tank, Duct and MS Frame Tray and other scrap materials.
xii	Office Furnitures (2 Glass Top Tables, 1 Chair, 1 Computer Table & 1 Steel Cub-Board)

9. Accordingly, the Writ Petition is Party-Allowed. The 2nd respondent/Tamil Nadu Industrial Investment Corporation, shall hand over the land and machineries listed in Serial Nos.ii, xiii, xiv and xv to the 3rd respondent/J.S.Rajkumar and remaining materials to the Company represented by its Directors, who are the petitioner and the 4th respondent. The "TIIC Limited" shall also hand over the documents to the petitioner company. All this process shall be completed, within a period of two weeks, from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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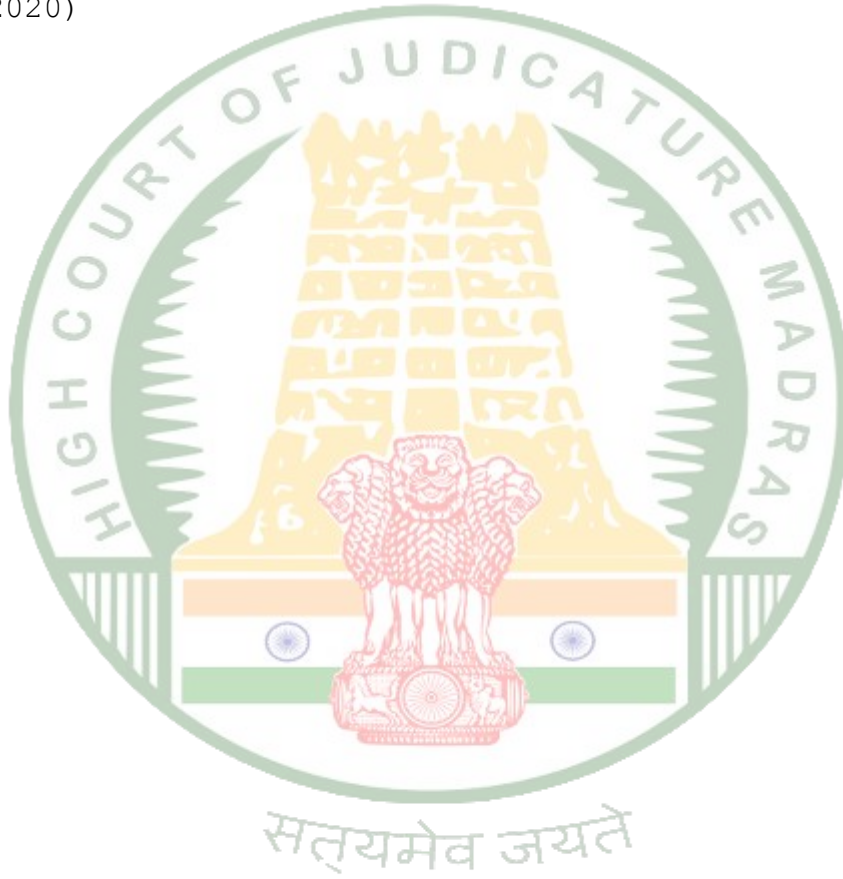
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W.P.No.29773 of 2019

KJ(CO)
CB(04/02/2020)



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