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Proceedings of the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai–600 028

Present: Thiru.Dinesh Ponraj Oliver, I.A.S.,

D.Dis.No. 13580/P1/2018 Dated 13.12.2023

Sub : Revision Petition––Document No. P.134/2017, Sub Registrar office, Neelangarai.–received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by District Registrar Chennai South– order issued – regarding.

Ref : 1. District Registrar, Chennai South order No.16421/B1/2017 dated 29.01.2017
2.Revision Petition dated 21.3.2018 received from M/s.Mandava Holdings Pvt. Ltd
3.W.P.No.32281/2023 filed by M/s.Mandava Holdings Pvt. Ltd before the Hon'ble High Court of Madras

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ORDER:

Revision petition 2nd cited has been filed under section 56 (1) of the Indian Stamp Act, 1899 before the Chief Controlling Revenue Authority against the order 1st cited passed by the District Registrar, Chennai South wherein it has been ordered to pay deficit stamp duty of Rs.5,61,60,000/– and penalty of Rs.5000/– in respect of document No.P.134/2017 on the file of Sub Registrar office, Neelankarai.

2) Facts of the Review Petition are as follows:–

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| Document No. | No.P.134/2017 |
| Office | Sub Registrar office, Neelankarai |
| Date of Execution | 10.1.2017 |
| Title | BOND TRUST DEED |

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|---|---|
| Executant | 1. M/s.Mandava Holdings Pvt. Ltd<br>2. M.Prabhakar Rao<br>3. Mrs.M.Asha Priya<br>4. M/s.Mandava Investments Pvt. Ltd<br>5. M/s.Axis Capital Limited |
| Claimant | M/s.Axis Trustee Services Ltd |
| Value of Debenture | Rs.140,00,00,000/- |
| Stamp Borne by the deed | Rs.40,000/- |
| Nature of document as determined by the District Registrar | Mortgage without possession {Article 40(b)}<br>&<br>Power of Attorney to sell immovable property granted for consideration {Article 48(e)} |
| Deficit stamp duty & penalty determined by the District Registrar | Rs.5,61,60,000/-<br>&<br>Rs.5000/- |

The above document has been executed for securing repayment to the prospective Bond holders of 14000 Bonds worth of Rs.140 Crores {proposed to be issued by the M/s.Mandava Holdings Pvt. Ltd} by Mortgaging the Immovable Property in favour of the Bond Trustee.

The aforesaid order has been passed by the District Registrar classifying the document under Article 48(e) of the Indian Stamp Act, 1899 considering the following recitals available under Clause 7.11 of the subject document:-

*7.11 APPOINTMENT OF TRUSTEE AS ATTORNEYS OF THE ISSUER The issuer hereby irrevocably appoints the Bond Trustee to be the attorneys of the issuer in the name and on behalf of the issuer to execute, sign do any deeds, documents, assurances, acts and things which shall in the opinion of the Bond Trustee be necessary or expedient that the issuer should execute, sign and do* ***for the purpose of carrying out any of the trusts or obligations declared or imposed upon***

***the issuer by these presents or of giving to the Tranche A Bondholders*** *or to the Bond Trustee on their behalf the full benefit of any of the provisions of these presents and generally to use the name of the issuer in the exercise of all or any of the powers hereby conferred upon the Bond Trustee..."*

Further the District Registrar has considered the recital found in Schedule IX (Sl.No.4) of the said document which enumerates list of existing encumbrances against various loans. The District Registrar construed the said recital as if a loan to the tune of Rs.350 crores has been granted to the issuer by the Axis Trustee services Ltd (Bond Trustee herein) and the said loan is secured under the deed in question.

Relying on the aforesaid recitals, the District Registrar held that the appointment of the Trustee is not only limited to hold the properties mortgaged but such appointment of the Trustee is also intended to confer the powers to act as the Attorney of the issuer and to execute any deed, including a sale deed.

Further the District Registrar has construed that the Trustee is conferred with such power in consideration of the loan availed to the tune of Rs. 350 crores from the Trustee company.

Based on the above reasoning the District Registrar classified the deed as comprising two distinct matters viz., Article 40(b) {Mortgage without possession of the Property) and Article 48(e) (Power of Attorney to sell the immovable property given for consideration).Accordingly deficit stamp duty and penalty have been determined by the Sub Registrar. Aggrieved over the same present Revision petition has been filed before the Chief Controlling Revenue Authority cum Inspector General of Registration.

3) The petitioner, when called for a personal hearing on 12.10.2023, sought for an adjournment through their Advocate. Accordingly petitioner was personally



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heard through their Advocate on 15.11.2023. During the hearing the Advocate for the petitioner stated that W.P.No. 32281/2023 has been filed by the petitioner seeking direction from the Hon'ble High Court for return of the impounded document without insisting payment of deficit stamp duty.

Main contentions advanced by the petitioner are as follows:

a) In the case of Board of Revenue vs Annamalai & co (AIR 1968 Mad 50) has laid the test for applicability of Article 48(e) of the Indian Stamp Act, 1899.
b) No Money or Valuable consideration has been paid by the Bond Trustee to the Issuer. In this regard reliance is placed on the decision of the Allahabad High court in Chief Inspector of Stamps, Allahabad Vs Murlidhar Kanodia, Kanpur AIR 1970 All 599.
c) In the Order passed in CCRA Proceedings No.38159/P1/2011 dated 12.09.2011 it has been held that "In the event where the company fails to fulfill its obligations, the power conferred in the said Clause will come alive and not before that" Hence District Registrar decision of classifying the instant document under Article 48(e) of Indian Stamp Act, 1899 is wrong.
d) The interpretation of the District Registrar that the Bond Trustee has sanctioned a sum of Rs.350 Crores to the Issuer is wrong. Axis Trustee services Limited was also appointed as the bond trustee, since the security has been created in favour of Axis Trustee services Limited, which is acting as trustee for the bond holders of the old bonds.

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Therefore, Axis Trustee services Limited has not sanctioned any loan to the issuer.

e) As per various case laws, the intention of the parties to a mortgage deed should be construed as a whole, giving attention to every provision therein.

4) Contents of revision petition, connected records received from the District Registrar, arguments advanced by the petitioner's advocate have been carefully examined by me.

Clause 6.1 of the document provides for creation of mortgage rights over the property of the Issuer described in schedule XVI of the document as security for the benefit of the Bond Holders. While so, the phrase "***for the purpose of carrying out any of the trusts or obligations declared or imposed upon the issuer by these presents or of giving to the Tranche A Bondholders***" employed in clause 7.11 indicates that appointment of the Trustee as the Attorney of the Issuer is meant only for the purpose of carrying out any of the trusts obligations declared or imposed upon the Issuer towards the Bond holders. Therefore it is clear that as per clause 7.11 the Trustee can act as the attorney of the Issuer only for the benefit of bond holders in the events such as default. Thus the power conferred on the Trustee is not an outright or absolute grant of power of attorney to sell immovable property.

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As far as the recital found in Schedule IX of the document, a close reading of the same shows that it merely enumerates the existing encumbrances against various loans. In the said enumeration, in serial no 4, fact relating Bonds issued to the tune of Rs.350 crores for which also Axis Trustee services Ltd stands as the Trustee has been stated. Thus it becomes clear that Axis Trustee services Ltd stands as the Trustee and not as a Lender for the said Bonds.

Therefore the decision of the District Registrar in having classified the document under Article 48 (e) by placing reliance on the aforesaid clause 7.11 and Schedule IX is not sustainable.

Accordingly, it is concluded that the document in question cannot be treated as a deed of '*power of attorney to sell immovable property granted for consideration*' under Article 48(e) of the Indian Stamp Act, 1899. Based on the above decision, the revision petition is hereby allowed and the order of the District Registrar is set aside.

As far as the request of the petitioner for return of the document without registration, since no deficit stamp duty remains to be paid for the document in question, the Sub Registrar is directed to consider the request by adhering to Registration department standing order No.244 and Article 17(2) (b) (i) of the Table fees under the Registration Act, 1908.

Sd/– Dinesh Ponraj Oliver /–13.12.2023
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

18/12/23

District Registrar (Inspection)

15/12/23

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To

1. Mandava Holdings Pvt Ltd.,
   8-2-684/2/A, Plot No.1 to 4,
   NSL Icon, 4th Floor, Road No.12, Banjara Hills,
   Hyderabad-500 034.

2. Mr.Edward James and Aravind Raj,
   Advocates,
   Cyril Amarchand Mangaldas, Advocates
   Regus, KRM Plaza,
   Office No.824, South Towers, 8th Floor,
   No.2, Harrington Road, Chetpet,
   Chennai – 600 031.

3. District Registrar,
   Chennai South
   (With original file)

Copy to: Stock file.

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