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.3217 of 2020
in
C.S.No.318 of 2020

NORTHERN ARC CAPITAL PRIVATE LIMITED,
Represented by its authorised Signatory
Mr.Kamal Kumar
Having Office at
10th Floor, Phase I,
IIT Madras, Research Park,
Kanagam Village,
Taramani, Chennai 600 113. ..Applicant

/versus/

1.SAMBANDH FINSERVE PRIVATE LIMITED
Represented by its Director
DCB-820/821/822, 8th Floor,
DLF Cyber City,
Chandaka Industrial Estate,
Patia, Chandrasekharpur,
Bhubaneswar,
Odisha-751 024.

2.Mr.Deepak Kindo,
Managing Director and Chief Executive Officer,
Sambandh Finserve Private Limited,
A-4/1, 3rd Floor,
Area 7 & 8, Civil Township,
Rourkela, Odisha 769 004.

3.Mr.Livinus Kindo,
Director and Chairman,
Sambandh Finserve Private limited,
Jubilee Vila, Plot No.7,
Sindhi Colony,
Rajgangpur, Sundergarh,
Odisha 770 017. ..Respondents

Prayer in A.No.3217 of 2020: Application has been filed under Order XIV, Rule 8 of O.S.Rules, read with Order XIX Rule 6 of Code of Civil Procedure, 1908 and Section 151 of C.P.C. praying (i)treat this application as urgent; (ii)to pass a judgment and decree upon admission under Order XII and Rule 6 of the CPC directing the 1st respondent to pay the entire suit claim of Rs.38,16,45,711/- to the applicant herein and (iii)to grant such other orders/reliegs as this Hon'ble Court may deem fit in the facts and circumstances of the present case and thus render justice.

For Applicant :Mr.Anirudh Krishnan
For 1st Respondent :Mr.Mr.Supriyo Ranjan Mahaptra
For 2nd respondent :Mr.Prashant Rajapogal

ORDER

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

This application in A.No.3217 of 2020 is filed under Order VII, Rule 11 of the Civil Procedure Code praying to pass a judgment and decree upon admission under Order XII and Rule 6 of the Civil Procedure Code directing the 1st respondent to pay the entire suit claim of Rs.38,16,45,711/- to the applicant herein.

2.The case of the plaintiff 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 written statement as well as counter in the connected applications. The present application is filed to pass a decree and judgment based on the alleged admissions.

5.According to the plaintiff, the admission of the respondents are as below:-

(i)Management organizational book debt certificate issued by the 1st respondent to the applicant herein, where they admit that the receivable to the tune of Rs.42,18,79,545/- as against the principal outstanding of Rs.40,56,00,000/- is hypothecated to the applicant herein.

(ii)Letter dated 07.10.2020 issued by the Chief Financial Officer, Accounts Head, MIS Head and Internal Audit Head of the 1st respondent to the Board Members of the 1st respondent wherein they admit that the 1st respondent does not have enough liquidity to service their debt obligations and have defaulted in repayment to the applicant.

(iii)Letter dated 13.10.2020, wherein the 1st respondent representative states that the 1st respondent has failed to repay the applicant for the month of September - October 2020, due to the liquidity issues faced by the 1st respondent.

6.Extracting certain portion of the pleadings in the written statement, the plaintiff seeks to pass a decree and judgment upon the said statement as admission.

7.At the outset, three admissions which are relied upon by the applicant does not infact admit the suit claim. They are all the general admissions regarding the outstanding and the liability of the first defendant company. The admission that fraud has been committed *per se* will not entail the plaintiff for a decree as claimed in the suit. Whatever claimed in the suit has to be proved through evidence in the manner known to law and the portions of the admission relied by the plaintiff/applicant is a general admission of fact regarding liability of the first defendant company and its inability to pay his creditors. The general admissions of fact cannot be construed as admission of suit claim to pass a judgment and decree. 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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