



Comp.A.Nos.32 of 2022, 139 and 140 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	16.11.2022
Order pronounced on	23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Comp.A.No.32 of 2022
in
Comp.A.Nos.1106 of 2016
in
Company Petition Nos.502 of 2015
and
Company Application Nos.139 and 140 of 2021
in
Company Petition No.239 of 2001

Company A.No.32 of 2022

Ramco Super Leathers Ltd.,
Sethu House,
No.28, Dr.Alagappa Road,
Chennai – 600 084.

... Applicant / Applicant / Respondent

Vs.

1.Industrial Investment Bank of India Ltd.,
(under member's voluntary winding up),



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Represented by its Liquidator,
No.19, Netaji Subhas Road,
Kolkata – 700 001.

... Respondents / Respondent/ Petitioner

2.Phoenix ARC Pvt. Ltd.,
158, 5th Floor, Dani Corporate Park,
CST Road, MMRDA Area, Kalina,
Santacruz East, Mumbai – 400 098.

... 2nd Respondent / Applicant in CA.829 of 2017

PRAYER : This Application is filed to permit the applicant company to sell its schedule mentioned item 1 to 3 properties in favour of Mr.Narayanan and his associates or his nominees M/s.R.Narayanan Infracon Pvt. Ltd., and his associates or his nominees, M.Sohanraj and his associates or his nominees and permit to made over 4th item schedule mentioned property in favour of Rukmani Narayanan or her nominee.

For Applicant	: Mr.P.S.Raman Senior Counsel for M/s.P.Krishnan
For Respondents	: Mr.Pamathri Sridhar Official Liquidator for R1 Mr.H.Karthik Seshadri for M/s. Iyer and Thomas for R2



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Company A.Nos.139 and 140 of 2021

Assets Reconstruction Company (India) Ltd.,
Represented by its Power of Attorney holder
Mrs.Manjula Balaji,
The Ruby, 10th Floor 29,
Senapati Bapat Marg Dadar (W),
Mumbai – 400 028.

... Applicant

Vs.

1.M/s.RSL Industries Ltd.,
“Sethu House”
28, Alagappa Road,
Chennai – 600 084.

... 1st Respondent / Petitioner

2.M/s.Ramco Super Leathers Ltd.,
(In Prov. Liquidation)
O/o. Official Liquidator,
Madras High Court,
Corporate Bhavan,
Rajaji Salai, Chennai – 600 001.

3.M/s.RSL Textiles (India) Ltd.,
“Sethu House”,
28, Alagappa Road,
Chennai – 600 084.

4.Phoenix ARC Pvt. Ltd.,
158, 5th Floor, Dani Corporate Park,
CST Road, MMRDA Area, Kalina,
Santacruz East, Mumbai – 400 098.



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- 5.Kotak Mahindra Bank Ltd.,
Branch at 1st Floor, Ceebros Centre,
39 Montieth Road, Egmore,
Chennai – 600 008.
- 6.Pridhvi ARC Limited,
having its registered office at
No.123/3RT, 1st Floor,
Sanjeeva Reddy Nagar,
Hyderabad – 500 082.
- 7.State Bank of Mauritius Ltd.,
Prince Arcade, No.22-A, Cathedral Road,
Chennai – 600 086.
- 8.ICICI Bank Ltd.,
No.1, Cenotaph Road,
Chennai – 600 018.
- 9.Corporation Bank Ltd.,
No.101, (Old No.49),
Armenian Street, George Town,
Chennai – 600 001.
- 10.State Bank of Travancore,
No.162, Anna Salai,
Chennai – 600 002.
- 11.IDBI Bank Ltd.,
No.115, Anna Salai,
Saidapet, Chennai – 600 015.
- 12.Registrar of Companies,
Office off the Registrar of Companies,
Shastri Bhavan, 2nd Floor,



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26, Haddows Road, Chennai – 600 006.

13. Regional Director,
Southern Region,
Department of Companies Affairs,
5th Floor, Shastri Bhavan,
26, Haddows Road,
Chennai – 600 006.

14. The Liquidator Industrial Investment Bank
of India,
(under members voluntary winding up),
19, Netaji Subhas Road,
Kolkata – 700 001.

... Respondents 2 to 14

PRAYER in Comp.A.No.139 of 2021: This Application is filed under Order XIV rule 8 of O.S. rules r/w section 9, 11B of the Companies (Court) Rules, 1959, praying to:-

(a) This Application should not be treated as urgent ?

(b) This Hon'ble Court be not pleased to direct the respondents 1 to 5 to file an affidavit before this Hon'ble Court on various steps taken by them pursuant to order dated 29.01.2003 in CP.No.239 to 242 of 2001 and also disclose the list of assets already sold/auctioned/alienated and details of consideration if any received and manner in which the sale proceeds were distributed.



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PRAYER in Comp.A.No.140 of 2021: This Application is filed under Order XIV rule 8 of O.S. rules r/w section 9, 11B of the Companies (Court) Rules, 1959, praying to:-

(a) This Application should not be treated as urgent ?

(b) This Hon'ble Court be not pleased to pass an order of injunction restraining respondents 1 to 5 from in any manner alienating the assets more fully described in Schedule owned by the first respondent.

For Applicant : Mr.KM.Aasim Shehzad
(in both Company Applications)

For Respondents : Mr.P.S.Raman, Senior Counsel
for Mr.P.Krishnan
for R1 and R3

Mr.H.Karthik Seshadri
for M/s. Iyer and Thomas for R4 and R5

Mr.K.Ramanamoorthy for R12

M/s.Shivakumar and Suresh for R14
(in both Company Applications)

COMMON ORDER



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C.A.No.32 of 2022 was filed by Ramco Super Leathers Limited for permission to sell the immovable assets described in the schedule to the Judge's summons. C.A.Nos.139 and 140 of 2021 were filed by the Asset Reconstruction Company of India Limited (ARCIL). By these applications, ARCIL seeks disclosure of the assets previously alienated by respondents 1 to 5 and to restrain the said respondents from alienating the assets described in the schedule to the Judge's summons.

Background

2. On 27.08.1976, a company under the name and style of Ramco Super Leathers Limited (the Original Ramco Super Leathers) was incorporated. On or about 17.02.1995, the Original Ramco Super Leathers and George Bird Textiles Limited were amalgamated. The name of the resulting entity was changed to RSL Industries Limited (RSL Industries) on 21.03.1995. M/s.Vijayalakshmi Mills was merged with RSL Industries on 07.10.1997. On or about 19.06.1998, Ramco Super Leathers Private Limited was promoted and incorporated by the promoters of RSL Industries. The



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name of Ramco Super Leathers Private Limited was changed to Ramco Super Leathers Limited (the New Ramco Super Leathers) on or about 13.08.2001.

3. The Board of Directors of RSL Industries and RSL Textiles (India) Limited (RSL Textiles) approved of a scheme of arrangement (the Demerger Scheme) by which the textile division of RSL Industries would be demerged and merged with RSL Textiles. In order to obtain sanction for the Demerger Scheme, C.P.Nos.239 and 240 of 2001 were filed by the above mentioned entities. The said scheme of arrangement specified 01.10.2000 as the appointed date.

4. Similarly, the Board of Directors of RSL Industries and the New Ramco Super Leathers approved of a scheme of amalgamation(the Merger Scheme) whereby the assets of liabilities of RSL Industries would be transferred to and vested in the New Ramco Super Leathers and, as a consequence, RSL Industries would be dissolved without the process of winding up. The appointed date for this amalgamation was 01.01.2001. In order to obtain sanction for the Merger Scheme, the above mentioned

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companies filed C.P.Nos.241 and 242 of 2001.

5. Initially, by order dated 06.12.2001, both the Demerger and Merger Schemes (collectively, the Schemes) were sanctioned by this Court. Thereafter, on applications filed by various secured creditors of these companies (the SBI-led consortium), by order dated 29.01.2003, the earlier order sanctioning the Schemes was made subject to the approval of secured creditors. On appeal, by judgment dated 17.08.2009 in O.S.A.Nos.55 to 68 of 2003, the modified order dated 29.01.2003 was affirmed. It should be noticed that another set of lenders (the Canara Bank-led consortium) did not oppose the Schemes. SBI assigned the debt due to it from RSL Industries to ARCIL by Assignment Agreement dated 31.03.2006 and Canara Bank assigned the debt due to it from the New Ramco Super Leathers to Phoenix ARC Private Limited (Phoenix ARC) by Assignment Agreement dated 24.06.2014, both the assignees being asset reconstruction companies.

6. Later, the Industrial Investment Bank of India (IIBI) filed C.P.No.502 of 2015 against the New Ramco Super Leathers on the ground of inability to pay undisputed debts. By order dated 02.03.2016, the Official

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Liquidator was appointed as the Provisional Liquidator of the New Ramco Super Leathers. By a subsequent order dated 27.03.2018, the earlier order was modified and the appointment of the Official Liquidator as Provisional Liquidator was kept in abeyance. In addition, this Court permitted the promoters of the New Ramco Super Leathers to retain physical possession of the assets on condition that symbolic possession shall be with the Official Liquidator. The said order continues to remain in force as on date. The present applications have been filed by the New Ramco Super Leathers and the assignee of one of the creditors of RSL Industries, ARCIL, in the above facts and circumstances.

The Counsel and their contentions

7. Oral arguments on behalf of the New Ramco Super Leathers were advanced by Mr.P.S.Raman, learned senior counsel; on behalf of ARCIL by Mr.KM.Aasim Shehzad, learned counsel; on behalf of Phoenix ARC by Mr.H.Karthik Seshadri, learned counsel; on behalf of the Liquidator, IIBI, by Mr.Suresh, learned counsel, M/s.Shivakumar and Suresh; and by Mr.Pamarthi Sridhar, Official Liquidator.



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8. Mr.Aasim Shehzad, learned counsel for ARCIL, opened his submissions by stating that the State Bank of India (SBI) extended loans to RSL Industries. Although RSL Industries filed C.P.No.239 of 2001 and C.P.No.241 of 2001 in respect of the Demerger Scheme and Merger Scheme, respectively, the Schemes did not come into effect on account of not obtaining the consent of secured creditors such as SBI. In this connection, he referred to the order dated 29.01.2003 of the learned single Judge in the applications filed by various secured creditors and to the judgment of the Division Bench of this Court dated 17.08.2009. Since the Demerger Scheme and Merger Scheme did not take effect, learned counsel contended that RSL Industries continues to exist and consists of both the textile and leather divisions and the assets relating thereto.

9. In order to establish that ARCIL is a secured creditor of RSL Industries, he referred to the loan agreement dated 06.02.1998 between RSL Industries and SBI, Hong Kong Branch, in connection with a loan of US\$ 7 million. He also referred to the Form 8 filed by RSL Industries by which a

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second charge on the fixed assets of the textile division of the company was created. By referring to the Memorandum of Entry dated 31.05.1999, he pointed out that the document was executed by RSL Industries in favour of ICICI Limited (ICICI), which acted for a consortium of banks including SBI. With particular reference to the Schedules to the Memorandum of Entry, he submitted that several immovable properties are described therein and that a joint mortgage by deposit of title deeds (both by physical and constructive delivery) was created over those properties in favour of SBI. By relying on the judgment of the Hon'ble Supreme Court in *Rachpal Mahraj v. Bhagwandas Daruka*, MANU/SC/0046/1950, he submitted that Section 58(f) of the Transfer of Property Act, 1882, enables a mortgage by deposit of title deeds and that such mortgage does not require registration unless the mortgage is created by and under a document. He also pointed out that the SBI-led consortium initiated and prosecuted successfully proceedings under the Recovery of Debts and Bankruptcy Act, 1993, to recover their dues and enforce the security and that a secured creditor is entitled to stand outside the winding up. In support of this proposition, he relied on the judgment in *Allahabad Bank v. Canara Bank* (2000) 4 SCC

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10. He next submitted that SBI executed an assignment agreement on 31.03.2006 by which the amount receivable from RSL Industries by SBI was assigned to ARCIL along with all securities provided by RSL Industries in respect of such loan. By virtue of such assignment, learned counsel contended that ARCIL has a joint mortgage over the properties described in the schedule to the Judge's summons. Consequently, he submitted that these properties cannot be brought to sale at the instance of Phoenix ARC or the New Ramco Super Leathers.

11. In response to these submissions, Mr.Raman, learned senior counsel, submitted that the mortgages and charges created in favour of the lenders would continue to operate irrespective of whether the Demerger Scheme and Merger Scheme are effective. Although extensive documents were placed before the Court, learned senior counsel submitted that ARCIL was unable to produce a mortgage deed or memorandum of deposit of title deeds evidencing the creation of a mortgage in respect of the assets described in the schedule to the Judge's summons of ARCIL's applications.

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With regard to all previous asset sales, he submitted that such sales were proceeded with only after obtaining the express permission of this Court. With specific reference to the Memorandum of Entry dated 31.05.1999 between RSL Industries and ICICI, he submitted that the said Memorandum of Entry does not create a *pari passu* charge over the assets described in the Judge's summons. With regard to the Poes Garden property, which is one of the properties in respect of which permission is sought by the New Ramco Super Leathers, he submitted that it is owned by an individual and not by the New Ramco Super Leathers. Therefore, he submitted that the said asset is not the subject of a mortgage or charge in favour of ARCIL.

12. According to learned senior counsel, the Original Ramco Super Leathers carried on only leather business. In relation to its leather business, loans were availed of from a consortium of banks of which Canara Bank was the lead bank. Therefore, a first charge over the immovable assets of the leather division was created in favour of the said consortium of banks. The company commenced textile business later by merging with George Bird Textiles Limited. These textile assets were subject to a

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mortgage/charge in favour of a consortium of banks led by SBI. Consequently, he contended that ARCIL cannot claim a better right than its predecessor-in-interest, SBI. Since SBI had a mortgage/charge only over the assets of the textile division, ARCIL's rights are also limited to the assets of the textile division. By pointing out that the lenders to the leather division and the lenders to the textile division approached Debts Recovery Tribunals and obtained separate orders, he submitted that the present applications by ARCIL constitute an abuse of process. Therefore, he concluded that the application filed by the New Ramco Super Leathers is liable to be allowed whereas the applications filed by ARCIL are liable to be rejected.

13. Mr.Suresh, learned counsel for IIBI, submitted that IIBI had subscribed to non-convertible debentures (NCDs) issued by RSL Industries. RSL Industries failed to make payments under the debentures. Thereafter, IIBI also initiated proceedings before the jurisdictional Debts Recovery Tribunal and obtained orders both against RSL Industries and the New Ramco Super Leathers. By adverting to the correspondence between IIBI, RSL Industries and the New Ramco Super Leathers, he submitted that the

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New Ramco Super Leathers admitted that the amount was reflected as a borrowing in its books of account. The said entity also agreed to discharge the liability. Therefore, he submitted that the winding up petition (C.P.No.205 of 2015) is maintainable against the New Ramco Super Leathers. He concluded his submissions by stating that no payments have been received by IIBI, which is currently in voluntary liquidation.

14. Mr.Karthik Seshadri, learned counsel for Phoenix ARC, began by providing an overview of the historical evolution of the New Ramco Super Leathers. After pointing out that the SBI led consortium provided financial assistance to the textile division, he referred to the security documents executed with reference to such borrowing. With reference to the hypothecation agreement and pledge agreement, he submitted that only machinery and book debts were the subject of such hypothecation and pledge. Even with regard to the Memorandum of Entry, he stated that the said Memorandum of Entry was only signed by ICICI. The said document only empowered the retention of the documents of title. Therefore, he submitted that the said document, at best, creates a second mortgage and not



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a joint mortgage. He relied on the judgment of the Privy Council in *Downsview Nominees Limited and another v. First City Corporation Limited and another*; Judgment dated 19.11.1992, to substantiate the contention that the owner of a property has the right to create subsequent mortgages and that the rights of a subsequent mortgagee are subordinate to the rights of the senior mortgagee. He next referred to the orders passed by the jurisdictional Debts Recovery Tribunals in the original applications filed by SBI/ARCIL, Canara Bank/Phoenix ARC, IDBI and IIBI and submitted that orders recognising the first charge in favour of Phoenix ARC were issued both in the proceedings by Canara Bank/Phoenix ARC and IDBI. He concluded his submissions by stating that the applications of ARCIL are not maintainable under Section 392 of the Companies Act, 1956.

15. By way of rejoinder, Mr. Aasim Shehzad, learned counsel, referred to the letter dated 26.05.1998 from Canara Bank to IDBI and others. He pointed out that there is a clear reference to the creation of a charge on the assets at Coimbatore and other assets. As regards the order passed by the jurisdictional Debts Recovery Tribunal in the original

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application filed by Canara Bank, he pointed out that an appeal was filed by ARCIL and that such appeal is pending. In conclusion, he submitted that Phoenix ARC has also failed to establish its charge over the assets and that, therefore, this Court should restrain any further sale of assets because several assets of RSL Industries were sold previously without putting ARCIL on notice.

16. The Official Liquidator pointed out that a sum of Rs.1.3 crore is payable towards security charges and that the promoters of the company should be directed to pay the same.

Discussion, analysis and conclusions

17. Upon taking stock of the rival contentions, the first issue that falls for consideration is whether the Schemes became effective and, if not, what are the implications thereof. C.P.Nos.239 and 240 of 2001 were filed by RSL Industries and RSL Textiles, respectively, for sanction of the Demerger Scheme whereby the textile division of RSL Industries would be demerged from RSL Industries and merged into RSL Textiles. By virtue of



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the order dated 29.01.2003 of the learned single Judge, which was affirmed in appeal by judgment dated 17.08.2009, the above Scheme was made subject to the consent of secured creditors. The admitted position is that some secured creditors, including SBI, did not consent to the Scheme. While the Schemes were sanctioned unconditionally initially, the subsequent order of the learned single Judge, as affirmed by the Division Bench, made the Schemes effective only upon satisfaction of a condition. Since such condition was not satisfied, *status quo ante* stands restored. Therefore, the Demerger Scheme between RSL Industries and RSL Textiles has not come into force. As a corollary, the textile division of RSL Industries continues to be a part of RSL Industries.

18. Similarly, RSL Industries and the New Ramco Super Leathers filed C.P.Nos.241 and 242 of 2001, respectively, for sanction of a Merger Scheme whereby RSL Industries would merge with the New Ramco Super Leathers and, as a consequence, RSL Industries would be dissolved without the process of winding up. Once again, this Scheme was sanctioned subject to the approval of secured creditors. Sans such approval, this Scheme also

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did not come into force. As a consequence, RSL Industries continues to exist, its assets and liabilities remain with RSL Industries and do not stand transferred to and vested in RSL Textiles or the New Ramco Super Leathers, as the case may be. Since the Schemes have not become effective on account of the failure to obtain the approval of all secured creditors, whereas the New Ramco Super Leathers and Phoenix ARC have proceeded on the assumption that the schemes are effective, the applications by ARCIL are maintainable. Put differently, this Court sanctioned the Schemes conditionally and the fall out of the condition not being fulfilled falls within the jurisdiction of this Court as the supervisory court.

19. The implications of the above conclusion that the Schemes did not become effective warrant close consideration. While undertaking this exercise, it should be borne in mind that the law provides that any form of security which creates an interest in property - for instance, mortgage or hypothecation – would attach itself to the secured asset and remain enforceable by the security holder against even subsequent transferees. Therefore, the critical questions are: who were the borrowers? what were



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the securities provided by the borrower concerned to the lender(s)? was a joint mortgage or second charge provided by the borrower over the same securities to another lender(s)?

20. From the original application filed by the Canara Bank-led consortium (O.A.No.243 of 2003, later renumbered as O.A.No.485 of 2015), it appears that credit facilities were extended by Canara Bank in December 1994 to the Original Ramco Super Leathers. Significantly, this application was filed in September 2003, when a stay of the order dated 29.01.2003 of the learned single Judge making the Schemes effective only upon obtaining the consent of secured creditors was in force. Therefore, the applicants proceeded on the assumption that the Schemes were effective. Paragraph V(xiv) of the application, which deals with securities, is as under:

“It is submitted that the securities created in the form of hypothecation and equitable mortgages in favour of the Applicant Banks/Consortium are more fully described in Schedules 'A' to 'F'. In respect of Schedules 'B', 'C', 'D' and partly in 'E', 1st charge is created in favour of the 1st



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*Applicant Bank/Consortium from 18.09.1997 to 20.02.2003 respectively. In respect of Schedules 'F' and partly in 'E', second charge is created in favour 1st Applicant Bank/Consortium. **In the securities covered in Schedule 'C', the 1st charge stood in favour of ICICI, which later became ICICI Bank Ltd. Of this, the liability with respect to ICICI Bank Ltd., was settled and charge satisfied. With the result, the Consortium consisting of Canara Bank, Andhra Bank and State Bank of Mauritius Ltd., headed by Canara Bank has become the first and primary charge holder of this security. In sum, it is submitted that the Applicant Banks/Consortium headed by the 1st Applicant Bank has primary, paramount and exclusive charge on the securities described in Schedules 'A', 'B', 'C', 'D' and partly in 'E' and second charge in respect of the Schedules 'E' and 'F'. It is submitted that the defendants, besides, the execution of agreements covering***



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hypothecation of movables, deed of deposit of title deeds, etc., have also registered charge with the Registrar of Companies by filing Form 8 and 13, more fully explained in the Schedules.” (emphasis added).

21. The schedules to the original application, therefore, merit close scrutiny. Schedules A and B thereof consist of movable properties. Schedules C to F consist of immovable assets. Schedule C covers the following assets: 7.465 acres in the aggregate in Numbal; 17.98 acres in the aggregate in Vaduganthangal; about 4.98 acres in Konavattam Village; about 1.45 acres in Palavakkam Village; and about 7 grounds 1030 square feet in Purasawalkam, Chennai. Schedule D consists of two items in SF No.302/4 in Kuniyamuthur, Coimbatore. Schedule E is particularly extensive and consists of Parts A to G with multiple items in each part and the properties are either in Bangalore or Palavakkam or the then North Arcot District. It includes properties in Melmanavur, Anpundi and Edyansathu in Vellore Taluk and Melvilachur in Gudiyattam Taluk. Schedule F pertains to a property in Poes Garden ad measuring 2 grounds and 1725 square feet.



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22. In paragraph V(xiv)(extracted above), the applicants state that a first charge was created over the assets in Schedule B to D and partly E between 18.09.1997 and 20.02.2003 and that a second charge was created over part of Schedule E and the entire Schedule F property. By 18.09.1997, RSL Industries was formed and consisted of both leather and textile divisions, whereas the New Ramco Super Leathers had not been incorporated. Thus, even according to the Canara Bank-led consortium, the mortgage was created by RSL Industries and not the New Ramco Super Leathers. Significantly, some of the assets described in Schedules C-F are the properties that the New Ramco Super Leathers now seeks permission to sell. ARCIL seeks to prevent the sale of both indigenous and imported plant and machinery at the following locations: No.112, Mahabalipuram Road, Chennai; Numbal Village, Puliamedu, Chennai; and at Coimbatore. ARCIL also seeks to prevent the sale of properties covered in Schedules C-F.

23. Turning to the details provided by Canara Bank's successor, Phoenix ARC: at paragraph 4 of its counter affidavit, the first secured loan



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referred to therein is under a deed of hypothecation executed by Vijayalakshmi Mills on 04.02.1981 in favour of a SBI-led consortium of banks. Upon the merger of Vijayalakshmi Mills with RSL Industries on 07.10.1997, the secured assets were transferred to and vested in RSL Industries. The next security document to which reference was made by Phoenix ARC is a mortgage created on 17.04.1996 in favour of ICICI in respect of immovable properties at Numbal, Vaduganthangal, Konavattam village, Palavakkam village and Purasawalkam. Phoenix ARC has described this security as having been created over assets of the leather division under RoC charge no.124. As on 17.04.1996, RSL Industries was in existence as an entity with both leather and textile divisions but the New Ramco Super Leathers did not exist even in its original avatar as a private limited company. Therefore, although the relevant mortgage deed is not on record, especially on reading this in combination with the original application of the Canara Bank-led Consortium, the only logical conclusion is that the borrower was RSL Industries. Phoenix ARC states that the mortgage was discharged on 20.02.2001 but that the same or similar assets were mortgaged on 07.01.1998 in favour of ICICI, Canara Bank, ABN Amro

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Bank and Indian Bank under RoC charge no.141. While the New Ramco Super Leathers existed by this time, the relevant assets were clearly assets of RSL Industries and not the New Ramco Super Leathers. This document is also not on record. Phoenix ARC has also drawn reference to a mortgage created on 31.05.1999 next and this mortgage is in favour of ICICI, IDBI and SBI.

24. ARCIL, which is the successor-in-interest of SBI, has placed for consideration the Memorandum of Entry dated 31.05.1999. This document appears to have been signed only by Mr.Ramaswamy Sethuraman, Director of RSL Industries, and Mr.K.Bharathan, Regional Manager, ICICI. Clause 3 of the agreement reveals that Shri K.Bharathan acted not only for ICICI but as an 'agent' for IDBI and SBI. The said clause further reveals that ICICI was permitted to retain the title deeds to the properties described in the Schedules thereto by way of a joint mortgage by deposit of title deeds of the properties described in the First Schedule and by way of joint mortgage by constructive deposit of title deeds of properties described in the Second Schedule. Since clause 3 is of particular

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significance, the said clause is set out below:-

“3. Shri Ramaswamy Sethuraman on the same day accorded and gave oral consent on behalf of the Company to Shri K. Bharathan acting for ICICI, ICICI acting as agent of-

a) Industrial Development Bank of India (hereinafter called "IDBI"); and

*b) State Bank of India (hereinafter called "SBI"), to hold and retain the said title deeds more particularly described in the First Schedule hereunder written as and by way of **joint mortgage by deposit of title deeds** (emphasis added) by way of constructive delivery on the Company's immoveable properties more particularly described in the Second Schedule hereunder written together with all buildings and structures thereon and all plant and machinery attached to the earth or permanently fastened to anything attached to the earth (hereinafter collectively referred to as "the said immoveable properties") as security also for the due repayment, discharge and redemption by the Company to -*

a) IDBI for its rupee term loans of Rs.842 lacs,



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Rs.500 lacs and Rs.158 lacs; and

b) SBI for its foreign currency loan of US\$ 7 million, together with interest, additional interest, further Interest, liquidated damages, premia on prepayment or on redemption, guarantee commission, costs, charges, expenses and other monies payable under their respective Loan Agreements / Letters of Sanction / Memorandum of Terms and Conditions as amended from time to time.”

25. The properties described in the First Schedule are the following: 11 items at Numbal ad measuring 7.465 acres; multiple items at Veduganthangal Village ad measuring about 17.98 acres in the aggregate; about 6 survey numbers at Konavattam, Vellore ad measuring about 4.98 acres in the aggregate; about 6 survey numbers at Palavakkam Village ad measuring about 1.45 acres; and about 7 grounds 1030 square feet at Survey No.27/1A, Purasawalkam, Chennai. The Second Schedule thereof covers the following properties: 7 items at Numbal Village, Saidapet Taluk aggregating 7.465 acres; 9 items aggregating 17.98 acres at Veduganthangal



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Village, Gudiyatham Taluk; 2 items aggregating 4.98 acres at Konavattam Village, Vellore Taluk; about 1.45 acres across 6 survey numbers at Palavakkam Village, Saidapet Taluk; and about 7 grounds 1030 square feet at Purasawalkam. Thus, the properties described in the First and Second Schedules of this document are the same and also tally with the properties described in Schedule C to the original application filed by the Canara Bank-led consortium.

26. Apart from the above, a Memorandum of Entry dated 01.06.1999 by and between RSL Industries and IDBI is on record. The said document reveals that it was executed by IDBI acting for itself and as agent of about six banks, including SBI. It further reveals that a joint mortgage by constructive delivery of documents was created over the immovable property described in the Second Schedule to this agreement. The Second Schedule contains a description of an immovable property ad measuring 15 acres and 89 ½ cents at Kuniyamuthur Village, Coimbatore Taluk, Coimbatore District. ARCIL has also placed on record the Form 8 filed by RSL Industries on 25.05.1998 in relation to a loan of Rs.9,30,00,000



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(Rupees Nine Crore Thirty Lakhs only) from SBI. The said Form 8 discloses that it is secured by a second charge on the fixed assets of the textile division of the company. In addition, ARCIL has placed on record the loan agreement dated 06.02.1998, the sanction letter dated 17.05.1999, the agreement of hypothecation of goods and assets dated 26.02.1998 (the Hypothecation Agreement) and the pledge agreement dated 26.02.1998, and I turn to the latter two agreements next.

27. The Hypothecation Agreement provides for a definition of goods and assets in clause 1 thereof and for the hypothecation of such goods and assets in favour of SBI. The said definition does not cover immovable assets. Curiously the documents annexed thereto cover lands at Vaduganthangal, Konavattam, Kandanchavadi, Purasawalkam and buildings at various places (pages 50-52 of Volume-I). ARCIL seeks an injunction in respect of these lands and buildings. Also annexed thereto are 10 pages of plant and machinery, which correspond to the plant and machinery in respect of which ARCIL seeks an injunction. Given both the label and substance of the Hypothecation Agreement, *prima facie*, I am of the view



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that the schedule of lands and buildings at pages 50-52 of Volume-I are not a part of the Hypothecation Agreement. The plant and machinery at pages 53-61 appear *prima facie* to be within the scope of the Hypothecation Agreement but definitive conclusions can only be drawn, if these documents are tested at trial. The Agreement of Pledge of Goods and Assets dated 26.02.1998 also deals with security for a loan of Rs.27.33 crores. Both the label and the substance of the agreement indicate that it is in respect of movables but no schedule is annexed. The conclusions that may be drawn from all the above documents warrant consideration next.

28. The Memorandum of Entry dated 31.05.1999, which was executed by RSL Industries and accepted by ICICI, which acted for itself and as an agent of IDBI and SBI, evidences *prima facie* that securities, including a joint mortgage by way of deposit of title deeds, in contrast to a second charge, were created *inter alia* in relation to SBI's foreign loan of US\$ 7 million. Such security was created in respect of immovable assets covered in Schedule C to the original application (O.A.No.243 of 2003, later renumbered as O.A.No.485 of 2015) filed by the Canara Bank-led

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consortium. From paragraph V(xiv) of the application, it is evident that the first charge was originally in favour of ICICI. Upon discharge of the liability to ICICI, the Canara Bank-led consortium presented its application on the assumption that the said consortium succeeded to such first charge. This does not, however, reckon the Memorandum of Entry dated 31.05.1999 by which a joint mortgage was created in favour of IDBI and SBI also(other than ICICI) in respect of the immovable assets described in the schedules thereto. I refrain from recording definitive conclusions on the nature of this security because the security documents in favour of Canara Bank/Phoenix ARC are not on record and even the originals of the security documents in favour of SBI/ARCIL are not on record. Besides, all the lenders have approached debts recovery tribunals, and the orders passed in those proceedings are pending in appeal. A brief discussion of those orders is also necessary.

29. The SBI-led consortium filed O.A.No.50 of 2003 before the Debts Recovery Tribunal, Coimbatore against RSL Industries and others, including Canara Bank. This case was transferred to the Debts Recovery

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Tribunal-I, Chennai, renumbered as O.A.No.36 of 2006 and prosecuted by the assignee, ARCIL. O.A.No.36 of 2006 was allowed by order dated 10.07.2017. In the said order, the Tribunal largely relied on a letter dated 26.05.2018 from Canara Bank to IDBI to conclude that the applicants have a prior charge over the secured assets. The Tribunal also noticed a significant, albeit probably rectifiable, anomaly in paragraphs 7.14 and 7.15 of its order, i.e. that the debts due from the New Ramco Super Leathers and not from RSL Industries were assigned by Canara Bank to Phoenix ARC. This order is, however, under challenge in R.A.No.53 of 2018.

30. The original application filed by the Canara Bank-led consortium and later prosecuted by Phoenix ARC and State Bank of Mauritius was also renumbered as O.A.No.485 of 2015 and decided by the Debts Recovery Tribunal-II, Chennai on 14.05.2018. The application was directed against the New Ramco Super Leathers and various others, including ARCIL. By this order, the Tribunal held that defendants 1-10 and 18 are jointly and severally liable for the claim and also held that the applicants are the first charge holders of the properties described in

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Schedule C to the application. It is unclear whether the Memorandum of Entry dated 31.05.1999 was placed before the Tribunal but there is no reference thereto. This order appears to proceed on the assumption that the Demerger and Merger Schemes became effective and that the assets of the leather division were transferred to and vested in the New Ramco Super Leathers. In addition, there are applications filed by IIBI (O.A.No.357 of 2003) and IDBI (O.A.No.323 of 2007) and the order passed in O.A.No.323 of 2007 appears to recognise the first charge of the Canara Bank-led consortium over assets in respect of which IDBI has a second charge. Thus, confusion reigns and it becomes necessary to put in place an interim arrangement.

31. ARCIL has also produced evidence that a mortgage by deposit of title deeds over the property ad measuring 15 acres and 89 ½ cents at Kuniyamuthur Village, Coimbatore Taluk, Coimbatore District, was created in favour of a consortium of banks, which were represented by IDBI acting for itself and as an agents for the other banks. The said consortium included SBI, which was the assignor of ARCIL. As regards all these assets, the

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evidence on record leads to the conclusion that the borrower and owner of the assets was RSL Industries and not the New Ramco Super Leathers. The request of the New Ramco Super Leathers for permission to sell assets should be examined in this context.

32. The New Ramco Super Leathers seeks permission to sell the following immovable properties: property ad measuring 728.5 cents at Melmonavur Village, Vellore; property ad measuring 271.78 cents also at Melmonavur Village, Vellore; property ad measuring 100 cents at Anpundi Village, Vellore; property ad measuring 3 grounds and 1117.88 sq.ft. at Alagappa Road, Purasawalkam, Chennai; property at Edayansathu, Bagayam Village, Vellore; and property ad measuring 2 ½ grounds at Poes Garden, Chennai. While the New Ramco Super Leathers has not produced any evidence of ownership of these immovable properties, from the original application filed by the Canara Bank-led consortium (discussed *supra*), it appears that a mortgage was created by RSL Industries in favour of the Canara Bank-led consortium in respect of these assets. From and out of these assets, except for the property at Alagappa Road, Purasawalkam, it

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does not appear that a joint mortgage was created in favour of SBI/ARCIL.

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33. Nonetheless, in view of the fact that the Demerger and Merger Schemes are not effective, RSL Industries, and not the New Ramco Super Leathers, continues to be the owner of these assets. Consequently, the New Ramco Super Leathers is not entitled to bring these assets for sale and, therefore, C.A.No.32 of 2022 is liable to be dismissed. This order will not, however, stand in the way of any lender taking steps to enforce its security interest in all assets described in the schedule to C.A.No.32 of 2022, other than the Purasawalkam property, in accordance with law, albeit subject to the right of other creditors asserting security interest in the same security. Since it appears that some properties were sold previously by the New Ramco Super Leathers pursuant to orders obtained on misrepresentation as to ownership, all material particulars shall be disclosed by the New Ramco Super Leathers, such as the purchaser, the sale consideration, etc.

34. As regards the application for injunctive relief by ARCIL, it is entitled to such relief only in respect of the immovable properties described in the Memorandum of Entry dated 31.05.1999, which corresponds to the

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properties described in Schedule C to the original application of the Canara Bank-led consortium before the Debts Recovery Tribunal, and the Memorandum of Entry dated 01.06.1999. If the Memorandum of Entry dated 31.05.1999 and the Memorandum of Entry dated 1.06.1999 are compared with the assignment by SBI in favour of ARCIL, it is noticeable that the schedules do not tally because the securities purportedly assigned are more extensive. As a consequence, with regard to immovable assets outside the scope of the schedules to the Memorandum of Entry dated 31.05.1999 and the Memorandum of Entry dated 01.06.1999, ARCIL's request is liable to be rejected. As regards movables, *prima facie*, ARCIL is entitled to such relief in respect of the schedule of plant and machinery annexed to the Agreement for Hypothecation of Goods and Assets dated 26.02.1999 at pages 53-61 of Volume-I. The New Ramco Super Leathers has previously obtained permission and sold assets by misrepresenting that it is the owner of such assets. Based on the above *prima facie* findings recorded in this order, unless the sale of assets over which ARCIL *prima facie* has a mortgage or hypothecation is restrained, it is likely that irreversible injury would be caused to ARCIL. The balance of convenience



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is clearly in favour of such course of action until definitive conclusions are reached upon consideration of all material documents. Therefore, parties are granted leave to re-apply.

35. For reasons set out above, these applications are disposed of on the following terms:-

- (i) C.A. No.32 of 2022 is dismissed;
- (ii) C.A. No.139 of 2021 is disposed of by directing Ramco Super Leathers Limited to disclose all material particulars of assets sold previously by filing an appropriate affidavit before this Court within two weeks from the date of receipt of a copy of this order;
- (iii) C.A. No.140 of 2021 is disposed of by restraining RSL Industries Limited, Ramco Super Leathers Limited, RSL Textiles (India) Limited, Phoenix ARC Private Limited and Kotak Mahindra Bank Limited from alienating, further encumbering or otherwise dealing with the following without the consent of ARCIL:
 - (a) immovable assets described in the Schedule to the



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Memorandum of Entry dated 31.05.1999 between RSL

Industries Limited and ICICI and the Schedule to the

Memorandum of Entry dated 01.06.1999 between RSL

Industries Limited and IDBI; and;

(b) the movable assets described in the schedule to the

Agreement for Hypothecation of Assets and Goods dated

26.02.1999 between RSL Industries Ltd. and SBI.

(iv) the secured creditors of RSL Industries Limited, Ramco Super

Leathers Limited and RSL Textiles (India) Limited are granted

leave to apply for final orders on the nature of their respective

securities and consequently for the discharge or modification of

the order in C.A.No.140 of 2021 on such basis.

23.03.2023

NCC :Yes/No

Internet :Yes/No

Index :Yes/No

PKN

To

1.Registrar of Companies,

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Office of the Registrar of Companies,
Shastri Bhavan, 2nd Floor,
26, Haddows Road, Chennai – 600 006.

2.Regional Director,
Southern Region,
Department of Companies Affairs,
5th Floor, Shastri Bhavan,
26, Haddows Road, Chennai – 600 006.



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SENTHILKUMAR RAMAMOORTHY, J.

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Comp.A.Nos.1106 of 2016
in
Company Petition Nos.502 of 2015, 239 of 2001

23.03.2023