

(2016) 04 RAJ CK 0110

In the Rajasthan High Court

Case No : Company Application No. 19 of 2016 : Company Application No. 20 of 2016 both in . MiscCompany Application No. 38 of 2012 in Company Petition No. 23 of 2006

IFCI Ltd.

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 19, 30

Citation : (2016) 3 BankJ 531 : (2017) 2 BC 404 : (2016) 2 DRTC 469 : (2016) 4 RLW 3114 : (2016) 3 WLC 568

Hon'ble Judges : Mr. Alok Sharma, J.

Bench : Single Bench

Advocate : Mr. Shashank Agarwal and Mr. R.N. Vijay, Advocate, for the Applicant; Mr. Ashok Mehta, Senior Advocate with Mr. Vibhor Kapoor, Advocate, for the IFCI Ltd; Mr. Gaurav Sharma, Mr. R.B. Mathur and Mr. Amol Vyas. Advocate, for the Objectors; Ms. Sonal Singh a

Final Decision : Disposed Off

Judgement

Mr. Alok Sharma, J.—A common question of law as to the jurisdiction of a Company Court in respect of execution of a recovery certificate issued by the Debt Recovery Tribunal under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter "the Act of 1993") arises in all the applications/cross-objections/counter applications filed on similar underlying facts. Hence all the applications are being disposed of by this common order.

2. M/s. Thar Cement Ltd. was wound up by the order of this Court passed on 21.11.2008 in Company Petition No. 23/2006. Prior thereto the Official Liquidator was appointed as provisional liquidator vide order dated 05.02.2007 in pursuance where to he took possession of the moveable and immovable assets of the company aforesaid in winding up. It appears that IFCI Ltd., the secured creditor

of the company, seeking to recover its unpaid secured loan advanced to the company had earlier approached the Debt Recovery Tribunal, Mumbai (hereinafter "DRTM") prior to the company's liquidation, filing an application under Section 19 of the Act of 1993. A recovery certificate thereupon came to be issued in its favour on 08.07.2004. The said recovery certificate was transferred for execution to the DRT at Jaipur ("DRTJ") as the properties of the judgment debtor company are situate in Rajasthan.

3. As the properties were in possession of the Company Court through the Official Liquidator under the Company Court's order dated 05.02.2007, Application No. 38/2012 came to be filed before the Company Court at the instance of the secured creditor-IFCI Ltd. under Rule 9 of the Company (Courts) Rules, 1959 (hereinafter "the Rules of 1959") seeking permission to stay outside winding up and sell the judgment debtor company's mortgaged properties in terms of the recovery certificate dated 08.07.2004 issued by DRTM. The Official Liquidator did not oppose the application for permission to IFCI Ltd. to stay outside winding up proceedings and sell the properties mortgaged with it provided the applicant-IFCI Ltd. fulfilled various conditions. Of primary relevance, to the adjudication of the application under consideration, were conditions set up by the Official Liquidator that the sale by the secured creditor-IFCI Ltd. in pursuance to the permission of the Company Court be subject to the confirmation and supervision of the court; that the sale proceeds received from the sale of the mortgaged property be deposited with the Official Liquidator; and further that the secured creditor-IFCI Ltd. then file its claim along with others, before the Official Liquidator for adjudication/disbursement in accordance with law. On consideration of the matter, the Company Court vide its order dated 29.11.2012 while granting permission sought directed that the auction sale would be confirmed after seeking its permission and that the sale proceeds be deposited with the Official Liquidator. Disbursement was then to be done by the Official Liquidator in accordance with Sections 529 & 529-A of the Companies Act, 1956 (hereinafter "the Act of 1956").

4. It is not in dispute that pursuant to the aforesaid order dated 29.11.2012, the Recovery Officer, DRTJ vide order dated 27.10.2014 ordered auction in pursuance of the recovery certificate dated 08.07.2004 issued by DRTM. Consequently the mortgaged (immovable) and hypothecated (movable) properties of the judgment debtor company (in liquidation) were put to auction on 19.01.2015. M/s. SPC Infrastructure Pvt. Ltd. was found to be the highest bidder at Rs. 2.91 crore for purchase of Lot No. 2 i.e. Land & Building. It is not in dispute that the amount as required under the terms and conditions of the auction was deposited within time. Qua movable properties (Lot No.1 Plant & Machinery), ditto for Delhi Tax-Mac Traders.

5. Despite the auction on 19.01.2015, where M/s. SPC Infrastructure Pvt. Ltd. was the highest bidder for the land and building of the judgment debtor company (in liquidation) and despite payment of the whole bid amount within the requisite

time i.e. 25% within 24 hours of the auction and the remainder 75% within 15 days, no proceedings for confirmation of the highest bid were taken by the Recovery Officer, DRTJ for several months and the application for confirmation filed by the highest bidders was kept pending. In the circumstances, the highest bidder (M/s. SPC Infrastructure Pvt. Ltd.) moved Company Application No. 20/2015 before this Court in Company Application No. 38/2012 inter alia stating that for reasons of delay in confirmation of the bid, the bid amount of Rs. 2.91 crore be directed to be refunded along with accrued interest. This Court was however disinclined to scuttle the auction and direct a refund of the amount of Rs. 2.91 crore, along-with interest dehors the provisions of Schedule-II of the Income Tax Act, 1956 (hereinafter "the Income Tax Act"). In the circumstances, it was prayed by the applicant that directions issue to the Recovery Officer, DRTJ or one holding additional charge of the said post for expeditious disposal of the pending application for confirmation of its bid at the auction held on 19.01.2015. Taking into consideration the fact that the auction was conducted on 19.01.2015 and several months had since lapsed, this Court then directed vide order dated 18.09.2015 that the application for confirmation of the highest bid at the auction of 19.01.2015 along-with objections thereto be disposed of within six weeks from the presentation of a certificate copy of the court's order.

6. Company Application No. 20/2015 however again came up before this Court on 04.12.2015 on the Recovery Officer's letter dated 05.11.2015 seeking extension of time by six weeks for deciding the application for confirmation of the bid and objections thereto. Vide order dated 04.12.2015, this Court directed that the application for confirmation of auction sale dated 19.01.2015 and the objections thereto be addressed at the next sitting of the Recovery Officer, DRTJ as several months had already elapsed from the date of public auction and the deposit of entire amount by the highest bidder.

7. Vide order dated 11.12.2015, the Recovery Officer DRTJ has rejected the objections to the highest bid at the auction of 19.01.2015 filed by multiple persons/entities. The application/s of the highest bidder/s for confirmation of the bid/s allowed and their bids confirmed. Pursuant to the confirmation dated 11.12.2015 it is on record that the sale certificate qua the properties sold has been issued in favour of the highest bidder/s and also registered.

8. That however was not the end of the matter as even though the sale certificate/s in respect of the properties auctioned on 19.01.2015 pursuant to the order dated 29.11.2012 were issued and registered, the possession of the properties (both movable and immovable of the company in liquidation) still lies with the Official Liquidator. And the Recovery Officer vide order dated 19.02.2016 has required the successful bidder/s to file appropriate application/s before the Official Liquidator attached to the Company Court for taking possession of the properties in issue. They are therefore before this Court (Application Nos. 19/2016 and 20/2016 in Company Application No. 38/2012) praying that the Official Liquidator attached to this Court in possession of the properties be

directed to forthwith handover actual physical possession and also convey the original title deeds.

9. The Official Liquidator has filed his reply to the application. A factual narration of the happenstance has been mechanically made. It is admitted that the entire bid amount both in respect of movable and immovable properties of the judgment debtor company (in liquidation) has been deposited with the Official Liquidator and sale certificates issued with regard thereto by the Recovery Officer to M/s. SPC Infrastructure Pvt. Ltd. in respect of Lot No. 2 i.e. Land & Building (Rs. 2.91 crore) and Delhi Tax-Mac Traders in respect of Lot No.1 i.e. Plant and Machinery (Rs. 56.10 lac). This Court's orders for the purpose of handing over possession are sought.

10. The Commercial Taxes Department has also filed objections/claim. It has been submitted that a huge amount of Rs. 28,80,84,830/- is owing as sales tax/VAT due against the company in liquidation on account of tax, interest as also penalty for the assessment years 1988-89 to 2001-02. The Department has been regularly following up for recovery of the tax due but was first obstructed by the proceedings against the Company now in winding up under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter "the Act of 1985"). Thereafter following the recommendations of BIFR, Delhi under Section 20(1) of the Act of 1985 for winding up of the company in default on tax, M/s. Thar Cement Ltd., a provisional liquidator was appointed on 05.02.2007 where-after complete details of the amounts due to the Department has been conveyed to him on or about 14.02.2007. It has been submitted that in the auction notice for the sale of the properties of the judgment debtor company (in liquidation) by the Recovery Officer, DRTJ, even while outstanding dues of IFCT, ICICI Bank & IDBI Ltd. against M/s. Thar Cement Ltd. were reflected, no mention was made about the outstanding dues of the Commercial Tax Department. The officers of the Commercial Taxes Department present at the auction sale of 19.01.2015 had orally objected to the adequacy of the bid of Rs. 2.91 crore in respect of Lot No. 2 comprising of Land & Building of the judgment debtor company-M/s. Thar Cement Ltd. (in liquidation), but were overruled by the representative of the secured creditor. And then the highest bid of M/s. SPC Infrastructure Ltd. wrongly accepted. Cartelisation of the bid qua Lot No. 2 is alleged. It has been submitted in the alternative that under Section 47 of the Rajasthan Value Added Tax Act, 2003 (hereinafter "VAT Act"), the Commercial Taxes Department has first charge over the properties of the defaulting company /dealer to the exclusion of all other claimants-including the secured creditor. Similarly provisions obtained under Section 50 of the Rajasthan Sales Tax Act, 1994 (hereinafter "RST Act") to the same effect. This is the view also taken by the Apex Court in the case of Central Bank of India v. State of Kerala 2009 (4) SCC 94. It has been submitted that in these circumstances, a copy of communication dated 03.03.2006 by the Official Liquidator to whom a claim for disbursement was made treating the claim of the Department as an ordinary claim is inconsistent with the provisions of RST Act and RVAT Act and law settled by the Apex Court. It has been prayed that the

auction dated 19.01.2015 be thus set aside or in the alternative, it be directed that the Commercial Tax Department be paid amount dues to it as a first charge to the exclusion of all other claimants-both secured and unsecured in accordance with Section 50 of RST Act and Section 47 of RVAT Act.

11. Mr. Gaurav Sharma, appearing for the counter applicant-M/s. Bhawani Stone Crushers Pvt. Ltd. has strongly relied upon the judgment of the Apex Court in the case of M.V. Janardhan Reddy v. Vijaya Bank and ors. (2008) 7 SCC 738 to contend that the confirmation of sale by the Recovery Officer vide order dated 11.12.2015 is in the crosshair of this Court's orders dated 18.09.2015 and 04.12.2015, hence without jurisdiction and of no effect. It has been submitted that under the order dated 29.11.2012 whereby the secured creditor-IFCI Ltd. was granted permission of this Court to sell the assets of the judgment debtor company (in liquidation), it was a specific condition that the sale would be confirmed by this Court-the Recovery Officer had in the circumstances no authority to confirm the auction sale and therefore the order dated 11.12.2015 confirming the auction sale is nonest. It has been submitted that the counter applicant is willing to offer a sum of Rs. 3.25 crore as against the highest bid of Rs. 2.91 crore for Lot No. 2 and an affidavit in this regard has been filed by Deependar Singh on behalf of the applicant-Company. It has been also submitted that the counter applicant-M/s. Bhawani Stone Crushers Pvt. Ltd. was not aware of the date of the auction sale and could not participate therefor. Counsel submitted that as the bid of the highest bidder M/s. SPC Infrastructure Pvt. Ltd. has not yet been lawfully confirmed by this Court as ought to have been for reasons earlier stated, it has no vested right and can be displaced by highest bidder such as the counter applicant-M/s. Bhawani Stone Crushers Pvt. Ltd.-the confirmation of the bid on 11.12.2015 by the Recovery Officer notwithstanding. Throwing every possible argument at the Court, misplaced in the context of the applicant's own offer of a mere Rs.30 lac over the highest bid, almost a year after the auction (10% enhancement) it has been finally submitted that the public auction conducted by DRTJ was neither proper, nor legal as the valuation report was prepared by Rajasthan Consultancy Organization Ltd. in August, 2014 was erroneous and biased for the reason that the certificate holder-IFCI Ltd. has a stake and shares in the said Organization.

12. Mr. Ashok Mehta, Sr. Advocate appearing with Mr. Vibhor Kapoor, for the certificate holder-IFCI Ltd. under DRT's recovery certificate dated 08.07.2004 and Mr. Shashank Agarwal appearing for successful bidder-M/s. SPC Infrastructure Pvt. Ltd have submitted that there is no contravention of the order dated 29.11.2012 passed by this Court in Company Application No. 38/2012 in the confirmation of the highest bid by the Recovery Officer on 11.12.2015. Mr. Ashok Mehta pointed out that the operative portion of the order dated 29.11.2012 clearly provided that the auction sale shall be confirmed with the permission of this court. The said permission was granted by this Court vide its orders dated 18.09.2015 and 04.12.2015 whereby the Recovery Officer, DRTJ was required to decide the objection against the auction sale as also the

application/s for confirmation of sale. Counsel submitted that in this view of the matter, the facts in the present case are totally at variance with the facts in the case of M.V. Janardhan Reddy (Supra) wherein the order of the court was that the auction sale at the instance of the secured creditor would be subject to confirmation by the Company Court. It has been further submitted that even otherwise the factual matrix in M.V. Janardhan Reddy (Supra) were wholly different from the facts in the present case inasmuch as in M.V. Janardhan Reddy (Supra) the allegation was that the secured creditor had not taken steps to take the Official Liquidator into confidence either in respect of valuation of the property to be auctioned or for his participation in the auction sale to ensure that the interest of the workers whom the O.L. represented were looked after and not compromised. It has been further submitted that in M.V. Janardhan Reddy (Supra) subsequent to the cancellation of the sale in favour of successful bidder, the property was reaucted by the Official Liquidator as directed by the Company Court and a price of Rs. 1.80 crores odd received for the mortgaged assets as against the sum of Rs.67.50 lacs odd which have been offered in the first instance at the auction which was confirmed by the Recovery Officer. Counsel pointed out that admittedly in the present case the Official Liquidator was associated with the valuation of the mortgaged assets as directed by the Company Court in its order dated 29.11.2012 at every stage of the auction sales. No objection as to the valuation of the mortgaged assets or even the highest bid has been raised by him at any point of time. It has been further submitted that the offer belatedly filed by the counter applicant-M/s. Bhawani Stone Crushers Pvt. Ltd. almost after a year of the auction sale, is a mere Rs. 30 lacs more (and after a year barely factoring in the inflation), and the difference is in any event not at all one which would shock the conscience of this Court vis-a-vis an auction sale lawfully conducted under the orders of the Court and it being confirmed.

13. Mr. Ashok Mehta further submitted that M.V. Janardhan Reddy (Supra) is even otherwise not the whole enunciation of law on the issue at hand i.e. the Recovery Officer's jurisdiction to sell (while necessarily includes power to confirm the highest bid) inasmuch as the question as to the jurisdiction of the Company Court in interfering with the recovery proceedings by Banks and Financial Institutions against the defaulting creditors on a recovery certificates issued under the Act of 1993 was neither formulated nor addressed. Further no reasons founded in law, for the Company Court exercising the jurisdiction in respect of such proceedings set out. It has been submitted that hence no ratio decidendi, which alone is binding on the Court, can thus be culled out from M.V. Janardhan Reddy (Supra) to hold that the Company Court has the jurisdiction to appropriate the power of confirmation of the sale conducted by the Recovery Officer in pursuance to the recovery certificate issued by a Debt Recovery Tribunal pursuant to allowing an application under Section 19 of the Act of 1993.

14. Mr. Ashok Mehta has further submitted that even otherwise M.V. Janardhan Reddy (Supra) did not take into consideration the prior judgment of the Apex Court in the case of Allahabad Bank v. Canara Bank and anr. (2000) 4 SCC 406

wherein it was held that without an iota of doubt, the DRT had exclusive and absolute sole jurisdiction in respect of adjudication of claims of secured creditors against the defaulting debtors on applications moved under Section 19 of the Act of 1993 and also in execution of certificates of recovery issued against such defaulting debtors. Mr. Ashok Mehta has drawn the attention of the Court in extenso to the prior judgment of the Apex Court in the case of Canara Bank (Supra) and submitted that it has been held therein that Sections 17, 18 & 34 of the Act of 1993 read together oust the jurisdiction of all courts except the High Court exercising jurisdiction under Article 226 & 227 of the Constitution of India in regard to claims of secured creditors against the defaulting debtors. Para 21, 22, 23 & 25 as also para 30 & 50 of the aforesaid opinion relevant to the complete lack of jurisdiction in the Company Court in matters of adjudication and execution by the Debt Recovery Tribunals on applications made by the secured creditors are reproduced here in below :

21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to Banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) (formerly under section 19(7)) to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution). This is the effect of Sections 17 and 18 of the Act.

22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant Bank is concerned.

(ii) execution of Certificate by Recovery Officer: Is his jurisdiction exclusive

23. Even in regard to "execution", the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the Banks/Financial institutions should go to the Civil Court or the Company court or some other authority outside the Act for the actual realisation of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, section 34 of the Act

gives overriding effect to the provisions of the RDB Act. That section reads as follows:

"Section 34 (1): Act to have over-riding effect- (1) Save as provided under sub-section (2), the provisions of this Act shall effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)."

The provisions of section 34(1) clearly state that the RDB Act overrides other laws to the extent of "inconsistency". In our opinion, the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner.

25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act. Point 1 is decided accordingly.

Points 2 and 3: Does the Act override the provisions of Sections 442 and 537 and Section 446 of the Company Act?

Question of leave and control by the Company Court:

30. Learned Attorney General has, in this connection, relied upon *Damji Valji Shah and another v. Life Insurance Corporation of India and others* to contend that for initiating and continuing proceedings under the RDB Act, no leave of the Company court is necessary under section 446. In that case, a Tribunal was constituted under the Life Insurance Corporation Act, 1956. Question was whether under section 446 of the Companies Act, 1956, the said proceedings could be stayed and later be transferred to the Company court and adjudicated in that Court. It was held that the said proceedings could not be transferred. Section 15 of the Life Insurance Corporation Act, 1956 - which we may say, roughly corresponds to section 17 of the RDB Act - enabled the Life Insurance Corporation of India to file a case before a special Tribunal and recover various amounts from the erstwhile life insurance companies in certain respects. Section 41 of the LIC Act conferred exclusive jurisdiction on the said Tribunal just like section 18 of the RDB Act, 1993. There the Company was ordered to be wound up by an order of the Company court passed under section 446(1) on 9.1.1959. The claim was filed by the LIC against the Company and its Directors before the

Tribunal in 1962. The respondents before the Tribunal contended that the claim could not have been filed in the Tribunal without the leave of the company court under section 446(1). This Court rejected the said contention and held that though the purpose of section 446 was to enable the company court to transfer proceedings to itself and to dispose of the suit or proceedings so transferred, unless the Company Court had jurisdiction to decide the questions which were raised before the LIC tribunal, there was no purpose of requiring leave of the Company Court or permitting transfer. It was held by this Court:

"In view of section 41 of the LIC Act, the Company Court has no jurisdiction to entertain and adjudicate upon any matter which the Tribunal is empowered to decide or determine under that Act. It is not disputed that the Tribunal has jurisdiction under the Act to entertain and decide matters raised in the petition filed by the corporation under section 15 of the LIC Act. It must follow that the consequential provisions of sub-section (1) of section 446 of the Companies Act will not operate on the proceedings which be pending before the Tribunal or which may be sought to be commenced before or."

(emphasis supplied)

Just as the Company Court was held incompetent to stay or transfer and decide the claims made before the LIC Tribunal because the Company Court could not decide the claims before the LIC Tribunal, the said Court cannot, in our view, decide the claims of Banks and financial institutions. On the same parity of reasoning as in Damji Valji Shah's case, there is no need for the appellant to seek leave of the Company Court to proceed with its claim before the Debt Recovery Tribunal or in respect of the execution proceedings before the Recovery Officer. Nor can they be transferred to the Company Court.

50. For the aforesaid reasons, we hold that at the stage of adjudication under section 17 and execution of the certificate under section 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on the Tribunal and the Recovery Officer in respect of debts payable to Banks and financial institutions and there can be no interference by the Company Court under section 442 read with section 537 or under Section 446 of the Companies Act, 1956. In respect of the monies realised under the RDB Act, the question of priorities among the Banks and financial institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with section 19(19) read with section 529-A of the Companies Act and in no other manner. The provisions of the RDB Act, 1993 are to the above extent inconsistent with the provisions of the Companies act, 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding up petition against the debtor-company and also after a winding up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the appellant and against the respondents.

15. Mr. Ashok Mehta finally relied upon the judgment of the Apex Court in the case of Official Liquidator, Uttar Pradesh & Uttarakhand v. Allahabad Bank and ors. (2013) 4 SCC 381. Therein it was held that the Company Court exercises only ordinary jurisdiction and does not exercise power under Article 226 & 227 of the Constitution of India. Reiterating its enunciation of law in the case of Canara Bank (Supra), it was held by the Apex Court that Section 34 of the Act of 1993 overrides the powers of the Company Court under Sections 442, 446 & 537 of the Act of 1956 and no directive could be issued by the Company Court in respect of proceedings before DRT. The Official Liquidator as representative of the workers' interest in the winding up proceedings would only have a right to be associated with the sale of the mortgaged assets of the Company in liquidation by the secured creditors to ensure that the assets were disposed of in a fair and transparent manner. Yet aggrievement, if any, of the Official Liquidator with regard to the methodology of the disposal of the mortgaged assets of the debtor by the secured creditors pursuant to a recovery certificate could not entail a challenge thereto before the Company Court. In view of the Act of 1993 being a complete code in itself, the Official Liquidator could, if aggrieved, only move the DRT by way of an appeal against the exercise any of powers under Sections 25-30 of the Act of 1993 by the Recovery Officer. Reference has been made to the conclusions of the Apex Court in para 31 and 35 which are reproduced here in below:

31. The aforesaid analysis makes it luculent that the DRT has exclusive jurisdiction to sell the properties in a proceeding instituted by the banks or financial institutions, but at the time of auction and sale, it is required to associate the Official Liquidator. The said principle has also been reiterated in Pravin Gada and anr. v. Central Bank of India and ors.

35. It has been submitted by Mr. Banerji, learned senior counsel, that if the Company Court as well as the DRT can exercise jurisdiction in respect of the same auction or sale after adjudication by the DRT, there would be duality of exercise of jurisdiction which the RDB Act does not envisage. By way of an example, the learned senior counsel has submitted that there are some categories of persons who can go before the DRT challenging the sale and if the Official Liquidator approaches the Company Court, then such a situation would only bring anarchy in the realm of adjudication. The aforesaid submission of the learned senior counsel commends acceptance as the intendment of the legislature is that the dues of the banks and financial institutions are realised in promptitude. It is to be noted that when there is inflation in the economy, the value of the mortgaged property/assets depreciates with the efflux of time. If more time is consumed, it would be really difficult on the part of the banks and financial institutions to realise their dues. Therefore, this Court in Allahabad Bank's case has opined that it is the DRT which would have the exclusive jurisdiction when a matter is agitated before the DRT. The dictum in the said case has been approved by the three-Judge Bench in Rajasthan State Financial Corporation. It is not a situation where the Official Liquidator can have a choice

either to approach the DRT or the Company Court. The language of the RDB Act, being clear, provides that any person aggrieved can prefer an appeal. The Official Liquidator which association is mandatorily required can indubitably be regarded as a person aggrieved relating to the action taken by the Recovery Officer which would include the manner in which the auction is conducted or the sale is confirmed. Under these circumstances, the Official Liquidator cannot even take recourse to the doctrine of election. It is difficult to conceive that there are two remedies. It is well settled in law that if there is only one remedy, the doctrine of election does not apply and we are disposed to think that the Official Liquidator has only one remedy, i.e., to challenge the order passed by the Recovery Officer before the DRT. Be it noted, an order passed under Section 30 of the RDB Act by the DRT is appealable. Thus, we are inclined to conclude and hold that the Official Liquidator can only take recourse to the mode of appeal and further appeal under the RDB Act and not approach the Company Court to set aside the auction or confirmation of sale when a sale has been confirmed by the Recovery Officer under the RDB Act.

16. Mr. Ashok Mehta also submitted that the Apex Court in the case of Official Liquidator, Uttar Pradesh & Uttarakhand (Supra) referring to its earlier judgment in M.V. Janardhan Reddy (Supra) distinguished it and held that it was a case turning on its own facts where the issue under challenge was limited to the authority of Recovery Officer, DRT to confirm the highest bid in the face of the order of the Company Court to the contrary. The Apex Court clearly recorded that in M.V. Janardhan Reddy (Supra) the court was not called upon to deal that the question of jurisdiction of the company court vis-a-vis DRT in respect of proceedings taken for recovery by the secured creditor against the defaulting borrowers in terms of Section 17/19 of the Act of 1993. And hence M.V. Janardhan Reddy (Supra) is not an authority for the proposition that the Company Court has jurisdiction to set aside an auction sale conducted by the Recovery Officer.

Heard. Considered.

17. In the state of law delineated in the judgments of the Apex Court in Official Liquidator, Uttar Pradesh & Uttarakhand (Supra) and Canara Bank (Supra), it is pellucid that the DRT has exclusive jurisdiction in matters relating to proceedings taken by the secured creditors for recovery of debts against the defaulting borrowers under Section 17/19 of the Act of 1993 even in respect of companies which may be in winding up. The Official Liquidator representing the company in liquidation only has an enforceable right to participate all through in the sale of the assets of a company against which a recovery certificate has been issued by the DRT. The Company Court has no manner of jurisdiction to interfere either with the adjudication or execution of recovery certificate issued by DRT. The case of M.V. Janardhan Reddy (Supra) is a peculiar one which turned on its own facts. Albeit the Apex court did not unturn it even while noting it in Official Liquidator, Uttar Pradesh & Uttarakhand (Supra) yet made it absolutely clear that it could

not be held to be binding authority for the proposition that the Official Liquidator could approach the Company court to set aside the auction sale conducted and confirmed by the Recovery Officer, DRT.

18. Reverting the facts of the present case, it is indeed true that the secured creditor-IFCI Ltd. sought direction of this Court to stay outside the winding up in Company Application No. 38/2012. Therein vide order dated 29.11.2012 the Company court did grant it permission to stay outside winding up. The Official Liquidator was directed to be associated with the whole sale process by the secured creditor and sale price deposited with him following confirmation of sale with the Court's permission. That permission was granted by this Court under its orders dated 18.09.2015 and 04.12.2015. In the circumstances, I am of the considered view, as rightly argued by Mr. Ashok Mehta, appearing for secured creditor that the confirmation of the auction dated 19.01.2015 by the Recovery Officer under order dated 11.12.2015 cannot be faulted for being without jurisdiction and/or contrary to the order dated 29.11.2012 passed by this court. The argument of Mr. Gaurav Sharma on this count is founded upon a misreading of the order dated 29.11.2012 and overlooks the subsequent orders passed by this Court on 18.09.2015 and 04.12.2015 directing the Recovery Officer to decide the application for confirmation by the highest bidder as also objections to the auction of 19.01.2015. Besides, it is inconceivable that under its order dated 29.11.2012 this Court could have intended or directed that in proceedings in the course of execution of recovery certificate issued by DRTM following adjudication of an application under Section 19 of the Act of 1993 in respect of a dispute covered under Section 17 of the Act of 1993, the Company Court could inter-meddle. Such a direction would be plainly contrary to the clear and categorical statement of law by the Apex court in the case of Canara Bank (Supra) wherein it was unequivocally elucidated that the DRT alone had absolute and exclusive jurisdiction in matters of adjudication and recovery of debts of secured creditors without any warrant of interference by the Company Court even in the event of the judgment debtor before the DRT being a company in liquidation. This legal position stands further emphatically reiterated by the Apex Court in the case of Official Liquidator, Uttar Pradesh & Uttarakhand (Supra) which has been referred to above in detail.

19. Following the directions of this Court to the Recovery Officer, DRTJ under its order 18.09.2015 and 04.12.2015, he has confirmed the bid/s of the highest bidders-M/s. SPC Infrastructure Ltd. and Delhi Tax-Mac Traders. Certificates of sale/s have been issued and registered on payment of requisite stamp duty. The order of confirmation passed by the Recovery Officer is appealable under the Act of 1993. As held by the Apex Court in the case of Official Liquidator, Uttar Pradesh & Uttarakhand (Supra) even in the event of the Official Liquidator being aggrieved by the order of the Recovery Officer, his remedy is not to approach the Company Court but the Appellate Authority i.e. DRT under the Act of 1993. The same situation also obtains in respect of any of the objectors before the Recovery Officer, if aggrieved by the rejection of their objections and

confirmation of auction sale vide order dated 11.12.2015.

20. The company applications under the circumstances, challenging before this Court the order dated 11.12.2015 passed by the Recovery Officer, DRTJ are wholly misdirected and not maintainable. They are thus dismissed.

21. Having held that this Court has no jurisdiction to entertain a challenge to the order passed by the Recovery Officer rejecting the objections to an auction sale and confirming the bid of the highest bidder at an auction held by him following a recovery certificate issued by the DRT resulting from an adjudication of an application under Section 19 of the Act of 1993 filed by the secured creditor or seek to appropriate the Recovery Officer's power to confirm a bid at an auction sale held by the Recovery Officer, even on permission being granted by a Company Court to a secured creditor to stay outside winding up in respect of a company in liquidation having suffered a certificate of recovery under the Act of 1993, the inevitable consequence will be to remit the applicants before this Court M/s. Bhawani Stone Crushers Pvt. Ltd. as also the Commercial Taxes Department to their remedy of appeal under Section 30 of the Act of 1993 against the order dated 11.12.2015, passed by the Recovery Officer, DRTJ.

22. In the facts of the case, the delay in filing the appeals for the period during which the objectors have been before this Court i.e. from the date of filing of applications for impleadment and counter application till the date of this order would stand excluded a la Section 14 of the Limitation Act. The appeals be filed within a period of two weeks from today. In the event of appeals being so filed and held to be within limitation or limitation being otherwise condoned under Section 5 of the Limitation Act, 1963, the Appellate Authority is directed to dispose them of within a period of three months of their presentation.

23. The claim of the applicants-M/s. SPC Infrastructure Ltd. and Delhi Tax-Mac Traders to possession of the properties purchased at the auction of 19.01.2015 would abide the decision in the appeals.

All applications stand disposed of accordingly.

24. Taking into consideration that the applicants-M/s. Bhawani Stone Crushers Pvt. Ltd. and Akhilesh Gupta sought to found their case on the judgment of the Apex Court in the case of M.V. Janardhan Reddy (Supra) albeit held to be inapplicable by this Court in the context of the other judgments of the Apex Court in the cases of Official Liquidator, Uttar Pradesh & Uttarakhand (Supra) and Canara Bank (Supra), it cannot be said that the applications now dismissed were wholly without legal foundation or purely vexatious. Consequently the security amount of Rs. 20,000/- deposited by each of the applicants be refunded to them.

25. All application disposed of as a above-delay condoned under section 14 of limitation Act, 1963, security amount be refunded to applicants.