

(2016) 04 KAR CK 0156

In the Karnataka High Court

Case No : Company Application Nos. 54 and 55 of 2016 in Company Petition No. 67 of 1997

Sharath Rukmangada

APPELLANT

Vs

Cauvery Papers Limited

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Recovery of Debts Due To Banks And Financial Institutions Act, 1993 — Section 17, Section 22
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(2)

Citation : (2017) 2 KantLJ 570

Hon'ble Judges : Budihal R.B, J.

Bench : Single Bench

Advocate : Sri Ajesh Kumar for Sri Ashwin C, Advocate, for the Applicants; Sri K.S. Mahadevan, Advocate for Official Liquidator and Sri V.J. Achalananda, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Budihal R.B., J.—These applications are filed by the applicants under Rule 6 read with Rule 9 of the Companies (Court) Rules, 1959.

2. C.A. No. 54 of 2016 is filed by the applicants praying the Court to set aside the judgment dated 22-12-2003 passed by the Debts Recovery Tribunal in O.A. No. 872 of 1999, which is produced at Annexure-C, and also to set-aside the orders dated 27-5-2015 and 24-6-2015 passed by respondent no. 2 in DCP No. 3096 of O.A. No. 872 of 1999 produced at Annexure-F, as they are non est, illegal and arbitrary.

3. C.A. No. 55 of 2016 is filed by the applicants to stay the execution/recovery proceedings in DCP No. 3096 of O.A. No. 872 of 1999 pending before the respondent no. 2.

4. Looking to averments made in both these applications, the said averments are one and the same, therefore, both these applications are taken together to

dispose of them by this common order.

5. The facts in brief as pleaded by the applicants are that, M/s. Cauvery Papers Limited (In Liqn.) i.e., respondent no. 1 herein had borrowed a term loan of Rs. 305 Lakhs from IDBI, IFCI and ICICI on 8-9-1982 and further loans of Rs. 28.80 Lakhs and Rs. 34 Lakhs on 27-3-1985 and 9-11-1987 respectively, for its project at Satyagala Village, Mysore District, for manufacture of M.G. Kraft and coloured poster papers. The respondent-company (In Liqn.) was declared as a Sick Industrial Company within the meaning of the Sick Industrial Companies (Special Provisions) Act, 1985, by the Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR" for short) on 26-10-1988 and the document in this regard is produced at Annexure-A.

6. The further facts that a reference under Section 15(2) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA" for short) of the respondent-company (In Liqn.) was made to the BIFR. The BIFR on 26-10-1988, declared the respondent-company as sick despite a rehabilitation scheme sanctioned by BIFR during August 1990, failed to revive the respondent-company (In Liqn.). It appears that the ICICI Bank and respondent no. 4-Bank (IFCI) i.e., the operating agency banks declined to implement the scheme of rehabilitation. Respondent-company (In Liqn.) preferred an appeal before the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as "AAIFR" for short) against the aforesaid order passed by the "BIFR", however the order passed by the BIFR was confirmed by the Appellate Authority on 10-9-1997. The BIFR finally passed an order dated 21-4-1997 recommending for winding-up of respondent-company (In Liqn.) and thereafter forwarded the matter to this Court, which is numbered as Co. P. No. 67 of 1997 before this Court, against tire respondent-company (In Liqn.) on 13-5-1997. This Court was pleased to pass an order for winding-up of the respondent-company (In Liqn.) vide its order dated 9-3-2000 and directed the Official Liquidator to take control of the assets and liabilities of the respondent-company (In Liqn.). The respondent-company was declared sick on 26-10-1988 by the BIFR and that, Section 22 of SICA operates immediately upon such declaration and was in force up to the presentation of the instant petition on 13-5-1997 and hence all the other legal proceedings are liable to be suspended.

Section 22 of the SICA, 1985, provides for suspension of legal proceedings, contracts etc.

Section 433 of the Companies Act, 1956, provides for the cases in which company may be wound-up by the Tribunal.

Section 438 of the Companies Act, 1956, provides for the jurisdiction of the High Courts to pass orders at anytime and at any stage and either on an application of or without application from any of the parties to the proceedings.

Respondent 2-Recovery Officer (N)-DRT and the DRT despite being notified by the Official Liquidator representing respondent-company, failed to adhere to

Section 441(2) of the Companies Act, 1956. It is well-settled law that once the order for winding-up of the Company is made, the said order relates back to the date of presentation of the winding-up petition.

Section 441 of the Companies Act, 1956, provides for commencement of winding-up by Tribunal. Respondent 2-the DRT, respondents no. 3 and 4-Banks, failed to obtain the express leave of this Court to continue with the proceedings before the DRT and respondent no. 2-Recovery Officer.

Section 446 of Companies Act, 1956 provides for the suits stayed on winding-up order.

7. This Court vide its order dated 2-1-2003 was pleased to accept the highest bid of Rs. 2,01,67,667/- for the Land, Building, Plant and Machinery, and the highest bid of Rs. 7,25,000/- for the comprising stocks of the respondent-company (In Liqn.) Hence, this Court granted permission to Official Liquidator representing the respondent-company (In Liqn.) for sale of the assets of the respondent-company (In Liqn.) and it is manifestly dear that the sale is made after winding-up of the respondent-company (In Liqn.). There is no basis and justification by respondent no. 2 at Annexure-F order sheet in D.C.P. No. 3096 as to recommencement/continuance of recover proceedings on 24-2-2014 after having kept the same in abeyance from 10-12-2007.

Section 537 of the Companies Act, 1956, provides for the avoidance's of certain attachments, executions, etc., in winding-up by Tribunal.

In lieu of the above mentioned provisions of the SICA, 1985, and the Companies Act, 1956, and in lieu of the pendency of the instant liquidation proceedings against the respondent-company no authority could have initiated/proceeded with any kind of action/distress/execution proceedings against the respondent-company and/or its directors for recovery of their respective dues. Therefore, the original application proceedings in O.A. No. 872 of 1999 could not have been presented by the IDBI, IFCI and ICICI Banks before the DRT, as the date of presentation of this petition is much prior to the initiation of the DRT proceedings. This certificate holder banks namely IDBI, IFCI and ICICI, had approached the DRT, Bangalore on 5-7-1999 seeking to recover its dues from the respondent-company (In Liqn.) in O.A. No. 872 of 1999. In the pleadings in O.A. No. 872 of 1999 before the DRT, the aforementioned banks have specifically pleaded as regards the pendency of liquidation proceedings before this Court, but no leave of this Court is sought for by the aforesaid banks to proceed with O.A. No. 872 of 1999 before the DRT in the said proceedings. In pursuance of the winding-up order by this Court, the Official Liquidator attached to this Court appeared before the DRT in O.A. No. 872 of 1999 on 18-12-2000 wherein in his written statement the Official Liquidator maintained that, respondent-company (In Liqn.) was ordered to be wound-up by this Court in COP No. 67 of 1997 on 9-3-2000 and that Official Liquidator had taken possession of the respondent-company (In Liqn.) on 20-4-2000 and all the property, etc., of the respondent-

company (In Liqn.) hence, vested with this Court under Section 456 of Companies Act, 1956, that the Official Liquidator is taking steps for the sale of respondent-company (In Liqn.) properties. The Official Liquidator also informed the DRT that under the provisions of Section 446(1) of the Companies Act, 1956, when a winding-up order was passed the leave of this Court was absolutely necessary and condition precedent to continue the application (Recovery) proceedings before the DRT against the respondent-company (In Liqn.) and also informed that in the event of aforementioned Banks viz., IDBI, IFCI and ICICI obtained a decree from the DRT against the respondent-company (In Liqn.) the same shall not be executed without the leave of this Court. An amendment to the claim petition that the Official Liquidator representing the company was carried out in terms of the order of DRT, dated 25-9-2000. The written statement filed by the Official Liquidator before the DRT is Annexure-B. The DRT instead of suspending the proceedings as contemplated under Section 22 of SICA and Sections 441, 446 and 537 of Companies Act, 1956, in O.A. No. 872 of 1999, continued with the judicial proceedings and passed a judgment dated 22-12-2003 thereby allowing the claims of the claimant Banks viz., IDBI, IFCI and ICICI. The claims of the respective banks was decreed as per the recovery certificate wherein the claim of Bank No. 1 (IDBI) was decreed at Rs. 5,08,27,177/-, the claim of Bank No. 2 (IFCI) was decreed at Rs. 2,46,23,546/- and the claim of Bank No. 3 (ICICI) was decreed at Rs. 2,07,79,225/- and interest at the rate of 14% p.a. from 5-7-1999 to 22-12-2003 for each of the aforesaid banks. The copy of the judgment in O.A. No. 872 of 1999, dated 22-12-2003, is produced at Annexure-C. The defendant 2 in O.A. No. 872 of 1999 before the respondent no. 5-DRT i.e., Sri N.B. Rukmangada, who was the director of the respondent-company (In Liqn.) arrived at an amicable ore time settlement with regard to the decretal amount of Bank No.1 i.e., IDBI and by way of a compromise memo dated 3-4-2006 settled the dues of IDBI in full and final settlement. In lieu of the aforesaid compromise memo dated 3-4-2006, the IDBI Bank acknowledged receipt of an amount of Rs. 5.00 Lakhs towards discharge of certificate amount due to it as full and final settlement. It was consented by tire IDBI Bank that no amount shall be recoverable any farther from the defendants in O.A. No 872 of 1999 by the said bank in lieu the aforesaid compromise. In lieu of the aforesaid compromise the DRT was pleased to issue an amended recovery certificate declaring the amount to be recovered by Bank No. 2 i.e., IFCI, the respondent no. 4 herein and Bank No. 3 i.e., ICICI. The copy of the compromise memo is as per Annexure-D and the copy of the amended recovery 7 certificate is as per Annexure-E. The Bank No. 3 i.e., (ICICI) assigned its right to recover the decretal amount under the amended recovery certificate from the respondent-company (In Liqn.) to Standard Chartered Bank Limited during 2006 and thereafter the said Bank has in-turn assigned its right to recover the decretal amount to International Assets Reconstruction Company Private Limited i.e., respondent no. 3 herein during 2013. The amended recovery certificate is sent to the Recovery Officer of the DRT for recovery proceedings (execution of judgment and decree of DRT in O.A. No. 872 of 1999) and that the

same is numbered as DCP No. 3096 before the Recovery Officer (N) who is respondent no. 2 herein. The respondent no. 3-IARC has impleaded itself in DCP No. 3096 before respondent no. 2 of the DRT, and said respondent no. 2-IARC is now seeking to recover the decretal amount in place of Bank No. 3 (ICICI). The copy of the order sheet in DCP No. 3096 of O.A. No. 872 of 1999 before respondent no. 2 is at Annexure-F.

8. Upon perusal of order sheet in D.C.P. No. 3096 of O.A. No. 872 of 1999 at Annexure-F, an order is made by respondent no. 2 on 10-12-2007 keeping in abeyance the recover proceedings till the bank reports the completion of liquidation proceedings. However, upon perusal of the said order sheet it is understood that the next order is dated 24-2-2014, wherein the respondent no. 2 has ordered for issuance of demand notice. The defendant 2 in O.A. No. 872 of 1999 i.e., Sri N.B. Rukmangada (Director of respondent-company (In Liqn.) and judgment-debtor 2 in DCP No. 3096) expired on 20-3-2015 and that an application to bring the legal representatives of the aforesaid defendant 2 was filed by respondent no. 3-IARC on 24-6-2015 before respondent no. 2 under Rule 85 of the Second Schedule to the Income-tax Act, 1961, read with Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. However, respondent no. 2 in DCP No. 3096 allowed the said application on 24-6-2015 itself without even issuing a notice to the applicants herein above mentioned as contemplated under Rule 60 of the Income Tax (Certificate Proceedings) Rules, 1962, which requires issuance of notice in Form ITCP-29 to the legal representatives. The copy of the said application to bring the legal representatives is produced at Annexure-G. Respondent no. 3-IARC filed an application seeking to furnish security to the extent of the amount recoverable and failing which to attach 3,61,251 number equity shares of Rs.10/- each in Cauvery Hydro Energy Limited, which are in the name of judgment-debtor 2 i.e., Sri N.B. Rukmangada and the same came to be allowed on 27-5-2015 by respondent no. 2, a copy of the said application along with the warrant issued by respondent no. 2 is produced at Annexure-H. Since the respondent-company (lit Liqn.) is represented by the Official Liquidator attached to this Court, the question of respondent no. 3-IARC recovering any amounts from the applicants herein above as legal representatives of judgment-debtor 2 late Sri N.B. Rukmangada or from Cauvery Hydro Energy Limited, does not arise at all. Respondent no. 3 filed a memo dated 29-10-2015 before respondent no. 2 that respondent no. 3 has received an amount in sum of Rs. 54,53,736/- from the Official Liquidator representing the respondent-company (In Liqn.) and the said amount may be deducted from the certificate amount. Therefore, the question of recovering the remaining certificate amount from the applicants does not arise at all. Respondent no. 3-IARC has on 29-12-2015 filed an application under Sections 25 and 28 of the RDDB and FI Act, 1993, seeking for an order of an injunction restraining the applicants herein from alienating or encumbering in any manner whatsoever the property described in the schedule therein during the pendency of the above execution proceedings on the basis that the applicants herein have

inherited the rights and interests insofar as the properties and assets in the name of Sri N.B. Rukmangada (now deceased) is concerned and that the said applicants herein are attempting to alienating the property in the schedule therein. The applicants herein have filed objections to the aforesaid application of respondent no. 3 and the matter is now set-down for hearing on the said application, a copy of the application is produced at Annexure-J and copy of the sale deed is annexed at Annexure-K. It is further pleaded that upon a perusal of the copy of the sale deed annexed along with the said application at Annexure-K indicates that the said property was purchased on 2-3-2005. The said property was not in existence when the loan was advanced by the aforementioned Banks (i.e., IDBI, IFCI and ICICI). Thus, the said property was never and could not have been a part of the hypothecation/mortgage/loan transaction with the aforesaid banks. Thus the said property could not have been offered as a collateral/personal guarantee or otherwise to respondent no. 3 and respondent no. 4 herein. The said property was not a subject-matter of the proceedings before the DRT in O.A. No. 872 of 1999 and hence, the question of said property now being sought for attachment or being proceeded against is bad in law and an abuse of process of law. Hence, the question of respondent no. 2 proceeding for granting injunction as sought for in the interlocutory application filed by the respondent no. 3-Bank is ultra vires of the judgment and decree passed by DRT in O.A. No. 872 of 1999. The joint deed of guarantee dated 9-11-1987 executed by Sri N.B. Rukmangada and Sri K.S. Manohar in favour of the three Banks viz., IDBI, IFCI and ICICI guarantees liability on the part of Sri N.B. Rukmangada for the total amount of Rs. 15 Lakhs only, i.e., Rs. 7,50,000/- in favour of respondent no. 3 and Rs. 7,50,000/- in favour of respondent no. 4 herein. The copy of joint deed of guarantee dated 9-11-1987 is at Annexure-L. There is no pious obligation for the applicants herein to repay the outstanding dues of respondents no. 3 and 4 as the said loan was not contracted for their benefit or for the benefit of the family. The personal guarantee of Sri N.B. Rukmangada was a limited liability with regard to respondents no. 3 and 4. The judgment and decree passed by the DRT, Bengaluru in O.A. No. 872 of 1999 is violative of Sections 438, 441(2), 446 and 537 of the Companies Act, 1956. The judgment and decree passed by the DRT, Bengaluru in O.A. No. 872 of 1999 is non est in the eye of law and is liable to be set aside/struck down in lieu of liquidation proceedings pending before this Court and the winding-up order passed by this Court and subsequent winding-up the respondent-company. Therefore, the judgment and decree passed by the DRT in O.A. No. 872 of 1999 and the orders dated 27-5-2015 and 24-6-2015 passed by the respondent no. 2-Recovery Officer (N), DRT, Bengaluru, are in clear violation of Section 22 of SICA, 1985. Hence, filed the above applications praying the Court to pass the orders as prayed for.

9. During the course of hearing the above applications, when the Court asked the learned Counsel for respondent no. 3 that whether he wanted to file objections to the said applications, learned Counsel has submitted that whatever the

arguments he will submit that itself may be considered as his oral objections to the said applications and also further submitted that it is a pure question of law to be considered by this Court.

10. Heard the arguments of the learned Counsel appearing for the applicants in respect of both the applications and also the learned Counsel for Official Liquidator-respondent 1, so also the arguments of learned Counsel appearing for respondent no. 3.

11. Learned Counsel for the applicants during the course of his arguments has submitted in detail about the facts and law as contended in the applications. Therefore, it is not necessary again to mention in detail about the said points argued by the learned Counsel for the applicants.

In support of his argument learned Counsel for the applicants has relied upon the following decisions:

(i) In the case of Industrial Credit and Investment Corporation of India Limited v. Srinivas Agencies and Others,;

(ii) In the case of The Industrial Credit and Investment Corporation of India Limited and Others v. Vanjinad Leathers Limited and Others, AIR 1997 Ker. 273;

(iii) In the case of Rajasthan State Financial Corporation and Another v. Official Liquidator and Another, AIR 2006 SC 755;

(iv) In the case of Official Liquidator of M/s. Kritika Rubber Industries Private Limited (in Liquidation) v. Canara Bank and Another, 2013 (35) Taxmann. Com. 618 (Kar.), C.A. No. 190 of 2008 in COP No. 167 of 1999;

(v) In the case of KSL and Industries Limited v. Arihant Threads Limited;

(vi) In the case of Bank of Maharashtra v. Pandurang Keshav Gorwardkar and Others, AIR 2013 SC 2036.

The learned Counsel appearing for respondent no. 3, in support of his arguments, relied upon the following decision:

(i) In the case of Allahabad Bank v. Canara Bank and Another, AIR 2000 SC 1535;

(ii) In the case of United Bank of India v. Satyawati Tondon and Others, AIR 2010 SC 3413;

(iii) In the case of Bank of Maharashtra v. Pandurang Keshav Gorwardkar, AIR 2013 SC 2036.

12. Perusing the materials on record i.e., the pleadings and the documents produced, some of the material facts with the date of events, which are not in dispute according to both the sides are as under:

(1) On 8-9-1982 money of Rs. 304 Lakhs borrowed by respondent-company from 3 banks i.e., IFCI, IDBI and ICICI (assigned to IARC-respondent 3).

- (2) 27-3-1985 respondent-company takes further loan of Rs. 28.8 lakhs.
- (3) 8-11-1987 N.B. Rukmangada, gave a guarantee to the extent to of 7.5 Lakhs to respondent no. 3.
- (4) 9-11-1987 respondent-company takes further loan of Rs. 34 Lakhs.
- (5) 26-10-1988 respondent-company declared as SICK industrial company by BIFR as per the document Annexure-A.
- (6) 10-9-1997 order of BIFR declaring respondent-company as SICK was confirmed by the Appellate Authority (AAIFR).
- (7) 21-4-1997 BIFR recommends winding-up of the respondent-company.
- (8) 13-5-1997 Company Petition No. 167 of 1997 numbered by the High Court against the respondent-company.
- (9) On 5-7-1999, O.A. No. 872 of 1999 filed in the Debt Recovery Tribunal without leave of this Court and BIFR, by recovery Banks IDBI, IFCI and ICICI.

13. It is also the contention of the applicants that in the objection statement of the Official Liquidator produced at Annexure-B, the Debts Recovery Tribunal is notified about the pendency of winding-up proceedings before this Court. So these factual aspects with the relevant dates are not in dispute even according to respondent no. 3, Therefore, the question is whether the judgment and decree passed by the DRT in O.A, No. 872 of 1999 is liable to be set aside and also whether this Court can stay the execution proceedings in CA No. 55 of 2006 in DCP No. 3096 of O.A. No. 872 of 1999 pending before respondent no. 2.

14. I have perused the provision Section 22 of the SICA and also the relevant provisions viz., Sections 433, 438, 441 and 446 of the Companies Act, 1956. sub-section (1) of Section 22 of SICA reads as under:

"22. (1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any oilier instrument having effect under the said Act or other law, no proceedings for the winding-up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

Section 446 of the Companies Act reads as under:

"446. Suits stayed on winding-up order, - (1) When a winding-up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding-up order, shall be proceeded with against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose.

(2) The Tribunal shall, notwithstanding anything contained in any other law for the time being, in force, have jurisdiction to entertain, or dispose of. -

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under Section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding-up of the company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding-up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

(3) ***Omitted by the Companies (Second Amendment) Act, 2002.

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

Section 529-A of the Act, 1956 reads as under:

"529-A. Overriding preferential payment.—Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding-up of a company. -

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of Section 529 pari passu with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

15. In the decision in AIR 2006 SC 755, Their Lordships of the Hon"ble Supreme Court have laid down, the proposition at para 18 of the said judgment as under:

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

(i) A Debts Recovery Tribunal acting under the Recovery of Debts Due to Banks

and Financial Institutions Act, 1993 would be entitled to order tire 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 under Section 31 of the State Financial Corporations Act, 1951 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 under Section 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 tire sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Sections 529-A and 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 concerned creditor is to approach the Company Court for appropriate directions regarding the realisation of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation."

16. In another decision relied upon by learned Counsel for applicants reported in AIR 2013 SC 2036 in Civil Appeal Nos. 7045 with 7046 of 2005, decided on 7-5-2013, in the case of Bank of Maharashtra v. Pandurang Keshav Gorwardkar and Others, the Hon"ble Apex Court at para 55 and sub-para 18 so also para 56 has observed as under:

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

(i) 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-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 under Section 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 under Section 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 Sections 529-A and 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, tire concerned creditor is to approach the Company Court for appropriate directions regarding the realisation of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation."

56. What is important to be noticed is that in Rajasthan State Financial Corporation, AIR 2006 SC 755, the three-judges Bench stated in no unambiguous terms that once a winding-up proceeding has commenced and the Liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the banks or financial institutions coming under the 1993 Act or of financial corporations coming under the 1951 Act can only be with the association of the Official Liquidator and under the supervision of the Company Court. It has also been stated that whether the assets are realised by a secured creditor even if it be by proceeding under the 1993 Act or the 1951 Act, the distribution of assets would only be in terms of Section 529-A of the Companies Act and by recognising the right of the Liquidator to calculate the workmen's dues and collected for distribution among them *pari passu* with the secured creditors. By noticing that there is no conflict on the question of applicability of Section 529-A read with Section 529 of the Companies Act to cases where the debtor is a company and is in liquidation, it was observed that the conflict, if any, is in the view that DRT could sell the properties of the Company in terms of the 1993 Act and to that extent, the 1993 Act shall prevail over the Companies Act being the general law."

17. I have also perused the decision of the Hon"ble Supreme Court rendered in Civil Appeal No. 5225 of 2008, decided on 27-10-2014 in the case of KSL and Industries Limited v. Arihant Threads Limited, Their Lordships have laid down the proposition in the said decision that the provisions of SICA, in particular, Section 22 shall prevail over the provision for the recovery of debts in the RDDB Act. It is further observed that in these circumstances as already directed by the two-judges Bench of this Court, the judgment and order dated 23-2-2006 of the High Court of Delhi is set aside.

But in the case on hand, the applicants who have filed the present application are not at all the workmen of the company-in-liquidation. They are the legal representatives of one Sri N.B. Rukmangada, who was the director of the company-in-liquidation, who furnished guarantee to the financial institution when

the company borrowed the loan from the said financial institution. After the demise of the said Sri N.B. Rukmangada, the guarantor, the present applicants claiming to be his legal representatives have filed the present application. The Official Liquidator had also appeared before the Recovery Officer in the case on hand, and he had also filed his statement while arguing on these applications. The Official Liquidator also made submission that in the above referred reported decisions, the interest of the workmen was involved but here in the case on hand, it is not so, because the applicants claiming to be the legal representatives of the said Sri N.B. Rukmangada have no concern with the company in liquidation. So this goes to show that notice has been already given by the DRT to the Official Liquidator and he has been heard in the matter. Even according to the decision relied upon by the learned Counsel for the applicants the relevant paragraphs are referred above. There is no bar for the DRT to proceed with the sale of the property. But before conducting such sale of the property, the Official Liquidator has to be heard in the matter. As I have already observed above, Official Liquidator has already appeared before the DRT and he has been heard.

Apart from the said legal position, when the judgment and decree has been passed by the DRT, neither the present applicants nor the said Sri N.B. Rukmangada had challenged the judgment and decree passed by the DRT by preferring an appeal to the Appellate Tribunal.

18. With regard to the jurisdiction of the DRT and the Appellate Tribunal, Section 17 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 so also Section 20 of the said Act reads as under:

"17. Jurisdiction, powers and authority of Tribunals. - (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

.....

20. Appeal to the Appellate Tribunal.—(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."

19. So when such statutory remedy was available to the applicants, they could have challenged the judgment and decree passed by the DRT and they could have canvassed all the points which they have urged before this Court in the company applications. In this connection, I have also perused the decision of the Hon"ble Supreme Court in Civil Appeal No. 5990 of 2010 (Arising out of SLP (C) No. 10145 of 2010), decided on 26-7-2010 in the case of United Bank of India v. Satyavathi Kannan and Others, wherein Their Lordships have observed at paras 18, 22 and 27 as under:

"18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution of India to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part-III or for any other purpose are very wide and there is no express limitation on exercise of that power, but at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc., and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which

(sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Aritarim Zila Parishad*, AIR 1969 SC 556; *Whirlpool Corporation v. Registrar of Trademarks*, Mumbai, (1998) 8 SCC 1 and *Harbanslal Sahnia and Another v. Indian Oil Corporation Limited and Others*, (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

.....

22. In *Punjab National Bank v. O.C. Krishnan and Others*, (2001)6 SCC 569, this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed:

"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum."

.....

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

20. It is no doubt true the said company applications are filed under the provisions of the Companies Act and not under the writ jurisdiction of this Court. But even then, the observations made by Their Lordships in the above said decision at the relevant paragraphs 18, 22 and 27 referred above are equally made applicable in the case on hand also as the applicants have not availed the statutory remedies available to them under Recovery of Debts Due to Banks and Financial Institutions Act, 1993. There are no reasons forthcoming in the applications also as to why they have not availed such statutory remedy before the filing of the present applications. As I have already observed above that Official Liquidator was notified about the proceedings he appeared in the matter before

the DRT and the applications herein are also not from the Workmen/Employees of the Company in Liquidation and there is no allegation from the Official Liquidator that the Recovery Officer is conducting the sale of the property without his consultation and without hearing him.

21. Therefore, looking to the facts and circumstances of the case on hand, and the facts and circumstances in the reported decisions relied upon by the learned Counsel for the applicants, which are referred above they will not come to the aid and assistance of the applicants case in getting the orders to set aside the judgment dated 22-12-2003 passed by the Debt Recovery Tribunal in O.A. No. 872 of 1999 produced as per Annexure-C and to set aside the orders dated 27-5-2015 and 24-6J2015 passed by respondent no. 2 in D.C.P. No. 3096 of O.A. No. 872 of 1999 produced as per Annexure-F and also to stay the execution/recovery proceedings in D.C.P. No. 3096 of O.A. No. 872 of 1999 pending before respondent no. 2. There is no merit in the applications and accordingly, C.A. Nos. 54 and 55 of 2016 in C.O.P. No. 67 of 1997 are hereby dismissed.