
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO. 492 OF 2019
IN
SUMMONS FOR JUDGMENT NO. 67 OF 2018

Bonton Holidays Pvt. Ltd. ...Appellant

Versus

European Gateways SARL ...Respondent

Mr. Rahul Narichania, Senior Counsel, a/w Vikil Dhoka & Ankut Shah, i/b GM Legal, Advocates for the Appellant.

Mr. Karl Tamboli, a/w Shruti Maniar, Shrikant Pillai & Sannaya Ghandhi, Shivani B., i/b M/s. Solomon & Co., Advocates for Respondent.

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : MAY 08, 2024

PC :

1. Mr. Narichania, the Senior Counsel, appearing on behalf of the Appellant has tendered a draft amendment to bring on record the bankruptcy trustee Mr. Bizzotto Laurent who has been appointed as the trustee of the Respondent (original Plaintiff) in bankruptcy proceedings initiated in Luxembourg. The said draft amendment tendered to the Court is taken on record and marked 'X' for identification. The

amendment shall be carried out forthwith in front of the Associate of this Court. Reverification is dispensed with.

2. Mr. Tamboli, the learned Counsel who was appearing on behalf of the original Respondent has stated that he and his Advocate have instructions to appear on behalf of the bankruptcy trustee and they shall file their note of appearance within a period of one week from today. The said statement is accepted.

3. By this Appeal, the Appellant has challenged the judgment dated 21st November 2018 passed by a Learned Single Judge of this Court, by which a decree in the sum of INR 1,63,33,703.42/- along with interest @ 6% p.a. thereon from the date of filing of suit till realization, was passed in favour of the Respondent/Original Plaintiff against the Appellant/Original Defendant.

4. The present Appeal was filed in the year 2018. However, till 4th April 2024, there was no stay granted with respect to the operation of the impugned Judgement and Decree. In these circumstances, the Respondent had filed Comm. Execution No.1235 of 2019 ("Execution Application") for execution of the Decree.

5. Various orders were passed by this Court in the execution proceedings including directions for disclosure of assets by the Appellant. On 21st March, 2024, this Bench in the present Appeal had clarified that the pendency of this Appeal will not come in the way of the Respondent proceeding with the Execution application.

6. On 4th April 2024, the learned Senior Counsel appearing on behalf of the Appellant, tendered a Demand Draft in the sum of INR 2,24,58,841.67/- which was the amount due and payable to the Respondent under the impugned Decree together with interest up to 20th March, 2024. The Demand Draft was made in favour of the Prothonotary and Senior Master of this Court. Accordingly, this Court in its order dated 4th April, 2024, directed that the execution of the impugned Decree would be stayed upon the aforesaid amount being encashed by the office of this Court. The Appeal was thereafter posted for hearing on 10th April, 2024 at 2:30 p.m.

7. The matter did not reach on 10th April, 2024 and was re-posted to 24th April, 2024. On 24th April, 2024, the Learned Counsel appearing on behalf of the Respondent requested this Court to permit the Respondent to withdraw the amount deposited by the Appellant

with the office of this Court. The matter was adjourned to 26th April, 2024. This Court had indicated that the Advocates for the Respondent should take instructions regarding withdrawing the money against sufficient security like a Bank Guarantee.

8. On 26th April, 2024, the Learned Counsel appearing on behalf of the Respondent informed this Court that an order had been passed by the Commercial Court at Luxembourg on 27th March, 2024 in respect of Bankruptcy proceedings against the Respondent, and that a Bankruptcy Trustee had been appointed in respect of the Respondent/ Original Plaintiff. This Court was informed that the Bankruptcy Trustee had instructed the present Advocates on Record for the Respondent to represent the Respondent in the present Appeal. A request was made to stand over the matter to enable the parties to take steps to bring the Bankruptcy Trustee on record as the representative of the Respondent.

9. Today when the matter is called out, as mentioned earlier, Mr. Tamboli, stated that he has instructions from the bankruptcy trustee to request this Court to permit the Respondent to withdraw the amount deposited by the Appellant with the office of this Court against providing a bank guarantee of the same amount issued by ICICI Bank

Ltd. This Bank guarantee would be in favour of in the name of the Prothonotary and Senior Master of this Court. In answer to this, Mr. Narichania submitted that if the Respondent is permitted to withdraw the amount deposited by the Appellant, then the terms of the bank guarantee to be issued by ICICI Bank Ltd. should be to the satisfaction of the Prothonotary and Senior Master of the Court. In other words, it should be an irrevocable unconditional bank guarantee and which has to be kept alive till the disposal of the above Appeal and for a period of four weeks thereafter.

10. After hearing the parties following order is passed:

- a) The Respondent shall furnish an irrevocable and an unconditional bank guarantee of ICICI Bank Ltd. in the name of the Prothonotary and Senior Master of this Court in the sum of Rs.2,24,58,841/- together with interest at 6% p.a. on Rs.1,63,33,703/- and shall be kept alive until the disposal of the Appeal and for a period four weeks thereafter.
- b) If the bank guarantee is to be renewed from year to year,

the same shall provide for interest at 6% p.a. for example;-

(i) for the 1st year, the bank guarantee shall be for the total amount of Rs.2,34,38,863/- (being Rs.2,24,58,841/- + Rs.9,80,022/- towards interest @ 6% p.a.);

(ii) for the 2nd year the bank guarantee shall be for an amount of Rs.2,44,18,885/- (being Rs.2,34,38,863/- + Rs.9,80,022/-); and so on.

11. Mr. Tamboli has submitted that the bank guarantee will be furnished by Mrs. Arti Mediratta, who is the director of the Respondent in bankruptcy. He has further stated that the bankruptcy trustee by his email dated 6th May, 2024 addressed to his Advocates has stated that the amount to be withdrawn from this Court can be deposited in the account of Mrs. Arti Mediratta, the details of which are given herein below:

Name of the Bank: ICICI Bank

Account Name: Arti Mediratta

NRO Account Number: 699101075506

Branch – Mumbai- Versova- Lokhandwala Market

IFSC Code- ICIC0006991

MICR Code: 400229175

The said email is tendered to the Court, taken on record and marked 'X' for identification. It is accordingly ordered that this amount of Rs.2,24,58,841/- to be withdrawn from this Court shall be deposited in the account maintained with ICICI Bank Ltd, the details of which are set out above.

12. Mr. Tamboli, on instructions, has further stated that in the event the Appeal succeeds neither the bankruptcy trustee nor Mrs. Arti Mediratta shall create any hurdle for encashments of the said bank guarantee by the Prothonotary and Senior Master of this Court. He submitted that an affidavit to this effect shall also be filed not only by the bankruptcy trustee but also by Mrs. Arti Mediratta within a period of six weeks from today. The same is duly noted.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]