

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 150 OF 2015

IN

COMPANY PETITION NO. 11 OF 2013

CORPORATION BANK, REPRESENTED BY
ITS CHIEF MANAGER MR.DEEPAK
CHARLEY.

... Applicant

Versus

M/S. SATYEN POLYMERS PVT. LTD.

... Respondent

Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Bharne,
Advocate for the Applicant-Original Intervenor no. 1.

Ms. Amira Raza, Advocate for the Official Liquidator.

Ms. D. Shirgam, Advocate for the Respondent no. 1/Original
Petitioner.

Mr. Ryan Menezes, Advocate for the Original Intervenor no. 2 and
Respondent no. 2.

Mr. Shivan Desai, Advocate for the Original Respondents.

Coram:- F. M. REIS, J.

Date:- 1st October, 2015

ORAL ORDER

Leave to amend to add Amiantil Employees Union, as Respondent
no. 2, is granted.

2. I have extensively heard Shri Sudin Usgaonkar, learned Senior
Advocate appearing for the Applicant/Original Intervenor no. 1, Ms.
Amira Razaq, learned Counsel appearing for the Official Liquidator
and Shri Ryan Menezes, learned Counsel appearing for the Original
Intervenor no. 2 and the newly added Respondent no. 2.

3. Upon hearing the learned Counsel, the admitted facts of the case are that the proceedings for winding up have been admitted and a provisional Liquidator has been appointed to take over the assets of the Company. The Applicant-Bank is a secured creditor who has initiated proceedings under the Securitisation Act and, according to Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Applicant, part of the asset which have been hypothecated to the Bank have already been sold and, in fact, the possession thereof has been taken by the Bank in terms of the Securitisation Act. It is sought to be contended by the learned Senior Advocate appearing for the Applicant, that though possession of the disputed premises has been taken over by the secured creditor Bank in terms of section 14 of the Securitisation Act, nevertheless, there are hurdles/impediments being created by the workers of the Trade Union-Respondent no. 2 in the ingress and egress of the officials and personnel of the secured creditors into the Company premises under winding up. It is also not disputed that substantial dues are payable to the workers of the Respondent no. 2 and, in fact, proceedings for recovery of said amount have been initiated before the Competent Authority under the Payment of Wages Act and, in fact proceedings to that effect are pending before the Labour Commissioner at Panaji. There are also Industrial disputes raised by the Workmen which are under consideration of the Industrial Tribunal. The fact remains that in the meanwhile the Labour Commissioner has tentatively fixed an amount of Rs.71,19,770/- as payable to the workers of the Respondent no. 2

though, according to Mr. Ryan Menezes, learned Counsel, such amount would work out to over Rupees Six Crores. In support of such claim, Mr. Menezes, learned Counsel, has also produced a Chart alleging that an adjudication to that effect is under consideration before the Competent Authority. The said Chart is marked 'X' for identification.

4. In terms of Section 13(9) of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002(SARFAESI ACT), when winding up proceedings are pending, the secured creditor has to satisfy the dues of the workers and while depositing such amount before the Liquidator, an undertaking has to be given to the effect that they would honour all other payments payable to the workers in terms of Section 13(9). In such circumstances, before we examine to grant any relief in favour of the Applicant-Bank, it would be appropriate to examine the grant of such relief subject to the Applicant-Bank depositing with the Liquidator the said sum of Rs. 71,19,770/- and furnishing an undertaking to the effect that any further amounts payable to the workers in terms of law would be deposited by such secured Bank with the Liquidator.

5. The dispute with regard to the ingress and egress to the subject Company is also being examined in the context that the Liquidator contends that he was not in the position to take over all the material

of the Company under winding up from the premises which are personally in occupation and possession of the Applicant-Bank. Though it cannot be disputed that the workers have a right to agitate to put up their legitimate claims, nevertheless, such agitation has to be in an orderly manner and should lead to obstructing the ingress and egress of the authorized officials of the Applicant-Bank and the office of the Liquidator.

6. Though Mr. Ryan Menezes, learned Counsel appearing for the Respondent no. 2, has pointed out that the workers have not been obstructing the authorised persons of the Applicant-Bank nor the Liquidator or other officials to proceed to the subject premises, nevertheless, considering the apprehension shown by the Applicant-Bank with that regard, I find that, in the interest of justice, some relief has to be granted on that count to ensure that the ingress and egress of the authorised persons to the factory premises, are not in any way hampered.

7. Mr. Sudin Usgaonkar, learned Counsel appearing for the Applicant, upon instructions, pointed out that the said Bank would withdraw the Special Civil Suit no. 3/2015/A pending before the Civil Judge, Senior Division at Bicholim.

8. In view of the above, I pass the following :

O R D E R

- (i) The Applicant-Bank is directed to deposit a sum of Rs.71,19,770/- (Rupees Seventy one lacs, nineteen thousand, seven hundred and seventy only) in the office of the Official Liquidator within one week from today and furnish an undertaking in terms of Section 13(9) of the said Securitisation Act to the satisfaction of the Registrar(Judicial)of this Court and signed by an Authorised Officer of the Applicant-Bank to the effect that the Applicant-Bank shall honour any other payment towards the workers dues besides the amount so deposited, upon such demand by the Liquidator.
- (ii) The Respondent no. 2, their members, workers, servants and agents, shall not in any way obstruct the Applicant-Bank nor the Liquidator and other authorized personnel in the ingress and egress to the factory premises of the subject Company located in the property surveyed under no. 120-Part, 121 and 177-Part, Navelim, Bicholim, Goa, until further orders.
- (iii)The Respondent no. 2-Workers are at liberty to file an appropriate claim before the Liquidator based on the Orders passed by the Labour Commissioner and, in case,

such claims are put forward, the Liquidator shall expeditiously examine to disburse such amounts in accordance with law.

(iv) Application stands disposed of accordingly.

F. M. REIS, J.

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