

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25TH DAY OF SEPTEMBER 2020

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. No.5835 and 5836 of 2019

A.No.5835 of 2019:

M/s.Integrated Finance Company Ltd.,
No.112, Thiyagarajar Salai,
T.Nagar, Chennai- 600 017
Currently having its registered office at
No.R-10, Second Floor,
Prem Nagar Colony,
South Boag Road,
T.Nagar, Chennai- 600 017

Applicant

versus

*Gopuram Enterprises Ltd.
No.31, First Floor,
Lazarus Church Road,
[above Andhra Bank]
Raja Annamalai Puram,
Chennai- 600 028

Respondent

(*Substituted as per order dated 14.08.2020 in A.No.1655/2020)

Application praying that this Hon'ble Court be pleased to pass an order directing the Respondent herein to furnish security to the tune of full realisation in aggregate amounting to Rs.3,08,61,129.59 (Rupees Three Crore Eight Lakhs Sixty One Thousand One Hundred and Twenty Nine and Paise Fifty Nine only) as on 03.04.2019, within such time as may be directed by this Hon'ble Court, failing which this Hon'ble Court may be pleased to issue an order of attachment of the assets of the Respondent.

A.No.5836 of 2019:

In the matter of Arbitration and
Conciliation Act, 1996
And
In the matter of Arbitral Award
dated 04.02.2008.

M/s.Integrated Finance Company Ltd.,
No.112, Thiyagarajar Salai,
T.Nagar, Chennai- 600 017
Currently having its registered office at
No.R-10, Second Floor,
Prem Nagar Colony,
South Boag Road,
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Applicant

versus

*Gopuram Enterprises Ltd.
No.31, First Floor,
Lazarus Church Road,
[above Andhra Bank]
Raja Annamalai Puram,
Chennai- 600 028

Respondent

(*Substituted as per order dated 14.08.2020 in A.No.1656/2020)

Application praying that this Hon'ble Court be pleased to pass an order directing the Respondent herein to disclose its assets and receivables held as on date including immovable properties and bank account details.

These Applications coming on this day before this court for hearing in the Court made the following order:-

Application No. 5835 of 2019 has been filed to furnish security for a

sum of Rs.3,08,61,129.59.

2. Application No. 5836 of 2019 has been filed to disclose the assets and receivables held as on date including immovable properties and bank account details of the respondent.

3. The above applications has been filed after the award has been passed by the learned Sole Arbitrator.

4. Learned counsel appearing for the applicant submitted that the award has been passed in the year 2008. The original petition filed as against the award under Section 34 of the Arbitration and Conciliation Act was dismissed on 07.12.2017 and O.S.A. filed against the fair and decretal order made in original petition has also dismissed on 13.03.2018.

5. The respondent from the beginning kept the applicant in dark about his financial status. The respondent being discrete about the financial status, the prospects of recovery of the award amount from the respondent is very difficult unless the amount secured by this Court under Section 9 of the Arbitration and Conciliation Act. Hence, unless the applicant is aware of the assets belonging to the respondent, without which, the applicant will not be in a position to initiate execution proceedings. Therefore, besides

applicant has also sought direction to the respondent to disclose the details of assets held as on date, including immovable properties and bank account details.

6. The common counter affidavit has been filed by the learned counsel for the respondent, in which, he contented that the respondent have not evaded from his liability and only exercised the legal remedy. The applicant faces liquidation proceedings for their liability therefore they cannot seek for disclosure of respondent's assets. Hence, object these applications.

7. Heard the learned counsel appearing for the appellant and learned counsel appearing for the respondent.

8. It is not disputed by the respondent that award has been passed and amount claimed in the application is due as on the date of application. It is further to be noted that the award was originally put in challenge under Section 34 of Arbitration and Conciliation Act, 1996 which was dismissed on 07.12.2017 and O.S.A. filed against the original petition also dismissed on 13.03.2019. Now, this application has been filed for direction to secure

to put an award into enforcement.

9. The only contention of the respondent is that the details of the asset cannot be sought under Section 9 of the Arbitration and Conciliation Act, 1996. In this regard, it is useful to refer the judgment of this Court reported in 2016 (2) -L.W.342 (*M/s. Samson Maritime Limited v. M/s. Hardy Exploration and Production (India) Inc.*) in para 14, 15, 16 and 20, wherein, this Court has taken note of the fact that such direction can be granted under Section 9 of the Arbitration and Conciliation Act .

10. The learned counsel for the respondent submitted that the assets of the applicant is available in public records and the certificate copies can be obtained. It is to be noted that if really the assets available in the public record, nothing provided the respondent to disclose the same to the applicant. Merely disclosing the nature of the properties and the assets owned by the respondents, no prejudice what so ever will be caused to the respondent, they cannot defeat the rights of the decree holder suppressing the nature of the property or assets movable or immovable, particularly, the name of the shares etc in order to defeat the rights of the applicant.

11. Having regard to the judgment of this Court, this Court is of the

view that the respondent can be directed to furnish the details of assets, in fact, same enable the applicant to enforce the award as per law. However application for furnish security is not ordered, as no property details is available as such. In such view of the matter, application prayed for furnishing security at this stage does not arise at all. However, this Court directs the respondent to furnish the details of the assets before this Court on or before 14.10.2020.

12. Post the matter on 15.10.2020 for reporting compliance.

Sd/-N.S.K.J.
25.09.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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