

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2020

Delivered on : 18.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Company Application No.79 of 2020
&
Company Application No.140 of 2020
in
Company Application No.79 of 2020
in
C.P.No.151 of 2013

Comp.A.No.79 of 2020

Mrs.Jayanthi Ramachandra
Ex-Chairman of M/s.VTX Industries Ltd.,
W/o.AL.Ramachandra
No.166A, Tea Estate
Race Course, Coimbatore – 641 018

... Applicant

Vs.

1. The Official Liquidator
High Court, Madras
As the Liquidator of
M/s.VTX Industries Limited
(In Liquidation)
No.29, Corporate Bhavan
2nd Floor, Rajaji Salai, Chennai – 600 001

2. The Authorized Officer
JM Financial Asset Reconstruction Company Limited
Registered Office 7th Floor
Cnergy, Appasaheb Marathe Marg
Prabhadhevi
Mumbai – 400 025
3. UCO Bank
1524, 1287, Trichy Road
Coimbatore – 641 018
4. United Bank of India
Coimbatore Branch
24/831-832, Oppanakara Street
Coimbatore – 641 001
5. Indian Overseas Bank
Park Square Branch
Uppilpalayam, Coimbatore – 641 018
6. Andhra Bank
Main Branch
No.17, Mill Road, Coimbatore – 641 001
7. M/s. Yes Bank Limited
9th Floor, Nehru Centre
Discovery of India
Dr. Annie Besant Road, Worli
Mumbai – 400 018
8. IDBI Bank Limited
Coimbatore Branch, City SME Centre
No.72, May Flower Castle
Dr. Balasundaram Road
Coimbatore – 641 018

9. M/s.Indian Renewable Energy Development Agency Limited
Core-4A, East Court, 1st Floor, India Babital Centre
Lodi Road, New Delhi – 110 003
10. M/s.City Bank
No.2, Club House Road
Anna Salai, Chennai – 600 002
11. IDBI Trusteeship Services Limited
Asian Building Ground Floor
17, R.Kamani Marg, Ballard Estate
Mumbai – 400 001
12. ICICI Bank Limited
Coimbatore Branch
1090, 1st Floor, Cheran Plaza
Trichy Road
Coimbatore – 641 018
13. HDFC Bank Ltd.,
HDFC House, No.29 Kamaraj Road
Coimbatore – 641 018
14. Tamil Nadu Industrial Investment Corporation Limited
United Shopping Complex
1st Floor, No.94 Dr.Nanjappa Road
Coimbatore – 641 018
15. M/s.S.E.Industries Limited
5-547, 2nd Floor, Main Road
Shankar Pur New Delhi – 110 092
- 16.K.Rajendran
Rep. By its Secretary of Coimbatore Periyar District
Thravida Panjalai Thozilalar Munnetra Sangam
(M.L.F) No.2/189, Palladam Road

Puliampatti Post
Pollachi Taluka
Coimbatore District – 642 002

17.The Directors (Purchaser)

Kovil Builders and Property Developers Private Limited
Registered Office at No.99/20D
Chettipalayam Road
Easwar Nagar (Bus Stand)
Podanur, Coimbatore – 641 023

... Respondents

Company Application filed under Order XIV Rule 8 of Original Side Rules with Rule 9, 11(B) and 19 of the Company (Court) Rules, 1959 to cancel the assignment deeds executed by the 3rd respondent dated 26.03.2014, 4th respondent dated 23.09.2015 and 5th Respondent dated 30.03.2016 in favour of the 2nd Respondent for the schedule mentioned property.

Comp.A.No.140 of 2020 in Comp.A.No.79 of 2020

Mrs.Jayanthi Ramachandra
Ex-Chairman of M/s.VTX Industries Ltd.,
W/o.AL.Ramachandra
No.166A, Tea Estate
Race Course, Coimbatore – 641 018

... Applicant

Vs.

1. The Official Liquidator

High Court, Madras
As the Liquidator of
M/s.VTX Industries Limited
(In Liquidation)
No.29, Corporate Bhavan
2nd Floor, Rajaji Salai, Chennai – 600 001

2. The Authorized Officer

JM Financial Asset Reconstruction Company Limited
Registered Office 7th Floor
Cnergy, Appasaheb Marathe Marg
Prabhadhevi
Mumbai – 400 025

3.UCO Bank

1524, 1287, Trichy Road
Coimbatore – 641 018

4.United Bank of India

Coimbatore Branch
24/831-832, Oppanakara Street
Coimbatore – 641 001

5. Indian Overseas Bank

Park Square Branch
Uppilipalayam, Coimbatore – 641 018

... Respondents

Company Application filed under Order XIV Rule 8 of Original
Side Rules with Rule 9, 11(B) and 19 of the Company (Court) Rules,
1959 to stay all further proceedings of the Sale Notice dated 30.06.2020
issued by the 2nd respondent in respect of the Schedule Item Nos.1 & 2
pending disposal of the C.A.NO.79 of 2020.

For Petitioner : Mr.Anirudh Krishnan
for Mr.K.Jayaraman

For Respondents : Mr.Bavisetty Sridhar
Deputy Official Liquidator for R1
Mr.T.K.Baskar for R2

M/s.A.Jayalakshmi for R16
Mr.P.V.Balasubramaniam
for Mr.N.Chinnaraj for R17
Mr.A.G.Sathya Narayanan for R6
No appearance of R3 to R5, 7 to 15
in C.A.No.70 of 2020

No appearance for R3 to R5
in C.A.No.140 of 2020

COMMON ORDER

This common order will govern captioned two applications.

2. 'VTX Industries Limited' (hereinafter 'said Company' for the sake of convenience) is the Company under liquidation in the main Company Petition, which was presented in this Court in 2013 and an order of winding up was passed by this Company Court on 23.06.2014. Thereafter, vide order dated 24.07.2015 made in Company Application No.792 of 2015, this Court directed the 'Official Liquidator attached to this Court' (hereinafter 'OL' for the sake of brevity and clarity) to take possession of said Company, pursuant to which OL took possession of the Registered Office/Factory premises of said Company on 07.08.2015.

3. To be noted, Respondents 1 to 5 are the same in captioned applications. Respondent No.1 is being referred to as OL, Respondent No.2, which this Court is informed, is a 'Asset Reconstruction Company', shall hereinafter be referred to as 'ARC' for the sake of convenience and clarity. Respondents 3 to 5 are three different Banks, namely UCO Bank, United Bank of India and Indian Overseas Bank respectively. There are as many as 10 immovable properties enlisted under the caption 'SCHEDULE OF PROPERTIES' in judge's summons to Company Application No.79 of 2020 and said schedule reads as follows:

SCHEDULE OF PROPERTIES

<i>S.No.</i>	<i>Property Details</i>
<i>1</i>	<i>S.F.No.88/2, 92/2A, 94/4, Pulliampatti Village, Pollachi Taluk, Coimbatore District, Extent of Land -15.75 Acres</i>
<i>2</i>	<i>Plant and Machinery and other structurals in Schedule No.1</i>
<i>3</i>	<i>Pollachi sub registration district, Pollachi Taluk, village patta No.80, Land 1.44 acres (0.58.5 hectares) in S.F.No.49/1 and 3.38 acres or 1.36.5 hectares S.F.No.50/1 & 2.98 acres or 1.20.5 hectares of land in S.F.No.51/1 total 7.80 acres of land with factory building 120950 sq.ft L & B and P&M valparai main road</i>
<i>4</i>	<i>Plant and Machinery and other structural in Schedule No.3</i>
<i>5</i>	<i>Pollachi sub registration district, Pollachi Taluk, Pilchinnapalayam village, Patta No.33 an extent 7.79</i>

S.No.	Property Details
	<i>acres in S.F.No.90 with factory 13000 sq.ft L & B and P & M.</i>
6	<i>Kinathukadavu sub-registration Dist. Coimbatore Taluk, No.47 Orrattukuppai Village, 3.55 acres of land S.F.No.116/1, 4.04 acres in S.F.No.117/1 and 1.30 acres S.F.NO.118/1 totally 8.89</i>
7	<i>Coimbatore taluk in Kuniyamuthu village, S.F.No.193/1B acre 3.58 Item II, Kuniyamuthu village S.F.No.191/1 acres 1.19</i>
8	<i>Land Plot No.K36 SIPCOT INDUSTRIAL GROWTH CENTRE, Perundurai Ingur Taluk, Erode-5.35 acres Survey No.78 Part, 79 Part, 88 Part and 89 Part. In which factory adme.sq.ft building & P & M</i>
9	<i>Plant and Machinery and other structural in Schedule No.8</i>
10.	<i>Tirupur Dist, Sulur Sub registration, Palladam Taluk, Paruvai Village, land in S.F.No.11/7 extent hectare 1.10.5 corresponding to punjai acres 2.73-property situated at pallasampanchayat union S.F.No.13/1 extent Hectare 0.67.5 corresponding to punjai acre 1/67 S.F.No.14/1 hectare 1.43.5 corresponding to Punjai acre 3.54</i>

4. Respondents 3 to 5 Banks, which are secured creditors qua said Company, assigned their rights in favour of second respondent ARC vide three separate assignment deeds dated 26.03.2014 (3rd respondent Bank is Assignor), 23.09.2015 (4th respondent Bank is Assignor) and 03.03.2016 (5th respondent Bank is Assignor). It is not in dispute that out of the aforementioned 10 items of immovable properties, Serial No.6 was subject

to pari passu charge ceded by Andhra Bank. Properties figuring as Serial Nos.1 and 2 are subject matter of one of the two captioned applications, namely Company Application No.140 of 2020, which is seeking stay pending disposal of Company Application No.79 of 2020.

5. Be that as it may, post aforementioned assignments, vide order dated 13.12.2018 made by this Company Court in Company Application No.69 of 2018, OL was directed to give to ARC possession of the aforementioned 10 items of immovable properties within a time frame subject to deposit of money (towards expenses of OL since taking possession qua said company) by ARC mentioned therein. It is also not in dispute that the deposit was made and OL has handed over possession of the aforementioned 10 items of properties to second respondent ARC on 18.02.2019. There is no disputation or disagreement before this Court that this order dated 13.12.2018 made in Company Application No.69 of 2018 has attained finality or in other words, has been given complete legal quietus and has also been acted upon as deposit has been made by ARC and OL has handed over possession of the 10 items of immovable properties to ARC. It is therefore clear that the order has been acted upon and all

concerned have complied with the order by depositing and handing over possession of the immovable properties.

6. While things stood thus, the applicant in captioned applications, who is Ex-Chairman of said Company took out Company Application No.79 of 2020 with a prayer to cancel the aforementioned three assignment deeds executed by Respondents 3 to 5 in favour of second respondent ARC. When this application was pending, ARC issued a sale notice dated 30.06.2020 qua two immovable properties (Serial Nos.1 and 2) and therefore, applicant took out Company Application No.140 of 2020 with a prayer to stay all further proceedings pursuant to sale notice pending disposal of Company Application No.79 of 2020. Amongst other parameters, as ARC had not completed pleadings in Company Application No.79 of 2020, this Court on 24.07.2020 granted an interim order to the effect that sale pursuant to the sale notice (sale fixed on 30.07.2020) can proceed, but the same shall not be confirmed and confirmation, if at all, shall be post outcome of captioned applications and obviously depending on the outcome. This order dated 24.07.2020 reads as follows:

'Mr.K.Jayaraman, learned counsel on record for applicant, Mr.Bavisetty Sridhar, learned Deputy Official Liquidator representing the 'Official Liquidator attached to this

Court' ('OL'), who is the first respondent in this application and Mr.Srinath Sridevan, learned counsel on record for the second respondent, are before me in this web-hearing on a video-conferencing platform. To be noted, this Court is informed that second respondent is a 'Asset Reconstruction Company' and the same shall hereinafter be referred to as 'ARC'.

2. 'VTX Industries Limited', which shall hereinafter be referred to as 'said company' is the company under liquidation in the main CP at the instance of a petitioning creditor, namely Thiagarajar Mills Private Limited.

3. Instant application has been taken out by former Chairman of said company with a prayer to stay sale notice dated 30.06.2020, which has been issued by the ARC.

4. What is of significance is another application, namely C.A.No.79 of 2020 taken out by the same applicant is pending and the same is on Board today. This is an application where the applicant has sought cancellation of three Assignments Deeds executed in favour of ARC by Respondents 3, 4 and 5. Absent these Assignments Deeds, ARC would not have gained control over said company and its assets. If ARC has gained control over said company, sale notice dated 30.06.2020 could not have been issued.

5. At the moment, this Court does not express any opinion on the merits of the matter, but, it is clear that it is imperative that Company Application No.79 of 2020 is decided first and instant application may have to be taken up if it becomes

necessary subject to the outcome of Company Application No.79 of 2020. To be noted, Company Application No.79 of 2020 has been filed by the applicant sometime in January, 2020, served on ARC as well as OL in February, 2020 and OL has even filed a counter in March of 2020, but learned counsel for ARC seeks time to file counter affidavit in Company Application No.79 of 2020 saying that there are certain facts which needs to be controverted.

6. In the light of the narrative thus far, if the sale notice dated 30.06.2020 is carried to its logical end pending these applications an irreversible situation might arise.

7. Therefore, to balance the rights of the parties, there shall be an interim order to the effect that any sale pursuant to sale notice dated 30.06.2020 (to be noted, this Court is informed that sale is fixed on 30.07.2020) shall not be confirmed and confirmation if any, shall be subject to the outcome of Company Application No.79 of 2020 and instant application.

8. Learned counsel for ARC submits that he will be able to file counter affidavit in Company Application No.79 of 2020 in the ensuing week.

9. List instant application along with Company Application No.79 of 2020 on 31.07.2020. '

7. Thereafter pleadings were completed in Company Application No.79 of 2020 and vide proceedings dated 07.08.2020, the issues that fall for consideration in captioned applications were narrowed down (based

on the submissions made before this Company Court) and this
07.08.2020 proceedings of this Company Court reads as follows:

*'Read this in conjunction with and in continuation of
earlier proceedings dated 31.07.2020.*

*2.In the web-hearing on a video-conferencing platform
today, Mr.Anirudh Krishnan, learned counsel representing
Mr.K.Jayaraman counsel on record for lone applicant in both the
captioned applications, Mr.Bavisetty Sridhar, learned 'Deputy
Official Liquidator' ('Deputy OL' for brevity) on behalf of first
respondent in both the captioned applications and
Mr.T.K.Bhaskar, learned counsel on record for second
respondent in both the captioned applications are before me.*

*3.There are 17 respondents in all in C.A.No.79 of 2020
and there are 5 respondents in all in C.A.No.140 of 2020.*

*4.The array of counsel before me set out supra means
applicant as well as Respondents 1 and 2 in both the captioned
applications are represented by counsel and Deputy Official
Liquidator ('Deputy OL' for brevity). To be noted, Respondents 3
to 5 are the same in both the captioned applications.*

*5. With regard to C.A.No.79 of 2020, it is submitted by
learned counsel for applicant that Respondents 3 to 17 have been
duly served and affidavit of service has been filed. Further to be
noted, with regard to Respondent No.6, a counsel has entered
appearance and vakalat has been returned. With regard to
Respondent No.16, a counsel, who has entered appearance has*

not joined the web-hearing today. With regard to Respondent No.17, Mr.P.V.Balasubramaniam representing the counsel on record Mr.N.Chinnaraj is before me.

6. Therefore, Registry to verify affidavit of service as well as Vakalat, if any, with regard to Respondents 3 to 5 and 7 to 15 in C.A.No.79 of 2020 and show the names of the parties or the counsel, as the case may be, in the next listing. Likewise needful shall be done regarding C.A.No.140 of 2020 also, bearing in mind that Respondents 3 to 5 are the same in both the captioned applications.

7. For the purpose of narrowing down the points for consideration, three points on which counsel for applicant shall predicate his submissions are as follows:

a) Whether an assignment which relates to disposition of properties of a company in liquidation will fall within the scope and ambit of Section 536(2) of Companies Act, 1956;

b) Whether the undertaking given by second respondent i.e., Asset Reconstruction Company (ARC) recorded in C.A.No.69 of 2018 on 13.12.2018 has not unenforceable;

c) Applicant, who is admittedly a former Director of the company in liquidation (VTX Industries Ltd., which shall hereinafter be referred to as 'said company') is entitled to maintain this application on the ground that OL has allegedly not acted?

8. Mr.T.K.Bhaskar, learned counsel for second respondent (ARC) submits that the Company Court within the meaning of the Companies Act and Company (Court) Rules, 1959, will not have

jurisdiction to entertain a challenge to an assignment inter se creditors. Learned counsel for ARC would also go on to submit that Pegasus principle, will directly hit the second captioned application, namely C.A.No.140 of 2020. To be noted, Pegasus principle is the ratio laid down by Hon'ble Supreme Court in Pegasus Assets Reconstruction Private Limited Vs. Haryana Concast Limited and Another reported in (2016) 4 SCC 47, which according to learned counsel for ARC, is to the effect that 'The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' ('SARFAESI Act' for brevity) will prevail over the provisions of Companies Act or in other words Companies Act, will have to yield to provisions of SARFAESI Act.

9. Learned counsel for ARC disputes that this is a case of disposition and therefore, Section 536(2) would not be attracted and he also disputes the locus of the applicant. It is his further submissions that there is no violation of undertaking. 10. With regard to Deputy OL representing the Official Liquidator, it is submitted that vide an order dated 23.06.2015 in the Company Petition, the OL was directed to take charge of said company (C.A.No.792 of 2015), thereafter there was a direction on 24.07.2015 to the OL to take possession and the OL has taken possession qua said company on 07.08.2015. 11. The above is a broad summation and the same has been captured for the purpose of narrowing down the bone of contention in the next listing. 12. Mr.K.Jayaraman, learned counsel on record shall coordinate with the Registry as and when required with regard to the

directions given supra in this order to the Registry for the next listing. List under the same caption i.e., 'FOR ARGUMENTS' on 14.08.2020.

8. Considering the importance of aforementioned order dated 13.12.2018 made by a Hon'ble predecessor Judge in Company Application No.69 of 2018, this Court deems it appropriate to extract and reproduce the order. This Court does so and the same is as follows:

'This application is filed for handing over the possession of the properties described in the schedule and to forbear the first respondent Official Liquidator from interfering with the recovery action initiated by the applicant.

2. When the matter is taken up for hearing today, the Official Liquidator has filed a report stating that they have incurred a sum of Rs.1,32,73,338/- (Rupees One Crore Thirty Two Lakhs Seventy Three Thousand Three Hundred and Thirty Eight Only) towards expenses from the date of taking possession of the assets. If that amount is deposited, the Official Liquidator is willing to hand over possession to the applicant for the furtherance of the recovery action taken as per the provisions of the SARFAESI Act. The applicant further undertakes that they will keep the Official Liquidator informed at every stage of the sale of the property. It is also further agreed that the secured creditors are entitled to recover the money remitted to the Official Liquidator towards expenses on a proportionate basis. Out of the sale proceeds, the amounts payable to the employees / workers should also be

deposited with the Official Liquidator.

3. In so far as the claim of M/s.Raenco Mills Pvt. Ltd., applicant in Company Application No.616 of 2018 is concerned, it should be decided after taking inventory of the property after taking over possession of the property from the Official Liquidator. After satisfaction of the debts due to the present creditors, if any surplus is available, shall be given to the fourth respondent. The Official Liquidator is directed to give possession of the property within a period of one week from the date of deposit of money made by the applicant.

4. Post the matter on 17.12.2018 along with Company Application No.616 of 2018. Registry is directed to delete the name of M/s.Iyer and Thomas.'

9. The points that fall for consideration in captioned applications have already been narrowed down based on the broad submissions before this Court, this has been captured vide proceedings dated 07.08.2020, which has been reproduced supra. Arguments were advanced before this Court by learned counsel on both sides taking the aforementioned 07.08.2020 proceedings as the broad basis.

10. This Court proceeds to deal with the points, counter points one by one setting out discussion and giving dispositive reasoning for each point and counter point.

11. The first point that was argued before this Court is locus of the

applicant. It was argued by learned counsel for ARC that the applicant has no locus, as the applicant, who describes herself as Ex-Chairman of said Company, does not have any right qua secured assets of said company.

12. In this regard, learned counsel pressed into service two case laws, namely ***Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*** reported in ***AIR 1955 SC 74*** and judgment of a Hon'ble Division Bench of this Court dated 17.04.2020 being ***S.Shaalini's case (Mrs. S.Shaalini Vs. Debt Recovery Tribunal and Ors.)*** wherein ***Bacha Guzdar*** principle, which has stood the test of time, was followed five and a half decades later. ***Bacha Guzdar*** principle declared by a Hon'ble Constitution Bench of the Supreme Court is to the effect that a company is a separate juristic entity distinct from the shareholders in contradistinction to partners qua a partnership firm. The principle that the shares or other interests of a member in a company are personal estate, transferable in the manner provided by its articles, was also upheld. There can hardly be any disputation or debate on the principle that a company is a juristic person, which is distinct and separate qua the Directors, share holding Directors and share holders, who may or may

not be natural persons. Five and half decades later, a Hon'ble Division Bench of this Court in ***Shaalani's*** case relying on ***Bacha Guzdar*** principle held that it is a company, which owns the properties and not the shareholders, as a company is a juristic person distinct from the shareholders. Hon'ble Division Bench went on to hold that a shareholder is not a borrower within the meaning of Section 2(1)(f) of the 'Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002' (hereinafter 'SARFAESI Act' for the sake of brevity) and therefore would not be entitled to notice under Section 13(2) or 13(4) of SARFAESI Act. It was also held that a shareholder cannot maintain a petition under Section 17 of SARFAESI Act as the shareholder would not qualify as a person aggrieved.

13. In this case, the facts and circumstances are very peculiar and different. This Court reminds itself of the celebrated ***Padma Sundara Rao Vs. State of Tamil Nadu*** case reported in ***(2002) 3 SCC 533*** and the most relevant paragraph is paragraph 9, which reads as follows :

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact

situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537'

14. In the case on hand, interest of secured creditors in secured assets were assigned to an ARC, possession was handed over to the ARC pursuant to an order of this Court and applicant has come up *inter alia* with a case that the conditions subject to which secured assets were handed over to ARC have not been adhered to, but OL has not acted in this regard. In this view of the matter, this Court deems it appropriate to remind itself that a petitioning creditor in a winding up petition presented in a Company Court is not akin to a plaintiff in a money suit to recover his dues as a winding up petition is proceedings for winding up the Company, liquidating its assets and distributing the same amongst all its creditors. This is the reason why a Company Petition for winding up filed by a creditor cannot be withdrawn without leave of the Company Court and this principle is ingrained in

Rule 100 of the 'Company (Court) Rules, 1956' (hereinafter 'said Rules' for clarity) which reads as follows:

'R.100. Application for leave to withdraw petition - (1) A petition for winding-up shall not be withdrawn after presentation without the leave of the Court. (2) An application for leave to withdraw a petition for winding-up which has been advertised in accordance with the provisions of Rule 99 shall not be heard at any time before the date fixed in the advertisement for the hearing of the petition.'

15. In this view of the matter, on the peculiar facts and circumstances of this case, the applicant can be treated as an informant (more so in the light of prayers, which are not applicant centric) as it is the stated position of the applicant that OL has not brought to the notice of this Court about ARC not complying with the conditions subject to which possession was handed over. This puts an end to the locus argument.

16. The next point that was raised is that there is no provision in Companies Act, 1956 (hereinafter 'said Act' for brevity) or said Rules for

cancelling Assignment Deeds. Sequitur submissions are that the Company Court does not have power to cancel Assignment Deeds and on a demurer it is argued that there is an ouster of such powers (if any) owing to *Pegasus* principle [*Pegasus Asset Reconstruction P. Ltd v. Haryana Concast Ltd.*, reported in (2016) 4 SCC 47].

17. In response to this, it was argued that inherent powers of Company Court has not been taken away and that *Pegasus* principle will operate only when there is a pre-supposition regarding rights of a secured creditor whereas in the case on hand rights in favour of ARC or in other words, assignment of rights in favour of ARC itself has been put in issue. The law is well settled that when there is no specific provision in a set of Rules or in a statute, a provision akin to Section 151 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity) cannot be invoked as an omnibus provision for exercising powers which have not been specifically provided for. In any event, this Court is of the view that it is not necessary to dilate much on this aspect, as answer to the ouster question will settle this issue. This Court reminded itself of the *Pegasus* principle. *Pegasus* principle, which was laid down by Hon'ble Supreme

Court in **(2016) 4 SCC 47** in simple terms is to the effect that provisions of SARFAESI Act will prevail over the Companies Act. In other words, Companies Act and provisions therein will have to yield to the provisions of SARFAESI Act. The argument by the applicant qua **Pegasus** principle is that assignments under challenge (with the exception of assignment by third respondent UCO Bank on 26.03.2014) are pending winding up proceedings and therefore rights have been created pending winding up proceedings. In the considered view of this Court, this argument does not impress this Court owing to the facts and circumstances of this case and trajectory which this company petition has taken. As already mentioned supra, Company Court vide order dated 13.12.2018 made in Company Application No.69 of 2018 has directed Respondents 3 to 5 to hand over possession of the immovable properties subject (secured assets) which are subject matter of three Assignment Deeds to the ARC. This order has not only been given legal quietus, it has not only attained finality, but parties have also acted upon the same. It is therefore, too late in the day for any one to say that **Pegasus** principle is distinguishable on facts. Therefore, the question of whether assignment of rights *inter se* secured creditors tantamounts to creation of

right is left open as it is not necessary to go into the same, for deciding captioned applications, owing to possession being given pursuant to orders of this Court which is an obvious recognition of assignments.

18. The next point that was argued before this Court turns on disposition. It was argued that approval of this Court under Section 536(2) of said Act is imperative for disposition. To this argument of the applicant, the counter point made by ARC counsel is two fold. One is that this is not disposition and the second point is, on a demurrer even if it is a disposition, it is not disposition by said Company, but disposition only by secured creditors, namely Respondents 3 to 5.

19. With regard to disposition, there are two lead cases, one is ***Controller of Estate Duty, Gujarat v. Kantilal Trikamlal*** reported in (1976) 4 SCC 643 and the other is ***VGP Finance Limited v. The Official Liquidator, High Court of Madras and Ors.*** reported in MANU/TN/4316/2017 (equivalent 2018 (1) LW 239). In Kantilal Trikamlal case, the relevant portion is contained in Paragraph 27 and the

relevant paragraph in VGP Finance Case is Paragraph 18.1, which read as follows:

'Relevant portion in Paragraph 27 of Kantilal Trikamlal Case reads as follows:

'27.....Each statute has its own mint and the coinage of words bears a special stamp. That is our only comment when we depart semantically from other judicial annotations of the expression “disposition”. If A is entitled to a moiety in property worth rupees five lakhs (or let us assume that much of cash in the till belongs jointly to A and B) and by a partition, relinquishment, disclaimer or otherwise, A accepts something substantially less than his due, say rupees one lakh as against rupees two-and-a-half lakhs and the remainder goes to the benefit of B who gets four lakhs as against two-and-a-half lakhs, commonsense, concurrently with Explanation 2, draws the inference that A has made over at his expense and to the benefit of B a sum of rupees one-and-a-half lakhs which may be designated a “disposition” by him in favour of B.'

'Paragraph 18.1 of VGP Finance case reads as follows:

'18.1 The measure which a Court generally applies while examining transactions involving disposition of property by a company qua which winding up has commenced are, broadly, as follows:

(i) *First and foremost what is to be borne in mind is that though Section 536(2) of the 1956 Act states that any transaction involving disposition of property, which includes actionable claims, after the commencement of winding up, is void, the Court has the discretion to validate such transactions, if they are undertaken for the benefit of and in the interest of the company which is in winding up. In other words, the transactions undertaken to keep the company operable while the winding up process is on, can be validated if they are entered into in the ordinary course of business.*

(ii) *The power to validate the transactions undertaken by a company after winding up process has commenced (i.e. winding up petition is filed) is to enable the company to obtain funds to carry out its business, so that its business is not "paralysed".*

(iii) *This principle has to be read with a caveat that assets cannot be disposed of by the company at its mere whim and fancy causing violation of the fundamental principle, which is, that equality amongst creditors is required to be maintained. [See: *Tulsidas Jasraj Parekh Vs. Industrial Bank of Western India (MANU/MH/0067/1930 : AIR 1931 Bombay 2)*].*

(iv) *The distinction between what is construed as ordinary course of business before the winding up petition is presented and that which can be categorised as ordinary course thereafter is, broadly, as follows:*

(iv)(a) *The ordinary course of business before a winding up petition is filed recognises the fact that a company in order to generate funds needs at times to furnish*

security in the form of assets owned by it so that the company has the leeway to raise debts according to its commercial wisdom.

(iv)(b) However, after the winding up petition is presented, the circumstances take a different colour. The unsecured creditors, will, necessarily, have a pari passu charge over its assets. It is, thus, not ordinary course of business, if, one creditor is paid in full or in entirety to the detriment of the interests of other creditors.

(v) The fact that the transactions have been entered into by the creditor in ignorance of institution of a winding up petition would be rare. Therefore, the knowledge of presentation of a petition is a factor which is required to be considered in determining as to whether or not the transaction is bona fide, even though, that by itself may not be conclusive. [See: Tulsidas Jasraj Parekh Vs. Industrial Bank of Western India (MANU/MH/0067/1930 : AIR 1931 Bombay 2)]

(vi) The transactions which are honest and bona fide, and are carried out in the ordinary course of business, can be validated by the Court. In examining the bona fides of a transaction, what should be kept in mind is that the transaction is fair, just and reasonable and in the interest of the company and its creditors.

(vii) The policy of law is that Court should not validate any transaction which will result in one or more pre-liquidation creditors being paid in full at the expenses of other creditors, albeit, in the absence of special circumstances. In determining whether the

disposition of property should be validated or not, the principle of good faith and ordinary course of business should be applied. [See Re: Gray's Inn Construction Co. Ltd., [MANU/UKWA/0040/1979 : 1980 (1) All ER 814 (CA)].

(viii) In considering whether the transaction is bona fide or not all surrounding circumstances should be considered. In this behalf, what is required to be examined is: is the disposition of property carried out to keep the company operational. If the answer is in the affirmative, then, generally a Court would validate such a transaction, unless it is shown to be a sham transaction.

(ix) While, the Court may validate a genuinely bona fide transaction carried out in the ordinary course of day-to-day business it will not allow disposition of property to take place which excludes other creditors from sharing the proceeds which would otherwise flow from sale of its assets. [See Syed Haidar Sahib Vs. M. Jayaram Pillai 1956 (26) Comp Cases 164 (Mad)].

(ix)(a) In other words, the fundamental principle of equality among creditors cannot be violated [See Tulsidas Jasraj Parekh Vs. The Industrial Bank of Western India MANU/MH/0067/1930 : AIR 1931 Bom 2)] '

20. The above two paragraphs from judgments of Hon'ble Supreme Court and of Hon'ble Division Bench of this Court are instructive and elucidative qua disposition. While ***Kantilal Trikamlal*** judgment of

Hon'ble Supreme Court and **VGP Finance Limited** judgment of Hon'ble Division Bench of this Court are elucidative regarding what constitutes disposition and the determinants qua disposition respectively, it may be appropriate to fall back on an English Case law for ascertaining what is the objective behind Section 536(2) of said Act, which deals with validation in cases of disposition.

21. Most relevant English Case law is dated 24.11.1999 and it was rendered by the Chancery Division of High Court of England and Wales in **Coutts & amp; Co V. Stock**. This case law has been reported in **[2000] 2 All ER 56** as well as **[1999] EWHC 191 (Ch)**. On facts, **Coutts & amp; Co** is a case where a guarantor of a debtor took umbrage under Section 127 of the Insolvency Act 1986 in England when the liquidators demanded payment owing to winding up petition being presented against the debtor three week after **Coutts & amp; Co** Bank had granted over draft facility to the debtor which was secured by a personal guarantee given by the guarantor who was a director of the debtor. It is not necessary to dilate further on facts. Suffice to say that Section 127 of the Insolvency Act, 1986 in England is clearly

comparable with Section 536(2) of said Act. For ease of reference, this Court deems it appropriate to re-produce the two provisions one after the other:

'Section 127 of the Insolvency Act, 1986 in England

'In a winding up by the court any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the court otherwise orders, void.'

'Section 536(2) of said Act reads as follows:

536. Avoidance of transfers etc., after commencement of winding up-(1).....

(2) In the case of a winding up by [the Tribunal] any disposition of the property (including actionable claims) of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall [unless the Tribunal] otherwise orders, be void.'

22. The objective behind Section 127 of England Insolvency Law has been set out as principles by Mr.Jutice Lightman who penned ***Coutts & amp; Co*** case and Justice Lightman's articulation is illuminating,

luminous and enlightening. Paragraph 8 of **Coutts & amp; Co** reads as follows:

'8. In summary, the principles lead to the conclusion that section 127 cannot be read as invalidating, not merely the disposition by a company, but also a loan made by someone else to the company to enable it to make that disposition. Nor can Section 127 retrospectively countermand the instructions given to the bank as the company's agent to make payment of the company's monies to the third party; it merely denudes the payment by the company, as a disposition of the company's money to the payee, of legal effect, entitling the company to obtain recoupment from the payee. It avoids the disposition of the company's money as between the company and the payee; but there is no disposition of the company's money by the company to the bank. As between the company and the bank the money was validly borrowed and paid by the company to the payee.

23. Before setting out principles, a survey of various case laws including **Gray's Inn** reported in **[1980] 1 WLR 711**, which was referred to by Hon'ble Division Bench of this Court in **VGP Finance case** (supra) and three Commonwealth authorities was made and an adumbration of principles underlying Section 127 in England Insolvency Law has been set out in paragraph 6 and this Court deems it appropriate to extract

/reproduce entire paragraph 6 of **Coutts & amp; Co** , which reads as follows:

'6. The following are the principles which would be expected to operate in a case where Section 127 applies: (1) the invalidation of dispositions of a company's assets after the date of presentation of a winding up petition is part of the statutory scheme designed to prevent the directors of a company, when liquidation is imminent, from disposing of the company's assets to the prejudice of its creditors and to preserve those assets for the benefit of the general body of creditors. It does not accordingly bite when the disposition can have no impact on the creditors e.g. in case of dispositions by receivers appointed under charges of the company's property or by the company where it holds legal title to property as bare trustee or subject to a specifically enforceable obligation to convey the property to a third party. (2) the retrospective invalidation effected by Section 127 does not change what happened between the date of the petition and the date of the winding up order: it merely denudes any disposition of the company's property during that period of legal effect; (3) the invalidation is limited to dispositions of property: (a) the section does not invalidate a company's assumption of liabilities. The section in no way precludes a company incurring or continuing to incur liabilities (e.g. for rates, electricity or the services of employees) nor does it invalidate liabilities so incurred. An increase in a company's overdraft over the period between

presentation of the petition and the making of the order for winding up is accordingly outside the ambit of Section 127; (b) nor does Section 127 have any impact on the company's use, consumption or exhaustion of its assets. Thus though an agreed overdraft limit has been held to be "property" which can be the subject of theft by presentation of forged cheques (see R v. Kohn (1979) Cr App R 395), it must be clear that (notwithstanding the contrary view expressed by Professor Goode in Principles of Corporate Insolvency Law at p.432) the use and indeed partial or total exhaustion of that overdraft limit by the company cannot constitute a disposition within Section 127; (4) presentation of the winding up petition has no impact on the powers of the directors of the company, the authority of the company's agents or the powers of disposition of the company. In particular the presentation does not invalidate the mandate of the company's bank to honour the cheques of the company. The subsequent winding up order accordingly does not invalidate the loan made by the bank to the company constituted by honouring cheques drawn on the company's overdrawn account; (5) if (contrary to my view) the acts of the bank of honouring cheques drawn on a company's overdrawn account constitute payments by the bank (by way of loan to the company) of its own monies to the party in whose favour the cheques are drawn, the transaction is outside Section 127, for there is no disposition of the company's property: the disposition is of the bank's property and the increase in the company's overdraft itself does not constitute a disposition within Section 127: see (3) above. (This is the analysis by Professor

Goode at pp. 429-431). The 28-08-2020 (Page 3 of 8) www.manupatra.com Bhaskar T K liquidator of the company can accordingly make no recovery from the payee nor can he challenge the state of the overdrawn account of the bank reflecting the payments drawn on the company's overdrawn account; (6) on principle however the acts of the bank in honouring cheques drawn on a company's overdrawn account constitute (i) loans of the sums in question by the bank to the company and (ii) payment by the bank as agent of the company of the sums loaned as monies of the company to the party in whose favour the cheques are drawn. On this analysis, the loan by the bank to the company is not a disposition of the company's money (it is a disposition of the bank's money to the company) and is therefore outside Section 127; but the payment by the bank as agent for the company of the company's money does constitute a disposition to the payee by the company within Section 127 and is recoverable by the liquidator from the payee. (This analysis accords with the view expressed by Millett J. in Agip (Africa) Ltd v. Jackson [1990] Ch 265 at 283 and 292 A-B).'

24. If the above said principles are applied, it is clear as daylight that disposition, if any, is only by the other secured creditors, namely three Banks (Respondents 3 to 5) and not said Company. This puts an end to the disposition and argument predicated and posited on Section 536(2) of said Act.

25. This takes us to the next submission which turns on the bonafides qua conduct of the applicant in moving the present application. Though several submissions were made by learned counsel for ARC on this aspect of the matter, it will suffice to advert to one aspect which turns on suppression and eleventh hour attempt. It was argued by learned counsel for ARC that the applicant, was well aware of the assignments at least four years ago, but has chosen to come before this Court only in 2020 (13.02.2020 to be precise, being the date on which C.A.No.79 of 2020 was filed). In this regard, in the counter affidavit of ARC, (more particularly paragraphs 4.3 to 4.5) there is a reference to C.A.No.887 of 2016 which was for substitution, a hearing of the same on 17.08.2016 and there is also a reference that applicant's spouse undertook that he would settle the creditors. The applicant has chosen to file a rejoinder affidavit dated 06.08.2020. Other than a bald denial of Paragraph 4.3 to 4.5 of Counter Affidavit of ARC, there is no assertion much less an emphatic assertion that the applicant was not aware of the assignments. On the contrary, there is an assertion about C.A.No.887 of 2016 for substitution. This is contained in Paragraph 8 of the rejoinder, which reads as follows:

'8. Furthermore, I state that the averments made by the 2nd respondent at paragraphs 4.3 to 4.5 of the Counter is false and therefore denied. In this aspect it is relevant to note that the question of validity of the said Assignment Deeds is currently pending adjudication before the Hon'ble Court in C.A.No.887 of 2016.'

26. More importantly, though it was open to the applicant to say that knowledge of her spouse cannot be put against her, the applicant has specifically mentioned about application taken out by her spouse being C.A.No.1035 of 2014 . This is contained in Paragraph 11 of the rejoinder, which reads as follows:

'11.Furthermore I state that the averments of the 2nd Respondent at Paragraph 4.7 of the counter are false and therefore denied. It is relevant to note that the 2nd Respondent has stated that the Applicant herein, had not disclosed the proceedings in C.A.No.1035 of 2014 filed by the Applicant's husband, Mr.A.L.Ramachandra. In this respect, I humbly submit that the proceedings in C.A.No.1035 of 2014 was "reserved for orders in 2014, but the order was pronounced only on 30.09.2019 and that too, not in the open court. Thus the Applicant herein, had no knowledge of the said Order dated 30.09.2019 in C.A.No.1035 of 2014 until it was brought on record by the 2nd Respondent in the present

proceedings. The question of suppressing the said order dated 30.09.2019 therefore, does not arise.'

27. Even though the applicant affirms that she was not aware of the order dated 30.09.2019 until it was brought on record by ARC in the present proceedings, it is clear from the rejoinder that the applicant was aware of C.A.No.1035 of 2014 filed by her spouse. Under these circumstances, this Court is of the considered view that the captioned applications are clearly eleventh hour efforts.

28. This takes us to the next argument which turns on whether the Company Court has powers to set aside the impugned assignments. A perusal of the judge's summons reveals that C.A.No.79 of 2020 has been filed invoking Rule 9, 11(B) and 19 of the Company (Court) Rules, 1959 read with Order XIV Rule 8 of Original Side Rules of this Court. No elaboration is required to say that these Rules are mere procedural or omnibus provisions and Order XIV Rule 8 of O.S.Rules clearly does not help the case of the applicant. However, what is of importance is there is no other provision which has been pointed out with specificity. If that had been done, the scenario may well have been different as that would tantamount to merely quoting the wrong provision or not quoting

the provision of law with specificity when the Company Court otherwise has powers. Be that as it may, as this Court is taking the view that order dated 13.12.2018 (alluded to supra) made by this Court in C.A.No.69 of 2018 pertaining to handing over of possession to ARC has attained finality and has been acted upon, the question regarding powers of Company Court setting aside the assignments of the nature of impugned assignments is left open to be tested in a case where it is imperative for deciding the proceedings.

29. With regard to respondents in captioned applications, though all respondents had been served, two counsel were before me. One was Mr.P.V.Balasubramaniam for 17th respondent. This Court is informed that 17th respondent is purchaser of some items of properties from ARC. It is not necessary to dilate into those facts. Suffice to say that learned counsel representing Mr.N.Chinnaraj, counsel on record for 17th respondent submitted that Section 37 (2) of the SARFEASI Act would apply. Learned counsel laid emphasis on constructive trusteeship argument which was advanced by learned counsel for ARC also in

response to the argument of learned counsel for applicant that ARC may well be able to realise much more than what is due to the assignors.

30. The other counsel is Ms.Jayalakshmi for the 16th respondent . For the sake of convenience 16th respondent can be taken as workmen. The order dated 13.12.2018 made in C.A.No.69 of 2018 under which ARC took possession makes adequate safeguards to the employees/workers as there is a direction that amounts payable to employees/workmen should be deposited with the OL from and out of the sale proceeds.

31. This takes us to the next point which turns on the undertaking given by ARC vide order dated 13.12.2018 in Company Application No.69 of 2018. This order has already been extracted and re-produced supra. A perusal of this order reveals that ARC had undertaken that they will keep the OL informed at every stage of the sale besides agreeing that the secured creditors are entitled to recover money remitted to OL towards expenses on proportionate basis.

32. In the case on hand, OL has filed a report dated 09.03.2020 wherein it is averred that ARC has failed to intimate every stage of the

sale of the property qua said company as per the undertaking. It is rather strange that OL is taking this stand in an application taken out by Ex-Chairman without acting on his own. However, what is of significance is, ARC has filed objections to this report of OL being objections dated 12.08.2020. In this objections, ARC has *inter alia* contended that it kept the OL informed of actions under SARFAESI Act as well as adhering to its obligations under Section 39 of SARFAESI Act besides Section 529 of said Act. Be that as it may, this averment of OL and counter assertion of ARC turn heavily on facts. This comes out clearly on a perusal of report of OL dated 09.03.2020 and objections of ARC dated 12.08.2020. As this turns on facts, it may be inappropriate to venture into deciding this question on affidavits and counter affidavits, that too, in captioned applications taken out by ex-chairman of said Company. If an undertaking given to this Court has been breached and that is the case of the OL, it is a separate cause of action that accrues in favour of the OL. It is made clear that it is open to the OL to pursue this course of action and this order will not become an impediment or come in the way if OL chooses to do so. To be noted, this Court has already taken the view that ex-chairman could be treated as an informant. Therefore, as a matter of

judicial discipline and as a matter of good order, this Court refrains itself from venturing to deciding this question in captioned applications as undertaking of ARC has been recorded in an order made by another Hon'ble single Judge. This Court deems it appropriate to preserve the rights of OL in this regard *inter alia* by making it clear that this order will not impede or come in the way if OL chooses to kick start suitable action in this regard.

33. Owing to the disputation regarding ARC not keeping the OL informed about the sale much less every stage of the sale, this Court wanted to know what is the date (date with exactitude) on which OL gained knowledge about the sale. To this, learned Deputy OL, who was before this Court in the hearing representing the OL, submitted that the exact date is 25.09.2019 when the OL was served with a letter of even date (25.09.2019) from ARC regarding sale of properties/secured assets. A scanned copy of 25.09.2019 letter (together with schedule) is as follows:

25

JM FINANCIAL
September 25, 2019

IMFARDWAFY20190004

The Official Liquidator
Attached to the Honble High Court, Madras
Office of the Official Liquidator
Corporate Bhawan, 2nd Floor
No.29, Rajaji Salai,
Chennai-600 001

Ref: Sale of Properties - VTX Industries Ltd (in Liquidation) under the provisions of SARFAESI Act, 2002.

Sub: Workmen dues and Liquidation cost under section 529-A of Companies Act, 1956 (Section 326 of Companies Act, 2013).

Sir,

We write to you regarding the captioned matter. Pursuant to the public auction of the immovable properties of M/s. VTX Industries Limited, conducted by JM Financial Asset Reconstruction Co. Ltd. (formerly JM Financial Asset Reconstruction Co. Pvt. Ltd.) ("JM FARC") held on September 14, 2019, two immovable properties as more particularly described in the Schedule - I herein ("Scheduled Properties") were sold for a total consideration of Rs. 9,85,00,000/- (Rupees Nine Crore Eighty Five Lakhs only) including the TDS amount. The aforesaid amount has been received by IMFARD on September 26, 2019. We would request you to share with us the order of "Workmen dues" in terms of the first proviso to section 13 (b) of SARFAESI Act 2002 read with section 529 - A of the Companies Act 1956 (Section 326 of Companies Act, 2013). The said workmen dues shall be paid in proportion to the sale consideration received by us.


Authorized Officer
JM Financial Asset Reconstruction Company Limited


सत्यमेव जयते

Page 1 of 3

JM Financial Asset Reconstruction Company Limited
(Formerly known as JM Financial Asset Reconstruction Company Private Limited)
Corporate Identity Number: U27100WB2007PLC174233
20/1A, 4th Floor, Naraina Complex, Naraina, New Delhi-110028

WEB COPY

2

JM FINANCIAL

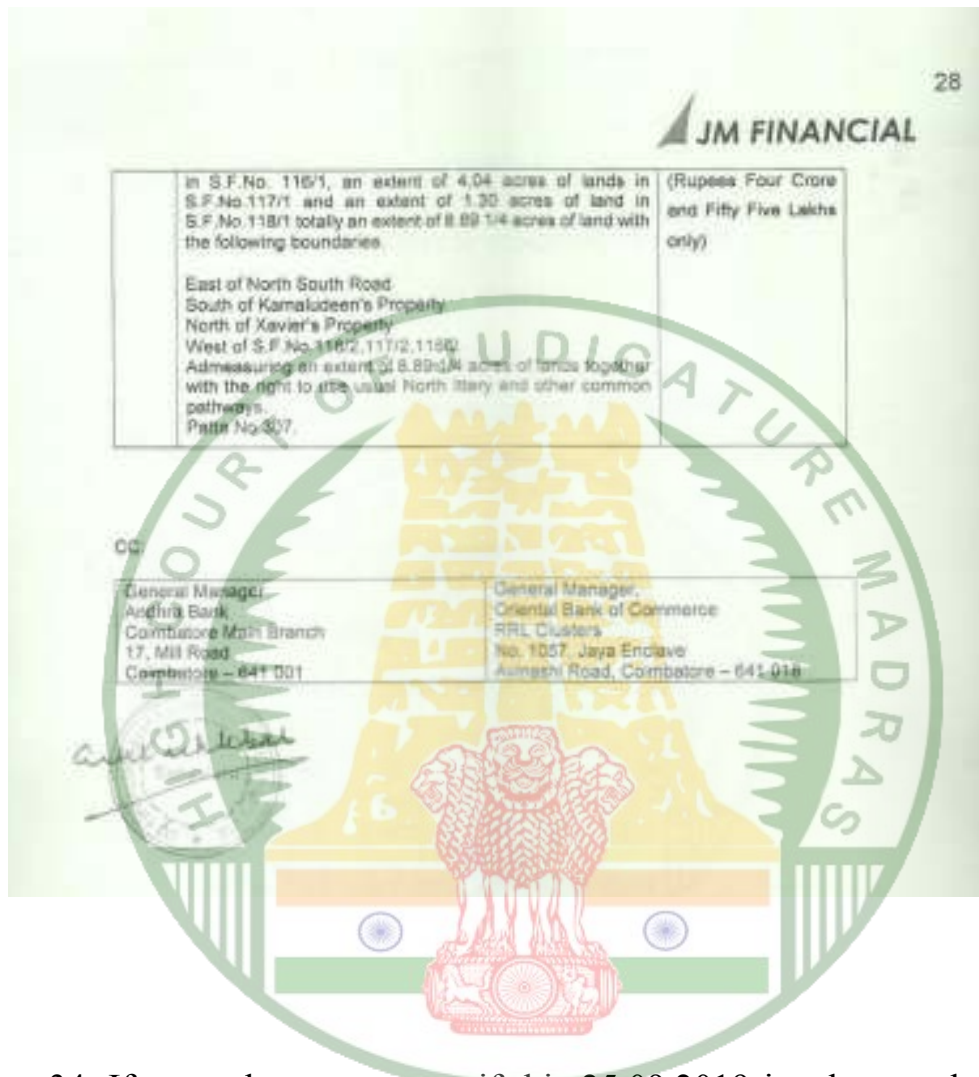
SCHEDULE - I

S.No.	Property Description	Selling Price
1.	Total extent of land of 2.50 Acres at S.F. No. 191/1 & 193/1B, Patta no. 1103 & 1850 Near K Rajagopal Nagar Kuniyamuthur Village, Coimbatore Taluk under Coimbatore Corporation 641 008 Item No. 1 S.F. No. 193/1B (34 Cents 326 Sq Ft Land) Bounded as: North: Remaining Lands in SF No. 193/1B belonging to Mr. R. Gopinath South: SF No. 202/2 land belonging to Smt. R. Mani East: Lands in SF 193/1B belonging to Vijayeshwari Textiles Ltd. West: Remaining Lands in SF No. 191/1 and 192/2 belonging to Mr. R. Gopinath Item No. 2 S.F. No. 191/1 (48 cents 342 Sq Ft Land) Bounded as: North: Remaining Lands in SF No. 191/1 belonging to Mr. R. Gopinath South: SF No. 203 East: Lands in SF 202/2 belonging to Smt. R. Mani West: Kuniya Tank in SF No. 205 Total 83 Cents 232 sq ft. Item No. 3 S.F. No. 193/1B - 83 Cents 150 Sq Ft Bounded as: North: K. Rajagopal Nagar Layout South: SF No. 202/2 land belonging to Smt. R. Mani East: Lands in SF No. 193/1B belonging to Vijayeshwari Textiles Ltd. West: Remaining Lands in SF 193/1B belonging to Mr. R. Gopinath Item No. 4 S.F. No. 193/1B - 83 Cents 144 Sq Ft Bounded as: North: K. Rajagopal Nagar Layout South: SF No. 202/2 land belonging to Smt. R. Mani East: SF No. 202/2 land belonging to Smt. R. Mani West: Remaining Land in SF 193/1B belonging to Mr. R. Gopinath Therefore, Total area 250 Cents 49 Sq Ft or 2.50 acres less 14 cents of land which is being used as a road	Rs. 5,30,00,000/- (Rupees Five Crore Thirty Lakhs only)
2.	Land at Tirupur Registration District Kintakudi Sub-Registration District, Coimbatore South taluk No. 47, Orattukuppall Village, an extent of 3.55 1/4 acres of lands	Rs. 4,55,00,000/-

सत्यमेव जयते

WEB COPY

Page 2 of 3



34. If, on a demurrer, even if this 25.09.2019 is taken as the date of knowledge of sale qua OL, there is no explanation whatsoever about the OL not taking any steps regarding alleged breach of undertaking given by ARC and recorded in 13.12.2018 order made in C.A.No.69 of 2018 until now. The only explanation is, captioned C.A.No.79 of 2020 had been filed by Ex-Chairman and therefore, OL chose to file its report on 09.03.2020 in instant applications.

35. In the considered view of this Court, this is hardly convincing owing to two reasons. One reason is, captioned C.A.No.79 of 2020 was filed only on 13.02.2020. Therefore, even if 25.09.2019 is taken as the date of knowledge of sale notice of ARC, OL has done nothing for the next five months. The second reason is, even thereafter, nothing has stopped the OL from initiating appropriate steps if there is a breach (as alleged) of the undertaking given vide 13.12.2018 order in C.A.No.69 of 2018.

36. Major points and counter points made in captioned applications, which are imperative have been set out, discussions and dispositive reasoning have also been given from which it becomes clear that this Court finds for ARC in so far as captioned applications are concerned albeit preserving the rights of OL in the manner set out supra.

37. In the light of Company Application No.79 of 2020 and Company Application No.140 of 2020 being dovetailed in the manner delineated supra, as this Court is disinclined to set aside three assignment deeds, it follows as sequitur that Company Application No.140 of 2020 would also fail.

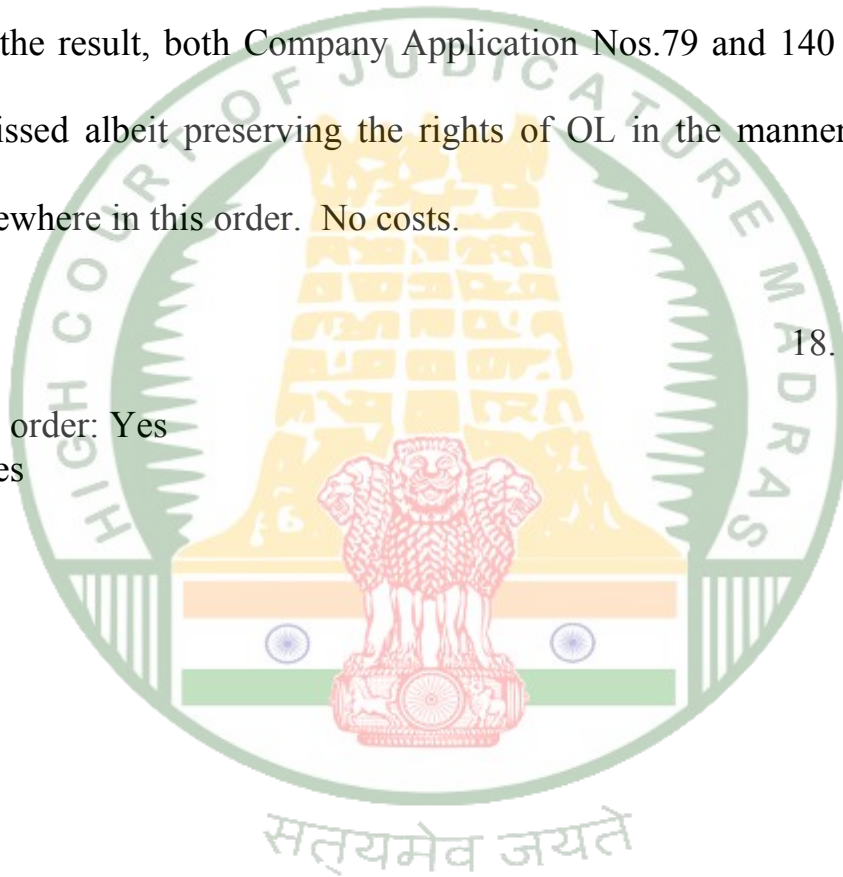
38. Before parting with this matter, it is made clear that one factor that has weighed heavily in the mind of this Court is order dated 13.12.2018 in C.A.No.69 of 2018 made by another Hon'ble single Judge. Though this order pertains to handing over possession of the secured assets by OL to ARC, handing over of the possession of secured assets was clearly pursuant to the impugned assignments. Therefore, the impugned assignments have been impliedly endorsed by the order made by another learned Hon'ble single Judge. Furthermore, the issue now turns on breach of undertaking given vide this order dated 13.12.2018 and this Court is of the view that the same has to be dealt with in appropriate proceedings, if initiated and this is also a matter of judicial discipline. While on this, this Court also deems it appropriate to record one submission turning on the plea for public auction. Answer of ARC to this plea for public auction was predicated on Rules 8(5) and 8(8) of SARFAESI Rules being 'The Security Interest (Enforcement) Rules, 2002. On the one hand ARC has taken the position that it stands out side winding up proceedings and would recover dues by resorting to SARFAESI Act. ARC on its own volition has given an undertaking that it will keep the OL informed at every stage of sale. To be noted, this

order has been acted upon and possession has been handed over. This question is also left open if the OL chooses to initiate suitable proceedings.

In the result, both Company Application Nos.79 and 140 of 2020 are dismissed albeit preserving the rights of OL in the manner set out supra elsewhere in this order. No costs.

18.09.2020

Speaking order: Yes
Index: Yes
gpa

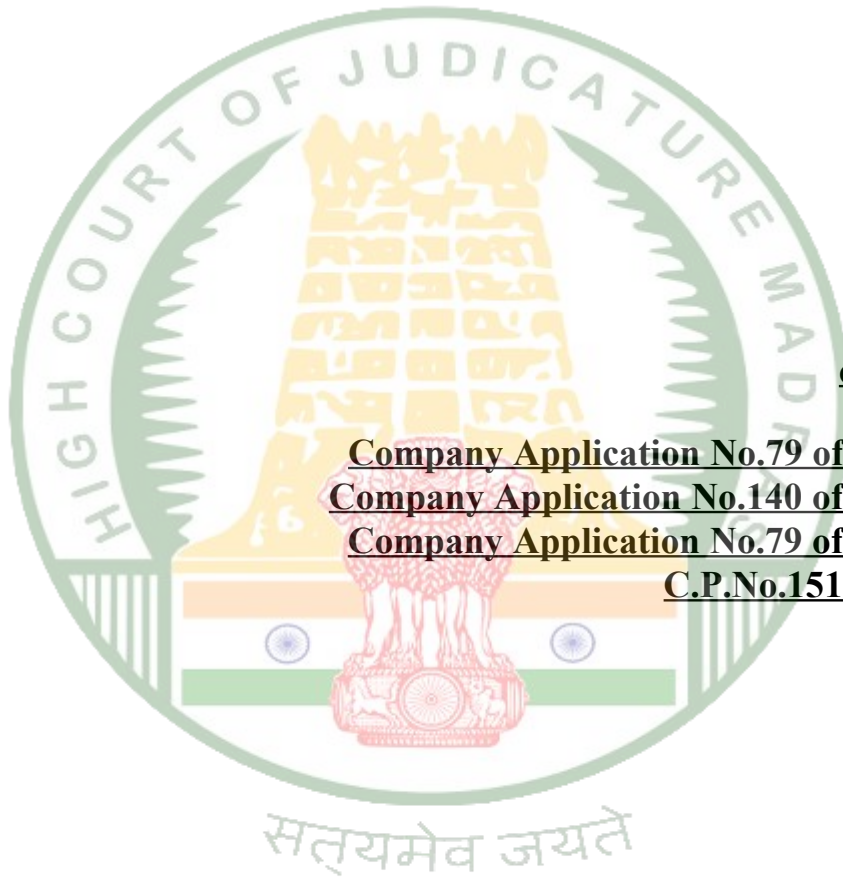


WEB COPY

Company Application No.79 of 2020 &
Company Application No.140 of 2020 in
C.P.No.151 of 2013

M.SUNDAR.J.,

gpa



order in

**Company Application No.79 of 2020 &
Company Application No.140 of 2020 in
Company Application No.79 of 2020 in
C.P.No.151 of 2013**

WEB COPY

18.09.2020