

IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD BENCH, HYDERABAD

CA No.119/2017 in
CP No.42/241/HDB/2017

In the matter of

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

...Applicants / Petitioners

V/s

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, Rajala Center at Road No.36
Jubilee Hills, Hyderabad
Telangana – 500 033

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

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
Senapati Bapat Marg
Lower Parel (w) Mumbai – 400013
& 03 others

..Respondents

Date of order: 28.06.2017

CORAM:

Hon'ble Shri Rajeswara Rao Vittalana, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties present

Counsels for the Petitioners:

Shri Yogesh Kumar Jagia, Senior Advocate with
Shri M. Mohan Rao, Shri Rajeev Kumar
Ms. Alisha Chopra, Advocates



Counsels for the Respondents: Ms. Divya Datla, Advocate (R. 24, 26 to 30)
 Shri P. Sriram & Shri P.S. Sastry, Advocates
 (R. 32, 33, 34)
 Shri CH Pushyam Kiran, Advocate (R1)
 Shri P.V. Markandeyulu & Shri B.V. Papa Rao
 Advocates (R 5 & 6)
 Shri A.B. Gangareddy, Advocate (R 12, 13 &
 18)
 Shri D.V. Ramakrishna, Advocate (R.17)
 Shri P. Sriharsha Reddy, Advocate (R.4)

Per: Rajeshwara Rao Vittanala, Member (Judicial)

ORDER

1. The present application bearing CA No.119/2017 in CP No. 42/241/HDB/2017, is filed by Mr. M. Kishan Rao & Others under Sections 213, 241, 242 & 244 of the Companies Act 2013, R/w Sections 398(1)(b) and 398(2), 406 & 409 of the Companies Act , 1956, by inter-alia, seeking directions to Respondent No.4 (ARCIL) to release original title deeds of immovable properties as mentioned in para 5 of the application, etc.
2. Heard Shri Yogesh Kumar Jagia, Learned Senior Counsel for the Petitioner, Ms. Divya Datla, Shri P. Sriram, Shri P.S. Sastry, Shri CH Pushyam Kiran, Shri P.V. Markandeyulu, Shri B.V. Papa Rao, Shri A.B. Gangareddy, Shri D.V. Ramakrishna, Shri P. Sriharsha Reddy, Learned Counsels for the Respondents.
3. The Learned Senior Counsel submit that 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 Company petition is pending adjudication before this Tribunal.



4. It is further stated that the Applicants/Petitioners have submitted their personal/ corporate guarantees to the Respondent No.1 Company to secure financial assistance advanced by financial Institutions and Bankers. Accordingly, Respondent No.1 Company provided collateral security by creating equitable mortgage on the following immovable properties of the Applicants / Petitioners.

- (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. Raghuvver, 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, Lingojiguda, 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 on 29/12/2005, all the financial institutions assigned their loans to Respondent No.4 Company and thus, all the securities were transferred to ARCIL (Asset Reconstruction Company India Private Limited). The Respondent No.1 Company, under the scheme of re-arrangement under Section 319 of the Companies Act, 1956, has filed form No. 17 with Registrar of Companies on 14/12/2010. Accordingly, the Petitioners requested State Bank of India on 01/04/2011 to release of charge on their immovable properties, and the Bank in its reply has directed Applicants to approach Respondent No.4 as all the advances were assigned to ARCIL and thus, all the original papers/share certificates/sale deeds were handed over to ARCIL on 30/11/2011.
6. The Learned Senior Counsel further submits that ARCIL, Respondent No.4 Company vide his letter dated 15/06/2011, declined to release collateral security on the sole ground that petition for restructuring scheme of Respondent No.1 company is pending before the Hon'ble High Court, Hyderabad and therefore the matter is subjudice. In this regard, it is stated

that the scheme of rearrangement, under Section 391 of Companies Act, 1956, was approved by the Hon'ble High Court by an order dated 5.10.2007 passed in CP No. 43/2007. However, the order was challenged before the Hon'ble Division Bench of Andhra Pradesh High Court, and the same was also dismissed by a common order dated 27.04.2010 passed in OSA No.1 of 2009 and OSA Bo. 62, 65 & 66 of 2007. Special leave petition No. 20033/2010 filed against the order dated 27.04.2010 was also dismissed by an order dated 02.08.2010 by the Apex Court.

7. It is further submitted that Applicants filed a petition bearing No. 212/2010 under section 392 of the Companies Act, and the same was also dismissed by an order dated 09.12.2015 for non-prosecution. In the circumstances, the Learned Senior Counsel submit, that admittedly ARCIL has no outstanding receivables from the Respondent No.1 Company, and has to release all the securities to the Respondent No.1 Company.
8. Shri P. Sriharsha Reddy, Learned Counsel takes notice for the Respondent No.4 and requested time to file his vakalat and reply.
9. In view of the above circumstances, we direct Respondent No.4 to file an affidavit stating the reasons for not releasing the documents as requested by the Applicants/Petitioners, by the next date of hearing, and also directed Respondent NO.4 to produce title deed and original documents as mentioned above along with covering letters, before this Tribunal, by the next date of hearing.
10. Post the case on 25.07.2017.



Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajeswara Rao Vittanala
Member (Judicial)

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

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