(2010) 09 GUJ CK 0003

In the Gujarat High Court

Case No : Company Application No. 316 of 2009 in Company Petition No. 150 of 1998

Indusind Bank Ltd APPELLANT

Vs

Official Liquidator of Hydron Enviro Systems Ltd. RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:
Companies Act, 1956 — Section 529(A), 530

Citation : (2010) 160 CompCas 59

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

Bench : Single Bench

Advocate : C.Z. Sankhla, for the Appellant; Official Liquidator and J.S. Yadav, for the Respondent

Judgement

K.A. Puj, J.—The applicant Bank has taken out Judges Summons seeking directions to the Official Liquidator to hand over the possession of the secured assets to the applicant to enable the applicant Bank to enforce its secured assets by selling and realizing the same by remaining out side the winding up proceedings.

2. An affidavit in support of the Judges Summons is filed by the Chief Manager of the applicant Bank. The Court has issued notice on 20.8.2009. The Court has passed further order directing the Official Liquidator to file copy of compliance report which he had earlier filed pursuant to the order of winding up passed by this Court. In response to the said order the Official Liquidator has filed his report on 28.7.2010 wherein it was stated that he has made all efforts to find out the compliance report. However, the possession file and other relevant files i.e. compliance report are not traced out. He has also inquired with O.J. Department of this Court on 20.7.2010 and it was communicated by the Registry that the compliance report has not been filed in the matter. On 25.8.2010, another order was passed by this Court directing the Official Liquidator to take all necessary steps to trace out the possession file and/or compliance report and to file proper

report before the Court indicating the correct state of affairs with regard to possession of property in question.

3. Pursuant thereto the Official Liquidator has filed his report on 13.9.2010 wherein he has stated that the concerned dealing assistant and the supervising technical assistant having failed to trace out and produce the possession file of the Company before the Official Liquidator, all the persons in the office of the Official Liquidator were deployed on 4.9.2010 and 5.9.2010 specifically to search out all the files and all the records of the office of the Official Liquidator as a special drive to find out the possession file of the Company in liquidation. The possession file thereafter has been traced out and produced before the Official Liquidator.

4. From the possession file it appears that the compliance report pursuant to the winding up order was drafted by the person then incharge of the Company at the relevant time in the office of Official Liquidator but the compliance report has not been filed. It is very sorry state of affairs that the winding up order was passed by the Court and directions were issued to the Official Liquidator to take possession of the assets of the Company, certain steps were taken by the office of the Official Liquidator and though the compliance report was prepared it was not filed before the Court. No explanation has come forward as to why this has happened and for about nine years no progress was made in the matter. It is only when the present application is moved by the Bank asking possession of property in question the entire machinery was put to work and it was found that the compliance report was not at all filed by the office of the Official Liquidator.

5. The report filed by the Official Liquidator further reveals that over and above a registered office of the Company at 3rd Floor, Nalanda Complex, Premchand Nagar Road, Ahmedabad. There are certain other properties of the Company in liquidation which are as under:

(1) Hydrown Enviro Systems Ltd., 6 Meera Upvan, Kasturba Road, Borivli (East), Mumbai.

(2) Unit No. 3070, Nahar and Sheth Industrial Estate, Pannalal Silk Mill Compound, LBS Marg, Bhandup (West) Mumbai.

(3) 2nd Floor, Chakravrati Complex, Vijay Cross Road, Drive-in-road, Navrangpura, Ahmedabad.

(4) 5, Comtrade Corporate Centre, 5th Floor, Combata Building, (North West Wing) M Karve Road, Mumbai.

6. The representatives of the Official Liquidator had visited the above premises in the year 2000. These facts were never placed before the Court and no order was obtained. After ten years, now to issue any further direction in respect of these properties could not serve any purpose. Had this fact been brought to the notice of the Court at the relevant point of time, further inquiry would have been undertaken pursuant to the order of the Court. The Official Liquidator is,

therefore, directed to initiate necessary inquiry against the persons, who were incharge at the relevant time and if they are in service either in his office or elsewhere, he is directed to seek their explanation as to why such major lapses have been committed and to take appropriate action in the matter, keeping this Court informed from time to time. It is also open for him to make any further inquiry in respect of the above properties.

7. So far as property in question is concerned, Mr. Sudhir Mehta, learned advocate appearing for the applicant has submitted that the applicant Bank has sanctioned the credit facility aggregating to an amount of Rs. 1064.00 lacs to M/s. Hydron Enviro Systems Ltd., which is now in liquidation and the said facilities are secured inter alia by first charge of immovable properties situated and lying and being the office premises of the said Company in liquidation. He has further submitted that the Company in liquidation on 5.6.1997 had deposited the title deeds and documents of title of its immovable properties described therein and created an equitable mortgage with an intent to secure due repayment of entire outstanding of the said facilities. He has further submitted that the applicant Bank has exclusive charge over the mortgaged properties, which are duly registered with the Registrar of Companies in favour of the applicant. Thus, the applicant is a secured creditor and solely and exclusively entitled to sell and realize the said mortgaged securities for recovery of its entire debt due together with interest, further interest, liquidated damages, expenses, costs, charges etc.

8. Mr. Mehta further submitted that this Court vide an order dated 11.4.2000 passed in Company Petition No. 150 of 1998 appointed Official Liquidator attached to this Court as the Official Liquidator of the Company with all necessary powers to take custody of all the properties and assets of the Company. Pursuant to the said order the Official Liquidator has taken over the possession of the assets of the Company in liquidation including the mortgaged properties which are solely and exclusively charged to the applicant and the Official Liquidator is still holding possession of the said mortgaged securities. He has further submitted that the Company in liquidation failed and neglected to repay the loan amount to the applicant and hence the applicant has filed Original Application No. 2171 of 1999 for Rs. 11,55,19,931.57 with further interest @ 22% from the date of filing of Original Application. The said Original Application was allowed for Rs. 11,50,73,257.12 with further interest @ 19.75. The Recovery Certificate dated 16.9.2002 was issued by the Debts Recovery Tribunal, Mumbai. The said Recovery Certificate was transferred to Debts Recovery Tribunal, Ahmedabad for execution and numbered as TRP No. 67 of 2004.

9. Since the property in question was under the possession of the Official Liquidator an application was moved by Ex.H/28 to take over possession of the property and accordingly the Recovery Officer, DRT, Ahmedabad directed the Official Liquidator to file his reply. Since the Official Liquidator has not responded to the notice issued by the Recovery Officer the applicant Bank requested to hand over possession of the property and accordingly the Recovery Officer, DRT,

Ahmedabad by order dated 21.9.2007 appointed Branch Manager, Ex-officio of the applicant Bank as Recovery Officer to take over the possession of the property and directed the Official Liquidator to hand over the possession of the property. Pursuant to the said order the applicant Bank demanded the possession of the property from the Official Liquidator vide letter dated 26.10.2007. However, the Official Liquidator vide his order dated 14.12.2007 refused to hand over the possession of the property. The Recovery Officer, thereafter, informed the Official Liquidator to appear in the recovery proceeding and make submissions before the Recovery Officer. However, he has not appeared before the Recovery Officer. Thereafter, the Recovery Officer vide his order dated 8.7.2008 put the property on public auction and the order for taking possession of the property was put in abeyance. The public auction was held on 26.8.2008. However, no bidder turned up since physical verification could not be made available to the bidders in view of the fact that the possession of the property was and is with the Official Liquidator. The Recovery Officer, therefore, passed an order to defer the auction to 19.9.2008. However, no progress was made.

10. In the above view of the matter, present application is moved by the applicant Bank before this Court seeking direction to the Official Liquidator to hand over possession to the applicant Bank being secured creditor opted for realizing its mortgaged securities by remaining outside the winding up proceeding.

11. Mr. Mehta further submitted that there is settled legal position and Recovery Officer has rightly observed in its order that in view of the decision of the Apex Court in the case of Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another, a Debts 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 is 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. In the present case this procedure has been followed by the Recovery Officer. Notice was issued to the Official Liquidator and an opportunity of being heard was also given. It is a different thing that the Official Liquidator could not remain present and, therefore, he has submitted that in view of this decision the applicant Bank being a secured creditor is entitled to possession and the Recovery Officer has rightly directed the Official Liquidator. He has, therefore, submitted that the prayer made in this application may kindly be granted and the possession of the property in question be directed to be handed over to the applicant so that the property can be put to sale and the applicant Bank can realize its debts.

12. Mr. J.S. Yadav, learned advocate appearing for the Official Liquidator, on the other hand, has submitted that the Company went into liquidation in 2000 and since then the property is in possession of the Official Liquidator. No efforts were made by the applicant Bank. The Official Liquidator is representing the workers

and all other creditors and in this way if the sale is undertaken by the Court it would fetch adequate price and the amount can be disbursed in favour of the creditors and workers in view of the provisions contained in Section 529A and 530 of the Companies Act. He has, therefore, submitted that instead of directing the Official Liquidator to hand over possession to the applicant Bank a Sale Committee be constituted wherein the applicant Bank is one of the Members of the Sale Committee and the Official Liquidator be convener and after inviting the offers through public advertisement the auction be held.

13. Having heard the learned Counsels appearing for the parties and having considered their rival submissions it appears to the Court that here in the present case neither the applicant Bank nor the Official Liquidator has acted promptly and accurately in the matter. Since 1999 onwards the applicant Bank has put its seal over the premises. The Official Liquidator has also taken possession pursuant to the winding up order passed by this Court in the year 2000. For ten years the Official Liquidator has not moved to this Court nor even compliance report is filed in respect of which certain actions could have been taken in time. However, due to mere negligence and carelessness on the part of the persons working in the office of the Official Liquidator or for extraneous reason best known to them, no steps were taken. Moreover, compliance report though prepared was not filed in the Court. Be that as it may, once the matter is pending before this Court and Court is seized with the matter, in the interest of all parties the property should be sold as expeditiously as possible considering the larger interest of all, including the applicant Bank and the workers, if any. The Court, therefore, thinks it fit and proper that instead of handing over the possession to the applicant Bank, through the Official Liquidator, the Court itself undertakes sale of the property in question through the assistance of the applicant Bank as well as Official Liquidator and chock out the detail programme and procedure.

14. In the above view of the matter, the Official Liquidator is directed to get the valuation of the property in question and, thereafter, invite offers from the interested purchaser by issuance of public advertisement. For this purpose, a Sale Committee is ordered to be constituted wherein the applicant Bank is one of the Members of the Sale Committee and the Official Liquidator be convener. They will take decision in the Sale Committee meeting with regard to valuation, issuance of public advertisement fixing upset price as well as EMD and put the property for sale after inviting offers. All those offers received by the office of the Official Liquidator shall be put into sealed cover and it should be placed before the Court and auction of the property shall be taken place on 29.10.2010. The Official Liquidator shall see to it that this entire procedure should be completed within the time bound programme and all necessary procedure in this regard shall be undertaken as promptly as possible.

15. With this directions, this application is accordingly disposed off.

