

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

DATED THIS THE 28TH DAY OF JUNE, 2013

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

CA NO.1387/2013

IN

COP NO.144/2011

BETWEEN:

M/s Gazala Engineering Pvt. Ltd.,
(A Private Limited Company
Registered under the provisions of
the Companies Act, 1956),
Registered office at No.40,
Sayed Aamir Society,
Mahathma Kabir Nagar,
Sahar Road, Chakla, Andheri (E),
Mumbai-400 099
Represented by its PA Holder
& Managing Director
Sri Mohammed Hameed Shah.

...Applicant

(By Sri.B.V.Thilak, Advocate)

AND:

M/s. Tyco Fire & Security
India Pvt. Ltd.,
(A Private Limited Company
Registered under the provisions
Of the Companies Act, 1956),
Registered office at
Tirumala Tech park,
Second Floor, Plot No.27,
1st Cross Road,

Doddenakundi Industrial Area,
Phase II, White Field Road,
Bangalore – 560 048
Represented by its
Managing Director.

...Respondent

(By Sri Shyam Sundar, Advocate)

This company application is filed under Rules 6 & 9 of the Companies (Court) Rules, 1959 R/w Order 1 Rule 10(2) of C.P.C praying to implead Bank of Maharashtra as Respondent No.2 since the said party is proper and necessary to conclusively decide the dispute between the parties to the present petition.

This company application coming on for Orders this day, the Court made the following:

ORDER

Heard Sri Shyam Sundar, learned counsel appearing on behalf of M/s. Fox Mandal Assts. Perused the application and annexures appended thereto.

2. By this application respondent is seeking for issuance of notice to proposed respondent No.2 i.e., Bank of Maharashtra, Pune to implead it as respondent No.2. In the affidavit supporting the application it has been contended that Bank has initiated proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, in O.A.N.157/2010

against the present petitioner and a Garnishee notice has been issued to respondent No.1 in the said O.A.No.157/2010 on 17.02.2012, directing the respondent herein not to disburse any amount to the petitioner. It is contended in the said proceedings initiated by the Bank for the recovery of Rs.45,06,426/-, petitioner herein has contended that it has to receive amounts from the respondent herein and as such, a Garnishee notice has been issued against the present respondent not to disburse the amount. It is further contended that despite petitioner being aware of the proceedings having been initiated by the Bank of Maharashtra against it for recovery of money, with a malafide intention has filed this petition for winding up of the respondent company and as such respondent is facing two proceedings.

3. Learned counsel appearing for the petitioner would also bring to the notice of the court the minutes of the meeting dated 05.02.2009, which has been enclosed to the present application as document No.1 which has

already been produced by the petitioner as document No.2 along with COP No.144/2011 indicating therein that parties have agreed to perform certain reciprocal promises, relating to the dispute in question and as such it is contended the proposed respondent is a necessary party.

4. As to whether the defence set up by the respondent to stave-off the creditor namely, petitioner herein is an issue which has to be examined in COP No.144/2011. Merely, because secured creditor of petitioner i.e., Bank of Maharashtra has initiated proceedings against the present petitioner, would not entitle the respondent to rope-in the said secured creditor in this proceedings and neither the said Bank is a necessary party nor a proper party in these proceedings. This application has been filed with an intention to protract the present proceedings on one pretext or the other. This conclusion is arrived at in the background of the submission that was made by the learned counsel appearing for the respondent herein on

14.06.2013, whereunder it was stated that despite Garnishee notice having been issued by Debt Recovery Tribunal, Mumbai, efforts would be made to make payment to the petitioner and settle the issue. Despite undertaking to settle the claim, present application has been filed.

5. In view of the aforesaid facts, I am of the view that Bank of Maharashtra is neither a necessary nor a proper party to these proceedings, as such, it cannot be impleaded as a party to the present proceedings.

6. At this stage learned counsel appearing for the respondent seeks permission of the Court to withdraw the application. He is permitted to withdraw the application.

C.A.1387/2013 stands dismissed as withdrawn.

**Sd/-
JUDGE**

DR