IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

OLR NO. 177 OF 2015

The Official Liquidator
High Court Bombay .. Petitioner
Vs.
Techtrek India Ltd. .. Respondent

WITH
COMPANY APPLICATION NO. 1005 OF 2015
IN
COMPANY PETITION NO. 617 OF 2013

Indian Overseas Bank .. Applicant

In the matter between :

SRL Limited
(formerly known as Super
Religare Laboratories Limited) .. Petitioner
Vs.
Techtrek (India) Ltd.
(in liquidation) .. Respondent

Mr.Siddharth Morarka for petitioner.
Mr.Mayur Khandeparkar i/b T.N.Tripathi & Co. for applicant.
Mr.Kinshuk Kislaya a/w. Mr.Parag Sharma i/b Udwadia & Co. for Sunjewels Pvt. Ltd.

CORAM : K.R.SHRIRAM, J.
DATED : 4TH DECEMBER, 2015

P.C.

COMPANY APPLICATION NO. 1005 OF 2015

1 This application is taken out on behalf of the Indian Overseas Bank, a secured creditor for (a) leave to initiate measure under Sub-section (4) of

Section 13 of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short referred as SARFAESI Act, 2002) in respect of its secured assets as more particularly described in the Schedule to the application and (b) to direct the official liquidator, High Court Bombay appointed as Provisional Liquidator of Techtrek (India) Limited to handover possession of the secured assets.

2 In prayer (b), the applicant is also seeking a direction against the official liquidator to pay all benefits, rents, compensation, if any, received in respect of the secured asset. The counsel appearing for the applicant states that he does not press for this part of the relief and seeks liberty to pray for the same at a subsequent stage. Liberty granted.

3 The counsel appearing for the applicant submit that a Division Bench of this Court in the matter of ***Akola Oil Industries V. State Bank of Maharashtra*** [1] has held that the provisions of the securitisation Act will prevail over the Companies Act and the secured creditor even if it had preferred an application for leave or moved under the provisions of the Securitisation Act, no leave was required. It was open to the applicant to initiate proceedings before the Tribunal under the debts Recovery Act or for

1 2006 I(1) Bom. C.R. 362

realisation of the security under the provisions of the Securitisation Act without seeking leave of the Company Court. The relevant portion of paragraph 5 of the said judgement reads as under :

> *5….......The Apex Court, however, chose not to answer the issue and considering the law as it stands it is immaterial at what stage the official liquidator is appointed. If that be the position, we have no doubt in our mind that, considering the provisions of the securitisation Act, and the provisions of the companies Act, the provisions of the securitisation Act will prevail and no leave of the company Court is required either before winding up or after winding up for selling the secured assets. <u>The respondent, therefore, even if had preferred an application for leave or moved under the provisions of the Securitisation Act, that really was not required. No leave was also required under the provisions of the R. D. B. Act. It was open to the respondent to initiate proceedings before the Tribunal under the debts Recovery Act or for realisation of the security under the provisions of the securitisation Act without seeking leave of the Company Court. It may also be noted that under the provisions of the proviso to section 13 (9) of the Securitisation Act, the workmen's dues are protected. In other words this, by itself will be an indication that the provisions of the Securitisation Act, will prevail over the Company Act. It was therefore, within the competence of the respondent to proceed to dispose of the assets under the provisions of the securitisation Act.</u>.…..................”*

4 The counsel also relied on an unreported order of a Single Judge of this Court in ***Mineral Sales Pvt. Ltd. Vs/ Otoklin Plants & Equipment Ltd. (in liqn.)*** [2] wherein it is also held that a secured creditor, while proceeding

2 Company Petition No.970 of 1997 dt. 26.11.2009

under the RDB Act or Securitization Act, does not need the permission of the Company Court. Paragraph 3 of the order reads as under :

> *"3 The Applicant has exercised powers under the Securitization Act. The Supreme Court, in its judgment in **Allahabad Bank vs. Canara Bank**, AIR 2000 SC 1535, held that the provision of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would override the powers of the Company Court under the Companies' Act, 1956. The position of a secured creditor who exercised his powers under the Securitization Act has been considered by a Learned Single Judge in **Akola Oil Industries vs. State Bank of India**, 2005(5) Bom.C.R 706. The Learned Single Judge held that a secured creditor, while proceeding under the RDB Act or Securitization Act does not need the permission of the Company Court. Besides, it may be noted that Section 35 of the Securitization Act gives overriding effect to the provisions of the Act, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

5 The counsel appearing for the petitioning creditor stated that the Apex Court in the matter of ***Rajasthan Financial Corporation & Anr. Vs. Official Liquidator & Anr.***[3] has in paragraph 18 stated as under :

> 18 In the light of the discussion as above, we think it proper to sum up the legal position thus:-
>
> > i) A Debt Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in-

3 2006(1) Bom.CR.(S.C).531

liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the liquidator appointed by the Company Court and after hearing him.

ii) A District Court entertaining an application under Section 31 of the SFC Act will have the power to order sale of the assets of a borrower company-in- liquidation, but only after notice to the Official Liquidator or the liquidator appointed by the Company Court and after hearing him.

Iii) If a financial corporation acting under Section 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the company court and acting in terms of the directions issued by that court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 29A and Section 529 of the Companies Act.

iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the concerned creditor is to approach the company court for appropriate directions regarding the realization of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation.

The counsel submitted that the concerned creditor, therefore, has to approach the Company Court for appropriate directions.

6 The indisputable fact is the secured creditor has approached this Court for directions regarding the asset which is mortgaged to the secured creditor and which is in the possession of the official liquidator. Therefore, the application in terms of prayer clauses (a) and (b) has in any event to be granted and is accordingly granted.

The official liquidator is also directed to handover possession of the assets mentioned in Exh.'A' to the application.

The secured creditor to keep the official liquidator informed promptly and as and when they take any action relating to the assets, then advance intimation to be given.

7 The company application stands disposed accordingly.

8 The counsel for the petitioning creditor also submitted that the land which is the subject matter of this application is an MIDC property and MIDC has fixed the value thereof of about Rs.3.22 crores whereas the claim of the applicant is somewhere in the region of Rs.25 crores. In my view, this is a non-issue at this stage. It would, I am sure, be considered in accordance with law by the appropriate forum.

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9 As regards, the Official Liquidator Report, the official liquidator states that in view of the above, prayers (a) to (f) are rendered infructuous. In view thereof, the official liquidator's report is allowed in terms of prayer clauses (g) and (h). The applicants-secured creditor are also directed to pay over to the official liquidator the amount equivalent to the workmen's claim within two weeks of receiving demand from the official liquidator.

10 The official liquidator report accordingly stands disposed.

(K.R. SHRIRAM, J.)