(2015) 01 P&H CK 0332

In the Punjab And Haryana At Chandigarh

Case No : C.A. Nos. 512 of 2013, 148, 149 and 363 of 2014

In Re: Pashupati Haryana Woolens Ltd.

Date of Decision : 09-01-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 5(1)(b)

Citation : (2015) 191 CompCas 276

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Nimrata Shergill, for the Appellant

Final Decision : Disposed off

Judgement

Rajesh Bindal, J—This order will dispose of company application bearing C.A. Nos. 512 of 2013, 148, 149 and 363 of 2014.

C.A. No. 148 of 2014

The prayer in the application is for exemption from filing certified copies of annexures A1 and A2. The applicant is exempted from filing certified copies of annexures A1 and A2.

2. The application stands disposed of.

C.A. Nos. 512 of 2013, 149 and 363 of 2014

3. The prayer made in C.A. No. 512 of 2013 filed by the applicant-UV Asset Reconstruction Co. Ltd. (for short, "the asset reconstruction company") is for substitution as respondent No. 2 in place of IFCI, as the entire debt of the company in liquidation has been assigned by the IFCI to the applicant vide assignment agreement dated July 8, 2013 (annexure A2).

4. The prayer made in C.A. No. 363 of 2014 filed by the applicant the asset reconstruction company is for issuance of a direction to the official liquidator to hand over physical possession of the assets of the company in liquidation for taking further action for sale thereof.

5. Learned counsel for the applicant submitted that IFCI in the case in hand is the secured creditor to whom a sum of Rs. 165 crores were due. The debt has been assigned to the applicant--the asset reconstruction company and in terms of the provisions of the SARFAESI Act, 2002, the applicant has a right to take over the possession of the assets of the company in liquidation and sell the same in association with the official liquidator under overall supervision of this court.

6. He further submitted that the company was directed to be wound up vide order dated August 13, 2004, passed in C.P. No. 110 of 1999 on the recommendations made by the BIFR.

7. Vide C.P. No. 97 of 2006, filed by some of the shareholders, guarantors and ex-managing director of the company in liquidation sought revival of the company, which was dismissed on January 10, 2014. The effort to sell the assets of the company earlier also could not be materialised as the offer received was found to be inadequate by this court and hence, the sale was not confirmed in C.A. No. 25 of 2007 and C.A. No. 491 of 2010, decided on January 10, 2014.

8. In support of his plea, learned counsel for the asset reconstruction company placed reliance upon the judgment of the hon''ble Supreme Court in ICICI Bank Limited Vs. Official Liquidator of APS Star Industries Ltd. and Others, AIR 2011 SC 1521 : (2011) 1 BC 178 : (2010) 159 CompCas 443 : (2010) 4 CompLJ 241 : (2010) 10 JT 599 : (2010) 10 SCALE 378 : (2010) 10 SCC 1 : (2010) 9 UJ 4531 : (2010) AIRSCW 6214 : (2011) AIRSCW 1427 : (2010) 5 Supreme 369 , the Division Bench judgments of this court in Dhir and Dhir Asset Reconstruction and Securitization Company Ltd. Vs. Air Liquide North India Private Ltd. and Others, (2009) 152 CompCas 604 : (2009) 93 SCL 207 , C.W.P. No. 13233 of 2012 titled as Rita Machines (India) Ltd. v. Debts Recovery Appellate Tribunal, decided on September 30, 2013, Pegasus Asset Reconstruction P. Ltd. Vs. Haryana Concast Ltd., (2009) 152 CompCas 215 , Air Liquide North India P. Ltd. Vs. Haryana Steel and Alloys Ltd., (2009) 152 CompCas 599 : (2010) 101 SCL 184 , Kotak Mahindra Bank Ltd. Vs. Coventry Coil-O-Matic (Haryana) Ltd. and Another, (2011) 105 SCL 274 and judgment of the Bombay High Court in Deutsche Bank AG Vs. Vilas Samant, (2009) 152 CompCas 609 : (2009) 92 SCL 376 .

9. In C.A. No. 149 of 2014 filed by the applicants-shareholders and guarantors of the company in liquidation, the prayer is for restraining the asset reconstruction company from selling the property. It is sought to be argued that the assignment agreement is bad as the same was for inadequate consideration. Further learned counsel for the applicants submitted that as the company is already in liquidation and the assets are in possession of the official liquidator, he may sell off the same.

10. Learned counsel appearing for the official liquidator submitted that she has no objection to handing over the possession of assets of the company in liquidation to the asset reconstruction company for sale thereof in association

with the official liquidator and under overall control of the company court. She further submitted that whatever expenses have already been incurred by the official liquidator, the same may be reimbursed.

11. In response to the contention raised by learned counsel for the official liquidator regarding reimbursement of expenses, learned counsel for the asset reconstruction company submitted that the amount claimed will be reimbursed, however, vouchers for the expenses incurred on account of valuation of assets of the company and of security expenses be furnished.

12. Heard learned counsel for the parties and perused the paper book.

13. As in terms of the assignment agreement dated July 8, 2013, the debt of the company in liquidation was taken over by the applicant assignee company namely UV Asset Reconstruction Co. Ltd., from IFCI, the application for substitution is allowed and the applicant--UV Asset Reconstruction Co. Ltd., is directed to be substituted as party in place of IFCI as a secured creditor. Memo of parties be corrected accordingly.

14. The issue as to whether assignee of a secured creditor in terms of section 5(1)(b) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, who steps into the shoes of secured creditor has a right to stand outside the winding up proceedings and still bring the properties mortgaged to sale, was considered by this court in Pegasus Asset Reconstruction P. Ltd. Vs. Haryana Concast Ltd., (2009) 152 CompCas 215 , wherein the following directions were given (page 230):

"If any attempt to harmonize the provisions of the SARFAESI Act and the Companies Act could be made, in the context of orders for sale having already been made by the company court and the participation of the assignor of the applicant at several step for the conduct of sale through the company court, it will be inexpedient to unyoke the proceeding that were put thoroughly the official liquidator. While upholding the claim that the procedure laid down under the SARFAESI Act would enable the provisions of the Security Interest Enforcement Rules to be applied for the conduct and confirmation of the sale, the dispensation in this case would be:

(a) To permit the applicant to stay outside the winding up proceedings and take action to bring to sale the secured assets under section 13 of the SARFAESI Act read with rules 8 and 9 of the Security Interest Enforcement Rules, 2002.

(b) The applicant-reconstruction company shall keep all the steps taken under the SARFAESI Act and the relevant Rules transparent and submit all the proposals for sale to the official liquidator and the details of valuation obtained for the conduct of sale for the purpose of determining the used price.

(c) Sale shall be advertised with a specific clause that the winding up proceedings are pending before the company court, with details of case number and the court of adjudication.

(d) The expenses already incurred for the conduct of the sale by the official liquidator shall be deducted from out of the sale proceeds before any appropriation or disbursement and deposited with the official liquidator.

(e) The reconstruction company shall place before the company court the details of its claim and all expenses incurred before the company court, before making any appropriation to itself and disbursed.

(f) The surplus proceeds over what is lawfully due to it shall be deposited to the credit of the company (in liquidation) before the official liquidator.

The application filed by the reconstruction company and other connected application are disposed of in the above terms."

15. The aforesaid judgment was followed in Air Liquide North India P. Ltd. Vs. Haryana Steel and Alloys Ltd., (2009) 152 CompCas 599 : (2010) 101 SCL 184 , which was upheld in appeal by this court in Dhir and Dhir Asset Reconstruction and Securitization Company Ltd. Vs. Air Liquide North India Private Ltd. and Others, (2009) 152 CompCas 604 : (2009) 93 SCL 207 .

16. Considering the aforesaid enunciation of law, in my opinion, there is no bar on handing over possession of the assets of the company in liquidation to the asset reconstruction company for taking further steps to sell the same in terms of the directions given in the aforesaid judgments. The sale of assets shall also be got confirmed by the company court. The object is to get the maximum price for the assets of the company in liquidation.

17. The contention raised by learned counsel for the shareholders and guarantors for restraining the asset reconstruction company to sell of the assets of the company in liquidation is merely to be noticed and rejected. No provision of law has been pointed out to show as to how the validity of the assignment agreement can be challenged before the company court. Once the debt has been assigned by IFCI to the asset reconstruction company, it steps into its shoes as secured creditor and can take whatever action a secured creditor could take. The apprehension of the shareholders and the guarantors was that the assets of the company in liquidation may not be sold at throwaway price. The apprehension is misplaced, if considered in the light of the directions already issued in terms of which the asset reconstruction company is to associate the official liquidator at every stage and further the sale shall be subject to approval by the company court. Even at that stage, the applicants-shareholders and guarantors shall be at liberty to intervene and bring a better buyer so as to get the maximum price for the properties sold.

18. As far as claim of liquidation expenses by the official liquidator is concerned, learned counsel for the asset reconstruction company has stated that entire amount claimed shall be paid, however, it is directed that the official liquidator shall provide the vouchers in support of the claim for the amount paid for valuation of the assets for sale and also for payments made to the security

agencies. The amount claimed by the official liquidator be paid within one month.

19. The possession of assets of the company in liquidation be handed over by the official liquidator to the asset reconstruction company as early as possible with notice to the shareholders. The inventory of the fixed and moveable assets shall be prepared at the time of handing over the possession to the asset reconstruction company. At that time, respondents Nos. 8 and 9 shall be at liberty to be present and ensure that correct inventory is being prepared. The applications are disposed of accordingly.