OCD-24

AP-COM No. 853 of 2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(Commercial Division)

SREI EQUIPMENT FINANCE LIMITED
VS
MARINA PILING COMPANY PVT. LTD. & ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 16th December, 2024.

*Appearance:*
*Mr. Swatarup Banerjee, Adv.*
*Mr. Sanghik Chowdhury, Adv.*
*…for the petitioner.*

*Mr. B. K. Sur, Adv.*
*Mr. S. Mukherjee, Adv.*
*…for the respondents.*

The Court: This Court has already injuncted the respondents from alienating and/or encumbering and/or disposing of and/or dealing with the subject asset as mentioned in the order dated November 11, 2024. Such injunction will continue for another period of four months or until further order, whichever is earlier, to be passed by the appropriate forum. In addition to the above, the respondents shall inform the petitioner with regard to the location and the status of the assets once in a month.

The petitioner's case is that more than Rs. 2 Crores are due and the respondents were required to pay monthly instalment of Rs. 8,07,000/- approximately. Such payments had not been made from 8th instalments.

The respondents dispute such claim and submit that the calculation arrived at by the finance company is erroneous. Around 31 instalments had been paid but the respondents had not taken into account the payments made.

The application under Section 9 has to be decided on the prima facie case, balance of convenience and inconvenience and irreparable loss and injury.

The fact is that the finance company extended the loan to the respondents for operation of the subject equipment being XR220D bearing engine no. 22293605 along with accessories. The Court does not deem it fit to appoint a receiver at this stage as the subject machinery is being utilized by the respondents for his business and unless the respondents are allowed to run the business, the respondents would not be in a position to pay back the loan. However, the Court cannot ignore the inconvenience and/or the loss that would be caused to the financier on account of the default committed by the respondents. Admittedly, the loan account of the respondents has been declared NPA.

Considering the balance of convenience and inconvenience, this Court directs the respondents to pay a sum of Rs. 48 lakhs to the petitioner within 31$^{st}$ January, 2025. Acceptance of the amount by the finance company shall be without prejudice to their claim and shall be treated as an adhoc payment towards the total dues. Although the respondents claim that only Rs.1 crore is due, the petitioner, on the other hand, submits that a sum of Rs. 2 crores and above are due. This issue shall be decided by the appropriate forum, at the appropriate stage.

In case of default, the finance Company shall be at liberty to take appropriate steps for appointment of a receiver and resumption of the vehicle.

AP-COM No. 853 of 2024 stands disposed of accordingly.

As no affidavits have been called for, allegations, if any, shall be deemed to be denied. The petitioner will take immediate steps as per the provisions of the Arbitration and Conciliation Act, 1996.

All parties to act on a server copy of the order.

(SHAMPA SARKAR, J.)

pkd/nm