

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

**CP No.4/614/CB/2013
(TP No.125/HDB/2016)**

Date of Order: 10.01.2017

Between:

1. Indiabulls Housing Finance Ltd.,
Having its Registered Office at
F-60, 2nd Floor,
Connaught Place,
New Delhi – 110 001.

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

Represented herein by its Authorised Signatory

..... Petitioner

And

1. Deccan Chronicle Holdings Ltd.,
Having its Registered Office at
No.36, Sarojini Devi Road,
Secunderabad – 500 003,
Andhra Pradesh.
2. Deccan Chronicle Rajahmundry Pvt Ltd.,
Having its Registered Office at
Dowaleswaram Rajahmundry,
Andhra Pradesh.
3. Deccan Chronicle Secunderabad Pvt Ltd.,
Having its Registered Office at
No.36, Sarojini Devi Road,
Secunderabad – 500 003,
Andhra Pradesh.
4. D C Share Consultants Pvt Ltd.
Having its Registered Office at
3-6-354/358, Basheer Bagh,
Hyderabad – 500 029.
5. Mr. T. Venkat Ram Reddy,
Residing at 8-2-703/A/6/C,
Road No.12, Banjara Hills,
Hyderabad – 500 034.



6. Mr. T. Vinayak Ravi Reddy,
Residing at Plot No.53,
Road No.12, Banjara Hills,
Hyderabad – 500 034
7. Mrs. T. Urmila Reddy,
Residing at 6-3-898,
Rajbhavan Road, Somajiguda,
Hyderabad – 500 082.
8. Mr. P.K. Iyer,
Residing at 8-2-703/A/6/C,
Road No.12, Banjara Hills,
Hyderabad – 500 034.
9. Registrar of Companies,
For the states of Telangana and Andhra Pradesh
2nd Floor, CPWD Building,
Kendriya Sadan,
Sultan Bazar, Koti,
Hyderabad – 500 195.

... Respondents

Counsel for the Petitioner:

Mr. S. Niranjan Reddy
Mr. K.V. Rusheek Reddy
Ms. Rubaina S. Khan
Mr. Ajay Rewal
Mr. Venkat Subbaiah



Counsel for the Respondent No.1:

Mr. Alok Dhir
Ms. Varsha Banerjee
Mr. A.S. Prashanth
Mr. Amir Bhavani

CORAM:

Hon'ble Mr. Rajeswara Rao Vittalana, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

ORDER

(As per Rajeswara Rao Vittanala, Member (J))

1. The present Company Petition bearing No.4/614/CB/2013 (hereinafter referred to as Company Petition) was initially filed by Indiabulls Housing Finance Limited before the then Hon'ble Company Law Board, Chennai (CLB). The case was adjourned on several times before the then Hon'ble CLB i.e. on 18.03.2013; 08.04.2013; 16.04.2013; 11.06.2013; 05.09.2013; 26.11.2013; 21.01.2014; 18.03.2014; 25.03.2014; 24.06.2014; 15.07.2014 and finally on 28.08.2014. On the constitution of NCLT Bench at Hyderabad, the case is transferred to this Bench in the month of July, 2016. Accordingly, the case was listed before this Bench on various dates viz., 03.08.2016; 29.08.2016; 30.08.2016; 15.09.2016; 04.10.2016; 25.10.2016; 28.11.2016; and finally on 20.12.2016.

2. The Company petition No.4/614/CB/2013 was filed by Indiabulls Housing Finance Limited under Section 614(1) read with Sections 125 and 134 of the Companies Act, 1956, inter-alia seeking the following reliefs under para 8 of the Company Petition:-

“8.1 Direct the First Respondent along with Fifth to Eighth Respondents as Directors of the First Respondent to register the charges by filing Form 8 along with supporting documents with regard to:

- i) The equitable mortgage created by the First Respondent in favour of the Petitioner with regard to the land together with all movables and buildings admeasuring 855 Sq.yards situated at 8-2-283/B,



Road No.3, Banjara Hills, Hyderabad that is owned by it, for the purpose of securing all amounts payable to the Petitioner in connection with the loan disbursed by the Petitioner under the Loan Agreement dated 08.12.2011 and related loan documents.

- ii) The equitable mortgage created by the First Respondent in favour of the Petitioner with regard to the commercial office space together with all movables and buildings admeasuring 3036.90 Sq.ft, situated at No.206, 2nd Floor, Sewa Corporate Park/Corporate suite at M.G. Road, Revenue Estate of Sirhial, Tehsil, Gurgaon, Haryana owned by it, for the purposes of securing all amounts payable to the Petitioner in connection with the loans disbursed by the Petitioner under loan Agreements dated 08.12.2011 and 05.01.2012 and related loan documents.

8.2 Direct the First to Fourth respondents along with Fifth to Eighth Respondents as Directors of the First to Fourth Respondents to register the charges by filing Form 8 along with Supporting documents with regard to:

- i) The equitable mortgage created by the First to Fourth Respondents in favour of the Petitioner with regard to the commercial land together with all movables and buildings admeasuring 9560 Sq. yards situated at 5-146, 147, 148, 149, 150, 151, 152 and 153, Alwal Municipality, Malkajgiri Mandal, Hyderabad that is jointly owned by them, for the purposes of securing all amounts payable to the Petitioner in connection with



the loans disbursed by the Petitioner under the Loan Agreements dated 08.12.2011 and 05.01.2012 and related loan documents.

- 8.3 Direct the Registrar of Companies to accept the Form 8 only on the signature of the Petitioner in the event that the Respondents fail to file the charge, as stipulated by this Hon'ble Board.
- 8.4 Direct the Respondents to bear the cost of this proceeding and pass such further or other directions/order (including necessary orders/directions to the Registrar of Companies for recording and registering the charge in favour of the Petitioner) as this Hon'ble Company Law Board may deem fit and proper in the circumstances of this case and thus render Justice."

3. Heard Shri S. Niranjan Reddy, Learned Senior Counsel for the Petitioner and Shri Alok Dhir, Learned Counsel for the Respondent No.1. We have carefully considered all the pleadings raised by the parties along with supported documents filed by them.

4. Shri S. Niranjan Reddy, the Learned Senior Counsel for the petitioner submits that Deccan Chronicle Holdings Limited (R1 Company); Deccan Chronicle Rajahmundry Private Limited (R2 Company) and Deccan Chronicle Secunderabad Private Limited (R3 Company) were incorporated under the Companies Act, 1956. He submits that R1 as principal barrower and 5th to 8th Respondents, have executed a loan agreement dated 08.12.2011 and related loan documents with regard to the sanction of loan by the petitioner. Accordingly, a declaration and



acknowledgment was executed by the 6th Respondent on behalf of Respondent No. 1 Company creating an equitable mortgage by deposit of title deeds with the petitioner in respect of Banjara Hills property. The 1st Respondent and 2nd to 8th Respondents have executed another loan agreement dated 05.01.2012 with regard to the sanction of the loan by the petitioner and also created equitable mortgage by deposit of title deeds with the petitioner in respect of Gurgoan property and Alwal property in question. The petitioner addressed several letters to the 8th Respondent reminding that the charges created in favour of the petitioner under the loans sanctioned would have to be registered by filing Form No.8. Two notices dated 26.09.2012 under Section 614 (1) of the Companies Act 1956 were given to the Respondent No. 1 to 4.

5. The Learned Senior Counsel further submits that the property at Banjara Hills [prayer at 8.1 (i)] was auctioned and sold to the successful purchaser by the petitioner pursuant to the permission granted by the Hon'ble Supreme Court in SLP No. 5752 of 2014 and also the property at Gurgoan [prayer no. 8.1 (ii)] was also auctioned and sold to be successful purchaser by the petitioner pursuant to the proceedings initiated under SARFAESI Act.



6. The Learned Senior Counsel Submits that it is not in dispute that the execution and creation of charge in favour of petitioner. However, the respondents are mainly relying upon the then proposed scheme filed by

the 1st Respondent Company before the Hon'ble High Court at Hyderabad to oppose the relief in the present Company Petition. The 1st Respondent Company has withdrawn the proposed scheme filed in COMPA No. 346 of 2013 and was allowed by the Hon'ble High Court at Hyderabad vide Order dated 04.12.2014. He further submits there is no suppression of material facts as alleged by the Respondents. It is stated that when a fact suppressed is not material for determination of *lis* between the parties in the Court, it does not bar the Court from adjudicating on the matter and granting the reliefs as prayed for. He relied upon the following cases in support of the above contentions:

- i. Arunima Baruah v. UOI and Ors. – (2007) 6 SCC 120 @para 12
- ii. S.J.S. Business Enterprises Ltd. V. State of Bihar – (2004) 7 SCC 166 @para13

Therefore, the Learned Senior Counsel prays the Tribunal to allow the Company petition and pass such other order(s) as deemed fit and proper.

7. Shri Alok Dhir, Learned Counsel for the Respondent No.1 submits that since the relief asked for in the petition under para 8.1 (i) & (ii) are no longer survives in view of the properties already sold by way of auction as mentioned above. So the only issue to be considered in the present application is commercial land together with all movables and buildings admeasuring 9560 sq. yds. Situated at 5-146, 147, 148, 149, 150, 151, 152 and 153, Alwal Municipality, Malkajgiri Mandal, Hyderabad.



He submits that the above property is admittedly jointly owned by Deccan Chronicle Holdings Limited (Respondent No.1), Deccan Chronicle Rajahmundry Pvt. Ltd. (Respondents No.2), Deccan Chronicle Secunderabad Pvt. Ltd. (Respondent No.3) and D.C. Share Consultants Pvt. Ltd (Respondent No.4). Since, the property is jointly owned, a charge cannot be created on the property without no objection (NOC) from them. He also submits that without making the said Co-Borrowers of the said property as Respondents, the issue cannot be adjudicated by this Tribunal as the petitioner failed to implead the necessary parties to the present litigation.

8. The Learned Counsel further submit that in view of clause 2.2 of the loan document dated 05.01.2012 with regard to event of default, the petitioner has filed O.P.(ARB.) No. 378 of 2013 before the Ld. Chief Judge, City Civil Court, Hyderabad, under Section 9 of the Arbitration and Conciliation Act, 1996 and even obtained interim order dated 06.03.2013 restraining the Respondents from alienating the schedule property. So the petitioner has to disclose the above fact in the present Company petition, which is filed on 09.03.2013. So the petitioner has deliberately suppressed the above information.

He further submit that the petitioner has malafidely suppressed the fact of SARFAESI action initiated by the Petitioner against the Respondent No. 1 Company. Possession Notices dated 29.05.2013 was also issued



by the petitioner with regard to the same property. He also got issued notice dated 07.12.2012 under the SARFAESI Act.

9. The Learned Counsel for the Respondent further submits that the Respondent No.1 Company has challenged the initiation of proceedings under SARFAESI Act by the petitioner before the Hon'ble High Court of A.P. The Hon'ble High Court vide order dated 04.02.2014 agreed with the contention of the Respondent No. 1 Company that the petitioner, who is the assignee of Indiabulls Financial Services Limited cannot exercise the powers under the provisions of the said Act as the original lender of the Respondent No. 1 Company. Aggrieved by the said order, the petitioner herein has filed SLP(C) No. 5752 of 2014 before the Hon'ble Supreme Court of India challenging the order dated 04.02.2014 passed by the Hon'ble High Court of Hyderabad. The subject properties of said SLP also includes the property mentioned at Sl.No. 3. The Apex Court passed an interim order dated 28.02.2014 by directing to maintain status quo with regard to the subject properties in all aspects. The status quo order is still in force as on date. Hence, he submits that the petitioner has malafidely indulged in forum shopping and has left no stone unturned to cause undue harassment and prejudice to Respondent No. 1 Company herein and, the petitioner has come to this Tribunal with unclean hands and thus he prays the Tribunal to dismiss the present Company petition.



10. By perusal of the above contentions made by both the parties, it is clear that nothing remains for the adjudication in the present Company petition with regard to relief Para 8.1. As stated supra the properties at Banjara Hills and Gurgaon, which is in question in the present Company petition were already sold by way of an auction and thus these reliefs become infructuous.

So far as the 3rd relief is concern, it is admitted that the petitioner has filed O.P. No. 378 of 2013 before the Chief Judge, City Civil Court, Hyderabad, and obtained interim orders. Moreover, the issue was also pending before the Hon'ble Supreme Court as mentioned above, and the status quo Order as passed by the Apex Court is also still in force as on date. So the Bench cannot adjudicate even this issue. The relief No.8.4 is the consequential to the above, it cannot be granted.

11. It is also not in dispute that the issue with regard to the relief No.8.3 still not resolved as an Interim Order was passed by the Hon'ble Supreme Court. So we are not inclined to accept the contentions of the learned

Counsel for the Respondents that the petitioner has resorted to suppression/misrepresentation of facts and resorting forum shopping.



12. In view of the above facts and circumstances of the case, we are of the considered view that the relief as asked under Para 8.1 of the Company Petition mentioned above become infructuous and so far as the relief No.8.3 is concerned, as stated above, an Interim Order was passed by the

Apex Court and the relief No.8.4 is only consequential to the relief No.8.3. In the result, the Company Petition No. 4/614/CB/2013 (TP No.125/HDB/2016) is dismissed as infructuous so far as relief No.8.1 is concerned. So far as the relief No.8.2 is concerned, the parties are at liberty to approach appropriate Courts subject to the final orders passed by the Hon'ble Supreme Court. The CP is disposed of accordingly.

Sd/-

RAVIKUMAR DURAISAMY
MEMBER (TECH)

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDL)



V. Anna Poorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68