IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 502 OF 2015
IN
COMPANY PETITION NO. 398 OF 2012

Dewan Housing Finance Corporation Ltd. …Petitioner / Applicant
vs.
SPANCO Ltd. & Anr. ...Respondents

Mr.Harinder Toor with S.B. Pawar, Ms.Swati Sawant i/b. S.K. Legal Associates for Petitioner.
Ms.Shruti Sardesai i/b. Phoenix Legal for Respondent No.1.
Mr.Vivek Sawant for Respondent No.2.

CORAM : S.C. GUPTE, J.

17 JULY 2015

P.C. :

The company application seeks appointment of an interim provisional liquidator of the Respondent company. The winding up petition has been admitted. It is now ripe for hearing and posted on 21 August 2015. The immediate cause for approaching the Court at this stage for urgent appointment of a provisional liquidator is a sale notice issued by State Bank of Mysore for sale of the company's property, being a commercial unit at Sion in Mumbai, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 ("SARFAESI Act").

2 The Respondent company owes a sum of over Rs.5 crores to the Petitioner. By an order dated 17 December 2013, this Court admitted the company petition. The matter was carried in appeal before a Division Bench of this Court. The appeal was disposed of by the Division Bench by accepting an undertaking of Respondent company and its chairman and managing director to pay the Petitioner's debt in terms of a statement which was taken on record. In pursuance of this order, post-dated cheques were deposited by the Respondent

company with the Petitioner. These cheques, except for the cheque towards the first instalment, were dishonoured upon presentation and in the premises, admission order of the learned Single Judge was revived by this Court by an order dated 24 July 2014. By an order dated 29 September 2014, this Court directed various parties dealing with the Respondent company not to make any payment directly to the Respondent company, but deposit such payments with the Prothonotary & Senior Master of this Court. In addition to this order, there is also a restriction on the Respondent company not to dispose of assets except in regular course of business without seeking leave of this Court. This Court, in other words, has thought it fit to protect the various petitioning creditors, including the Applicant herein, pending the hearing and final disposal of the company petition, by putting restrictions on the Respondent company regarding sale of its assets and also requiring various receivables to be deposited into this court. The Court is given to understand that in terms of these orders, the various contracting parties have been depositing payments due to the Respondent company with this Court. The petition, as noted above, is now ripe for hearing. Having regard to these facts, there should have been no occasion to seek further reliefs. It is, however, claimed by the Applicant that the sale notice issued by the secured creditor of the Respondent company has introduced a change of circumstances which calls for a further protective relief in the form of appointment of a provisional liquidator.

3 State Bank of Mysore, which is a secured creditor, is entitled to securitise the asset, namely, commercial unit described in the application. The bank has taken steps under Section 13 of the SARFAESI Act and has issued the sale notice, referred to above. As a matter of fact, it is submitted by learned Counsel for the Bank that no offers have been received in response to the sale notice and the sale cannot, under the circumstances, go through.

4 The basis of the present application, according to learned Counsel for the Applicant, is that the asset, which is sought to be securitised by the bank, is valued over Rs.30 crores, whereas the total debt owed by the Respondent company to the Bank is of about Rs.5 crores. It is contended by the Applicant

that unless there is an order for winding up of the Respondent company or a provisional liquidator is appointed of its assets, distribution of sale proceeds amongst creditors including workmen of the Respondent company, who have a preferential claim against the assets of the company, cannot take place and that in such event, the surplus sale proceeds, after recovery of the bank's claim, shall come to the Respondent company and not be available for distribution among creditors including workmen. Learned Counsel relies upon the judgment of the Supreme Court in the case of **Bank of Maharashtra vs. Pandurang Keshav Gorwadkar**[1] in this behalf.

5 In the first place, there is no change of circumstances on account of the sale notice issued by State Bank of Mysore, warranting this Court to consider further protective reliefs for the petitioning creditors. State Bank of Mysore is outside winding up and can very well securitise the assets. The surplus, if any, that may come into the hands of the company is the property of the company. At this stage, there is no allegation against the company that it is seeking to dispose of its properties with a view to defeat the claims of creditors including the Petitioner herein. Secondly, the proposed sale anyway has not gone through, and there is no need to consider any urgent interim relief today. The petition along with other pending petitions against the Respondent company is ripe for hearing and final orders could be expected to be passed shortly.

6 There is no quarrel with the propositions of law pressed into service by the Petitioner insofar as the jurisdiction of the company court to appoint a provisional liquidator is concerned. The judgments of **Majestic Infracon P.Ltd. vs. Etisalat Mauritius Ltd.**[2] and **Asha Bhosle vs. Magnasound (India) Ltd.**[3] relied upon by learned Counsel for the Petitioner do lay down the propositions that the company court can appoint a provisional liquidator in appropriate cases where the substratum of the company is lost and there is either no possibility of the company's revival or in the face of an imminent likelihood of commercial

1 **(2013) 7 SCC 754**
2 **[2014] 185 Comp Cas 145 (Bom)**
3 **2003(4) Mh.L.J.**

insolvency, there is a strong *prima facie* case that the company would be wound up at the final hearing of the petition; and such order can be passed at any time after the presentation of a winding up petition, both before and after an admission order. What I have observed above is that this is not a case where such order should be considered today. No case is accordingly made out for grant of interim relief. The company application is, thus, dismissed.

7 The company petition to come up on board on 21 August 2015, as earlier ordered.

(S.C. Gupte, J.)