IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.11.2020

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO. 15860 OF 2020
AND W.M.P.NO.19718 OF 2020

1.Sivadevan Kumar
2.N.Mohana Priya ...Petitioners

-vs-

1. India Bulls Commercial Credit Limited,
   Rep. By its Authorized Officer,
   India Bulls House,
   448-451, Udyog Vihar,
   Phase V, Gurugram – 122 016.

2. India Bulls Commercial Credit Limited,
   Rep. By its Authorized Officer,
   1st Floor, Apex Chamber,
   No.20, Sri Theyagaraya Road,
   T.Nagar, Chennai – 600 017.

3. C.Gowthaman ...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing respondents 1 and 2 to permit the petitioner to deposit the balance sale price in pursuance of their sale confirmation letter dated 30.09.2020 followed by their letter dated 14.11.2020, extending the time of deposit, after deducting the arbitral award amount of Rs.2,40,00,000/- by taking note of the arbitral award dated 19.10.2020 passed between the 1st petitioner and the 3rd respondent.

For Petitioners .. Mr.F.B.Benjamin George

For Respondents .. Mr.Saikrishnan
Mr.Bharathachakravarthy
for R1 and R2

Mr.G.Raja
Mr.J.Ram for R3

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

Seeking a direction to respondents 1 and 2 to permit the petitioners to deposit the balance sale price in pursuance of their sale confirmation letter dated 30.09.2020 followed by their letter dated 14.11.2020, extending the time of deposit, after deducting the arbitral award amount of Rs.2,40,00,000/- by taking note of the arbitral award dated 19.10.2020 passed between the 1st petitioner and the 3rd respondent, the present writ petition has been filed.

2.The petitioners are the successful bidders pursuant to the sale notice issued on 28.08.2020 for the sale held on 30.09.2020. The upset price fixed was Rs.11 crores. The petitioners became the sole bidder for a sum of Rs.11,03,00,000/-. They paid earnest money deposit for a sum of Rs.1,10,00,000/-. The balance amount out of 25% has been paid for a sum of Rs.1,65,75,000/-. Thus, 25% of the total amount as per the tender condition being Rs.2,75,75,000/- has been paid by them. Accordingly, the remaining amount which is to be paid by the petitioners is Rs.8,27,25,000/- to be payable on or before 14.11.2020.

3.The petitioners made a request to respondents 1 and 2 stating that there is an award which has attained finality in their favour as against the third respondent. The petitioners were also tenants of the third respondent. Therefore, the petitioners made a request to adjust the award amount of Rs.2,40,00,000/- payable by the third respondent towards them. As the said request was not acceded to, the present writ petition has been filed.

4.Learned counsel appearing for the petitioners submitted that Order 21 Rules 72 and 85 CPC provide for such an adjustment towards set off. Rule 9(4) of the SARFAESI Rules which mandates that entire amount has to be paid by the successful bidder read with Rule 13(7) cannot be interpreted in a technical way. These rules are regular rules which are required to be complied with by the successful bidder which has got exception with admitted liability emanates from the owner of the property in favour of the successful bidder. In the case on hand, the third respondent does not have an objection for adjustment. After all, the remaining amount other than the amount which respondents 1 and 2 are entitled to will have to be given in favour of the third respondent. Thus, the fact that the said amount will have to be routed through respondents 1 and 2 or can be adjusted is the one which is to be decided by the third respondent. Respondents 1 and 2 while do not dispute the aforesaid factum also cannot have any grievance that the remaining amount out of the award which respondents 1 and 2 are entitled to has to necessarily go to the third respondent. Further more, in this case, there is no other claim as against the third respondent either from respondents 1 and 2 or any other third party. We may also note that for setting off the said amount of Rs.2,40,00,000/-, the third respondent has also agreed to give an undertaking before respondents 1 and 2.

5.In such view of the matter, rules governing would not come into play as against the petitioners deducting a sum of Rs.2,40,00,000/-. Therefore, the petitioners are directed to pay the remaining amount of Rs.5,87,25,000/- in favour of respondents 1 and 2 on or before 14.11.2020. The submission made by the learned counsel appearing for the third respondent before us that for the aforesaid arrangement inclusive of adjustment of Rs.2,40,00,000/- pursuant to the award dated 19.10.2020 stands recorded.

6.We also note that even before the learned Arbitrator, the third respondent has given an undertaking. The following clauses read as under:-

> "(ii) The Respondent has no objection for passing an award for a sum of Rs.2,40,00,000/-(Rupees Two Crores and Forty Lakhs) and in consideration thereof the Claimant is hereby giving up his all other claims in the above arbitration.
> (iii) The loan outstanding to M/s.India Bulls Commercial Credit Limited as on 26.08.2020 is Rs.6,35,06,022 (Rupees Six crores thirty-five lakhs six thousand and twenty-two) and now the Claimant has offered to purchase the property for a sum of Rs.11,03,00,000/- as a successful bidder. Out of the sale price of Rs.11,03,00,000/- after realizing the loan outstanding, M/s.India Bulls Commercial Credit Limited is due and liable to pay the balance amount of to the Respondent herein. M/s.India Bulls Commercial Credit Limited is only interested to realize its loan outstanding and the balance amount of the total sale price is payable to the Respondent.
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> x x x
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> (v) The Claimant and the Respondent has further agreed to request M/s.India Bulls Commercial Credit Limited to adjust the award amount of Rs.2,40,00,000/-, while depositing the sale price of Rs.11,03,00,000/- by the claimant."

7.Apart from the award being consented and thus became final and binding between the parties viz., the petitioners and the third respondent coupled with the fact the third respondent is also interested in the adjustment as aforesaid is in tune with the award passed and therefore there is no difficulty in undertaking the said exercise.

8.Learned counsel appearing for the third respondent submits that undertaking affidavit will also be given within a period of one week from the date of receipt of a copy of this order for the adjustment of the entitlement for a sum of Rs.2,40,00,000/- while making the remaining amount by the petitioners in favour of the third respondent.

9.In view of the above, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Authorized Officer,
   India Bulls Commercial Credit Limited,
   India Bulls House,
   448-451, Udyog Vihar,
   Phase V, Gurugram – 122 016.

2. The Authorized Officer,
   India Bulls Commercial Credit Limited,
   1st Floor, Apex Chamber,
   No.20, Sri Theyagaraya Road,
   T.Nagar, Chennai – 600 017.

+1cc to M/s.Benjamin George, Advocate, SR.No.36107
+1cc to Mr.G.Raja, Advocate, SR.No.36044

W.P.No. 15860 of 2020

LN(CO)
KKV/11/11/2020