IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11608 of 2017 and
W.M.P.Nos.12621 & 12622 of 2017

M/s.Arvind Remedies Ltd.
No.38-40, SIDCO Industrial Estate
Kakkalur, Thiruvallur District – 602 003
Rep by its Managing Director. .. Petitioner

vs

1. Punjab National Bank (Lead Bank)
Rep. by its Deputy General Manager
Large Corporate Branch
No.782-785, Anna Salai
Rayala Towers, 3rd Floor
Chennai – 600 002.

2. State Bank of India
Rep. by its Assistant General Manager
Commercial Branch
NSC Bose Road, Chennai – 600 001.

3. IDBI Bank
Rep. by its Deputy General Manager
T.Nagar Branch, South Boag Road
Chennai – 600 017.

4. Corporation Bank
Rep. by its Deputy General Manager

Whites Road Branch
Chennai – 600 040.

5. Karur Vysya Bank Ltd.
Rep. by its Chief Manager
Anna Nagar Branch
Chennai – 600 040.

6. Indian Overseas Bank
Rep. by its Assistant General Manager
C&I Commercial Branch
Dr.Radhakrishnan Salai
Chennai – 600 004.

7. Allahabad Bank
Rep. by its Chief Manager
George Town Branch
Chennai – 600 001.

8. United Bank of India
Rep. by its Assistant General Manager
Corporate Finance Branch
No.117, Armenian Street
Chennai – 600 001.

9. Corporate Debt Restructuring Cell
Rep. by its Chairman
19th Floor, IDBI Building
Cuffe Parade, Mumbai – 500 005.

10. The Chief General Manager
Strategic Debt Restructuring (SDR)
Reserve Bank of India
Mumbai – 400 001.

11. Reserve Bank of India
Rep. by its Governor
Central Office Building
Mumbai – 400 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Declaration, declaring that the acceptance of the Forensic Audit Report dated 23.05.2015 by the respondents 1 to 8 / Consortium Banks, as illegal and violative of RBI Guidelines issued from time to time.

For the Petitioner	:	Mr.A.Arokia Sathees
For the Respondents	:	Mr.M.L.Ganesh for respondents 1 to 7 No Appearance for respondent 8 & 9 Mr.C.Mohan for M/s.King and Partridge for respondents 10 & 11

ORDER

The writ of declaration has been filed to declare that the acceptance of the forensic audit report dated 23.05.2015 by the respondents 1 to 8 / Consortium Banks, as illegal and violative of RBI guidelines

2. The petitioner Company was incorporated in the year 1988 as a private limited company in the name of M/s.Arvind Remedies Pvt. Ltd. and subsequently, it became a public limited company and fresh certificate of incorporation has been issued to that effect on 07.04.1995. The petitioner Company started manufacturing and marketing of world class allopathic and ayurvedic pharmaceutical products within and outside India.

3. The learned counsel for the writ petitioner strenuously contended that based on the impugned forensic audit report dated 23.05.2015, actions were initiated against the petitioner and the petitioner was not in a position to conduct affairs of the business and it was closed down. The petitioner was not even provided the opportunity to contest the audit report and more so, the auditor, who submitted the forensic audit report has not taken into account the mitigating factors and the conditions of the petitioner.

4. The petitioner has raised several grounds in the writ petition in order to assail the forensic audit report dated 25.03.2015, which is

impugned herein. This Court raised a preliminary question regarding the entertainability of the writ petition against the forensic audit report. The auditor's report is in the nature of fact finding and it cannot be construed as a final decision taken by the respondents Bank or the competent authority. It is only to be considered as a document for the purpose of initiation of further action and thus, the report which may be used for initiation of further action cannot be challenged in a writ proceedings. Nibbing the bud will cause irreparable injury to the parties to the proceedings. Adjudications are to be done by following the procedures as contemplated.

5. The learned counsel for the petitioner states that actions were already initiated against the writ petitioner Company based on the impugned forensic audit report. Therefore, the petitioner has to challenge the final decision or proceedings issued by the competent authority. That apart, this Court cannot adjudicate the audit report in a writ proceedings, which is impugned herein, based on certain original documents which are all to be adjudicated based on the documents and evidences. The authorities

competent would have relied on many other documents along with the forensic audit report.

6. The learned counsel appearing on behalf of the respondents Bank brought to the notice of this Court that the Company underwent liquidation and an official liquidator has already stepped in. More so, the forensic auditor had conducted a discrete enquiry and established that large scale irregularities have been done by the petitioner Company, which include manipulation of books of accounts and inflating of revenue numbers of the Company for the last five to eight years. Consequently, the consortium members had declared the account as fraud in its JLM meeting held on 04.07.2015.

7. The counter filed by the respondents reveals that the petitioner had created first *paripassu* charge by way of hypothecation of entire current assets of the Company, namely raw materials, stocks in process, finished goods, spares, consumables and stores and receivable etc., for the working

capital facilities extended by the respondents 1 to 7. But, whereas, in the JLM meeting on 10.03.2015, the petitioner had admitted that there are no stocks available at the factory premises. It is pertinent to mention that the petitioner had created first *paripassu* charge on the block assets of the company, namely Plot Nos.38 to 40 44 & 46, SIDCO Industrial Estate, Irungattukottai, Sriperumbadur Taluk and the realizable value of the aforesaid properties are too low as compared to the huge outstanding loan amount payable to the respondents 1 to 7.

8. Since the Company went into liquidation already and an official liquidator has taken charge even prior to the writ petition, the challenge made in respect of the forensic audit report is untenable and subsequently, the writ petition stands dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No 23.03.2023
Neutral Order:Yes/No

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To:

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S.M.SUBRAMANIAM,J.

(drm)

W.P.No.11608 of 2017

23.03.2023