

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

O.S.A.No.296 of 2020

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

Appellant

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 Authorised Officer
JM Financial Asset Reconstruction Company Limited
Register Office 7th Floor
Energy, 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.

6. Andhra Bank
Main Branch
No.17, Mill Road
Coimbatore - 641 001.
7. 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. Indian Renewable Energy
Development Agency Limited
Core & # 126, 4A, East Court
1st Floor, India Babital Centre
Lodi Road, New Delhi - 110 003.
- 10.CITI 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.S.E.Industries Limited
4 & 126, 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 Sagam
(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 Ltd.
Registered Office at No.99/20D
Chettipalayam Road
Easwar Nagar (Bus Stand)
Podanur, Coimbatore - 641 023.

.... Respondents

Prayer: Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 18.9.2020 passed in Company Application No.79 of 2020 in Company Petition No.151 of 2013.

Company Application No.79 of 2020 in
Company Petition No.151 of 2013:

Prayer: It is prayed that this Hon'ble Court may be pleased 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 in respect of the Schedule Mentioned property.

For Appellant : Mr.Om Prakash
Senior Counsel
for M/s.Ramalingam &
Associates

For Respondents : Mr.Bavisetty Sridhar
Deputy Official Liquidator
for 1st respondent

Mr.Srinath Sridevan
for 2nd respondent

Mr.P.V.Balasubramaniam
for 17th respondent

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appeal is directed against a rather elaborate order of September 18, 2020 passed on several company applications, primarily brought by the former chairperson of a company in liquidation.

2. There is no dispute that company VTX Industries Limited went into liquidation in 2014 pursuant to an order of this Court. The Official Liquidator attached to this Court was directed to take possession of the company and its assets and it appears that the Official Liquidator took possession of the registered office and factory premises of the company in liquidation by or about August 7, 2015.

3. The company in liquidation had obtained credit facilities from several banks and financial institutions prior to its liquidation. Some of such secured creditors of the company in liquidation transferred their securities and the debts due from the company in liquidation to the asset reconstruction company which is arrayed as the second respondent in the present appeal. Divers steps were taken by or at the behest of the contributories of the company in liquidation to thwart the secured creditors realising their dues. Even a writ petition is pending in this Court challenging the sales conducted by the second respondent herein. The writ petition has been filed by the present appellant.

4. In the detailed judgment impugned herein, the initial consideration was as to the locus of the appellant herein to complain of the matters pertaining to the company in liquidation. The issue was answered substantially against the appellant, particularly since the Official Liquidator had stepped in to take control over the company and its assets and all matters pertaining thereto. In the scheme of things as they stood under the Companies Act, 1956, the Official Liquidator became the custodia legis and all rights qua the company had to be exercised by or in the name of the Official Liquidator. In such a scenario, the chairman or the erstwhile chairman of the company in liquidation could brandish the former designation in a decorative visiting card, but it would be of little practical use in a court of law. Indeed, a former director of a company or even its chairperson may only assert such rights as are available to a contributory as an erstwhile shareholder of the company in liquidation becomes upon the company going into

liquidation.

5. On the more practical side, given the huge debts of the company in liquidation in the present case and where the secured creditors of the company in liquidation may not be able to realise the entire quantum of their dues, there would be little or nothing left over down the line to hand over to the contributories of the company after meeting the debts of the other persons who stand ahead of the shareholders in the order of preference. Thus, the element of financial prejudice suffered by the appellant in this case has to be regarded as remote almost to the vanishing point.

6. The second aspect of the matter was that if the law as it stands does not give the shareholder of a company the right to proceed against a secured creditor of the company as a person aggrieved, a contributory of a company in liquidation would have almost no right. It is for the Official Liquidator of the company in liquidation to protect the interest of all secured and other creditors and of the contributories of the company in liquidation. At the highest, a contributory could approach the Company Court with a request to direct the Official Liquidator to challenge anything perceived to be wrong after, prima facie, establishing that there was something remiss.

7. There are several creditors of the company in liquidation, including secured creditors whose assets may not have been assigned to the second respondent herein. Such secured creditors and other creditors of the company in liquidation have more at stake in the company in liquidation than the appellant herein and such persons could also have approached the Company Court and sought a direction on the Official Liquidator to pursue proceedings against the second respondent herein. In the absence of any steps being taken by such other persons, who had a much higher stake in the company in liquidation than the appellant herein, the appellant's approach has to be seen to be on rather infirm grounds.

8. It appears that a further grievance of the appellant was that an undertaking had earlier been furnished by the second respondent herein to the Company Court to keep the Official Liquidator abreast of all that was happening pertaining to the measures taken by the second respondent under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The grievance aired by the appellant before the Company Court was that notwithstanding such undertaking, the Official Liquidator had been kept in the dark. It further appears that the Official

Liquidator attempted to add fuel to the fire by indicating that the Official Liquidator may have not been kept in the loop, so to say, by the second respondent herein. However, the Company Court took a serious view of the matter, particularly since an undertaking had been furnished and there was no independent grievance by the Official Liquidator of such undertaking having been breached. The Company Judge appropriately perceived that in the rather weak action of the appellant herein, the Company Court should not take cognisance of the Official Liquidator's statement that the Official Liquidator may not have been kept informed at every stage by the second respondent herein. The Official Liquidator was permitted to bring an independent action against the second respondent if the Official Liquidator perceived that the second respondent had breached the undertaking furnished to the Court. It does not appear that the Official Liquidator has carried a complaint in such regard to the Company Court.

9. The other aspect of the matter that the appellant emphasises on is the perceived undervalued sales apparently conducted by the second respondent. Such matters can scarcely be gone into at the behest of the appellant and the remote or imaginary financial stake that the appellant has in matters of such kind. There is an Official Liquidator in place who ought to be following how the assets of the company are being dealt with by the second respondent, albeit the second respondent standing outside liquidation. There may be other secured creditors whose interests run *pari passu* with the security interest assigned to the second respondent that the Official Liquidator must necessarily protect. There is no doubt that if the Official Liquidator perceived that the second respondent was upto some games or the second respondent was compromising the interest of the company or selling its assets cheap to the detriment of the other creditors, whether secured or not, the Official Liquidator would have jumped into the fray. The Official Liquidator, however, does not seem to have reacted.

10. The Company Judge has referred to the applicable law, has traversed the entire gamut of the grievances aired by the appellant herein and has arrived at the conclusion that the exercise was in futility. Since relevant considerations have been taken into account and the very locus of the appellant was called into question, the matters appear to have been appropriately dealt with in the judgment and order impugned herein.

For the reasons aforesaid, the judgment and order impugned do not call for any interference. O.S.A.No.296 of 2020 is

dismissed. As a consequence, the completely unreasoned ad-interim protection given at the receiving stage of the appeal stands vacated with immediate effect. There will be no order as to costs. Consequently, C.M.P.No.14145 of 2020 is closed.

*Xerox copy of the Schedule of Property Enclosed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

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 Sub-Assistant Registrar,
Original Side,
High Court, Madras.

+2cc to M/s.Ramalingam & Associates, Advocate SR.6143
+1cc to M/s.Srinath Sridevan, Advocate SR.5996

O.S.A.No.296 of 2020

SR II(CO)
CB(29/03/2021)
CB(20/04/2021)

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