
(2012) 10 MAD CK 0085

In the Madras High Court

Case No : O.S.A. No's. 179, 193-194 of 2012 and O.S.A.SRs. 43419 and 43425 of 2012

V. Thirumurugan

APPELLANT

Vs

Rajsriya Automobile Industries Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Companies Act, 1956 — Section 529, 529A
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(9), 17

Citation : AIR 2013 Mad 39 : (2013) 2 BC 162 : (2012) 175 CompCas 186 : (2012) 8 MLJ 5

Hon'ble Judges : P. Jyothimani, J;P. Devadass, J

Bench : Division Bench

Advocate : S.V. Jayaraman, for M.P. Jayaprakash and R. Thiagarajan, for Ms. M. Thenmozhi, for the Appellant; A.L. Somayaji, for P.J. Sri Ganesh, R. Krishnamurthy, for B. Giridhara Rao, P.J. Sriganesh, S. Dhanaraj and F.B. Benjamin George, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The brief facts relevant for the disposal of these appeals are as under: Uma Maheshwari Mills Limited was wound up by an order of this Court dated 2.1.2006 in C.P. No. 173 of 2001 filed by Upasana Finance Limited and thereafter the assets vested in the Official Liquidator. One of the secured creditors, to wit Indian Overseas Bank, the second respondent in O.S.A. No. 179 of 2012, has initiated action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "the SARFAESI Act") by attaching the company's factory premises and taking possession of the same.

2. The assets of the company in liquidation, to wit the land and building, were advertised for sale by the Official Liquidator on 24.8.2008 and 11.4.2010 and there was no response to the advertisement. Thereafter steps were taken to sell

the property by fixing the upset price of the property at Rs. 12.43 Crores through the ITCOT Consultancy and Services and that was also not fruitful. It was on 6.9.2010, the first respondent, who is a member of the Hosur Industries Association, offered to purchase the property at Rs. 12.52 Crores.

3. While the Official Liquidator filed C.A. No. 2115 of 2008, the Indian Overseas Bank and the Stressed Assets Stabilization Fund (Assignee of Industrial Development Bank of India) filed C.A. Nos. 1312 and 1453 of 2010 respectively seeking a direction to the Official Liquidator to hand over the secured assets and the plant and machinery and to permit the sale of the said assets of the company in liquidation.

4. This Court, having found that there are two items of properties, to wit moveables hypothecated, and land and building measuring about 12.61 Acres or thereabout, and that the immovable property was said to have been mortgaged to the Indian Overseas Bank, by an order dated 2.9.2010, has directed the Indian Overseas Bank to sell the said land and building under the provisions of the SAFAESI Act, however in consultation with the Official Liquidator, so as to enable the Official Liquidator to settle on priority basis the claims of the workmen u/s 529A of the Companies Act, 1956. In respect of the other machinery which were identified in the factory premises of Sakthi Finance, who is another secured creditor, since there has been some objection to IDBI, there was a direction that in respect of the other movable properties, if the same are identified, the Official Liquidator can hand over the same to the creditor concerned by obtaining proper acknowledgment.

5. Accordingly, the Bank has advertised a tender-cum-auction notice on 20.10.2010 for sale of the land and building by fixing upset price at Rs. 12.52 Crores with a direction that the bids were to be submitted to the second respondent in O.S.A. No. 179 of 2012, being the bank, in sealed covers on or before 25.11.2010 along with earnest money deposit (EMD) of 10%.

6. The first respondent, to wit Rajsriya Automobile Industries Private Limited, has submitted a bid on 25.11.2010 along with 10% EMD and out of the two bids stated to have been received, the first respondent's bid amount, which was Rs. 12,52,01,000/-, was found to be the higher. It appears that on the date when bids were opened, to wit on 26.11.2010, as the two bidders were present, the Authorized Officer of the Bank has asked them as to whether they are willing to raise their bid amount. It appears that the first respondent has raised the bid amount to Rs. 12,57,00,000/- and being the highest offerer, the first respondent was called upon to deposit 25% of the bid amount immediately, which was duly complied with by the first respondent. The balance amount of sale consideration of Rs. 9,42,75,000/- is stated to have been paid by the first respondent on 27.11.2010.

7. On 30.11.2010, a third party-one Arumugam has filed C.A. No. 1753 of 2010 offering to purchase the property for a sum of Rs. 12.75 Crores and sought a

direction to set aside the auction dated 26.11.2010. By an order dated 30.11.2010, the said application came to be dismissed observing that the said Arumugam instead of taking part in the auction has filed the application for permission, which is not necessary; that the said applicant was aware of the tender-cum-auction notice and he even met the Sale Officer; and that he has chosen to wait for eleven months and filed the said application with an oblique motive.

8. It was thereafter on 4.12.2010, the Bank has confirmed the sale in favour of the first respondent for a consideration of Rs. 12.57 Crores and a sale certificate was issued on 6.12.2010 to the first respondent and it was registered by the first respondent on 9.12.2010 as Document No. 13073 of 2010 on payment of stamp duty and registration charges.

9. A Sarfaesi Application in S.A. No. 300 of 2010 was stated to have been filed before the Debts Recovery Tribunal by a third party-one Murugan on 16.12.2010 to set aside the auction sale conducted on 26.11.2010 and offering to pay Rs. 1 Crore over and above the price paid by the first respondent. It appears that the Debts Recovery Tribunal has passed an interim order of status-quo against the bank.

10. On 23.11.2010, the Employees" Union of the Company in liquidation has filed a Sarfaesi Application in S.A. No. 308 of 2010 before the Debts Recovery Tribunal challenging the sale effected by the bank on the grounds that sufficient publicity was not given and that the price fixed is inadequate.

11. Against the order passed by the Debts Recovery Tribunal in S.A. No. 300 of 2010, the first respondent has filed a revision in C.R.P. No. 2030 of 2011 before this Court. It appears that a Division Bench of this Court, by order dated 28.7.2011, has directed the third party-Murugan to deposit an amount of Rs. 13.57 Crores by 12.8.2011, failing which the interim order granted by the Debts Recovery Tribunal was directed to be vacated. Since the Presiding Officer in Debts Recovery Tribunal-III was not sitting, the Division Bench has directed the Sarfaesi Application to be posted before the Debts Recovery Tribunal-II.

12. The third party-Murugan has filed a SLP before the Supreme Court on 11.9.2011 against the order of the Division Bench dated 28.7.2011. The Supreme Court, while dismissing the said petition, has extended the time granted by the High Court to the third party to deposit the amount by another four weeks making it clear that if the said amount is not deposited, the Division Bench order shall stand confirmed. The said third party has not complied with the order of the Supreme Court also and ultimately on 27.9.2011, the Debts Recovery Tribunal has dismissed the application filed by the third party and ordered that the first respondent be put in possession of the property.

13. The Debts Recovery Tribunal-II has also dismissed S.A. No. 308 of 2010 filed by the Employees" Union of the Company in liquidation holding that sufficient publicity has been effected and that the application lacks bona fide and the same

was set up by third party to defeat the claim of the Bank.

14. On 28.9.2011, the first respondent filed two applications in C.A. Nos. 649 and 650 of 2011 seeking suitable direction to the Official Liquidator to dismantle the machinery installed in the property sold and to store them in one of the sheds of the said property and hand over vacant possession, and thereafter to direct the Official Liquidator to remove the machinery from the said shed within a specified time so as to enable the first respondent, being the purchaser, to utilize the property.

15. As against the order of dismissal passed in S.A. No. 308 of 2010, the Employees' Union of the company in liquidation filed an appeal before the Debts Recovery Appellate Tribunal on 13.12.2011, which is pending. In the meantime, the Employees' Union of the company in liquidation has also filed C.A. Nos. 785 and 786 of 2011 to implead them as parties in the application filed by the first respondent/purchaser.

16. Yet another third party- V. Thirumurugan, who is the appellant in O.S.A. No. 179 of 2012, has filed an application in C.A. No. 789 of 2011 to set aside the sale notice dated 20.10.2010 and the consequential sale held on 26.11.2010, including the confirmation of sale in favour of the first respondent dated 9.12.2010, and to conduct fresh auction after proper publication or in the alternative to confirm the sale of the property free from all encumbrances in his favour for an amount of Rs. 15 Crores as net amount. The said application filed by the third party-- V. Thirumurugan was dismissed by the learned single Judge under the impugned order dated 30.3.2012, against which the third party-V. Thirumurugan has filed O.S.A. No. 179 of 2012.

17. Likewise, the two applications, to wit C.A. Nos. 785 and 786 of 2011, filed by the Employees' Union of the company in liquidation were also dismissed by the learned single Judge under the impugned order dated 30.3.2012, against which the Employees' Union of the company in liquidation has filed O.S.A. Nos. 193 and 194 of 2012.

18. The learned single Judge under the impugned orders, while dismissing the said applications filed by the third party as well as the Employees' Union of the company in liquidation, has held that when once another third party-Arumugam has already offered to pay more amount after confirmation of sale in favour of the first respondent by filing C.A. No. 1753 of 2010 and that was dismissed on 30.11.2010 and thereafter the sale effected in favour of the first respondent was confirmed on 4.12.2010 and sale certificate was issued on 6.12.2010, which was subsequently registered on 9.12.2010 and the entire sale consideration has been paid to the second respondent/bank in respect of the due by the company in liquidation, there is no bona fide on the part of the third party appellants in filing the applications. It was also held that these applications are filed only to scuttle the rights of the bank in realizing the due from the company in liquidation, which has borrowed the amount. It was also held that settled things cannot be

unsettled by filing of repeated applications like these.

19. The other O.S.A.SRs are filed by the Employees' Union challenging the order dated 30.3.2012 passed by the learned single Judge in C.A. Nos. 649 and 650 of 2011, the applications filed by the first respondent/purchaser.

20. It is not in dispute that, as per the direction of the Court, the Official Liquidator has handed over the property to the first respondent on 3.5.2012 and the first respondent is in possession from the said date, as it is seen in the minutes of the meeting of the Official Liquidator. Insofar as it relates to the machinery of the company in liquidation, the process of dismantling is said to be in progress, as directed by this Court.

21.1. It is the contention of Mr. S.V. Jayaraman, learned senior counsel appearing for the appellants in O.S.A. Nos. 193 and 194 of 2012 and O.S.A.SRs. wherein the Employees' Union of the company in liquidation are the appellants, that inasmuch as under the Companies Act the claims of the workmen are protected statutorily, the employees are very much interested about the valuation with which the sale was effected.

21.2. It is his contention that when the publication has not been effected properly, the ultimate sufferers are the employees and the secured creditors and, therefore, when at least one third party, to wit-V. Thirumurugan, has offered to purchase the property for a higher value than the price for which the first respondent has purchased, in all fairness, that should have been accepted.

22. It is the contention of Mr. R. Thiagarajan, learned senior counsel appearing for the appellant in O.S.A. No. 179 of 2012, to wit the third party-V. Thirumurugan, that even though the third party's claim is belated, the learned Judge ought to have tested the bona fide of the third party which has made a claim to pay better sale consideration than the first respondent/purchaser.

23.1. Mr. A.L. Somayaji, learned senior counsel appearing for the first respondent/purchaser in O.S.A. Nos. 193 and 194 of 2012 would submit that when there was wide publication effected by the bank by exercising its powers under the SARFAESI Act and many times steps have been taken for the purpose of selling the property and there was no offer, after completion of the entire process, including the execution of the sale certificate and the registration, it is certainly not open to any third party to re-agitate the issue and if such claims are permitted, there will be no end in respect of the sale effected by the Company Court.

23.2. Insofar as the claims of the workmen are concerned, it is his submission that their claims are statutorily protected and they are yet to be adjudicated by the Official Liquidator and they have been paid nearly Rs. 8 Crores as on date and therefore they can have no grievance.

24.1. Mr. R. Krishnamurthy, learned senior counsel appearing for the first respondent/purchaser in O.S.A. No. 179 of 2012 would submit that the third

party appellant was aware of the auction which took place on 26.11.2010 and he has been watching the proceedings and has never chosen to participate in the auction and after the entire procedure is over, after two years he has chosen to file an application to set aside the sale and the same lacks bona fide.

24.2. He would rely upon the judgment in Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Others, to substantiate his contention that inasmuch as it is nobody's case that any fraud has been played on the Court in respect of the sale of the property, the purchaser should not be affected.

25.1. Mr. F.B. Benjamin George, learned counsel appearing for the second respondent/bank, which has exercised its power of sale under the SARFAESI Act, would submit that the bank has taken all necessary steps and made publication in accordance with the Security Interest (Enforcement) Rules, 2002 and the local publication has also been effected.

25.2. While meeting the contention raised on behalf of the Official Liquidator that the bank which was directed to consult the Official Liquidator has not done effective consultation, he would submit that, in fact, the bank has fixed a price which is more than the amount fixed by the Official Liquidator and, therefore, it cannot be said that the statutory claims of the workmen would be affected by the sale effected by the bank.

26. We have heard the contentions of all the respective counsel, referred to the impugned orders passed by the learned single Judge and given our anxious consideration to the issue involved.

27. At the outset, as it is correctly stated by the learned single Judge in the impugned order, even though the sale in respect of the first respondent attained finality starting from the first advertisement issued by the bank as per the SARFAESI Act on 20.10.2010 till the issuance of sale certificate and registration of the sale certificate on 6.12.2010 and 9.12.2010 respectively, if not the appellant in O.S.A. No. 179 of 2012, various other persons, including the said third party-Arumugam who filed C.A. No. 1753 of 2010, have prayed the Court to set aside the sale, and the said applications were dismissed. The challenge to the auction sale by one Murugan, who is stated to be a resident of Villupuram, was negatived and now the appellant in O.S.A. No. 179 of 2012-V. Thirumurugan, who is also a resident of Villupuram is challenging the auction sale.

28. When once the application made by Murugan before the Debts Recovery Tribunal u/s 17 of the SARFAESI Act to set aside the auction sale and to sell the property to him was dismissed, as the said third party failed to comply with the conditional order passed by the Division Bench of this Court in the revision or the order passed by the Supreme Court in the Special Leave Petition, there is no difficulty to conclude that the claim made by the appellant in O.S.A. No. 179 of 2012 much after the confirmation of sale in favour of the first respondent can only be presumed to be a collusive attitude with an intention to scuttle the

process of sale by any manner.

29. In any event, as it is seen that the publication has been effected by the bank in "The Hindu" newspaper of Coimbatore Edition having circulation in Coimbatore, Salem, Erode, Namakkal, Krishnagiri and Dharmapuri Districts and in the "Daily Thanti" in the whole of Tamil Nadu, it cannot be said that there was no effective publication or the requirements of the SARFAESI Act have not been followed by the second respondent/bank.

30. Insofar as it relates to the claim of the Employees' Union, when the employees' right is protected under the Companies Act and their claims can always be adjudicated by the Official Liquidator in the manner known to law, in the absence of any bona fide on the part of the third parties who have been consistently making efforts for the purpose of preventing the sale confirmation by one means or other, we are unable to accept the contentions raised on behalf of the appellants as if there is any infirmity in the sale conducted by the second respondent. That apart, it is nobody's case that any fraud has been played in conducting the sale.

31. The Supreme Court has held in Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others (supra), while referring to the company in liquidation that there is no question of entertaining objections after confirmation of sale, except under very limited circumstances of allegation of fraud. In fact, the Supreme Court has held that if such applications are entertained continuously, there will be no completion of auction sale. The following paragraphs of the decision of the Supreme Court are relevant to be referred to:

11. It may be noted that the auction-sale was done after adequate publicity in well-known newspapers. Hence, if anyone wanted to make a bid in the auction he should have participated in the said auction and made his bid. Moreover, even after the auction the sale was confirmed by the High Court only on 30.7.2003, and any objection to the sale could have been filed prior to that date. However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction-sale will ever be complete.

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28. If it is held that every confirmed sale can be set aside the result would be that no auction-sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-sale was done after wide publicity, then setting aside the sale after its confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same, and they are themselves to be blamed if they do not come forward to bid at the time

of the auction. They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is finalised, say for Rs. 1 crore, and subsequently somebody turns up offering Rs. 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs. 10 crores, then an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion. However, if the price offered after the auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done.

29. In the present case we are satisfied that there is no fraud in the auction-sale. It may be mentioned that auctions are of two types-(1) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held.

30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

It has been categorically held by the Supreme Court in the above said judgment that unless there is an allegation of fraud, there is no question of interference by the Court to set aside the sale after the sale has been effected in favour of the purchaser after completion of all formalities.

32. The procedure to be followed for the purpose of effecting sale of the immovable property forming part of the secured assets has been specified in Rule 8 of the Security Interest (Enforcement) Rules, 2002, which is as follows:

Rule 8. Sale of immovable secured assets.-

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix-IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much

care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:--

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers; one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,-

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the web-site of the secured creditor on the Internet.

(8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

33. Even though on a bare reading of Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 gives discretion to the bank, after obtaining the reserve price of the property, to follow any one of the methods, including private treaty, which in our view need not be considered on the facts of the present case, we find that the bank has fairly resorted to effect publication inviting tenders from the public. That being a fair method which is also followed by the Company Court in effecting sale, we are of the view that there can be no exception taken to the manner in which the publication and sale have been effected by the bank.

34. In the order passed in the earlier applications in C.A. Nos. 1312 and 1453 of 2010 in C.P. No. 173 of 2001 dated 2.9.2010, which has been passed by one of us (P. JYOTHIMANI, J.), this Court in paragraph (3) of the order, which is as follows:

3. Insofar as it relates to the immovable property, which is said to have been mortgaged with the Indian Overseas Bank, the said property is permitted to be sold by the Indian Overseas Bank under the SARFAESI Act, however, in consultation with the Official Liquidator, so as to enable to settle on priority basis in respect of the workman u/s 529(A) of the Companies Act, 1956. Accordingly, it is only in respect of the said immovable property, which has been mortgaged to the Indian Overseas bank, the said property is directed to be sold by the Indian Overseas Bank under the SARFAESI Act. In respect of the other two items of movable property mentioned in the schedule to the Judges Summons, the applicant-Indian Overseas Bank as well as the Official Liquidator are directed to identify the machineries and find out the actual nature of machineries, which are the subject matter of hypothecation

has directed the bank, while exercising its powers under the SARFAESI Act to sell the secured assets, to consult the Official Liquidator in order to effectively implement the rights of the employees guaranteed u/s 529A of the Companies Act.

35. In fact, the applicability of Section 529A of the Companies Act as a matter of security for the claim of the workmen has been specifically protected under the SARFAESI Act itself, as it is seen u/s 13(9) of the Act, which is as follows:

Section 13. Enforcement of security interest.-

(1) to (8) xxx

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from

the sale of secured assets shall be distributed in accordance with the provisions of Section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of Section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of Section 529A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of Section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that Section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation : For the purposes of this sub-section,--

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

36. When this Court in the order cited supra has directed the bank to proceed to sell the property given as security in consultation with the Official Liquidator, the basic purpose is to protect the claims of the workmen guaranteed u/s 529A of the Companies Act. It is true that the consultation must be effective and not a mere formality. The basis of such consultation is relating to the fixation of upset price of the properties subject matter of security. It is common knowledge that insofar as it relates to the claim of the bank for recovery of amount borrowed on security, whether the bank takes action under the SARFAESI Act or otherwise, the predominant interest of the bank, which cannot be said to be wrong, must be in making recovery of the amount due to the bank and the valuation of the property, even though is obtained in accordance with the Rules stated above,

does not play a very important role when once the valuation is within the amount due to the bank.

37. On the other hand, the sale effected by the Company Court is not for the purpose of recovery of any loan advance, but it is in the larger interest of securing the claims of not only the workmen, which are statutorily protected u/s 529A of the Act, but also the secured creditors, debenture holders and other claims on priority basis. Therefore, the Company Court, while fixing the price of the property to be brought to sale, has to take into consideration the larger interest of not only the company, but also all the persons connected with the company and, therefore, it is not restricted to one or two claims towards the company. Therefore, the Company Court always obtains the valuation from the proper authorities and not mere private valuer, even though it is permissible under the SARFAESI Act, and even after obtaining the value, the sales are being effected in the open Court after giving elaborate publication so that the value of the property sold in the Company Court may fetch maximum price in the interest of all concerned. That is squarely the reason why this Court has earlier directed the bank to consult the Official Liquidator while exercising its power under the SARFAESI Act, especially when the debtor happens to be a company in liquidation and assets stand transferred to the Official Liquidator when once the Company Court passed order of winding up. That being the basis of the earlier order and by going through the efforts taken by the bank throughout and since it is stated by the bank that the valuation obtained by it is more than what was given by the Official Liquidator, there is no reason for this Court to doubt the propriety of the bank in confirming the sale. In any event, as correctly stated by the learned Judge in the impugned order, the settled sale cannot be attempted to be unsettled after a lapse of long period, especially when nobody has made any allegation of fraud in conducting the sale.

Looking from any angle, we are of the view that there is absolutely no necessity for this Court to interfere with the impugned order of the learned Judge. Accordingly, all the appeals and the O.S.A.SRs stand dismissed by confirming the order of the learned single Judge. Now that the confirmation of sale in favour of the first respondent has attained finality at this level, it is needless to state that the Official Liquidator shall proceed effectively with the adjudication of all the claims, including the claims of the workmen guaranteed under the Companies Act. No costs. Consequently, M.P. No. 1 of 2012 in O.S.A. No. 179 of 2012, M.P. No. 1 of 2012 in O.S.A. No. 193 of 2012, M.P. No. 1 of 2012 in O.S.A. No. 194 of 2012, M.P. No. 1 of 2012 in O.S.A.SR. 43419 of 2012 and M.P. No. 1 of 2012 in O.S.A.SR. 43425 of 2012 are closed.