THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

%21.12.2018

COMP.A.NOS.222, 227 OF 2018 IN C.P.NO.67 OF 1999

COMP.A.NO.222 OF 2018

M/S Sunrise Oleo Chemicals Ltd., (in Liquidation), rep.

by Official Liquidator, High Court of Andhra Pradesh,

Hyderabad.

Applicant

AND

M/s Reliance Asset Reconstruction co., Ltd., Mumbai,

Rep. by its vice President and another.

RESPONDENTS

Counsel for the applicant: : Official Liquidator

Counsel for the respondents: Ambadipudi Satyanarayana

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- Head Note.
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?Cases Referred:

1. (2013)4 SCC 381
2. (2016)4 SCC 47
3. 2015(3) ALD 427 (DB)

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMP.A.NOS.222 AND 277 OF 2018 IN C.P.NO.67 OF 1999

O R D E R

C.A.No.222 of 2018 is filed by the company in liquidation, seeking following directions:

i. direct the first respondent not to proceed for sale against assets / landed property together with structures of the company (in liquidation) situated at Yawapur village, Sadasivapet mandal, Medak District under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act').

ii. direct the respondent Nos.1 and 2 to conduct the joint survey with Government Surveyor of Revenue Department and submit the report of the total land an extent Acs.32.37 gts. and structures in Sy.Nos. 3/1, 4/1, 5/1, 7/1, 3/2, 4/2, 9/2, 6/U. and to fix the boundary stones / fence as two bits / two lots by dividing them separately i.e., i) land consisting of Acs.25.00 gts were mortgaged to first respondent / M/s Reliance Asset Reconstruction Co. Ltd., and ii) balance land to an extent of Acs.7.37 gts. to the second respondent / State Bank of Bikaner and Jaipur.

iii. Order the costs of this application do come out of the assets of the company.

This court by interim order dated 02.05.2018 directed the respondents not to proceed with sale of landed property together with structures of the company in liquation situated at Yawapur village, Sadasivpet Manal, Medak District, for a period of twelve weeks. The said interim order was extended from time to time and on 18.09.2018, it was extended until furthers.

The 1st respondent – Asset Reconstruction Company, had acquired a part of the asset from the secured creditor – Central Bank of India under the SARFAESI Act. The 2nd respondent – State Bank of India, is the secured creditor of the assets of the company in liquidation.

The contention of the learned counsel appearing for Official Liquidator is that the 1st respondent – company, which sold the assets of the company, particularly the land over an extent of Acs.24.22 gts., out of the total extent of Acs.25-00, has not given any notice to Official Liquidator, either respect to the value, or the sale of the property. He submits that the Supreme Court in the decisions reported in *OFFICIAL LIQUIDATOR v. ALLAHABAD BANK*[1] and *PEGASUS ASSETS RECONSTRUCTION (P) LTD. v. HARYANA CONCAST LTD.*[2] held that the Official Liquidator shall be given notice before the sale of secured assets. He contends that inasmuch as the official liquidator was not issued with any notice, the sale is liable to be set aside.

On the other hand, learned counsel appearing for the 1st respondent – company, making reference to the judgments cited by the learned counsel appearing for the official liquidator and particularly drawing the attention of this court to the Division Bench judgment of this court in *INDIAN BANK v. SUB-REGISTRAR, MAKUNDI VILLAGE, BELLARY*[3], would submit that the law on the issue is well settled that even the Official Liquidator is required to approach the Debt Recovery Tribunal, if he desires to question any proceedings, particularly the sale proceedings made under the provisions of SARFAESI Act. He would also further submit that the Official Liquidator does not enjoy any special status and on the

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1 (2013)4 SCC 381
2 (2016)4 SCC 47
3 2015(3) ALD 427 (DB)

other hand, is free to raise any objection with regard to maintainability of the very company application.

I.A.No.1 of 2018 in C.A.No.222 of 2018 in C.P.No.67 of 1999, is filed by the company in liquidation to order:

i) Set-aside the sale of the assets / landed property together with structures of the company (in liquidation) situated at Yawapur village, Sadassivapet mandal, Medak District conducted under the SARFAESI Act, 2002 by the 1st respondent herein.

ii) give a direction to the respondents to bear all the legal expenses going to incur by the official liquidator before the DRT, Hyderabad (including legal fee, court fees and other expenditure.)

iii) Order the costs of this application do come out of the assets of the company.

I.A.No.2 of 2018 in C.A.No.222 of 2018 in C.P.No.67 of 1999, is filed by one M/s Kontham Trading Company, represented by its authorized signatory K.Rajesh, having office at plot No.57, IDA Nacharam, Hyderabad, seeking to implead as respondent No.3 in the C.A.No.222 of 2018.

I.A.No.3 of 2018 in 2018 in C.A.No.222 of 2018 in C.P.No.67 of 1999, is also filed by the petitioner in I.A.No.2 of 2018, offering to purchase the land of the company in liquidation, which was put in public auction, for a price of Rs.4,66,00,000/-, which according to it, is substantially higher price, as against the sale price of Rs.3,42,00,000/-, at which the 1st respondent – company sold the property.

Learned counsel appearing for the petitioners in I.A.Nos.2 and 3 also would submit that to show the *bona fides*, the petitioner in these interlocutory applications, is ready to deposit 30% of offer price of Rs.4,66,00,000/-.

As noted above, the company in liquidation filed I.A.No.1 of 2018 seeking to set aside the sale made under the provisions of SARFAESI Act. In the affidavit filed in support of the application, the Official Liquidator at paragraph No.7 of the affidavit stated that he has received offers ranging from Rs.3,90,00,000/- to Rs.5,00,00,000/-. Therefore, the learned counsel appearing for Official Liquidator would submit that the offer quoted by the implead petitioner at Rs.4,66,00,000/-, cannot be said to be substantially higher.

C.A.No.277 of 2018 in C.P.No.67 of 1999 is filed by one Mr.N.Seetarama Raju, s/o late Sri N.Satyanarayana Raju. He is the auction purchaser of the land over an extent of Acs.24.22 gts. from the 1st respondent – Asset Reconstruction Company in C.A.No.222 of 2018. In the company application, the said individual asserts that pursuant to the auction conducted by the asset reconstruction company, he became the successful bidder and he has also deposited 25% of the bid amount, amounting to Rs.85,50,000/- (Rupees eighty five lakhs fifty thousand only), and sale confirmation letter dated 15.03.2018 was issued to him requiring him to pay the balance amount of Rs.2,56,50,000/-, and that he is ready to pay the said amount and inasmuch as his huge amount is struck in the process, he is being put to great hardship and loss. Therefore, he prays for conformation of the sale in his favour by receiving the balance amount of Rs.2,56,50,000/-.

Heard the learned counsel for the Official Liquidator, learned counsel for the 1st respondent – asset reconstruction company, Sri Pasham Krishna Reddy, learned counsel appearing for the petitioners in I.A.Nos.2 and 3 and Sri Narender Reddy, learned Senior Counsel appearing for the petitioner in C.A.No.277 of 2018, who is the auction purchaser.

After elaborate arguments, all the counsel arrived at a consensus to seek for a direction, to relegate the Official Liquidator to approach the Debt Recovery Tribunal, as there being no dispute that the sale proceedings of the assets of the company in liquidation, were carried out by 1st respondent – company, invoking the provisions of SARFAESI Act.

The fact that while selling the assets of the company in liquidation, the Official Liquidator is required to be informed at every stage i.e., at the stage of obtaining sanction, at the stage of conducting auction and confirmation of auction is not in dispute and the same is now well-settled in the judgments of the Supreme Court cited 1 and 2 *supra*.

It is also not in dispute that the Official Liquidator representing the company in liquidation is required to challenge the irregularity or otherwise of a sale made under the SARFAESI Act, before the Debts Recovery Tribunal. Filing the appeal under Section 17 of SARFAESI Act, is no longer *res integra* in view of the decision of the Supreme Court and the Division Bench judgment of this Court referred to *supra*.

In PEGASUS ASSETS RECONSTRUCTION (P) LTD. v. HARYANA CONCAST LTD. (2 *supra*), the Apex Court held as under:

> 23. . . . In our considered judgment, the same view is required to be taken in context of the SARFAESI Act also, for the additional reason that Section 13 requires notice to the borrower at various stages which in the case of a company under winding up being a borrower would mean requirement of notice to the Official Liquidator. The Security Interest (enforcement) Rules, 2002 (for brevity "the Rules") framed under the provisions of the SARFAESI Act also require notice upon the borrower or his agent at different stages. For sale of immovable secured assets, as per Rule 8, the authorized officer can take possession by delivering a possession notice to the borrower and by affixing possession notice on the outer door or at some conspicuous place of the property. Before the sale also, the authorized officer is required to serve to the borrower a notice of 30 days. Thus, the Rules also ensure that the Official Liquidator is in knowledge of the proceedings under the SARFAESI Act in case the borrower happens to be a company under winding up. . . .
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> 24. . .
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> 25. In the event in the capacity of a borrower the Official Liquidator is not satisfied with the decisions or steps taken by the secured creditor or the authorized officer, at appropriate stage it has sufficient opportunity to avail the right of appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. There is a right of further appeal under Section 18 before the Appellate Tribunal."

The Supreme Court in OFFICIAL LIQUIDATOR v. ALLAHABAD BANK (1 *supra*), while considering the provisions under the Recovery of Debts Due to Banks and financial Institutions Act, 1993, (for short RDB Act, 1993), held that Official Liquidator being protector of interests of workmen and creditors, is liable to ensure that appropriate price is obtained by holding of auction in a fair, transparent and non-arbitrary manner in consonance with Rules under RDB Act, 1993 and if he is not satisfied with manner in which auction was conducted, he can challenge the said auction by filing appeal before Debt Recovery Tribunal, as person aggrieved under Section 30 of RDB Act. The Supreme Court, further clarified that the Official Liquidator can take recourse to mode of appeal and further appeal under RDB Act *only* and he cannot approach company court seeking to set aside auction / confirmation of sale under RDB Act, 1993. The relevant portion of the judgment is as under:

> "34. We have referred to the said passage from Delhi High Court Bar Assn. case {(2002)4 SCC 275}, for the purpose of highlighting that an appeal lies to DRT challenging the action of the Recovery Officer. In the case at hand, the Official Liquidator was not satisfied with the manner in which the auction was conducted and he thought it apposite to report to the learned Company Judge who set aside the auction. Needless to emphasis, the Official Liquidator has a role under the 1956 Act. He protects the interests of the workmen and the creditors and, hence, his association at the time of auction and sale has been thought appropriate by this court. To put it differently, he has been conferred locus to put forth his stand in the said matters. Therefore, anyone who is aggrieved by any act done by the Recovery Officer can prefer an appeal. Such a statutory mode is provided under the RDB Act, which is a special enactment. DRT has the powers under the RDB Act to make an enquiry as it deems fit and confirm, modify or set aside the order made by the Recovery Officer in exercise of powers under Sections 25 to 28(both inclusive) of the RDB Act. Thus, the auction, sale and challenge are completely codified under the RDB Act, regard being had to the special nature of the legislation.
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> 35. . . . The language of the RDB Act, being clear, provides that any person aggrieved can prefer an appeal. The Official Liquidator whose association is mandatorily required can indubitably be regarded as a person aggrieved relating to the action taken by the Recovery Officer which would include the manner in which the auction is conducted or the sale is confirmed. Under these circumstances, the Official Liquidator cannot even take recourse to the doctrine of election. It is difficult

to conceive that there are two remedies. It is well settled in law that if there is only one remedy, the doctrine of election does not apply and we are disposed to think that the Official Liquidator has only one remedy i.e. to challenge the order passed by the Recovery Officer before DRT. Be it noted, an order passed under Section 30 of the RDB Act by DRT is appealable. Thus, we are inclined to conclude and hold that the Official Liquidator can only take recourse to the mode of appeal and further appeal under the RDB Act and not approach the Company Court to set aside the auction or confirmation of sale when a sale has been confirmed by the Recovery Officer under the RDB Act.

. . .

37. In view of the aforesaid analysis, we concur with the view expressed by the Division Bench and hold that the Official Liquidator can prefer an appeal before DRT. As he was prosecuting the lis in all genuineness before the Company Court and defending the order before the Division Bench, we grant him four weeks' time to file an appeal after following the due procedure. On such an appeal being preferred, DRT shall deal with the appeal in accordance with law."

Similar view was expressed by this the Division Bench of this court in INDIAN BANK v. SUB-REGISTRAR, MAKUNDI VILLAGE, BELLARY (3 *supra*).

If the borrower is aggrieved by the sale proceedings carried out under the provisions of SARFAESI Act, appeal has to be filed within a period of 45 days under Section 17 of the said Act. Since, in the present case, as the sale was alleged to have been carried out without notice to the Official Liquidator, the counsel appearing for 1st respondent - asset reconstruction company, and the counsel appearing for implead petitioner in I.As.No.2 and 3 and the petitioner in C.A.No.277 of 2018, on instructions, would submit that their clients would not raise the plea of limitation for filing of appeal under Section 17 of the SARFAESI Act, and thereby the said plea may be treated to have been waived, and that this court may direct the Official Liquidator to file appeal within reasonable time.

Considering the facts and circumstances of the case and the respective submissions of the learned counsel and the law laid down by Supreme Court and the Division Bench of this court in the decisions cited supra, Official Liquidator is directed to file appeal before the Debts Recovery Tribunal within a period of two weeks from the date of receipt of a copy of this order, and on filing of such appeal, the Tribunal shall dispose of the same in accordance with law, after giving notice and opportunity of hearing to all the parities, within a period of twelve weeks thereafter. Till the disposal of the appeal, the interim order granted by this court on 02.05.2018, shall continue.

Official Liquidator is permitted to incur expenditure with respect to the court fee and other legal expenditure including the counsel's fee, by moving appropriate application before the Tribunal.

Subject to above directions, C.A.NOS.222 AND 277 OF 2018 and I.A.Nos.1,2 and 3 of 2018 in C.A.No.222 of 2018 are disposed of.

Interlocutory applications pending, if any, shall stand closed. No costs.

CHALLA KODANDA RAM,J

Date:21—12—2018
Note: C.C. in three days.
B/O (AVS)