(2014) 12 RAJ CK 0127

In the Rajasthan High Court

Case No : Civil Special Appeal (Company) Nos. 7 of 2012 and 2 of 2013

State of Rajasthan — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Companies Act, 1956 — Section 19(19), 442, 446, 483, 529-A — Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 17, 18, 19(22), 2(g), 25, 25, 25

Citation : (2015) 3 RLW 1830

Hon'ble Judges : Sunil Ambwani, Acting. C.J.;Prakash Gupta, J.

Bench : Division Bench

Advocate : P.S. Bhati, Additional Advocate General assisted by Sajjan Singh, for the Appellant

Final Decision : Dismissed

Judgement

Sunil Ambwani, Actg. C.J.?These two Company Appeals have been filed by the State of Rajasthan under Sec. 483 of the Companies Act, 1956. The D.B. Civil Special Appeal (Company) No. 7/2012 has been preferred to set aside the order passed by the learned Single Judge (as Company Judge) on 27.7.2012, on an application of the Official Liquidator to M/s. Mewar Textile Mills Ltd., Bhilwara (in liquidation), appointed as Official Liquidator by learned Company Judge, to direct the Collector, Bhilwara to provide assistance in regard to measurement and identification of the land as per the revenue record (57 bighas 6 biswas), belonging to the Company (in liquidation), so as to enable him to hand over the possession to the auction purchaser M/s. Geetanjali Infosystems Private Limited, Udaipur in pursuance to the auction of the assets of the Company held by the Recovery Officer of the Debt Recovery Tribunal. The Official Liquidator had also prayed for a direction to the Bank of Rajasthan Limited, Bhilwara to provide the original Title Deeds of the land belonging to the company in liquidation, for executing conveyance deed; to direct the Police authorities and Collector, Bhilwara to provide necessary assistance to the Official Liquidator so as to maintain, law and order at the time of handing over actual possession to the Official Liquidator; to permit the Official Liquidator to get evaluation of the stores, spares and finished goods through approved valuer on panel of the Official Liquidator, so that steps may be taken with prior approval of the Court; to permit the Official Liquidator to shift the record and books of accounts from Bhilwara to Jaipur, after preparing inventory of the record along with valuable items and to permit him to keep possession of three sheds where the stores, spares and finished goods are to be kept till their disposal and the purchaser may be asked to extend cooperation in that regard. The application filed by the Official Liquidator was allowed on 27.7.2012 on the ground that once the Court has passed order on 23.2.2010 for handing over the actual possession of the premises to the auction purchaser, the Official Liquidator and all other authorities are required to comply with the directions. Observations were made by the Court for the District Collector, Bhilwara to arrange and provide assistance regarding measurement of the land so as to the enable him to hand over actual possession of the land to the auction purchaser. The Bank of Rajasthan was expected to provide original Title Deed of the land to the Official Liquidator for execution of Conveyance Deed in favour of the auction purchaser.

2. D.B. Civil Special Appeal (Company) No. 2/2013 has been filed against order dated 8.3.2013 by which learned Single Judge has dismissed an application filed by the State of Rajasthan to set aside the sale, conducted by the Recovery Officer, Debt Recovery Tribunal, Jaipur, of the assets of the company in liquidation, to satisfy the decrees passed by the Debt Recovery Tribunal in favour of the creditor-Banks as follows:

"1) Bank of Rajasthan, for Rs. 2,86,03,682/- by decree dated 28.7.2003;

2) ICICI Bank for Rs. 71,11,769/- vide decree dated 4.8.2013;

3) Oriental Bank of Commerce for Rs. 2,38,49,084.75 vide decree dated 18.12.2002;

4) Union Bank of India for Rs. 3,11,11,574/-;

5) IDBI Bank for Rs. 2,25,18,514/-."

3. The application was rejected in view of the judgment of the Supreme Court in Allahabad Bank Vs. Canara Bank and Another, and in the case of Pravin Gada and Another Vs. Central Bank of India and Others, .

4. Brief facts giving rise to these appeals are that M/s. Mewar Textile Mills Ltd. was not able to meet its accumulated losses which had eroded its net worth, on which it was registered with the Board of Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985. The State of Rajasthan held 49% of the share capital in the Company, which was subsequently reduced to 38%. When no revival proposal was received by the BIFR, the BIFR by order dated 22.4.1997 recorded its opinion that the sick industrial company is not likely to make its not worth exceed its accumulated

losses within reasonable time while meeting all its financial obligations and that the company is not likely to become financially viable in future and thus, it is just, equitable and in public interest that it should be wound up.

5. The BIFR, with this opinion, referred the matter to Rajasthan High Court for necessary action of winding up of the Company. The BIFR in its order dated 22.4.1997 also directed that the Government of Rajasthan shall take care of all the assets of the Company, while winding up proceedings starts and the Official Liquidator takes up charge of assets of the company.

6. On receipt of the recommendation, a Company Petition No. 8/2000 was registered. The creditor-Banks, after registration of the Company Petition, obtained various decrees from Debt Recovery Tribunal, referred to above, which were sought to be executed by moving Execution Petition before the Debt Recovery Tribunal and therein sale proclamation for sale of properties was issued, on which the workmen and company moved separate applications before this Court for obtaining interim order. On these applications, an order dated 20.10.2003 was passed by this Court staying the auction proceedings. By the same order, the Official Liquidator was directed to make inventory of assets of the Company and the Government of Rajasthan was directed to prepare an action plan for land which has been placed at its disposal.

7. On 29.5.2007, the State Government expressed its inability in proceeding with the sale of the assets of the company and requested the Court for auction sale of the properties of the Company. On 27th July, 2007, learned Additional Advocate General conveyed the decision of the State Government not to intervene in the process of sale of the assets of the Company. It was stated that the State Government has no objection if the assets are disposed of through auction proceedings. The court, however, observed that the State Government should re-consider the matter and then submit its decision. The Company Court had in the meantime stayed the recovery proceedings under the decrees from 20.10.2003 to 14.10.2008 when the say orders were vacated in view of the judgment of Supreme Court in Allahabad Bank Vs. Canara Bank and Another, .

8. In D.B. Civil Special Appeal (Company) No. 4/2005, while disposing of the Special Appeal against order dated 24.4.2008 passed by learned Company Judge, the Court took note of the contention that the appellant may be allowed to keep, alive the issue which was raised in the appeal viz., about jurisdiction of the Company Judge and to make sale of the properties of the Company in the Company Petition.

9. On 11.12.2007, after taking note of the order of the Division Bench dated 4.4.2008, an order was passed by the learned Company Judge constituting a committee to materialize a scheme for further proceeding i.e. auction of movable and immovable properties of the company in liquidator. The committee submitted a valuation report. Thereafter no progress was made in the matter. The Official Liquidator submitted he had incurred expenses of Rs. 19,12,117/- upto

December 2007 and also stated that he is incurring expenses to the tune of Rs. 1,64,665/- per month on security of the properties of the company and Rs. 70,000/- for valuation thereof.

10. The workmen filed an application for release of amount of their provident fund lying with the State Government, on which an order was passed on 15.7.2008 directing that the management will report with regard to submission of annual returns, clearing provident fund dues and verification of requisite documents regarding EPF and pension funds. The management was further directed on 5.8.2008 for making proper representation before the court for settlement of PF amount of the workmen.

11. An application filed by a Union of workmen to restrain the auction sale by DRT was dismissed by the Court by order dated 8.12.2009. The Recovery Officer, DRT, proceeded with the sale of the assets. He advertised the auction sale in leading newspapers, after which assets of the company in liquidation were auctioned and the sale was confirmed for Rs. 120.25 crores to the auction purchaser.

12. The auction purchaser filed an application for impleadment and for handing over of the possession of the properties, as described in the auction held on 7.12.2009, and deposited entire amount. Despite orders passed by the High Court on 23.2.2010, the actual possession of the assets has not been given to him so far.

13. On these facts and circumstances, the Official Liquidator filed an application, of which details are given herein above, for handing over possession to the auction purchaser, on which an order was passed by the Company court on 27.7.2012, allowing the application and for handing over possession of the land, after measurement and identification, to the auction purchaser. The orders was also passed directing the Bank of Rajasthan, Bhilwara to provide original Title-Deed of the land belonging to company in liquidation for execution of Conveyance Deed and, the police authorities and the District Collector were directed to provide necessary assistance to the Official Liquidator.

14. On an application filed by the State of Rajasthan challenging the auction sale, learned Single Judge, after noticing the judgments in the case of Allahabad Bank v. Canara Bank (supra) and Parvin Gada''s case (supra), rejected the application on the ground that the Company Court, in view of fact that assets of the company were sold by Recovery Officer of the Debt Recovery Tribunal for realizing the decrees granted in favour of Banks and further in view of fact that the Official Liquidator has participated in the proceedings of sale of assets, does not have jurisdiction to entertain the application. He has relied on the judgment delivered in Pavind Gada and Anr. v. Central Bank of India and Ors. (supra), in which it was held in para 18 and 19 of the judgment:

"18. At this juncture, it is necessary to address whether the finding of the High Court as regards the role of the official liquidator is correct or not. In Rajasthan

Financial Corpn. (supra), while dealing with the role of official liquidator, a three-Judge Bench referred to the pronouncements in A.P. State Financial Corporation v. Official Liquidator (2) and International Coach Builders v. State of Karnataka (3) and, in the ultimate eventuate, summed its conclusions. The relevant conclusions are reproduced below:

"(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.

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(iv) In a case where proceedings under the Recovery of Debts Due to the 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."

19. On a perusal of the record, it transpires that the official liquidator had appeared before the recovery officer on number of dates. However, the DRT had returned a finding that he has a restricted role which has been found fault with by the High Court. In our opinion, the High Court is absolutely correct in its analysis and we concur with the same, but, a pregnant one, the fact remains that the High Court had set aside the sale on the foundation that a fair and transparent procedure had not been adopted. Having given due respect to he same, this Court had passed orders on earlier occasions which we have reproduced hereinabove to get the auction conducted in a fair and transparent manner and recorded our conclusion. Therefore, the confirmation of sale as has been directed by us shall be treated to have attained finality."

15. Learned Additional Advocate General appearing for the State of Rajasthan submits that the Company Court has ample power under the Companies Act, 1956 and in terms of Rules 7 and 9 of the Companies (Court) Rules, 1969 to protect the interests of the creditors and workmen as well as Government, referred to be realized from sale of assets of the company in liquidation. The Company Court may set aside the sale directed by he Debt Recovery Tribunal if it is found that the sale was held for inadequate sale consideration or that the process of sale was unfair, which ultimately affects interest of the creditors and workmen. It is submitted that the powers of the Company Court under the Companies Act, 1956 as well as Rules 7 and 9 of the Companies (Court) Rules are inherent powers, which cannot be curtailed by any legislation. The Recovery Officer of the Debt Recovery Tribunal did not have permission of the Company Judge before proceeding to sale the assets of the company by auction.

16. Learned counsel appearing for the auction purchaser submitted that he has

an independent right, which is protected by he provisions of Recovery of Dues due to Banks and Financial Institutions Act, 1996. The Recovery Officer proceeded to recover the amount due to Banks. He does not work under the supervision of the Official Liquidator nor is he required to take permission from the Company judge and the proceedings of sale were undertaken under the Act of 1993 and the Rules made thereunder.

17. The State of Rajasthan had filed an appeal against the order of the Recovery Officer by which he had confirmed the sale of the assets of the company in favour of the auction purchaser, on the ground of inadequacy of the valuation and the consideration on which the assets and properties were put to sale and were sold by him, as well as the fairness of the procedure which was followed by the Recovery Officer in the proceedings for sale. The Appeal (No. 11/2010) has been dismissed by the Debts Recovery Tribunal by order dated 4.5.2012. Against the order dismissing the Appeal, a Second Appeal has been filed by the State of Rajasthan in the Debts Recovery Appellate Tribunal. We are informed that the Appeal No. 274/2012 filed by the State of Rajasthan before the Debts Recovery Appellate Tribunal has also been dismissed on 14.10.2014 on the ground of delay in filing the Appeal.

18. The powers of the Company court, where the Recovery Officer proceeds to sale the properties for realization of the dues of Banks and financial institutions, were again examined by Hon''ble Apex Court in The Official Liquidator, U.P. and Uttarakhand Vs. Allahabad Bank and Others, , in which considering earlier judgment in the case of Allahabad Bank v. Canara Bank (supra), in Pravin Gada''s case (supra) and Jitendra Nath Singh Vs. The Official Liquidator and Others, ; the Supreme Court held as follows :

"13. The two-Judge Bench, after referring to the dictionary provisions, especially the "debt" as defined in Section 2(g), Sections 17, 18 and 19(22) and Section 31 of the RDB Act, came to hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the Allahabad Bank was concerned. Dealing with the facet of the execution of the certificate by the Recovery Officer, the Division Bench referred to Section 34 of the RDB Act and opined thus:--

"Even in regard to "execution", the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the banks/financial institutions should go to the civil court or the Company Court or some other authority outside the Act for the actual realization of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdiction at different stages are contemplated."

[Emphasis supplied]

14. While dealing with the issue whether the RDB Act overrides the provisions of Sections 442, 446 and 537 of the 1956 Act, after analyzing the said provisions and delving into the concept of leave and control by the Company Court, the learned Judges relied on the pronouncement in Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others, and came to hold that there is no need for the appellant bank to seek leave of the Company Court to proceed with the claim before the DRT or in respect of the execution proceedings before the Recovery Officer. It was also categorically held that the said litigation cannot be transferred to the Company Court. In the ultimate eventuate, the bench ruled that in view of Section 34 of the RDB Act, the tribunal has exclusive jurisdiction and, hence, the Company Court cannot use its powers under Section 442 of the 1956 Act against the tribunal/Recovery Officer and, therefore, Sections 442, 446 and 537 of the 1956 Act could not be applied against the tribunal. Be it noted, emphasis was laid on speedy and summary remedy for recovery of the amount which was due to the banks and financial institutions and the concept of special procedure as recommended by the Tiwari Committee Report of 1981 was stressed upon. It was concluded that the special provisions made under the RDB Act have to be applied. The Court addressed itself to the special and general law and ruled that in view of Section 34 of the RDB Act, it overrides the Companies Act to the extent there is any thing inconsistent between the Acts. In the ultimate analysis, the learned Judges stated thus: -

"For the aforesaid reasons, we hold that the at the stage of adjudication under Section 17 and execution of the certificate under Section 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on the Tribunal and the Recovery Officer in respect of debts payable to banks and financial institutions and there can be no interference by the Company Court under Section 442 read with Section 537 or under Section 446 of the Companies Act, 1956. In respect of the monies realized under the RDB Act, the question of priorities among the banks and financial institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19(19) read with Section 529-A of the Companies Act and in no other manner. The provisions of the RDB Act, 1993 are to the above extent inconsistent with the provisions of the Companies Act, 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding-up petition against the debtor Company and also after a winding-up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993."

[Emphasis added]

15. While dealing with the claim of the workmen, the Bench proceeded to state that the "workmen''s dues" have priority over all other creditors, secured and unsecured, because of Section 529-A(1)(a) of the 1956 Act. Be it noted, this has been so stated in paragraph 76 of the decision in Allahabad Bank''s case. The

correctness Of this statement was doubted and the matter was referred to the larger Bench. A three-Judge Bench in Andhra Bank v. Official Liquidator and another opined that it was only a stray observation as such a question did not arise in the said case as Allahabad Bank was undisputably an unsecured creditor and, accordingly, the larger Bench opined that the finding of this Court in Allahabad Bank''s case to the aforesaid extent did not lay down the correct law. The said exposition of law has further been reiterated in Jitendra Nath Singh v. Official Liquidator and others. We have referred to the aforesaid decisions only to highlight that this part of the judgment in Allahabad Bank''s case has been overruled."

"19. 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."

"26. We have referred to the said passage for the purpose of highlighting that an appeal lies to the DRT challenging the action of the Recovery Officer. In the case at hand, the Official Liquidator was not satisfied with the manner in which the auction was conducted and he thought it apposite to report to the learned Company Judge who set aside the auction. Needless to emphasise, the Official Liquidator has a role under the 1956 Act. He protects the interests of the workmen and the creditors and, hence, his association at the time of auction and sale has been thought appropriate by this Court. To put it differently, he has been conferred locus to put forth his stand in the said matters. Therefore, anyone who is aggrieved by any act done by the Recovery Officer can prefer an appeal. Such a statutory mode is provided under the RDB Act, which is a special enactment. The DRT has the powers under the RDB Act to make an enquiry as it deems fit and confirm, modify or set aside the order made by the Recovery Officer in exercise of powers under Sections 25 to 28 (both inclusive) of the RDB Act. Thus, the auction, sale and challenge are completely codified under the RDB Act, regard being had to the special nature of the legislation.

27. 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 another (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."

19. The decisions of the Supreme Court cited above clearly lays down that the auction sale by the Recovery Officer of the Debt Recovery Tribunal under the RDB Act, 1993 being completely codified, regard being had to special nature of legislation, any person aggrieved can prefer an appeal before Debt Recovery Tribunal. The Official Liquidator whose association is mandatorily required is indisputably regarded as a person aggrieved relating to the action taken, by the Recovery Officer, which would include the manner in which the action is conducted or sale is confirmed, the Official Liquidator can not take recourse to doctrine of election. It is difficult to conceive that there are two remedies, one by approaching to Company Court and other by an appeal to Debt Recovery Tribunal. The Official Liquidator having one remedy, can challenge the order passed by the Recovery Officer before the Debt Recovery Tribunal. The Official Liquidator can only take recourse to the mode of appeal and further appeal under the RDB Act and cannot approach the Company court to set aside the action or confirmation of sale when the sale has been confirmed by the Recovery Officer under the Act.

20. What has been stated in respect of Official Liquidator in the matter of sale and confirmation of sale by the Recovery Officer under the Act of 1993 is equally

applicable to any other person, who may aggrieved by such sale and which includes any creditor or promoter. In the present case, the Sate of Rajasthan as a promoter and creditor stands on the same footing and does not have any better rights to challenge the sale except'' by filing an appeal and further appeal under the RDB Act.

21. We may refer to stand taken by the State of Rajasthan in the Company Court, in which it was clearly stated that it will have no objection if the assets of the company are sold by the Official Liquidator. Before the Official Liquidator could sale the assets, the Recovery Officer of the Debt Recovery Tribunal intervened, to recover the amount from assets of the company on the decrees passed in favour of Banks and in said proceedings, assets of the company have been sold on 7.12.2009. The Official Liquidator had participated in the proceedings of sale before the Recovery Officer, DRT. The sale of assets, therefore, are not to be put to any question and thus, the only issue which survives is the fairness of procedure of sale and adequacy of valuation and price on which the assets were sold.

22. We are informed that the State of Rajasthan has not yet challenged the order passed by the Debt Recovery Appellate Tribunal by which appeal against the appellate order passed by the Debt Recovery Tribunal, in respect of sale of assets, was dismissed.

23. We may make it clear that by this order, we are not curtailing the rights nor making any observation which may affect rights of the State of Rajasthan as promoter and creditor of the Company and of any other person including the Official Liquidator, to seek remedy against sale of assets, either in appeal or further appeal under RDB Act, 1993 and if such appeal has been decided, by taking recourse of law in such forum or High Court in its writ jurisdiction, as may be available to it. On the aforesaid discussion, both the Special Appeals are dismissed.