

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.07.2018	Delivered on 25.07.2018
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CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH
Original Side Appeal No.245 of 2016
and
CMP Nos.19092 of 2016 & 10492 of 2017

Riverside Infrastructure Pvt.Ltd.,
4/318, Marg Axia, Future Building,
5th Floor, Rajiv Gandhi Salai,
Kottivakkam,
Chennai 600 041. Appellant
.Vs.

- 1.M/s.LIC Housing Finance Ltd.,
Rep.By its Area Manager,
"Harrington Chambers"
Block No.C, No.30/1A,
Abdul Razack 1st Street,
Saidapet, Chennai 600 015.
- 2.Edelweiss Asset Reconstruction Company Ltd.,
15th Floor, Off CST Road, Kalina,
Mumbai 400 098.
- 3.The Official Liquidator,
High Court, Madras,
2nd Floor Corporate Bhawan,
No.29, Rajaji Salai,
Chennai 600 001. Respondents
(R-3 impleaded vide order of Court
dt.07.08.2017 made in CMP.No.13003.2017
in O.S.A.No.245/2016).

Original Side Appeal is filed under Order XXXVI Rule 1 of
the O.S. Rules read with Clause 15 of the Letters Patent to
set aside the order dated 06.10.2016 in C.P.No.127 of 2015.

For Appellant : Mr.AR.L.Sundaresan, Sr.counsel
for Mr.Akhil R.Bhansali

For Respondent : M/s.Ramalingam Associates for R 1
Mr. Ravi
for M/s.Indumathi Ravi for R 2

JUDGMENT

N.ANAND VENKATESH., J.

This Original Side Appeal has been filed by the first respondent Company in C.P.No.127 of 2015, aggrieved by the order passed by the learned Single Judge in Comp.A.No.866 of 2016, dated 06.10.2016, wherein the appellant Company was directed to hand over physical possession of the secured assets to the second respondent herein and admitting the Company Petition and appointing a Provisional Liquidator.

2.The first respondent filed a petition for winding up against the appellant on the ground that the appellant owes a sum of more than 100 crores and it has defaulted in the payment of the money. The further case of the first respondent was that the appellant is due and payable more than 117 crores to State Bank of Patiala and Syndicate Bank and the appellant is not in a position to repay the debts and therefore the appellant Company should be wound up and an Official Liquidator should be appointed.

3.The second respondent in this appeal is an Asset Reconstruction Company and the Syndicate Bank of Patiala and Syndicate Bank have assigned their debt in favour of the second respondent and the second respondent has independently initiated proceedings against the appellant under the SARFAESI Act.

4.During the pendency of the Company Petition, the appellant consented for the sale of the assets of the Company for realisation of the loan amount payable to two Banks and M/s.LIC Housing Finance Limited. Consequently, an affidavit was filed on 18.01.2016 by the appellant, undertaking that they will hand over physical possession of the secured assets upon completion and confirmation of the auction

sale to be carried out by the second respondent under the SARFAESI Act.

5.Based on the undertaking affidavit and the consent given by all the parties, this Court by an order dated 19.01.2016, permitted the second respondent to sell the assets of the appellant Company and get the sale confirmed upon which the appellant Company was directed to hand over possession of the assets as per the affidavit of undertaking.

6.It was at this stage Comp.A.No.866 of 2016 came to be filed by the second respondent to direct the appellant Company to hand over physical possession of the secured assets to the second respondent and permit the second respondent to proceed further in bringing the property for auction.

7.It was brought to the notice of the Court that the second respondent was not in a position to proceed with the auction since the secured assets is in a decrepit condition, and therefore, the prospective buyers are not willing to bid for it.

8.The learned Single Judge having regard to the facts and circumstances of the case modified the earlier order dated, 91.01.2016, directing the appellant Company to hand over physical possession of the property to the second respondent within a period of two weeks.

9.The learned Single Judge also took into consideration the fact that the appellant Company owes more than 217 crores to the two Banks and M/s.LIC Housing Finance Limited and the financial condition of the appellant Company is not healthy, and therefore thought it fit to admit the Company Petition and appoint a Provisional Liquidator.

10.There is no dispute with regard to the fact that the appellant Company owes money to M/s.LIC Housing Finance Limited and also to the State Bank of Patiala and Syndicate Bank who have assigned the debt to the second respondent. It is also an admitted case that the second respondent has already initiated proceedings under the SARFAESI Act against the appellant Company to sell the secured assets and realise the proceeds. It is also brought to the notice of the Court that the first respondent viz; M/s.LIC Housing Finance Limited has also entered into an agreement with the second respondent with regard to settlement of its liability out of the proceeds of sale to be collected by the second respondent.

11.The appellant Company has already undertaken to hand over possession of the secured assets to the second respondent after the confirmation of sale. The learned Single Judge taking into account the dilapidated condition of the property though it fit to direct the appellant Company to hand over possession of the secured assets to the second respondent to enable the second respondent to bring the property for auction sale.

12.We do not find any ground to interfere with the above direction given by the learned Single Judge since whether before auction sale or after the confirmation of the sale, the appellant Company ultimately has to hand over possession as per the affidavit of undertaking. Therefore, there cannot be any grievance on the part of the appellant Company to hand over possession of the secured assets for distribution of the sale proceeds to the secured creditors. There is no dispute with regard to the liability of the appellant Company towards the first and second respondent.

13.Mr.AR.L.Sundaresan,learned Senior Counsel appearing on behalf of Mr.Akhil R.Bhansali, learned counsel would submit that admittedly there is only one secured asset and three secured creditors. There is no other claim by any other creditor against the appellant Company. Therefore, the learned senior counsel submits that there is no reason to admit the winding up petition and appoint a Provisional Liquidator.

14.Per contra, M/s.Ramalingam Associates appearing on behalf of the first respondent and Mr.Ravi, appearing for M/s.Indumathi Ravi, learned counsel for the second respondent did not seriously dispute the above submission made by the learned senior counsel. Till the second respondent is permitted to take possession of the property and to sell the property by auction sale and adjust the proceeds among the three creditors, their interest is safeguarded. For this purpose, there is no necessity to admit the winding up petition and appoint Provisional Liquidator. In fact, such a process will only delay the action taken by the second respondent to bring the secured assets for sale under the SARFAESI Proceedings.

15.In view of the above we are upholding the order of the learned Single Judge made in Comp.A.No.866 of 2016 and direct the appellant Company to hand over the physical possession of the subject property to the second respondent [RIPL] within a period of two weeks from the date of receipt of copy of this order. The order of the learned Single Judge admitting the Company Petition and appointing a Provisional Liquidator is hereby set aside.

16.The Original Side Appeal is partly allowed to the extent indicated above. In the facts and circumstances of the case there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

Kp

Copy to:

- 1.The Sub. Asst. Registrar
Original Side,
High Court, Madras.

2. The Sub Assistant Registrar Judicial,
High Court, Madras.

+1cc to Mr.Akhil R.Bhansali, Advocate SR.No.50310

+1cc to Mr.Indhumathi Ravi, Advocate SR.No.49882

O.S.A.No.245 of 2016

and

CMP Nos.19092/2016 & 10492/2017

GP (CO)

GN(10/08/2018)



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