



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.Nos.454, 455, 456, 457, 458 and 459 of 2018

India Growth Fund,
Through its Trustee M Kotak Mahindra
Trusteeship Services Limited,
Securities and Exchange Board of India,
having 27 BKC, Plot No.C27, Block G,
Bandra Kurla Complex, Bandra East,
Mumbai 400 051.

... Appellant in all OSAs

-Vs-

1. M.Thiagarajan ... 1st Respondent in OSA.Nos.454,
455, 456, 457, 458, 459 of 2018
2. Lakshmi Murugesan ... 2nd Respondent in OSA.Nos.454,
455, 456, 457, 458, 459 of 2018
3. M/s.Paramount Mills Pvt Ltd
rep.by its Director, Rajapalayam Road
N.H.208, T.Pudapatti Post
Thirumangalam - 635 704.
... 3rd Respondent in OSA.Nos.454,
455, 457, 458, 459 of 2018
4. M/s.Paramount Textile Mills Private Limited
rep.by its Director, Thirali Tirumangalam
Madurai District, Tamil Nadu.
... 4th Respondent in OSA.Nos.454,
455, 457, 458, 459 of 2018
5. M/s.T.M.Thiyagarajan Trust
through its Trustee, Mrs.Lakshmi Murugesan
A21, Lankaram Street, Thirunagar
Madurai 625 006.
... 5th Respondent in OSA.Nos.454,
455, 457, 458, 459 of 2018



WEB COPY

6. M.Ramu
S/o.Mr.Murugesan, Director,
M/s.Paramount Textiles Mills Pvt.Ltd.,
Thirali Tirumangalam, Madurai District,
Tamil Nadu.
... 6th Respondent in OSA.Nos.454,
455, 457, 458, 459 of 2018
7. R.Sivagami
... 7th Respondent in OSA.Nos.454,
455, 458, 459 of 2018
& 8th Respondent in 457 of 2018
8. Mr.Essakai Thangappandi
.. 7th Respondent in
OSA.457 of 2018
9. M/s.Parker Ford Garments Pvt.Ltd.,
No.36, B-2, Balaji Colony, Street No.3,
Ramanathapuram, Coimbatore-641 005.
.. 9th Respondent in
OSA.No.457 of 2018
10. M/s.Golden Lotus Textiles Pvt.Ltd.,
rep by its Director,
Door No.12, Krishnarayar Theppakulam West,
Madurai.
.. 10th Respondent in
OSA.No.457 of 2018

Prayer:-

Original Side Appeal under clause 15 of the Letters Patent, against the order and decreetal order dated 15/03/2018 of in Application Nos.256, 255, 4752, 25, 257, 254 of 2017 respectively.

OSA.No.454 of 2018:-

in A.No.256 of 2017, Application praying that this Court be pleased to direct the 2nd respondent as the trustee of the 5th respondent/garnishee to deposit share certificates evidencing ownership of 25,000/- held by the 2nd Respondent on behalf of 5th respondent in the 4th respondent company.

OSA.No.455 of 2018:-

in A.No.255 of 2017, Application praying that this Court be pleased to prohibit the 4th respondent/Garnishee from making any payments, more particularly by way of dividends, salaries, remunerations, commissioner or otherwise to the 2nd respondent and deposit such amounts before this Court to the credit of the above application.



OSA.No.456 of 2018:-

in A.No.4752 of 2017, to direct the respondents to surrender their passports before the Registrar of this Hon'ble Court to be held by the court to ensure that the respondents do not leave the country and stay at large to defeat the rights of the applicant in executing and recovering the dues as per award dated 24.12.2017 passed against the respondents and in favour of the applicant.

OSA.No.457 of 2018:-

in A.No.25 of 2017, Application praying this Court be pleased to direct the respondents 1 to 3 to deposit with the applicant the awarded amount of Rs.112,86,00,000/- (Rupees One Hundred Twelve Crores and Eighty Six Lakhs only) in accordance with the directions of this Honourable Court in order dated March, 20, 2013.

OSA.No.458 of 2018:-

in A.No.257 of 2017, Pleased to direct the 4th respondent/garnishee to cancel 1,05,594 equity shares allotted to the 6th respondent on rights issue basis, which changes the share holding percentage after the attachment of the shares of the 2nd respondent by this Hon'ble Court and consequentially direct the 4th respondent to rectify the register to restore the share holding as on the date of attachment by order dated 20.03.2013.

OSA.No.459 of 2018:-

in A.No.254 of 2017, Application praying that this Court be pleased to prohibit the 4th respondent/Garnishee from issuing any additional shares, convertibles, warrants in any manner to its existing share holders or to any third party without the permission of this court.

For Appellant : Mr.E.Om Prakash, Senior Counsel
assisted by Mr.P.Elaya Rajkumar
for M/s.Ramalingam & Associates

For Respondents: Mr.N.Ramakrishnan
for M/s.Waran & Sairams
- for R2
Mr.Anirudh Krishnan - for R4



J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

These appeals have been filed under Clause 15 of the Letters Patent by M/s. India Growth Fund, aggrieved by the common order of the learned single Judge dated 15.3.2018 in Application No.256 of 2017 etc., in exercise of the original civil jurisdiction of this Court.

2. The award of the Arbitral Tribunal in the present case was passed on 24.12.2016. But the learned counsel for the appellant / decree holder submitted that so far no enforcement application has been filed before the competent civil Court in terms of Section 36 of the Arbitration and Conciliation Act, 1996, even though Section 34 petition, seeking setting aside of the said Arbitral Tribunal was dismissed by the learned Single Judge of this Court vide order dated 15.03.2018, which is a common order passed in O.P.No.229 of 2017 (Lakshmi Murugesan -Vs- India Growth Fund and others) and O.P.No.506 of 2017 (M.Thiagarajan -Vs- India Growth Fund and others). While dismissing the said original petitions, the learned Single Judge further directed in Paragraph 24 and 25 as under :

"24. Number of applications have been filed seeking various reliefs by the respondents invoking Section 9 of the Arbitration and Conciliation Act, 1996. In some of the applications, orders have been granted by the Court. The learned Senior Counsel appearing for the petitioner in O.P.No.229 of 2017 and the second respondent in O.P.No.506 of 2017 would submit that, these orders may continue but their objections are for the further orders in such applications where no orders have been granted. As submitted by the learned counsel for the first respondent, prima facie it appears to be a case of non compliance of the earlier orders passed and an attempt to evade the consequence of the award and frustrate the first respondent from getting the relief. However, this Court is not willing to dwell much into these applications. While making it clear that the interim orders agranted in Application Nos. 7, 28, 49, 254, 255 and 627 of 2017 would continue till the completion of the execution petitions, the other applications are accordingly closed with the observation that it is well open to the first respondent to raise a contention before the Execution Court that transfers, transactions and other activities indulging the petitioner and the second respondent are deliberate and willful and in order to



WEB COPY

defeat the fruits of the award. For the aforesaid reason, the first respondent can also implead the third parties, if so advised. Thus, all the applications filed under Section 9 of the Arbitration and Conciliation Act, 1996 are accordingly disposed of while extending the interim order granted including undertakings given by the petitioner and the second respondent until the disposal of the Execution Petition."

3. Mr.Om Prakash, learned Senior Counsel appearing for the appellant urged before us that the various orders passed by this Court on the petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 have not been complied with by the respondents and the assets have been alienated contrary to the said orders passed by the Court and therefore, the decree holder has not so far availed the remedy of enforcement or execution of the arbitral award under Section 36 of the Act, and this Court may pass appropriate consequential orders directing the judgment debtors / respondents to restore those assets so that the arbitral award in question can be properly enforced by the decree holder.

4. Learned counsel for the respondents, however submitted that on the rejection of the petitions filed under Section 34 of the Act, they have filed further petitions under Section 37 of the Act, which are not yet numbered and are lying in the Registry for removal of the defects.

5. Having heard the learned counsel for the parties, we are satisfied that the present appeals do not deserve any further directions by us in these appeals and the decree holder / claimant ought to have availed the regular remedy of enforcement under Section 36 of the Act for enforcement of the arbitral award in question. He can even approach the Arbitral Tribunal under Section 17 of the Act for protection of assets etc., Both these provisions are quoted below for ready reference.

"Section 17 : Interim Measures ordered by arbitral tribunal : (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute.

(2) The arbitral tribunal may required a party to provide appropriate security in connection with a measure ordered under sub-section (1).



WEB COPY

.....
36. Enforcement : Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."

6. We see no reasons to keep these appeals pending before us arising out of the order passed under Section 9 of the Act as, with the passing the arbitral award, the decree holder is permitted to approach the concerned Civil Court for execution of the arbitral award, as if it were a decree of the Court and the executing Court has all the powers to grant even interim relief as prayed for, for the protection of the assets, after affording opportunity to the parties concerned. Enforcement of the arbitral award is the remedy available to the decree holder even if such Section 34 petitions are filed for setting aside the Award. In the present case, we are informed that the same was also dismissed by the order impugned before us dated 15.03.2018. The aforesaid quoted portions of Paragraph 24 of the learned Single Judge adequately protects the interests of the decree holder. In our opinion, therefore, we are not inclined to grant any further orders in this regard in the present appeals filed by the decree holder.

7. Therefore, we dispose of the present appeals with a liberty to the appellant / decree holder to seek enforcement of the arbitral award in question in terms of Section 36 of the Act. With these observations, the appeals are disposed of. The directions given by the learned Single Judge in Paragraph 24 of the impugned order shall continue for a period of six weeks from today. Accordingly, the appeals are disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kst



To

The Sub Assistant Registrar,
Original Side,
Madras High Court.

WEB COPY

+1cc to Mr.Anirudh Krishnan, Advocate, S.R.No.45575
+2ccs to M/s.Ramalingam & Associates, Advocate, S.R.No.45275
+2ccs to M/s.Waran & Sairams, Advocate, S.R.No.45316

O.S.A.Nos.454, 455, 456,
457, 458 and 459 of 2018

CNR(CO)
CS/05/08/2019