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(2010) 09 RAJ CK 0082

In the Rajasthan High Court

Case No : Company Application No. 13 of 2009 and Company Petition No. 6 of 2004

IFCI Ltd. APPELLANT

Vs

Official Liquidator RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Companies Act, 1956 — Section 446, 529, 529A
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(13), 13(2), 13(4)

Citation : (2011) 106 SCL 477

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : Anant Kasliwal, for the Appellant; B.K. Sharma, for the Respondent

Judgement

Ajay Rastogi, J.—Instant application has been filed by the applicant-IFCI Limited being a secured creditor and other secured creditors having given their consent u/s 446, read with section 529 of the Companies Act seeking directions to handover possession of the mortgaged/hypothecated immovable and movable property of the company-in-liquidation-Punsumi India Ltd. (hereinafter referred as ''Company'') which are in possession of the Official Liquidator so that the applicant-company may realize its outstanding dues by disposing of the property by public auction as provided under law.

2. It has been alleged that the applicant-company is one of the secured creditors who advanced loan to the company.

3. The Company Court passed an order on 23-5-2005 to wind up the Company-in-liquidation and appointed the Official Liquidator to takeover the charge of the company.

4. The applicant-company, being a secured creditor, filed Original Application No. 131/2004 before the Debts Recovery Tribunal, Jaipur for recovery of its dues which is pending. However, in the meanwhile, vide its reference dated

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25-7-2007, the applicant-company sent a notice to the Company u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (''Act, 2002'').

5. It may be proper to mention that u/s 13(13) of the Act, 2002, the Company was prohibited from transferring, either by way of sale, lease or otherwise, any of the secured assets.

6. Taking recourse thereof, a notice was sent by the applicant on 7-12-2007 (Annex 4) to the Company for taking action u/s 13(4) of the Act, 2002. The respondent-Official Liquidator sent a letter dated 17-9-2008 (Annex 5) to the applicant to clarify that whether the applicant-Company intended to remain outside or within the winding up proceedings.

7. The applicant-company thereupon informed the Official Liquidator vide Ref. dated 3-11-2008 (Annex 6) that the applicant-company intended to remain outside the winding up proceedings, however, it wants to take possession of the mortgaged properties of the Company from the Official Liquidator. Simultaneously, the Official Liquidator sent a letter dated 24-11-2008 (Annex 7) to the applicant-company stating therein that if the applicant-company wants to take possession of the assets of the Company, it may seek permission of the Company Court u/s 446 of the Companies Act. Hence, instant application has been filed by the applicant-company.

8. After notice was duly served, pending proceedings, this Court directed the Official Liquidator to submit status report of the Company. The status report has been submitted by the Official Liquidator after supplying copy of the same to the counsel for applicant-company. In Para No. 3 of the status report, the details of the outstanding dues of financial institutions/ secured creditors of the Company have been furnished and it has been informed to this Court that except the RIICO, which is also a secured creditor, the applicant-company has submitted consent letters of all other secured creditors. The consent letters have been placed on record by the applicant-company as Annexures-8(i) to (iv). The IDBI Bank Ltd., Jaipur has given its consent in favour of the applicant-company as evident from the document placed on record as Annexure-8(iv). The Standard Chartered Bank has given its consent to the applicant-Company as evident from the document placed on record as Annexure-8(ii). The LIC of India has given its consent to the applicant-Company as evident from the document placed on record as Annexure-8(i) and the HDFC has given its consent to the applicant-Company as evident from the document placed on record as Annexure-8(iii). The other secured creditors SBI, Jaipur has assigned to Standard Chartered Bank; SBBJ has made Kotak Mahindra Bank Limited as assignee. As per status report Bank of Baroda appears to be secured creditor but no intimation has ever been received of its dues, if any, in the office of the Official Liquidator during pending proceedings.

9. Counsel for the applicant-company submits that once the consent letters have

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been placed on record of all the other secured creditors in favour of the applicant-company and they have already informed the Official Liquidator that they intend to remain outside the winding up proceedings, the assets of the Company have to be handed over to them and there is no justification for the Official Liquidator in holding possession after the clarification has been made giving details of the secured creditors.

10. It came on record on the last date of hearing on 9-9-2010 when the Official Liquidator informed this Court that the possession of the mortgaged properties of the Company can be handed over to the applicant-company on payment of expenses incurred by the Official Liquidator and it has been informed that the expenses incurred by the Official Liquidator upto 30-9-2010 have been paid. Counsel for Official Liquidator further submits that whatever the sale proceeds may come of the assets of the company on being auctioned, it can be disbursed only after complying with provisions of sections 529 and 529A of the Companies Act and the same may be confirmed by this Court and the Official Liquidator may be associated in the proceedings which the applicant-company intends to take for disposal of the secured assets of the company.

11. There cannot be any dispute that the disbursement of the sale proceeds has to take place in terms of sections 529 and 529A of the Companies Act irrespective of the fact that the secured creditors remained outside the winding up proceedings or not.

12. Taking note of the details of the secured creditors, referred to supra, this Court considers it appropriate to direct the Official Liquidator to handover the secured/hypothecated movable/immovable assets of the Company to the applicant-company as soon as possible without any further delay and after the applicant-company receives the sale proceeds, its disbursement must be made in terms of sections 529 and 529A of the Companies Act and the Official Liquidator shall be intimated and also be associated in all such proceedings which the applicant-company intends to take in regard to the assets of the Company. So far as the records the Company are concerned, the same may be retained by the Official Liquidator.

13. With the above directions/observations, the company application stands disposed of.

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