Comp.Appl.Nos.623 and 624 of 2016
in CP.No.323 of 2015

RAJIV SHAKDHER,J.

1. In these applications, the following substantial relief has been sought for:

Comp.Appl.No.623 of 2016

> ".. ..To stay all further proceedings arising out of the order dated 16.06.2016 in C.A.No.799 of 2015 in CP.No.323 of 2015 seeking to appoint the Official Liquidator, High Court, Madras, as Provisional Liquidator of the respondent company .. .. ..

Comp.Appl.No.624 of 2016

> ".. .. To recall the order dated 16.06.2016 passed in C.A.No.799 of 2015 in CP.No.323 of 2015 and thereon please to defer all further process of admission of winding up proceedings, advertisements, the appointment of Provisional liquidator and all the other incidental proceedings for a period of 90 days .. .. "

2. To be noted, the captioned applications have been filed by the original respondent, i.e., M/s. Surana Corporation Ltd., which is the company against whom the main petition has been filed, i.e., CP: 323 of 2015.

3. The relief sought for in these applications is predicated on the assertion that corporate debt restructuring mechanism is in place.

4. At the proceedings held on 18.7.2016, I had arrayed State Bank of India (in short "SBI"), as a party to the present proceedings, which includes the captioned applications.

4.1. Accordingly, notice was issued to SBI.

5. SBI has filed a reply, which is indicative of the following facts:

(i) That the applicant/original respondent company had availed, in all, credit facilities, from the consortium of banks, which is lead by SBI, to the tune of Rs.1577.59 crores.

(ii)That the loan advanced to the applicant/original respondent company is secured and that, in that behalf, *interalia,* the applicant/original respondent company has created equitable mortgage in its immovable properties in favour of the consortium of banks.

(iii)That the CDR mechanism was indeed put in place, which, however, failed, as the applicant/ original respondent company, failed to achieve optimum results, as projected to the consortium of banks.

(iv)As a result thereof, the account of the applicant/original respondent company was declared, as an “NPA”, on 28.6.2014.

(v)That, as on 31.7.2016, the applicant/original respondent company, is liable to pay a sum of Rs.1786.49 crores along with accrued interest to the consortium of banks.

6. Having regard to the aforesaid, it is quite clear that the view taken by this Court on 16.06.2016, while admitting the company petition, was correct.

6.1. On that date, I had, *interalia,* noted, based on the certificate of the Chartered Accountant filed by the applicant/original respondent company, that its net worth was negative to the extent of Rs.5,19,38,12,427/-, as on 31.5.2016, and, therefore, the company was in financial doldrums.

7. In view of the stand taken by the SBI for itself, as well as for consortium of banks, it is clear that, no relief, as sought for by the applicant/original respondent company in the captioned application, can be granted, at least, at this stage.

8. The applications are, accordingly, dismissed.

Comp.Appl.No.650 of 2016 in CP.No.323 of 2016

9. This is an application moved by State Bank of India (in short "SBI").

9.1. SBI is a leader of consortium of banks comprising of itself, PNB, PNB, BOI, IDBI Bank, CBI and SCB

10. As indicated herein above, it is the case of the SBI that the account of the original respondent company, i.e. Surana Corporation Limited, has become an “NPA”, as on 28.6.2014.

11. I am informed by the learned counsel for the SBI that steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (In short “SARFAESI Act”) have been taken.

12. As a matter of fact, in the proceedings, held on 05.8.2016, it was noticed that the SBI had issued a legal notice under Section 13(2) of the SARFAESI Act on 01.7.2016.

13. Having regard to the fact that SBI is a secured creditor and, the steps under SARFEASI Act have been initiated, it is permitted to stand outside the winding up proceedings and, take further steps in accordance with law.

14. As a result of the aforesaid, the order dated 16.06.2016 will have to be modified to the extent, that the Official Liquidator will take possession of all assets, which are not the assets, over which, security interest has been created in favour of the SBI and other Members of the consortium.

15. It is ordered accordingly.

15.1. The application is allowed, accordingly, in terms of the prayer made.

Comp.Appl.No.800 of 2015 in CP.No.323 of 2015

16. This is an application filed by the petitioning creditor.

17. While admitting the accompanying company petition being CP: 323 of 2015, I had, *interalia,* directed in paragraph 4 (viii) of the order dated 16.06.2016 that the respondent company is injuncted from selling, transferring, alienating or creating third party interest in its assets.

17.1. Furthermore, the Official Liquidator was directed to take possession, *interalia*, qua all the assets of the respondent company

18. Today, while passing order in Company Application: 650 of 2016, which is filed by SBI, I have modified the order dated 16.06.2016 to the extent that the Official Liquidator will now take possession of all assets, except those, in which secured interest is created in favour of the SBI and other Members of consortium of banks.

19. Therefore, the aforesaid application is closed.

19.1. Order dated 16.06.2016, will continue to operate except for the modification made, today, in Company Application: 650 of 2016.

CP.No.323 of 2015

20. Mr. Rahul Balaji, who appears for the petitioning creditor says that due to the pendency of the company applications: 623 and 624 of 2016, which had been filed by the respondent company, citation had not been published in the two newspapers, to which, reference is made in paragraph 4 (v).

20.1. Mr.Rahul Balaji, however, confirms that citation has been published in the Tamil Nadu Government Gazette.

21. In view of the fact that Company Applications: 623 and 624 of 2016 filed by the respondent company have been

dismissed today, Mr.Balaji, is given further three (3) weeks to have the citation published in the two dailies, referred to, in paragraph 4 (v) of the order dated 16.06.2016.

22. The Official Liquidator will file a fresh status report before the next date of hearing.

23. Re-notify on 13.12.2016.

24. At this stage, Mr.Rahul Balaji mentions the matter and, says that on account of confusion with another matter, he had made the submission that the publication / citation had not been carried out, in the dailies, adverted to, in the order dated 16.06.2016.

25. It is his submission that publication has been carried out not only in the dailies, but also in the Tamil Nadu Government Gazette, as noticed above.

RAJIV SHAKDHER,J.

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26. I have been taken through the records and this submission made, at this stage, is correct.

ga 18.10.2016

Comp.Appl.Nos.623 and 624 of 2016
Comp.Appl.No.650 of 2016
and 800 of 2016 in CP.No.323 of 2015