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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(EFA)(COMM.) 6/2016 & CCP(O) 21/2017 I.A. 11066/2017
I.A. 2066/2018 I.A. 2067/2018 I.A. 2068/2018 I.A. 2069/2018 I.A.
2070/2018 I.A. 2072/2018 I.A. 2075/2018 I.A. 2077/2018 I.A.
2078/2018 I.A. 2079/2018 I.A. 2080/2018 I.A. 2081/2018 I.A.
2082/2018 I.A. 2083/2018 I.A. 6680/2018 I.A. 6681/2018 I.A.
7005/2018 I.A. 7006/2018 I.A. 9262/2018 I.A. 9264/2018 I.A.
14121/2018 I.A. 14551/2018 I.A. 14553/2018 I.A. 14554/2018 I.A.
15462/2018 I.A. 16727/2018 I.A. 17282/2018 EX.APPL.(OS)
451/2019 EX.APPL.(OS)453/2019 EX.APPL.(OS) 454/2019
EX.APPL.(OS)490/2019 EX.APPL.(OS) 491/2019 EX.APPL.(OS)
660/2019, EX.APPL.(OS) 661/2019 EX.APPL.(OS)667/2019
EX.APPL.(OS) 719/2019 EX.APPL.(OS) 803/2019 I.A. 885/2019
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EX.APPL.(OS) 819/2020 EX.APPL.(OS) 1164/2020 EX.APPL.(OS)
1248/2020 EX.APPL.(OS) 262/2021 EX.APPL.(OS) 494/2021
EX.APPL.(OS)1096/2021 EX.APPL.(OS) 1361/2021 EX.APPL.(OS)
1365/2021 EX.APPL.(OS) 115/2022 EX.APPL.(OS) 185/2022
EX.APPL.(OS)2902/2022 EX.APPL.(OS) 2903/2022 EX.APPL.(OS)
2907/2022 EX.APPL.(OS) 2908/2022 EX.APPL.(OS) 2909/2022
EX.APPL.(OS)2910/2022 EX.APPL.(OS) 2967/2022 EX.APPL.(OS)
2968/2022 EX.APPL.(OS) 3013/2022 EX.APPL.(OS) 3299/2022
EX.APPL.(OS)3320/2022 EX.APPL.(OS) 3326/2022 EX.APPL.(OS)
3650/2022 EX.APPL.(OS) 3763/2022 EX.APPL.(OS) 3764/2022
EX.APPL.(OS) 3850/2022 EX.APPL.(OS) 40/2023 CCP(O) 44/2023
EX.APPL.(OS) 317/2023 EX.APPL.(OS) 318/2023 EX.APPL.(OS)



659/2023 EX.APPL.(OS) 669/2023 EX.APPL.(OS) 679/2023
EX.APPL.(OS) 699/2023 EX.APPL.(OS) 756/2023 EX.APPL.(OS)
797/2023 EX.APPL.(OS) 1092/2023 EX.APPL.(OS) 1234/2023
EX.APPL.(OS) 1525/2023 EX.APPL.(OS) 108/2024 EX.APPL.(OS)
154/2024, EX.APPL.(OS) 185/2024, EX.APPL.(OS) 231/2024 EX. APP
L.(OS) 244/2024 EX.APPL.(OS) 245/2024 EX.APPL.(OS) 278/2024
EX.APPL.(OS) 471/2024, EX.APPL.(OS) 482/2024, EX.APPL.(OS)
529/2024, EX.APPL.(OS) 530/2024

DAIICHI SANKYO COMPANY, LIMITED Decree Holder

Through: Mr. Arvind Nigam, Sr. Advocate with
Mr. Giriraj Subramaniam, Ms.
Samridhi Hota, Mr. Shivam Chanana,
Ms. Astha Ahjuja, Ms. Shyra Hoon,
Mr. Tanmay Arora, Mr. Sidhant
Juyal, Mr. Kunal C., Mr. Agnish
Aditya and Mr. Rohan Jaitely,
Advocates.

versus

MALVINDER MOHAN SINGH AND ORS. Judgement Debtors

Through: Mr. Rajiv Nayar, Sr. Advocate with
Ms. Shyel Trehan, Mr. Gaurav, Mr.
Pranav Sarthi, Ms. Krushi Barfiwala,
Mr. Vinesh Raj and Ms. Shivalika R.,
Advocates.

Mr. Ashish Dholakia, Sr. Advocate
with Mr. Sandeep Das, Mr. Siddharth
Sharma, Mr. Lakshya Khanna and
Ms. Anurima Sood, Advocates for
respondent in I.A.532/2024.

Mr. Vikas Dutta, Advocate in
Ex.APPL(OS). 2907/22 & 2908/22.

Mr. Chitranshul A. Sinha and Ms.
Arya Shrivastava, Advocates for R-38
in E.A. No.819/2020.

Mr. Varun Garg and Ms. Nitya
Prabhakar, Advocates for JD-1, 4 &
15.



**CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

ORDER

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02.04.2024

EX.APPL.(OS) 181/2024 (under Order XXI Rule 58 & 59 CPC)

Mr. Rajiv Nayar, learned senior counsel appearing for the applicant/M/s. One Qube Realtors Pvt. Ltd. submits, that the reply to this application was filed by the decree-holder with delay. Mr. Nayar submits, that owing to the delay, the applicant was not afforded enough time to file rejoinder; and seeks some more time to do so.

2. Let rejoinder be filed *positively* by 08.04.2024; with copy to the opposing counsel.
3. Re-notify for consideration on 09th April 2024, in the post-lunch session.

EX. APPL. (OS) 532/2024

4. By way of the present application filed under Order XXI Rule 46A and 46B read with section 151 of the Code of Civil Procedure 1908 ('CPC'), the decree-holder seeks a direction for attachment, deposit and subsequent remittance of Rs. 20,79,64,409/- stated to be held in the bank account of **M/s. Ligare Aviation Ltd.** ('Ligare') at Yes Bank, Udyog Vihar, Gurugram as a garnishee of **M/s. RHC Holdings Private Ltd.**/judgment-debtor No.19 in satisfaction of the award-decree.
5. At the outset, Mr. Ashish Dholakia, learned senior counsel appears for **M/s. Religare Enterprises Ltd.** ('Religare Enterprises') to submit, that before the present application is decided, it is necessary to



implead and hear Religare Enterprises, since the said company is a creditor of Ligare. Mr Dholakia submits that at the instance of Religare Enterprises, as a financial creditor, Corporate Insolvency Resolution Process ('CIRP proceedings') are under-way against Ligare *vide* order dated 18.07.2023 passed by the learned National Company Law Tribunal ('NCLT'), New Delhi.

6. Mr. Dholakia submits, that though the CIRP proceedings have since been stayed by the learned National Company Law Appellate Tribunal, Principal Bench, New Delhi ('NCLAT') *vide* order dated 28.07.2023 passed in Company Appeal (AT) (Ins.) No.992 of 2023, in his submission, the moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 ('IBC') continues to operate against Ligare.
7. Mr. Dholakia accordingly submits, that Religare Enterprises ought to be impleaded as party-respondent in the present application. He further urges that in view of the CIRP proceedings, no further steps can be taken in present application.
8. Mr. Arvind Nigam, learned senior counsel appearing for applicant/decreed-holder, on instructions, does not oppose the impleadment of Religare Enterprises, while at the same time disputing that any moratorium can continue when the CIRP proceedings have themselves been stayed by the learned NCLAT.
9. Accordingly, on oral prayer made on behalf of Religare Enterprises, the said party is impleaded as party-respondent No.23 in the present application.
10. Let amended memo of parties be filed by the applicant/decreed-holder within 01 week.



11. Issue notice on EX. APPL. (OS) 532/2024.
12. Mr. Sandeep Das, learned counsel appearing for the newly impleaded respondent No.23 and Mr. Rajat Choudhary, learned counsel appearing for the Interim Resolution Professional ('IRP') appointed for Ligare, accept notice; and seek time to file reply to the present application.
13. Let replies to the present application be filed before the next date of hearing; with copies to the opposing counsel.
14. At this stage, Mr. Nigam presses for interim attachment of the sum of Rs.20,79,64,409/- stated to be held in the account of Ligare, as detailed in the application. It is noticed however, that in additional affidavit dated 10.01.2024 filed by the IRP appointed for Ligare, the sum lying in the account of the company is Rs.20,45,25,279/-.
15. The court has heard Mr. Nigam, learned senior counsel appearing for the decree-holder; as well as Mr. Dholakia, learned senior counsel appearing for the newly impleaded respondent No.23 *i.e.* Religare Enterprises, at considerable length.
16. Mr. Nigam submits, that the decree-holder is entitled to attachment of the aforesaid sum since the amount of about Rs. 133,26,27,955/- *owed by Ligare to judgment-debtor No.19/M/s. RHC Holdings Pvt. Ltd., had been offered* by judgment-debtor No. 19 towards satisfaction of the award-decree in Form 16A, Appendix E of the CPC in affidavit dated 02.12.2016 filed by the said judgment-debtor in the present proceedings.
17. Mr. Dholakia on the other hand argues, that since Ligare is undergoing CIRP proceedings under the IBC, the monies lying in its



accounts are required to be dealt with in those proceedings, in favour of all the creditors of the company. Mr. Dholakia submits, that the decree-holder is only one such creditor and should have no precedence insofar as the monies lying in the accounts of Ligare are concerned *vis-a-vis* the other creditors of that company.

18. Mr. Dholakia also submits that regardless of the stay of the CIRP proceedings by the NCLAT, the moratorium under section 14(1) in respect of proceedings against Ligare continues.
19. Mr. Dholakia also points-out, that in its order staying the proceedings before the NCLT, the NCLAT has in any case restrained the corporate debtor, namely Ligare, from alienating its assets and therefore the monies lying in the account of Ligare is secure. Learned senior counsel draws attention to order dated 28.07.2023 passed by the NCLAT, New Delhi, which reads as under :

*“Appellant is also allowed one week time to file additional documents. In the meantime, the order impugned **shall remain stayed.**”*

* * * * *

*“We further are of the view that **even though** we have stayed the CIRP process **the appellant or CD shall not alienate its assets.**”*

(emphasis supplied)

Furthermore, by a subsequent order dated 10.08.2023, the NCLAT has also recorded the following observation :

*“2. In view of the stay of the CIRP process, **IRP is not to proceed any further in the CIRP process. However, IRP shall keep the Corporate Debtor as a going concern.**”*

(emphasis supplied)



20. Mr. Nigam argues that affidavit dated 02.12.2016, whereby the judgment-debtor No.19 had offered the monies lying with Ligare towards satisfaction of the award-decree, pre-dates the proceedings filed by Religare Enterprises against Ligare under the IBC.
21. Mr. Nigam emphasizes that *vide* orders dated 19.02.2018 and 26.02.2018 made by this court in the present proceedings, there was *already an existing direction* to the judgement-debtors, including judgment-debtor No.19 to maintain *status-quo* with regard to the assets disclosed in affidavit dated 02.12.2016. It is noticed that order dated 19.02.2018 made by this court also refers to another affidavit dated 14.03.2017 filed *inter-alia* by judgement-debtor No.19.
22. Mr. Nigam submits, that the stay by the learned NCLAT of CIRP proceedings in relation to Ligare, would imply that the moratorium imposed under section 14(1) of the IBC is also no longer in force, which is why the learned NCLAT has specifically observed in order dated 28.07.2023 that *even though* they have stayed the CIRP proceedings, Ligare shall not alienate any of its assets.
23. This court also observes, that in order dated 15.11.2019 made by the Supreme Court in Contempt Petition (Civil) No.2120/2018 in SLP (Civil) No.20417/2017, while analysing the relationship between the various entities belonging to the contemnors (which includes judgment-debtor No.19), the Supreme Court has noticed that the Religare Enterprises was itself held *inter-alia* by judgment-debtor No.19, and eventually by Shri Malvinder Mohan Singh and Shri Shivinder Mohan Singh, *i.e.* judgment-debtors Nos.1 and 6 respectively, through a labyrinth of other companies.



24. In this backdrop, it is Mr. Nigam's contention, that *at the relevant time and when affidavit dated 02.12.2016* was filed, the said judgment-debtors were in fact the beneficial owners of Religare Enterprises also, which (latter) company is now seeking to stall the attachment of the bank account of Ligare, which account was offered by the said judgement-debtors towards part-satisfaction of the award-decree as far back as in 2016.
25. The court is cognizant that the arbitral award that is sought to be enforced by way of the present proceedings is dated *29.04.2016*. The awarded sum is of about Rs. 3000 crores, not accounting for the running interest. The amount sought to be attached by way of the present application is only about Rs.20 crores.
26. In its recent order dated 04.03.2024 in Civil Appeal Nos. 3835-3836/2024 titled *Avitel Post Studioz Limited &Ors. vs. HSBC PI Holdings (Mauritius) Limited*, the Supreme Court has observed that enforcement of a 'foreign award' should only be refused in a rare case, also emphasizing the need for early enforcement of such awards. The award in the present case is also a foreign award.
27. Moreover, the account that is subject matter of attachment in the present proceedings was disclosed by judgment-debtor No. 19 *vide* affidavit dated *02.12.2016*. But for the tardiness of the system, the account would have been attached back then. On the other hand, the proceedings before the NCLT and NCLAT were initiated only recently in 2023.
28. If every subsequent proceeding, filed by some party or the other, is permitted to stall the enforcement of the foreign award in the present



case, the essence of the observation of the Supreme Court in *Avitel Post Studioz Limited & Ors.* (supra) would be rendered nugatory.

29. As of now, in any case the CIRP proceedings before the NCLT, including the order of moratorium, have been stayed. The fate of the appellate proceedings before the learned NCLAT is as yet unknown and would take its own time.
30. Upon a conspectus of all the above factors, this court is persuaded to direct that the amount lying to the credit of M/s. Ligare Aviation Ltd. at Yes Bank, Udyog Vihar Branch, Gurgaon by way of fixed deposit bearing No.102540600015848 shall stand attached *forthwith*, in furtherance of the garnishee proceedings in the present case, till the next date of hearing.
31. Since the proceedings before the learned NCLAT are stated to be scheduled tomorrow, parties are at liberty to communicate the gist of the order passed in the present application today to the learned NCLAT.
32. Re-notify on 15th April 2024.

ANUP JAIRAM BHAMBHANI, J

APRIL 2, 2024

V.Rawat