IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30/06/2021 ***Pronounced on :05/07/2021***

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

A.No.792 of 2021
in
C.S.No.318 of 2020

Sambandh Finserve Pvt.Ltd.
DCB-820/821/822, 8th Floor,
DLF Cyber City,
Chandaka Industrial Estate,
Patia, Chandrasekharpur,
Bhubaneswar,
Odisha-751 024. ..Applicant/1st Defendant

/versus/

1.Northern Arc Capital Private Limited,
Having registered office at
10th Floor, Phase I,
IIT Madras, Research Park,
Kanagam Village,
Taramani, Chennai 600 113,
Represented by it's Authorised Signatory
Mr.Kamal Kumar ..1st Respondent/Plaintiff

2.Mr.Deepak Kindo,
A-4/1, 3rd Floor,

Area 7 & 8, Civil Township,
Rourkela, Odisha 769 004. ..2nd Respondent/2nd Defendant

3.Mr.Livinus Kindo,
Jubilee Vila, 1st Floor, Plot No.7,
Sindhi Colony, Mission Hata,
Rajgangpur, Odisha 770 017. .. 3rd Respondents/3rd defendants

Prayer in A.No.792 of 2021: Application has been filed under Order VII, Rule 11 Read With Section 151 of the Civil Procedure Code, 1908 praying to reject the plaint filed by the 1st Respondent/Plaintiff under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

For Applicant :Mr.Supriyo Ranjan Mahaptra

For 1st Respondent :Mr.Anirudh Krishnan

For 2nd respondent :Mr.Prashant Rajapogal

ORDER

(*This case has been heard through Video Conferencing*)

This application in A.No.792 of 2021 is filed under Order VII, Rule 11 of the Civil Procedure Code to reject the plaint on the ground that (a) the suit is impliedly barred by statutory prohibition; (b)the plaintiff has suppressed the material facts in its plaint and the interim applications; (c) the suit is barred under Section 3 of the Tamil Nadu Stamp Act, 2019; and (d)the suit is contrary to the provisions of Insolvency and Bankruptcy Code, 2016.

2.The statement in the plaint in nutshell is that, the plaintiff, which is engaged in the business of providing and arranging finance to various borrowers has lent loan to the first defendant company, which is a Non-Banking Financial Companies(in short "NBFC"). Based on the facility agreement entered between the plaintiff and the first defendant, loan was advanced to the first defendant. On the date of filing the suit, a sum of Rs.38,16,45,711/- is due and payable to the plaintiff. While advancing the loan, the second defendant has provided personal guarantees for each of the facility agreement entered by the first defendant. Further, the second and third defendants as Directors of the first defendant are jointly and severally liable to pay the suit claim.

3.According to the plaintiff, since 2014, the transaction between the plaintiff and the first defendant company was regular without any default till the month of September 2020. Misappropriation of the fund by the Management of the Company came to light, when there was a default and when the Chief Financial Officer of the first defendant issued a Circular on 07.10.2020 disclosing diversion of the fund of the first defendant company by the second defendant As a consequence, criminal proceedings has been initiated by the plaintiff and the matter has been seized by the Directorate of Enforcement Wing.

4.The first defendant, on receipt of the suit summon, has entered appearance and has filed detailed written statement and also taken out application to reject the plaint. According to the first defendant, the plaintiff has suppressed material facts regarding the appointment of Administrator to protect the rights of the lenders. The Administrator appointed is engaged in tracing of all the assets of the first defendant company and is engaged in the process of collecting the receivables. A Joint Lenders Form(in short "JLF") has been constituted for taking necessary remedial measures and under the ambit of the Reserve Bank of India's circular dated 07.06.2019, the largest lender is designated as lead lender of the Joint Lenders Forum (in short "JLF"). In the said JLF, the plaintiff is also a member. Out of 39 lenders with an aggregate debt of about Rs.389,00,00,000/-, most are secured creditors. While so, the plaintiff suppressing all these facts has filed this suit to get a preferential treatment among the other lenders. The said attempt is contrary to Section 43 of the Insolvency and Bankruptcy Code, 2016. Further, it is contended by the applicant/first defendant that the plaintiff rely upon the transactional document entered between the parties. Though it is stamped as per the requisite of the Stamp Act of Odisa, it does not satisfy condition under Section 3 of the Tamil Nadu Stamp Act, 2019. Hence, the suit cannot be entertained, based on the deficiently stamped document. It is also contended that as per the circular issued by the Reserve Bank of India, till the failure of Rectification and Restructuring Scheme, the parties cannot resort to the recovery proceedings. In this case, the Rectification and Restructuring Scheme is under way and therefore, recovery proceedings initiated by the plaintiff is premature and barred.

5.In view of this Court, none of the above grounds falls within the ambit of Order VII, Rule11 (d) of the Civil Procedure Code, to reject the plaint. Under this provisions, there must be a specific bar to institute the suit under any of the statute inforce.

6.From the pleadings, this Court finds no such statutory bar. The plea of the applicant that the statutory circular issued by the Reserve Bank of India impliedly bar the suit for recovery, is in-correct, in the light of the Reserve Bank of India circular dated 07.06.2019, which deals with the Prudential Framework for Resolution of Stressed Assets. Under Clause 9 of the said circular, which deals with implementation of 'Resolution Plan' option to the lenders to initiate legal proceedings for Insolvency or recovery is given. During the review period of 30 days, the lenders may decide on the resolution plan including the nature of the resolution plan, approach for implementation of resolution plan etc., and in case, the resolution plan is to be implemented, all the lenders shall enter into an inter-creditor agreement, during the above said review period. In the case in hand, no resolution or inter party agreement has sofar been arrived at.

7.Similarly, the apprehension of preferential payment and bar of Section 43 of the Insolvency and Bankruptcy Code, 2016 is also not applicable to the present case. At the first instance, as per the notification of the Ministry of Corporate Affairs dated 18.11.2019 read with Section 3(7) and 227 of the Insolvency and Bankruptcy Code, 2016 Non-Banking Finance Company (in short "NBFC") with an asset size of less than Rs.500 crores will not come under the purview of the Insolvency and Bankruptcy Code. Therefore, Section 43 of the Act has no application. Even otherwise, filing the suit for recovery of money cannot fall within the mischief of preferential payment. It is pre-mature to say the money suit filed tantamount to preferential treatment.

8.The other ground regarding admissibility of document namely, facility agreement for deficit of stamp duty is an issue to be decided at the time of trial. Whether there is any deficit in stamp duty; (ii) whether the document to be impounded for the said reason or to be admitted after collecting the deficit stamp duty and penalty are all the matters to be decided in the course of trial. It is not a ground to reject the plaint at the threshold. Likewise, the allegation of suppression of fact is also the matter for trial. Therefore, this Court is of the view that there is no valid ground to reject the plaint as prayed in this application. Hence, this application is dismissed. No order as to costs.

05.07.2021

Index:yes/no
Internet:yes/no
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Dr.G.JAYACHANDRAN,J.

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delivery common order made in
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