vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL LIQUIDATOR REPORT NO.11 OF 2017
IN
COMPANY PETITION NO.400 OF 2012
WITH
COMPANY PETITION NO.171 OF 2013
AND
COMPANY PETITION NO.224 OF 2014

1) M/s.Videocon Industries Ltd.
2) M/s.Hitech Litho Pvt. Ltd.
3) M/s.Cytech Coating Pvt. Ltd. ...Petitioners
V/s.
M/s.Sharp Industries Ltd. (In liquidation) ...Respondent

Ms.Yogini D. Chauhan, Deputy Official Liquidator present.

Mr.Nitin Thakkar, Senior Counsel with Mr.Rohit Gupta and Mr.Angel Carneiro for Bassein Catholic Co-operative Bank.

Mr.Mayur Khandeparkar with Ms.Ishita Advani i/b Desai & Diwanji for J.M. Financial ARC Pvt. Ltd.

CORAM : R.D. DHANUKA, J.
DATE : 8TH MARCH, 2017.

P.C. :-

1. Not on board. Taken on board.

2. Except prayer clause (f), the other prayers are already disposed of by an order dated 24th February, 2017.

3. Insofar as prayer clause (f) of the report is concerned,

Mr.Khandeparkar, learned counsel appearing for J.M. Financial ARC Pvt. Ltd. invited my attention to the judgment of the Supreme Court in case of ***Pegasus Assets Reconstruction P. Ltd. vs. M/s.Haryana Concast Limited & Anr.*** delivered on 29th December, 2015 in Civil Appeal No.3646 of 2011 and more particularly on paragraphs 13, 17 and 19. He submits that in view of the judgment of the Supreme Court, the Official Liquidator cannot seek direction against secured creditors to take steps for possession and sale of the property in question under SARFAESI Act. He submits that insofar as the intimation about the steps being taken by the secured creditors is concerned, the secured creditors would inform the Official Liquidator about the steps taken for conducting the sale of the property described in prayer clause (1) of the Company Application No.221 of 2016 from time to time.

4. It is submitted by the learned counsel that in view of the judgment of the Supreme Court and in view of section 13(9) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), the applicant is not required to render any undertaking to distribute the sale proceeds pari pasu amongst claimants in accordance with section 529(A) of the Companies Act, 1956. He however, submits that upon sale of the properties by the secured creditors described in

prayer clause (1), his client would act in accordance with the provisions of section 13(9) of the said Act. The statement is accepted. In view of the statement made by the learned counsel for J.M. Financial ARC Pvt. Ltd., and in view of the provisions under section 13(a) of SARFAESI Act, in my view the secured creditors are not required to give any undertaking to distribute the sale proceeds.

5. At this stage, the learned Deputy Liquidator states that there are certain records lying in the suit premises described in prayer clause (1) of the Company Application No.221 of 2016, which are required to be shifted if possession of the said premises is required to be handed over to the secured creditors. She states that the secured creditors be directed to assist the Official Liquidator to shift the said records to the godown of the Official Liquidator situated at Vasai. She also presses for costs of Rs.1,00,000/- towards the expenses incurred in handling this matter and towards the administrative expenses. Both the secured creditors are directed to provide necessary assistance to the Official Liquidator to shift the records from the premises described in prayer clause (1) of the Company Application No.221 of 2016 to the godown of the Official Liquidator situated at Vasai at the earliest to enable the secured creditors to take vacant possession thereof. Both the secured creditors are also directed to pay total amount of Rs.50,000/- to the

Official Liquidator towards the costs and administrative expenses in the ratio agreed between the parties in the Memorandum of Understanding dated 22nd February, 2017 within two weeks from today. The costs that would be received by the Official Liquidator shall be credited to the expenses account of the Official Liquidator.

6. The Official Liquidator's Report No.11 of 2017 is disposed of in aforesaid terms.

7. The parties including the Official Liquidator to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)