(2014) 03 AP CK 0075

In the Andhra Pradesh High Court

Case No : Company Application No''s. 366 and 367 of 2012 in Company Petition No. 197 of 2010

Syndicate Bank APPELLANT

Vs

Vasuda Pharma Chem Ltd. and Another RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Citation : (2015) 1 ALD 441

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : A. Krishnam Raju, for the Appellant; M. Anil Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

C.V. Nagarjuna Reddy, J.—Company Application No. 366 of 2012 is filed to permit the authorised officer of the applicant-Bank to continue in possession of respondent No. 2''s movable and immovable properties till they are sold. Company Application No. 367 of 2012 is filed by the same applicant for permitting its authorised officer to conduct sale of respondent No. 2''s movable and immovable properties by following the procedure under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ''SARFAESI Act''). During the hearing of the cases, an issue has arisen as to whether the ratio laid down in Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another, applies to the sales to be held by the secured creditor under the SARFAESI Act. In Rajasthan Financial Corporation (supra), the Apex Court held that in respect of the dues recoverable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and also under the State Financial Corporations Act, 1951 the Official Liquidator is bound to be associated by the secured creditor as he represents the workmen dues for which a pari pasu charge is held by him. This question, however, was considered by a Division Bench of the Delhi High Court in Kotak Mahindra Bank Ltd., v.

Megnostar Telecommunications Co. App. No. 58 of 2012, dated 17.09.2012. By its judgment, dated 17.09.2012, the Division Bench held that the ratio in Rajasthan Financial Corporation (supra) has no application to the dues recoverable under the SARFAESI Act. In the process, the Division Bench disagreed with the judgment of the Division Bench of the Punjab and Haryana High Court in Haryana State Industrial and Infrastructure Development Corporation Vs. Haryana Concast Limited and Another, and also with the judgment of the Madras High Court in K. Chidambara Manickam Vs. Shakeena and Others, . I also find that the learned Single Judge of Karnataka High Court has concurred with the judgment of the Punjab and Haryana in M/s. Prime Industries Vs. Official Liquidator of M/s. B.S. Refrigerators Limited Attached to High Court of Karnataka 4th Floor, D and F Wing Kendriyasadan, Koramangala Bangalore - 560034 and Asset Reconstruction Company (India) Limited,

2. At the hearing, Sri M. Anil Kumar, learned counsel for the Official Liquidator, placed before the Court order, dated 17.02.2014, of the Supreme Court in SLP (Civil) Nos. 36254 and 36255 of 2012 filed against the judgment in Kotak Mahindra Bank Ltd., Co. App. No. 58 of 2012, dated 17.09.2012 (supra), wherein the following order is passed:

There is some inconsistency in the view taken by the Delhi High Court in the impugned judgment and the decision of the Punjab and Haryana High Court in Haryana State Industrial and Infrastructure Development Corporation Vs. Haryana Concast Limited and Another,

Having regard to the above, let this SLP be listed for final disposal on a non-miscellaneous day within three months from today.

Prayer for interim relief is rejected.

3. Sri A. Krishnam Raju, learned counsel for the applicant, stated that in view of the conflicting opinions on the issue as to whether the secured creditor while exercising its right under the SARFAESI Act is under obligation to associate with the Official Liquidator in respect of the dues under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and also under the State Financial Corporations Act, 1951 and the Supreme Court being in sisin of this issue in the above noted SLPs, his client would not like to get entangled in this controversy and that the applicant-bank is prepared to follow the same directions as were issued in Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another,

4. Accordingly, the applicant is permitted to sell the properties of the company in liquidation by scrupulously following the directions issued in Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another,

5. The valuation report, dated 19.11.2013, of Mr. Pradeep Kapaarthi, Chartered Engineer & Valuer, filed by the applicant bank is not disputed by the Official Liquidator. Hence, the said report is taken on record.

6. The applicant-bank is permitted to sell the properties by issuing advertisement in English and Telugu, daily newspapers, as required under Rules 272 and 273 of the Companies (Court) Rules, 1959 while associating with the Official Liquidator. The company applications accordingly stand disposed of.

