



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 22nd DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

E.P. No.101 of 2019
and
A.No.1663 of 2020
and
A.D.Nos.85173 and 85174 of 2021
and
E.P.No.24 of 2021

E.P. No.101 of 2019 and A.D.Nos.85173 and 85174 of 2021:-

M.Gagan Bothra,
S/o Late Shri S.Mukanchand Bothra,
No.44, Veerappan Street,
Sowcarpet, Chennai – 79. ... Decree Holder/Financial Creditor
/Applicant
-Versus-

1.M/s Sai Baba Business Solutions Pvt Ltd.,
Rep by V Subramanyam Naidu,
No.46, Dr.B.N.Road,
2nd Street, T.Nagar,
Chennai – 600 017Garnishee/ResolutionApplicant/Respondent

2.Senthil Kumar,
Suspended Director,
M/s PRC International Hotel Pvt Ltd.,
37, North Boag Road,
T.Nagar, Chennai – 17.
(Last Known Address).

3.Kanaka Subbu Ganapathy,
Suspended Director,
M/s PRC International Hotel Pvt Ltd.,



37, North Boag Road,
T.Nagar, Chennai – 17.
(Last Known address).

... Respondents/Ex Directors

*** 4. Mr.Rajendran,
Resolution Professional
71/1, MC Nicholas Road,
Off Poonamallee High Road,
Chetpet, Chennai. ... 4th Respondent /Resolution Professional**

***(4th Respondent Impleaded
Suomoto Vide Order dt: 06/12/19
Made in E.P.No.101/19 & Time extended
as per order dt 06/10/2020).**

E.P. No.101 of 2019:-

Execution Petition praying that this Hon'ble Court be pleased to attach the amount of Rs.80,33,342/- (Eighty lakhs thirty three thousand three hundred and forty two) that is payable by the garnishee to the respondents 2 and 3 under the resolution plan that has been approved by the Hon'ble NCLT, Chennai bench vide order dated 27.08.2019 and order deposit of the above amount to the credit of the present execution petition.

A.D.No.85173 of 2021:-

Application praying that this Hon'ble Court be pleased to set-aside the order dated 17-03-2020 passed by the learned master in E.P.No.101 of 2019 and remand the matter back to the learned master for passing final orders.

**A.D.No.85174 of 2021:-**

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Application praying that this Hon'ble Court be pleased to condone the delay of 553 days in setting aside the order dt:-17.03.2020 passed by the learned master in E.P.No.101 of 2019.

A.No.1663 of 2020:-

M.Gagan Bothra,
S/o Late Shri S.Mukanchand Bothra,
No.44, Veerappan Street,
Sowcarpet, Chennai – 79.

...Applicant/Decree Holder

-Versus-

1.M/s Sai Baba Business Solutions Pvt Ltd.,
Rep by V Subramanyam Naidu,
No.46, Dr.B.N.Road,
2nd Street, T.Nagar,
Chennai – 600 017.

.... Respondent/Garnishee

2.Mr.Rajendran,
Resolution Professional
71/1, MC Nicholas Road,
Off Poonamallee High Road,
Chetpet, Chennai.

... Respondent/Resolution Professional

Application praying that this Hon'ble Court be pleased to punish the respondents for willful, deliberate disobedience of the order dated 06-11-2019 passed by this Hon'ble Court in E.P.No.101 of 2019 and direct the respondents to obey the order dated 06-11-2019 passed in E.P.No.101 of 2019.

**E.P.No.24 of 2021:-**

M.Gagan Bothra,
S/o Late Shri S.Mukanchand Bothra,
No.44, Veerappan Street,
Sowcarpet, Chennai – 79.

... Decree Holder/Financial Creditor

-Versus-

M/s Sai Baba Business Solutions Pvt Ltd.,
Rep by V Subramanyam Naidu,
No.46, Dr.B.N.Road,
2nd Street, T.Nagar,
Chennai – 600 017

.... Judgment Debtor/ Garnishee

Execution Petition praying that this Hon'ble Court be pleased to attach and order sale of the schedule mentioned property belonging to the garnishee and to deposit the sale proceeds to the extent of Rs.80,33,342/- (Eighty Lakhs Thirty Three Thousand Three Hundred and Forty Two) to the credit of E.P.No.101 of 2019.

This Execution Petitions along with these applications coming on this day before this Court for hearing in the presence of Mr.Gagan Bothra the decree holder in E.P.No.101 of 2019 and E.P.No.24 of 2021 and the applicant in A.No.1663 of 2020 and A.D.Nos.85173 and 85174 of 2021 appearing in person and Mr.B.Siddeswaran, advocate for the 1st Respondent/Garnishee in E.P.No.101 of 2019 and E.P.No.24 of 2021 and in A.No.1663 of 2020 and A.D.Nos.85173 and 85174 of 2021 and



and A.D.Nos.85173 and 85174 of 2021 and Ms.M.Sarithadevi, advocate for the 4th respondent in E.P.No.101 of 2019 and A.D.Nos.85173 and 85174 of 2021 and for the 2nd respondent in A.No.1663 of 2020 and upon reading the petition and the affidavit of Gagan Bothra filed in E.P.Nos.101 of 2019 and 24 of 2021 and the Judge's Summons and the Affidavit of Gagan Bothra filed in A.No.1663 of 2020 and A.D.Nos.85173 and 85174 of 2021 and the decree holder/applicant herein having submitted that this Court has power to execute the order passed by the NCLT, he would contend that the NCLT is also a Court as defined under National Legal Services Authority Act and therefore, being a Court, its decree can be executed through the High Court and this court is unable to accept the said submission of the applicant appearing in person, firstly, there is no decree in favour of the petitioner against the respondents herein passed by any court much less the NCLT, the NCLT has only determined the amount due to the applicant by the Company under liquidation viz., PRC International Hotel Pvt. Ltd., at Rs.2,33,66,000/- (Rupees two crores thirty three lakhs sixty six thousand only), as a part of the resolution plan the amount due to the applicant has been determined at Rs.64,32,660/- (Rupees sixty four lakhs thirty two thousand six hundred and sixty only), it is not in dispute that the said amount has already been paid, apart from that, the 1st respondent herein



the erstwhile Directors of the Company and further submitted that the erstwhile Directors must be directed to make good the amount and pay the said sum to him, since, he is entitled to receive the sum of Rs.2,33,66,000/- (Rupees two crores thirty three laksh sixty six thousand only) from the Company under liquidation as per the order of the NCLT, and the order of NCLT at any stretch of imagination cannot be treated as a decree in favour of Mr.Gagan Bothra against the 1st respondent who is only resolution applicant, of course, the 2nd and 3rd respondents, the Ex-Directors of the Company have been impleaded, there is no decree against them also, in favour of the applicant, in the absence of any decree, this court do not think the Execution Petition would be maintainable, moreover, this Court, in the original side, cannot be used as a mechanism for executing the order of the NCLT, even assuming that the order dated 24.07.2018 is a decree, it is ordered as follows:-

That the E.P.No.101 of 2019 be and is hereby dismissed.

2. That the decree holder/applicant herein shall be at liberty to take appropriate legal proceedings that shall be available to him either under the Insolvency and Bankruptcy code or under general civil law for recovery of monies that are due to him.

3. That in view of the order passed in E.P.No.101 of 2019, the



4. That the A.No.1663 of 2020 do stand closed.

5. That in view of the orders passed in E.P.No.101 of 2019, the E.P.No.24 of 2021 be and is hereby withdrawn to the file of this court from the file of the learned Master and the same is also be and is hereby dismissed.

6. That all the interim orders passed do stand vacated.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
22nd DAY OF OCTOBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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29.10.2021

E.P. No.101 of 2019
and
A.No.1663 of 2020
and
A.D.Nos.85173 and 85174 of 2021
and
E.P.No.24 of 2021

ORDER

DATED: 22.10.2021

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 01.11.2021

APPROVED ON : 01.11.2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

E.P.No.101 of 2019,
A.Sr.No.85173 & 85174 of 2021
and
A.No.1663 of 2020

M.Gagan Bothra
S/o.Late Shri S.Mukanchand Bothra
No.44, Veerappan Street,
Sowcarpet, Chennai – 79.

...Decree holder/ Financial Creditor

Vs.

1.M/s.Sai Baba Business Solutions Pvt. Ltd.,
Rep. by V.Subramanyam Naidu
No.46, Dr.B.N.Road,
2nd Street, T.Nagar, Chennai – 600 017.... Garnishee/ Resolution Applicant

2.Senthil Kumar
Suspended Director
M/s.PRC International Hotel Pvt Ltd.,
37, North Boag Road,
T.Nagar, Chennai – 17.

3.Kanaka Subbu Ganapathy
Suspended Director
M/s.PRC International Hotel Pvt Ltd.,
37, North Boag Road,
T.Nagar, Chennai – 17. ... Respondents 2 and 3/ Ex-Directors

4.Mr.Rajendran, Resolution Professional
71/1, Mc Nicholas Road,
Off Poonamallee High Road,
Chetpet, Chennai.



[4th respondent impleaded suo moto
vide order dated 06.12.2019 made in
E.P.No.101 of 2019 and time extended
vide order dated 06.01.2020] ... 4th respondent/ Resolution Professional

PRAYER: Execution Petition is filed under Order XXI Rule 46 (A & B) of the Code of Civil Procedure praying to attach the amount of Rs.80,33,342/- (Eighty Laksh Thirty Three Thousand Three Hundred and Forty Two) that is payable by the garnishee/ resolution applicant to the respondents 2 and 3 under the resolution plan that has been approved by the NCLT, Chennai bench vide order dated 27.08.2019 and order deposit of the above amount to the credit of the present execution petition.

For Petitioner : Mr.Gagan Bothra
Party – in – person

For Respondents : Mr.B.Siddeswaran for R1
Mr.R.Suresh for R2 and R3
Ms.M.Sarithadevi for R4

ORDER

The Execution Petition in E.P.No.101 of 2019 has been filed by the applicant Mr.Gagan Bothra seeking execution of the order of the National Company Law Tribunal (NCLT) dated 27.08.2019 approving resolution plan in respect of the Company under liquidation.



Ltd., had borrowed a sum of Rs.2,00,00,000/- (Rupees two Crores only) from him and the amount that was adjudicated to be due to him by the NCLT was Rs.2,33,66,000/- (Rupees two crores thirty three laksh sixty six thousand only), vide its order dated 24.07.2018 made in C.P.No.540 of 2018. Upon a resolution plan being submitted by the 1st respondent herein, the NCLT directed payment of a sum of Rs.64,32,660/- (Rupees sixty four lakhs thrity two thousand six hundred and sixty only) to the applicant vide its order dated 27.08.2019. It is not in dispute that the said amount has been paid over to the applicant.

3. The applicant has come up with this Execution Petition contending that as per the resolution plan, a sum of Rs.80,33,342/- (Rupees eighty lakhs thirty three thousand three hundred and forty two only) has been directed to be paid over to the Ex-Directors of the Company in liquidation and hence, he is entitled to seek attachment and recover the said sum by executing the order of the NCLT dated 24.07.2018.

4. Though, the learned Master initially held that the Execution Petition is maintainable and passed some interim orders for attachment of the amount, subsequently, when the matter came up, he entertained a doubt regarding maintainability of the Execution Petition and finally by an order dated 17.03.2020 referred the matter to the Court for adjudication on the



maintainability of the Execution Petition.

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5. Mr.Gagan Bothra has also filed applications in Diary Nos.85173 and 85174 of 2021 seeking condonation of delay in filing an appeal against the said order of the learned Master dated 17.03.2020 and to set aside the said order in the form of appeal. Those applications and the Execution Petition have been posted for maintainability today.

6. Heard Mr.Gagan Bothra appearing in person.

7. Mr.Gagan Bothra would submit that this Court has power to execute the order passed by the NCLT. He would contend that the NCLT is also a Court as defined under National Legal Services Authority Act and therefore, being a Court, its decree can be executed through the High Court.

8. I am unable to accept the said submission of the applicant appearing in person. Firstly, there is no decree in favour of the petitioner against the respondents herein passed by any court much less the NCLT. The NCLT has only determined the amount due to the applicant by the Company under liquidation viz., PRC International Hotel Pvt. Ltd., at Rs.2,33,66,000/- (Rupees two crores thirty three laksh sixty six thousand only). As a part of the resolution plan the amount due to the applicant has been determined at Rs.64,32,660/- (Rupees sixty four lakhs thrity two thousand six hundred and sixty only). It is not in dispute that the said amount has already been paid. Apart from that, the 1st respondent herein



which is a resolution applicant has been directed to pay certain amount to the erstwhile Directors of the Company.

9. Mr.Gagan Bothra would submit that the erstwhile Directors must be directed to make good the amount and pay the said sum to him, since, he is entitled to receive the sum of Rs.2,33,66,000/- (Rupees two crores thirty three laksh sixty six thousand only) from the Company under liquidation as per the order of the NCLT.

10. As I had already pointed out, the order of NCLT at any stretch of imagination cannot be treated as a decree in favour of Mr.Gagan Bothra against the 1st respondent who is only resolution applicant. Of course, the 2nd and 3rd respondents, the Ex-Directors of the Company have been impleaded, there is no decree against them also, in favour of the applicant. In the absence of any decree, I do not think the Execution Petition would be maintainable. Moreover, this Court, in the original side, cannot be used as a mechanism for executing the order of the NCLT, even assuming that the order dated 24.07.2018 is a decree.

11. I therefore do not see any merit in the Execution Petition. The Execution Petition is therefore **dismissed** reserving liberty to the petitioner to take appropriate legal proceedings that may be available to him either under the Insolvency and Bankruptcy Code or under general civil law for recovery of monies that are due to him. In view of the order passed in



E.P.No.101 of 2019, the applications in Diary No.85173 and 85174 of 2021 will stand rejected and all the other applications are closed.

12. It is also brought to my knowledge that the petitioner has filed another Execution Petition in E.P.No.24 of 2021. In view of the orders passed in E.P.No.101 of 2019, the E.P.No.24 of 2021 is withdrawn to the file of this Court from the file of the learned Master and the same is also dismissed. All the interim orders passed stand vacated.

Sd./-R.S.M.J.
22.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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