

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Twenty First day of October Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

CMP.Nos.22615, 22617, 22620 and 22622 of 2019

in CRP.Sr.Nos.132010 and 132011 of 2019

1 AAPICO HITECH PUBLIC COMPANY [PETITIONERS IN ALL THE
LTD., 99 MOOL HITECH INDUSTRIAL ESATE, PETITIONS]
TAMBOL BAN LANE AMPHUR, BANG PA -IN,
AYUTTHAYA, THAILAND 13160, THROUGH THE AUTHORISED
REPRESENTATIVE, KAIKHUSHRU VICAJI TARAPOREVALA
LEVEL 42, SIX BATTERY ROAD, SINGAPORE-049909.

2 AAPICO INVESTMENT PTE LTD
745 TOA PAYOHLOR 5, 01-07 THE ACTUARY,
SINGAPORE 319455, THROUGH THE AUTHORISED
REPRESENTATIVE KAIKHUSHRU VICAJI TARAPOREVALA,
LEVEL 42, SIX BATTERY ROAD, SINGAPORE-049909

3 SAKTHI GLOBAL AUTO HOLDING
LTD, 100 NEW BRIDGE ST, LONDON EC4V 6JA,
UK, THROUGH THE AUTHORISED REPRESENTATIVE,
KAIKHUSHRU VICAJI TARAPOREVALA, LEVEL 42,
SIX BATTERY ROAD, SINGAPORE-049909

**CAUSE TITLE ACCEPTED VIDE COURT ORDER DATED 21.10.2019 MADE IN
CMP.22617 ABD 22620/2019 IN CRP.SR.NO.13210 AND 132011/2019**

**CAUSE TITLE ACCEPTED VIDE COURT ORDER DATED 21.10.2019 MADE IN
CMP.22617 ABD 22620/2019 IN CRP.SR.NO.13210 AND 132011/2019**

Vs

1 SAKTHI SUGARS LTD [1 & 2 RESPONDENTS IN ALL
SAKTHI NAGAR, BHAVANIN TK, ERODE DIST, THE PETITIONS]
TAMIL NADU, INDIA -638315

2 SAKTHI AUTO COMPONENT LTD,
180 RACE COURSE ROAD, COIMBATORE,
TAMIL NADU, INDIA -641018.

MR.MANICKAM MAHALINGAM

[3 TO 6 RESPONDENTS IN
CMP.22622, 22620/19]

M.BALASUBRAMANIAM

S.CHANDRASEKHAR

M.SKRINIVAASAN

Petitions praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

1 CMP No.22615 of 2019

To grant leave to the petitioners herein to file the above CRp.

2 CMP No.22617 of 2019

To accept the cause title of the above mentioned CRP

3 CMP No.22620 of 2019

To accept the cause title of the above mentioned CRP.

4 CMP No.22622 of 2019

To grant leave to the Petitioners herein to file the above CRP.

Order : These petitions coming on for orders upon perusing the petition and the respective affidavits filed in support thereof and upon hearing the arguments of MR.M.S.KRISHNAN, Senior Counsel for M/S.ROSHAN BALASUBRAMANIAN, Advocate for the petitioner in each the petitions the court made the following order:-

I heard the learned senior counsel, Mr.M.S.Krishnan, on behalf of the Petitioners.

2.The learned senior counsel submitted that the first and second Petitioners made investments in the third Petitioner company, whereby they currently hold 100% of the paid-up share capital of the third Petitioner and that the third Petitioner company acquired about 77.04% of the paid-up share capital of the second Respondent company. Consequently, the case of the Petitioners is that the Petitioners are the controlling shareholders of the second Respondent company and, as a result of being controlling shareholders, they are entitled to appoint directors and take over the management of the second Respondent Company, if so intended. In these facts and circumstances, the learned senior counsel submitted that two petitions were filed under Section 9 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) by the first Respondent herein. In Arbitration O.P.No.132 of 2019, the only Respondent is the second Respondent herein, whereas in Arbitration O.P.No.188 of 2019 some of the individual directors of the second Respondent company have been arrayed as Respondents 2 to 5. He further submitted that it appears that the Section 9 Petition arises out of the Memorandum of Agreement dated 30.06.2000 between the first and second Respondent herein in respect of an alleged loan. Even as regards this loan, he pointed out that it is pleaded in the said Section 9 Petition, at paragraph 7, that the principal was repaid. In effect, his submission is that the Section 9 Petitions are for interim protection in connection with an action for recovery of money. Notwithstanding the fact that it is effectively an interim application in an action for recovery of money, he submitted that in Arbitration O.P.No.132 of 2019, the Petitioners

prayed for an interim injunction to restrain the Respondents from effecting a change in control or change in the management of the Respondent Company pending arbitration. By referring to the said prayer, the learned senior counsel submitted that, on the face of it, such an application is not maintainable at the instance of an alleged lender. Likewise, he submitted that in Arbitration O.P.No.188 of 2019, the relief requested is for an interim injunction restraining the first Respondent company from removing Respondents 2 to 5 from directorship of the first Respondent company pending Arbitration. Once again, he submitted that the said relief cannot be prayed for in an interim application in an action to recover money. In this regard, he also pointed that it is admitted, in paragraph 3 of AOP 132 of 2019, that the Petitioner therein/first Respondent herein holds only 19.81% of the paid-up share capital of the second Respondent but that particulars of the controlling shareholders were intentionally not disclosed and the controlling shareholders were not impleaded although they are necessary parties.

3. After referring to the above pleadings, the learned senior counsel also referred to the Joint Memo dated 30.08.2019, whereby the parties agreed to the continuation of the ad interim injunction with regard to the change in management, removal of directors and creation of fresh encumbrances and that based on the said Joint Memo dated 30.08.2019, the impugned order dated 07.09.2019 was passed by the learned Principal District Judge, Coimbatore, which is impugned herein. In the above facts and circumstances, he submitted that a strong prima facie case is made out for the grant of emergent orders as prayed for. The relevant portion of the impugned order reads as follows:

"3. The parties take note of the operative part of the Interim order passed by this Honourable Court which is in force as of date and reading as under:

"....Accordingly, an ad-interim injunction is granted in favour of the Petitioner and against the Respondent, from parting with or effecting change in control of the management of the Respondent Company or creating any fresh encumbrance over the assets of the Respondent...."

4. The Respondent agrees to abide by the interim order and not effect any change in control of management including through removal of nominee directors of the Petitioner or create any fresh encumbrance over the assets of the Respondent until the interim order is vacated by the Arbitration Tribunal. The parties will be at liberty to move the Tribunal for such further or other interim orders or for vacating the interim orders, pursuant to Sec. 17 of the Arbitration and Conciliation Act, 1996.

6. Joint Memo, dated 30-08-2019 is recorded. Hence, this Court does incline to dispose of the said AOPs in terms of the Joint Memo, dated 30-08-2019. The Joint Memo dated 30-08-2019 shall form and part of the order.

7. In the result,

(a) AOP No.132 of 2019 is allowed an order of interim injunction is granted in favour of the petition u/s.9(2) of the Arbitration & Conciliation Act, 1996 for the period of ninety days from the date of this order. Both parties are at liberty to approach the Arbitrator modifying or varying or vacating the order passed by this Court.

(b) AOP No.188 of 2019 is disposed in terms of the Joint Memo dated 30.08.2019."

4. Based on the above submissions and upon perusal of the relevant pleadings and orders, it appears prima facie that the first Respondent herein initiated Section 9 proceedings without disclosing the relevant facts and, more importantly, without impleading necessary parties, namely, the Petitioners herein. It further appears prima facie that the interim orders were obtained by adopting the above methodology and by executing a Joint Memo purportedly on behalf of the second Respondent company without the knowledge or consent of the controlling shareholder. In addition, in contrast to the standard measures of interim protection in an action for recovery of money, such as garnishee orders or orders of attachment before judgment of property, an interim injunction restraining the Respondents from changing the management has been obtained. Furthermore, it prima facie appears that without the knowledge and consent of the controlling shareholder, consent was given for the appointment of a specific arbitrator and for the conduct of arbitration proceedings.

5. Consequently, notwithstanding the fact that the CMPs for interim stay and the CRPs are at the SR stage, in view of the above extraordinary facts and circumstances and the nature of the interim orders which are impugned herein, I find a strong prima facie case is made out for the grant of interim orders and, therefore, I am inclined to issue interim orders at the SR stage with a consequential direction to number the CMPs and CRPs. With specific reference to the arbitration proceedings, in view of the factual context of the Joint Memo and the order on that basis, it is possible that developments that are subsequently difficult or impossible to reverse may take place if such proceedings are permitted to continue at this juncture. Accordingly, the following orders and directions are issued:

(i) The Petitioners are granted leave to file the above CRPs as third parties.

(ii) The petitions to accept the cause title of the petitioners are allowed.

(iii) The petitions to dispense with the production of certified copies of the impugned order are allowed.

(iv) The Registry is directed to number the CMPs for interim stay and injunction and the CRPs, if otherwise in order.

(v) There shall be an order of interim stay of the impugned common order dated 07.09.2019 in so far as it relates to the injunction in respect of change in management for a period of four weeks from the date of receipt of a copy of this order.

(vi) There shall be an order of interim injunction restraining the Respondents from proceeding with Arbitration Case No.4 of 2019 before Hon'ble Justice K.B.K.Vasuki for a period of four weeks from the date of receipt of a copy of this order. The Petitioners are directed to comply with Order XXXIX, Rule 3 CPC.

6. Issue notice to the Respondents in the interim stay and injunction CMPs and in the CRPs returnable by 11.11.2019. Private notice is also permitted.

7. List the matter on 11.11.2019.

-sd/-

21/10/2019

/ TRUE COPY /

**[(*) CORRECTED ORDER TO BE SUBSTITUTED
FOR THE ORDER ALREADY DESPATCHED ON
22/10/2019 REGARDING IN THE ORDER PORTION]**

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT JUDGE,
COIMBATORE.

C.C. to M/S.ROSHAN BALASUBRAMANIAN Advocate on payment of necessary charges

Order

in

WEB COPY

CMP.Nos.22615, 22617, 22620 and 22622 of 2019

in CRP.Sr.Nos.132010 and 132011 of 2019

Date :21/10/2019

From 26.2.2001 the Registry is issuing certified copies of the Interim Orders in this format

KP(22/10/2019) (IT)

KP(25/10/2019)