
(2004) 07 DEL CK 0056
In the Delhi High Court
Case No : CA 1106 of 2003 in CP 148/85

Corporation Bank

APPELLANT

Vs

Saz International (P) Ltd.

RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Companies Act, 1956 — Section 433, 439, 443

Citation : (2004) 07 DEL CK 0056

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Adarsh B. Dial and Navneet Mishra, for the Appellant; Malvika Rajkotia, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—This application is filed by the petitioner Corporation Bank seeking a direction that the keys of the factory at plot nos.46, 47, 48 and 49 situated at Industrial Estate-II, Village Palia, Tehsil Ballabhgarh, Faridabad, Haryana of the respondent company be delivered to the Bank/Recovery Officer, Debt Recovery Tribunal (DRT), New Delhi.

2. In addition to filing instant petition against the respondent company u/s 433/439/443 of the Companies Act, 1956 for winding up of the respondent company, the petitioner had also filed a Suit bearing No.1716/85 in this Court for recovery of an amount of Rs.22,51,730.96 with interest etc. against the respondent company as well as guarantors. The said suit, on the enactment of Recovery of Debts Due to Banks and Financial institutions Act,1993 was transferred to the Debt Recovery Tribunal, Delhi.

3. It is the case of the applicant bank that the property, particulars of which are given above was mortgaged with the applicant bank. The suit filed, which was transferred to DRT was decreed by the DRT, Delhi as the company or the guarantors did not deposit the decretal amount within 30 days from the date of

passing of the decree. Recovery proceedings were initiated by the Recovery Officer DRT, Delhi and the mortgaged property was attached vide order dated 29.11.2002. Notices for settling sale proclamation were served by registered A.D. Cover and by affixation on the mortgaged property. However, during the pendency of the aforesaid proceedings before the Recovery Officer, it was brought to his notice that this Court in the present petition had passed order dated 8.5.1986 appointing Mr. Parag Tripathi, Advocate as Local Commissioner with direction to visit the aforesaid mortgaged property/factory at Faridabad and to make inventory after breaking open locks of the factory. Direction was also given to put a new lock after the inventory is made and deposit the keys with the Deputy Registrar (Company Section) of this court. Pursuant thereto the Local Commissioner submitted his report dated 10.5.1986/15.5.1986 and also deposited the keys.

4. It is the case of the petitioner Bank that Bank is a secured creditor and mortgagee of the aforesaid property which is subject matter of proceedings before DRT, it has right to proceed under the Recovery of Debts Due to Banks and Financial institutions Act, 1993 for realisation of the amount by sale of the mortgaged property. However, the Recovery Officer has not been able to go ahead with the sale of the property as the keys of the property are deposited with the Deputy Registrar (Company Section) of his Court. In view of this, prayer is made to handover the keys.

5. The respondent company has filed the reply to this application opposing the prayer wherein it is, inter alia, alleged that the bank has neglected and mismanaged the security and thereby allowed its security to be wasted. It is further stated that the order of DRT states that after sale of the premises the amount so recovered would be adjusted against the decretal amount and balance, if any, remain thereafter would be recovered from the guarantor and, Therefore, guarantor has right to ensure that full and fair value of the security of the premises is recovered upon sale. It is also alleged that the bank is willing to settle the entire decretal amount for a sum of Rs.75 lacs and has entered into an agreement with Mrs. S.K. Gill and Mr. G.S. Gill to this effect and has accepted a sum of rupees one lakh as part consideration.

6. I am afraid. None of the objections filed by the respondents have any relevance insofar as present application is concerned. It is a well settled proposition of law in view of the decision of the Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, that notwithstanding the winding up petition the claim by banks and financial institutions be proceeded with under Recovery of Debts Due to Banks and Financial institutions Act, 1993. That being a special statute would prevail over the provisions contained in the Companies Act on the principle of *Generalia specialibus non derogant*. It is also categorically held in this case that even in regard to "execution" the jurisdiction of Recovery Officer is exclusive. Since the properties in question are mortgaged properties with the applicant bank and based there on recovery suit was filed which has

been decreed by the DRT, Delhi and Recovery Officer is seized of the matter, he has exclusive jurisdiction to deal with this property. Insofar as apprehension of the respondent to secure proper sale consideration in respect of these properties is concerned, it is for the respondent to make submissions in this behalf before the Recovery Officer. The objections of the respondent are accordingly rejected. Prayer made in this application is allowed. It is directed that keys of the factory at plot nos.46, 47, 48 and 49 situated at Industrial Estate-II, Village Palia, Tehsil Ballabgarh, Faridabad, Haryana be handed over to the petitioner bank and/ Recovery Officer, DRT, New Delhi immediately.