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

COMPANY PETITION NO.728 OF 2000

Asset Reconstruction Company (I) Limited ....Petitioner

V/s.

Sadguru Flour Mills Private Limited ....Respondent

WITH
COMPANY PETITION NO.729 OF 2000

Asset Reconstruction Company (I) Limited ....Petitioner

V/s.

Sunflower Foods Products Private Limited ....Respondent

WITH
COMPANY APPLICATION NO.421 OF 2013
IN
COMPANY PETITION NO.729 OF 2000

Mr. Babanrao Radhoji Kadbhane & Ors. ....Applicants

V/s.

The Official Liquidator, High Court,
Bombay & others ....Respondents

WITH
COMPANY APPLICATION NO.440 OF 2013
IN
COMPANY PETITION NO.728 OF 2000

Mr. Babanrao Radhoji Kadbhane & Ors. ....Applicants

V/s.

The Official Liquidator, High Court,
Bombay & others ....Respondents

WITH
COMPANY APPLICATION NO.185 OF 2014
IN
COMPANY PETITION NO.729 OF 2000

Asset Reconstruction Company (I) Limited ....Applicant

V/s.

The Official Liquidator of Sunflower Foods Products Private Limited (In Liqn.) ....Respondent

WITH
COMPANY APPLICATION NO.186 OF 2014
IN
COMPANY PETITION NO.728 OF 2000

Asset Reconstruction Company (I) Limited ....Applicants

V/s.

The Official Liquidator of Sadguru Flour Mills Private Limited (In Liqn.) ....Respondent

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Ms. Rajani Iyer, Senior Advocate a/w. Mr. Rohit Gupta & Mr. Vinod Kothari i/b. Apex Law Partners for the petitioner and for the applicant in CA/185/2014 and CA/186/2014.
Mr. V.P. Sawant a/w. Mr. Vikram Pai for the respondents/applicants in CA/440/2013 and CA/421/2013.
Mr. Sharan Jagtiani a/w. Mr. Vedchetan Patil for the Official Liquidator.
Ms. Yogini Chauhan, Deputy Official Liquidator.

CORAM : K.R.SHRIRAM,J
DATE : 18th FEBRUARY, 2016

P.C.:-

COMPANY APPLICATION NO.440 OF 2013

1 Prayer clauses – (a), (b) and (c) of this application read as under :-

> *(a) that it be held and declared that the petitioners are bound by the terms and conditions of compromise as set out in the letter dated 28.06.2006 bearing no.AX4/RCC/Comp/2001/789 of the original petitioner - Bank of Maharashtra, especially condition no.4 therein, by which the claim as made in the above company petition against the respondent company, as also claims arising out of O.A. No.340 of 1999 before the Debt Recovery Tribunal – III, Mumbai and in Recovery Proceedings No.411 of 2004, before the Recovery Officer, Debt Recovery Tribunal – III, Mumbai, stands settled as compromised;*

(b) that the above company petition be dismissed in view of and as the entire the claim as set out in the company petition as also claim arising out of O.A. No.340 of 1999 before the Debt Recovery Tribunal – III, Mumbai and in Recovery Proceedings No.411 of 2004, before the Recovery Officer, Debt Recovery Tribunal – III, Mumbai, being treated as compromised and finally settled between the parties;

(c) that the petitioners who are transposed as such in place of original petitioners, as petitioners by order passed by this Hon'ble Court in company application no.476 of 2010 dated 15.10.2010, be restrained by an order and injunction of this Hon'ble Court from withdrawing themselves and/or deviating from the terms and conditions of the compromise as contained in the letter issued by the original petitioners – Bank of Maharashtra, dated 28.06.2006, referred to in prayer clause – (a) above.

2 The subject matter of the reliefs sought in this application is under the exclusive jurisdiction of the Debt Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act). As held by the Apex Court in the matter of ***Allahabad Bank vs. Canara Bank and another***[1], the RDB Act, 1993 confers exclusive jurisdiction to the Tribunal and the Recovery Officers in respect of debts payable to the banks and financial institutions and there can be no interference by the Company Court under section 442 read with section 537 or under section 446 of the Companies Act, 1956. Moreover these reliefs have already been sought by the applicants before the Debts Recovery Tribunal – III, Mumbai, which by an order dated 3rd December, 2014 has rejected the same. Paragraphs 6,19,20,21,23,24 and 25 of the said order read as under :-

"6. It is further contention that the Applicants have never sought

1. (2000) 4 SCC 406

enforcement of RBI guidelines in their correspondences and/or negotiations with the assignor of the respondent. There is no whisper of RBI guidelines in the application. It is not admitted that the borrowers are Small Scale Industries and Medium Scale Industries. The applicants have never made proposal within the frame work of RBI guidelines. The reliance is placed on citation "Sardar Associates", but it is not applicable to the present case. In that case bonafide efforts were made by the borrowers for settlement. In our case, no such proposal within the frame work of RBI guidelines is made. The dues of M/s. Satguru Flour Mills as on 31.03.2011 is Rs.13,63,96,784/- and of M/s. Sunflower Food Products Pvt. Ltd. is for Rs.27,92,90,163/- i.e. total Rs.41.57 crores are blocked by delaying tactics of the applicants. The court cannot issue directions to the parties for settlement, because settlement is voluntary act. The borrower is bound to pay as per contract. The respondent no.1 is not aware of the letter dated 14.03.2007 as the zerox copy of which is not annexed with the application. It is claimed for dismissal of the application with exemplary costs.

7. to 18. …………

19. Admittedly there is lot of correspondence in between the applicants and the respondents. It shows that there are negotiations in between the parties on the settlement. Resultantly the letter dated 28.06.2006 issued by the respondent no.2 accepting the OTS is not under any Scheme, but it is in the normal cours

the decision of the respondent no.2 bank. The said letter contains clause for late payment with interest of 11.25% p.a.

20. The Ld. Counsel for the applicants argues that the said letter is received on 13.07.2006, because it was dispatched later on. Therefore, an amount of Rs.10.00 Lacs which was to be deposited on or before 10.07.2006 could not be deposited. The applicants sent a letter dated 26.07.2006, but sought for extension of time of 60 days to depsoit Rs.10.00 Lacs.

21. In my opinion, no much capital can be made of this letter dated 28.06.2006. It has not resulted into concluded contract. The applicants have not deposited upfront amount of Rs.10.00 Lacs, may be for the reason that the relevant letter has not reached within time. But the deposit of Rs.10.00 Lacs is not the only condition. The said letter stipulates the conditions to obtain consent of the Official Liquidator for disposal of property mortgaged to the Bank and the responsibility is on the applicants. The applicants could not show that they have obtained permission from the Official Liquidator and/or made efforts for that. On the other hand, the Ld. Counsel for the Official Liquidator opposed for settlement raised on the ground that there are other claims also. Moreover, admittedly there is further letter correspondence in between the parties and improvement of offer etc. Therefore, it cannot be accepted that there is concluded contract in between the applicants and the respondent no.2 and the respondent no.1 as an assignee is bound by the said contract in terms of offer of the applicants dated 08.03.2010.

22. ....

23. I have also gone through the letter dated 26.07.2006 and there are so many conditions enumerated therein by the applicants. In all the letters right from 21.08.2004 issued by the applicants, there are certain conditions.

24. The applicants not even accepted the unconditional OTS letter dated 28.06.2006, because the letter dated 26.07.2006 (page 89 of M.A. 65/2010) in response to the said letter, asked for 60 days time to deposit Rs.10.00 Lacs and that too in "No Lien Account" and further to take permission from the Official Liquidator for release of the property. So it is evident that the applicants not even opted to deposit even Rs.10.00 Lacs after receipt of the said letter.

25. In such circumstances, the Ld. Counsel for the respondents have rightly argued that the applicants have not paid any amount in last 10 years and simply filing litigations one after another. Now the dues are around Rs.40.00 Crores. It was never the case of the applicants that their case falls under OTS Scheme of 2003. It was a normal settlement efforts with all the conditions from the side of the applicants are not within the frame work of RBI guidelines enumerated."

3 Against this order the applicants have preferred an appeal before the Debts Recovery Appellate Tribunal at Mumbai, which appeal is still pending.

4 In view of the above, this court cannot entertain the present application, which is hereby dismissed.

5 It will be open to the applicants to raise all the contentions available to them before the Debts Recovery Appellate Tribunal, which will decide the matter on its own merits and in accordance with law.

6 The relief sought in prayer clause - (c), is the subject matter of a writ petition that the applicants have filed in this court. Certainly it will be open for the applicants to raise all those points in the said writ petition.

7 The company application no.440 of 2013 is accordingly disposed.

COMPANY APPLICATION NO.421 OF 2013

In view of the above, company application no.421 of 2013 in company petition no.729 of 2000 also does not survive and is accordingly disposed.

COMPANY APPLICATION NO.186 OF 2014

1 This application is taken out on behalf of ARCIL, the assignees of the debt from Bank of Maharashtra relating to the company for declaration that no permission or consent is required to be sought by the present applicant from this Hon'ble Court prior to selling the property of the company in execution of the Recovery Certificate issued in favour of the applicant and to direct the Official Liquidator officiating as Provisional Liquidator to handover the possession of all the assets of the company which are mortgaged and/or hypothecated to the applicant/ Bank of Maharashtra.

2 As held by this court in the order dated 4th December, 2015 in OLR No.177 of 2015 in the matter of *Techtrek (India) Limited* (In Liquidation), a secured creditor does not need permission of the Company Court in disposing off the assets which are mortgaged/ hypothecated to the secured creditor. At the same time the secured creditor has to keep the Official Liquidator informed promptly and as and when they take any action relating to the assets, then advance intimation has to be given. Ofcourse, any sale of the asset by the secured creditor will be subject to compliance with the provisions of section 529 and section 529 (A) of the Companies Act, 1956.

3 Ms. Iyer, counsel for the applicant submitted that this application was made in view of the order passed by the Appeal Court on 8th April, 2002 in appeal no.379 of 2001 in company petition no.729 of 2000, where the court was pleased to direct in paragraph 1 as under :-

> *"1. ……….. The Learned Counsel, however, submitted that prayer clause (c) which is granted by the Learned Single Judge is widely worded and it confers power on the provisional liquidator to even sell the company's assets. By consent of the parties, the official liquidator to even sell the company's assets. By consent of the parties, the official liquidator who has been appointed as provisional liquidator is directed to make a report to the Company Judge in respect of taking over of the charge of the assets of both the companies and thereafter the respondents banks may apply for further reliefs for sale etc. which will be considered by the Company Judge in accordance with law. The order of the Learned Single Judge to stand modified to the above extent."*

The Provisional Liquidator to handover the possession of all pledged/hypothecated/mortgaged movable and immovable assets of the company to the applicant/recovery officer.

4 Therefore, the company application no.186 of 2014 is allowed and accordingly disposed in terms of prayer clauses – (a) and (c), which read as under :-

> “(a) that this Hon'ble Court be pleased to declare that no permission or consent is required to be sought by the present applicant from this Hon'ble Court prior to selling the property of the company in execution of the Recovery Certificate issued in favour of the applicant;
>
> (b) …
>
> (c) that this Hon'ble Court be pleased to direct the Official Liquidator appointed as the Provisional Liquidator to handover the possession of the movable and/or immovable assets of the company as and when called upon to do so by the Ld. Recovery Officer pursuant to sale or prior to sale.”

COMPANY APPLICATION NO.185 OF 2014

In view of the above, company application no.185 of 2014 in company petition no.729 of 2000 also accordingly stands disposed.

(K.R.SHRIRAM,J)