

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

A.No.5214 of 2019

in

O.P.No.891 of 2018

Alchemist Asset Reconstruction Company Limited

A-270, First and Second Floor

Defence Colony

New Delhi - 110 024

rep. By its Resolution Manager

... Applicant

vs.

1. VME Precast Pvt. Ltd.,
364, Pilliyarkoil Street
Panner Nagar, Mugapair West
Chennai - 600 037

2. VME Properties Pvt. Ltd.,
364, Pilliyarkoil Street
Panner Nagar, Mugapair West
Chennai - 600 037

3. Finnish Fund for Industrial Cooperation Ltd.,
Uudenmaankatu 16B
00120 Helsinki, Finland
Rep. By its Authorized Signatory
Juha-Pekka Tuomipuu

... Respondents

Application filed under Order XIV Rule 8 of O.S.Rules read with Order I Rule 10 CPC to implead the Applicant as proposed 3rd respondent in O.P.No.891 of 2018.

For Applicant : Mr.K.Harishankar

For Respondents : Mr.Jayiesh Dolia
for M/s. Aiyar and Dolia for R1 and R2

Mr.P.Giridharan for R3

ORDER

Main 'Original Petition' (hereinafter 'OP' for the sake of brevity) has been filed *inter alia* under Sections 47 and 59 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity with prayers for recognition and enforcement of an award dated 16.09.2015, which is a foreign award made by Daniel Hochstrasser under the Arbitration Rules of Finland Chamber of Commerce. This 'foreign award dated 16.09.2015 made by a sole arbitrator in Finland Chamber of Commerce', shall hereinafter be referred as 'said Foreign Award' for the sake of brevity, clarity and convenience.

2. Instant OP has been filed by 'Finnish Fund for Industrial Cooperation Ltd.', which is the claimant qua said Foreign Award and this company shall hereinafter be referred to as 'FFICL' for the sake of brevity. VME Precast Pvt. Ltd., and VME Properties Pvt. Ltd., which this Court is informed are borrower

and guarantor respectively qua FFICL being companies that have been arrayed as Respondents 1 and 2 in the said Foreign Award are Respondents 1 and 2 in

main OP. These two companies i.e., 'borrower' and 'guarantor' shall hereinafter be referred to as 'VME Precast' and 'VME Properties' respectively for the sake of convenience and clarity. The applicant in the instant application on hand, namely 'Alchemist Asset Reconstruction Company Limited', shall hereinafter be referred to as 'Alchemist ARC' for the sake of brevity, convenience and clarity.

3. As already mentioned supra, main OP has been filed by FFICL arraying VME Precast and VME Properties as Respondents 1 and 2 respectively with a prayer for recognition and enforcement of said Foreign Award. Alchemist ARC has filed the instant application with a prayer to get itself impleaded as third respondent. Considering the trajectory of the hearing today, this Court is of the considered view that short facts shorn of micro details will suffice and the same is given infra under the caption precise of facts.

4. PRECISE OF FACTS:

4(i) There was a loan agreement between FFICL as lender on one side and VME Precast and VME Properties on the other side as borrower and guarantor respectively. This loan agreement is dated 06.06.2009 and this is the genesis of this matter. There is no dispute or disagreement that certain financial assistance was given by FFICL to VME Precast under this loan

agreement.

4(ii) VME Properties, which is the guarantor, has mortgaged immovable property in the form of vacant land at No.124, Vallam (A) Village, Sriperumbudur Taluk, Kanchipuram District, ad-measuring 4 acres and 5.465 cents or thereabouts (hereinafter 'said property' for the sake of convenience) to secure the aforementioned loan.

4(iii) Post aforesaid loan agreement in 2009, about three years later, an inter-creditor agreement dated 29.03.2012 came to be executed between FFICL and UCO Bank. This Court is informed without any disputation or disagreement that UCO Bank is the predecessor entity qua Alchemist ARC and it has now stepped into the shoes of UCO Bank.

4(iv) Be that as it may, suffice to say that after full contest, ultimately said Foreign Award came to be passed on 16.09.2015.

4(v) Thereafter main OP has been filed by FFICL on 12.09.2018 in this Court.

4(vi) Pending main OP, on 12.07.2019, Alchemist ARC filed instant application with a prayer to implead itself as third respondent in main OP. To be noted, this plea of Alchemist ARC is predicated on the aforementioned inter-creditor agreement dated 29.03.2012 and *pari pasu* charge being ceded by UCO Bank/ Alchemist ARC qua said property. Instant implead application on hand is opposed by FFICL. To be noted, VME Precast and VME Properties do not

oppose instant implead application.

5. Having set out the precise of facts in the nature of factual matrix in a nutshell, this Court now proceeds to capture the rival submissions.

6. RIVAL SUBMISSIONS:

A. The submissions made by learned counsel for Alchemist ARC can be broadly summarised as follows:

(i) Alchemist ARC's predecessor entity UCO Bank has ceded *pari passu* charge qua said properties and therefore Alchemist ARC has a vital interest in the instant matter notwithstanding proceedings under 'The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' ('SARFAESI' Act) in 'Debts Recovery Tribunal' ('DRT' for brevity).

(ii) No prejudice or hardship will be caused to FFICL if the prayer for impleading is acceded to.

B. Submissions made by learned counsel for FFICL, opposing the implead prayer, can be broadly summarised as follows:

(i) There is a separate Inter-creditor Agreement between FFICL and Alchemist ARC, there is a dispute resolution clause therein and therefore Alchemist ARC, which is not a party within

the meaning of Section 2(1)(h) of A and C Act, cannot get itself impleaded in main OP, which is for recognition and enforcement of said Foreign Award;

(ii) the objections, which can be taken qua a prayer for recognition and enforcement of a foreign award have been adumbrated in various sub-sections/sub-clauses of Section 48 of A and C Act and Alchemist ARC, not being a party to the award (to be noted 'party' within the meaning of A and C Act), cannot be heard to raise the objections adumbrated in Section 48 of A and C Act.

(iii) Acceding to the implead prayer can lead to an anomalous situation of a third party to a arbitration agreement, who is also a third party qua said Foreign Award, filing an appeal against any order that may ultimately be passed in main OP.

7. Having set out a broad summary of the rival submissions, this Court now proceeds to discuss and deal with the submissions in a search for an answer to the prayer in application on hand under the caption 'DISCUSSION AND DISPOSITIVE REASONING' infra.

8. DISCUSSION AND DISPOSITIVE REASONING:

(i) At the outset it is to be made clear that the task of disposal of instant application on hand has become fairly simple owing to the fair stand taken by learned counsel for Alchemist ARC on instructions. Learned counsel for Alchemist ARC, on instructions, submitted that the prayer in instant application is now abridged / limited to making a request to be heard as an 'intervener' and instead of an 'impleaded party'.

(ii) Therefore, the application on hand is now one to test whether Alchemist ARC can be heard as an intervener.

(iii) It is therefore important to notice the essential distinction between an impleaded party and an intervener, as this would put to rest most the submissions that have been raised on behalf of FFICL. An intervener cannot claim any relief in the proceedings in which intervener is being heard. In other words, an intervener will merely have audience, but will not have any right to claim any relief or take out any application in the proceedings in which the intervener is being heard. Likewise, an intervener will not be able to prefer an appeal (be it an intra-court appeal or an appeal to the next higher Court) unlike an impleaded party.

(iv) This essential distinction between an impleaded party and an intervener or in other words, this limited right of an

intervener has been laid down by Hon'ble Supreme Court in ***Saraswati Industrial Syndicate Ltd., Vs. Commissioner of Income Tax*** reported in **(1999) 3 SCC 141**. The most instructive paragraph, where this principle has been articulated, is Paragraph 12 and the same reads as follows:

'12. Learned counsel for the intervener submits that he is entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side. Having heard the arguments, we have decided in the assessee's favour. The interveners may take advantage of that order.'

(v) ***Saraswati Industrial Syndicate*** principle has been followed by a Division Bench of Madhya Pradesh High Court in ***Jeevam Singh Chhatwal Vs. Bank of Baroda*** case (order dated 17.12.2014 made in M.C.C.No.1375 of 2006). This Court deems it appropriate to extract Paragraphs 3 to 5 in ***Jeevam Singh Chhatwal*** case which read as follows:

'3. Shri V. S. Shroti, senior counsel for respondent no.1 objects with regards to maintainability of this review application mainly on two counts. The first ground is that there is no error apparent on the face of the record, the ground raised pertains to interpretation of certain judgments and therefore, review application is not maintainable on these grounds. The second ground is that at the instance of

intervenor the review is not maintainable, it is said that that even if in the appeal intervenor had any grievance he could not claim any relief for himself as a intervenor, he may have a right to intervene but as a intervenor has no right to seek any relief to himself in a proceeding, though, the application is not maintainable. Reliance is placed on a judgment of Supreme Court in the case of *Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax Haryana, Rohtak* 1999(3)SCC, 141 in support of this contention.

4. Having heard learned counsel for parties and on consideration of the second ground canvassed by Shri V.S. Shrotri, senior counsel and taking note of the law laid down by the Supreme Court in the case of *Saraswati Industrial Syndicate Ltd. (supra)*, this M.C.C. No. 1375/2006. court is of the view that if the intervenor had any grievance with regard to his right to the property in the appeal no relief could be claimed by him. He is only entitled to support or oppose the claim of the parties to the appeal. No relief to an intervenor can be granted in that appeal, that being the legal position, there is much force in the objection raised by Shri Shrotri, Senior counsel. In the appeal that was pending i.e. M.A. No. 1153/1999, the applicant as a intervenor could not claim any relief for himself based on the right that accrued to him by virtue of the auction conducted in his favour. He could not stake his right to the property by way of intervention, he could only either support or oppose the claim of one of the party. In the capacity of a intervenor he cannot challenge the auction process by contending that he has a right to the property and claim a separate relief for him, keeping in view the law laid down in the case of *Saraswati Industrial Syndicate Ltd. (supra)*, we are of the

considered view that at the instance of intervenor no relief could be granted in the appeal proceedings initiated.

5. The applicant herein admittedly was an intervenor in M.A. No. 1153/1999 and they were claiming their right to the property by virtue of the M.C.C. No. 1375/2006. Auction held in their favour at the instance of Sales Tax Department as already indicated hereinabove. An intervenor cannot claim any relief or decree for himself in the capacity of an intervenor in the appeal under Order 21 Rule 58 of C.P.C., that being the legal position. It is clear that in M.A. No. 1153/1999, the applicant as an intervenor could not claim any relief for himself, accordingly, even if this application is allowed and the appeal proceedings under Order 21 Rule 58 are restored the intervenor cannot get any benefit as he cannot claim any relief for himself. That being so no useful purpose would be served in considering the question of review at the instance of the applicant an intervenor for the reasons as are indicated hereinabove.'

(vi). Before proceeding further, it is also to be noted that subject to the outcome of main OP if and when FFICL resorts to launching an execution petition qua the said Foreign Award under Order XXI Rule 66 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) read in the light of Form 29 of Appendix E, adequately protects the interest of Alchemist ARC. This is another aspect that this Court has reminded itself in considering/examining the abridged request of Alchemist ARC to be heard as an intervener i.e., not an impleaded party.

(vii) This takes us to the rival submissions with regard to the first point pertaining to a separate inter-creditor agreement. There is no dispute or disagreement that there is a separate inter-creditor agreement dated 29.03.2012 between FFICL and Alchemist ARC's predecessor UCO Bank and dispute resolution clause in the same, namely Clause 7.41, which reads as follows:

'7.41. The parties hereby agree that the courts and tribunals at Chennai in India, shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings (together referred to as "Proceedings" arising out of or in connection with this Agreement may be brought in such Courts or the tribunals and the Parties irrevocably submit to the jurisdiction of those Courts or tribunals. '

(viii) Therefore, if Alchemist ARC is merely heard as intervener in the instant case, the rights, if any of Alchemist ARC qua the said Foreign Awwad, which is subject matter of case on hand, will stand protected.

(ix) As the prayer of Alchemist ARC is now only to be heard as an intervener and as the very limited rights of an intervener has already been set out supra, the other apprehensions raised by FFICL regarding raising objections to recognition and enforcement qua the

said Foreign Award (Section 48 of A and C Act) and a third party filing an appeal pale into insignificance. To be noted, the clear and well marked out distinction between an entity impleaded as a party and a party being merely heard as intervener is not disputed in instant case by both sides and therefore, that has made the task of disposal of this application fairly simple as alluded to supra. This puts to rest all the apprehensions and anxiety expressed by FFICL qua the implead prayer.

(x). This takes us to one another aspect of the matter highlighted by learned counsel FFICL. Learned counsel pointed out that Alchemist ARC has filed a rejoinder affidavit raising several points on merits of the matter qua said Foreign Award. Learned counsel for Alchemist ARC very fairly submitted that rejoinder can stand eschewed. This is recorded and rejoinder affidavit dated 17.09.2019 stands eschewed.

(xi). However, with regard to the submissions which Alchemist ARC will be permitted to make is a matter which will be regulated by this Court. In other words, the scope of audience given to Alchemist ARC will be at the discretion of this Court depending on the trajectory of the hearing and the subject matter

when the main OP is taken up. It is made clear that the rejoinder affidavit of Alchemist ARC being eschewed will not come in the way of exercise of such discretion by this Court while hearing the main OP.

(xii). In other words, it is made clear that instant application is ordered by permitting Alchemist ARC to be heard as an intervener alone and acceding to the prayer of Alchemist ARC for being impleaded as third respondent in main OP does not arise as Alchemist ARC has abridged its prayer as mentioned supra.

9. For the purposes of clarity and specificity, the terms of Alchemist ARC being heard as an intervener are set out and the same are as follows:

a) Alchemist ARC will only have audience in main OP i.e., O.P.No.891 of 2018.

b) Alchemist ARC cannot take out any interlocutory application or make any other prayer in main OP.

c) Subject to the outcome of main OP, Alchemist ARC will have no right to prefer an appeal, be it an intra-court appeal or any other form of challenge.

d) The scope and extent of submissions which the

intervener will be permitted to make will be at the discretion of this Court depending on the trajectory of the proceedings in the main OP.

e) Though obvious, it is made clear that this order is for the limited purpose of hearing out main OP and therefore, any execution or other mode of recovery proceedings launched by Alchemist ARC will proceed uninfluenced by observations made in the instant order and equally, any execution proceedings, if any launched by FFICL.

f) It is made clear that this Court has not expressed any view or opinion on the submissions regarding 'party' within the meaning of A & C Act in such proceedings in the light of applicant abridging the prayer and therefore, this order will not serve as a precedent for that aspect of the matter.

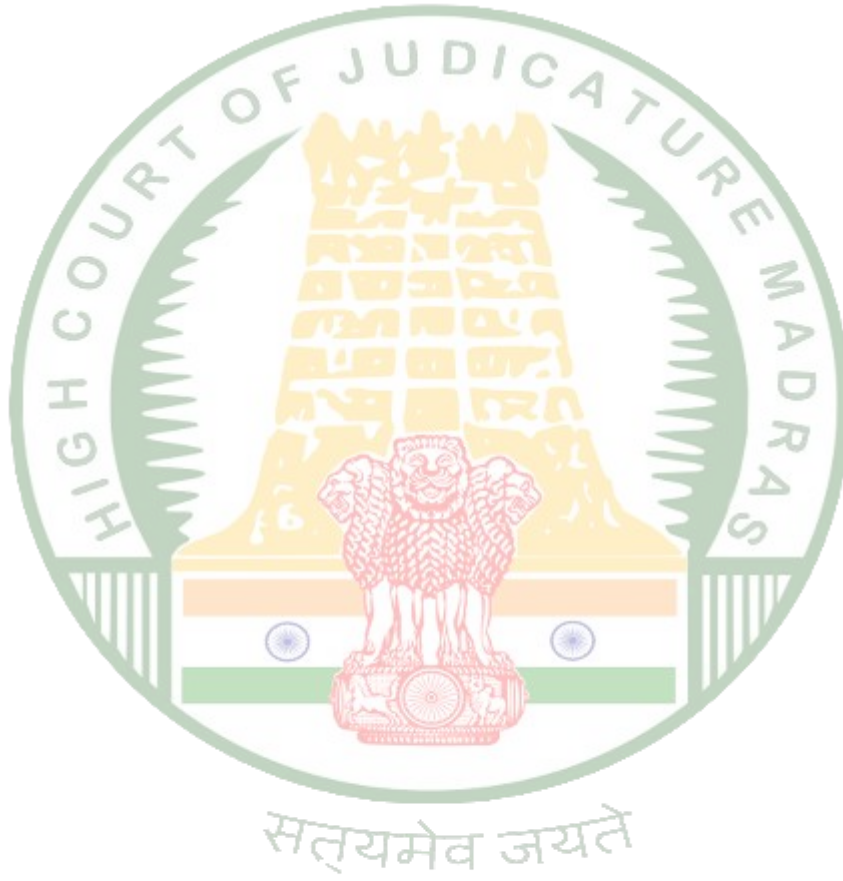
10. Instant application ordered on above terms.

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Speaking order: Yes/No
Index: yes/no

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M.SUNDAR.J.,
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