

(2008) 07 AP CK 0085

In the Andhra Pradesh High Court

Case No : O.S.A. No's. 53 of 2006 and 41 of 2007

Indian Bank

APPELLANT

Vs

Prisma Home Appliance Pvt. Ltd. (in liquidation)

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Companies Act, 1956 — Section 529, 529A

Income Tax Rules, 1962 — Rule 31

State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2009) 1 ALD 718 : (2008) 145 CompCas 707 : (2009) 92 SCL 91

Hon'ble Judges : G. Bhavani Prasad, J; B. Prakash Rao, J

Bench : Division Bench

Advocate : G.V.V. Prasad, for the Appellant; Anil Kumar, SC for OL, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—Since these two appeals assail the very same proceedings and the orders passed by the learned Single Judge, hence, they are taken up together for disposal.

2. The appellant in O.S.A No. 53 of 2006 is the Indian Bank, which seeks to assail the orders of the learned Single Judge in allowing the application filed by the Official Liquidator representing the company in liquidation seeking to set aside the sale as void as per the orders passed in Company Application No. 1193 of 2005 in Company Petition No. 81 of 1996 dated 7.3.2006. Whereas, the appellant in the other appeal i.e., O.S.A No. 41 of 2007 is the third party/purchaser who having purchased the property that was sold in auction conducted by the bank and seeks to assail the very same order.

3. Briefly stated facts, which are not much in controversy are that the company in question viz., M/s. Prism Home Appliances Private Limited was ordered to be wound up by this Court on the Original Side of Company jurisdiction as per the orders dated 13.7.1999 and consequently entire assets of the company in

liquidation, as claimed by the Official Liquidator, stood vested with the Official Liquidator. However, the grievance of the Official Liquidator who filed the present application in seeking to set aside the sale conducted by the bank, is that without intervention of the Company Court or issuance of any notice to the Official Liquidator, the bank proceeded to lay a claim for recovery of the amounts due under a debt due to them by filing a proceedings in O.A No. 1447 of 1997 before the concerned Debt Recovery Tribunal and obtained a decree. Later on, as per the procedure contemplated under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the bank has obtained certificate dated 19.1.2003 for a sum of Rs. 4,04,23,607/-. Consequently, the bank sought to proceed to sell the properties by way of auction on 18.12.2003 and later on, a certificate was duly issued on 22.1.2004 in favour of the auction purchaser. The appellant in O.S.A. No. 41 of 2007 claimed to have purchased the said property under a registered sale deed document bearing No. 1637 of 2005 dated 3.5.2005.

4. The main contention urged by the Official Liquidator in the application filed seeking to set aside the sale was to the effect that no notice has been given to him nor there is any intervention of the company Court, where the company is directed to be wound up and properties stood vested in the Official Liquidator. Further, as per the procedure contemplated under the provisions of the Income Tax Act, viz., under Schedule II read with Rule 31 of the Rules made thereunder, notice to the Official Liquidator is mandatory and therefore the entire sale behind the back of the Official Liquidator is void. In support, the Official Liquidator sought to place reliance on the decision of the Supreme Court in *Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another*, .

5. Contesting the said application, the case of the appellant bank was total denial as to the contentions raised by the Official Liquidator and further pleading that the proceedings before the Debt Recovery Tribunal as contemplated under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, are not subjected to any of the proceedings before the Court and further provisions of the said Act over-rides the other law and therefore the question of issuance of any notice or to set aside the sale does not arise. In support of his contentions, reliance was sought to be placed on the judgment in *Allahabad Bank Vs. Canara Bank and Another*, .

6. After considering the submissions made from both sides and especially in regard to the different contentions and objections raised by the Official Liquidator as to the want of notice, the learned Single Judge allowed the application following the principles laid down in the decision of the Apex Court in *Rajasthan* case (cited 1 supra). Hence, the appeal by the bank.

7. Further, the appellant in the other appeal in O.S No. 41 of 2007 is a subsequent third party purchaser from the auction purchaser under a registered sale deed as mentioned above and since the very auction conducted by the bank was set aside, a separate appeal is filed.

8. The main contention urged on behalf of the appellant in these appeals is to the effect that having regard to the proceedings under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and proceedings which are already taken place and third parties having been set in, the learned Single Judge ought not to have set aside the sale. Further there is no such warrant to issue any notice to the Official Liquidator or any intervention of the Company Court and the Debt Recovery Tribunal proceedings stand on its own, independently unhindered by the proceedings of any winding up.

9. The learned Counsel appearing on behalf of the Official Liquidator sought to place reliance on the aforesaid judgment in Rajasthan case (cited 1 supra) and submitted that all the objections raised by the appellants virtually stand answered in the said decision and therefore there are no merits in the said contentions or the appeal, that apart, no indulgence need be shown to either of the appeals for failure to follow the procedure as contemplated under the law.

10. Considering the submissions made and also on perusal of the material, the only question voiced on is to the effect that whether on the facts and circumstances, the sale conducted by the bank in pursuance of the sale certificate and the decree obtained before the Debt Recovery Tribunal proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, without intervention of the Company Court or issuing any notice to the Official Liquidator especially where the said company was ordered to be wound up, is void.?

11. Having regard to the aforesaid uncontroverted facts, necessarily, it leads us to consider as to the effect of the sale conducted by the bank in pursuance of the Certificate issued by the Debt Recovery Tribunal. There is no dispute to the fact that the Company in liquidation was liable to pay certain amounts to the bank and on failure of which they obtained the decree in O.A No. 1447 of 1999 before the Debt Recovery Tribunal and after issuance of the certificate for recovery of the said amount, sale was conducted and a certificate of sale was also issued in favour of the auction purchaser on 22.1.2004. The said property was purchased by the appellants in O.S A No. 41 of 2007 on 3.5.2004, however, much earlier thereto, the subject company was ordered to be wound up by this Court on company jurisdiction as per the orders in C.P. No. 81 of 1996 dated 13.7.1999. There is no much controversy across the bar on the effect of such orders of winding up issued by the Court under the provisions of the Companies Act, necessarily it follows with all the assets of the company which were ordered to be wound up, automatically vest with the Official Liquidator. There is no dispute to the provisions of Income Tax Act 1961 and the Rule 31 which contemplates a notice to the Court or Public Officer in custody of the property before affecting attachment. Therefore, either way, the Official Liquidator was not put on notice before the bank has taken steps for conduction of sale or auction, which is quite fatal and vitiates the proceedings. Admittedly, the entire proceedings as initiated by the bank for recovery of the said amounts after obtaining the certificate and

conducting the sale etc are much later to the orders of winding up. Therefore, having regard to the aforesaid situation and especially there being no notice issued to the Official Liquidator, the learned Single Judge has rightly held that the sale would not be sustained. Though, an attempt was made on behalf of the appellants herein in placing reliance on the decision of the Supreme Court in Allahabad Bank case (cited 2 supra), however, there is no dispute to the fact that said decision has also came up for consideration in the later decision in Rajasthan case (cited 1 supra) and it is only due to conflicting views in the said decision with that of the other decision in International Coach Builders Ltd. Vs. Karnataka State Financial Corpn., , the supreme Court has ultimately held that the notice to the Official Liquidator is mandatory. Further, it went on to hold as under ;

In the light of the discussion as above, we think it proper to sum up the legal position thus:

(i) A Debt Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company in liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(ii) A District Court entertaining an application u/s 31 of the SFC Act will have the power to order sale of the assets of a borrower company-in- liquidation, but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(iii) If a financial corporation acting u/s 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the Company court and acting in terms of the directions issued by that court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529A and Section 529 of the Companies Act. (iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act 1993 or the SFC Act are not set in motion, the creditor concerned is to approach the Company Court for appropriate directions regarding the realization of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation.

12. As per the above, it is amply clear that absence of notice, be it under the provisions of Companies Act consequent to winding up or even as per the procedure contemplated under Rule 31 of the Schedule II of the Income Tax Act, is mandatory and would vitiate the entire proceedings. In view of the aforesaid principles laid down, we do not find any merits in either of these appeals. Though the appellant in O.S.A No 41 of 2007 claims to be a third party purchaser and seeks indulgence no equities can be claimed nor can be extended to having

regard to such well laid down decision. Hence, both the appeals fail and they are accordingly dismissed. No costs.