

THE HON'BLE SRI JUSTICE S.V. BHATT

COMPANY APPLICATION No.199 OF 2016

IN

COMPANY APPLICATION No.1283 OF 2014

IN

COMPANY PETITION No.164 OF 2004

ORDER:

The applicant prays for modifying the order dated 09.02.2015 in Company Application No.1283 of 2014 and delete the conditions imposed and permit the applicant to withdraw Company Application No.1283 of 2014.

The applicant filed Company Application No.1283 of 2014 with the following prayer:

".....to grant leave to stay out of winding up process."

On 09.02.2015, Company Application No.1283 of 2014 was heard and allowed by this Court. The relevant portion of the order reads as under:

"Sri P.V.Markandeyulu, learned counsel for respondent No.3, submitted that with the unequivocal averment of the deponent of the additional affidavit filed in Company Application No.87 of 2015, as reproduced above, his client has no objection for allowing Company Application No.1283 of 2014.

The Official Liquidator filed his report, dated 03.11.2014, wherein he has, inter alia, stated that the Company Application may be allowed subject to the following conditions:

- (1) to direct the applicant to involve the Official Liquidator at every stage of the sale proceedings;
- (2) to direct the applicant to place the valuation report before this Court for its approval;
- (3) to direct the applicant to make available the Government fee on the sale proceeds realized ; and
- (4) to direct that the sale shall be subject to the confirmation by this Court. Sri P.Sriharsha Reddy, learned counsel for the applicant, submitted that his client has no objection for incorporating the above-noted conditions.

In the light of the above-noted facts and the submissions of the learned counsel for the parties, the Company Application is allowed subject to the following conditions: -

- (1) Respondent No.3 shall be treated as first paripasu charge holder over the properties of the company in liquidation along with the applicant;
 - (2) the applicant shall involve the Official Liquidator at every stage of the sale proceedings;
 - (3) the applicant shall place the valuation report before this Court for its approval;
 - (4) the applicant shall make available the Government fee on the sale proceeds realized ;
- and
- (5) the sale shall be subject to the confirmation by this Court."

On 29.12.2015, the Hon'ble Supreme Court in **PEGASUS ASSETS RECONSTRUCTION P. LTD. v. M/s HARYANA CONCAST LIMITED & ANR** (Civil Appeal No.3646 of 2011) considered whether a Company Court, directly or through Official Liquidator, can wield any control in respect of sale of secured asset by a secured creditor in exercise of powers available to such creditor under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Apex Court has answered the question in the negative. On 06.01.2016, by reference to the judgment in Civil Appeal No.3646 of 2011, the present application is filed to modify the conditions imposed in the order dated 09.02.2015 in Company Application No.1283 of 2014 and permit the applicant to withdraw the application.

Heard learned counsel Mr.P.Sriharsha Reddy for applicant and Mr.M.Anil Kumar, learned counsel for Official Liquidator. Learned counsel for the applicant has contended that the application for modification of conditions imposed by this Court and for withdrawal of the application is made in view of the law declared by the Apex Court in Civil Appeal No.3646 of 2011 and he requests the Court to consider the prayers and pass appropriate orders.

Mr.Anil Kumar draws the attention of the Court to the consent given by the applicant for the conditions imposed by this Court in the order dated 09.02.2015 and submits that the applicant cannot and could not point out any hardship or difficulty in adhering to any of the conditions imposed by this Court through order dated 09.02.2015. Therefore, the application for modification even with the change of law in Civil Appeal No.3646 of 2011 is not maintainable and ought to be rejected. According to him,

the change of law is no ground for filing a review by a party and by the same analogy the prayer for modifying the order is not maintainable. He submits that as the conditions were imposed with the consent of the applicant, appeal against that order is not maintainable and likewise modifying the consented conditions is not maintainable and the prayers for modification and withdrawal ought to be rejected outright.

The applicant, except relying upon the judgment of the Apex Court in Civil Appeal No.3646 of 2011, could not and did not place any material to accept the prayer for modification and/or withdrawal of Company Application No.1283 of 2014. As rightly pointed out by the learned counsel appearing for Official Liquidator if the prayer in the instant application is accepted, it leads to opening pandora's box and spate of applications filed by assets reconstruction and securitization companies will have to be considered and ordered. The law laid down by the Apex Court is prospective and will be followed in pending applications, but not in disposed of applications.

For the above reasons, the application fails and is dismissed.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J _____

Date: 08.03.2016
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