IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

COMPANY APPEAL NO. 4/2024 WITH CIVIL APPLICATION (L) NO. 24/2024

(BANK OF MAHARASHTRA, DHARAMPETH, NAGPUR **VERSUS** M/S MAHARASHTRA EXPLOSIVES LTD. (IN LIQUIDATION) THROUGH OFFICIAL LIQUIDATOR, NAGPUR)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri M.N. Phadke, counsel for the appellant.
Shri N.A. Padhye, counsel for the intervenor.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : JULY 04, 2024
DATE ON WHICH ORDER IS PRONOUNCED : AUGUST 30, 2024

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This company appeal is preferred by the Bank of Maharashtra, the alleged secured creditor, under the provisions of Section 483 of the Companies Act, 1956, whereby the objection preferred by the appellant came to be rejected *vide* impugned order dated May 09, 2024.

2. The facts necessary for deciding the present company appeal are as under:-

In Company Petition No. 07 of 2001, the company Court *vide* order dated July 12, 2019 directed the Recovery Officer to assess the entitlement of the secured creditors and the unsecured creditors, keeping in view the priorities as per Section 529A of the Companies Act, 1956 and Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 and also directed the Recovery Officer to ascertain the amount receivable by the secured creditors and the unsecured creditors.

3. In compliance with the same, the Recovery Officer reported that the secured creditors will be entitled to have priority claim over

the unsecured creditors. The Recovery Officer then observed that the claim of the secured creditors in the form of loan is Rs.39.36 Crores as against the amount available for disbursement of Rs.20 Crores. As a sequel of above, the Recovery Officer has stated that the unsecured creditors will not be entitled to any amount.

4. The appellant objected to the report of the Recovery Officer stating that what was directed to the Recovery Officer was to ascertain the amount receivable by the secured creditors and the unsecured creditors and there were no directions to decide the priorities *inter se* between the secured creditors. It is claimed by the appellant that the Recovery Officer has entertained the objection raised by the Kotak Mahindra Bank which was not within the scope of the order dated July 12, 2019 passed by the company Court. It is also claimed by the appellant before the company Judge that once the assets of the company were liquidated and the securities are converted into cash, all the secured creditors would have equal right in cash which can be realized on sale of the assets. In this background, it is claimed that the appellant-Bank was entitled for the amount available for disbursement.

Such objection of the appellant came to be rejected by the learned company Judge *vide* impugned order dated May 09, 2024. As such, this appeal.

5. Amongst others, the grounds which are sought to be canvassed by Shri M.N. Phadke, learned counsel for the appellant are, the Company Court erred in recording a finding on the objection of the appellant thereby overruling the objection on the powers of the Recovery Officer. According to him, the order dated July 12, 2019 in no way permits the Recovery Officer to decide the

inter se priorities between the secured creditors. According to him, the law laid down by the Apex Court in *ICICI Bank Ltd. Versus SIDCO Leather Ltd. & Others* [**AIR 2006 SC 2088**] is incorrectly interpreted and applied. He would claim that it is only the Company Tribunal who can work out the priorities in the matter of amount to be realized. That being so, the counsel for the appellant would urge that the order impugned is not sustainable.

6. As against above, Shri N.A. Padhye, learned counsel for the Intervenor in Company Application (CAL) No. 24 of 2024 has opposed the prayer made by the appellant as according to him, he being a necessary party to the appeal was intentionally not impleaded as the party to the appeal. It is claimed that the report/ order of the Recovery Officer, Debts Recovery Tribunal, Nagpur dated February 06, 2024 which was placed before the company Judge creates certain rights in favour of the intervenor. According to him, the deed of assignment dated March 31, 2006 has resulted into assigning the deed in favour of the intervenor by the assignee ICICI Bank. He would claim that the Official Liquidator has already sold the assets of the company under liquidation. By preferring the present company appeal, the appellant is questioning the right of first charge holders without impleading them. As such, it is claimed that the appeal is liable to be dismissed.

7. If we appreciate the submissions of Shri M.N. Phadke, counsel appearing for the appellant, in the light of the reasoning recorded by the learned Single Judge, it is necessary to be sensitive to the order dated July 12, 2019 wherein the following observations are made:-

> "*It is not in dispute that the amount which is lying in deposit with the bank through the Company Court will have to be sent to the Recovery Officer for disbursement. However, looking to the dispute between the secured creditors regarding their unsatisfied claims and the objection raised by the unsecured creditors regarding their entitlement and the claims made by the unsecured creditors, in my view, it would be appropriate at this stage to direct the Recovery Officer to ascertain the entitlement of the secured creditors and the unsecured creditors keeping in view the properties as per Section 529-A of the Companies Act, 1956 and Section 31-B of the RDB Act.*
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> *..............*
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> *.............. The recovery Officer shall ascertain the amount receivable by the secured creditors and the unsecured creditors and submit report within four months. ....*"

The aforesaid order records that there exists a dispute between the secured creditors and the objection being raised by the unsecured creditors as to their entitlement. That being so, the Company Court has directed the Recovery Officer to ascertain the entitlement of the secured creditors and the unsecured creditors in the backdrop of the provisions of Section 529-A of the Companies Act, 1956 and Section 31-B of the Recovery of Debts and Bankruptcy Act, 1993. The Company Court further directed that the Recovery Officer shall ascertain the amounts receivable by the secured creditors and the unsecured creditors and submit a report to that effect. As a consequence of above, the appellant claims to have been aggrieved by the report of the Recovery Officer.

8. The important issue of which this Court intends to take note of is that the appellant has never questioned the mandate issued on July 12, 2019 by the Company Court but is only harping upon the powers of the Recovery Officer. The Company Court has noted that the Recovery Officer has to prioritize the entitlement of the claims between the secured and the unsecured creditors and also *inter se* amongst the secured creditors. The Company Court further noted that the claim of the first charge holding secured creditors was Rs.30.876 Crores at the relevant time as against the amount available of Rs.20 Crores for disbursement. In this background of statistics, it is observed by the Company Court that the second charge holding secured creditors will not be entitled to any sum. This Court has further held that the Recovery Officer was directed to assess the entitlement of the secured and the unsecured creditors in the light of the statutory provisions of Section 529-A of the Companies Act, 1956 and Section 31-B of the Recovery of Debts and Bankruptcy Act, 1993. The Company Court further recorded that the ICICI Bank, Kotak Mahindra Bank and IFCI Bank are the first charge holding secured creditors whereas the appellant and the Bank of India are the second charge holding secured creditors.

This factual matrix is not in dispute as nothing contrary is brought on record by the appellant. In this background, the satisfaction recorded by the Company Court that the Recovery Officer has tabulated the entitlement of the first charge holding secured creditors on pro rata basis and the amount of Rs.20 Crores was disbursed by approval of this Court cannot be faulted with. The Company Court has drawn support from the authoritative pronouncements in paragraphs 20 and 21 which are already reproduced in the impugned order. The Company Court has further observed that the Apex Court having regard to the right to property being a Constitutional right has observed that the right to recover the money lent by enforcing a mortgage would also be a right to enforce an interest in the property. The Company Court has also taken a note of the observations of the Apex Court that merely because Section 529 of the Companies Act, 1956 does not specifically provide for rights or priorities over the mortgaged assets, would not mean that the provision of Section 48 of the Transfer of Property Act, 1882 shall stand obliterated. The learned Company Judge has then proceeded to consider the submission of Shri M.N. Phadke that the creditors shall have equal right in cash and rightly so recorded a finding that the priorities of claims amongst the secured creditors *inter se* or amongst the secured creditors and the unsecured creditors would be at par once the securities are liquidated. The aforesaid findings in our opinion are rightly so derived from the observations of the Apex Court in *ICICI Bank Ltd.* (supra) and the provisions of Section 529 of the Companies Act, 1956.

9. In this background, the submissions canvassed by Shri M.N. Phadke, counsel for the appellant, in our opinion, do not call for any consideration so as to interfere with the conclusion arrived at by the learned Company Court. Once the appellant is held to be the second charge holder, the right of the appellant cannot be said to be at par with the first charge holding secured creditors, as rightly held by the Company Court. Consequently, it is held that the there is no substance in the appeal preferred by the appellant.

10. That being so, the appeal fails and the same stands dismissed as such. With the disposal of the company appeal, Civil Application (L) No. 24 of 2024 also stands disposed of. Pending civil applications, if any, also stand disposed of. No costs.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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