THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY APPLICATION No.785 of 2015

in

C.P.No.21 of 2014

08.09.2015

Between:

Andhra Pradesh State Financial Corporation, Hyderabad

…Applicant

And

M/s.Cheminnova Remedies Pvt. Ltd. (in liqn.)

…Respondent

Counsel for the applicant: Mr.Y.N.Vivekananda
for Mr.Y.N.Lohita

Counsel for the respondent: Mr.M.Anil Kumar
for Official Liquidator

The Court made the following:

ORDER:

This application is filed by the Andhra Pradesh State Financial Corporation, Ramachandrapuram Branch, Hyderabad, for permitting it to remain outside the liquidation proceedings.

In support of this application, the Senior Branch Manager of the applicant company filed an affidavit, wherein, he has, *inter alia*, stated that the applicant company has sanctioned and disbursed a sum of Rs.936.84 lakhs towards term loan and working capital term loans to the company in liquidation (respondent). That the Managing Director of the company in liquidation died in 2009 resulting in the management being taken over by his son – Mr.M.Vasudeva Rao. That as the company in liquidation failed to pay outstanding loan of Rs.606.38 lakhs, the applicant company issued recall-cum-sale notice, dated 07.10.2013, and that there was no response to the said notice from the management of the company in liquidation. That the company in liquidation filed a writ petition and this Court while admitting the writ petition granted interim stay subject to compliance of the conditions and the applicant company was directed not to take coercive steps. That the applicant company seized and taken possession of the assets of the company in liquidation on 07.02.2014 under a panchanama in order to recover the outstanding loan. That the applicant company advertised the assets for sale in 'Andhra Jyothi' daily (Telugu) newspaper on 18.08.2014. That the Official Liquidator attached to this Court sent a letter, dated 18.03.2015, informing the applicant company about this Court passing of order, dated 16.02.2015, winding up the company in liquidation. That as the applicant company is the secured creditor in respect of the assets mentioned in the panchanama, dated 07.02.2014, it prayed that it may be allowed to remain outside the liquidation proceedings for recovery of its dues.

The Official Liquidator has filed his report, dated 05.06.2015, wherein he has, *inter alia,* stated that in response to the letters sent by him, after the company in liquidation was ordered to be wound up, to various other secured creditors such as Andhra Pradesh Industrial Development Corporation (APIDC), State Bank of Hyderabad (SBH), Citicorp Finance (India) Limited, UTI Bank Limited and SE Investments Limited, the representatives of SBH and SE Investments Limited attended the meeting on 06.04.2015. That as per the details given by the said two secured creditors, SE Investments Limited, which gave loan of Rs.1,40,00,000/- to the company in liquidation, received a sum of Rs.3,25,59,979/- from out of the said loan and as regards SBH, it assigned debt to ASREC (India) Ltd., and requested for two weeks time to provide relevant details. The Official Liquidator, however, requested for incorporation of the following conditions in the event this Court is inclined to allow the applicant company to remain outside the liquidation proceedings:

> "(i) That the corporation shall involve the Official Liquidator in all the proceedings and have consultation with him in the matter of sale of the properties and shall give at least one week prior intimation;
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> (ii) The corporation shall value the properties and place the Valuation report before this Hon'ble Court for approval;
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> (iii) That the corporation shall provide funds for inviting claims from the creditors of the company from the sale proceeds realized on the sale of assets in respect of which permission has been sought to remain outside winding up proceedings;
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> (iv) That the corporation shall undertake to discharge the workmen liability in accordance with Section 529 & 529A of the Companies Act, 1956, as and when notified by the Official Liquidator to them;
>
> (v) The applicant corporation shall prove its claim against the company along with interest up to the date of the winding up order before the Official Liquidator and until then it shall not appropriate any dues out of the proceeds realized by sale of the assets and shall keep the same in an interest bearing

fixed deposit;

(vi) The corporation shall discharge statutory liability in accordance with law before appropriating the sale proceeds and the applicant shall also pay the Government fee on the sale proceeds as provided under Rule, 291 of the Companies (Court) Rules, 1959;

(vii) The sale shall be subject to the confirmation of this Hon'ble Court, as also subject to such terms and conditions as may be imposed."

That a secured creditor is entitled to remain outside the liquidation proceedings is well settled in **Rajasthan State Financial Corporation vs. Official Liquidator**[1]. While holding so, the Supreme Court summed up the legal position 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- 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 529A 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."

Mr.Y.N.Vivekananda, learned counsel for the applicant company, submitted that his client will file a separate application in order to comply with Clause (iii) of para 18 of the Supreme Court's judgment in **Rajasthan** referred to above. He has further submitted that after ascertaining the details of the other secured creditors, his client will implead them in the said application.

In the light of the above discussed legal position emerging from the judgment of the Supreme Court in **Rajasthan**, the applicant company, being a secured creditor, is entitled to remain outside the liquidation proceedings. The conditions subject to which the applicant company will be permitted to proceed with the sale of the assets of the company in liquidation will be decided by this Court in the application that may be filed by the applicant company, wherein it shall implead the other secured creditors, if any.

The Company Application is allowed to the extent indicated above.

(C.V.NAGARJUNA REDDY, J)

08th September, 2015
GHN

[1] (2005)8 SCC 190