Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1332 OF 2021

IN

INTERIM APPLICATION NO. 1153 OF 2021

IN

SUIT NO. 96 OF 2021

Ridge Innovations Pvt Ltd …Applicant/Plaintiff

Versus

JCR & Company & Anr …Defendants

Mr Rafique Dada, Senior Advocate, with Dr Birendra Saraf, Senior Advocate, *Mukul Taly, Azis Mohd & Sehyr Taly, i/b S Mohomedbhai & Co, for the Applicant/Plaintiff.*

Ms Lopa Munim, *with JB Navlani, i/n Kusumakar Kaushik, for Defendant No.1.*

Mr Nitin G Thakker, Senior Advocate, *with Charles De Souza, Vinod Kothari, Sonal Sanap & Priyansh Jain, i/b M/s Apex Law Partners, for Defendant No.2*

ARUN RAMCHNDRA SANKPAL

Digitally signed by ARUN RAMCHNDRA SANKPAL Date: 2021.09.16 10:43:09 +0530

CORAM: G.S. PATEL, J
DATED: 15th September 2021

PC:-

1. The present Interim Application seeks the following relief.

"(a) That pending the hearing and final disposal of the Suit and the Application under Order 12 Rule 6 of the Code of Civil Procedure, this Hon'ble Court be pleased to restrain the Defendants or any of their partners, substitutes or delegates by a temporary order and injunction from in any manner directly or indirectly taking any steps or action purporting to hold a sham hearing to purportedly classify the Applicant's account as 'fraud' in pursuance of the SCN dated 29th January 2021 issued by the 2nd Defendant and report as such to the Reserve Bank of India.

2. This is the second Interim Application in this Suit. On the first Interim Application, AK Menon J made a detailed reasoned order on 11th March 2021. A copy of that order is at Exhibit "A" from pages 35 to 77. The present Plaintiff filed an appeal.

3. For the purposes of the present order, shortly stated, AK Menon J held that a Forensic Audit Report prepared by the 1st Defendant could not and ought not to be permitted to be relied on by the 2nd Defendant in its show-cause notice issued to the Plaintiff. That show-cause notice is at page 414. It is dated 29th January 2021. Paragraph 9 of the show-cause notice of 29th January 2021 (at pages 416 and 417) reads thus:

> "9. IFCL Limited vide letter dated 18.11.2020 appointed a Forensic Auditor, JCR & Co., Chartered Accounts, who after auditing submitted a report dated 21.12.2020 stating their opinion at page no.24 of the report that following are fulfilled.
>
> a) Misappropriation and Criminal Breach of Trust and
>
> (b) Manipulation of books of account or through fictitious accounts.
>
> Therefore it is concluded that Company has perpetrated a fraud against IFCI Limited.

> A copy of the said Forensic Report by JCR & Co. is enclosed herewith.
>
> The above clearly shows the malafide intent of you addressees to misappropriate the amount so as to defraud the creditor and causing wrongful loss to IFCI Ltd. as the liability cannot be abated and extinguished until paid."

4. After an extended hearing in Court, both sides have agreed on a workable order that is without prejudice to rival rights and contentions, with certain additional directions as more particularly set out later in this order. At my instance, and on taking instructions, Mr Thakker, learned Senior Advocate for the 2nd Defendant has agreed to issue a substituted show-cause notice that is identical in every respect to the 29th January 2021 show-cause notice except that the substituted notice now physically omits paragraph 9 of the earlier notice. This, therefore, is in keeping and in line with Mr Justice Menon's order. It obviates any possibility of a later misunderstanding that might have occurred had paragraph 9 been retained.

5. This takes care of one part of the controversy, as regards the Forensic Audit Report.

6. There are two other areas canvassed by Mr Dada. First, there is a demand for documents. Mr Taly instructing Mr Dada has since the date of the last hearing furnished a list of the documents that the Plaintiff seeks. It seems to me abundantly clear that the 2nd Defendant is bound to give the Plaintiff inspection and copies of the documents on which the 2nd Defendant relies in the show-cause notice or on which it proposes to rely at the hearing following the show-cause notice. But Mr Dada's submission that a large number of other documents, whether or not in the 2nd Defendant's possession, and whether or not relied on by the 2nd Defendant, and whether or not mentioned in the show-cause notice, must also be furnished seems to me to be one that I cannot readily accept.

7. Mr Dada then submits that if this be so the fullness of the Plaintiff's contentions and submissions must be left open, including without limitation the following:

- **(a)** that if the 2nd Defendant is unable to produce documents that the Plaintiff submits are essential and necessary, then an adverse inference can be invited against the 2nd Defendant;
- **(b)** that the Plaintiff will be entitled to contend that the 2nd Defendant does not in fact have the right either to demand repayment of the Zero Coupon Bonds in question, or to issue the show-cause notice or to classify the Plaintiff's account as a fraud account whether for misappropriation or for any other reason;
- **(c)** that having regard to the long and complex litigation history, the Plaintiff's contention that there is a demonstrable bias on the part of the committee must be kept open.

8. This is by no means an exhaustive list of the possible defences by the Plaintiff in the hearing before the committee. Mr Dada's statement is reasonable. Keeping open these contentions balances the rights and equities on both sides. Merely keeping the defences open causes no prejudice to the 2nd Defendant. Thus, Mr Dada's submission is accepted. All defences are left open and are available.

9. Equally, all contentions of the 2nd Defendant are open, including its case that the Plaintiff has deliberately refused to honour its commercial and financial obligations in relation to the Zero Coupon Bonds in question, as also in regard to other borrowings by the Plaintiff or its predecessor-in-title.

10. Mr Thakker submits that the Plaintiffs have filed a Reply to the previous show-cause of 29th January 2021. That may be so, but it does not mean that a supplemental Reply should be prohibited. The revised show-cause notice of 15th September 2021, a copy of which is handed over to Mr Taly and a copy of which is appended to this order also gives time of 21 days. I do not think this is an unreasonably long period of time. Within that time, the Plaintiff must file either a supplemental or consolidated Reply as the Plaintiff deems appropriate.

11. Since a copy of the show-cause notice is given to Mr Taly, he on behalf of the Plaintiffs waives formal service of the show-cause notice.

12. I am making no observations as to whether an Advocate is permitted to represent the Plaintiff at the hearing of this show-cause notice, nor am I issuing any directions as to whether the hearing should be in physical form in Delhi or online. The parties will undoubtedly have to work that out.

13. This is so far as the agreement between the parties is concerned.

14. Mr Dada's next submission is that if the result of the show-cause notice and hearing is against the Plaintiff, and which he believes is inevitable, there should be a reasonable stay to permit to allow the Plaintiff to move this Court for appropriate relief. Mr Thakker has no instructions to agree to a direction in this regard. It is clear that the show-cause notice has been issued by the 2nd Defendant in compliance with an RBI notification and directions governing non banking financial companies and classification of certain accounts as "fraud" accounts.

15. The result of such an inquiry and process is that the 2nd Defendant would have to report the result and the resultant findings to the Reserve Bank of India. Mr Dada is correct, I believe, in saying that any such reporting would immediately trigger several adverse events and consequences including on other enterprises that the Plaintiff's directors may have since set up. Having regard to how long this litigation has been going on in one forum or the other, I do not think it is unreasonable to direct the 2nd Defendant to not give immediate effect to any order adverse to the Plaintiff for a period of three weeks after that order is signed, issued and made available to the Plaintiffs or their Advocates. I clarify that should the Plaintiff not obtain an appropriate order of a Court or Tribunal of competent jurisdiction within that period of three weeks, the 2nd Defendant will of course not only be at liberty, but will be obliged to complete compliance and reporting as required by the relevant applicable RBI directions and circulars.

16. Mr Dada states with these clarifications and directions, the Plaintiffs will appear on the appointed date before the committee constituted by the 2nd Defendant. The statement is noted and accepted.

17. This is sufficient to dispose of the present Interim Application. There will be no order as to costs.

18. Mr Dada states that the Plaintiffs will be withdrawing the Appeal that they have filed against the order of Justice AK Menon of 11th March 2021. The statement is noted.

19. For the reasons stated earlier I have not examined the rival contentions on merits.

20. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)

IFCI LIMITED
आई एफ सी आई लिमिटेड
भारत सरकार का उपक्रम
Govt. of India (GOI)

BY REGD. POST/COURIER
"WITHOUT PREJUDICE"

No.IFCI/RIPL/MURO/2021 09 /501   Date: 15.09.2021

Ridge Innovations Private Limited, (Formerly DSL Enterprises Pvt. Ltd.) Successor in interest of Datar Switchgear Limited having its office at F-8, D Road, MIDC, Ambad, Nashik, Maharashtra - 422 010	Shri Rajan Dalar, (Director & Guarantor), Ridge Innovations Pvt. Ltd. F – 8, D Road, MIDC, Ambad, Nashik, Maharashtra - 422010

Dear Sir/Madam,

Re: Ridge Innovations Private Limited, (Formerly DSL Enterprises Pvt. Ltd.) Successor in interest of Datar Switchgear Limited – Misappropriation and Criminal Breach of Trust in respect of the arbitration award amount received by you in terms of the scheme sanctioned by the BIFR.

1. IFCI Limited (hereinafter referred to as "IFCI" or the "Lender") had sanctioned financial assistance to M/s Datar Switchgear Ltd. by way of Rupee Term Loan and Optionally Fully Convertible Debentures aggregating to Rs.45.50 Crore.

2. IFCI had acquired the debt owned by M/s Datar Switchgear Ltd. from Industrial Investment Bank of India Ltd. (IIBI) vide deed of assignment dated 25.06.2009 and consequently as rightful assignee of the debt (Rupee Loan of Rs.1500 Lakh) of M/s Datar Switchgear Ltd.. hence is entitled to all the amount payable towards the loan outstanding dues of M/s Datar Switchgear Ltd.

3. M/s Datar Switchgear Ltd. (DSL) had been declared as a Sick Company in 2002 under the provisions of Sick Industrial Companies Act, 1985. The BIFR vide its order dated 05.12.2006 had sanctioned a scheme. The scheme interalia envisaged that the:

a) *sale of the electrical business of Datar Switchgear Ltd. to L & T and the distribution of the sale proceeds to the lenders of DSL to meet the upfront payment,*
b) *conversion of the part of the outstanding dues into restructured term loan and*
c) *partly into Zero Coupon Bond to be redeemed out of the proceeds of the award money.*

4. The terms of the clause 9.1.1 of the scheme are reproduced as under:

"a) To accept a Restructured Term Loan of Rs.967.04 lakh and Zero Coupon Bonds of Rs.2957.5 lakh in the Resulting Company as particularized in schedule XIII and an upfront payment of Rs.625.46 lakh as stipulated in clause 3.5.9 in full and final settlement of the dues of the De-merged company.

b) To waive entire balance dues over and above Rs.4550.0 lakh, including interest, penalties, liquidated damages and other charges without recourse as against the Demerged Company and/or the Resulting Company and/or the Transferee Company and/or the Guarantors of the Demerged Company and/or the Resulting Company."

c) To accept the terms of the repayment of the Restructured Term Loan as set out in clause 3.5 and the terms of the Zero Coupon Bond as set out in Schedule VB.

d) To vacate charge over all assets to be transferred to the Transferee Company.

e) To release and discharge any personal guarantee/s and/or encumbrance/s on the property of the promoters and/or Guarantors and no new personal guarantee/s or encumbrances on their property shall be taken from the promoters in the Resulting Company during the rehabilitation period save and except a personal guarantee of Mr. Ranjan Dalal towards the amount of the Restructured Term Loan which will automatically stand reduced prorata on cumulative payment against the said Term Loan.

5. As per the above clause 9.1.1 (c), clause 3.5.5 and schedule VB of the scheme; the Zero Coupon Bonds were to be redeemed out of the expected proceeds from the Arbitration Award secured by the DSL Enterprises Limited against the MSEB. The relevant portion of the schedule VB of the scheme is reproduced below:

Terms and conditions (for Bond Class B)

" The Bonds shall be redeemed by the New Co. out of the expected proceeds from the arbitration award secured by the New Co (vested after De-merger from the Sick Industrial Company) against the Maharashtra State Electricity Board within a period of 7 years from the date of issue of these bonds.. ."

6. However, you the Addressees have failed and neglected to repay the outstanding dues of the lender and continue to remain in persistent default in repayment of the outstanding dues to the lender inspite of ample opportunity being granted.

7. As per order dated 12.05.2018 passed by the Prothonotary and Senior Master of the Hon'ble High Court of Bombay in COMEX 422/2018, DSL Enterprises Ltd. (Now Ridge Innovations Pvt. Ltd.) has received the full and final payment of the arbitration award amount and withdrawn the Execution Application. However, to the utter shock and surprise of IFCI Ltd, despite receipt of the entire arbitration award amount, DSL Enterprises Ltd. (Now Ridge Innovations Pvt. Ltd.) has not made the payment to IFCI Ltd. in terms of the scheme sanctioned by BIFR on 05.12.2006. This particular dishonest act despite receipt of the arbitration award amount tantamount to an act of Misappropriation and Criminal Breach of Trust to cause wrongful loss to IFCI Ltd., warranting criminal action in accordance with the provisions of law.

8. It is pertinent to mention here that the Independent Auditor's Report dated 01.09.2017 & 05.09.2019 of Dharde and Associates in respect of Ridge

Innovations Pvt. Ltd. clearly shows the malafide intentions of you addressees which is enumerated hereinbelow:

Independent Auditor's Report dated 01.09.2017: Under the head of 'Independent Auditor's Report/ Basic for Qualified Opinion' at page no. 3 & 4, Paragraph 2 states that *"However Company has transferred the liabilities of specified secured as well as unsecured creditors to the reserves on 31/03/2016, on the ground that all these liabilities vested under the BIFR Scheme have been abated, thereby extinguishing the total liability of Rs.137,87,60,579/- as per details given in Clause No. 34 of Notes to Accounts, the brief details of amounts written back and credited to reserve, are as under..."*

As per the explanation given by the company, "all liabilities vested under the BIFR Scheme have now been abated. The liabilities are written back as legally advised in view of the provisions of the Sick Industrial Companies Act and the Limitation Act."

"However, the Board for Industrial and Financial Reconstruction (BIFR) vide order passed on 05/12/2006 in Case No. 260 of 2001 has laid down certain directions under clause No. 3.5 and 3.6 of Part 'A' for restructuring and reorganizing the liabilities of secured and unsecured creditors and certain specific liabilities of the creditors. These directions are to be to be mandatorily followed or for any further action a permission of BIFR must be sought and the total liability of Rs. 137.87 crores cannot be made NIL/extinguished, without consent of loaners."

Independent Auditor's Report dated 05.09.2019: Para no.5 of the report is reproduced as under:

5. The company, during the last year i.e. FY 2017/18, has paid Rs.449,85,38,339.52 to Mr. Rjan B Datar, one of the Director & Member of the Company, as "Compensation for Loss of Goodwill / Reputation towards indemnity " and it is shown as debit to "Reserve and Surplus" and not as charge to profit and Loss Account. However certain liabilities under BIFR scheme have not been paid by the company, as explained to us, on the basis of counter claims against Banks / Financial Institutions and limitation. Copy of the Independent Auditors Reports of the Ridge Innovations Pvt. Ltd. are enclosed herewith.

9. In view of the above, we advise you to show cause within 21 days from the date of this letter, as to why action should not be initiated against you, to classify your account as a fraud in terms of Chapter – III, Para No. 1 of RBI Master Direction – Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016 dated 29.09.2016 (RBI/DNBS/2016-17/49 Master Direction DNBS.PPD.01/66.15.001/2016-17).

आईएफसीआई लिमिटेड IFCI LIMITED MUMBAI

10. Please note that in case you fail to show cause within 21 days, as aforementioned, IFCI Ltd. shall initiate appropriate criminal action against you addressees without any further notice.

11. Please note that this notice is issued to you without prejudice to all the other rights and remedies available to us, against the Company and Guarantor in r/o the said loan and the securities thereof.

Yours faithfully,

For IFCI Ltd.

Authorised Signatory

आई एफ सी आई लिमिटेड
IFCI LIMITED
MUMBAI
मुंबई