

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
19~07~2019	25~07~2019

CORAM

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Company Application No.657 of 2018
in Company Petition No.265 of 2002

Shanthi Alloys Private Limited
Rep.by its Authorised Signatory
Mr.Ashfaqqr Rahman
No.480, 1st Floor, KHB Colony,
5th Floor, Kormangala,
Bengaluru – 560095.

... Applicant

Vs

1. SPIC Petrochemicals Ltd.,
(in Liquidation)
Rep.by Official Liquidator
High Court Madras
Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai,
Chennai 600001.

2. Assets Reconstruction Company
(India) Ltd., ARCIL,
The Ruby, 10th Floor,
No.29, Senapathy Bapat Marg
Dadar, West Mumbai 400028.

... Respondents

Prayer: The Company Application filed under the Companies Act

1956 to direct the 2nd Respondent to refund the balance Security Deposit of Rs.50,00,000/- (Rupees Fifty Lakhs only) with interest to the applicant within a time frame fixed by this Court.

For Applicant : Mr. Jayesh B Dolia
for M/s. Aiyar & Dolia

For Respondents : Mr. Bavishetty Sridhar
Dy. Official Liquidator [for R-1]

Mr. Kalyan Jabakh
for M/s. Surana & Surana [for R-2]

ORDER

This Application has been filed for directing the Second Respondent to refund the balance Security Deposit of Rs.50,00,000/- with interest. The Second Respondent as secured creditor brought the movables of the company in liquidation for sale through public auction. One M/s.Moorthy & Associates was declared highest bidder for Lot-I, subsequently the Applicant company entered into an MOU with the said M/s.Moorthy & Associates for purchasing the said Lot-I and remitted the entire sale consideration of Rs.22 Crores and sale certificate was issued in that regard. Security Deposit of Rs.1,50,00,000/- was made at the time in case of any damages occurred to the structure while removing the machineries.

2. Subsequently Lot-II was sold for Rs.4 Crores. In fact a sum of

Rs.1 Crore from the Security Deposit has been adjusted towards sale consideration of Rs.4 crores. Thereafter it was agreed between the Applicant and Second Respondent that the balance Security Deposit of Rs.50 lakhs will be returned to the Applicant after removing all the machineries in Lot-II. The same was also recorded in the Order dated 14.06.2016 in C.A.No.662 of 2014 and 1170 of 2014 in C.P.No.265 of 2002. However, the Second Respondent has not refunded the balance security deposit amount, however, taken a contrary stand to the effect that there was damages caused to structure inside polyester filament yarn shed, hence the amount cannot refunded. Hence, this Application.

3. It is the contention of the Respondent that selling Lot-I the purchaser apart from failure to remove the goods within the time frame, they have also caused damage to the second respondent by way of removing goods which were not sold to them and not part of the sale notice. The goods which had not been sold had been damaged and removed from the site by the said M/s. Moorthy & Associates. It is further contended that M/s.ITCOT Consultancy Services vide its letter dated 17.10.2013 indicated that following items which were not sold, were removed from the site.

1. *Two Building Pillars (steel) has been cust from the ware house.*
2. *Nearly Ten Nos. of Iron Pillars were removed from the warehouse locatee in Dark Places.*
3. *Five Nos. of Iron Pillars located in Electrical Sub-Station were removed.*

4. Subsequent field visit by the valuer also indicated that there were damage to the structure and removal of goods worth about Rs.73,75,000/- It is further contended that Lot-I movable goods have been sold under SARFAESI proceedings. Therefore, this Court cannot have any jurisdiction.

5. Learned counsel for the Applicant would contend that admittedly Rs.1,50,00,000/- was deposited while selling the movables of Lot-I as security deposit and out of the above Rs.1,50,00,000/-, Rs.1 crore was adjusted towards the sale consideration while selling Lot-II for a sum of Rs.4 crores. That being the position, if really the alleged removal or damage projected by the Respondent was true, they would not have allowed to adjust the security amount of Rs.1 crore towards the sale consideration at the initial stage itself. The above conduct itself clearly indicates that the defence putforth by the

Respondent cannot be true and the entire movables from Lot-I and Lot-II have been sold and removed. It has been specifically recorded by this Court vide order dated 14.06.2016 in C.A.664 and 1170 of 2014.

6. Whereas it is the contention of the learned counsel appearing for the second respondent that the correspondence exchanged by the parties clearly indicate that there were damages to the property which are not the subject matter of sale. Valuation Report clearly indicate that movables which were not sold also removed from the premises. In fact the value of such removed goods is more than Rs.70 lakhs. Therefore, it is his contention that the amount of Rs.50 lakhs lying as Security Deposit cannot be refunded.

7. I have perused the entire materials. Absolutely, there is no dispute with regard to the sale of movables in Lot-I and II. While auctioned Lot-I a sum of Rs.1,50,00,000/- has paid as Security Deposit which is not in dispute. Similarly Lot-II was sold for Rs.4 crores. All the sales were at the instance of this court by various orders. These facts are also not in dispute. It is curious to note that in Company Application Nos.664 and 1170 of 2014 when the parties have raised

issue with regard to the security deposit, this Court on 14.06.2016 has recorded the following:

"7.1.However, counsel for both parties, further submit that this issue can be deliberated upon later and for this purpose, Rs.50,00,000/- can be kept aside. Counsels, in fact, submit that, for this purpose they would not require the intercession of the Court."

8. Similarly, this Court has also held that sold and unsold items are so inextricably linked. At the time of passing of order by this Court there was no serious allegations whatsoever made as alleged now by the second respondent with regard to the alleged theft or removal of unsold goods. If the contention of the respondent was true that there was removal of unsold goods, there was no necessity to adjust the security deposit of Rs.1 crore towards the sale consideration of Lot-II. This aspect clearly indicates that the allegation of alleged removal or damage of unsold goods cannot be countenanced. Having accepted before the court that the issue of refund of Rs.50 lakhs could be deliberated even without intercession of the Court, now the allegation of the alleged removal certainly appears to be unbelievable.

9. Though it is also contend that there were damages to the

property, the correspondence relied upon by the Respondent would indicate that there were removal of materials and certain tonnage of materials have been removed. The same clearly indicate that the materials have been removed. Therefore, it cannot be said that there was damage. Even assuming that damage and removal are one and the same sale certificate also indicated that certain materials were shown in the weight i.e., tonnage. Therefore, without any materials to show that unsold goods were removed stealthily the removal cannot be presumed. If such valuable machineries have been removed stealthily without any authorisation what should have been the conduct on the part of the secured creditor? His immediate reaction would be to take recourse of law, either to lodge criminal complaint or civil case. Their conduct in keeping silent all these years and further, failure to whisper anything about these aspects before this Court while passing the orders referred above, the conduct certainly goes against the second respondent contention. सत्यमेव जयते

10. In view of the above, this Court is directed the Second Respondent to return the Security Deposit of Rs.50 lakhs with interest at the rate of 6% p.a. from the date of deposit till the date of realisation.

11. In the result, the Company Application is ordered.

25.07.2019

Index : Yes/ No

Internet : Yes

Speaking/Non-speaking Order

ggs

Note : Issue Order Copy on 29.07.2019



WEB COPY

N.SATHISH KUMAR, J.

ggs



**Pre-delivery Order in
Company Application No.657 of 2018 in
Company Petition No.265 of 2002**

WEB COPY

25.07.2019