(2016) 02 MP CK 0018

In the Madhya Pradesh High Court

Case No : Company Petition No. 14 of 2009

Asset Reconstruction Company (India) Ltd. APPELLANT

Vs

Jyoti Overseas Ltd. RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:
Companies Act, 1956 — Section 433, 434

Citation : (2016) 198 CompCas 67

Hon'ble Judges : Prakash Shrivastava, J.

Bench : Single Bench

Advocate : Shri. Manoj Munshi, learned counsel, for the Appellant; Shri Vijesh Atre, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Prakash Shrivastava, J.—By this company petition u/S.433(1)(E) 434 and 439 of the Companies Act, the petitioner is seeking the winding up of the respondent Jyoti Overseas Ltd.

2. The case of the petitioner is that the respondent had obtained loan from ICICI Bank Ltd which was a secured loan on the movable and immovable assets of the borrower. The respondent had defaulted in repayment of loan and the loan account was classified as non performing assets. The loans together with underlying interest and all right title and interest therein of ICICI has been acquired by the petitioner Asset Reconstruction Company India Ltd (ARCIL) vide agreement dated 30th March, 2005 in terms of Section 5 of the SARFAESI Act. The petitioner had issued notice u/S. 13(2) of the SARFAESI Act on 9/1/2006 which was duly served, yet the payment was not made. The petitioner took possession of the property of the company located at village Sejawaya, Tehsil & District Dhar on July, 11, 2007. The statutory notice u/S.434 of the Companies Act calling upon the respondent to pay a sum of Rs.72,02,83,615/- was issued on 11/6/2009 but in spite of the same, the payment was not done, hence, the present winding up petition is filed.

3. A reply has been filed by the respondent raising several objections but the main objection which has been pressed before this court is that the deed of assignment executed by the ICICI Bank Ltd in favour of petitioner ARCIL is defective and no right accrues on the basis of such a deed.

4. Learned counsel for petitioner submits that the respondent has defaulted in repayment of the amount, hence, it is required to be wound up. He further submits that by the deed of assignment, no properties have been transferred to the petitioner and petitioner has simply stepped into the shoes of the ICICI Bank Ltd, hence, the objection about the registration and deficit payment of stamp duty is of no consequence.

5. As against this, the learned counsel for respondent has questioned the assignment deed as well as the locus of the petitioner to file the petition on the ground that the petitioner is not entitled to recover the amount from the respondent on the basis of such a defective assignment deed.

6. I have heard the learned counsel for parties and perused the record.

7. The fact that the loan was obtained by the respondent from the ICICI Bank is not in dispute. The default in the repayment is also reflected from the record but the main issue is about the right of the petitioner to seek winding up as assignee of the debt on the basis of the deed of assignment Annexure P/3.

8. Learned counsel for respondent has pointed out that by the deed of assignment Annexure P/3 dated 30/3/2005, the ICICI Bank has assigned the loan along with all other interest therein which was disbursed to as many as five borrowers as disclosed in Clause 1.1 of the deed of assignment. He has pointed out that in terms of Section 5 of the Stamp Act, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one such matters, is chargeable under the Act. He has also pointed out the judgment of the supreme court in the matter of The Member, Board of Revenue v. Arthur Paul Benthall reported in (1955) 2 SCR 842 wherein the supreme court has interpreted the word matter u/S.5 as under (Page 38):

"4. We are unable to accept the contention that the word "matter" in Section 5 was intended to convey the same meaning as the word "description" in Section 6. In its popular sense, the expression "distinct matters" would connote something different from distinct "categories". Two transactions might be of the same description, but all the same, they might be distinct.

If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters...

If the intention of the legislature was that the expression ''distinct matters'' in Section 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would been have easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression "distinct matters" in Section 5 and "descriptions" in Section 6 have different connotations".

9. In the matter of Chief Controlling Revenue Authority v. Coastal Gujarat Power Limited and others reported in (2015) 10 SCC 700 also it has been held that the instrument containing or relating to several distinct matters is to be separately charged as if it were the separate instrument. It has been pointed out that on the deed of assignment, the stamp duty of only rupees one lakh has been paid whereas separate stamp duty in respect of the assignment of the lease of each borrower was required to be paid.

10. Counsel for respondent has also pointed out that the deed of assignment has been got registered at Noida, Uttar Pradesh where neither the properties are situated nor the borrowers or the assignor or assignee are located. In para 6 of the additional reply, the details of the debts which are assigned to different borrowers covered by the deed of assignment have been disclosed. He has also brought to the notice of this court the Section 19-A of the Stamp Act inserted by the State amendment which provides that any instrument which has become chargeable in India outside Madhya Pradesh with duty under this Act and thereafter becomes chargeable with a higher rate of duty in Madhya Pradesh u/ S.3(bb) then differential amount of duty is to be paid and has pointed out that in Madhya Pradesh such a deed of assignment is chargeable at a higher rate of stamp duty but the differential amount of duty has not been paid. He has also referred to Section 18 of the Registration Act and has pointed out that the immovable property including land is situated in Madhya Pradesh, therefore, the registration of the document was required to be done in the office of Registrar within whose sub district the property is located but the same has not been done.

11. That apart, he has also pointed out that the column of consideration has been left blank in Clause 1.1 of the Deed. Nothing has been pointed out by the counsel for the respondent to controvert the above material defects and illegalities and irregularities in the execution of deed of assignment in petitioner''s favour. The submission of the counsel for petitioner that no rights in properties have been transferred by the deed of assignment, therefore, no default in respect of payment of stamp duty and registration has been committed, cannot be accepted in view of the recital in clause 2(C) of the deed of assignment as also the other Clauses which reveal that the right title and interest in the secured assets which include immovable properties have been transferred to the assignee. The said aspect is also clear by perusing the provisions contained in Section 5(1)(b) read with Section 2 of the SARFAESI Act.

12. That apart, the petitioner has also initiated the proceedings for recovery of the debts due under the SARFAESI Act.

13. Since it has been demonstrated before this court that the deed of assignment, on the basis of which this winding up petition has been filed, itself is

defective and if any right has accrued to the petitioner on the basis of such a deed of assignment is in dispute and the relief of winding up is a discretionary relief, therefore, considering the circumstances of the case, I am of the opinion that it would not be in the interest of justice to pass the order of winding up of the respondent company.

14. Hence, company petition is rejected.

