BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **27.08.2020**
CORAM
THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD)No.10372 of 2020
and
W.M.P.(MD)Nos.9206 & 9207 of 2020
(Through Video conferencing)

Pegasus Assets Reconstruction Pvt. Ltd.
Acting in its Capacity as Trustee of
Pegasus Group Twenty Trust I
Corporate Office at:
No.55-56, 5th Floor, Free Press House
Nariman Point,Mumbai - 400 021.
Having Branch Office at:
No.3F, 3rd Floor, Kasthuri Apartments
JP Avenue, 6th Street
Dr.Radhakrishnan Road
Mylapore, Chennai - 600 004. ...Petitioner

-Vs-

1.The Authorized Officer
Omkara Assets Reconstruction Pvt. Ltd.
Corporation Office:
C/515, Kanakiazillian
Junction of LBS Road and CST Road
BKC Annexe, Near Equinox,
Kurla (West), Mumbari - 400 070.
and Registered Office at:
Door No.9, M.P.Nagar, 1st Street
Kongu Nagar Extn.
Tirupur - 641 607.

2.G.V.Ravikumar
The Liquidator
Tirupur Suriya Textiles Pvt. Ltd
Door No.34-36-38, New Hospital Road
Gopichettipalayam 638 452.

3.The Presiding Officer
The Hon'ble Debt Recovery Tribunal
Madurai. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein, pertaining to the Order dated 05.08.2020, made in I.A.No.828 of 2020 in S.A.No.196/2020, and quash the same and consequently direct the 3rd respondent herein to hear and dispose of I.A.No.828 of 2020 in S.A.No.196/2020 on merits and also grant appropriate interim protection until such time as the 3rd respondent hears and decides the said I.A.No.828 of 2020 in S.A.No.196/2020,

For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.Adarsh Ramanujam for R1 & R2
R3-Tribunal

ORDER

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

The Senior Manager of the petitioner - Pegasus Assets Reconstruction Pvt. Ltd., has sworn to the affidavit filed in support of the writ petition stating, among other things, that the Company in Liquidation viz., M/s.Tirupur Suriya Textiles Pvt. Ltd., had borrowed moneys from South Indian Bank and State Bank of India and both Banks had a pari-passu charge over the immovable assets of the said Company, which is under liquidation.

2. The South Indian Bank assigned the secured assets held by it, in favour of the petitioner by way of a Registered Deed of Assignment, dated 30.06.2016, in and by which, the petitioner became entitled to pari-passu share in the secured assets of the said Company in Liquidation and similarly, the State Bank of India, through a Deed of Assignment, assigned the secured assets held by it, in favour of the first respondent. It is further averred that the Company in Liquidation filed C.P.No.467 of 2017 before the National Company Law Board, Chennai, initiating insolvency proceeding under Section 10 of the 'The Insolvency and Bankruptcy Code, 2016' (in short 'IBC') and it was admitted on 24.06.2017 and the claim of the petitioner to the tune of Rs.38.74 Crores had been admitted and the claim of the State Bank of India was admitted for a sum of Rs.127.13 Crores.

3. The Company in Liquidation challenging the order of admission dated 14.06.2017, passed by the Adjudicating Authority filing an appeal in C.A.No.48 of 2018 before the NCLAT and the said appeal was dismissed on 08.08.2019.

4. In the interregnum, the Adjudicating Authority vide order dated 11.01.2018, passed some direction to initiate liquidation proceedings against the Company in Liquidation and appointed the second respondent as Liquidator of the said Company and during the process of liquidation, the State Bank of India, being pari-passu charge holder, intimated to the second respondent, and filed an application before the Adjudicating Authoirty that it would exercise

its rights under Section 52(1)(b) of the IBC and realise it security by standing outside the liquidation proceedings through the enforcement by invoking the provisions of the SARFAESI Act, 2002. Accordingly, the second respondent, on 18.01.2020 had handed over the physical possession of the secured assets to the State Bank of India. On 30.03.2020, the State Bank of India had assigned its security interest along with secured assets in favour of the first respondent company and the first respondent company had proceeded with the auction under SARFAESI Act, which according to the petitioner, is even before the registration of the Assignment Deed.

5. The first respondent has issued a sale notice dated 16.07.2020, for sale of the secured assets and the petitioner, vide legal notice dated 17.07.2020, raised objections on the unilateral action on the part of the first respondent for sale of immovable as well as the movable properties of the Company in Liquidation without any consultation and also not deliberately sharing the valuation report and the basis of the fixing the upset price at Rs.33 Crores and further pointed out that in respect of the valuation done during the month of Janauary 2020, it was valued at Rs.68,03,30,000/- and Forced Sale value was about Rs.49,00,23,000/-. The petitioner also required the first respondent to conduct the sale process in a transparent and fair manner for the purpose of realising maximum value of the assets sought to be sold.

6. However, the first respondent proceeded with the further proceedings, the petitioner has invoked the jurisdiction of DRT by filing an application in S.A.No.196 of 2020 under Section 17 of the SARFAESI Act. The petitioner would further aver that it was also advised to file a petition before the NCLT for staying the sale proceedings of the first respondent on various grounds and however, the petitioner also took a decision to press for the relief before the DRT under Section 17 of the SARFAESI Act.

7. The petitioner would further aver that the first respondent in the second sale notice dated 17.07.2020, has decreased the reserve price to the extent of more than 50% with a lowest upset price of Rs.33 Crores.

8. When S.A.No.196 of 2020 came up for hearing, the Tribunal having noted the fact that the petitioner had simultaneously invoked the jurisdiction of NCLT and the said fact has not been disclosed in the said application and further found that in the absence of allegations of fraud as to the fixation of the reserve price, no such complaints can be made and accordingly dismissed the I.A.No.828 of 2020 in S.A.196 of 2020. vide impugned order dated 05.08.2020 and making a challenge to the same, the present Writ Petition is filed.

9. Mr.Srinath Sridevan, the learned counsel appearing for the petitioner would submit that due to some advise, the petitioner has invoked the jurisdiction of NCLT and though the said fact has not

been disclosed while filing S.A.No.196 of 2020, it was only an inadvertent mistake and further points out that the core issue is as to the reduction of sale price and also points out that in respect of the valuation done during January 2020, it was Rs.68,03,30,000/- and the Forced Sale value was about Rs.49,00,23,000/- and all of a sudden, it got reduced to nearly half of it i.e., Rs.33 Crores and though the petitioner has filed an appeal before the DRAT at Chennai challenging the impugned order dated 05.08.2020 made in I.A.No.828 of 2020 in S.A.196 of 2020, in the light of the present pandemic COVID-19 virus, there is some difficulty in moving the said application as well as the application for interim orders and therefore, prays for appropriate direction to direct the first respondent to maintain status quo till the appeal is numbered and the interlocutory applications are taken up for hearing.

10. *Per contra*, Mr.Adarsh Ramanujam, learned counsel, who accepts notice on behalf of the respondents 1 and 2 would submit that the Tribunal in the impugned order has taken note of the fact that the writ petitioner is guilty of suppression of material facts for invoking the jurisdiction of NCLT and also further found that in the absence of allegation of fraud, as to the sale of the property for Rs.33 Crores, it is not open to the petitioner to contend contra or otherwise. It is also brought to the knowledge of this Court by the learned counsel appearing for the respondents 1 and 2 that the auction sale was conducted on 03.08.2020 and the secured assets were sold for Rs.35 Crores and the sale certificate has also been issued in favour of the auction purchaser and the physical possession of the assets has also been handed over to the auction purchaser on 24.08.2020.

11. It is the further submission of the learned counsel appearing for the 1st respondent that the terms of the pari-passu agreement would be strictly adhered to and complied with and as against the allegations made in the writ petition as to the reduction of the sale price, it is the submission of the learned counsel appearing for the petitioner that in fact it is put to some hardship and difficulty for the reasons that the dues payable to them would be more than Rs.185 Crores and dues of the petitioner is about 1/3rd of the same and such statements/allegations made in this regard totally lack merit and substance and prays for dismissal of this writ petition.

12. This Court has carefully considered the rival submissions and also perused the materials placed on record.

13. Be that as it may, the petitioner has invoked the jurisdiction of DRAT at Chennai by filing an appeal on 17.08.2020, challenging the order dated 05.08.2020 made in I.A.No.828 of 2020 in S.A.No.196 of 2020 and prays for appropriate direction to direct the Registry of DRAT to entertain the said appeal and take up the

petition for stay at the first instance and in the meanwhile, prays for maintenance of *status quo* as exists. However, the plea made by the learned counsel appearing for the petitioner for passing of order of *status quo* was strongly opposed by the learned counsel appearing for the first respondent in the light of the fact that the right of the third party viz., the auction purchaser had intervened and the physical possession of the assets had also been handed overe to the auction purchaser and he is not before this Court also.

14. This Court, in the light of the above facts and circumstances and without going into the merits of the case projected by either of the contesting parties, requests the DRAT, Chennai to entertain the appeal filed by the petitioner on 17.08.2020 against the order dated 05.08.1010 made in I.A.No.828 of 2020 in S.A.No.196 of 2020, if the papers are otherwise in order and take up the prayer for stay at the first instance and after putting the concerned respondents/parties on notice, shall accord priority and dispose of the said prayer as expeditiously as possible and not later than two weeks from the date of receipt of a copy of this order. Though it is vehement and forcible submission of the learned counsel appearing for the petitioner that in the meanwhile, the first respondent is likely to part with the money in favour of the second respondent and prays for maintenance of status quo, in the light of Section 52(8) of IBC, this Court is not inclined to consider the said plea. However, it is open to the petitioner to approach DRAT and get necessary relief. It is made clear that any payment in this regard by the first respondent, may, subject to the outcome of the result of the appeal filed by the petitioner to be decided by DRAT at Chennai.

This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

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Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer
The Hon'ble Debt Recovery Tribunal
Madurai.

Order made in
W.P.(MD)No.10372 of 2020
and
W.M.P.(MD)Nos.9206 & 9207 of 2020
27.08.2020

VB (08.09.2020) 6P 2C