(2021) 01 DEL CK 0057

In the Delhi High Court

Case No : Civil Suit (COMM) No. 1319 Of 2018

Altico Capital India Limited APPELLANT

Vs

Sare Gurugram Private Limited & Ors RESPONDENT

Date of Decision : 12-01-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 1 Rule 10, Order 7 Rule 14

Citation : (2021) 01 DEL CK 0057

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Gopal Jain, Amit K Mishra, Akshat Hansaria, Manasi Chatpalliwar, Etisha Srivastava, Tushar Bhatnagar, Astha Ahuja, Rajshekhar Rao, Pooja Mehra Saigal, Amit Singh Chauhan, Gauri Puri, Anandh Venkataramani, Hemant Chauhan, Krishanu Barua, Sahil Monga, Ashim Sood, Prabhav Shroff, Apoorva Gupta, Rhythm Buariah, Vijay Nair, Manoranjan Sharma

Final Decision : Disposed Of

Judgement

Mukta Gupta, J

I.A. 17846/2018 (under Order XXXIX Rule 1 and 2 CPC)

I.A. 199/2019 (under Order XXXIX Rule 4 CPC-by defendant No.4)

I.A. 10/2020 (under Order VII Rule 11 CPC-by defendant No.4)

1. This suit has been filed by Altico Capital India Ltd. (in short â??Alticoâ?) impleading 14 defendants, that is, SARE Gurugram Pvt. Ltd. (in short

â??SARE Gurugramâ?); Ramprastha SARE Landholding Company Two Pvt. Ltd. (in short â??SARE Ramprastha Twoâ?), Ramprastha SARE

Landholding Company Five Pvt. Ltd. (in short â??SARE Ramprastha Fiveâ?); SARE Public Company Ltd. (Cyprus) (in short â??SARE Cyprusâ?);

Avon Infracon Pvt. Ltd. (in short â??Avonâ?); Brilliant SARE Realty Pvt. Ltd. (in short â??SARE Brilliantâ?); Impact SARE Magnum Townships

Pvt. Ltd. (in short â??SARE Impactâ?); SARE Realty Projects Pvt. Ltd. (in short â??SARE Realtyâ?); SARE (Cyprus) SPV (No.4) Ltd. (in short

â??SARE Cyprus SPV-4â?); SARE (Cyprus) SPV (No.11) (in short â??SARE Cyprus SPV-11â?); SARE Cyprus Ltd. (in short â??SARE Cyprus

Ltd.â?); SARE Realty Singapore Lte Ltd. (in short â??SARE Singaporeâ?) (all group companies of SARE Group); Axis Trustee Services Ltd. (in

short â??Axis Trusteeâ??) and Vistra ITCL (India) Limited (in short â??Vistraâ??) as defendant Nos. 1 to 14 respectively.

2. In the suit, the plaintiff inter alia prayed for a decree of permanent injunction against the defendants (a) restraining them from acting in breach of

the Facility Agreement, with respect to changing its management, shareholding, restructuring both corporate and capital, and charter documents,

without prior consent of the Plaintiff, directly or indirectly; (b) restraining the defendants from acting in breach of the following agreements with

respect to changing its management, shareholding, restructuring both corporate and capital, and charter documents, without prior consent of the

plaintiff, directly or indirectly viz; (i) Amendment dated 24th November, 2016 to Debenture Trust Deed dated 4th December, 2015, (ii) Memorandum

of Hypothecation executed by Defendant Nos.1, 2 & 3 dated 3rd November, 2016, (iii) Unattested Share Pledge Agreement dated 24th November,

2016, executed by Defendant Nos.2 & 3, (iv) Corporate Guarantee executed by Defendant Nos.2 & 3 dated 24th November, 2016, (v) Corporate

Guarantee executed by Defendant No.8 dated 2nd March, 2017, (vi) Unattested Share Pledge Agreement dated 2nd March, 2017 executed by

Defendant No.8, (vii) Memorandum of Hypothecation executed by Defendant Nos.1, 2 & 3 dated 24th November, 2016, (viii) Debenture Trust Deed

dated 11th April, 2017; (c) restraining the Defendant Nos. 1, 2, 3 & 8 from changing its board of director, management of shareholding, restructuring

both corporate and capital charter documents, without prior approval of the Plaintiff, directly or indirectly viz., and acting in breach of the agreements,

executed in furtherance of the Facility Agreement and Debenture Trust Deed; (d) restraining the defendant Nos. 4, 5, 6 & 7 from changing its

management, capital structure, or shareholding under the Facility Agreement dated 14th May, 2018 without prior consent of the Plaintiff, directly or indirectly; (e) restraining Defendant No.8 from changing its management and control without the prior consent of the Plaintiff, directly or indirectly,

under the Deed of Corporate Guarantee dated 14th May, 2018 and Unattested Share Pledge agreement under the Facility Agreement dated 14th

May, 2018 and Corporate Guarantee and Unattested Share Pledge Agreement under the Debenture Trust 2.

3. Briefly the case of Altico is that Altico and KKR India Asset Finance Pvt. Ltd. (in short â??KKR Indiaâ??) entered into a Facility Agreement dated

14th May, 2018 with SARE Gurugram. Under the Facility Agreement, Altico along with KKR India, the lenders of the Facility sanctioned a loan of

Rs. 100 crores to SARE Gurugram out of which loan amount of Rs. 60 crores wa sextended by Altico and Rs. 40 crores by KKR India. In addition to

the Facility Agreement, Altico had previously also disbursed money to SARE Gurugram and debentures in this regard were issued in favour of Altico

under the Debenture Trust Deed dated 4th December, 2015 (as amended and restated on 24th November, 2016) and a Debenture Trust Deed dated

24th November, 2016. Altico had also disbursed money to SARE Realty and in this regard debentures were issued in favour of Altico under

Debenture Trust Deed dated 11th April, 2017. As a term of the Facility Agreement dated 14th May, 2018 defendant Nos.1 to 12 were required to

create interest, in form of mortgage, charge, pledge, lien, hypothecation, assignment by way of security, Deed of Trust, or any other encumbrances on

the secured assets, in orders to secure the facility loan and confer priority to the payment of Altico and other lenders. Consequently parties executed

various ancillary agreements with the lenders/appointed security trustees, that is, Axis Trustee and Vistra. After the first disbursement of the loan

amount under the Facility Agreement, the guarantors had a period of one year, to duly execute mortgage documents in relation to the lands at Panvel,

Indore and Amritsar along with the guarantees. Further in terms of the facilities, defendant Nos.1 to 9 had undertaken to seek the consent of Altico

before carrying out any change in their management, corporate structure or charter documents. According to Altico, thus under the expressed terms

of the Facility Agreement, defendants were restrained from changing their Board of Directors, Management or the shareholding, without a prior

written consent of the plaintiff/Altico. According to Altico, Receiver of SARE Cyprus had already appointed Directors in SARE Cyprus Ltd. and

Altico apprehended that the receiver may make changes in the management of various defendants except SARE Cyprus, SARE Cyprus Ltd., Axis

Trustee and Vistra in violation of the various agreements as mentioned in the suit in relation to the credit facility. It was thus the case of Altico that

any change in the Board of Directors or Management of defendant Nos.1 to 9 would result in loss to Altico and affect the security creation in its

favour.

Consequently, Altico sought the reliefs as noted above.

4. When the suit came up before this Court on the first date of hearing, that is, 24th December, 2018 this Court based on the representation on behalf

of Altico passed the following order in I.A.17846/2018 (under Order XXXIX Rule 1 and 2 CPC):

â??I.A. No.17846/2018 (under Order XXXIX Rule 1 & 2 CPC)

This is an application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908 (CPC) seeking ex-parte ad interim injunction

restraining the defendants from acting in breach of the Facility Agreement and other ancillary agreement with respect to changing its

management and shareholding without prior consent of the plaintiff directly or indirectly. While the application has several prayer clauses,

learned senior counsel for the plaintiff at this stage submits that he will be restricting his claim to the interim injunction, as prayed above.

Learned senior counsel for the plaintiff submits that he had entered into a Facility Agreement on 14.05.2018 and other ancillary agreement

with SARE Gurugram Private Limited and other companies i.e. defendant nos.1 to 12. It is submitted that the Facility Agreement created a

negative covenant, wherein clauses 2.12 and 3.6 (bb) of Schedule 6 required a prior mandatory consent of the Lenders, in order to make

any change in management of defendant no.1 as well as â??Third Party Security providersâ? and â??SARE groupsâ?. The relevant

clauses are as under:

â??2.12 Merger

The Company, the Third Party Security providers and SARE group shall not except with the prior consent of all the lenders allow any

changes to the management of the Company or the Third Party Security providers or the Sare Group, as the case may and/or enter into any arrangements with its shareholders or creditors or implementation of any scheme or proposal or taking of any action for or allowing any

restructuring, reconstruction, consolidation, amalgamation, merger, demerger or re-schedulement of its debts (or other similar actions)

3.6 Other Negative Covenants

Without the prior written approval of the Majority Lenders, the Company shall not (or procure, as relevant) â?¦.

(bb) any direct or indirect change in management and Control of the Company, Sare Two or Sare Five; or

It is submitted by learned senior counsel for the plaintiff that they understand from Defendant no.1 that in exercise of its power, the

Receiver of Defendant no.4 has already appointed his Directors in Defendant no.11. The plaintiff apprehends that the Receiver will now

make changes in the management of the Defendants in violation of the Facility Agreement and various other agreements, which would cause

irreparable harm and injury to the plaintiff.

Learned senior counsel for the plaintiff has very fairly filed a copy of the order dated 12.10.2018 passed by the learned Single Judge of

this Court in CS (COMM) 1179 of 2018 by SARE Public Company Ltd. through its Receiver, wherein an injunction has been granted in

favour of the plaintiff therein and against the defendant no.17 (plaintiff in the present suit). By way of the said injunction the plaintiff

herein has been restrained to give effect to the Facility Agreement dated 14.05.2018 to the extent of taking any further lien charge, security,

mortgage or pledge of any of the assets of plaintiff therein, till the next date of hearing, which is 28.01.2019.

Learned senior counsel further submits at the Bar that the plaint in that suit is also being filed during the course of the day and he points

out that in the plaint itself the averments have been made that â??Altico are lenders from whom financial facilities are being availed by

SARE Gurugram by encumbering the properties/assets of SARE Public and its subsidiaries including Brilliant SARE Avon.â??

The prayer in the present injunction application is â??to restrain the defendants from acting in breach of the Facility Agreement and other

ancillary agreement with respect to changing its management, shareholding directly or indirectly without the prior consent of the

plaintiff.â??

I have gone through the relevant clauses extracted above. Clauses 2.12 and 3.6 (bb) stipulate that Defendant nos.1 to 12 will not allow any

change directly or indirectly in the management, shareholding/control of the companies, without prior consent of the Lenders.

A perusal of the order dated 12.10.2018 shows that injunction was granted to the limited extent of taking any further lien charge, security

mortgage and pledge over any of the assets of defendant nos.1 to 15 till the next date of hearing which is 28.01.2019, and does not extend

to the relief sought in the present application.

The plaintiff has made out a prima facie case in its favour and balance of convenience is also in its favour. This court is of the opinion that

irreparable harm and injury will be caused, if the relief of injunction as prayed above is not granted.

The Defendant nos.1 to 12 are hereby restrained from changing the management and shareholding directly or indirectly under the Facility

Agreement dated 14.05.2018 and other ancillary agreements without prior consent of the plaintiff till the next date of hearing.â??

5. Contentions of learned counsel appearing on behalf of SARE Cyprus (defendant No.4) seeking rejection of the plaint are two folds. Firstly, in the

entire suit though no cause of action is pleaded against SARE Cyprus however, surreptitiously reliefs are sought by including SARE Cyprus in the

averments and prayers. It is the case of SARE Cyprus that it is not a signatory to the Facility Agreement nor any other agreement even though it is

the parent company of SARE Gurugram and it provided no security nor any collateral for the Facility Agreement. Further SARE Cyprus has never

authorised SARE Gurugram to make any commitment/undertaking on its behalf in the Facility Agreement, including the negative covenant of no

change in shareholding/management of SARE Cyprus without prior consent of the plaintiff/Altico. Secondly, it is contended that since Altico had

assigned the facilities to ACRE, no cause of action subsisted in favour of Altico and the suit cannot be maintained by consenting to the impleadment of

KKR India as a defendant in the suit.

6. Contentions on behalf of SARE Cyprus in relation to I.A.199/2019 under Order

XXIX Rule 4 CPC seeking vacation of the interim order against

SARE Cyprus are that while seeking an interim order from this Court, Altico suppressed material facts. Alticoâ?s cause of action was premised on

the order dated 12th October, 2018 passed in CS (Comm.) No.1179/2018 titled as â??SARE Public Company (Through its Receiver) Ltd. vs. Sare

Gurugram and othersâ?. However, Altico failed to file the plaint and the necessary documents of the said suit as mandated under Order VII Rule 14

CPC, intentionally and deliberately suppressing material documents. Further after appointment of the receiver of SARE Cyprus none of the

defendants of SARE Group can create any security, mortgage, pledge, dispose of any property, enter into or sign any new contracts or agreements,

etc. without first obtaining the receiverâ?s written consent. Thirdly, that on the date of signing of the Facility Agreement only two Directors were on

Board in SARE Cyprus, both of whom resigned on 29th August, 2018 and thus under the Companies Law of Republic of Cyprus there was an urgent

need to appoint atleast two Directors on the Board of SARE Cyprus.

7. Learned counsel for SARE Cyprus further states that despite the fact that the cause of action in favour of Altico allegedly arose on 12th October,

2018, when a suit was filed by the Receiver of SARE Cyprus being CS (Comm.) No.1179/2018 and an ex-parte ad-interim order was passed

restraining SARE Entities from creating any lien, charge or encumbrances on their assets in furtherance of the Facility Agreement, the said interim

order dated 12th October, 2018 was not filed along with the plaint but a copy of the order was merely handed over across the Bar at the time of

hearing. Therefore, even the document which forms the fundamental basis of cause of action of Altico was not filed along with the plaint.

8. Mr.Rajshekhar Rao, learned counsel for SARE Cyprus relies upon the decisions reported as2 006 (3) SCC 100 Mayar (H.K.) Ltd. & Ors. vs.

Owners and Parties, Vessl M.V. Fortune Express & Ors.; (2012) 8 SCC 706 Church of Christ Charitable Trust & Educational Charitable Society vs.

Poniamman Education Trust; 1977 (4) SCC 467 T. Arivandandam vs. T.V. Satyapal & Anr.; 1998 (2) SCC 70 I.T.C. Ltd. vs. Debts Recovery

Appellate Tribunal & Ors.; 1998 (44) DRJ DB 109 Satish Khosla vs. Eli Lilly Ranbaxy Lt;d .2012 (132) DRJ 108 (DB) Raj Kumari Garg vs. SM

Ezaz & Ors.; AIR 2005 Mad 72 Suguna Poultry Farm Ltd. vs. Arul Maniamman

Textiles Ltd R. eliance is also placed on the decision reported as ILR

1987 Delhi 210 Pratap Chand Mehta vs. Krishna Devi Mehta to contend that when the suit is not maintainable it cannot be allowed to continue by a

subsequent application for substitution or addition of parties.

9. According to learned counsel for Altico, one of the condition precedent for entering into the Facility Agreement with SARE Gurugram was that all

companies of SARE Group shall not without the prior consent of all the lenders allow any changes to the management of these companies. In terms of

Clause 2 of the conditions precedent, SARE Cyprus passed the Board Resolution dated 20th April, 2018 which was signed by the Director of SARE

Cyprus consenting to the issuance of corporate guarantee in terms of the Facility Agreement. Thus SARE Cyprus was bound by the terms of the

Facility Agreement. Further the present suit was not filed by Altico to enforce its security under the Facility Agreement or any other independent

guarantee but to enforce a negative covenant restraining the change in the management and control of SARE Cyprus and other defendants without

prior consent of Altico. It is further contended that a statement made by a subsidiary company, that is, SARE Gurugram will bind the parent company,

that is, SARE Cyprus.

10. Relevant clauses of Facility Agreement on which Altico basis its claim are reproduced herein under:

â??SCHEDULE 2

CONDITIONS PRECEDENT

PART A

CONDITIONS PRECEDENT TO EXECUTION

1. CORPORATE DOCUMENTS/ AUTHORITY DOCUMENTS

â?¦

(b) A copy of resolution of the board of directors of the Company, relevant Guarantors, relevant Pledgers (which are corporate entities):

(i) approving the terms of, and the transactions contemplated by, the Facility Documents and resolving that it execute the Facility

Documents to which it is a party;

(ii) authorizing a specific Person or Persons to execute the Facility Documents to which it is a party on its behalf;

(iii) authorizing a specific Person or Persons, on its behalf, to sign (including, if relevant, any Utilization Requests) and/or dispatch all

certificates, documents and notices to be signed and/or dispatched by it under or in connection with the Facility Documents to which it is a

party.

SCHEDULE 6

COVENANTS AND UNDERTAKINGS

â?¦

2. GENERAL UNDERTAKINGS

â?¦

2.12. MERGER

The Company, the Third Party Security Providers and Sare Group, shall not, except with the prior consent of all the Lenders, allow any

changes to the management of the Company or the Third Party Security Providers or the Sare group as the case maybe and/or enter into

any agreements with its shareholders or creditors or implementation of any scheme or proposal or taking of any action for or allowing any

restructuring, reconstruction, consolidation, amalgamation, merger, de-merger or reschedulement of its debts (similar actions).

...

3. NEGATIVE COVENANTS

...

3.6. OTHER NEGATIVE COVENANTS

...

3.6.(bb) any direct or indirect change in management and Control of the Company, Sare Two and Sare Five.

11. This Court during the course of arguments sought a specific reply from learned Senior Counsel for Altico as to whether SARE Cyprus was a

signatory to the Facility Agreement or any ancillary or supplementary agreement or guarantee. The answer on this query was in the negative. It was

however stated that even though SARE Gyprus was not a signatory to the Facility Agreement, or any other ancillary agreement, SARE Cyprus had

passed the Board Resolution dated 20th April, 2018 signed by the Director of

SARE Cyprus consenting to the issuance of corporate guarantee in

terms of the Facility Agreement. Thus SARE Cyprus was bound by its Board Resolution. When this Court wanted to peruse the said Board

Resolution, learned counsel for Altico stated that this document was not filed by Altico along with the plaint, however the same was filed by KKR

along with I.A.494/2019 for impleadment in the suit, as KKR had not been originally impleaded as a defendant by Altico.

12. I.A.494/2019 came up before this Court on 16th January, 2019. Admittedly no advance copy of this application was served on learned counsel for

SARE Cyprus and was served only on learned counsel for Altico. The said application was allowed permitting impleadment of KKR under Order I

Rule 10 CPC based on the no objection furnished by learned counsel for Altico on 16th January, 2019 itself. Hence, SARE Cyprus had no knowledge

of this purported Board Resolution since the same was never served on SARE Cyprus or its counsels.

13. For the first time, the purported Board Resolution of SARE Cyprus dated 20th April, 2018 signed by Mr.Michael Henry Oâ? Sullivan resolving the

issuance of the corporate guarantee for securing the repayment of monies to the lender (i.e. Altico), as a condition precedent in terms of Schedule-2

of the Facility Agreement was referred to and relied upon by learned counsel for the plaintiff/Altico during the course of hearing in these applications.

14. Learned counsel for SARE Cyprus took instructions and it was revealed that the person who signed the said resolution, that is, Mr.Michael Henry

Oâ? Sullivan was never a Director of SARE Cyprus. When learned counsel for Altico was confronted with this fact, learned counsel for

plaintiff/Altico had no reply to the same. Hence the reliance on behalf of Altico on the purported Board of Resolution dated 20th April, 2018 which

never formed part of the documents of the plaint, is wholly unwarranted, as the same is not a genuine document.

15. For the facts noted above, contention on behalf of Altico while seeking an ex-parte ad-interim injunction before this Court on 24th December, 2018

that Altico had entered into the Facility Agreement on 14th May, 2018 and other ancillary agreement with the defendant Nos.1 to 12 was incorrect in

so far as SARE Cyprus was concerned for the reason there was neither any agreement nor any board resolution of the SARE Cyprus authorising

SARE Gurugram or any other person to incur obligation on behalf of SARE Cyprus.

16. In para-20 of the plaint, Altico has stated that the defendants were mandated with multiple obligations under the Facility Agreement dated 14th

May, 2018 arrived at between Altico, KKR and SARE Gurugram. SARE Gurugram was thus required to create security and obligations were

imposed on the guarantors. As per para-24 of the plaint, in terms of the negative covenants, the third party security providers which included

defendant Nos.2, 3, 4, 5, 6 and 7 were bound by the negative covenants. In sub-paras (a) to (p) of para-25 of the plaint, Altico has enumerated the

guarantees, mortgages and agreements, termed as ancillary agreements, executed by the various defendants however, there is no mention whatsoever

of any agreement, undertaking, mortgage or guarantee executed by SARE Cyprus. Again in paragraph-36 of the plaint Altico claims that the

defendants executed various ancillary agreements with defendant No.13, that is, Axis Trustee on behalf of Altico which restricted the defendants

from changing its management, without a prior notice to the security trustee or the lender.

17. It would be further relevant to note that though there was no agreement with SARE Cyprus, in para-36 of the plaint Altico specifically stated that

the defendants (which would obviously include SARE Cyprus) had even executed various ancillary agreements stated above with the defendant

No.13/Axis Trustee on behalf of Altico which specifically restricted the defendants from changing its management, without prior notice to the security

trustees or the lenders. While dealing with the specific deeds of guarantee in para-38, 39, 40, 41 and 42 of the plaint, Altico nowhere refers to any

specific deed of guarantee or the clauses thereunder with SARE Cyprus however, in para-43 of the plaint again by general averments it is pleaded

that the express clauses restrained the defendants (which would include SARE Cyprus) from changing their board of directors, management or

shareholding, without prior written consent of Altico or defendant No.13/Axis Trustee which is acting on behalf of the Altico. Similarly, while

mentioning ancillary agreements in para-67 of the plaint though no reference is made to any agreement with defendant No.4/SARE Cyprus however,

subsequently, the acts/agreements of the other defendants are also attributed to SARE Cyprus, thereby including SARE Cyprus in the sweep with all the defendants.

18. Thus it is incorrectly noted in para-66 and other paragraphs of the plaint that the Facility Agreement imposes restrictions and negative covenants

on third party security providers, that is, defendant Nos.2, 3, 4, 5, 6 and 7.

19. On pages-886 and 888 of the documents filed, Altico has placed on record copies of the deeds, unconditional irrevocable deed of guarantee

executed/to be executed by SARE Cyprus however, the fact remains that no such guarantees were ever executed by SARE Cyprus.

20. From the plain reading of the plaint it is evident that though there is no specific averment qua SARE Cyprus nor any specific undertaking, MoU,

agreement, guarantees etc. is attributed to be executed by SARE Cyprus however, in the sweep all defendants SARE Cyprus has been included in

different paragraphs and thus injunction also sought against SARE Cyprus besides other defendants. Thus not only is the present suit where there is

no cause of action against SARE Cyprus but the suit contains false and incorrect pleadings with concealment and suppression of material facts on

oath.

21. Despite specific pleadings in respect of SARE Cyprus in the plaint that a Receiver of Wafra has been appointed in respect of SARE Cyprus and a

suit being CS (COMM) No.1179/2018 was filed wherein Altico and KKR were injuncted by this Court neither were the plaint and documents of the

said suit filed nor Wafra impleaded by Altico, rather when Wafra filed an application for the impleadment, the same was opposed by the

plaintiff/Altico.

22. Further though Altico sought the prayers seeking restrain of the change of management against all the defendants, the averments in the plaint in

paras-87 and 88 of the plaint are as under:

87. Thereafter, Wafra appointed a Receiver on August 08, 2018, to manage the affairs and assets of the Defendant No. 4, in reference of

the Purchase Agreements dated April 28, 2011 and Debenture dated April 28, 2011, regarding the secured assets of the Defendant No.4.

88. It is submitted that, the Plaintiff understands from Defendant 1, that in exercise of its powers, the Receiver of the Defendant No.4, has

already appointed his directors, in the Defendant No. 11. The Plaintiff now apprehends that the Receiver may make changes in the management of the various defendants, except Defendant Nos. 4, 11, 13 and 14, in violation of the various agreements, mentioned earlier in

this suit entered, into by the Defendants in relation to the credit facilities advanced by the Plaintiff.

23. It is thus evident that Altico was aware that to manage the affairs and assets of SARE Cyprus, Wafra has appointed a receiver on 8th August,

2018 and in para-88 of the plaint specifically notes that the receiver of SARE Cyprus has already appointed its Directors in defendant No.11 SARE

Cyprus Ltd. and Altico apprehended that the receiver may make changes in the management of the various defendants, except defendant Nos.4, 11,

13 and 14, that is, SARE Cyprus, SARE Cyprus Ltd., Axis Trustee and Vistra respectively in violation of the various agreements, however, while

seeking the relief in the prayer clause injunction is sought against all the defendants from changing their management, Directors, shareholdings etc.

Similar averments had been made in para-11 of I.A.17846/2018 but in the prayer 'a' sweeping interim injunction is sought against all the defendants.

24. Prayers (a), (e) and (h) of the plaint are as under:

a. A decree of permanent injunction restraining the Defendants from acting in breach of the Facility Agreement, with respect to changing its

management, shareholding, restructuring, both corporate and capital, and charter documents, without a prior consent of the Plaintiff,

directly or indirectly;

e. A decree of permanent injunction against Defendant No. 1, 2, 3 and 8, restraining them from changing its board of director,

management, shareholding, restructuring, both corporate and capital, and charter documents, without prior approval of the Plaintiff, and

acting in breach of the agreements, executed in furtherance of the Facility Agreement and the Debenture Trust Deeds.

h. A decree of permanent injunction against Defendant Nos. 4, 5, 6 and 7from changing its management, capital structure or shareholding

under the Facility Agreement dated May 14, 2018, without a prior consent of the Plaintiff, directly or indirectly.

25. Though in prayer 'e', Altico noted that relief was sought against defendant Nos. 1, 3 and 8, however, in prayer 'a' injunction is sought against all the

defendants. A perusal of the interim order passed by this Court reveals that these facts were not brought to the notice of this Court and a general

sweeping order was sought restraining defendant Nos. 1 to 12 from changing the management and shareholding directly or indirectly under the Facility

Agreement dated 14th May, 2018 and other ancillary agreement without the prior consent of the plaintiff.

26. In the decision reported as AIR 1994 SC 853 S.P.Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannnath (Dead) by LRs. & O. rSsupreme Court

clearly held that the Courts of law are meant for imparting justice between the parties and one who comes to the Court, must come with clean hands.

It can be said without hesitation that a person, whoâ?s case is based on falsehood, has no right to approach the Court. He can be summarily thrown

out at any stage of the litigation. Supreme Court noted that a litigant, who approaches the Court, is bound to produce all documents executed by him

which are relevant to the litigation, if he withholds the vital document in order to gain advantage on the other side then he would be guilty of playing

fraud on the court as well as on the opposite party.

27. Supreme Court in the decision reported as AIR 1998 SC 1297 K.K. Modi vs. K.N. Modi & Or,s .explaining the expression â??abuse of the

process of the courtâ? held that the same has to be understood in the context that the process of court must be used bona fide, properly and must not

be abused. Supreme Court noted:

43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase â??abuse of the

process of the courtâ?? thus:

â??This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent

improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and

oppression in the process of litigation. â?¦ The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not

closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be

very material.â??

28. In the decision reported as 1995 (1) SCC 421 Chandra Shahi vs. Anil Kumar Verma, Supreme Court held:

â??1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the

organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's

environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same

interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong

done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.â??

29. As noted above, the case of Altico in its pleadings specially qua SARE Cyprus is based on false and incorrect facts and finally Altico basis its case

on a purported Board Resolution of SARE Cyprus which was a fabricated document. No cause of action has been shown in the plaint qua SARE

Cyprus. There is concealment of material facts and documents and incorrect and false facts have been pleaded on oath. Without any agreement,

guarantee or any board resolution passed by SARE Cyprus, Altico sought injunction and was granted injunction in the sweep of including it in all the

defendants without SARE Cyprus being a privity to any of the contracts with Altico. Thus the present suit is a clear abuse of the process of the Court

specially in so far as defendant No.4 SARE Cyprus.

30. It is thus to be seen whether the present plaint can be rejected qua one defendant, that is, defendant No.4 SARE Cyprus. In the decision reported

as 2012 (8) SCC 706 Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trus to,ne of the issue dealt

by the Supreme Court was whether the Single Judge of the High Court was justified in ordering rejection of the plaint in so far as the first defendant

was concerned. Supreme Court explaining what cause of action was, upheld the judgment of the Single Judge in so far as it rejected the plaint qua one

of the defendants. It was held that in the absence of any cause of action shown against the first defendant, the suit cannot be proceeded against the

first defendant and thus the plaint was rightly rejected as against the first defendant.

31. As noted from the facts above in the entire plaint no cause of action has been brought out against SARE Cyprus and by pleading causes of actions

against various other defendants, SARE Cyprus is sought to be brought in the sweep of all the defendants and reliefs sought against SARE Cyprus.

Therefore, the plaint is rejected qua SARE Cyprus/defendant No.4 and SARE Cyprus is directed to be deleted from the array of parties. The interim

order dated 24th December, 2018 in application being I.A.17846/2018 under Order XXXIX Rule 1 and 2 CPC is vacated qua SARE Cyprus and is

modified to this extent.

32. Consequently, I.A. 17846/2018 (under Order XXXIX Rule 1 and 2 CPC), I.A. 199/2019 (under Order XXXIX Rule 4 CPC-by defendant No.4)

and I.A. 10/2020 (under Order VII Rule 11 CPC-by defendant No.4) are disposed of with a cost oRf s. 1 Lakh against Altico to be deposited in Delhi

High Court Legal Services Committee within four week.

