

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

16

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 24/10/2017 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER - JUDICIAL
SHRI S. VIJAYARAGHAVAN, MEMBER - TECHNICAL

APPLICATION NUMBER :
PETITION NUMBER : CP/551/(IB)/2017
NAME OF THE PETITIONER(S) : CKPL STEELS PVT LTD
NAME OF THE RESPONDENT(S) : ASHOK MAGNETICS LTD
UNDER SECTION : 7 RULE 4

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
-------	-------------------	-------------	-----------

REPRESENTATION BY WHOM

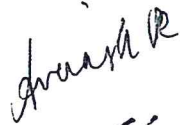
MR. ARVINDH PANDIAN, Senior Counsel
for HARSHINI.J

Counsel for applicant



SHRI SWANKARA NARAYANAN, SENIOR COUNSEL
for AVINASH KRISHNAN RAVI

for Ex - Managing
Director



M.L. Ganesan for SBI/CBI

Counsel for
SBI/CBI



R. SUBRAMANIAM
ADVOCATE

Counsel for
Respondents
(R1/R2)



ORDER

Counsel for Applicant present. Counsel for IRP present. Counsel for State Bank of India and Central Bank of India also present. Heard both the sides.

Under consideration is IA/29/2017 that has been filed by CKPL Steels Pvt. Ltd. seeking permanent injunction restraining the IRP viz., Mr. Venkataramanarao Nagarajan from interfering with the peaceful possession and rentals of the Applicant with respect to the Leased Property.

The first Respondent Company, viz., M/s. Ashok Magnetics Ltd. is under Corporate Insolvency Resolution Process and the moratorium has been declared. The IRP was appointed. The IRP in exercise of the powers conferred under clause (f) of section 18 of the IBC, 2016 has to take control and custody of the assets over which the Corporate Debtor has ownership rights as recorded in the balance sheet of the Corporate Debtor. The Applicant pleads that the property in question has been leased out by the 1st Respondent Company to the Applicant on 11.11.2016. Based on the registered Lease Agreement, the Applicant is enjoying the rights of lessee.

The IRP has filed the counter stating therein that the scheduled property is covered by equitable mortgage by deposit of Title Deeds under section 58 (f) of the Transfer of Property Act and such mortgage was made on 30.12.2014. Therefore, subsequent lease by the Mortgagor is covered under section 65 A of the Transfer of Property Act, 1882 and such lease shall in no case exceed three years. But the claimed lease relied upon by the Applicant of the Scheduled property is for a period of 10 years which per se is invalid under sub clause (e) of sub section (2) of section 65 A of the Transfer of Property Act, 1882. It has further been submitted by the Counsel representing the IRP that besides the above, lease deed in question is in contravention of the provisions of section 13 (13) of the SARFAESI Act, 2002, for the reasons that in respect of the said property notice on 17.12.2015 under section 13 (2) of the SARFAESI Act, 2002 was issued by the Central Bank of India i.e., a secured lender in whose favour the equitable mortgage was created on 30.12.2014 by the first Respondent Company. Therefore, on and from the date of notice the first Respondent Company was barred from dealing with the property without written consent of the

Secured Creditor as provided under the provisions of section 13 (13) of the SARFAESI Act, 2002. Therefore, the claimed lease in favour of the Applicant is in violation of the said provisions and the same is non est in law. Counsel for the IRP has also referred to the ruling given by the Apex Court in Harshad Govardhan Sondagar v/s. International Assets Reconstruction Co. Ltd. reported in (2014) 6SCC1 wherein under para 15, the Hon'ble Court observed as follows:-

"Subsection (13) of Section 13 of the SARFAESI Act, however, provides that after receipt of notice referred to in sub-section (2) of Section 13 of the SARFAESI Act, no borrower shall lease any of his secured assets referred to in the notice, without the prior written consent of the secured creditor. This provision in subsection (13) of Section 13 of the SARFAESI Act and the provisions of the Transfer of Property Act enabling the borrower or the mortgagor to make a lease are inconsistent with each other. Hence, sub-section (13) of Section 13 of the SARFAESI Act will override the provisions of Section 65A of the Transfer of Property Act by virtue of Section 35 of the SARFAESI Act, and a lease of a secured asset made by the borrower after he receives the notice under sub-section (2) of Section 13 from the secured creditor intending to enforce that secured asset will not be a valid lease".

It has further been submitted by the Counsel for the IRP that the property leased out is in violation of the provisions of section 180 (1)(a)(i)and(ii) of the Companies Act, 2013, because the Board of Directors has no authority to lease out the said property, without seeking the consent of the Company by a '**special resolution**'.

Counsel for the Applicant has not been able to controvert the arguments that have been submitted by the Counsel appearing on behalf of the IRP. The arguments submitted by the Counsel for the IRP are plausible. Therefore, the contentions raised by the Applicant are hereby **rejected**.

In the light of facts and circumstances of the case and the arguments submitted by the parties, the Lease Deed dated 11.11.2016, is not tenable in the eye of the law, as discussed herein above. Therefore, the interim order dated 17.10.2017 is hereby vacated. The IRP is directed to initiate action in accordance with law to take control and custody of the property purportedly leased out to the Applicant by the Corporate Debtor.

In terms of the above, the IA/29/2017 stands **disposed of**.



MEMBER (TECHNICAL)

ghk



MEMBER (JUDICIAL)