(2012) 11 MAD CK 0080

In the Madras High Court

Case No : M.P. No. 4 of 2012 in O.S.A. No. 345 of 2011

M/s. Indian Oil Corporation Ltd. APPELLANT

Vs

M/s. Nepc India Ltd. and M/s NEPC Micon Ltd. RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:
Companies Act, 1956 — Section 433(e), 434

Citation : (2013) 1 CTC 226

Hon'ble Judges : R. Banumathi, J;K.K. Sasidharan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R. Banumathi, J.—This application is filed to permit the petitioner Company Indian Oil Corporation Limited to withdraw the sum of Rs.

5,30,00,000/- together with accrued interest. During the course of business, Petitioner had entered into two separate fuel supply contract dated

23.7.1996 with the Respondent-M/s. NEPC India Limited and its sister concern M/s. Skyline NEPC Limited. Both M/s. NEPC India Limited and

M/s. Skyline NEPC Limited fell into huge arrears under aircraft fuel account over a period of time. According to the Petitioner by 30.04.1997, the

total arrears due from M/s. NEPC India Limited and M/s. Skyline NEPC Limited under aircraft fuel account accumulated to more than Rs. 19.00

crores. For recovery of the said amount, Petitioner has filed three suits viz., C.S. No. 425 of 1997; C.S. No. 998 of 1999 and C.S. No. 11 of

2007 respectively.

2. Since the Respondent Company and M/s. Skyline NEPC Limited committed default in clearing the outstanding amount, Petitioner-M/s. Indian

Oil Corporation Limited filed C.P. No. 232 of 1998 under Sections 433(e) read with 434 of the Companies Act for winding up of Respondent

Company and M/s. Skyline NEPC Limited. By Order dated 30.9.2011, Company Court passed the order winding up of the Respondent

Company.

3. O.S.A. No. 345 of 2011 has been preferred by Respondent M/s. NEPC India Limited challenging the Order dated 30.9.2011 made in C.P.

No. 232 of 1998 directing winding up of the Company and directing appointment of Official Liquidator to take over the assets of the Company

and the consequential direction to the Directors to file the statement.

4. During the course of hearing the appeal, it was stated that a sum of Rs. 5,30,00,000/- was due from M/s. NEPC India Limited. The

Respondent has agreed to deposit the said amount. In pursuance of the orders of the Court, the said amount of Rs. 5,30,00,000/- has been

deposited by way of demand drafts on various dates. On 07.12.2011, when the matter was taken up for hearing, learned Senior Counsel for

Petitioner submitted that the Petitioner may be permitted to withdraw the amount deposited for which learned counsel for Respondent raised a

strong objection. However, Court observed that the Petitioner is at liberty to file appropriate application for payment out of the said amount. By

way of this application, Petitioner-M/s. Indian Oil Corporation Limited seeks to withdraw the sum of Rs. 5,30,00,000/- together with accrued

interest from the High Court.

5. On behalf of M/s. Indian Oil Corporation Limited, Mr. R. Krishnamurthy, learned Senior Counsel submitted that when the Respondent has

obtained an order of ""status quo"", there is no impediment for permitting the Petitioner to withdraw the amount. Learned Senior Counsel further

submitted that huge amount of more than Rs. 19.00 Crores is due from M/s. NEPC India Limited and M/s. Skyline NEPC Limited and therefore,

notwithstanding the pendency of the suits, Petitioner may be permitted to withdraw the amount. The learned Senior Counsel further submitted that

the Petitioner is agreeable for imposing appropriate condition for such withdrawal.

6. Mr. S.R. Rajagopal, learned counsel for the Respondent submitted that the Respondent expressed their willingness to deposit a sum of Rs.

5,30,00,000/- only to show that they are commercially solvent and to establish their bonafides and the said amount has not been deposited

towards the liability as alleged by the Petitioner. Learned counsel further contended that the Civil Suit in C.S. No. 998 of 1999 for recovery of a

sum of Rs. 5,28,23,501/- is pending and the Respondent has made a counter claim claiming a sum of Rs. 6,57,839.88 against the Petitioner and

the Respondent has specifically pleaded that they are not liable to pay the amount to M/s. Indian Oil Corporation Limited and under such

circumstances, question of permitting the Petitioner to withdraw the amount deposited by the Respondent does not arise. Learned counsel further

submitted that filing of winding up Petition u/s 433(e) of Companies Act cannot be used as a mode for recovery of the amount. Learned counsel

would submit that unless and until C.S. No. 998 of 1999 is decided, the Petitioner cannot be permitted to withdraw the amount deposited by the

Respondent and if the Petitioner is permitted to withdraw the said amount, the Respondent would be subjected to serious hardship. In support of

his contention, learned counsel placed reliance upon Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd., Rishi Pal Gupta

Vs. S.J. Knitting and Finishing Mills Ltd., ; Rishi Pal Gupta Vs. S.J. Knitting and Finishing Mills Pvt. Ltd., Techno Fire Protection Services (P.)

Ltd. Vs. MTZ Polyesters Ltd., Pavan Om Parkash Kejriwal Vs. Partap Steel Rolling Mills (1935) Ltd., In Re: Ispat Industries Limited,

7. We have carefully considered the submissions of both sides and also the materials on record.

8. The merits of the case pleaded by the Respondent is to be considered only while hearing the main appeal O.S.A. No. 345 of 2011 preferred

against the order of winding up in C.P. No. 232 of 1998. Petitioner M/s. Indian Oil Corporation Limited is a Public Limited Company wherein

Government of India owns 96% of shares. Admittedly, M/s. Indian Oil Corporation Limited entered into two separate fuel supply contracts with

M/s. NEPC India Limited and its sister concern M/s. Skyline NEPC Limited on 23.7.1996. According to the Petitioner, both M/s. NEPC India

Limited and M/s. Skyline NEPC Limited fell to huge arrears under aircraft fuel account over a period of time and the amount accumulated would

come to more than Rs. 19.00 Crores as on 30.04.1997.

9. Materials available on records show that the 1st Respondent and its sister

concern have entered into a tripartite agreement on 06.05.1997 with

the Petitioner, in and by which, the 1st Respondent has agreed to guarantee due repayment of the dues from M/s. NEPC Micon Limited.

Petitioner has already filed a Civil Suit against the 1st Respondent on the strength of the tripartite agreement and the deed of hypothecation. The

claim together would come to a sum of Rs. 19.00 Crores.

10. The Petitioner is a Public Sector Undertaking. The 1st Respondent has already obtained an order of status quo and it was only for the purpose

of granting such an interim protection, a sum of Rs. 5,30,00,000/- was directed to be deposited. The Petitioner has agreed to redeposit the amount

in the case the appeal is allowed.

11. In view of the fact that the Civil Suits filed by the Petitioner claiming a sum of Rs. 19.00 Crores are now pending and taking into account the

order of status quo granted by this Court, subject to the deposit of Rs. 5,30,00,000/-, we are of the view that the Petitioner should be permitted to

withdraw the said amount on condition of filing an undertaking to redeposit the amount in case the Appellant succeeds.

12. Accordingly, we permit the Petitioner to withdraw a sum of Rs. 5,30,00,000/- (Rupees Five Crores Thirty Lakhs) along with the accrued

interest lying in the Court deposit, subject to filing an affidavit of undertaking before the Registry, agreeing to redeposit the entire amount, in case

the appeal is allowed or the Court directs for such deposit. The Miscellaneous Petition is allowed as indicated above. No costs.