THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
08~02~2023	22~02~2023

CORAM:
THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Comp.A.No.410 of 2022 in
Comp.A.No.122 of 2019 in
Comp.Petn.No.502 of 2015 and

Comp.A.No.411 of 2022 in
Comp.A.No.122 of 2019 in
Comp.Petn.No.502 of 2015 and

Comp.A.Nos.410 and 411 of 2022 in
Comp.A.No.122 of 2019 in
Comp.Petn.No.502 of 2015

Asset Reconstruction Company (India) Ltd.,
Rep.by its Power of Attorney Mr.Jigar Dalai,
The Ruby, 10th Floor 29, Senapathi Bapat Marg Dadar (W)
Mumbai 400023
Also at
1G, First Floor, Century Plaza,
No.560-562, Teynampet,
Anna Salai, Chennai 600018. ... Applicant/Third Party/Third Party

vs

1. Ramco Super Leathers Ltd.,
78, Kumarappa Chetty Street, Periampet,

Chennai 600003.
(in Prov. Liquidation) O/o. The Official Liquidator
Madras High Court, Corporate Bhavan,
Rajaji Salai, Chennai 600001. ... 1st Respondent/Applicant/Respondent

2. M/s. Phoenix ARC Private Limited,
7th Floor, Dani Corporate Bank No.158,
C.S.T. Road, Kalina,
MMRDA Area, Santacruz(E),
Mumbai 400098. ... 2nd Respondent/2nd Respondent/Third Party

3. Industrial Investment Bank of India Limited
(Under Member's voluntary winding up)
Rep.by its Liquidator Mr.Ram Narayan Dhar
Head Ofice: 19, Netaji Subhas Road,
Kolkotta – 700 001. ...3rd Respondent/1st Respondent/Petitioner

4. M/s.Noombal Gardenia
No.45, Halls Road, Kilpauk,
Chennai 600010. ... 4th Respondent/Third Party/Third Party

5. The Sub-Registrar of Kundrathur,
District Thiruvallur, Taluka Poonamallee
Chennai, Tamil Nadu 600069. ... 5th Respondent/Third Party/Third Party

Prayer in Comp.A.No.410 of 2022: This Company Application is filed under Order XIV Rule 8 of the Original side Rules r/w Section 9 and 11(B) of the Company Court Rules 1959, to recall the order dated 28.06.2019 passed in CA No.122 of 2019 in C.P.No.502 of 2015 and to set aside the same.

Prayer in Comp.A.No.411 of 2022: This Company Application is filed under Order XIV Rule 8 of the Original side Rules r/w Section 9 and 11(B) of the Company Court Rules 1959, to set aside the sale deed No.23777 of 2021 executed by the 1st Respondent in favour of 4th Respondent registered in the office of the 5th Respondent in C.A.No.122 of 2019 in C.P.No.502 of 2015.

For Applicant : Mr. P.V. Balasubramanian
Senior Counsel for
Mr.Akhil R. Bhansali

For Respondents : Mr. V. Lakshminarayanan for
Mr.P.Krishnan [for R1]

Mr.I. Karthik Seshadri for
M/s. Iyer & Thomas [for R2]

M/s. Shivakumar & Suresh [for R3]

M/s. Sathish Parasaran
Senior counsel for
M/s. Ganesh & Ganesh [for R4]

COMMON ORDER

1.a. Company Application No.410 of 2022 is filed to recall the order dated 28.06.2019 passed by this Court in C.A.No.122 of 2019 in C.P.No.502 of 2015 and to set aside the same.

1.b. Company Application No.411 of 2022 is filed to set aside the sale deed No.23777 of 2021 executed by the 1st Respondent in favour of 4th Respondent registered in the office of the 5th Respondent in C.A.No.122 of 2019 in C.P.No.502

of 2015.

2.a. The Applicant is a Securitisation Company and Reconstruction Company pursuant to section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. The Applicant is the assignee of the debts of RSL Industries Ltd. assigned by State Bank of India vide Assignment Agreement dated 31 March 2006.

2.b. As Against the RSL Industries Ltd the Applicant is having Decree in terms of Judgment and Recovery Certificate issued by the Debt Recovery Tribunal-I, Chennai as per Judgment delivered on 10 July, 2017. 2nd Respondent is also a party to the said decree granted in favour of the Applicant. The 2nd Respondents alleged claim over the properties has been negated by the Debt Recovery Tribunal. 2nd Respondent is claiming to be an assignee who acquired assignment of debts from Canara Bank, the debts allegedly due and payable by the Ramco Super Leather Ltd (In liquidation) to the Canara Bank. 3rd Respondent is also one of the creditors of RSL Industries Ltd who had filed the petition in C.P. No.502 of 2015 for the inability of the 1st Respondent to pay the debt.

2.c. This Court in C.P.Nos.239 to 242 of 2001 vide its order dated 06th December 2001, sanctioned demerger of RSL Industries Ltd. The Applicant and other creditors had filed applications to set aside the order dated 06.12.2001 on the ground that the scheme of demerger was filed without the consent of the Secured Creditors of the Company and therefore on the said ground the order of sanction was liable to be set aside, for the same the assignor of the Applicant herein had filed Comp. Appln. Nos. 1937 & 1940 of 2002. This Court vide order dated 29.01.2003 modified the order dated 06.12.2001, and directed that the scheme of demerger/amalgamation shall be subject to the consent/approval of the Secured Creditors of RSL Industries Ltd. The said order was also affirmed by the Division Bench of this Hon'ble Court in OSA No 55 to 68 of 2003 on 17 August, 2009.

2.d. Hence it is the contention that in spite of no demerger order as on date, the effect of demerger was fraudulently given by RSL Industries Ltd without complying the order of this court dated 29.01.2003 and the promotors proceeded with the demerger/amalgamation. This said action was in contravention of the order of this Court and the properties are being sold, transferred and dealt with as they are asset of demerged entity. All this is done deceptively under the guise of the earlier order dated 06.12.2001 passed by this Court without evidencing consent all the secured creditors of the RSL Industries Ltd.

2.e. It is the contention that State Bank of India, the Original Lender (SBI) has unconditionally and irrevocably assigned, transferred, and released all its rights, title, and interest in respect of debts of the RSL Industries Limited in favour of the Applicant vide registered Assignment Agreement dated 31" March 2006. The SBI, the original Lender, has granted credit facilities/loans including Foreign Currency Loan to the RSL Industries Limited for the purpose of repaying its high-cost borrowings, long-term working capital purposes and to finance the expansion and modernisation of leather and textile units in participation with other Original Lenders viz. Laxmi Vilas Bank and Dhanalaxmi Bank. The Original Lenders consisting of SBI, Laxmi Vilas Bank and Dhanalaxmi Bank have filed Original Application before Coimbatore DRT which was subsequently transferred to Chennai DRT-I and numbered as OA No. 36 of 2006. During the pendency of the said Original Application, the SBI has assigned, transferred, and released all its rights, title and interest in respect of the debts of the RSL Industries Limited in favour of the Applicant under an Assignment Agreement dated 31 March, 2006. The above Original Application was allowed by the Chennai DRT-I on 10 July 2017.

2.f. The Official Liquidator appointed by the Company Court not only to take care of the assets of the RSL Industries Ltd., but also the 1st Respondent Company as if the demerged scheme still existed and was in force. The Official Liquidator who is well aware about all the earlier orders passed by this Court, never took any steps to inform this Court about the order of demerger being modified by this Court.

2.g. Before placing the correct facts the Respondents also obtained the decrees before the Tribunals and Courts, seeking declaration of mortgage as if the assets are of Respondent No. 1. It is the contention that the Company Application No.139 and 140 of 2021 of CP No.239 of 2001 also filed and the Court has passed interim order dated 23.07.2021 that any alienation or encumbrance created over the property as mentioned in the Schedule hereunder will be subject to the outcome of those applications.

2.h. Despite being aware of the interim order dated 23.07.2021 passed by this Court the Respondent No.1 fraudulently conveyed land admeasuring 7.545 acres comprised in S.Nos. 19/2, 19/1, 15/6, 15/4A, 15/5B and 120/1 situated in Noombal Village, Poonamallee Taluk, Tiruvallur District to the 5th Respondent vide sale deed dated 21.12.2021 bearing No.23777 of 2021. 1st Respondent suppressed the facts that the first charge was created in favour of the Applicant and conveyed the said property to the Respondent No.4. Hence it is the contention that the orders in C.A.No.122 of 2019 was obtained by suppressing the material facts from the Court.

2.i. It is further contended that there was no valuation nor any Public Auction insisted by any party, only consideration of Rs. 23 crores was collected by Respondent No. 2 without informing other charge holders including the Applicant herein. According to the applicant, the market value of the properties is more than Rs.52.25 crores and a Realizable Value of Rs.44.41 crores. Therefore this application has been filed to recall the order dated 28.06.2019 passed in C.A.No.122/2019 in C.P.No.502 of 2015 and setting aside the same.

3.a. In the counter it is the contention of the 1st Respondent that Ramco Super Leather Limited was incorporated under the Companies Act, 1956 on 27.08.1976 and had acquired several immovable properties at Palavakkam, Vaduganthangal, Konavattam, Purasawalkam and the subject property situated at Noombal Village, which was purchased by way of seven sale deeds in the year 1991. The said Company was merged with M/s. George Bird Textiles Limited as per an order dated 17.02.1995 passed by this Court and the name of the merged Company was changed into RSL Industries Limited as seen from the fresh Certificate of Incorporation dated 21.03.1995. Thus, RSL Industries Limited had a Leather Division and a Textiles Division. Thereafter, one, Vijayalakshmi Mills Limited also got merged with RSL Industries Limited (Textiles Division) with effect from 01.06.1997, as per the order dated 07.10.1997 passed by this Court

3.b. In the ordinary course of business, the above Company had availed credit facilities from various bankers by mortgaging the above mentioned immovable assets. Accordingly, on 12.06.1995, the property situated at Palavakkam was mortgaged in favour of Exim Bank and the same was registered with the Registrar of Companies on 09.01.1996. Similarly, on 17.04.1996 the properties situated at Vaduganthangal, Konavattam, Purasawalkam and the subject property situated at Noombal Village were mortgaged in favour of ICICI Bank and the same was registered with ROC on 21.07.1997. On 07.01.1998, the mortgage created in favour of ICICI Bank was extended to the other banks in the consortium viz., ABN Amro Bank, Canara Bank and Indian Bank and the charge was duly registered with the ROC on 09.02.1998.

3.c. The mortgage created on the subject property can be summarized as follows:

S.No.	Date of mortgage	Date of registration	Mortgagee
1.	17.04.1996	21.07.1997 [RoC No. 124]	ICICI Bank [Satisfaction of charge filed on 20.02.2001]
2	07.01.1998	09.02.1998 [RoC No. 141]	ICICI Bank, Canara Bank, ABN Amro Bank, Indian Bank.
3	31.05.1999	16.08.1999 [RoC No. 202]	ICICI Bank, IDBI, SBI

3.d. The charge was created on the Noombal property in favour of the Canara Bank on 07.01.1998 is much prior in time to that created in favour of the State Bank of India [31.05.1999]. Further, it is evident from the Memorandum of Entry dated 31.05.1999 that only a joint charge is created in favour of State Bank of India in addition to that created in favour of Canara Bank and other lenders. It is denied that State Bank of India had prior charge over the subject property. On the other hand, State Bank of India has prior charge with respect to the properties that stood in the name of Vijayalakshmi Mills Limited, which got merged with RSL Industries Limited as stated above. Meanwhile, on 19.06.1998, the promoters of RSL Industries Limited had promoted another Company namely, Ramco Super Leathers Private Limited and the Company's name was changed into Ramco Super Leathers Limited by virtue of a fresh Certificate of Incorporation dated 13.08.2001.

3.e. RSL Industries Limited opted for demerger of its Leather and Textile Division and approached this Hon'ble Court with a Scheme of Arrangement in C.P. Nos. 239 to 242 of 2001. This Court was pleased to approve the said scheme of arrangement by way of order dated 06.12.2001, whereby the Textile Division was demerged and vested with RSL Textiles (India) Limited and Leather Division was vested with Ramco Super Leathers Limited (the 1 respondent herein).

3.f. Thereafter the same was modified by way of an order dated 29.01.2003 which is as follows:

> "38. For the reasons stated above, all the Company Applications filed to set aside the order dated 06.12.2001 are allowed in part and the order is modified that the order would be valid and effective subject to the approval by the secured creditors."

3.g. The same was confirmed by the division Bench. During pendency of the above appeals, the lenders had initiated recovery proceedings before the Debt Recovery Tribunals.

3.i. The Industrial Development Bank of India (IDBI) had initiated recovery proceedings before the DRT-2, Chennai in OA. No. 323 of 2007, wherein State Bank of India and Canara Bank were also arrayed as 9 and 12th defendants respectively. While allowing the above original application by way of an order dated 16.11.2009, the DRT-2, Chennai was pleased to confirm the primacy of charge of Canara Bank over the secured assets. The said order has not been challenged and has attained finality.

3.j. Similarly, the State Bank of India and other bankers had jointly filed O.A. No. 50 of 2003 before the Debts Recovery Tribunal at Coimbatore not only against RSL Industries Limited (original borrower) but also against Ramco Super Leather Limited (merged Company). In the application filed the applicants averred that they are entitled to enforce the security in the hands of either RSL Industries or the newly constituted entities viz. RSL Textiles India Ltd and & Ramco Super Leathers Ltd. Therefore it is the contention of the 1st Respondent that the SBI consortium had acted upon the amalgamation and proceeded against the merged Company and is therefore estopped from disputing the same at this point of time. The above original application of the SBI consortium was thereafter transferred to DRT-1, Chennai and was renumbered as O.A. No.36 of 2006, which was eventually allowed on 10.07.2017. The same was challenged by the 2 respondent before the DRAT, Chennai in R.A. No. 53 of 2018 and the same is pending.

3.k. The Canara Bank and other bankers had jointly filed O.A. No.243 of 2003 before the Hon'ble DRT-1, Chennai not only against RSL Industries Limited (original borrower) but also against Ramco Super Leather Limited (merged Company). The said original application No.485 of 2015, was ordered on 14.05.2018, holding that Canara Bank possessed first charge over the subject property situated at Noombal Village. The said order is now under challenge before the Hon'ble DRAT, Chennai in R.A. No. 127 of 2019.

3.l. The 3d Respondent had initiated recovery proceedings in O.A. No. 357 of 2003 before the Hon'ble DRT-I, Chennai, not only against RSL Industries Limited (original borrower) but also against Ramco Super Leather Limited (merged Company), wherein an order was passed on 08.07.2008, holding that the 3rd Respondent is entitled for a sum of Rs.13,03,49,995/-, along with further interest. Accordingly, a Recovery Certificate has also been issued in favour of the 3rd Respondent on 12.10.2010 for a sum of Rs.24,47,24,364.65 in D.R.C. No. 124 of 2010 in O.A. No. 357 of 2003, on the file of the DRT-I, Chennai. During pendency of the recovery proceedings, the lenders entered into various assignment agreements with Asset Reconstruction Companies while State Bank of India assigned its rights to the Applicant herein, Canara Bank had assigned its rights to the 2 respondent herein. Thus, the applicant and the 2 respondent herein have stepped into the shoes of SBI and Canara Bank respectively. Based on the order passed in O.A.No.357 of 2003, the 3rd respondent herein had preferred the C.P. No. 502 of 2015 for winding up the 1st Respondent Company. The said petition was admitted and the Official Liquidator of this Court was appointed as the provisional liquidator of the applicant company by way of an ex-parte order dated 02.03.2016. Thereafter, this Court was passed an order dated 27.03.2018 and kept in abeyance of the order appointing official liquidator as Provisional liquidator. Meanwhile, the 2nd respondent herein had also preferred an application in CA. No. 829 of 2001, seeking permission to sell the secured assets outside the winding up proceedings. The 2nd Respondent has clearly stated that it has got first charge over the secured assets.

3.m. The 1st Respondent Company has been identifying prospective buyers to sell the secured assets by entering into negotiations with the lenders. Accordingly, the 1st respondent Company had preferred the application in CA, No, 122 of 2019, seeking the permission of this Court to sell the subject property situated at Noombal Village and another property situated at Vellore. In the counter affidavit dated 18.05.2019, the 2nd Respondent herein has clearly stated that it has the first charge over the secured assets and sought payment of the entire sale consideration in its favour. Pursuant thereto, the properties were sold by 1st respondent Company and the entire sale considerations were directly paid by the purchasers in favour of the 2nd respondent herein, who holds the first charge thereon.

3.n. Similarly, the applicant has also preferred an application in C.A. No. 32 of 2022, seeking permission to sell another property in order to settle the creditors. As the applicant has placed its objections in the said application and orders have been reserved therein by this Court. Hence it is the contention of the 1st respondent that they never executed any document granting first and paramount charge on the secured assets either in favour of the applicant or its assignor, SBI. As stated above, the charge created in favour of SBI is subsequent point of time and the Canara Bank Consortium holds that first and primary charge over the secured assets. Hence, the sale consideration has been duly paid to the 2nd Respondent.

3.o. The 1st Respondent Company has been taking genuine efforts to settle the applicant and other creditors and hereby undertakes to do the needful at the earliest without any unnecessary delay. The 1st respondent Company has not willfully suppressed any material fact from this Court. Hence opposed the company petition.

4.a. The 2nd Respondent also filed a counter in the similar line of the 1st Respondent. Further it is stated that during the pendency of the recovery proceedings, the lenders entered into various agreements with Asset Reconstruction Companies (Applicant herein). State Bank of India appears to have assigned ins rights to the Applicant herein, Canara Bank had assigned its rights to the 2 respondent herein. The Applicant has deliberately not produced the complete assignment deed with the application. Applicant has chosen to produce a truncated copy of the said assignment deed.

4.b. Applicant has suppressed the Order of DRT-II, Chennai dated 16.11.2009 to which it's assignor is a party, that recognized the priority of charge in favour of the Canara bank consortium over the assets belonging to the leather division. In fact this Order has attained finality and not been challenged till date by the Applicant.

4.c. The Applicant has suppressed the fact that DRT-II Chennai had permitted the sale of the Noombal property in IA No. 534/2015 in the Original Application filed by Canara Bank at the instance of the 1" Respondent, Ramco Super Leathers Ltd. even as early as 07.08.2015. Applicant's assignor SBI was very much a party to the said proceedings. However, in view of the order for appointment of Provisional Liquidator by this Court in CP No. 502 of 2015 at the instance of 3rd Respondent, IIBI, the 1" Respondent took permission of the Company Court in CA No. 122 of 2019.

4.d. Applicant has been lackadaisical in proceeding with the recovery claims against the borrower and/or enforcing any of its securities. The IDBI and SBI consortium have a prior charge over the textile assets. The title documents of the textile unit at Kuniyamuthur village, Coimbatore is deposited with IDBI on 01.06.1999. The properties are very valuable and yet no steps have been initiated to enforce the said security till date. The OA filed in 2003 came to be dismissed in the DRT on 26.06.2015 for non-prosecution. It was restored after 1 year on 12.07.2016.

4.e. Applicant quietly watched the Official Liquidator to take possession of the assets of the Leather division alone. The appointment of Official Liquidator was notified to Applicant even on 08.12.2016. The Applicant now seeks to blame the Official Liquidator for not bringing facts to the notice of this Court. The Applicant chose to stay outside the winding up of 3rd Respondent deliberately and now after various events have transpired, decided to file the present application as if it had no knowledge of the various happenings.

4.f. The Applicant cannot seek to claim any right based on the DRT order dated 10.07.2017. The Order is under challenge firstly before the DRAT. Secondly, the order simply recognizes a *pari passu* right and not a prior right over the subject asset. Thirdly, the Order is *per se* illegal. It is illegal because it notices that DRT-II had already upheld the priority of charge in favour of the Assignors of the answering respondent and yet it decided to differ with that. Fourthly, the said Order left it open for the answering respondent to establish its plea of priority in the OA filed by it in the DRT. By Order dated 14.05.2018, in OA No.485/2015 the DRT-II once again reiterated the answering respondent's priority of charge over the leather division assets including the Noombal property. The Applicant had made similar allegations and filed CA Nos. 139-140 of 2021 in CP No.239 of 2001. Hence submitted that these applications are not maintainable.

5.a. It is the contention of the 3rd Respondent that the 3rd Respondent is one of the unsecured creditors of the Respondent No.1 and had initiated various legal proceedings against them to recover the dues. According to him taking into consideration of the right of the secured creditors and also safe guarded the rights of the unsecured creditors in the other properties. Therefore denied the contention that the spectators are also remained silent without making any objection. According to them valuation submitted by the applicant, value of the sold asset is much more than the sale price. It is for the first and second respondents to answer this Hon'ble Court about the valuation of the assets arrived at for the sale. This respondent has been fighting with the first respondent to recover its legitimate dues since 2003. The first respondent has been giving various assurances to settle the dues and failed to honour its promises. Now the first respondent had given the OTS Proposal for Rs.5 Crores and the same is under consideration of the approval of the Central Government after the approval of the internal committee.

5.b. The 4th Respondent in his counter has stated that the applicant set out the details in the proceedings in CP No.502/2015 in detail, it is extremely suspect that the Applicant has deliberately failed to disclose the date on which the applicant became aware of the said order. The averments in the Application demonstrate that the Applicant has been fully aware of the proceedings in C.P.No.502/20 from the date of its inception including the order dated 28.06.2019 and the Applicant has never prefered to make any claims over the said property at any point of time all these years and or challenge the order dated 28.06.2019 till the said sale was completed in favour this respondent. According to them the Application ought not to be permitted to prejudice the legal rights and interest of this Respondent, who is bonafide purchaser of the said property for valuable sale consideration

6.b. It is further averred that the present Application is nothing but a relitigation of an issue that has been previously agitated by the Applicant. The Applicant itself admits that it had filed CA Nos.139 and 140 of 2021 in CP 239/2001 seeking the Respondent No.1 from alienating the properties. As per the Order of this Court dated 15.11.2018 in C. A. Nos. 829. 554 & 556 of 2017 and 1106 of 2016 in C.P. No. 502 of 2015, the Official Liquidator was directed to sell the properties of the 1st Respondent company through auction sale. Further the 1" Respondent herein has filed C. A. No. 122 of 2019 in C. A. No. 1106 of 2016 in C.P. No. 502 of 2015 seeking permission to sell the said property among other properties to the persons named in the application. After considering the submissions this Court was pleased to pass an order dated 28.06.2019. After considering the submissions, this Court was pleased to pass an order dated 28.06.2019 in the said application permitting the 1st Respondent herein to sell the said property and pay the Sale Consideration directly to the 2nd Respondent herein on the date of sale. Hence, the said order permits the sale of properties situated at Vellore District and at Noombal. The present application is filed only against the sale of the property at Noombal.

6.c. Pursuant to the said order, the 2nd Respondent confirmed that the sale value of the said property is at Rs.23,00,00,000/- (Rupees Twenty Three Crores only) vide Consent Letter dated 15.12.2021. Further, the 1st Respondent had initiated the sale of the said property in favour of this Respondent and to transfer the said sale consideration in favour of the 2 Respondent for release of their charge over the said property.

6.d.. By way of the aforesaid proceedings, Mr. A. Alagupandian, had been declared as one of the purchasers of the said property. Thereafter, he has nominated the Answering Respondent for purchasing the said property. The Answering Respondent accepted the offer and purchased the said property for a total consideration of Rs. 23,00,00,000/- (Rupees Twenty Three Crores only). The allegations and averments made by the Applicant against the 1st and 2nd Respondent alleging suppression of material facts and claiming first and primary charge over the said property are to be countered by the 1st and 2nd Respondents The Answering Respondent has been put in possession to the property.

6.e. After the purchase of the said property in December 2021, the Answering Respondent has further invested substantial sums for securing the necessary approvals for the plot layout development, required legal compliances and marketing the approved plots for sale. From January 2022, several activities have been taking place on the property regarding cleaning of the site, survey and other field activities for plot development. A board has also been placed on the said property about the proposed plot development. Advertisements were given by the Answering Respondent in prominent news daily for the sale of the plots. Prior to the passing of interim orders, few plots have been registered in favour of the prospective customers, and further third party interest has been created. The Applicant has chosen to be silent all these years, despite the knowledge of the applicant about the main proceedings, i.e. from the date of permission of sale which is on 28.06.2019 till 21.12.2021. The Applicant has deliberately chosen not to challenge the said order. At this stage, the applicant come before the Court.

6.f. In fact, relating to the approval of plot layout, several parcels of the subject property has been Gifted in favour of Thiruverkadu Municipality by a Gift Deed dated 25.06.2022, registered as document number 13078 of 2022, under which an extent of 8887 square meters towards road, 1767 square meters towards park- 1, 357 square meters towards park-II, 110 square meters towards Public

Purpose and 107 square meters towards Public Purpose I stands transferred/gifted, therefore substantial public interest has been created over the subject property. The property has been developed into 160 plots. Any further restraint of alienation would cause severe injury to the reputation of the Answering Respondent. Hence, prays for dismissal of these application.

7.a. Learned Senior Counsel Mr.P.V. Balasubramanian appearing for the Applicant would submit that the order in C.A.No.122 of 2019 was obtained by suppressing the material facts. It is the contention that the DRT proceedings has already initiated in this regard has been totally suppressed. Three orders have been passed by the DRT wherein one of the Orders *pari passu* charge has been upheld by the DRT which has been totally suppressed and challenging the above said order passed by the DRT appeals have been filed and pending. While filing application those orders have been totally suppressed besides affidavit has been filed to the effect as if first charge has been created in favour of the Petitioner.

7.b. It is the contention of the learned Senior Counsel that the 1st Respondent has now dealt with the property which has no title at all. According to him demerger was allowed subject to the consent by all the secured creditors, whereas no such consent was obtained. Such being the position the property has been dealt violating earlier orders of this Court. All these facts were totally suppressed before this court. According to him the *pari passu* charge has been created in respect of the immovable properties. Whereas the 1st and 2nd Respondents suppressing the same, obtained the orders in the Company Application and sold the property for the value of Rs.23 Crores. According to them the value is more than that. Various DRT orders and Memorandum and letters addressed in this regard is also referred by the learned counsel. Hence, submitted that once the orders have been obtained by suppressing the material fact, the entire sale pursuant to that order has to be set aside.

8. Whereas the learned counsel Mr.V. Lakshminarayanan appeared for the 1st Respondent would submit that only the Applicant has suppressed the material facts. In fact, in the year 2010 itself there was an order in the DRT confirming right of the priority charges of the assignor of the 2nd Respondent, which has been suppressed. Since the Company Court has already granted an order of keeping abeyance of the Liquidator appointment and granted permission in the

earlier occasion to sell the property, the application has been filed for sale of property. According to him there is no suppression of material facts. In fact, the applicant has suppressed the earlier order of the DRT, wherein the rights of the Canara Bank and Consortium Banks have been upheld. In fact, DRT has passed an order permitting the sale of properties. Said order has not been challenged and that apart in the order relied upon by the Applicant also, the Tribunal has held that these respondents priority right on the properties would be established in the other applications. OA.No.485 of 2015 was also held in favaour of the 2nd Respondent by the DRT on 14.06.2018. Therefore, submitted that the applicant now cannot seek to set aside the sale on the ground of suppressing the material facts.

9. Learned Senior Counsel Mr.Sathish Parasaran appearing for the 4th Respondent would submit that he has purchased the properties as per the orders of the Court and he is the bonafide purchaser. According to him in these applications the sale cannot be set aside. Even assuming the submissions that there is a fraud played by the Applicant, the fraudulent transfer could be challenged only in the manner known to law, not by way of these applications. Hence, submitted that this is a simple dispute between the mortgagees claiming the priority right over the

property. Since the 4th Respondent has purchased the property and paid the consideration, the same cannot be set aside.

10. Heard the learned Senior counsels and counsel appeared and putforth their argument on their respective parties. These applications have been filed to recall the order passed by this Court granting permission to the 2nd Respondent to sell the scheduled mentioned property to the 4th Respondent herein. This court granted permission to sell the property in company Application No.122 of 2019. This application was filed seeking permission on the ground that the 2nd Respondent herein was the first charge holder, therefore in order to settle the dues for sale of property, the application has filed. The application is proceeded as if this court has passed an interim order keeping abeyance of the appointment of the liquidator and also granted permission for sale of certain properties in Company Application No.1106 of 2016 dated 27.03.2018. In the Company Petition No.829, 554 & 556 of 2017 & 1106 of 2016 in Company Petition No.502 of 2015. This Court by order dated 15.11.2018 taking note of the order earlier passed on 27.03.2018 wherein the appointment of the official liquidator has been kept in abeyance. The 2nd Respondent herein filed an application and submitted that they

identified certain prospective buyers since the first charge has created on the 2nd Respondent, who is applicant in C.A.No.829 of 2017 sought permission. This Court granted permission to sell it as the 2nd Respondent expressed no objection provided the entire sale consideration is paid to the bank directly.

11. Pursuant to the above order now it appears that the property has been sold to the 4th Respondent for valuable consideration. Now these applications have been moved mainly on the ground that the orders have been obtained in suppressing the material facts. According to the Applicant they are having the charge over the property and there are orders passed in this regard by the Debt Recovery Tribunal. Therefore suppressing those orders the applicant has obtained the order.

12. It is relevant to note that from the crux of allegations and the submissions made by the learned counsels before this Court, the main issue revolve around the priority rights between the Applicant and the 2nd Respondent over certain properties of the 1st Respondent and group of companies. In Company Petition No.239, 240, 241 and 242 of 2001 this court by order dated

06.12.2001 sanctioned the scheme of arrangement and the same has modified by this Court by order dated 29.01.2003 to the effect that the order would be valid and effective subject to the approval by the secured creditors. In the appeal in O.S.A.No.55 to 68 of 2003 vide order dated 17.08.2009 reported in ***2009(5) LW 144***, this Court approved the modified order.

13. Be that as it may. The parties are claiming priority right before this Court. This Court is not inclined to go into the merits of merger and demerger since same is subject matter of Company Petition No.139 of 2021, wherein this Court has already passed an order that any alienation or encumbrance created in the interregnum will be subject to the result of that application. Now it is appeared that the matter has been reserved for judgment by the learned Single Judge. Therefore, the question of demerger and other aspects cannot be gone into in these applications. These applications have been only filed to recall the orders of this Court on the ground of suppression of material facts and set aside the sale in favour of the 4th Respondent.

14. It is relevant to note that the Applicant is assignee from the State Bank

Consortium Banks whereas the 2nd Respondent is the assignee from the Canara Bank Consortium Banks. The first Respondent and the companies were availing loans from the year 1995. The subject matter of property is related to Noombal village. It is admitted fact that the said property was originally mortgaged in favour of ICICI Bank, which is also registered in the Registrar of Companies in the year 1997. On 07.01.1998, the mortgage created in favour of ICICI Bank has extended to other banks in the Consortium, i.e., ABN Amro Bank, Canara Bank and Indian Bank and the charge was also registered with ROC. Accordingly, the subject property was mortgaged in favour of the ICICI Bank, Canara Bank and ABN Amro Bank on 07.01.1998. The applicant is Assignee from the State Bank of India, SBI has claimed the priority charges based on the Memorandum dated 31.05.1999 and letter dated 26.05.1998 said to have sent by the Canara Bank to IDBI Bank. Though the letter mainly indicated the Vijayalakshmi Mills, it also stated that the properties situated in Coimbatore or elsewhere.

15. Be that as it may. As these matters are subject matters of appeal and other company petitions and also the DRT proceedings, this Court is not venture

into the merits of the documents. However, the fact remains that in respect of the priority charges certain proceedings have been taken before the DRT. Industrial Bank, lead bank of Canara Bank and other banks has filed Original Application No.323 of 2007 before the DRT wherein the Canara Bank is also made as 12th Defendant and all other consortium banks are also made as parties. By order dated 16.11.2009 the it is held as follows:

> *"11.7 in the result final order is passed allowing-*
>
> *(a) the applicant bank to recover a sum of Rs.4,50,95,231/- with future interest and other monies at the agreed rate with 20% pa from 20 September 2003 upon footing of compound interest until payment and/or realization with costs from defendants 1 to 5 jointly and severally and by sale of schedule mentioned properties in the OA.*
>
> *(b) Since the defendants 12, 15 & 18 have priority of charge over the schedule mentioned properties, the claim of the applicant bank is subject to the claim of the defendants 12, 15 & 18.*
>
> *(c) The applicant bank is directed to produce cost memo within two weeks.*

(d) Issue recovery certificate in favour of the applicant bank in terms of the final order.

(e) Communicate a copy of this order to the parties in terms of the rule 16 read with rule 2(c) of DRT (Procedure) Rules, 1993."

16. In the above Order the Debt Recovery Tribunal has held in clause (b) of para 11.7 that 12th 15th and 18th defendants have priority of charge over the properties. Therefore the claim of the IDBI bank is subject to the claim of the defendants 12, 15 or 18. This order has not been challenged. It is also appeared that another O.A.485/2015 filed by the Canara Bank and others vs. Ramco Super Leathers Ltd., wherein by order dated 07.08.2015 permission has been granted for sale of the properties including the subject property in Noombal village. The Interim Application has been filed by the Ramco Super Leathers Ltd.,wherein the applicant and the assignor are respondents. In O.A.No.485 of 2015 the 2nd Respondent filed an application and decree has been passed in their favour by the DRT by order dated 15.05.2018 which is as follows:

"20. In the result, the application (OA) is

allowed as under:-

a) the applicants to recover the sum of Rs.60,04,12,003.77p (Rupees sixty crore four lakhh twelve thousand three and paise seventy seven only) and the 1st applicant (Canara Bank) to recover a sum of Rs.3,44,12,083/- (Rupees three crore forty four lakh twelve thousand eighty three only) with Interest @ 6% pa.(simple) from the date of institution of the OA till realisation and also costs of the OA from the defendants 1 to 10 & 18 jointly and severally and in case of default, by sale of the remaining schedule mentioned mortgaged/hypothecated properties, if any, in consonance with the charge held by them over the properties and in accordance with Section 326 of the Companies Act 2013;

b) Defendants 11 to 17 are proforma parties;

c) the 11th Defendant-ICICI, being the 1st charge holder having got their dues discharged from, defendants, is directed to handover the documents pertaining to 'C' Schedule property to the applicants herein since they became first *charge holder;*

d) Issue Recovery Certificate in favour of the applicant bank in terms of this final order;

e) Applicant is directed to file costs memo within two weeks of receipt of this order and

f) Communicate a copy of this to the parties concerned."

Wherein also permission granted for sale of the property, schedule mentioned properties, etc.,

17. The above orders passed by the DRT clearly shows that the rights have already decided. Now it is stated that the as against the order passed in O.A.No.485 of 2015 the appeal is pending.

18. Be that as it may. In O.A.No.357 of 2003 the Debts Recovery Tribunal granted decree to the Industrial Investment Bank of India Ltd., for a recovery of Rs.13,03,49,995/- with interest. Debt Recovery Certificate was also issued in

favour of the Industrial Investment Bank of India Ltd. In the meanwhile the Applicant has also filed an another O.A.No.36 of 2006 making all other parties. The above O.A. despite the fact that the already earlier order have been passed in this regard the DRT-1 Chennai has proceeded to hold that the Applicant is also entitled to a priority charge. However, by holding so, it is also given liberty to the 2nd Respondent who is arrayed as 16th Respondent in the above O.A.to establish the said plea of priority charge notwithstanding the finding in O.A.No.36 of 2006. It is relevant to note that the earlier O.As referred, the applicant's predecessors / assignors were also party and the order passed in OA. No. 323 of 2007 dated 16.11.2009 has not been challenged.

19. Similarly, subsequent O.A.No.485 of 2015 the right of the 2nd Respondent/ Assignor has also been declared. Despite above the entire confusion was created by the conflicting orders by the same Tribunal in the same matters. Further the counsels appeared in these matters also not brought to the notice of the earlier orders and every application proceeded as if the entire matter they are arguing as fresh. This led to all the confusions. The issue involved is just a priority right of the parties. It is the contention of the Second Respondent herein

as far as the applicant's charge is concerned even as per the documents relied by the applicant of the year 1999 is only a joint mortgage that cannot be a prior mortgage. Above memorandum related to the property situated in Coimbatore namely Vijayalakshmi Mills alone, right has been created in favour of the applicant.

20. Be that as it may. The Applicant has not taken any steps so far to enforce the security created in their favour, particularly, the property situated in Coimbatore (Vijayalakshmi Mills). But now, they challenge the sale in these applications in respect of the property which is already rights have been declared by the two orders of the DRT and in fact, permission is also given to sell the property to realise the amount. No doubt, the DRT Orders have not placed before this Court for seeking permission to sell the property situated in Noombal village by the 2nd Respondent or by the 1st Respondent. Such non disclosure certainly amount to suppression of facts. 2nd Respondent may be guilty of such suppression. But the fact remains that pursuant to the order of this Court the property situated in Noombal village has been transferred to 4th Respondent for valid consideration. Even assuming that such sale is fraudulent transaction, this Court is of the view

that the same could be avoided only in the manner known to law. Even assuming that such a sale is fraudulent, which is only a voidable. It has to be tested in the backbone of the principal laid down in the Section 53 of the Transfer of Property Act. If the purchaser is able to show that he has purchased in good faith for consideration such sale cannot be set aside. Therefore whether the 4th Respondent purchased the property in good faith or for valuable consideration is the matter of evidence. That cannot be decided in these applications before this Court. Similarly to avoid the transaction of sale under the Old Companies Act, 1956 and since the winding up is also took place, such transfers can be avoided under Section 531 and 531A of the companies Act, 1956. Therefore, mere an application the sale cannot be avoided. Admittedly, the Applicant and the Second Respondent claiming right over a particular property on the basis of the priority rights.

21. Section 48 of the Transfer of Property Act deals with the priority right created by transfer, which reads as follows:

"48. Priority of rights created by transfer.

> *—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."*

22. Unless special contract or reservation subsequent right created will not affect the previous right created. In such a view of the matter this Court is of the view that as against orders passed in O.A.No.485 of 2015 and O.A.No.36 of 2006 by DRT appeal were filed and the same are pending, now this Court cannot go into those aspects. If the applicant is able to succeed in establishing his priority right, in such a case amount realised by the 2nd Respondent shall be repaid proportionate to the right declared in the above Original Application. Merely some suppression of earlier order passed by the DRT, this Court is not willing to set aside the entire sale, since the sale is even assuming to be fraudulent is voidable one. It has to be set aside in the manner known to law. Whether such purchasers are not purchased in good faith or without consideration is a matter of evidence.

Accordingly, this Court is not acceding the applicant's submission to recall the entire order and set aside the same. Since the matter has already seized by the Company Court in C.A.No.139 of 2021 and the similar prayer for setting aside the sale is also sought in the above matter is pending decision, this Court is not inclined to go into the merits of the submissions. However, taking note of the dispute, that is only with regard to the priority right, if the applicant establishes his right in the pending proceedings, in such a case 2nd Respondent shall pay the proportionate amount as per their rights declared.

23. With the above observations, both the company applications are dismissed. No costs.

22.02.2023

Index : Yes/No
Neutral Citation : Yes/No
ggs

copy to: The Sub-Registrar of Kundrathur,
District Thiruvallur, Taluka Poonamallee,
Chennai, Tamil Nadu 600069.

N. SATHISH KUMAR, J.

ggs

Common Order in:
Comp.A.Nos.410 & 411 of 2022 in
Comp.A.122 of 2019 in
Comp.Petn.502 of 2015

22.02.2023