
(2002) 10 AP CK 0009
In the Andhra Pradesh High Court
Case No : CA No. 382 of 2002

Syndicate Bank

APPELLANT

Vs

Andhra Pradesh Steels Limited and Others

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Companies Act, 1956 — Section 456, 457
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18, 25, 29, 34

Citation : (2002) 6 ALD 662 : (2003) 113 CompCas 129 : (2003) 41 SCL 301

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : K.G. Shastry, for the Appellant; Official Liquidator for Respondent No. 1, Deepak Bhattacharjee and P.V. Markandeyulu, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.

Introduction

1. This application, filed by one of the respondents in R.C.C. No. 2 of 1995 i.e. Syndicate Bank, under Rule 9 of the Company (Court) Rules, 1959 (for short "the Rules") raises an important question as to the right of a secured creditor to seek transfer or assets to the Debts Recovery Tribunal (DRT). By this application, the applicant seeks a direction to the Official Liquidator to transfer all the assets, moveable and Immovable properties and liquid cash of A.P. Steels Limited-1st respondent company to the Recovery Officer of the DRT as per R.P. No. 90 of 2002, on the file of the DRT. The applicant also seeks stay of all further proceedings in C.A. No. 354 of 2002 in RCC No. 2 of 1995.

Facts in brief

2. It is the case of the applicant that they filed OA No. 925 of 1999 before the DRT, Hyderabad, for recovery of Rs.2,91,27,334/-, that in the said application all

the other respondents, except 9th respondent herein are parties, that one of the respondents, namely Andhra Bank has put up a claim for Rs.1,05,71,000/- against the applicant, that the DRT vide orders dated 1-3-2002 allowed the claim of the applicant and rejected the claim of the 2nd respondent and issued a Certificate of Recovery in favour of the applicant vide RP No. 90 of 2002, for recovery of a sum of Rs.8,49,07,865/-. As per Section 34(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the DRT Act") and the order passed by the DRT dated 1-3-2002, the applicant is entitled to seek transfer of all the assets of the Company in liquidation to the DRT and the 1st respondent.

3. The 5th and 7th respondents, namely IDBI and ICICI have opposed the application. In their counter-affidavit, IDBI stated that the application filed by Syndicate Bank is belated and is not maintainable, that when the assets of the Company in liquidation are sold by the Official Liquidator and the sale is awaiting confirmation by the Court, the remedy of the applicant is to pursue their claim by filing appropriate application before the Official Liquidator as per Section 529A of the Companies Act, 1956; (for short "the Companies Act") and that the application for transfer of all the properties of the company in liquidation to the DRT is not maintainable. The 7th respondent, ICICI also filed counter-affidavit with similar averments. Another financial institution, namely IFCI has taken similar stand in their counter-affidavit. Apart from the counter-affidavits filed by the financial Institutions, other secured creditors filed counter-affidavits and opposed the applications. It is their contention that the applicant has only second charge over the properties, and therefore, it has no right to claim any amount from the assets of the company.

Summary of submissions

4. The learned Counsel for the applicant submits that in view of the overriding effect given to DRT Act by reason of Section 34 thereof, the Company Court has no power to sell the assets/ properties of the company in liquidation. Reliance is placed on the judgment of the Supreme Court in Allahabad Bank v. Canara Bank (2000) 101 Comp. Cas. 634 (SC) : AIR 2000 SC 1535, and on the judgment of the Division Bench of this Court in Pennar Paterson Limited Vs. State Bank of Hyderabad and Others, . The learned Counsel further urged that the DRT Act was enacted to provide for speedy and summary remedy for recovery of huge amounts of debts due to the banks and financial institutions. Delay in recovering the debt due to the winding up proceedings should be avoided. The debt due to the bank and the company in liquidation has to be realized from the assets and properties of the company and all the remedies are to be worked out only under the DRT Act. Any recourse to the provisions of the Companies Act, which is a general Act, would defeat the purpose of the DRT Act, and therefore, all questions in relation to adjudication of the claims by the bank, execution of orders, etc., are to be in accordance with the provisions of the special enactment i.e., DRT Act. The Companies Act is a general Act and does not prevail over the

DRT Act. Even if the Companies Act is treated as special law, the DRT Act being subsequent, the latter should prevail over the former.

5. The learned Counsel for the Official Liquidator submitted that as per Section 456 of the Companies Act, all the properties of the company in liquidation absolutely vest in the Company Court, and it is for the Company Court to pass appropriate orders for disposal of the properties of the company in liquidation having regard to the interests of the company as well as secured and unsecured creditors of the company. He urged that the property of the company in liquidation does not vest in the Official Liquidator and he is only the custodian of the company. Since the object of winding up proceedings is to put the secured creditors on par with and pay them *pari passu*, any attachment or sale of the properties of the company in liquidation by another authority would be ineffective, as under law, all the properties of the company in liquidation would absolutely vest in the Company Court free from all attachments. It is only the Company Court which can give all the directions, and no secured creditor is entitled to seek removal of the properties vested in the Company Court by reason of exercise of jurisdiction by any other forum or authority.

Point for consideration

The point that arises for consideration is whether a Bank or a Financial Institution, which obtained a Certificate of Recovery from the Debts Recovery Tribunal against a company in winding up can seek an order to remove the properties *custodia legis* in Company Court to the Recovery Officer attached to the Debts Recovery, Tribunal?

6. A.P. Steels Limited, the 1st respondent in this application was ordered to be wound up by this Court on 17-4-1996 in RCC No. 2 of 1995. The Official Liquidator was appointed as liquidator of the company. By order dated 26-4-2002 in CA No. 354 of 2002, this Court directed the Official Liquidator to sell the properties of the company in liquidation by giving wide publicity in newspapers *Eenadu*, *Economic Times* and *Times of India*. Accordingly, the Official Liquidator issued notice inviting sealed tenders, which was published in newspapers on 1-6-2002 and 2-6-2002. It may be noticed that the Official Liquidator filed an application to value the properties of the company by the secured creditors. The secured creditors, IFCI and IDBI valued the properties, and filed report before this Court on 5-4-2002, After receiving the report, the Official Liquidator was directed to file an application. Before valuing the properties, the Official Liquidator issued notice to the secured creditors on 6-3-2002 under due acknowledgement. The applicant bank did not file any objections. It did not inform the liquidator or this Court about the pending of OA, being OA No. 925 of 1999 before the Debts Recovery Tribunal.

7. After receiving the offers pursuant to the notices in newspapers on 1-6-2002 and 2-6-2002, the Official Liquidator filed his report on 20-6-2002 stating that for lot No. 1, an amount of Rs. 2,06,00,000/- has been offered being the highest

offer as against the minimum upset price of Rs. 2,92,42,500/-, that for lot No. 2, the highest offer received is Rs.2,96,12,500/-, as against the minimum upset price of Rs. 4,97,80,500/-, and for lot No. 3, the highest offer received is Rs. 3,15,00,000/- as against the minimum upset price of Rs. 4,97,80,500/-. At no point of time, the applicant bank raised any objection nor filed any application before this Court seeking stay of all further proceedings in CA No. 354 of 2002. After conducting auction, and at the stage when the matter was posted for confirmation, the Syndicate Bank filed the present application raising objection that the Official Liquidator cannot conduct sale of the properties in view of the judgment of the Supreme Court in Allahabad Bank v. Canara Bank. These facts are not denied. The main contention of the learned Counsel is that in view of Section 34 of DRT Act, the properties which are mortgaged to Syndicate Bank cannot be brought to sale in winding up proceedings. It is also the contention that notwithstanding the proceedings of the Companies Act, the provisions of DRT Act prevail, and therefore, any recourse to winding up under the Companies Act would defeat the purpose of DRT Act. It is therefore, necessary to notice the purport of relevant provisions of Companies Act as well as DRT Act.

(a) Relevant Provisions of the Companies Act, 1956

8. Sections 442 and 537 of the Companies Act deal with situations before passing of the winding up order. When a petition for winding up is presented to the Company Court, the company or any creditor or contributor may seek stay of all suits and proceedings against the company, and if any company is being wound up, any attachment or execution enforced or taken out without the leave of the Company Court would be void. That is the purport of Section 442 read with Section 537. Section 446 deals with situations after the passing of winding up order. As per Section 446, when a winding up order is made and/or Official Liquidator is appointed, no suit or proceedings can be initiated or if pending, can be proceeded with against the company in liquidation, except with the leave of the Company Court. All the suits or proceedings against the company in winding up pending before other forums are required to be transferred to the Company Court. Sections 456 and 457 deal with custody of company's property and powers of liquidator. As per these provisions, all the property and affairs of the company in liquidation shall be deemed to be in the custody of the Court from the date of order of winding up and the Company Court shall have power to sanction the institution of any suit, prosecution or legal proceedings to carry on the business of the Company, to raise any money required and sell the moveable and Immovable property and actionable claims of the company by public auction or private contract. Rules 272 and 273 of the Companies (Court) Rules, 1959 also adumbrate the rule that unless the Court orders, no property belonging to the company which is being wound up shall be sold by the Official Liquidator without previous sanction of the Court and that every sale shall be subject to the confirmation by the Court. Be it also noted that power of the Company Court to order sale of assets of the company in liquidation is not restrictive having regard to the provisions of Sections 446(1), 537, 457 and 556 and Rules 272 and 273 of

the Rules. This position of law is not disputed before this Court.

(b) Relevant Provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993

9. The DRT Act is an Act to provide for establishment of Tribunals for expeditious recovery of debts due to banks and financial institutions. It does not in any manner deal with winding up of a company registered under the Companies Act. Therefore, it is not possible to assume that Section 17 of the DRT Act read with Sections 25 - 30 thereof also enable the Debt Recovery Tribunal to exercise their authority, power and jurisdiction to decide questions of winding up of a company. These are outside the purview of Section 17 of the DRT Act, which deal with jurisdiction, powers and authority of the Tribunal. Chapter IV of the DRT Act deal with procedure of the Tribunals. Section 19 contains such procedure for making applications to the Tribunals by the banks and financial institutions and subsection (7) of Section 19 empowers the Presiding Officer of the DRT to issue a Certificate of Recovery to the Recovery Officer appointed by the Central Government under Sub-section (1) of Section 7, directing recovery of the amount of debt specified in the certificate. The procedure for recovery of the debt determined by the Tribunal is contained in Chapter V of the DRT Act, which contains Sections 25 - 30. As per Section 25, the Recovery Officer shall proceed to recover the amount of debt specified in the Certificate of Recovery (i) by attachment and sale of moveable and Immovable properties of the defendant; (ii) arrest of the defendant and his detention in prison, and (iii) appointing a Receiver for the management of the moveable and Immovable properties of the defendant. This provision, be it noted, is in similar terms to that of Section 222 of the Income Tax Act, 1961 (for short "the Income Tax Act"). Section 28 speaks of other modes of recovery. Sub-sections (4) and (5) of Section 28 are relevant, and they read:

(4) The Recovery Officer may apply to the Court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money, or if it is more than the amount of debt due, an amount sufficient to discharge the amount of debt so due.

(5) The Recovery Officer may recover any amount of debt due from the defendant by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income Tax Act, 1961 (43 of 1961).

Section 29 of the DRT Act is also relevant, and it reads:

29. Application of certain provisions of Income Tax Act :--The provisions of the Second and Third Schedules to the Income Tax Act, 1961 (43 of 1961) and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income tax:

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act.

10. A reading of Sub-section (5) of Section 28 and Section 29 together would show that the Recovery Officer while enforcing the Certificate of Recovery is required to follow the procedure contemplated in the Third Schedule to the Income Tax Act, 1961. If the recovery is by distraint and sale of moveable property, as per Section 29, the Recovery Officer is required to follow the procedure of Second and Third Schedules to the Income Tax Act, and the Income Tax (Certificate Proceedings) Rules, 1962, which are made applicable for recovery of debts specified in the Certificate of Recovery issued by the Tribunal.

(c) Second and Third Schedules to the Income Tax Act, 1961

11. I may now refer to the relevant provisions in Second and Third Schedules to the Income Tax Act. Schedule-II to the Income Tax Act, provides the procedure for recovery of tax from an assessee who is in default or is deemed to be in default in payment of tax, Part-I contains general provisions. Part-II contains provisions for attachment and sale of moveable property, and Part-III contains attachment and sale of Immovable property. Parts-IV to VI deal with other aspects of the matter. As per Rule 27 of the Second Schedule, the attachment of a decree of civil Court for payment of money or for sale in enforcement of mortgage or charge, shall be made by the Tax Recovery Officer by issue of notice to the civil Court requesting the civil Court to stay the execution of the decree. When such a request is received by the civil Court, the civil Court shall on application of the Tax Recovery Officer and subject to the provisions or the Code of Civil Procedure, 1908 proceed to attach the decree and apply the net proceeds in satisfaction of the Tax Recovery Certificate.

12. Here, it may be noticed that as per Sub-section (4) of Section 28 of the DRT Act, the Debt Recovery Officer has to apply to the Court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money or if its more than the amount of debt due, an amount sufficient to discharge the amount of debt so due.

13. Further the Third Schedule to the Income Tax Act as noticed deals with distraint and sale of moveable property of a defaulter of an assessee who has defaulted in payment of tax. Third Schedule lays down that distraint and sale of movable property are to be effected by the Tax Recovery Officer as per the provisions of Second Schedule relating to attachment and sale of immovable property. Here we may notice Rule 31 of the Second Schedule, which reads:

Attachment of property in custody of the Court or Public Officer

31. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by

whom the notice is issued.

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the Tax Recovery Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

14. A plain reading of Rule 31 shows that where the property to be attached is in the custody of any Court or public officer, the attachment shall be by notice to such Court or officer requesting that such property or any interest or dividend becoming payable therein may be held subject to further orders of the Tax Recovery Officer by whom the notice is issued. As per the proviso to Rule 31 when any question of title or priority arises between the Tax Recovery Officer or any other person not being defaulter, the said question shall be determined by the Court in whose custody the property vests,

15. The upshot of the above conspectus of various provisions of the Companies Act, DRT Act and Second and Third Schedules to the Income Tax Act, is as follows: When a petition is filed in a Company Court for winding up of the company, at the instance of the company, contributors and/or creditors, the Company Court may stay the suit or proceedings against the company or attachment of the assets of the company which is being wound up. Any attachment or distraint or execution enforced without the leave of the Court shall be void. After an order of winding up is passed by the company Court, the properties of the company go into the custody of the Company Court and they can be sold only with the prior sanction of the Company Court by the Official Liquidator of the company or by private negotiations. Further, any sale of moveable and Immovable property shall be subject to confirmation by the Company Court. It is for the company Court to apply the proceeds realised by sale of moveable and Immovable properties to various liabilities of the company in winding up. Under subsection (7) of Section 19 of the DRT Act, the bank or financial institution is entitled to obtain a Certificate of Recovery if the debt is more than Rs.10,00,000/-, Such Certificate of Recovery specifying the debt to be recovered is enforced/executed by the Recovery Officer appointed under Sub-section (1) of Section 7 of the DRT Act. The Recovery Officer is required to recover the amount of debt specified in the Certificate of Recovery by attachment or sale of moveable and Immovable properties by following the procedure contemplated in Second and Third Schedules to the Income Tax Act. As per Sub-section (4) of Section 28 as well as Rules 27 and 31 of the Second Schedule, the Recovery Officer has to apply to the Court when the property to be attached or money belonging to the defendant is in the custody of a Court and seek appropriate orders for holding the property or for payment to him the entire amount of money or money sufficient to discharge the debt.

16. In view of the various provisions discussed thus far, it must be held that the applicant before the Debts Recovery Tribunal or the defendant is not entitled to move the Company Court seeking directions to the Official Liquidator to transfer

the assets of the company in liquidation to the Recovery Officer. After the property is sold and sale is confirmed, proceeds realised as per Sections 456 and 457, the Recovery Officer may then apply to the Court in whose custody there is money requesting payment to him of the entire amount realised or the money sufficient to discharge the amount of debt. There is no provision in the DRT Act, which enables the applicant before the Debts Recovery Tribunal to move the Company Court for transfer of the assets to the Recovery Officer. Such a procedure is not contemplated under the law. It is only the Recovery Officer who can apply to the Company Court seeking appropriate orders. Further, in this case at the stage of valuation of the property the Official Liquidator issued notices to the creditors, and the applicant bank did not raise any objection and did not even bring to the notice of this Court that the OA filed by them before the Debts Recovery Tribunal, is pending.

17. This Company is being wound up as per Section 20(2) of the Sick Industrial Companies (Special Provisions) Act, 1985 and as per the opinion of the Board for Industrial and Financial Reconstruction (BIFR). This shows that even before the applicant filed OA before the Debts Recovery Tribunal, the proceedings before the BIFR was pending, and it is doubtful whether in such a situation the Debts Recovery Tribunal could have validly passed an order and issued valid Certificate of Recovery. Be that as it may, at the stage of confirmation of sale by this Court, the applicant is not entitled to file this application, and such an application is not maintainable.

18. I may now consider the two decisions relied upon by the learned Counsel for the applicant. I have gone through the decisions very carefully and am of the considered opinion that they do not in any manner assist the applicant, and on the other hand, there are observations, which run counter to the submissions made by the learned Counsel for the applicant.

Allahabad Bank v. Canara Bank

19. The seminal question that arose before the Supreme Court was whether the Bank or financial Institution was required to obtain leave of the Company Court u/s 537 of the Companies Act to proceed with the claim before the Debts Recovery Tribunal or in respect of execution proceedings before the Debt Recovery Officer against the Company against which a winding up petition is pending.

20. The facts in the said case were that Allahabad Bank obtained Certificate of Recovery from the Debts Recovery Tribunal, Delhi and filed a Recovery Case before the Recovery Officer against M/s. M.S. Shoes. In the meanwhile, M/s, Ranbaxy Limited filed a petition for winding up of M/s. M.S. Shoes, which was pending. Canara Bank another creditor of M/s. M.S. Shoes also filed another O.A. before the DRT, Delhi and the same was also pending. When the Recovery Officer was proceeding with the sale of the properties of M/s. M.S. Shoes, Canara Bank filed an application before the Recovery Officer seeking pro rata distribution of the sale proceeds, which was opposed by Allahabad Bank. Simultaneously

Canara Bank also filed an application before the DRT u/s 22 of the DRT Act seeking stay of recovery proceedings initiated by Allahabad Bank. They also filed company application before the Company Court for stay of the Recovery Case of Allahabad Bank and the Company Judge passed orders u/s 442 read with Section 537 of the Companies Act. This order was challenged by Allahabad Bank.

21. The contention was that in view of Section 18 of the DRT Act, all matters relating to recovery of debt are taken out from the purview of the Companies Court, including Sections 442, 537 and 446, and therefore, no leave is necessary to proceed with the original application and the Recovery Case in view of the overriding effect given to DRT Act by Section 34 thereof. Alternately, it was also submitted that Section 447 of the Companies Act, cannot be invoked as there was no winding up order nor an order appointing provisional liquidator. For the Canara Bank it was urged that merely because Allahabad Bank obtained a decree from the Debts Recovery Tribunal, it cannot be allowed to appropriate the entire sale proceeds recovered by it as Canara Bank has claimed u/s 446 of the Companies Act. The Hon'ble Supreme Court framed six points for consideration. It was held that the adjudication of liability and recovery of debt amount by execution of the Certificate of Recovery are within the exclusive jurisdiction of the Debts Recovery Tribunal and the Recovery Officer. On the question whether leave of the Company Court is required for initiation of various proceedings by the banks and financial institutions before the Debts Recovery Tribunal, before winding up order is passed, it was answered in the negative. Even in regard to cases after winding up order has been passed, it was held that the Company Court cannot stay the execution proceedings before the Recovery Officer or transfer the execution proceedings to itself. It was observed in para 49:

For the aforesaid reasons, we hold that at the stage of adjudication u/s 17 and execution of the certificate u/s 25 etc., the provisions of the RDB Act, 1993 confer exclusive jurisdiction in 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 u/s 442 read with Section 537 or u/s 446 of the Companies Act, 1956. In respect of the monies realised 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 529A 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.

22. The question which arose in Allahabad Bank v. Canara Bank is altogether different from the question that falls for consideration in the case on hand. It is not a case where stay of recovery proceedings or execution of Recovery

Certificate is sought for in this case. The Syndicate Bank, which obtained Certificate of Recovery from the Debts Recovery Tribunal long after the winding up order has been passed by the Company Court, has itself filed an application seeking transfer of assets of the company in liquidation from the custody of the Company Court to the Recovery Officer. Whether Syndicate Bank being decree holder or whether the Recovery Officer being an officer is entitled to proceed with the recovery as per the Certificate, Is the question before us, which never arose before the apex Court. Besides, the Supreme Court made the following observations in regard to execution by the Recovery Officer:

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 - 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal u/s 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 realisation of the amount. The certificates granted u/s 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual Jurisdictions at different stages are contemplated.

23. The observations would support the view taken by me that even the Recovery Officer cannot proceed with the recovery de hors the provisions of Sections 25 - 30 of the DRT Act. He can only do so strictly in accordance with the provisions of the DRT Act read with Second and Third Schedules to the Income Tax Act. I have already held that the provisions of DRT Act do not enable the Recovery Officer or the decree holder to seek transfer of assets to enable the Recovery Officer to bring them to sale after the properties are sold as sanctioned by this Court, and awaiting confirmation by this Court. Therefore, the dicta in Allahabad v. Canara Bank in no way helps the applicant.

24. In Pennar Patterson Ltd. v. State Bank of Hyderabad, the Division Bench of this Court was concerned with the question as to whether the Debts Recovery Tribunal can ask the provisional liquidator to take certain action without obtaining leave of the Company Court in view of the decision of the apex Court in Allahabad Bank v. Canara Bank. The Division Bench observed that the point which fell for consideration did not fall for consideration before the Supreme Court in Allahabad Bank v. Canara Bank. It was also observed that "it is one thing to say that the Tribunal has exclusive jurisdiction in relation to adjudication and execution, but it is another thing to say that such jurisdiction has to be exercised in a particular manner". Pennar case also involves the question as to the method and manner of exercising jurisdiction and discharging the powers by the Recovery Officer constituted u/s 7(1) of the DRT Act. The Division Bench observed:

The Tribunal although has a plenary jurisdiction, its right of execution, in our opinion, must be done having regard to the provisions laid down therein. We

must also take into consideration the fact that the Tribunal is subject to the supervisory jurisdiction of this Court. The jurisdiction of the Tribunal for adjudication and the right of execution vis-a-vis the jurisdiction of the Company Court has been determined in Allahabad Bank's case (supra) but not the mode of recovery thereof. When a liquidator or a provisional liquidator as the case may be is directed to take into his custody or under his control the property, effects and actionable claims, the company is or appears to b'e entitled to by reason of the provisions contained in Section 456 of the Companies Act, there cannot be any doubt whatsoever that leave of the Court must be obtained. By reason of the aforesaid provision a legal fiction is created.

25. Thus the judgment of this Court in Pennar Patterson v. State Bank of Hyderabad does not in any manner takes a contra view from the view taken by me.

26. The application filed by Syndicate Bank at the stage when the matter is posted for confirmation of sale by this Court is not maintainable as per the provisions of DRT Act, Companies Act, Second and Third Schedules to the Income Tax Act, which are made applicable by reason of Section 29 of the DRT Act. This application is misconceived, and is liable to be dismissed.