(2013) 01 DEL CK 0259

In the Delhi High Court

Case No : CO.PET. 292 of 2004, CCP (CO.) 31 of 2005, CCP (CO.) 16 of 2007 and CCP (CO.) 22 of 2011

Pacific Convergence Corpn. Ltd. — APPELLANT

Vs

Data Access (India) Ltd.
 Canara Bank Vs Neena Anand and Others
 Siddhartha Ray Vs Sporting Pastime India Ltd. and Others
 K.C. Palanisamy Vs Ramaswamy Athappan and Others — RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0259

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Chandni Goel in CO.PET. 292 of 2004, Mr. Y.P. Narula, with Mr. Aniruddha Choudhury and Mr. Abhay Narula, in CCP CO. 31 of 2005, Mr. Anish Dayal and Mr. Siddharth Vaid, in CCP CO. 16 of 2007 and Mr. H. Karthik Seshadiri, for K.C. Palanisamy, Cheran Holdings Pvt. Ltd. and K.C. Palanisamy, Associate Holdings Pvt. Ltd. in CCP CO. 22 of 2011, for the Appellant; H. Karthik Seshadiri, Advocate for K.C. Palanisamy, Cheran Holdings Pvt. Ltd. and K.C. Palanisamy, Associate Holdings Pvt. Ltd. Mr. Dhruv Wahi, Ms. Shalini Rawat, Ashish Singh, Brijesh Choudhary, Advocates for Cheran Ent. (P) Ltd. Mr. Y.P. Narula with Mr. Aniruddha Choudhury and Mr. Abhay Narula, Advocates Mr. Puneet Gupta and Mr. Sanjeev Sabharwal, Senior Standing Counsel for IT Department in CO.PET. 292 of 2004, Mr. Kanwal Chaudhary, Advocate for OL Mr. Amol Sharma, Advocate for Respondent No.7 Mr. Dhruv Wahi, Ms. Shalini Rawat, Ashish Singh, Brijesh Choudhary, Advocates for Cheran Entsr. (P) Ltd. Mr. H. Karthik Seshadiri, Advocate for K.C. Palanisamy, Cheran Holdings Pvt. Ltd. and K.C. Palanisamy Associate Holdings Pvt. Ltd. in CCP (CO.) 31 of 2005 and Mr. V. Lakshmi Narayanan, Advocate for SPIL Mr. Dhruv Wahi, Ms. Shalini Rawat, Ashish Singh, Brijesh Choudhary, Advocates for Cheran Ent. (P) Ltd. in CCP (CO.) 16 of 2007, for the Respondent

Judgement

Justice S. Muralidhar J.

1. Although there are a large number of applications pending consideration, this

order covers a specific issue concerning the implementation of previous judgments and orders of the Court vis-a-vis the liability of Sporting Pastime India Ltd. (''SPIL''). The facts relevant to the issue are that CP No. 292 of 2004 was filed by Pacific Convergence Corporation Ltd. (''PCCL'') under Sections 433(e) and 434 of the Companies Act, 1956 (''Act'') seeking the winding up of Data Access (India) Ltd. (''DAIL'') on the ground that DAIL was unable to pay its debts. DAIL admitted to the liability arising from the availing of a loan of $ 10 million in its draft red herring prospectus and the other documents. DAIL stated that Cheran Holdings Pvt. Ltd. (''CHPL''), one of the shareholders of DAIL, had filed a Scheme of Arrangement (''Scheme'') in CA No. 537 of 2005. It is further disclosed that CHPL and KCP Associates Holdings Pvt. Ltd. (''KCPH'') had purchased shares of DAIL from the Promoter, Mr. Siddhartha Ray and his group companies through a series of shareholders'' agreements. It was pointed out that at the request of the ''new investors'', M/s. Odyssey America Reinsurance Corporation (''Odyssey Re'') agreed to lend money to DAIL on certain conditions. One of the subsidiaries of DAIL, Pacific Net Invest BV, Netherlands had incorporated a wholly owned subsidiary in the USA, Data Access America Inc. (''DAA''). DAA had, in turn, incorporated a wholly owned subsidiary in the U.K. by the name of Data Access Telecom Ltd. (''DATL'').

2. The Court passed a detailed judgment in CP No. 292 of 2004 on 18th November 2005 which, inter alia, dealt with CA No. 537 of 2005 filed by CHPL under Sections 391 and 394 of the Act propounding a Scheme for restructuring of the debts of DAIL. The Scheme was opposed, inter alia, by the secured creditors including Canara Bank and IDFC. The Court noted that DAIL had admitted, in CA No. 1 of 2005 that its debts were to an extent of Rs. 446.5 crores. This included the claim of the Income Tax Department (''IT Department'') to the extent of Rs. 18 crores, of which DAIL admitted Rs. 5 crores. DAIL also admitted to a debt of Rs. 90 crores owing to the secured creditors as against Rs. 120 crores claimed by them. In view of the strong opposition by the secured creditors to the said Scheme, the Court rejected CA No. 537 of 2005. The Court expressed a prima facie view that DAIL was not in a position to meet its existing liabilities and that "there are bleak chances of the company''s revival which has no business activity at present and thus it has lost its substratum as well." C.P. No. 292 of 2004 was accordingly admitted. The Official Liquidator (''OL'') who had, by an order dated 26th October 2004, been appointed as the Provisional Liquidator (''PL''), was directed to immediately take possession of all the assets and records of DAIL and file his report.

3. In its judgment dated 18th November 2005 the Court dealt with several applications, in particular CA No. 1409 of 2004 filed by Canara Bank which was the lead Bank. The case of Canara Bank was that DAIL owed it about Rs. 92 crores. Rs. 17 crores was owed to one of the consortium banks, i.e., Syndicate Bank. DAIL had, with the permission of Canara Bank opened an account with ABN Amro Bank (''ABN Amro'') for the limited purpose of receiving the aforementioned money from DAA. A sum of $ 17 million (which approximately

was Rs. 78.45 crores) was received by DAIL from DAA on 19th August 2004. On that day itself from the said account in ABN Amro Rs. 78.45 crore was transferred by DAIL to CHPL. Immediately thereafter CHPL transferred Rs. 18.05 crores to KCPH, approximately Rs. 35.30 crores to Cheran Enterprises Pvt. Ltd. (''CEPL'') and Rs. 25 crores to SPIL. On 20th August 2004, KCPH transferred Rs. 18.03 crores to the Syndicate Bank.

4. Canara Bank filed CA No. 1582 of 2004 in which this Court passed an order on 17th December 2004 directing that the balances to the above extent be maintained in the respective accounts of CEPL, SPIL and KCPH.

5. DAIL filed CA No. 35 of 2005, seeking vacation of the order dated 17th December 2004. DAIL contended that $ 17 million was not received from DAA but as a loan from Odyssey Re subject to two conditions, i.e., (a) rollover of all loans and bank guarantees with the Canara Bank and Syndicate Bank for 12 months and (b) reinstatement of all points of interconnect with Bharat Sanchar Nigam Limited (''BSNL'') and extension by BSNL of all outstanding dues. DAIL further contended that Hamblin Watsa Investment Counsel (''Hamblin''), who were the investment advisors of Odyssey Re, had addressed a letter dated 12th August 2004 to DAA about the said loan. CEPL, which was a joint venture between ORE Holdings Ltd., Mauritius, which was a subsidiary of Odyssey Re, also sent a letter to the same effect to Canara Bank on 12th August 2004 stating that the loan had been given subject to certain conditions. It was stated that the sum of $ 17 million was transferred to CHPL as directed by Hamblin and since the conditions for the loan had not been fulfilled, Odyssey Re had a right to recall it. Therefore, Canara Bank had no right over the said money. There were also allegations made by CHPL and KCPH against Mr. Siddhartha Ray accusing him of siphoning off the funds of DAIL.

6. As far as CEPL was concerned, it sought to explain that it had remitted a sum of Rs. 35 crores to CHPL on 1st July 2004 for acquiring the equity in CHPL. However, due to the subsequent decision of the Board of Directors (''BoDs'') of CEPL it was decided not to purchase the said equity. Consequently CEPL asked for a refund of the said sum. CEPL accordingly filed CA No. 287 of 2005 seeking vacation of the stay vis-?-vis its account. Hamblin filed CA No. 677 of 2005 seeking vacation of the said order by putting forth the same explanation that the amount of $ 17 million was by way of a loan from Odyssey Re to DAA.

7. The case of SPIL, which filed CA No. 288 of 2005, again seeking the vacation of the order dated 17th December 2004, was that it had been originally a company held by Kasturi & Sons Ltd. (''KSL'') and incorporated for the promotion and development of a large parcel of land of around 400 acres near Chennai for the purposes of a country club-cum-golf course. SPIL availed of the loan of Rs. 25 crore from Dhanalakshmi Bank and Development Credit Bank, for which KSL stood as guarantor. On 19th July 2004, KSL sold 90% shares in SPIL to Cheran Properties Ltd. (''CPL'') which was a 100% subsidiary of CEPL. It is stated that CHPL made an investment of Rs. 25 crores in SPIL. It may be recalled that CEPL

held 100% shares of CHPL. It may also be noted at this stage that the allotment by SPIL of shares to CHPL has since been cancelled by the Company Law Board (''CLB'') by an order dated 9th October 2006. The CLB took note of the judgment dated 18th November 2005 passed by this Court in CP No. 292 of 2004.

8. Reverting to the judgment dated 18th November 2005, the case of SPIL that the sum of Rs. 25 crore was transferred to it by CHPL on 19th August 2004 by way of investment was not believed by this Court. The Court noted that Canara Bank had received copies of the letters addressed by Mr. Siddhartha Ray as Chairman of DAIL to the Enforcement Directorate and the Revenue authorities stating that the new management, i.e., Mr. K.C. Palanisamy and others had fraudulently transferred funds of DAIL to their own companies. The declaration filed with the Reserve Bank of India (''RBI'') on 19th August 2004 by ABN Amro stated that the inward remittance of $17 million was received on the account of DAIL against "outstanding bills of services rendered." The Court also noted the contention of Canara Bank that the sum of Rs. 78.45 crores (i.e. $17 million) was held by DAIL "in trust and such a trust money is not be intermingled with other funds" of DAIL and "has to be given a separate treatment." In the circumstances, the Court dismissed the applications and made absolute the interim order dated 17th December 2004 "to protect the interests of the secured creditors." The Court accepted the case of Canara Bank and held that the transactions involving some of the Respondents were "not without suspicion and cannot be accepted at the face value."

9. In para 72 of the judgment dated 18th November 2005, the following directions were issued by this Court:

72. Interim order dated 17th December, 2004 is accordingly confirmed. Consequence would be that the amount which has been transferred from ABN Amro Account No. 1014374 of the company to CHPL and other companies shall be remitted back by those parties to the account of the company maintained with ABN Amro Bank. Needful in this respect shall be done within two weeks. After receiving this amount the ABN Amro Bank shall remit this amount to Canara bank. It is because of the admitted liability of the bank and charge of the bank over this money. Furthermore, in case it is found ultimately that the money is to be refunded to Odyssey Re etc., appropriate orders can be passed directing Canara Bank to refund the amount and the bank has sufficient means to carry out such directions. Appropriate orders shall be passed in the company petition as to how this amount is to be dealt with depending on the nature of the final orders passed in the company petition.

10. Against the judgment dated 18th November 2005, appeals were filed by CHPL, KCPH and SPIL. The Division Bench (''DB'') of this Court dismissed the appeals by judgment dated 20th November 2009. Before the DB SPIL questioned the direction issued to it. SPIL pointed out that KCPH had transferred Rs. 18.03 crores to Syndicate Bank and that the IT Department had, on 23rd February 2005 and 19th August 2005, appropriated Rs. 17,40,29,511 and Rs. 7,59,70,489

respectively. However, these submissions did not find favour with the DB. By its judgment dated 20th November 2009, the DB dismissed the appeals thus affirming the order dated 18th November 2005. The DB held that the Inward Remittance Certificate filed by ABN Amro with RBI on 19th August 2004 was indicative of the nature of transaction which was not consistent with the case set up by the Appellants that it was a loan advanced by Odyssey Re.

11. Meanwhile CEPL filed writ petitions [WP (C) 32444-32450 of 2006] in the Madras High Court praying inter alia for a writ of certiorari to quash an order dated 23rd September 2005 issued by the Additional Commissioner of Income Tax (''Addl. CIT'') and certain other orders of the Assistant CIT, confirming the demand against CEPL and praying for the release of the sums attached together with interest. SPIL filed WP(C) 13820 of 2007 against the Asst. CIT and CIT, Coimbatore [Respondent Nos. 1 and 2] and the State Bank of India (''SBI''), Adyar Branch, Chennai [Respondent No. 3] seeking stay of the order dated 19th February 2007 passed by CIT, Coimbatore and praying that the attached money should be released only to SPIL and no one else. A prayer was also made that the sum of Rs. 17,40,29,511 already recovered by IT Department should be asked to be refunded together with interest.

12. In SPIL''s writ petition, a learned Single Judge of the Madras High Court passed an interim order on 9th May 2007 in terms of which the IT Department and the SBI were restrained from releasing the aforementioned amounts, i.e., Rs. 17,40,29,511 and Rs. 7,59,70,489 along with accrued interest to any other person than SPIL pending disposal of the writ petitions. Aggrieved by the said interim order, Canara Bank filed SLP (Civil) No. 10960 of 2008 in the Supreme Court of India. While directing notice to issue in the petition, the Supreme Court passed an interim order to the effect that the amounts will not be released to any one by the IT Department and the SBI. However, ultimately, on 14th December 2009, the SLP was dismissed with a request to the High Court of Madras to expeditiously hear and dispose of the pending writ petition, preferably within six months thereafter.

13. Reverting to the proceedings in this Court, there was an obligation on KCPH, CEPL, CHPL and SPIL to comply with the directions issued in the judgment dated 18th November 2005 and bring back the sum of Rs. 78.5 crores. On 22nd September 2006 the Court issued a further direction on the applications, CA Nos. 1142 of 2006 and 1145 of 2006, filed by Mr. Siddhartha Ray that "if Income Tax Authorities issue refund of Rs. 25 crores to M/s. Sporting Pastime India Ltd., the same along with interest will be deposited in Canara Bank as per directions given in the order dated 18.11.2005." On 26th September 2006, another direction was issued in CA 1156 of 2006 filed by Mr. Siddharth Ray in relation to CHPL and CEPL directing that "if the income tax Department releases payment of Rs. 32,43,31,290/- to M/s. CG Holdings Private Limited, the same after deposit will not be withdrawn and the said company will maintain the minimum balance of the amount received from the income tax Department." The said order was,

however, made subject to orders of the Madras High Court in the writ petitions by CEPL.

14. On 21st January 2011, a detailed judgment was passed by this Court in the applications filed by CEPL (CA 1459 of 2006 and 1061 of 2010), Canara Bank (CA 221 of 2007 and CA 688 of 2010), Odyssey Re (CA 989 of 2007). It also dealt with the contempt petitions filed by Canara Bank and Syndicate Bank for non-compliance with the judgment dated 18th November 2005.

15. In the said judgment, the Court also noted that there was litigation pending in the CLB at the instance of both Mr. K.C. Palanisamy as well as O.R.E. Holdings Pvt. Ltd. alleging oppression and mismanagement in the affairs of CEPL. It was noticed that the interim order passed by the CLB did not affect the order dated 18th November 2005 passed by the Company Court which had been upheld by the DB. The Court also noted that differences had cropped up between Mr. Nandakumar Athappan, who held 45%, 45% and 10% shares respectively in CEPL, O.R.E. Holdings and CG Holdings Pvt. Ltd. (''CGHPL''), and Mr. K.C. Palanisamy. After noticing the complex pattern of holding of shares of one company in the other, the Court concluded that "prima facie, it does appear that all the companies were fully aware and conscious of the transfer of the money in ABN Amro Bank and the claim of Canara Bank." Notice was also taken of the proceedings pending in the Madras High Court at the instance of CEPL.

16. The Court in its detailed order dated 21st January 2011 issued the following directions:

36....

(1) All bank accounts and deposits of CEPL, CHPL, SPIL and KCPAHPL are hereby attached. No payments will be made from the said bank accounts except with the permission of the Company Court. The aforemtioned companies are also restrained from selling, disposing of or creating third party interest in respect of movable and immovable assets.

(2) Managing Director/principal officer of CEPL, CHPL, SPIL and KCPAHPL will file affidavits in the Court within fifteen days furnishing the following details:

(a) Account numbers and details of the banks including details of fixed deposits and other deposits.

(b) Details of movable and immovable assets including shares.

(c) Names and addresses of the directors.

(37) CEPL, Mr. K.C. Palanisamy and CHPL will file copy of this order before the Madras High Court. Copy of this order will be also brought to the notice and filed with the Company Law Board by the parties appearing before the Company Law Board.

(38) Mr. Nandkumar Athappan will be present in the Court on the next date of

hearing.

(39) The aforesaid attachment orders and restrain order shall be withdrawn on deposit of Rs. 78,45,50,000/- with the Canara Bank in terms of the order dated 18th November, 2005. The said amount must be deposited immediately in terms of the said order and latest by or before 31st March, 2011. The attachment orders in respect of the bank accounts and fixed deposits or other deposits will not come in the way of depositing payments. In case deposit is not made by 31st March, 2011, the parties concerned will be liable to pay interest @ 15% per annum with effect from the date of passing of this order. The question of payment of interest for past period is for the time being left open.

17. Against the above judgment dated 21st January 2011, CEPL filed Company Appeal Nos. 16 and 17 of 2011 before the DB. An interim order was passed in the said appeals by the DB on 27th April 2011 noting the statement made on behalf of Canara Bank that "no precipitative action would be taken by the bank in so far as the appellant is concerned." SPIL did not file an appeal. CEPL''s appeals are pending consideration before the DB. In the meanwhile, an application has also been filed in the DB being CM No. 19443 of 2011 purportedly by CEPL itself by Mr. K.C. Palanisamy, stating that the Co. Appeals 16-17 of 2011 had been filed by Mr. Ramaswamy Athappan and Mr. Chandran Rathinaswamy without proper authorisation and without consent of Mr. K.C. Palanisamy, who was the Managing Director (''MD'') of CEPL. Mr. K.C. Palanisamy has also filed CCP(Co.) 22 of 2011 in this Court stating that in the above application, the DB had issued notice and further that the present BoDs of CEPL had decided to comply with the order dated 21st January 2011 to show their bonafides to the Court.

18. The other development that requires to be noticed is that, on 3rd January 2013, a learned Single Judge of the Madras High Court allowed the writ petitions filed by CEPL in which Canara Bank was impleaded as a party Respondent by an order dated 16th September 2010. Some of CEPL''s writ petitions were disposed of as having become infructuous on account of subsequent developments, including allowing of appeals filed by CGHPL, the 6th Respondent in those writ petitions against the assessment order. It was held by the learned Single Judge in the judgment dated 3rd January 2013 that the attachment order issued by the IT Department was on the mistaken assumption that CGHPL was the holding company of CEPL and that a certain sum was issued from CEPL to CGHPL. Since it was specifically stated on affidavit that CGHPL was not the holding company of CEPL and CEPL did not owe any money to either the Directors or the shareholders, the attachment by the IT Department was held to be invalid. However, in para 32 of the judgment, the Madras High Court made it clear that the said order was "subject to the order dated 21.01.2011 passed by the Delhi High Court in Company Petition No. 292/2004 & Company Application Nos. 1459/2006, 221/2007, 688/2010, 1061/2010 and 989/2007 in Company Petition No. 292 of 2004 and CCP(CO) Nos. 31/2005 and 16/2007 and also the order dated 13.08.2008 passed by the Company Law Board, Additional Principal Bench,

Chennai, in C.P. Nos. 65 of 2005 and 76 of 2005."

19. Back in this Court SPIL filed CA 603 of 2011 through an interim Receiver Mr. Kuppuswamy seeking recall of the judgment dated 21st January 2011. The said application was dismissed by order dated 13th May 2011, leaving it open to SPIL to move the Company Court in case there was compliance and payment was made in terms of the order dated 21st January 2011. Co. Appeal 45 of 2011 filed against the said order was dismissed by the DB as withdrawn on 9th May 2012. Consequently, the order dated 21st January 2011 became final as regards SPIL.

20. In CA 1142 and 1145 of 2006 filed by Mr. Siddhartha Ray, notice was directed to issue to the Addl. CIT, Coimbatore by this Court on 13th April 2012, requiring him to file a status report with regard to the amount attached in the account of SPIL. Thereafter, on 13th July 2012, a further order was passed noting the oral submission of learned counsel for the IT Department that Rs. 25 crores relating to SPIL was lying with the IT Department. The IT Department was then directed by the Court to deposit the aforesaid amount with the OL.

21. Subsequent to the above order, a further application, being CA No. 1540 of 2012, was filed by Canara Bank seeking direction to the IT Department for deposit of the said sum together with interest. Notice was issued on the said application on 21st August 2012.

22. On 11th September 2012, the IT Department filed an affidavit dated 31st August 2012 of Mr. S. Tamil Selvam, ACIT, Coimbatore, which reads as under:

1. I state that I am in-charge and in control of M/s. Sporting Pastime India Ltd., Coimbatore being its Assessing Officer and conversant with the facts of the case and competent to swear the present affidavit.

2. I state and submit that an amount of Rs. 25 crores was provisionally attached u/s 281B of the Income Tax Act, 1961 and after assessment a sum of Rs. 17,40,29,511/- was appropriated towards the demand arising out of the said assessment order. However, the balance amount of Rs. 7,59,70,489/- was never appropriated by the Income Tax Department. The later amount which was not appropriated towards demand stood discharged as provisional attachment u/s 281B was not extended after statutory period of 2 years.

3. That before any amount could be refunded order dated 09/05/2007 of Hon''ble Madras High Court was received stating and injuncting the Department not to release the same to any party but only to M/s. Sporting Pastime India Ltd. The same was followed by another order sent to the Department by the Hon''ble Supreme Court vide SLP No. 10960/2008 dated 7.04.2008 injuncting Income Tax Department for releasing that amount to ''any party.'' The order of stay of the Hon''ble Supreme Court reads as under:-

"Meanwhile respondent no. 2 and 3 will not release the amount to any party."

4. That admittedly Department does not have any lien on the said amounts and

in any case no demand is subsisting payable or due from M/s. Sporting Pastime India Ltd.

5. That Department is ready and willing to comply with the order of this Hon''ble Court dated 22.09.2006 but for the injunction issued by the Hon''ble Court of Madras.

6. That on further independent verification from Hon''ble Supreme Court it transpires that the said petitions filed before the Hon''ble Supreme Court stands dismissed vide order dated 14.12.2009. In the said order Hon''ble Supreme Court had directed, while dismissing the SLP, that they were not going to interfere in the said order of Hon''ble Madras High Court being ''interim order'' and had directed the Hon''ble Madras High Court to "expeditiously hear and dispose of the pending writ petition preferably within six months from today."

7. No further communication is available on record as to what has transpired after the said order of Hon''ble Supreme Court with remand to Madras High Court to pass a final order within six months. However, from the internet verification it is discerned that the said petition before the Hon''ble Madras High Court is still shown as pending.

8. That in any case, it is submitted that the Department is still ready and willing to comply with the order of this Hon''ble Court but is handicapped by the proceedings that are taking place before Hon''ble Madras High Court. The earlier order of injuncting the Income Tax Department to refund the amount only to M/s. Sporting Pastime India Limited is in vogue. Otherwise, the Department had no lien and is willing to deposit/pay the said amount according to the direction of this Hon''ble Court.

23. On 4th January 2013, this Court directed that the main petition and the applications be set down for hearing on day-to-day basis from 15th January 2013 onwards. SPIL has filed an affidavit dated 11th January 2013, wherein, inter alia, it is mentioned that its movable assets constitute a fixed deposit with the SBI, Adayar Branch, Chennai in the sum of Rs. 11.60 crores.

24. This Court heard the matter on 15th, 16th and 17th January 2013. The Court heard the submissions of Mr. Y.P. Narula, learned Senior counsel appearing for Canara Bank, Mr. Anish Dayal on behalf of Mr. Siddhartha Ray, Mr. H. Karthik Seshadiri on behalf of CHPL, KCPAH and Mr. K.C. Palanisamy, Mr. V. Lakshminarayanan on behalf of SPIL, Mr. Sanjiv Sabharwal, learned Senior Standing Counsel for IT Department, Mr. Kanwal Chaudhary, Advocate on behalf of OL and Mr. Dhruv Wahi, Advocate on behalf of CEPL.

25. As noted earlier, the Court by this order proposes to deal only with the limited aspect of the directions that are required to be issued to SPIL for compliance with the earlier judgments dated 18th November 2005 and 21st January 2011, both of which have become final as far as SPIL is concerned. The submissions made on behalf of learned counsel for the parties on the other

issues will be dealt with in the subsequent orders.

26. The above narration of facts reveals the following factual position:

(i) The judgment dated 18th November 2005 passed by the Company Judge in CP 292 of 2004 has become final with the dismissal by the DB of Co. Appeal Nos. 3-5 of 2006 filed by CHPL, KCPH and SPIL respectively on 20th November 2009.

(ii) Writ Petition Nos. 13820-21 of 2007 filed by SPIL in the Madras High Court are pending. With the dismissal on 14th December 2009 of SLP (C) No. 10960 of 2008 filed by Canara Bank, the interim order dated 9th May 2007 passed in those writ petitions to the effect that with the release by the IT Department of Rs. 7,59,70,489 [forming subject matter of WP(C) No. 13820 of 2007] and Rs. 17,40,29,511 [forming subject matter of WP(C) No. 13821 of 2007] along with interest accrued thereon will not be made to any person other than SPIL continues.

(iii) There is no restraint on SPIL by any Court in complying with the directions issued by this Court in the judgments dated 18th November 2005 and 21st January 2011.

(iv) The IT Department has made it clear that it is prepared to comply with the directions of this Court dated 22nd September 2006 "but for the injunction issued by the Hon''ble High Court of Madras." In other words, it expresses its inability to directly deposit the money with Canara Bank.

27. The analysis of the above facts reveals that SPIL has an interim injunction in its favour by virtue of the order dated 9th May 2007 passed by the Madras High Court in its two writ petitions as aforementioned to the effect that the monies in question will be released by the IT Department only to SPIL and no one else. The IT Department has expressed its readiness to do so consistent with the orders of the Madras High Court, since, in any event, the order dated 9th May 2007 subsists.

28. As regards the sum of Rs. 7,59,70,489, it remains in the account No. 10792703325 of SPIL with the SBI, Adayar Branch, Chennai by way of a fixed deposit (''FD'') the value of which, as on the date of the filing of affidavit dated 11th January 2013 by SPIL in this Court, is Rs. 11.60 crores. CA No. 659 of 2008 was been filed by Canara Bank in this Court against SPIL and SBI, Chennai in relation to the aforementioned sum, in which notice was directed to issue by the Court on 24th July 2008 itself.

29. Therefore, as regards the sum of Rs. 7,59,70,489 which, at present, has grown, together with interest, to Rs. 11.60 crores this Court directs the SBI, Adayar Branch, Chennai to close the said FD and transfer the proceeds to account No. 10792703325 of SPIL forthwith. SPIL will immediately thereafter ask SBI to transfer the said amount by RTGS to the account of Canara Bank, Green Park Extn. Branch, New Delhi forthwith. SBI is directed not to allow the said amount to be appropriated for any other reason by any other party. The above

directions should be complied with not later than 24th January 2013. A report of compliance in this regard be filed by SBI in this Court before the next date.

30. As regards the other component of Rs. 17,40,29,511, it is stated by Mr. Sabharwal, that although an appeal has been filed by the IT Department before the Income Tax Appellate Tribunal (''ITAT'') against the cancellation of the demand, there is no interim order passed by ITAT. He submits that as long as an undertaking is filed by Canara Bank in terms of order dated 22nd September 2006 already passed by this Court that it will refund the amount that is subsequently found to be payable to the IT Department, there will be no difficulty for the IT Department to pass orders and refund the said amount together with interest in terms of Section 244 of the Income Tax Act, 1961 (''IT Act''). Mr. Narula states that Canara Bank will give such an undertaking. It is stated by Mr. Lakshminarayanan, learned counsel for SPIL, that any order passed in this regard should be subject to the orders that will ultimately be passed in relation to the income tax liability, if any, of SPIL.

31. As already noticed, this Court had, on 22nd September 2006, already required the IT Department to refund the sum to SPIL and further ordered that the sum should be deposited with Canara Bank in terms of the judgment dated 18th November 2005. Since the Madras High Court has, by order dated 9th May 2007, directed that the release of the said amount should be only to SPIL and to no one else, this Court directs the IT Department to deposit in the account of SPIL with SBI Branch the sum of Rs. 17,40,29,511 together with interest calculated in terms of Section 244 of the IT Act within a period of three weeks from today. This is subject to the orders that may be passed in the appeal preferred by the IT Department and any further orders that may be passed by any other higher judicial forum. Immediately upon the amount being deposited in its account, SPIL will instruct SBI to transmit by RTGS the amount deposited to the account of Canara Bank, Green Park Extn., New Delhi. The above order is subject further to Canara Bank filing an affidavit in this Court, within two weeks, stating that depending on the orders passed by the ITAT or any higher judicial fora and any further order passed by this Court, Canara Bank will refund the said amount or any part thereof together with whatever interest as may be directed by this Court. This order is without prejudice to the rights and contentions of SPIL as regards its liability as may be determined by ITAT or by any other judicial forum. For reporting compliance and further hearing, list these matters on 12th February 2013 at 2.15 pm.

