(2006) 07 RAJ CK 0087

In the Rajasthan High Court

Surya Power Ltd. APPELLANT

Vs

Bank of India and Another RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 529A
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 28
State Financial Corporations Act, 1951 — Section 29

Citation : (2007) 2 RLW 1481 : (2007) 78 SCL 407

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—Heard rival submissions.

2. This Court vide its order dated August 4, 1995 directed to wind up company and appointed the Official Liquidator attached to this Court as Liquidator of the Company. This Court granted permission to the respondent Bank (Bank of India) for filing application to the Debt Recovery Tribunal vide its order dated September 4, 1997 as per the following terms and conditions:

(i) The applicant will undertake to discharge the liability due to the workmen if any, u/s 529A of the Act to the extent of the amount realised from the assets of the company.

(ii) The applicant Bank will intimate the Official Liquidator from time to time about the progress of the recovery proceedings and the interlocutory applications, if any seeking any order in relation to the secured properties.

(iii) The final result of the proceedings shall be intimated immediately to the official liquidator.

(iv) The execution proceeding for realisation of the amount from the properties of the company shall be taken by the Bank after obtaining permission from the Company Court.

(v) The expenses to be incurred by the Official Liquidator in defending before the Tribunal shall be recoverable from sale proceeds of the properties of the company as and when sold.

3. That much before passing the winding up order, one of the secured creditors of the company in liquidation namely RIICO had taken over the possession of the assets of the company in liquidation by invoking the provisions of Section 29 of the State Financial Corporation Act, 1951. The RIICO took the possession of the assets of the company in liquidation on 17.3.1993 i.e. Much prior to the date of winding up order passed by thus Court on August 4, 1995. The RIICO sold the assets of the company on Feb. 22, 1996 and after adjustment of its due out of the sale proceeds, balance amount of Rs. 1,08,90,000/- were deposited with the official liquidator on November 21, 1997. Now the sale proceeds are lying with the official liquidator. The Debt Recovery Tribunal vide order dated May 18, 2001 decided the application and the respondent Ban filed an application for execution of the certificate dated May 18, 2001 before the Recovery officer of Debt Recovery Tribunal II Delhi. The Recovery officer vide order dated January 15, 2003 attached the aforesaid sale proceeds lying with the official liquidator and further directed to issue notice u/s 28 of the RDB Act for its realization. The Official Liquidator invested the sale proceeds in fixed deposits under the orders of this Court.

4. The respondent Bank filed reply with the averments that in terms of the orders of the Company Court dated September 4, 1997 the Bank filed application before this Court on September 4,2002 which was registered as Company Application No. 124 of 2002. This Court vide order dated April 5, 2003 granted leave to the bank to proceed before the Recovery Officer DRT New Delhi and the official liquidator was granted liberty to raise all the available objections before the Recovery Officer. Thus it was incumbent upon the Official Liquidator to have the amount disbursed among the secured creditors as per law, but despite the fact that the amount being in possession of the OL since 1997, no efforts were made to disburse the amount, rather keeping the amount in fixed deposit. The Official Liquidator tried to avoid and frustrate the lawful claim of the respondent Bank to recovery its amount which has been certified by the competent forum. The Official Liquidator has suppressed these material facts from this Court, hence the application deserves to be dismissed summarily with costs.

5. In B. Shoes Ltd. v. Indian Overeas Bank (Special Leave to Appeal (Civil) No. 3636/2003 order dated November 14, 2003), their Lordships of the Supreme Court granted leave and framed following question-

Whether the Debt Recovery Tribunal can direct sale of assets of a company which has been wound up and the Official Liquidator is appointed.

6. Looking to the fact that issue involved in the instant matter is directly related to the question framed by the Apex Court, It will not be proper for this court to vacate the interim order passed in the matter. The parties shall however be at

liberty to approach this court after the decision in B. Shoes Ltd. v. Indian Overseas Bank (supra).

7. The application stands disposed of as indicated above without any order as to costs.

