

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.31810 OF 2018

1. M/s. Velohar Infra Private Limited,
No.1F, 7th Cross street,
Woodcreek County,
Nandambakkam, Chennai - 600016
Represented by its Managing Director
Ms.Vijayalakshmi Subburaj.
2. M.Murugesan, The Liquidator,
M/s. Velohar Infra Private Limited,
No.1F, 7th Cross street,
Nandambakkam, Chennai - 600016.
(Suo motu impleaded as per order dated
02.12.2019 made in W.P.No.31810 of 2018)

... Petitioners

Vs

The Branch Manager,
Bank of India, Zonal Office, Star House,
Errabalu Chetty Street,
Chennai - 600 001.

... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus or any other appropriate Writ, order or direction of like nature directing the Respondent to consider the representation letter dated 8/2/2018 as per the circular dated 7/2/2018 bearing DBR.No.BP.BC.100/21.04.048/2017-18 issued by the Reserve Bank of India.

For Petitioner No.1 : Mr. Anil Relwani

For Petitioner No.2 : Mr.E.Venkatesh Babu

For Respondent : Mr.S.Sathiyarayanan

ORDER

The Writ petition has been filed originally by writ petitioner M/s.Velohar Infra Private Limited represented by the Managing Director Ms.Vijayalakshmi Subburaj in the nature of Mandamus directing the respondent, namely, the Branch Manager, Bank of India, Zonal Office, Star House, Errabalu Chetty Street, Chennai - 600 001 to consider the representation letter dated 8/2/2018 in accordance with the circular dated 07/2/2018 issued by the Reserve Bank of India.

2. In the affidavit filed in support of the writ petition, it has been stated that Ms.Vijayalakshmi Subburaj is the Managing Director and that the petitioner company is engaged in the business of engineering, procurement and construction (EPC) of all types of building and factory structures. It is stated that they had account with Bank of India, the respondent herein. It is stated that owing to various factors, the petitioner company could not maintain financial discipline and the respondent bank classified the account of the petitioner company as Non-Performing Account on 31.12.2017. The petitioner states that they came across a circular dated 07.02.2018, bearing DBR.No.BP.BC.100/21.04.048/2017-18, issued by the Reserve Bank of India. According to the said circular, it had been stated that the accounts as on 31.08.2017, if they are regular, should not be declared as Non-Performing Account. Taking refuge under the said circular, the writ petition has been filed. The writ petitioner in her affidavit stated that the respondent bank had shown her account as 'standard' as on 31.08.2017. It is also stated that the borrowal did not exceed 4 crores. It is also stated that the company is registered under the GST regime as on 31.01.2018. It is also stated that without considering the representation letter dated 08.02.2018, the respondent bank has filed a claim petition in C.P.No.1100 of 2018 before the National Company Law Tribunal (NCLT), Chennai. It is also stated that the petitioner has no other efficacious remedy and hence the writ petition has been filed.

3. Notice was issued to the respondent and respondent entered appearance. It was thereafter informed that the NCLT had actually passed orders regarding the petitioner company and

also appointed Mr.M.Murugesan as Interim Resolution Professional. This fact has been suppressed in the writ petition. Subsequently, as on date, he is the liquidator of the company. Once this fact had come to the knowledge of this Court, this Court had suo motu impleaded the liquidator M.Murugesan as the 2nd petitioner on 02.12.2019 to represent the petitioner company.

4. Learned counsel for the petitioner stated that the petitioner should get the benefit as per the circular dated 07.02.2018. With reference to the contention that the writ petition is not maintainable, the writ petitioner relied upon a judgment reported in 2019 (6) CTC 652 (Indus Cityscapes Constructions Pvt. Ltd., Vs. Karismaa Foundations Pvt. Ltd.,) wherein, in an Original Side Appeal filed by the appellant therein which was represented by its Director and when a preliminary objection was raised on maintainability, learned Division Bench held that under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), what is prohibited is that, proceedings against a corporate debtor in any Court of law alone is prohibited but, it does not prohibit institution of proceedings by a corporate debtor against his debtors. As seen, the Original Side Appeal was a continuation of the decree in C.S.No.632 of 2018. In the said suit, the plaintiff has filed an application for judgment, and a decree on admission, was partly allowed by the learned Single Judge. As against the judgment, the defendant therein had filed an Original Side Appeal.

5. In the present case, the facts are totally different. This is a writ petition instituted by a director, when admittedly, on the date of filing of the writ petition an Interim Resolution Professional had been appointed by the NCLT for executing Corporate Insolvency Resolution Process. This fact was suppressed. It was only stated in the affidavit that the respondent bank had filed a claim petition in C.P.No.1100 of 2018 before the National Company Law Tribunal (NCLT), Chennai. No other fact has been disclosed in the writ petition. Therefore, prima facie I hold that the Managing Director has suppressed a vital information from this Court while filing the writ petition and on that ground, the writ petition, has to be dismissed as not maintainable. Even otherwise in his affidavit, the liquidator has clearly stated that Ms.Vijayalakshmi Subburaj had not co-operated, not handed over the documents nor the control over the company. Learned counsel for the petitioner states that the account can never be regularised in view of the fact that there are no funds. A statement has been stated by the learned counsel for the petitioner that a contract has been offered by the Thoothukudi Smart City Limited. Reference was

drawn to a xerox of demand draft which has also been filed along with the typed set of papers. Learned counsel for liquidator however states that the liquidator had made enquiries with the Thoothukudi Smart City Limited Project and with reference to the said project. There was complete denial by the officials of the Thoothukudi Smart City Limited Project who had disclaimed handing over of the contract to the petitioner company. Learned counsel for liquidator also stated that he had also requested investigation by the police authorities in this regard.

6. Learned counsel appearing for respondent bank drew the attention of this Court to the order of the National Company Law Appellate Tribunal, New Delhi, which has also been suppressed in the writ petition. Even otherwise one further fact is that the NCLT, Chennai appears to have passed an order directing handing over of documents of the property at Sun Rise Avenue, Sholinganallur Village, Sholinganallur Taluk, Kanchipuram District, bearing Old Survey No.1/1G and New Survey No.1G/294/A1/B1 which had already been mortgaged to some third party and there was an undertaking given by the present writ petitioner Ms.Vijayalakshmi Subburaj that the documents of the said property would be handed over to the Interim Resolution Professional within four days from the date of the order which was 03.05.2019.

7. My attention was also drawn to another order in MA/903/2019, dated 27.08.2019 wherein a third party had filed an application stating that the said property was actually theirs and the Managing Director had shown a property which did not belong either to her or to the company. The Interim Resolution Professional on the basis of such representation had taken over the possession of the property by the order in MA/903/2019 dated 27.08.2019. The NCLT passed an order stating that the liquidator realized that he was misled by the Director in identifying the property as a property of the writ petitioner and the liquidator had already unlocked the property. This property was thereafter handed over to the claimant. All these facts show that Ms.Vijayalakshmi Subburaj had suppressed all the material facts to this Court and had also misled the liquidator with respect to the dealings of the company. Learned counsel for the petitioner repeatedly insisted since there was an on going process of project and steps must be taken to revive the company. The fact is that the on going process of project is under a cloud of suspicion since the Thoothukudi Smart City Limited has disclaimed offering of any project to the petitioner herein. Even otherwise, the petitioner should have informed the Interim Resolution Professional about the institution and filing of the writ petition. The writ petitioner has not only suppressed the facts before the Court but, deliberately screened material facts from the knowledge of the Interim Resolution Professional. Any

Court can grant reliefs only to a person who comes to the Court with clean hands. Somebody who comes with dishonest intentions can never be granted any relief. Therefore, I am not inclined to grant any relief to the writ petitioner and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sli

To

+1cc to Mr.Anil Relwani, Advocate, S.R.No.12993

+1cc to Mr.S.Sathiyarayanan, Advocate, S.R.No.12284

W.P.No.31810 of 2018

AD(CO)
CS/19/02/2020



WEB COPY