(2015) 05 RAJ CK 0103

In the Rajasthan High Court

Case No : Company Application Nos. 51 and 53/2014 in Company Petition No. 28 of 2003

Sanjay Seth APPELLANT

Vs

Kesari Vanaspati Products Ltd. RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Companies Act, 1956 — Section 442, 529-A, 537
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(19), 30, 32

Citation : (2015) 05 RAJ CK 0103

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Sandeep Taneja, for the Appellant; Sonal Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—Ex-Director of M/s. Kesri Vanaspati Products Ltd., (''the Company in Liquidation'', for short), has instituted an application (51/2014) with a prayer seeking quashment of Tender Notice dated 2nd September, 2014, whereas the Official Liquidator of the Company in Liquidation aforesaid has instituted S.B. Company Application No. 53/2014, with a request for accepting of the highest bid for sale of Plant and Machinery and other equipment of the Company in Liquidation, as a consequence of Tender Notice dated 2nd September, 2014, which was issued with the approval of the High Court on an Application No. 32/2014, disposed off vide order dated 1st September, 2014.

2. Briefly, the skeletal material facts necessary for appreciation of the controversy raised herein are that the Company in Liquidation was ordered to be wound up vide order dated 13th January, 2004, passed in the Company Petition aforesaid. The Debts Recovery Tribunal, Jaipur issued an order dated 30th

September, 2005, for auction, without notifying the Official Liquidator. The proceedings of auction, consequent thereupon, were quashed and set aside, in S.B. Company Application No. 79/2005, vide order dated 23rd January, 2007, for the Official Liquidator was not associated in the auction proceedings. Thereafter, the Official Liquidator, directly, made an application before the High Court, which has been disposed off, with approval leading to issuance of impugned Tender Notice dated 2nd September, 2014. Thus, the question raised for want of jurisdiction, is the subject matter of the two applications.

3. Learned counsel for the applicant/Ex-Director, reiterating the pleaded facts and grounds of the application, referring to the opinion of the Hon''ble Apex Court of the land in the case of The Official Liquidator, U.P. and Uttarakhand Vs. Allahabad Bank and Others, (2013) 4 AD 332 : AIR 2013 SC 1823 : (2013) 2 BC 191 : (2013) 113 CLA 335 : (2013) 177 CompCas 433 : (2013) 177 CompCas 426 : (2013) 2 CompLJ 225 : (2013) 2 CTC 564 : (2013) 4 JT 175 : (2013) 3 SCALE 401 : (2013) 4 SCC 381 : (2013) 119 SCL 168 : (2013) AIRSCW 1766 : (2013) 2 Supreme 494 , has emphatically, argued that the Official Liquidator, is required to follow the route as engrafted, under the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

4. According to the learned counsel, the jurisdiction of Company Court vis a vis, the sale of assets of Company in Liquidation, under the provisions of Recovery of Debts Due to Banks and Financial Institution Act, 1993, is within the exclusive jurisdiction of Debts Recovery Tribunal, for the purpose of sale of the properties for realisation of the dues of the banks and Financial Institutions.

5. It is further contended that Recovery of Debts Due to Banks and Financial Institution Act, 1993, being a special Act, would, thus, prevail over the Companies Act, 1956, being a general law. Further, Section 32 of the Act of 1993, provides an over riding effect to its provisions over other laws, and therefore, the Tender Notice issued, without jurisdiction, is liable to be set aside. There has not been proper and fair valuation of the properties of the Company, in Liquidation, is another ground pressed while assailing the Tender Notice dated 2nd September, 2014.

6. Per contra, Ms. Sonal Singh, learned counsel appearing on behalf of the Official Liquidator, reiterating the stand in the reply to the application, emphatically argued that the Tender Notice dated 2nd September, 2014, was rightly issued in pursuance to the approval accorded by the High Court, vide order dated 1st September, 2014, in S.B. Company Application No. 32/2014. The averment, made on behalf of the applicant/Ex-Director, that Debts Recovery Tribunal, Jaipur, has exclusive jurisdiction to sale the assets of the Company, is misconceived. The Company, in Liquidation, was ordered to be wound up, vide order dated 23rd January, 2004, in the Company Petition aforesaid and the assets of the Company vests in the Company Court from the date of winding up and the Official Liquidator in the capacity of custodian, is entrusted with the winding up proceedings as contemplated under the Provisions of Companies Act,

1956. Further, the Debts Recovery Tribunal, Jaipur, in its orders passed, in recovery case No. 120/2003 (IDBI v. Kesri Vanaspati), has entrusted the auction of the plant, building, machinery and land to the Official Liquidator and the secured creditors are further agreeable to the same and are also interested in conclusion of the winding up proceedings at the earliest. More over, the secured creditors were also involved in the auction proceedings conducted in pursuance to auction Notice dated 2nd September, 2014, and have approved the proceedings conducted by the Official Liquidator.

7. According to the learned counsel, the opinion of the Hon''ble Apex Court of the land, as referred to and relied upon, in the case of Official Liquidator, Uttar Pradesh and Uttarakhand (supra), is not applicable to the facts of the instant case at hand, which are entirely different and distinguishable.

8. I have heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival contentions raised.

9. Indisputably, from the facts and materials available on record, the issue that emerges for consideration is a pure question of law: The High Court, vide its order dated 13th January, 2004, accepting the recommendations of the BIFR, passed the order for winding up of the Company in the above noted Company Petition, and the Official Liquidator has been put in charge of all the properties and assets of the Company Liquidation. The secured creditors of the Company in Liquidation i.e. Industrial Development Bank of India (IDBI), Vijaya Bank and State Bank of Bikaner and Jaipur also initiated the recovery proceedings before the Debts Recovery Tribunal, Jaipur. The Debts Recovery Tribunal, Jaipur, issued a Recovery Certificate dated 20th August, 2003, in Original Application No. 419/2000, in favour of IDBI, against the Company, the applicant, Mr. Vijay Seth and Mr. M.R. Seth (since deceased), for a sum of Rs. 7,57,50,439/- (Rupees Seven Crore Fifty Seven Lac Fifty Thousand Four Hundred Thirty Nine only) along with interest @10% per annum. Recovery proceedings, in Execution Application No. 120/2003, instituted by IDBI, leading to order dated 30th September, 2005, were the subject matter of S.B. Company Application No. 79/2005, adjudicated upon by the High Court vide order dated 23rd January, 2007.

10. Addressing the question, whether Debts Recovery Tribunal, Jaipur, has exclusive jurisdiction to sell the properties in a proceeding instituted by the Bank or Financial Institutions, the Hon''ble Apex Court of the land in the case of Official Liquidator, Uttar Pradesh and Uttarakhand (supra), under paragraphs 15, 23, 24, 31 and 35, has held thus:

"15. Presently, we shall advert to the analysis made in Allahabad Bank''s case. In the said case, this Court was concerned with the issue relating to the impact of the provisions of the RDB Act on the provisions of the 1956 Act. Allahabad Bank had come to this Court against an order passed by the learned Company Judge under Sections 442 and 537 of the 1956 Act whereby the Company Court, in winding up petition, had stayed the sale proceedings taken out by the Allahabad Bank before the Recovery Officer under the RDB Act. The stand of the Allahabad Bank was that the tribunal under the RDB Act could itself deal with the question of appropriation of sale proceeds in respect of the sale of the company''s properties held at the instance of the Bank and the priorities. After stating the facts, the Court posed the questions that required to be adverted to:

Questions have been raised by the Respondent as to whether the Tribunal can entertain proceedings for recovery, execution proceedings, and also for distribution of monies realized by sales of properties of a company against which winding-up proceedings are pending, whether leave is necessary and as to which court is to distribute the sale proceeds and according to what priorities among various creditors.

23. From the aforesaid verdict, it is vivid that the larger Bench approved the law laid down in Allahabad Bank (supra). In fact, it is noticeable that the larger Bench has observed that in Allahabad Bank''s case, a view has been taken that the RDB Act being a subsequent legislation and being a special law would prevail over the general law, the 1956 Act, but the said argument is not available as far as the SFC Act is concerned.

24. From the aforesaid authorities, it clearly emerges that the sale has to be conducted by the DRT with the association of the Official Liquidator. We may hasten to clarify that as the present controversy only relates to the sale, we are not going to say anything with regard to the distribution. However, it is noticeable that under Section 19(19) of the RDB Act, the legislature has clearly stated that distribution has to be done in accordance with Section 529-A of the 1956 Act. The purpose of stating so is that it is a complete code in itself and the tribunal has the exclusive jurisdiction for the purpose of sale of the properties for realization of the dues of the banks and financial institutions.

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 realized 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 realize 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 and Anr. (supra). 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 whose 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."

11. From a glance of the adjudication by the Hon''ble Apex Court of the land, as extracted in the forgoing the paragraphs, there is no room for any doubt that Debts Recovery Tribunal, Jaipur, has exclusive jurisdiction, to sell the properties in a proceeding instituted by the Bank or Financial Institutions, of course, it is required to associate the Official Liquidator.

12. The Hon''ble Apex Court of the land has emphasized considering the intendment of the legislature for realization of the dues to the Banks and Financial Institutions, there is no choice for the Official Liquidator, to approach the Debts Recovery Tribunal or Company Court, in view of the specific stipulations under the Act of 1993.

13. For the reasons and discussions hereinabove, the application preferred on behalf of the applicant/Ex-Director (SB Company Application No. 51/2014) merits acceptance.

14. Ordered accordingly.

15. In the result, the Tender Notice dated 2nd September, 2014, is hereby quashed and set aside.

16. As a consequence of decision on Application No. 51/2014, the Company Application No. 53/2014, instituted by the Official Liquidator, has to be dismissed.

17. Ordered accordingly.

18. A copy of this order be placed in each of the file.