C.A.No.506 of 2015

V. RAMASUBRAMANIAN, J

This is an application filed by the Former Managing Director of the Company in Liquidation seeking to set aside the sale conducted by the Bank on 10.9.2014 in exercise of the powers conferred under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act, 2002").

2. Heard Mr.AR.L. Sundaresan, learned counsel for the applicant, Mr.P.Atchuta Ramiah, learned Official Liquidator, Mr.A.L. Somayaji, learned Senior Counsel appearing for respondents 4 and 5 and Mr.M.S.Krishnan, learned Senior Counsel appearing for the third respondent/Creditor Bank.

3. The Company in Liquidation had facilities granted by IDBI and upon the company committing default in payment, IDBI initiated proceedings under the SARFAESI Act, 2002 by issuing a notice under Section 13(2) on 7.12.2006. In the said notice, the Bank demanded a total amount of Rs.50,16,54,098/-.

4. Since the Company could not repay the money, the Bank issued the next notice under Section 13(4) on 12.2.2007.

5. In April, 2008, an unsecured creditor namely, M/s. Anjaneya Cotton Mills Private Limited filed the above Company Petition, C.P.No.132 of 2008 for winding up the Company in Liquidation. The claim made in the Company Petition was for payment of Rs.2.03 Crores. Though the Petitioning Creditor and the Company made an attempt to settle the claim of the Petitioning Creditor alone before me on an earlier occasion, the proposal did not fructify.

6. In the meantime, the Bank agreed for an one time settlement. By a letter dated 9.3.2011, the Bank agreed to receive the amount of Rs.380.01 lakhs apart from the amount of Rs.269.99 lakhs already paid by the Company towards one time settlement of their dues on condition that the entire balance of Rs.380.01 lakhs ought to be paid on or before 26.3.2011. Pursuant to the said letter, a sum of Rs.50 lakhs was paid upfront. Therefore the balance of Rs.330.01 lakhs was to be paid on or before 26.3.2011 to IDBI for clinching the one time settlement proposal.

7. But the applicant herein as well as the Company in Liquidation could not generate funds to honour their commitment under the one time

settlement proposal.

8. Simultaneously, while negotiating for the one time settlement, the Company went before the Debts Recovery Tribunal and filed an application in S.A.No.140 of 2007 under Section 17 of the SARFAESI Act, 2002 challenging the possession notice issued under Section 13(4). This application was dismissed by the Tribunal by an order dated 30.3.2012.

9. The Company filed an appeal before the Debts Recovery Appellate Tribunal. For entertaining the appeal, the Tribunal passed a conditional order directing the company to deposit Rs.23 Crores. But the Company could not comply with the condition, resulting in the order of the Debts Recovery Tribunal attaining finality.

10. In the meantime, IDBI assigned the debts in favour of M/s. Ratnakar Bank Limited on 30.8.2013. The assignee Bank made atleast two attempts to bring the property to sale from January 2014 to July 2014. But these attempts were not successful.

11. In the interregnum, this Court passed an order on 5.3.2014 appointing the Official Liquidator attached to this Court as the Provisional Liquidator. However, no order of winding up was passed. Therefore, it

became necessary for the Bank to associate the Official Liquidator with the sale of the property, as the Official Liquidator also took charge on 11.4.2014.

12. Eventually, the last of the paper publications for the sale of the property was made by the Bank on 9.9.2014. Upon the paper publication being made, the applicant came up with an application in C.A.No.879 of 2014 for stay of the auction. But the prayer for stay was rejected by this Court by an order passed on the same date namely, 9.9.2014. Consequently, the sale appears to have taken place on 10.9.2014. Therefore seeking to set aside the sale, the former Managing Director of the Company in Liquidation has come up with the above application.

13. The grounds on which the sale is assailed by the applicant are as follows:

(i) That the upset price fixed for the property was too low and was no match to the market value of the property;

(ii) that the Bank did not associate the Official Liquidator in the manner in which it ought to have associated the Official Liquidator; and

(iii) that the Bank did not follow the procedure prescribed by law for brining the property to sale.

14. Before taking up the above contentions, it should be pointed out that the very maintainability of the above application is doubtful. Admittedly, the sale has taken place on 10.9.2014 at the instance of the secured creditor in exercise of the powers conferred under the SARFAESI Act5 2002. SARFAESI Act 2002 prescribes the procedure for sale of the properties and also for challenging the sale made. The sale of the property under the SARFAESI Act is a step taken under one of the sub-sections of Section 13 and hence it is a matter which comes within the purview of the Debts Recovery Tribunal under Section 17. Even the contention that the Official Liquidator was not associated with the sale, is liable to be raised only before the Tribunal.

15. The SARFAESI Act, 2002 contains a non-obstante clause**.** The right of the secured creditor to stand outside the winding up proceeding and to bring the property to sale under the SARFAESI Act 2002 is recognized. Therefore, the sale which took place under the SARFAESI Act cannot be set aside by this Court in an application taken out under the Companies Act, 1956.

16. In any case, the three contentions raised by the learned Senior Counsel for the applicant, do not merit acceptance. As I have indicated

earlier the first contention of the learned Senior Counsel for the applicant is that the upset price fixed was too low when compared to the market value of the property.

17. It is seen from the paper publication dated 7.8.2014 that the upset price for all the properties was fixed totally at Rs.21 Crores. According to the learned Senior Counsel for the applicant, the market value of the property is about Rs.300 Crores. But the applicant has not even produced any proof to show that the market value of the property is Rs.300 Crores. Apart from the above, it also offends common sense to think that the properties could be worth Rs.300 Crores. This is in the light of the fact that the Bank which claimed an amount of Rs.50 Crores way back on 7.12.2006 agreed for an one time settlement to the total extent of about Rs.6.50 crores in the year 2011. If the secured assets are valued at hundreds of crores, no Bank would agree for an one time settlement of 10% of their total claim. Therefore the first contention cannot be sustained.

18. The second contention is that the Official Liquidator was not associated in the true spirit in which the Supreme Court directed the Official Liquidators to be associated with such sales in ***Official Liquidator, Uttar Pradesh and Uttarakhand v. Allahabad Bank and Others (2013) 4 SCC***

381.

19. But unfortunately for the applicant, the Official Liquidator made a categorical statement before this Court in C.A.No.879 of 2014 on 9.9.2014 that the proper procedures have been followed and that he did not have any objection. Moreover, the auction appears to have taken place online and at every stage the Official Liquidator was put on notice. As to what is the exact role to be played by the Official Liquidator, there is no clarity. Therefore it has to be left to the discretion of the Court every time, whenever such an allegation is made. From the records placed before me and from the stand taken by the Official Liquidator it cannot be said that he was not properly associated with the sale. Hence, the second contention is also liable tobe rejected.

20. The third contention that the proper procedure was not followed is based upon the provisions of the Security Interest Rules. But apart from pointing out the valuation, no other violation of procedure is highlighted by the applicant. Therefore the third contention also to fail.

21. There is also one more aspect which stares at the face of the applicant. The applicant filed a writ petition in W.P.No.28622 of 2013 on the file of this Court, seeking to set aside the auction notice dated

19.9.2013 published in newspaper on 22.9.2013.

22. This Court granted relief to the applicant by an interim order dated 22.10.2013 on condition that the applicant deposits Rs.50 lakhs. Even this amount could not be deposited by the applicant. Therefore it is clear that several attempts made by the Bank to bring the property to sale were successfully stalled and ultimately the properties were managed to be sold in the auction held on 10.9.2014. I find no valid ground to set aside the sale, apart from the fact that the proper course of action for the applicant was not actually to approach the Court.

23. Accordingly, Application No.506 of 2015 is dismissed.

10.06.2015

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V. RAMASUBRAMANIAN, J

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10..6.2015