

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP No. 119/2017 IN
CP No. 42/2017
U/S 241 to 244 of the Companies Act, 2013

In the matter of

Mr. M. Kishan Rao & Others
No. 10-2-262/263, East Marredpally
Secunderabad – 500003

Applicant / Petitioners

Versus



1. M/s Spectrum Power Generation Limited
6-3-871, IV Floor, M.C.H. No. 8-2-293/82/A/241/A
SSC-3, RajalaCenter at Road No. 36
Jubilee Hills, Hyderabad
Telangana – 500 033
2. Dr. A.V. Mohan Rao
Plot No. 261-A, Road No. 10C
Jubilee Hills, Hyderabad – 500033
3. Spectrum Technologies Inc. USA
Plot No. 261-A, Road No. 10C
Jubilee Hills
Hyderabad – 500033
4. Asset Reconstruction Company Limited
Times Tower, 9th Floor
Kamla Mills Compound
SenapatiBapat Marg, Lower Parel (w)
Mumbai – 400013
& others

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

....Respondents

Date of order: 25.07.2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties Present

Counsels for the Petitioner: Shri Yogesh Kumar Jagia, Senior Advocate with Shri M. Mohan Rao, Shri Hemender Reddy and Ms. Alisha Chopra, Advocates

Counsels for the Respondents: Shri CH Pushyam Kiran (R-1), Ms. Divya Datla, (R.24, 27, 28, 29, 30), Shri Srinivasan S. Rajan, Sh. D.V. Ramakrishna (R-17), Shri P. Sriharsha Reddy, (R-4) and Shri B. Aravind Reddy (R-12, 13 & 18) Advocates

Per: Rajeswara Rao Vittanala, Member (Judicial)



ORDER

1. Heard Shri Yogesh Kumar Jagia, Learned Senior Counsel alongwith Shri Hemender Reddy for the Petitioner, Shri CH Pushyam Kiran, Shri P. Sriharsha Reddy, Shri B. Aravind Reddy, Ms Divya Datla, Shri Srinivasan S. Rajan, Shri D.V. Ramakrishna and Shri Aravind Reddy, Learned Counsels for the Respondents.
2. The Company Application bearing CA.No.119/2017 in CP No. 42/241/HDB/2017 is filed by M. Kishan Rao & Others against M/s Spectrum Power Generation Limited and Others, by inter-alia seeking a direction to the Respondent No.4 (Asset Reconstruction Company India Limited (ARCIL)) to release original title deeds of the immovable properties as detailed in para 5 of the Application and also the personal and corporate guarantee deposited by petitioners etc. to the Petitioner.

3. Brief facts, as mentioned in this Company Application, are as follows:-

(a) The Applicants/Petitioners are the promoters and members of the Respondent No.1 Company, and have subscribed equity capital of Respondent No.1 Company, which was subsequently converted into redeemable preference shares by Respondents, under the garb of scheme of arrangement u/s 391 of Companies Act, 1956. The Petitioners are members of the Respondent No.1 Company holding redeemable preference shares as mentioned in the Company Petition.

(b) The case was admitted on 06/04/2017 by passing interim orders and directed respondents to maintain status quo with regard to the rights of petitioner and also the property of the Company in question and parties were also directed to file their respective replies

4. The Petitioners / Applicants stated that they have given their personal guarantee / Corporate guarantee to the Company to secure financial assistance, advanced by Financial Institutions and Banks so as to provide collateral security by creating equitable mortgage on their immovable properties as details below:-

(a) Equitable Mortgage by submitting original title deeds of Bambino Agro Industries Limited. Petitioner No.8 herein of the following immovable property.

Portion comprising of Flat No.E-1 on 4th Floor having built up area of 2246 sq.ft in the premises of



Surya Towers bearing MCH No. 1-7-4 to 19, SP Road, Secunderabad having Sale deed No.89/1994.

Portion comprising of Flat No.E.1 on the 4th Floor having built up area of 2318 sq. ft in the premises of Surya Towers bearing MCH No. 1-7-4 to 19 SP Road, Secunderabad having sale deed No. 2513/93.

- (b) Equitable mortgage by submitting original title deeds of KRS Finance Private Limited, Petitioner No.9 herein of the following immovable property.

Portion comprising of Block No.F-1 and 2 on 2nd Floor in the premises bearing No. 1-7-4 to 19 Sardar Patel Road, Secunderabad with built up area of 3622 sq. ft (inclusive of 15% common passage) with undivided share of land 107.94 square yards out of 9382 sq. yds (sale deed No. 531/1997).

- (c) Equitable mortgage by submitting original title deeds of Mr. Kishan Rao, Petitioner No.1 herein of the following immovable property.

Agricultural land with grape garden, Ac 0.37 guntas in Survey no. 20, Lingoiguda, Saroornagar, Hyderabad (sale deed No. 2852/78).

- (d) Equitable mortgage by submitting original title deeds of Mr. M. Raghuveer, Petitioner No.2 herein of the following immovable Property.

Land with shed and structures marked as portion No.9 forming part of Survey No. 56/1 extent Ac



0.9851 guntas of 1192 sq. yds at Chinthalakunta, Mansoorabad, RR District (Sale deed 2807/82).

Land with shed and structures marked as portion No.4 forming part of Survey No. 56/1 extent 311 sq. yds at Chinthalakunta, Mansoorabad, RR District. (Sale deed no. 2809/82).

Land with shed and structures marked as portion No.3 forming part of Survey No. 56/1 extent 1189 sq. yds at Chinthalakunta, Mansoorabad, RR District. (Sale deed no. 2808/82).



Part and parcel of House bearing No. 8-2/5 in Survey No. 56/1, extent 957 square yards at Chinthalakunta, Mansoorabad, RR District (Sale Deed 2784/84)

- (e) Equitable mortgage by submitting original title deeds of Mr. M. Subramanyam, Petitioner No.3 herein of the following immovable property.

Agricultural land with grape garden with extent Ac. 1-30 Guntas in Survey No.57 at Chinthalakunta, Mansoorabad, RR District (Sale Deed 612/80)

Agricultural land with grape garden with extent Ac. 1-30 Guntas in Survey No.57 at Chinthalakunta, Mansoorabad, RR District (Sale Deed 1569/80)

Agricultural land with grape garden with extent Ac. 1-10 Guntas in Survey No.57 at Chinthalakunta, Mansoorabad, RR District (Sale Deed 1119/80)

- (f) Equitable mortgage by submitting original title deeds of Smt M. Sugandha Bai, Petitioner No.5 herein of the following immovable property.

All that land in Sale deed 2980/68 located at Municipality No.1-93/1, Ambica Garden, Karmanghat, Lingoiguda, Hyderabad – 35.

Survey No. 32/B, extent AC 1-17 Guntas

Survey No. 33/B, extent AC 0-22 Guntas

Survey No. 33/D, extent AC 0-25 Guntas

Survey No. 44, extent Ac 1-39 Guntas

Survey No. 44, extent AC 1-39 Guntas



TOTAL AC 6-22 Guntas

5. It is further stated that it is not in dispute all the personal / corporate guarantee and creation of equitable mortgage and are admitted in the audited balance sheet available as on 31.03.2003.
6. It is stated that all the financial institutions, have assigned their loans to Respondent No.4 (ARCIL) Company, under scheme of re-arrangement filed under section 391 of Companies Act, 1956, on 29.12.2005 and consequently all the securities were transferred to ARCIL.
7. It is stated that Respondent No.1 Company has satisfied all the outstanding loans of Respondent No.4 Company under the Scheme of re-arrangement filed under section 391 of Companies Act, 1956. Accordingly, Form No.17 was also filed with Registrar of Companies on 14/12/2010. It is stated that on satisfaction of parties on the properties in question, the applicants approached SBI on 01/04/2011 requesting it to release of charge on their immovable properties. However, the Bank has

replied to the Applicant to approach Respondent No. 4 Company as all advances were assigned to ARCIL (Respondent No.4), consequently all the original papers / share certificates / sale deeds were handed over to ARCIL on 30.11.2010.

8. It is stated that on approaching Respondent No.4 Company, it has, by letter dated 15/06/2011 declined to release collateral security on the sole ground that petition for re-structuring scheme of Respondent No.1 Company was pending before the Hon'ble High Court at Hyderabad, and thus the matter is under subjudice.



9. It is stated that Hon'ble High Court of A.P. had passed an order dated 05.10.2007 in C.P No. 43/2007, and the same was also challenged before Hon'ble Division Bench of A.P High Court, which was dismissed by common order dated 27.04.2010 passed in OSA No. 1/2009 and OSA No. 62, 65 and 66/2007. Subsequently, SLP No. 20033/2010 was also dismissed by an order dated 02.08.2010. So, there is no case pending as on date in respect of scheme as mentioned by ARCIL.
10. It is further submitted that another Company petition bearing No. 212/2010 was also filed under section 392 of the Companies Act, 1956 for non-implementation of Scheme of Arrangement and the same was dismissed by order dated 09.12.2015 for non-prosecution.

11. Shri Yogesh Kumar Jagia, Learned Senior Counsel for Applicants/ Petitioners submits that as on date there is no impediment, as such ARCIL has to release the documents in question. Moreover, contention of ARCIL that there is no case pending before Hon'ble High Court. He, therefore, prayed this Tribunal may direct ARCIL to release original title deeds. The present CA No.119 was listed on 28.6.2017 and passed an order by inter-alia, directing Respondent No.4 to file an affidavit stating the reasons for not releasing the documents as requested by Applicants / Petitioners before the next date of hearing and also directed ARCIL to produce title deeds and original documents with covering letters before this Tribunal and thus, the case is posted for today.



12. Shri P. Sriharsha Reddy, Learned Counsel takes notice for ARCIL (Respondent No.4) and requested time on 28.6.2017 to file his vakalat and reply. Today the Learned Counsel for Respondent No.4 submits that they would release the documents as sought by the Applicants / Petitioners, however, subject to any impediment, if any.
13. Shri B. Aravind Reddy, Learned Counsel for Respondents No. 12, 13 & 18 submits that they have no objection to release the documents in question. Shri Markandaya, Learned Counsel for Respondents No. 6 & 7 also submits that they have no objection for release of the documents.
14. It is not in dispute that ARCIL is an assignee of all the original documents of the lenders and ARCIL has every right to deal with the interest / rights got from original lenders. Therefore,

there cannot be any objection on the part of Respondent No. 4 (ARCIL) to keep documents in question.



15. In view of the above facts and circumstances of the case, I am of considered view that the Applicants / Petitioners are entitled to receive the documents as sought for at para 5 of the CA.
16. In the result, CA No. 119/2017 in CP No. 42/241/HDB/ 2017 is allowed by directing Respondent No.4 to release the documents as mentioned at para 4 along with covering letters on or before 15.08.2017 and Petitioner No.1 is authorised to collect the same.

sd/-
Rajeswara Rao Vittanala
Member (J)

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CERTIFIED TRUE COPY**
केस संख्या
CASE NUMBER. *CP No. 119/2017 in*
निर्णय का तारीख *CP No. 42/2017*
DATE OF JUDGEMENT. *25-7-2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON. *27-7-2017*

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.