Reserved on : 22.04.2016
Delivered on : 29.04.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.04.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.39500 of 2015
and M.P.No.1 of 2015

P.Elango
Ex.M.D. & Committee of Administrator,
M/s.Tan India Limited (In Liquidation)
117, Kalaimagal Street,
Komarapalayam - 638 183,
Tamil Nadu. ... Petitioner

Vs.

1.The Registrar,
Appellate Authority for Industrial & Financial Reconstruction,
New Delhi.

2.Board for Industrial & Financial Reconstruction,
Jawahar Vyapart Bhavan,
No.1, Tolstoy Marg,
New Delhi - 110 001.

3.M/s.Tan India Limited (In Liquidation),
rep by Official Liquidator,
High Court, Madras,
3rd Floor, UTI House,
First Line Beach Road, Chennai - 600 001.

4.International Asset Reconstruction Company Pvt. Ltd.,
B-302, Citi Point, Andheri Kurla Road,
Andheri East, Mumbai - 400 059. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the 1st respondent in Appeal No.70 of 2015 dated 26.10.2015 and to quash the same and to further direct the 2nd respondent, BIFR, New Delhi to hold DENOVA enquiry in Case No.311 of 2001.

For Petitioner : Mr.B.Ravi Raja

For Respondents : Mr.P.S.Raman, Senior Counsel for Mr.V.V.Sivakumar (R4)

Mr.B.Dhanaraj (R3)

R2 - no appearance

R1 - not ready in notice.

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records of the 1st respondent in Appeal No.70 of 2015 dated 26.10.2015 and to quash the same and to further direct the 2nd respondent, BIFR, New Delhi to hold DENOVA enquiry in Case No.311 of 2001.

2.It is the case of the petitioner that M/s.Tan India Limited was ordered to be wound up by this Court and the Company approached the BIFR, the 2nd respondent, where the Company was declared as a Sick Company. When the rehabilitation of the Company was proceeding and some creditors were re-paid, the 4th respondent, who was the 2nd Assignee of some secured assets of the Company, initiated proceedings under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act to abate the proceedings. According to the petitioner, the 2nd respondent, BIFR, without appreciating that the 4th respondent was paid Rs.50,00,000/- for a crystallized OTS of Rs.8,00,00,000/-, merely abated the proceedings before the BIFR. The appeal filed against the order passed by the 2nd respondent before the 1st respondent was also dismissed. According to the respondents 1 & 2, the proceedings had automatically abated.

3.According to the 4th respondent, the Reference pending before the 2nd respondent in Case No.311 of 2001, automatically and by operation of law, stands abated in terms of the Third proviso to Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 as well as on account of the measures taken by the secured creditors under the provisions of Section 13 of the SARFAESI Act. Further, according to the 4th respondent, the petitioner is not involved in the affairs of the 3rd respondent since there exists no Committee of Administrators after the order dated 08.08.2011 made by this Court discharging the Administrator. That apart, the 4th respondent has also stated that the 4th respondent represents more than three-fourth in value of the amount outstanding against the financial assistance disbursed to the 3rd respondent as contemplated under Section 13 (9) of the SARFAESI Act and pursuant to which all the secured creditors along with the 4th respondent have taken measures so as to recover their secured debts under Section 13(4) of the SARFAESI Act.

4.Mr.P.S.Raman, learned senior counsel appearing for the 4th respondent submitted that the judgment of the Hon'ble Supreme Court reported in Manu/SC/0088/2016 [Civil Appeal Nos.614 - 615 of 2016; Madras Petrochem Ltd., and others Vs. BIFR and others] dated 29.01.2016 squarely applies to the facts and circumstances of the present case. In the said judgment, the Hon'ble Supreme Court, taking into consideration the judgment of the Full Bench of this Court reported in [M/s.Salem Textiles Limited Vs. The Authorized Officer and others; Manu/TN/0484/2013 : AIR 2013 Madras 229], held as follows:

> "54. The resultant position may be stated thus:
>
> 1.Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 will continue to apply in the case of unsecured creditors seeking to recover their debts from a sick industrial company. This is for the reason that the Sick Industrial Companies (Special Provisions) Act, 1985 overrides the provisions of the Recovery of Debts Due to Banks And Financial Institutions Act, 1993.
>
> 2.Where a secured creditor of a sick industrial company seeks to recover its debt in the manner provided by Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, such secured creditor may realise such secured debt under Section 13(4) of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, notwithstanding the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.
>
> 3.In a situation where there are more than one secured creditor of a sick industrial company or it has been jointly financed by secured creditors, and at least 60 per cent of such secured creditors in value of the amount outstanding as on a record date do not agree upon exercise of the right to realise their security under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 will continue to have full play.
>
> 4.Where, Under Section 13(9) of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in the case of a sick industrial company having more than one secured creditor or being jointly financed by secured creditors representing 60 per cent or more in value of the amount outstanding as on a record date wish to exercise their

rights to enforce their security under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 22 of the Sick industrial Companies (Special Provisions) Act, 1985, being inconsistent with the exercise of such rights, will have no play.

5.Where secured creditors representing not less than 75 per cent in value of the amount outstanding against financial assistance decide to enforce their security under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any reference pending under the Sick Industrial Companies (Special Provisions) Act, 1985 cannot be proceeded with further-the proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 will abate."

5.The Official Liquidator in his report has stated that the petitioner has no locus standi to maintain the Writ Petition for the reason that the administrator appointed by this Court in C.P.No.243 of 1997 was discharged by order dated 08.08.2011, therefore, the petitioner cannot claim to be a member of the Committee of the Administrator, when the same is not in existence. Further, the learned counsel for the Official Liquidator submitted that the relief sought for in the Writ Petition, if granted, would result in Companies in Liquidation challenging the proceedings of the respondents 1 & 2, even after the winding up order is passed and the Official Liquidator is appointed, affecting the process of winding up.

6.It is settled position that the Sick Industrial Companies (Special Provisions) Act, 1985, overrides the provisions of the Recovery of Debts Due to Banks And Financial Institutions Act, 1993 where a secured creditor of a Sick Industrial Company seeks to recover its debt in the manner provided by Section 13(2) of the SARFAESI Act, such secured creditor may realize such secured debt under Section 13(4) of the SARFAESI Act, notwithstanding the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act. If there are more than one secured creditor of a Sick Industrial Company or it has been jointly financed by secured creditors and at least 60 per cent of such secured creditors in value of the amount outstanding as on a record date do not agree upon exercise of the right to realize their security under the SARFAESI Act, Section 22 of the Sick Industrial Companies (Special Provisions) Act will continue to have full play. Under Section 13(9) of the SARFAESI Act in the case of a Sick Industrial Company having more than one secured creditor or being jointly financed by secured creditors representing 60 per cent or more in value of the amount outstanding as on a record date wish to exercise their rights to enforce their security under the SARFAESI Act, Section 22 of the

Sick industrial Companies (Special Provisions) Act, being inconsistent with the exercise of such rights, will have no play.

7.In the case on hand, the learned senior counsel appearing for the 4th respondent submitted that the record date for the purpose of representing not less than three-fourth of the value of the amount outstanding was 31.05.2014. To that effect, the learned senior counsel also produced a letter dated 07.07.2014 and when the secured creditors representing not less than 75% in value of the amount outstanding against the financial assistance decide to enforce their security under the SARFAESI Act, any Reference pending under the Sick Industrial Companies (Special Provisions) Act, 1985 cannot be proceeded with further, the proceedings under the Sick Industrial Companies (Special Provisions) Act will abate.

8.In these circumstances, the order passed by the 1st respondent dismissing the appeal stating that the proceedings had abated is just and proper. The 2nd respondent BIFR also rightly stated that the proceedings had abated. The ratio laid down by the Hon'ble Supreme Court in the judgment reported in Manu/SC/0088/2016 [Civil Appeal Nos.614 - 615 of 2016; Madras Petrochem Ltd., and others Vs. BIFR and others] squarely applies to the facts and circumstances of the present case.

9.In these circumstances, I do not find any ground to interfere with the orders passed by the respondents 1 & 2. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Registrar,
Appellate Authority for Industrial & Financial Reconstruction,
New Delhi.

2.Board for Industrial & Financial Reconstruction,
Jawahar Vyapart Bhavan,
No.1, Tolstoy Marg,
New Delhi - 110 001.

3.The Official Liquidator,
M/s.Tan India Limited (In Liquidation),
High Court, Madras,
3rd Floor, UTI House,
First Line Beach Road, Chennai - 600 001.

1 cc to Mr.B. Ravi Raja, Advocate, sr. 27298
1 cc to Mr.B. Dhanraj, Advocate, Sr. 27632

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and M.P.No.1 of 2015

KSJ (CO)
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