IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 180 OF 2019
IN
COMMERCIAL SUIT NO. 1447 OF 2018

IDBI Bank Limited & Anr. … Applicants/ Proposed Defendants

In the matter of

ICICI Bank Limited … Plaintiff

Versus

State Bank of India & Ors. ... Defendants

WITH
INTERIM APPLICATION (L) NO. 20021 OF 2021
IN
COMMERCIAL SUIT NO. 1447 OF 2018

WITH
INTERIM APPLICATION (L) NO. 2163 OF 2021
IN
COMMERCIAL SUIT NO. 1447 OF 2018

WITH
INTERIM APPLICATION (L) NO. 3905 OF 2021
IN
COMMERCIAL SUIT NO. 1447 OF 2018

WITH
INTERIM APPLICATION (L) NO. 3582 OF 2021
IN
COMMERCIAL SUIT NO. 1447 OF 2018

WITH
NOTICE OF MOTION NO. 1377 OF 2019
IN
COMMERCIAL SUIT NO. 1447 OF 2018

WITH
NOTICE OF MOTION NO. 2453 OF 2018
IN
COMMERCIAL SUIT NO. 1447 OF 2018

Mr. Sharan Jagtiani, Senior Advocate a/w Ms. Ankita Singhania, Apurva Manwani, Mr. Siddharth Ranade, Ms. Samrudhi Chothani and Ms. Saloni Gupta i/b Trilegal for the Plaintiff- ICICI Bank Limited.
Mr. J.P. Sen, Senior Advocate a/w Ms. Nidhi Singh, Chitrang Gamoth i/b India Law LLP for Defendant Nos.1 and 2.
Ameya Gokhale, Ms. Radhika Indapurkar, Harit Lakhani i/b Shardul Amarchand Mangaldas & Co. for Defendant No.6.
Mr. Cyrus Ardeshir a/w Mr. Archit Virmani and Payoja Gandhi i/b Yash Jariwala for Defendant Nos.3 and Applicant in IAL/3582/2021 i.e. Lanco Devihalli Highway Limited.
Mr. Piyush Raheja i/b Gauri S. Rao for the Applicant-IDBI Bank Limited.
Ms. Praneeta Ragji i/b AZB & Partners for Defendant No.5-Cube Highways.

CORAM : R.I. CHAGLA, J.

DATED : 20th DECEMBER, 2021.

ORDER :

1 By this Interim Application the Applicants are seeking to be impleaded as party Defendants in the above Suit and all pending applications. Further consequential relief has been sought.

2 It is the case of the Applicants that the Applicant No.1 Bank as a monetary institution had under the Master Restructuring Agreement dated 27.12.2013, provided a Corporate Debt Restructuring Facility (CDR) to Defendant No.6-Lanco Infratech Ltd. (in liquidation) which is

the 100% holding Company of Defendant No.3. Under the said CDR, all existing facilities were continued to be secured by the respective assets on which security had been created under the respective existing financial documents and shall be deemed to continue as security for the restructuring facilities. It is the further case of the Applicant that under indenture of mortgage dated 01.12.2014 executed between Lanco Devihalli Highways Limited and IDBI Trusteeship Services Limited and Lanco Infratech Limited (in liquidation), various properties were mortgaged by Defendant No.3 in favour of the Applicant No.2. The mortgage was against the implementation of the CDR scheme and accordingly security interest of the Applicants continued to lie in the Defendant No.3 Company. There is an assertion that the charges created by the indenture of mortgage for an amount of Rs.111,55,14,00,000/- has been registered on 01.12.2014. There have been further agreements referred to which includes a Share Pledge Agreement.

3 It is the case of the Applicant that though the Defendant Nos.1 and 2 have the right to substitute Defendant No.3 as Concessionaire with another "selectee" in the event Defendant No.3 defaults under the terms of the Concession Agreement/Facility Agreement, the Applicants too have an interest in the new Concessionaire so appointed as well as in the moneys brought in by the new Concessionaire insofar as disbursement

of these moneys are concerned, to satisfy their agreements with the Defendant No.3 Company under the CDR.

4 The Applicants have approached this Court by way of impleadment application in view of consent order dated 18.02.2019 passed by this Court in the above Suit and by which the new Concessionaire was to be appointed pursuant to the settlement arrived at between the Plaintiff and Defendant Nos.1 and 2. The new Concessionaire was by the consent order to bring in an amount of Rs.385.90 crores into this Court. The manner of distribution of the amount to be deposited in this Court is to be decided by this Court in the Notice of Motion No.2453 of 2018 filed by the Plaintiffs in the captioned Suit.

5 The Applicants claim to have security interest which supersede the security interest of the Plaintiff i.e. ICICI Bank. According to the Applicants, the deed of mortgage in respect of the movable and immovable properties of Defendant No.3 have been executed on 01.12.2014 and the charge registered with the ROC on 01.12.2014 whereas the Plaintiff claims to have executed the deed of hypothecation on 16.12.2015 and on the same date the charge has been registered with the ROC in respect of the mortgage properties. The Applicants claim to

have an outstanding amount of Rs.14,371 crore and have filed their claim before the Liquidator of Defendant No.6-Company. The Applicants have claimed that the distribution of the amounts to be brought in by the new Concessionaire and any relief sought for by the Plaintiff in the Notice of Motion taken out in the above Suit, will have a direct effect on the Applicants and that the Applicants are therefore, necessary and/or proper parties for disposal of the above Suit and the Notice of Motion.

6 Mr. Raheja, learned Counsel appearing for the Applicant has taken this Court through the plaint filed in the above Suit as well as the averments in the plaint wherein it is stated that Defendant No.3 created a subservient charge on its assets in favour of the sponsor lenders in relation to the sponsor's payment obligation towards the sponsored lenders under the Master Restructuring Agreement dated 27.12.2013. He has submitted that the Plaintiff thus accepts that the Applicants are having a subservient charge on the assets of Defendant No.3. He has further submitted that it is an accepted position that as and when the new Concessionaire has been appointed, the Applicants very much have an interest in the monies brought in by the new Concessionaire. He has referred to documents on record including the minutes of the meeting of consortium of lenders of Lanco Devihalli Highways Limited held on 28.05.2018 which contemplated the appointment of a new Concessionaire

by Defendant Nos.1 and 2, and from which it is clear that the Applicants were an interested party being part of the consortium of lenders. Mr. Raheja has further submitted that the prayers in the Suit were for a mandatory injunction restraining Defendant No.1 (acting as lenders' agents) from replacing Defendant No.3 with "selectee" under the Concession Agreement without prior consent of the Plaintiff or otherwise proceeding in any manner that may be prejudicial to the security interest created in favour of the Plaintiff under the deed of hypothecation at Exhibit-E to the Suit. The Plaintiff and Defendant Nos.1 and 2 have thereafter consented to appoint a new Concessionaire who would being in a sum of Rs.385.90 crores in this Court. By doing so, the Applicants have become necessary parties in the Suit as their dues are also required to be settled by the new concessionaire. He has referred to the consent order dated 18.02.2019 passed by this Court in terms of the minutes of order, as well as subsequent order dated 13.01.2021 wherein this Court had recorded that the consent order dated 18.02.2019 has been accepted by the Plaintiff and directed the parties to work out a settlement so that the entire dispute between the parties can be settled. The Plaintiff was granted liberty to take out a fresh application inter-alia seeking distribution of the said sum brought in by the new Concessionaire and in terms of clause 4(f) of the consent minutes of order dated 18.02.2019. He has accordingly submitted that the Applicants are necessary parties to the distribution of the sums brought in by the new Concessionaire as their security interest in the movable and immovable properties of Defendant No.3 supersedes the security interest of the Plaintiff and therefore, they are vitally effected in the event the sums are distributed in favour of the Plaintiff.

7 Mr. Raheja has further pointed out that the Applicant No.1- IDBI Bank Limited has together with the Plaintiff- ICICI Bank Limited adopted proceedings in the Telangana DRT against Defendant No.3 to satisfy their security interest in the movable and immovable properties of Defendant No.3. He has submitted that any order passed by this Court will have a bearing of such proceedings and, therefore, the Applicants are necessary parties to the above Suit.

8 Mr. Sharan Jagtiani, the learned Senior Counsel appearing for the Plaintiff has vehemently opposed the Interim Application. He has submitted that the Interim Application was filed on 09.10.2019 much after the consent order dated 18.02.2019 passed by this Court. He has submitted that if the Applicant was at all aggrieved by the appointment of a new Concessionaire as well as the bringing in by the new concessionaire of the sum of Rs.385.90 crores which the Plaintiff and Defendant Nos.1

and 2 had consented to in the said consent minutes of order, they were required to file the Interim Application immediately upon passing of the said consent order. He has submitted that it is only upon the settlement arrived at between the Plaintiff and Defendant Nos.1 and 2 that the consent order dated 18.02.2019 was passed. The Plaintiff had thus by entering into the consent minutes of order with Defendant Nos.1 and 2 had agreed to give up the injunction which had been granted by this Court on 31.10.2018 restraining the Defendant No.4 from granting approval to the agreement executed by and between the Defendants and new Concessionaire.

9 Mr. Sharan Jagtiani has further submitted that by subsequent order dated 13.01.2021 this Court had recorded his statement that the Applicant is not seeking vacation of the consent order and reinstating the stay order dated 31.10.2018. He has submitted that the distribution directed by this Court of the dues of the Plaintiff and Defendant Nos.1 and 2 which comes to approximately Rs.380 crores necessarily required an Interim Application to be filed and to be decided in that Interim Application. It was this Court's suggestion in the said order dated 13.01.2021 that it is for the Plaintiff and Defendant Nos.1 and 2 to work out some sort of settlement so that the entire dispute between the parties can be settled. He has submitted that in fact in the bid document dated

23.08.2018 which had been issued by Defendant Nos.1 and 2, parties mentioned having outstanding debt were the secured lenders i.e. Defendant Nos.1 and 2 and the Plaintiff here. This was executed way before the consent order dated 18.02.2019 was passed by this Court. He has submitted that if the Applicants herein were at all aggrieved by any distribution of the funds deposited by the new concessionaire in favour of the Plaintiff, it is open for them to file their independent proceedings by way of substantive suit for claiming their dues. It is not for the Applicant to be impleaded in the above Suit wherein the Plaintiff and Defendant Nos.1 and 2 have arrived at settlement.

10 Having considered the submissions, I find much merit in the submissions of Mr. Sharan Jagtiani. Particularly considering that the suit as originally filed was a suit which had sought a mandatory injunction restraining the Defendant No.1 from replacing Defendant No.3 with "selectee" under the Concession Agreement without prior consent of the Plaintiff. It is upon the Plaintiff agreeing to the appointment of a new Concessionaire who would bring in the moneys due and payable to the Plaintiff and Defendant Nos. 1 and 2 that the consent order dated 18.02.2019 was passed by this Court. This Court in its order dated 18.02.2019 had taken on record the consent minutes of order between the Plaintiff and Defendant Nos.1 and 2. Under the consent minutes of

order, the sum of Rs.385.90/- crores was to be brought in by the new Concessionaire. The issue as to be manner of distribution of the said amount deposited in the Court, is to be determined in the Interim Application taken out by the Plaintiff as per the liberty granted by this Court.

11 It is further clear from the orders passed by this Court including the order dated 13.01.2021 that the Plaintiff and Defendant Nos.1 and 2 had agreed to settle their disputes. In the said order dated 13.01.2021, it was recorded that Mr. Jagtiani, the learned senior counsel appearing on behalf of the Applicant has fairly stated the Applicant is not pressing prayer clause (a) and is accepting the consent order dated 18.02.2019. It is material to note that by the prior order dated 31.10.2018 this Court had in fact injuncted Defendant No.4 from granting approval to the agreement executed by and between the Defendants and new Concessionaire.

12 I am of the view that the Applicant cannot be considered to be a proper and necessary party in the above suit, considering the prayers in the Suit as well as the consent order thereafter passed by this Court recording the settlement between the Plaintiff and Defendant Nos.1 and 2. The Applicants would necessarily have to adopt their independent

proceedings for claiming their dues and/or their security interest in Defendant No.3-Company. It is relevant to note that there has been considerable delay in approaching this Court as the Interim Application has been filed on 09.10.2019 though the Applicants claim to be aggrieved by the consent order dated 18.02.2019 recording the settlement between the Plaintiff and Defendant Nos.1 and 2 for appointing the new Concessionaire for payment of the dues of the Plaintiff and Defendant Nos.1 and 2 by depositing the said sum in Court. It is further pertinent to note that the Interim Application though filed on 09.10.2019, was not moved till 23.03.2021 i.e. after the said order dated 13.01.2021 was passed by this Court, by which this Court had suggested the Plaintiff as well as Defendant Nos.1 and 2 to work out some sort of settlement regarding distribution of their dues which had been deposited in this Court so that the entire dispute between these parties can be settled. Thus, I am not inclined to grant the impleadment of the Applicants as party Defendants in the above Suit.

13 Hence the following order :

i) The Interim Application (L) No.180 of 2019 is rejected.

ii) There shall be no order as to costs.

iii) The Commercial Suit No.1447 of 2018 shall be placed along with the above remaining Interim Applications on 06.01.2022 under the caption for settlement.

(R.I. CHAGLA, J.)