HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPLICATION No.656 OF 2016
IN
COMPANY PETITION No.164 OF 2004
AND
COMPANY APPLICATION No.942 OF 2016
IN
R.C.C. No.6 OF 1996
AND
COMPANY APPLICATION No.1081 OF 2016
IN
R.C.C. No.1 OF 2004

COMMON ORDER:

Since in all these Company Applications a common issue is involved, they are being heard together and disposed of by this common order.

The applicants are the Companies incorporated under the provisions of the Companies Act, 1956 (in short "the Act") and are registered as Asset Reconstruction and Securitisation Companies under the provisions of the Securitisation and Reconstruction of Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act").

The 1st respondent-Targof Pure Drugs Ltd., (in Liquidation) in COMPA No.656 of 2016 in C.P.No.164 of 2004, is in liquidation, represented by the Official Liquidator and 2nd respondent-Edelweiss Asset Reconstruction Company Limited, is yet another Asset Reconstruction Company. The State Bank of India-3rd respondent is secured creditor of the company in liquidation by an assignment agreement dated 30.03.2015 assigned the loans, disbursed under the specified financing documents together with all its rights, title and interest in the financing documents and other underlying security interests, pledges and / or guarantees in respect of loans. The assignment was made inconformity with the

Section 5 of the SARFAESI Act. The applicant filed this Application claiming benefit of sub-section 5 of the SARFAESI Act to implead / substitute and / or representing State Bank of India on account of the said assignment deed.

The 1st respondent-Maruthi Goldstar Silks Ltd., (in Liquidation) in COMPA No.942 of 2016 in R.C.C.No.6 of 1996, is in liquidation, represented by the Official Liquidator. The 3rd respondent-ICICI Bank, which was the original lender, by virtue of Deed of Assignment dated 18.02.2006, assigned the financial assets pertaining to the respondent No.1, together with all its rights, titles, interests and benefits in favour of 2nd respondent-Standard Charted Bank, thereafter the 2nd respondent vide Assignment Deed dated 31.07.2012 assigned the financial assets pertaining to the 1st respondent, together with all its rights, titles, interests and benefits in favour of the Applicant. The assignment was made inconformity with the Section 5 of the SARFAESI Act. The applicant filed this Application claiming benefit of sub-section 5 of the SARFAESI Act to implead / substitute and / or representing ICICI Bank Ltd.,/Standard Chartered Bank on account of the said Assignment Deed.

The 1st respondent-Global Drugs (P) Ltd., (in Liquidation) in COMPA No.1081 of 2016 in R.C.C.No.1 of 2004, is in liquidation, represented by the Official Liquidator and the 2nd respondent-State Bank of Hyderabad, which is the original lender, by virtue of Deed of Assignment dated 07.11.2006 assigned its debt in favour of. The assignment was made inconformity with the Section 5 of the SARFAESI Act. The Applicant filed this application claiming benefit of sub-section 5 of the SARFAESI Act to come on record by substituting State Bank of Hyderabad as Secured Creditor of the 1st respondent company, on account of the said Assignment Deed.

Learned counsel for the Applicants submits that in similar circumstances this Court had allowed Company Application No.1073 of 2014, wherein the applicant was permitted to be substituted in place of Industrial Development Bank of India, another financial institution.

Sri M. Anil Kumar, learned counsel appearing on behalf of the Official Liquidator, while not disputing the legal position, however placed on record a Division Bench Order of this Court dated 21.06.2016 passed in O.S.A.No.18 and 20 of 2014 to contend that the Division Bench had opined for all practical purposes the Company Court is to be treated as a Civil Court and is entitled to pass all types of orders that a Civil Court is competent to pass. In that view of the matter, the bar contained under Section 34 of the SARFAESI Act would equally apply in entertaining the application of the applicant. However, learned counsel for the Official Liquidator does not dispute or question the genuineness, validity or otherwise of the Assignment Agreement dated 30.03.2015.

Heard learned counsel for the respective parties and perused the material on record.

The fact that the applicants are the Asset Reconstruction Companies and the genuineness or otherwise of the Assignment Agreement is not in dispute, the original lenders in all these Company Applications viz., Edelweiss Asset Reconstruction Company Limited; Standard Chartered Bank / ICICI Bank Limited and State Bank of India, can assign their debts and other financial assets in favour of the applicants' Asset Reconstruction Companies, in view of the provisions of the SARFAESI Act, is also not in dispute.

Section 5 of the SARFAESI Act reads as under:-

5. Acquisition of rights or interest in financial assets –
(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution--
(a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and

effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.

(5) On acquisition of financial assets under sub-section (1), the securitisation company or reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the securitisation company or reconstruction company in such pending suit, appeal or other proceedings.

The provision as quoted above, particularly sub-section (2) creates a fixation that on Asset Reconstruction Company acquiring rights in terms of sub-section (1) shall be deemed to be the original lender from the banks / financial institutions with whom agreement has been entered into. On account of sub-section (3) for all practical purposes the asset reconstruction company would be entitled to exercise all rights and privileges of the financial institutions from whom they had acquired their rights in terms of sub-section (1) of Section 5 of the SARFAESI Act. Sub-section (5) specifically empowers seeking substitution of its name before any forum. Sub-section (5) does not restrict such substitution only before the Debts Recovery Tribunal or the Appellate Tribunal and the same is wide enough to seek substitution even before the Company Court. In this context, a careful reading of the Division Bench judgment in O.S.A. No.18 and 20 of 2014 referred to in conjunction with the judgment of the Supreme Court in **Pegasus Assets Reconstruction Private Limited Vs Haryana Concast Limited and Another[1],** does not in any way disentitle the Asset Reconstruction Company to seek substitution before the Company. The observations of the Division Bench of this Court in O.S.A.Nos.18 and 20 of 2014, particularly in para 15 are *"For all practical purposes, the Company Court is treated as Civil Court, which is entitled to pass all types of orders that a Civil Court is competent to pass. Therefore, the bar of jurisdiction under Section 34, to the extent necessary, would also cover a Company Court. The purpose of Section 37 is for certain purposes, such as, the distribution under Sections 529, 529-A, 530 etc.,",* made in context of the peculiar facts of the case whether there was an assignment or not. In that context, Section 11 of the SARFAESI Act may be noticed, wherein a specific mechanism is provided for resolution of

[1] (2016) 4 Supreme Court Cases 47

disputes between the financial institutions and Asset Reconstruction Company. In other cases, in the event there being a dispute whether a particular asset is property of borrower as defined under Section 2(1)(f) of the SARFAESI Act or not can only be decided by a designated forum. This distinction would have to be kept in mind while considering the cases of the present nature. In the present case there is no said dispute. In the circumstances, these applications deserve to be allowed.

Accordingly, these Company Applications are allowed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dated:30.09.2016
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