IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM

THE HONOURABLE ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29608 of 2019
and
W.M.P.No.29505 of 2019

K.Paramasivam ... Petitioner

Versus

1. The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore 641 037.

2. State Bank of India,
rep. by its Branch Manager,
Commercial Branch,
No.45, Sathy Road,
Erode 638 003.

3. The Liquidator,
Shri.R.Raghavendran,
M/s.Sri Maharaja Oil Imports and
Exports India (P) Ltd.,
Flat No.3, Dhruvatara Apartments,
No.241, Dr.Rajendra Prasad Road,
Tatabad, Coimbatore 641 012.

4. Debts Recovery Tribunal-Coimbatore,
rep. by its Presiding Officer,
Ex-Services Centre,
Jawans Bhawan, 2nd & 3rd Floor,
27, Travellers Bungalow Road,
Coimbatore 641 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to the order dated 3.9.2019 passed by the Hon'ble Debt Recovery Tribunal, Coimbatore 4th Respondent herein memo in S.R.No.7187 of 2019 S.A.No.506 of 2018 and quash the same and direct the 3rd Respondent to hand over the documents mentioned in the Memo/notice to furnish particulars and documents dated 30.7.2019.

For petitioner : Mr.P.J.Sri Ganesh

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, ACJ.)

Mr.K.Paramasivam, Director of Corporate Borrower, M/s.Maharaja Oil Imports & Exports (P) Limited (under liquidation) has filed this Petition in this court aggrieved by the order of the Debts Recovery Tribunal, Coimbatore, dated 3rd September 2019 by which the learned Debts Recovery Tribunal directed the Petitioner to approach the NCLT for appropriate orders in the matter for production of the valuation reports.

2. The Respondent State Bank of India sought to realise its secured assets remaining out of liquidation as permitted by Section 52 (1)(b) read with Sub-section (2) of Section 52 of the Insolvency and Bankruptcy Code, 2016. Section 52 of the Code is quoted below for ready reference:-

> "52. Secured creditor in liquidation proceedings - (1) A secured creditor in the liquidation proceedings may --
>
> (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
>
> (b) realise its security interest in the manner specified in this section.
>
> (2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised."

3. Learned counsel for the Petitioner submitted that unless the Valuation Reports procured by the Respondent is produced before the Debts Recovery Tribunal, gross undervaluation on which the assets are sought to be sold cannot be ascertained by the Debts Recovery Tribunal, but, the Debts Recovery Tribunal has wrongly directed the Petitioner to approach the NCLT where the matter is pending at the instance of State Bank of India.

4. The relevant portion of the order passed by the Member of the Debts Recovery Tribunal is quoted below for ready reference:-

> "The Liquidator/3rd Respondent has filed the relevant portion of copy of the Insolvency and Bankruptcy Code, 2016 and the copy of the I & B BOI (LIQUIDATION PROCESS) REG. 2016" along with this objection memorandum. A perusal of the same would show that the particulars/documents sought for by the petitioner cannot be furnished to him except under the Orders of the National Company Law

Tribunal. The only remedy available to the applicant, is to approach the said Forum for getting the particulars. Therefore, this tribunal cannot direct the 3rd Respondent to furnish the aforesaid particulars/documents to the applicant."

5. The learned counsel for the Petitioner also referred to Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 35 provides for method to arrive at fair value and liquidation value. The said regulation is quoted below for ready reference:-

> "35. Fair value and liquidation value-- (1) Fair value and liquidation value shall be determined in the following manner:--
>
> (a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
>
> (b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and
>
> (c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.
>
> (2) After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.
>
> (3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value."

6. Having heard the learned counsel for the Petitioner, we are satisfied that there is no error in the order passed by the learned Debts Recovery Tribunal since the entire matter

regarding regarding insolvency of M/s.Sri Maharaja Oil Imports and Exports India (P) Limited is pending before the NCLT and any direction with regard to production of documents in the matter can, naturally, be given only by the NCLT concerned. Therefore, the learned Debts Recovery Tribunal cannot be said to have faulted in passing the said direction on the Application filed by the present Petitioner.

7. The method of valuation provided in Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is relating to the merits of the case with which we are not concerned. The present Petition filed by this Petitioner in this court, without complying with the direction given by the learned Debts Recovery Tribunal which cannot be said to be erroneous in any manner, is not sustainable. Therefore, we dismiss the Writ Petition giving liberty to the Petitioner to approach the NCLT in the matter. No costs. The connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
1112, Raja Plaza, Avinashi Road,
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2.The Branch Manager,
State Bank of India,
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3.The Presiding Officer,
Debts Recovery Tribunal-Coimbatore,
Ex-Services Centre,
Jawans Bhawan, 2nd & 3rd Floor,
27, Travellers Bungalow Road,
Coimbatore 641 018.

+1cc to Mr.P.J.Sri Ganesh , Advocate SR.No. 86362

sr A.SK(12/11/2019)