

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.09.2016

Delivered on : 05.10.2016

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. Nos.394 and 395 of 2008

State Bank of India
Stressed Assets Management Branch,
NO.157-A, 8th Floor, Anna Salai,
Chennai 600 002, Rep. By its Manager.

... Appellant in OSA.394/2008

Corporation Bank
Oppanakara Street Brarnch,
Coimbatore

.. Appellant in OSA.395/2008

-vs-

1.The Official Liquidator,
High Court, Madras, as the Liquidator
of M/s.Lakshmi Synthetics Machinery
Manufacturers Limited (In Liquidation)

... 1st Respondent in OSA.394
of 2008 & Sole respondent
in OSA.395 of 2008

2.Standard Chartered bank,
Rep. By its Director, Mr.Nikil Kamble,
No.23-25, M.G.Road, Fort,
Mumbai 500 001.

(R-2 impleaded as party respondent
vide order of Court dt.15.11.2011
in M.P.No.1/2009 in OSA 394/2008) ... 2nd Respondent in
OSA.394 of 2008

Appeals filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent against the common order dated 09.06.2008 made in C.A.Nos.2109 and 2110 of 2007 in C.P.No.215 of 2003 respectively on the file of original side of this Court.

For Appellants
in both appeals

: Mr.S.Sethuraman

For Respondents
in both appeals

: Mr.S.R.Sundar
for Official Liquidator

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The appeals arise from the impugned order dated 09.06.2008 adjudicating the distribution of sale proceeds received on the sale of the assets of the company in liquidation, M/s.Lakshmi Synthetics Machinery Manufacturers Limited. The appellants before us are the two banks - State Bank of India and Corporation Bank. These two banks were the secured creditors in respect of current assets along with Union Bank of India and were also the second charge holders of the movable and immovable assets, plant and machinery. The IDBI, IFCI and ICICI were the three secured creditors having first charge for movable and immovable properties, which debts were assigned to the Standard Chartered Bank.

2.The total realisation was Rs.14 crores, out of which, Rs.11 crores are stated to be towards land and building, while Rs.3 crores towards plant and machinery and movable assets. The current assets were valued at Rs.29,29,100/- and were to be distributed in terms of the report of the Official Liquidator dated 04.10.2007.

3.The Official Liquidator assessed the claims of all the three banks as under:

Sl.No.	Name of the Institution	Amount Adjudicated
1.	Corporation Bank	Rs.2,40,85,052/-
2.	Union Bank of India	Rs.3,80,70,753/-
3.	State Bank of India	Rs.10,00,000/-

4.The grievance of the appellants before the learned Company Judge arose from a claim that the assets were sold as a whole in a lot and should be distributed on pro rata. This request was, however, declined by the learned Company Judge in terms of the impugned order.

5.The rationale for disbursements of only Rs.9 lakhs to the Corporation Bank and Rs.1 lakh to the State Bank of India, while

giving Rs.15 lakhs to Union Bank of India is that they are secured creditors only of the current assets and thus, could not receive any sale proceeds on account of the sale of the other assets. The mere fact that it is stated to be a sale in whole lot was, thus, opined not to resale in acceptance of the plea of the appellants that the appellants should get pro rata amount out of the total sale proceeds.

6.The crucial document in this behalf is the valuation report of the Valuer dated 10.06.2006. The valuation report refers to the assets of the company in liquidation as under:

- a) Land;
- b) Buildings and infrastructural facilities;
- c) Plant & Machinery including Electricals;
- d) Current Assets like raw material (mostly various types of steel), spares, semi finished products and so on.

7.The land is separately described along with building and infrastructural facilities. In respect of plant and machinery and current assets, it is stated as under:

c. Plant & Machinery:

The equipment are basically intended for producing machinery for textile and allied industry. Even though the invoice values have been specified as part of the inventory list, since the invoices are not available, they cannot be taken as a basis. In any case, given the fact the equipment are between 8-15 years old, invoice values will not be of much relevance. Hence we have arrived at the updated value of the machinery taking into account the possible resale value, considering the age, status, special features, import content (where applicable), obsolescence, non-productive period, serviceability, maintenance facilities, utility value and other such aspects and demand level for such machinery using our data base and based on enquiries with dealers of such equipment.

d. Current Assets:

There is a substantial quantity of raw materials (mostly steel items) and work-in-progress. Based on a random survey, we have put a value based on the approximate weight and market value of these assets.'

8.The appellants' contention was that the copy of the valuation report they received did not have the figures filled in, but the fact remains, as explained by the learned counsel for the Official Liquidator, that when it was handed over to the learned Company Judge in the sealed cover, the amounts were filled in. A separate affidavit was also called for from the

Valuer affirmed on 10.02.2009 in the appeals, which has referred to the report submitted to obviate any doubt. We consider it appropriate to reproduce the same, as the dispute really is as to how the valuation was done.

''3. We submit that out of the above categories, we are of the opinion that in the case of sale of closed unit, the first three items would command a reasonable value, due to the following reasons:

a. Land: a piece of land in a good location can be used for a wide variety of purposes. Therefore the bidders would pay near market value for the land.

b. Buildings and civil structures: If the buildings are well built and are suitable for wide variety of uses (for different types of industries), the buyers would offer a value in the range of 60 to 70% of the depreciated value. This value would also be substantial.

c. Plant and Machinery: The plant and machinery used in this kind of engineering units (lathes, Compressors, Generators, Milling machines, Drilling machines, Cutting machines, Shaping machines and other Special CNC Machines, Control Panels, electrical gears and so on) will also have a wide application across several industries, and therefore buyers evince interest in these items also. However, the Value Offered will be the depreciated value of the machinery or slightly less depending on the specifics of the case (like age, technological obsolescence, availability in the market and so on).

d. Current assets: The current assets in this case as inspected by us, were small types of steel pieces and items like, washers, nuts, bolts, assorted types of parts, rubber gaskets, spare parts, paint, minor tools and tackles (spanners, screw drivers and so on), pins, nails, nylon washers and other items of miscellaneous nature. In addition, there were some unfinished items (work in progress). These current assets, by their very nature, are easily available in the market and are replaceable without difficulty (except semi finished items or work-in-progress, which will have only scrap value for a buyer). Also the size, quantum and specifications of each of these items vary from one type of manufacturing to another type. A typical buyer of a unit of this nature, will put it for any type of manufacturing activity and in most of cases of engineering industry (like this one), the usage of the unit need not necessarily be similar to the earlier

usage. In such a case, the current assets will have very limited usage for the new buyer. To illustrate this aspect, if an engineering industry is manufacturing valves, the current assets will be of a particular nature. In case the unit is sold, the new buyer will use it for various types of usages (example: manufacture of Auto mobile components, metal fabrication, electrical switches, Injection Moulding, and so on) and such types of requirements will not be able to make use of the current assets of the earlier unit. As the current assets come bundled with the other three major categories of assets (land, buildings, plant & machinery) the proportionate value attached by a typical buyer for the current assets would be very limited.

e. It is submitted that thus it can be seen that while the first three categories of the assets (Land, Buildings, Plant and machinery) command value even when the unit is closed, the same is not applicable in the case of current assets, which will command only a fraction of its book value.

f. This is the normal scenario in the sale of closed industrial units manufacturing engineering products.

g. We submit that this Hon'ble Court may be pleased to note that apart from the above the following points with regard to the current assets in this case may also be noted.

4. We submit that unlike the plant and machinery which have been diligently recorded and valued on item wise basis, the above current assets in this case were too small and spread out in various locations in small quantities and were too miscellaneous in nature, that we lumped them together so as to arrive at a collective value. Because of the above nature of the current assets, and taking into account their low value (in proportion to the overall value of the unit just about 1% to 2%), no individual listing of the items was done. This is the normal practice of detailing and valuing current assets. In cases like this one, the other three types of assets (land, buildings, plant and machinery) determine the sale value and the current assets constitute a very insignificant portion of the overall value.

5. We submit that going by the nature of the current assets that were available during our

inspection and based on our assessment of the market value and utility value of the above said current assets from the perspective of the buyers of such closed units, the valuation was carried out.

6. Especially in the case of current assets in closed units, cost of acquisition or book value does not translate into actual value for the reasons given supra and in the following paragraphs.

7. Unlike the cases of capital assets like land, buildings, plant and machinery which have a good residual value even if the unit goes non-functional, the small current assets (spread over as several no. of items) and semi finished products (work-in-progress) will not command their book value as their utility value for other units is very limited and even if some items are useful, the size, specifications and quality parameters required may not match. In the case of semi finished items too, the utility value will be very limited for a buyer, as it can only command a scrap value as there is no productive end use for the same in any industry.

8. Even if a particular unit is bought and revived, there is substantial time gap between the closure and reopening (at least 3 to 4 years), and during this period the small steel parts like nuts, bolts, washers and machinery parts etc., start rusting or develop scaling or get oxidized and such deterioration, even if very minor, will lead to their rejection and failure in quality tests during ultimate usage.

9. It is for these reasons, the buyers of old and closed units attach a fraction of the book value of the above current assets.

10. In our valuation we have considered the approximate quantum of the various current assets in the unit and based on our assessment of the probable utility value for a buyer, we have determined the market value (salable value) of the current assets.

11. We have also determined, on an approximate basis, the weight of the miscellaneous current assets (mainly steel based) and based on the same, and taking into account the other items like rubber parts, paint materials (which have lost their shelf life), packing materials and so on, estimated the above value of Rs.10 lacs in this case. Also a nominal value has been included towards the semi finished items. As already

stated the semi finished items will command only scrap value as their utility value for buyers of the unit will be practically nil (as they are neither raw materials nor they are finished products).'

9.What emerges from the affidavit is that the current assets were opined as easily available in the market and replaceable without difficulty having very limited usage for the buyer. The land, building, plant and machinery have commanded value, even when the unit was closed, the same was not applicable to the current assets, which command only a fraction of the book value. As observed, this was a normal scenario in such manufacturing engineering product units. In fact, the current assets were too small and spread out in various locations in small quantity and were, thus, miscellaneous in nature and were lumped together to arrive at a collective value. Individual listing of such items could not be done and they were very insignificant portion of the value.

10.The Valuer has explained that unlike capital assets including plant and machinery, which may have good residual value even if the unit is non-functional, a small current assets and semi finished goods would not command their book value as their utility to others will be very limited. Even if the unit was to be revived, the time period in between would make those current assets almost negligible in value. The current assets have been taken on a weight basis and thus, the value was estimated at Rs.10 lakhs.

11.We are unable to accept the submission of the learned counsel for the appellants that there should be a pro rata distribution, when the fact remains that they had only the first charge on the current assets. If we may say, it is not unusual in such a situation for the current assets to almost become scrap over the years and thus, rightly have been only taken by weight. There seems to be a misconception in the minds of the appellants that there was no valuation filled in the valuation report. The report dated 10.06.2006 stating that there was substantial quantity of raw materials would not advance the case of the appellants as that quantity had already been weighed for valuation purpose. It is not the quantity, but the price prevalent in the market which would have a relevance.

12.Undoubtedly, the sale was in one lot, but then the real assets were land and building. Apart from that, there was also plant and machinery. In fact, in the state of things, the current assets become negligible in value. The appellants do not even dispute the fact that they do not have priority over the valued assets, but their claim is only based on misconception of valuation report not bifurcating the amounts and one lot sale giving them some kind of a bonanza by

proportional distribution of what was fetched for the land, building, machinery and the current assets.

13.We find no infirmity in the impugned order and the Original Side Appeals are, accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sra

To

The Sub Assistant Registrar,
Original Side, Madras High Court,
Chennai.

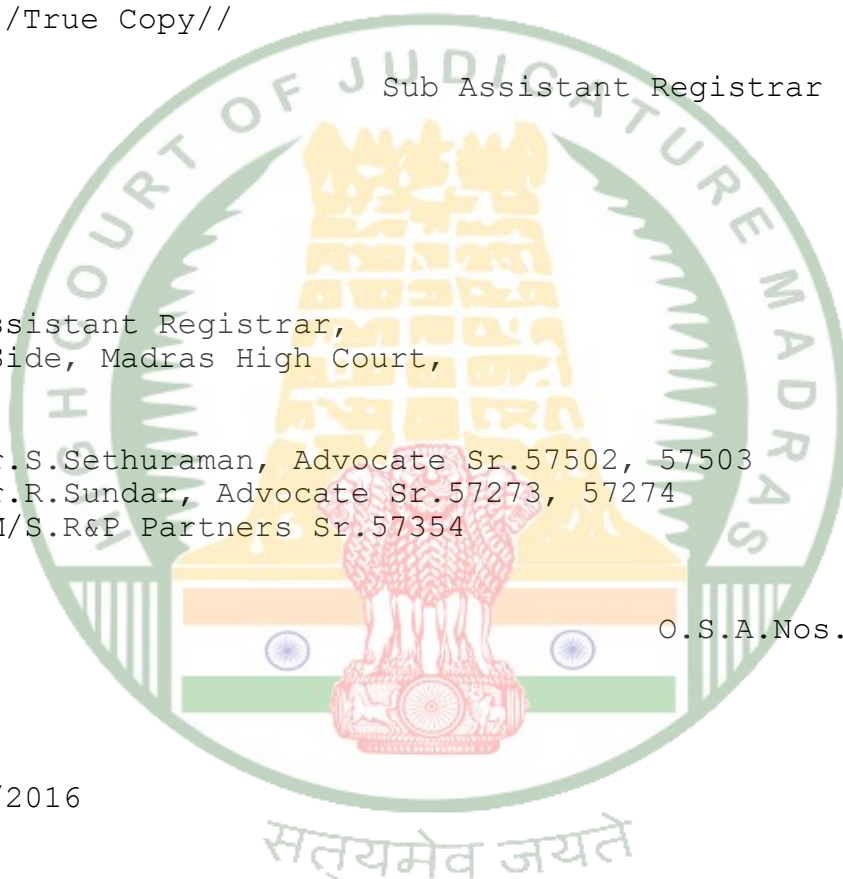
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