

O.A.No.630 of 2020
and A.Nos.49 of 2021 and
A.Nos.6555 of 2018, 2827, 2828 of 2020

N. SATHISH KUMAR, J.

O.A.No.630 of 2020 is filed by the Applicant M/s. ISGEC Heavy Engineering Ltd., to grant interim injunction restraining the 1st Respondent viz., M/s. Empee Sugars & Chemicals Limited, and his men, agents or any one claiming under or through the Respondent, from dismantling relocating the Schedule mentioned equipment. This Court by order dated 30.11.2020 granted interim injunction against the 1st Respondent. To vacate this interim injunction, the 2nd Respondent M/s. Melbro Sugars Pvt. Ltd., has filed **A.No.49 of 2021**. The Applicant also filed **A.No.6555 of 2018** to direct the Tamil Nadu State Marketing Corporation Limited not to make payments due to M/s. Empee Sugars & Chemicals Ltd., (1st Respondent in O.A.630 of 2020), **A.No.2827 of 2020** to appoint Receiver to take charge of the sugar plant and **A.No.2828 of 2020** to direct M/s. Empee Sugars & Chemicals Ltd., (1st Respondent in O.A.630 of 2020) to disclose the details of various bank accounts assets and receivables as on

30.11.2019.

1. The brief facts of the Applicant's case is as follows:

2(a) The applicant is Award holder in O.A.No.630 of 2020. They obtained Award against the 1st Respondent in respect of contract entered into between them for supply of goods. The Award was said to be passed on 04.02.2015 and this Application for Interim Injunction is post award and 4th Respondent herein viz., Edelweiss Asset Reconstruction Company Ltd.,(EARCL) is not disputed that the subject matter of the properties were initially secured in favour of the 1st Respondent from the year 2008 onwards by availing several loan facilities from Consortium of Banks. Admittedly, the applicant herein obtained an Award as against the 1st Respondent in the dispute arose between them in supply of goods.

2(b) As per the Award the Applicant is entitled to the tune of Rs.13,98,72,037 together with interest at the rate of 12% from 06.06.2020 till the date of payment. After obtaining the Award the Applicant herein filed an application in O.A.No.194 of 2015 before this Court. This Court vide Order dated

26.02.2015 granted interim injunction for a period of two weeks till 12.03.2015 restraining the Award Debtor from in any manner seeking to dispose of any assets including assets related to power business, until receipt of the full amount. The above interim order extended till further orders and subsequently the interim order was made absolute. It is to be noted that the above Award and Interim Order were obtained only against the Award Debtor. The 3rd and 4th Respondent were sue motu impleaded as per order dated 21.01.2021. The above O.A.No.630 of 2020 was filed for various reliefs and the interim order was granted restraining the 1st Respondent from dismantling or relocating the equipment. It is to be noted that O.A.No.630 of 2020 filed only against the 1st Respondent. Interim Order also passed against the 1st Respondent only. Thereafter the 2nd Respondent was impleaded on 23.12.2020 in A.No.3243 of 2020 after obtaining the Interim Order.

2(c) The interim order in O.A.No.630 of 2020 dated 30.11.2020 makes it clear that 4th Respondent M/s. Edelweiss Asset Reconstruction Company Limited (EARCL) who is main respondent in this case, has been added as a party subsequent to the interim order. The Applicant in A.No.49 of 2021 is purchaser under SARFAESI Act, who is 2nd Respondent in O.A.No.630 of 2020.

3. The learned counsel for the Applicant Mr.Rahul Balaji placed much emphasize on the fact that the Auction Purchaser is also aware of the proceedings and when the interim order operating against the Award Debtor ignoring the Court Order one cannot take advantage of the power conferred under SARFAESI Act to contend that they do not know the Court Orders. Hence, it is his contention that when the interim order is operating right from the year 2015, the parties are binding, not only the Award Debtor but also the subsequent Purchaser from the EARCL. Hence, it is submitted that to protect the right and to safeguard the Award holder, the 4th Respondent/Auction Purchaser EARCL may be directed to deposit the amount. In support of his contention the learned counsel relied upon the judgment in ***Robust Hotels (P) Ltd., v. EIH Limited and others [(2017) (1) SCC 622]***.

4. Whereas the learned Senior Counsel Mr.M.S. Krishnan appearing for the 4th Respondent submitted that the application is not maintainable and in fact in O.A.No.194 of 2015 EARCL (4th Respondent) is not a party and even in O.A.No.630 of 2020 he is not a party at the initial stage. Only after the applicant

obtaining the interim order in O.A.No.630 of 2020 the 4th Respondent was impleaded much after other respondents were impleaded. It is the further contention of the learned Senior Counsel that interim protection under Section 9 of the Arbitration and conciliation Act cannot be extended beyond the time as contemplated under Section 9 itself. In this case Execution Petition also filed in E.P.No.73 of 2016 on 9.3.2016. Once Execution Petition is filed and the Award was put in for enforcement. No interim protection can be extended under Section 9 of the Act. Hence, it is his contention that EARCL, the 4th Respondent being the secured Creditor, merely on the basis of the Award the right of the Secured Creditor cannot be taken away on the basis of interim order obtained as against the Award Debtor.

5. Further it is his contention that when the company applications are pending before the Court as early as in the year 2017 the applicant was aware of the fact that the entire debts have been assigned to EARCL and an affidavit has been filed by the applicant in the above proceedings, knowing well that EARCL already stepped into the shoes of Original Secured Creditor, they cannot be made as parties in the present application. Hence, this Application is nothing but abuse

of process of law and the same is liable to be dismissed.

6. As indicated above, the Award has been passed as early as 04.02.2015 as against the 1st Respondent. The interim order was originally obtained in the year 2015 in O.A.No.194 of 2015 as against the 1st Respondent not to dispose of the assets. Records also indicate that the property were secured in lieu of the loan obtained by the 1st Respondent in the year 2008. The debts have been assigned to 4rd Respondent/EARCL, which is also not in dispute. Now, the applicant in A.No.49 of 2015 is Auction Purchaser from EARCL. It is to be noted that the interim order was sought under Section 9 of the Arbitration and Conciliation Act. On a careful perusal of the Section 9 of the Act makes it clear, interim protection can be granted by the Court after making the Arbitral Award but before its enforcement in accordance with Section 36. Section 36 deals with the limitation for filing of application under Section 34. If the limitation period for filing of application under section 34 is expired, the award has to be enforced under the Code of Civil Procedure, 1908 (5 of 1908).

7. Therefore, the conjoint reading of Sections 9 and 36 of the Arbitration

and Conciliation Act, make it clear that if the period of limitation to file application under Section 34 is expired, the Award can be enforced under the Code of Civil Procedure. The protection under Section 9 of the Act can be given till the period of limitation provided under Section 36. Therefore, this Court is of the view that the interim orders cannot be granted endlessly under section 9 of the Act, particularly, when the Award already put into enforcement in the year 2016 in E.P.No.73 of 2016. It is admitted by both sides during their submissions that the execution petition is also dismissed for default. Now it is submitted that subsequently restoration petition has been filed. Therefore, once execution application has been filed for enforcement of the Award, the Court cannot invoke jurisdiction under Section 9 of the Act for interim orders. Only the Code of Civil Procedure come into play for enforcement or for any other order as contemplated under Order 21 of CPC and not Section 9 of the Arbitration and Conciliation Act Act. In this regard a Division Bench of this Court in **Gopuram Enterprises Ltd vs M/S Integrated Finance Company** [Madras High Court on 15 February, 2021] by its order has held that beyond the period mentioned in Section 36 of the Act, interim order cannot be extended for the Award. In such a view of the matter this Court is of the view that the interim orders cannot be converted as perfectual

nature under Section 9 applications.

8. In fact in O.A.No.194 of 2015 Interim Order preventing the 1st Respondent was made absolute by order dated 13.02.2019. Such perfectual injunction making the interim order absolute in Section 9 of the Arbitration and Conciliation Act application cannot be permitted in the eye of law. The scope of Section 9 of the Arbitration and Conciliation Act is limited for certain period particularly after the Award is passed. Therefore, this Court cannot extend such orders permanently under the cover of Section 9 of the Act. It is also to be noted that in 2017 itself Applicant were aware of the fact that entire debts have been assigned to EARCL. In fact, affidavit has been filed by 1st Respondent which has been noted by the NCLT in its order dated 16.10.2017. In para No.4 of the order makes it very clear that the 1st Respondent/M/s.Empee Sugars & Chemicals Ltd., has filed an affidavit dated 12.10.2017 indicating the nature of the assignment in favour of EARCL. Having known to this fact from the year 2017 itself, there is no reason as to why interim order has been obtained only against the 1st Respondent in O.A.630 of 2020 without making EARCL as a party in the above application. This fact clearly shows that the Applicant has not come to the court with clean

hands.

9. The learned counsel for the applicant placed much reliance in ***Robust Hotels(P) Ltd.& Others vs E.I.H Limited & Others [2017 SCC (1) 622]*** wherein the Apex Court has held that a party to the lis or the third party who considers an order passed by a court as voidable or non est, must approach the court of competent jurisdiction to have the said order set-aside on such grounds, as may be available in law. In the above case after considering the facts of the case the Honourable Apex Court has held that the BAR of civil court jurisdiction under Section 34 of the SARFAESI Act will not apply to the facts of the above case. It is no doubt that any person ignores or violates the order passed by the Court deliberately, any action pursuant to such violations cannot be sustained in the eye of law. But the fact remains in this case either EARCL or the Auction Purchaser were not made as a party in the application. Much after obtaining the Interim Order, EARCL and the Auction Purchaser were impleaded in O.A.No.630 of 2020, which clearly indicates that the application lacks bonafide. At any event, considering the scope of Section 9 of the Act and the jurisdiction of the Court under Section 9 of the Arbitration and Conciliation Act, the interim orders cannot

be extended endlessly and the same cannot be converted as perfectual one which in fact will defeat the scope and object of the Act. In view of the same, the Original Application in O.A.No.630 of 2020 stands dismissed. A.No.49 of 2021 is allowed. It is open to the Award Holder namely the applicant herein to seek all their remeides which are available under Order 21 of C.P.C.to realise their debts and this Order will not preclude the applicant seeking any relief from the competent court.

10. In the Result, O.A.No.630 of 2020 is dismissed and A.No.49 of 2021 is allowed. Consequently, the connected Applications in A.No.6555 of 2018, A.Nos.2827 and 2828 of 2020 are closed.

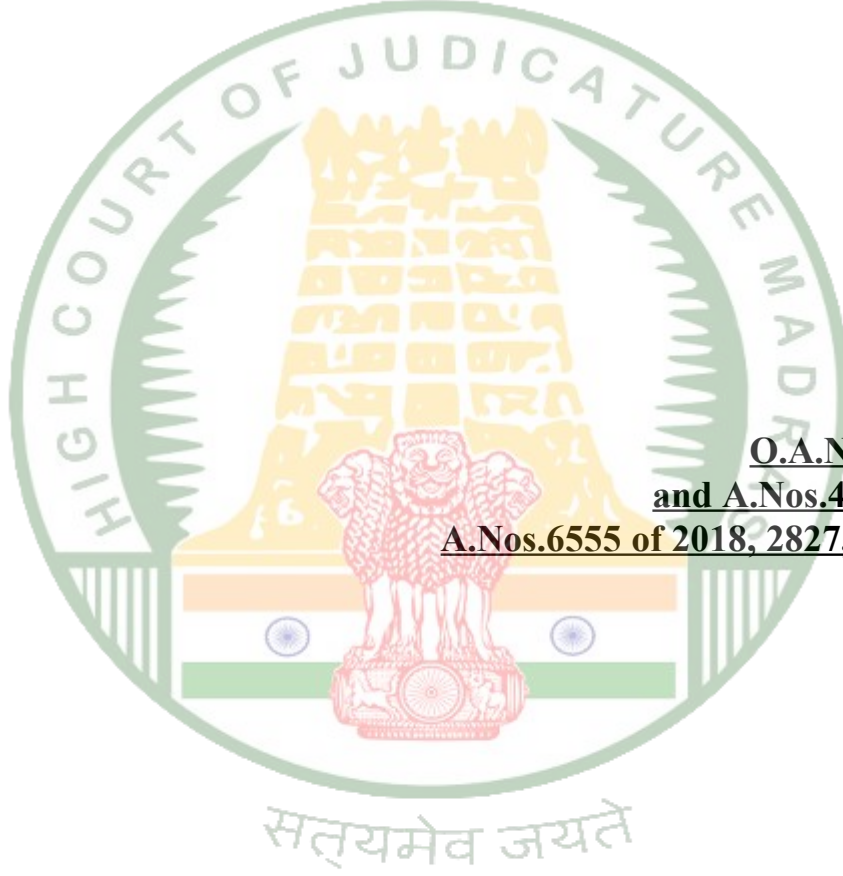
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