HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.9694 OF 2019

O R D E R
(Per Sanjay Kumar, J)

1. ICICI Bank Limited, Hyderabad, assails the order dated 25.04.2019 passed by the Debts Recovery Tribunal–II, Hyderabad (*for brevity*, 'the Tribunal'), in I.A.No.3795 of 2015 in S.A.No.1068 of 2015. The said I.A. was filed by the bank to dismiss the securitisation application on the ground that the Managing Director of M/s.Mantena Laboratories Limited, Hyderabad, the applicant therein, was not competent to represent it. By the order under challenge, the Tribunal dismissed the I.A.

2. By order dated 30.04.2019, this Court granted interim stay of further proceedings in S.A.No.1068 of 2017. I.A.No.2 of 2019 was filed by M/s.Mantena Laboratories Limited, Hyderabad, the respondent herein, to vacate the said order.

3. Heard Sri Ambadipudi Satyanarayana, learned counsel for the bank, and Sri V.Hariharan, learned counsel for the respondent company.

4. The case of the bank is that S.A.No.1068 of 2017 (old S.A.No.170 of 2014) was filed before the Tribunal on 28.02.2014 by the respondent company aggrieved by the measures initiated by it under Section 13(4) and Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'). Notice under Section 13(2) of the SARFAESI Act was issued on 18.02.2013. As repayment of the dues was not made within sixty days, measures were initiated under Section 13(4) of the SARFAESI Act in September 2013. The securitization application came to be filed in February, 2014.

5. While so, one M/s.India Factoring and Finance Solution Private Limited filed Company Petition No.81 of 2014 before the High Court to wind up the respondent company. The said company petition was ordered on 07.07.2015 directing the winding up of the respondent company and a liquidator was appointed. According to the bank, despite the passing of this order, the Managing Director of the respondent company did not bring the same to the notice of the Tribunal. The bank would assert that the Managing Director of the respondent company did not approach the Tribunal with clean hands and therefore, the securitization application was liable to be dismissed on that short ground. As the Official Liquidator had been appointed to take charge of the company's affairs, the bank would assert that it had every right to file the subject I.A. praying for dismissal of the securitization application on the ground of maintainability.

6. The respondent company filed its counter contesting the application filed by the bank. Therein, it stated that the order of winding up was subsequent in point of time to the filing of the securitization application. It stated that it had filed an appeal in O.S.A.No.40 of 2015 against the winding up order and by order dated 14.07.2016, a Division Bench had granted interim stay of the said winding up order. It further stated that it had thereafter settled the matter with M/s.India Factoring and Finance Solution Private Limited, the petitioner in Company Petition No.81 of 2014. It asserted that the Managing Director had the *locus standi* to represent the company and the Tribunal was justified in entertaining the securitization application filed by him as its authorised representative.

7. We may note at the outset that when a company petition is filed for winding up of a company under Sections 433 or 434 of the Companies Act, 1956 (*for brevity*, 'the Act of 1956') and the same is allowed, winding

up of such a company shall be deemed to commence at the time of presentation of the winding up petition, in terms of Section 441 thereof. Therefore, notwithstanding the fact that the winding up order was passed on 07.07.2015, it would relate back to the date of filing of C.P.No.81 of 2014. Sri Ambadipudi Satyanarayana, learned counsel, would fairly concede that C.P.No.81 of 2014 was filed on 14.03.2014, i.e., after institution of S.A.No.1068 of 2017 (old S.A.No.170 of 2014) on 28.02.2014. Therefore, as on the date of presentation of this S.A., the Managing Director of the respondent company was well within his rights to represent it and file such an application before the Tribunal. There is thus no cloud on the institution of the securitization application.

8. The question, however, is whether the Tribunal was correct in taking note of the stay of the winding up order passed thereafter on 14.07.2016 in O.S.A.No.40 of 2015 and permitting proceedings in the securitization application to go on as framed. According to Sri Ambadipudi Satyanarayana, learned counsel, mere suspension of the winding up order would not entitle the Managing Director to continue to represent the respondent company and the Tribunal ought to have insisted upon the proceedings in the S.A. being prosecuted only by the Official Liquidator.

9. We find no merit in this submission of Sri Ambadipudi Satyanarayana, learned counsel. Once an order of stay was granted in relation to the winding up order, it would mean that no consequences would flow out of the said winding up order and for all practical purposes, the management of the company would stand restored. The liquidation process that would have otherwise set in, pursuant to the winding up order, would therefore not commence at all.

10. We find that the reliance placed by Sri Ambadipudi Satyanarayana, learned counsel, on SUDARSAN CHITS (I) LTD. V/s. G.SUKUMARAN PILLAI[1] is utterly misconceived. That was a case where the winding up of the appellant company was sought by its creditors under Section 439 of the Act of 1956 on the ground that it was unable to pay its debts. The learned company Judge passed an order directing its winding up and appointed the Official Liquidator to be its liquidator. The appeal filed against the said winding up order was disposed of approving the scheme of compromise and arrangement under Section 391 of the Act of 1956, directing that the winding up order should be kept in abeyance upon certain undertakings being filed by the appellant company within the prescribed time. The Provisional Liquidator was however directed to operate the company. In the event of default, the appellate Court directed that the winding up order would stand confirmed. In the course of the implementation of the scheme, it became necessary to recover certain debts due to the appellant company. An application was moved before the Appellate Court praying that the Provisional Liquidator be directed to file claim petitions under Section 446(2) of the Act of 1956 in the Company Court to realize such claims. It was however contended before the Appellate Court that as there was no winding up proceeding pending before the Company Judge or the Appellate Court and as the company was being managed under the scheme of compromise, the Company Court would have no jurisdiction to entertain the claim petition under Section 446(2) of the Act of 1956. The Appellate Court found merit in this submission and rejected the miscellaneous petition. The Appellate Court held that the right to avail the remedy under Section 446(2) could be only

[1] AIR 1984 SUPREME COURT 1579

in a Court which was winding up the company. Aggrieved thereby, the appellant company approached the Supreme Court.

11. Having considered the matter at length, the Supreme Court observed that the approach of the High Court overlooked the object and purpose sought to be achieved by Section 446(2). It was pointed out that the said provision was amended to bring it to its present form so as to confer jurisdiction on the Court winding up the company to entertain any suit or proceeding by or against the company. The Supreme Court noted that if a winding up petition was pending, meaning thereby that the Official Liquidator was appointed as a Provisional Liquidator, which was a stage in the process of winding up, the Court before which such proceeding was pending could be styled as a Court winding up the company and, *ipso facto*, it would have jurisdiction to entertain the proceedings enumerated in Section 446(2). Considering the narrow question as to whether the winding up proceedings were pending or had come to an end when the Appellate Court froze the winding up order by keeping it in abeyance, the Supreme Court noted that the said winding up order had not been quashed, set aside, cancelled, revoked or recalled. It was only kept in abeyance and the Official Liquidator was directed to continue to act as its Provisional Liquidator and that itself was a stage in the winding up proceedings. The Supreme Court observed that when a winding up order is kept in abeyance, it is in a state of suspended animation and continued to exist but remained inoperative. It was therefore held that the winding up order was effectively subsisting but inoperative for the time being. It was on this basis that the Supreme Court held that the application under Section 446(2) of the Act of 1956 was maintainable.

12. Though Sri Ambadipudi Satyanarayana, learned counsel, would place strong reliance on the aforestated judgment, we are of the opinion that it is of no avail to him whatsoever. We find no merit in the submission of the learned counsel that 'suspension' of a winding up order would stand on par with keeping a winding up order in 'abeyance'. A suspension order would invariably mean that the order so suspended stands obliterated for the time being. However, when an order is kept in abeyance, it does not have the effect of extinguishing it and it is only made inoperative. Therefore, keeping of an order in abeyance would not have the same effect as suspending it. This is also clear from the fact that in the aforestated decision, while the order of winding up was kept in abeyance, the Official Liquidator who was appointed pursuant thereto was directed to be continued as a Provisional liquidator. These two distinguishing factors are sufficient in themselves to hold that the ratio in SUDARSAN CHITS (I) LTD.[1] is wholly inapplicable to the case on hand.

13. As pointed out by the Supreme Court in INDIRA NEHRU GANDHI V/s. RAJ NARAIN[2], an order of suspension would mean that the judgment or order so suspended is nullified for the nonce.

14. On the above analysis, we hold that the institution of S.A.No.1068 of 2017 (old S.A.No.170 of 2014) on the file of the Tribunal was not tainted inasmuch as the Managing Director of the respondent company was fully entitled to file such an application on its behalf. Further, continuance of the proceedings in the securitization application by the Managing Director of the respondent company after the suspension of the winding up order on 14.07.2016, without involving the Official Liquidator, also does not suffer from any illegality. The order passed by the Tribunal

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[2] AIR 1975 SUPREME COURT 1590

holding to this effect therefore does not warrant any interference, be it on facts or in law.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE P.KESHAVA RAO

20th AUGUST, 2019

PGS