



W.P.Nos.10741 to 10760 of 2015

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 14.06.2023**

**CORAM :**

**THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN**

**Writ Petition Nos.10741, 10742, 10743, 10744, 10745, 10746, 10747, 10748, 10749, 10750, 10751, 10752, 10753, 10754, 10755, 10756, 10757, 10758, 10759 and 10760 of 2015**

**W.P.No.10741 of 2015**

The Management  
Snowcem Paints Private Limited  
B-60-61, SIPCOT Industrial Estate  
Gummidipoondi – 601 201  
Represented by its General Manager

.... Petitioner

-Vs-

- 1.The Presiding Officer  
I Additional Labour Court,  
Chennai.
- 2.J.Rajasekar
- 3.M/s.Snowcem India Limited  
Since renamed as M/s.SIL Business  
Enterprises Limited (in liquidation)  
C/O The Official Liquidator  
High Court of Bombay as the  
Liquidator of M/s.SIL Business Enterprises  
Limited (in Liquidation), 5<sup>th</sup> Floor,  
Bank of India Building, Mahatma Gandhi  
Road, Fort, Mumbai – 400 023.
- 4.The Official Liquidator, High Court of Bombay



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As the Liquidator of M/s.SIL Business Enterprises  
Limited (in Liquidation), 5<sup>th</sup> Floor,  
Bank of India Building, Mahatma Gandhi  
Road, Fort, Mumbai – 400 023.

... Respondents

Prayer in W.P.No.10741 of 2015 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to I.D.No.706 of 2003 on the file of the I Additional Labour Court, Chennai, the first respondent herein and quash the order dated April 22, 2014 passed therein.

**In all W.Ps.**

For Petitioner : Mr.M.Praveen Kumar  
For Respondents : Mr.Balan Haridas – for R2  
R1 – Court  
R3 and R4 – No appearance

**COMMON ORDER**

The third respondent in I.D.Nos.706 to 725 of 2003 is the petitioner before this Court. The workmen were originally working with third respondent herein M/s.Snowcem India Limited. Snowcem India Limited had mortgaged its properties for the purpose of raising a loan with a consortium headed by M/s.Kotak Mahindra Bank.

2. Being unable to pay the amount, the assets and properties of the third respondent were taken possession under SARFAESI Act. The properties were purchased by the writ petitioner on 31.08.2010. Therefore, it shows that by operation of law, the petitioner came to control the assets of the third



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respondent.

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3. The issue is very simple as to whether it was a 'transfer of assets' or a 'transfer of undertaking'.

4. Learned counsel for the petitioner would vehemently contend that it was only a 'transfer of assets' and not 'transfer of undertaking' and the labour court had misconstrued the documents to come to a conclusion that it was a 'transfer of undertaking'.

5. This is rebutted by Mr.Balan Haridoss, learned counsel for the workmen stating that the writ petitioner had not changed its business and had continued with the employees of the third respondent in its services. He would draw my attention to the two exhibits viz., Exs.W.20 and W.21, which are the appointment orders issued to workmen, who were working along with the dismissed employees. In the said letter, it is stated as follows:

*"As special case, services (From 01.03.1996 to 31.08.2010 rendered by you in SIL Business Enterprises Limited (Formerly known as Snowcem India Limited) will be considered on continuity basis without break of services for the purpose of calculation of terminal benefits (Gratuity, LTA, etc.) on retirement."*



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6. Apart from that, the Assistant Manager of the petitioner who was examined before the labour Court had categorically admitted that the existing employees of the 3<sup>rd</sup> respondent were continued as employees of the petitioner, though there was 'transfer of ownership' from the 3<sup>rd</sup> respondent to the writ petitioner. This fact would disclose what was being transferred was not mere assets but of the entire undertaking. The statement that the existing workmens' services will not be interrupted by the writ petitioner shows that the intention of the 3<sup>rd</sup> respondent was to run it as "an undertaking" itself. It was not its intention to only treat it as the assets of the 3<sup>rd</sup> respondent, but to take it over and run the same nature of business as was done by the 3<sup>rd</sup> respondent.

7. An additional factor which would persuade me to come to this conclusion is the order of this Court made in W.P.No.1431 of 2011 filed by Snowcem Paints Private Limited, where an undertaking was given by the writ petitioner. The undertaking reads as follows:

*" The respondent side counsel Mr.Jayaraman, learned counsel also would fairly submit that in respect of the workers who have been employed earlier and now working, the continuity of service from the erstwhile management is also given and they are also willing to offer the same to all workmen."*

8. All these would go to show that it was only a 'transfer of undertaking'



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and not 'transfer of assets'. Therefore, the petitioner is responsible for the workmen who were working with the 3<sup>rd</sup> respondent and were dismissed. The validity of the order of the labour court, with respect to the status of the private respondents as workmen or the fact that their order of dismissal was contrary to Section 25F, cannot be disputed by the writ petitioner, because the private respondents satisfy the requirement of Section 2(s) of the Industrial Disputes Act and are workmen. No evidence worth its name has been produced before the labour Court for the purpose of substantiating that Section 25F has been complied with.

9. The only issue being whether it is a 'transfer of assets' or 'transfer of undertaking' having been concluded by me as a 'transfer of undertaking', nothing further remains for consideration in these writ petitions. The writ petitions are dismissed. No costs.

**14.06.2023**

Index : Yes/No  
Neutral Citation : Yes/No  
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**V. LAKSHMINARAYANAN, J.**

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To

The Presiding Officer  
II Additional Labour Court  
Chennai.

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**14.06.2023**