

**(2013) 04 AP CK 0017**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 19297 of 2012 and 33655 of 2011

M/s. United Steel Allied  
Industries Pvt. Ltd.

APPELLANT

Vs

M/s. Indian Bank, The Assistant  
General Manager and M/s. Laran  
Sponge and Minerals (P) Ltd.  
<BR> Indian Bank Vs The  
Sub-Registrar, Sub-Registrar  
office, The Sub Registrar, Sanjeva  
Reddy Nagar, The Official  
Liquidator and The  
Sub-Registrar, Kukatpally

RESPONDENT

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**Date of Decision:** April 29, 2013

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 85, Order 21 Rule 86
- Companies Act, 1956 - Section 446, 531, 531A, 537
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 17, 37

**Citation:** (2013) 5 ALT 257

**Hon'ble Judges:** N.R.L. Nageswara Rao, J

**Bench:** Single Bench

**Advocate:** E. Ajay Reddy in W.P. No. 19297 of 2012 and Sri Ambadipudi Satyanarayana in W.P. No. 33655 of 2011, for the Appellant; Sri Ambadipudi Satyanarayana for Respondent Nos. 1 and 2 and Sri M. Anil Kumar for Respondent No. 3 in W.P. No. 33655 of 2011 and 19297 of 2012 and GP for Respondent Nos. 1, 2 and 4, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

N.R.L. Nageswara Rao, J.

All these matters arise out of a common issue. M/s. Laran Sponge & Minerals Private

Limited (hereinafter called as borrower) has availed a loan with Indian Bank by hypothecation of the agricultural land and also machinery belonging to the company and also the guarantors, Smt. P. Latha and Sri P. Vara Prasada Raju, who are the Directors of the Company. A loan facility of Rs. 12,00,00,000/- as M.T.L. loan and O.C.C. Limit of Rs. 5,00,00,000/- and L.C. of Rs. 5,00,00,000/- and B.G. Limit of Rs. 40,00,000/- was availed in the year, 2008 and ad hoc Limit of Rs. 3,50,00,000/- in the year, 2009. As there was default in repayment of the loan and the loan was classified as Non Performing Asset (N.P.A.) Account and the Indian Bank being a secured creditor under the provisions of SARFAESI Act, 2002, has taken possession of the property. A publication was given on 28.08.2010 for auction of the same. M/s. United Steel Allied Industries Private Limited (Auction Purchaser) participated in the auction on 29.09.2010 and 25% of sale price was deposited. Subsequently, on 01.01.2010 S.B.I. Global Factors Limited has filed company petition for winding up as it is also a secured creditor and the petition was allowed on 18.07.2011 and the Official Liquidator was appointed to take possession of the property. After the auction a letter dated 18.10.2010 was addressed by the auction purchaser to the effect that there participation in the auction is subject to the following conditions:-

- 1) Satisfactory legal due diligence and clear marketable title over land, plant and machinery free from any lien, charge, encumbrances etc.,
- 2) Indemnity guarantee from the Indian Bank with respect to future litigation, what so ever in nature, if any,
- 3) Indian Bank shall put us in the peaceful possession and handing over the land, plant and machinery and smooth functioning without any obstructions, what so ever in nature, from any quarter.

In this connection, we would also like to mention that in your above-referred letter you have mentioned that the total available land is about 20 acres, whereas the land available is only 16 acres. Further, the land available is not sufficient to meet the technical requirements of plant.

In view of the above, we have no option, except to reserve our right to with draw. We request the Bank to refund the initial bid amount (inclusive of EMD) of Rs. 9.0 Crores deposited with the Bank at the earliest.

It is also to be noted here that after the sale on 29.09.2010 after deposit of 25% of the sale price, the balance of 75% was not deposited within fifteenth day. Thereafter, on 24.11.2010 a letter is said to have been addressed by the auction purchaser for grant of loan and accordingly loan was granted on 07.01.2011 and the balance of sale consideration was adjusted from that loan and a sale certificate was issued on 18.01.2011. Thereafter, as contemplated under the tender agreement, the documents were sent for registration. At that stage, the Official Liquidator has addressed a letter on 20.09.2011 to the Sub Registrar, Hakundi Village, Ballari District, informing that the borrower company was wound up in C.P. No. 215 of 2010

and he was appointed as Liquidator and the Sub Registrar was requested not to register any document with regard to the properties of the borrower. Subsequently, W.P. No. 33655 of 2011 was filed on 14.12.2011 by the Indian Bank for a direction to the Sub Registrar to register the sale certificate with regard to the auctioned property. While, the Writ Petition was pending, the Bank also filed the COMP. A. No. 1972 of 2011 on 27.12.2011 for a direction to the Official Receiver to clarify his letter, dated 20.09.2011 addressed to the Sub Registrar. While the matter stood thus as the auction purchaser claimed that the possession was not given as there was further claims with regard to the auctioned property and there were dues claimed by the authorities and as the property is not free from encumbrances and as the Bank threatened to recover the amounts as a defaulter and to treat the loan account as Non Performing Asset. W.P. No. 19297 of 2012 was filed by the auction purchaser on 26.06.2012 and interim orders were passed in W.P.M.P. No. 24720 of 2012 in favour of the auction purchaser restraining the Bank from proceeding and later it was varied in W.P.M.P. No. 2850 of 2012 giving the Bank liberty to proceed against the auction purchaser in accordance with law for recovery of the over due amounts and installments to the extent of default by the auction purchaser. As against that W.A. No. 17 of 2013 was filed and by order dated 09.01.2013 the modification ordered in W.P.M.P. No. 2850 of 2012 was deleted and the matter was directed to be dealt by this Court along with W.P. No. 33655 of 2011. That is how both the Writ Petitions were transferred to this Court. While these matters are pending the auction purchaser has filed COMP. A. No. 421 of 2013 to set aside the sale alleging several irregularities, suppression of facts and not following due process. It was also further pleaded that the properties are not properly valued and the encumbrances were not disclosed and possession was not delivered effectively. It was also pleaded that there were several claims of taxes etc., to a large sum of more than 1 Crore and as such the sale is liable to set aside.

2. The Indian Bank has denied all the allegations and supported the action taken under SARFAESI Act. The Official Liquidator claims that this sale is void u/s 446 as the leave was not obtained and also under Sections 531 and 531 (A) of Companies Act, 1956. The transfer being void as it was done within one year from the date of presentation of the winding up petition and the sale certificate having been issued after the winding up order u/s 531(A). The sale being fraudulent and undue preference to the one of the creditors, since it is within six months is not valid u/s 531 and consequently he has got every right to oppose the registration even without asking for setting aside the sale as it is void. It is the contention of the S.B.I. Global that it is also a secured creditor and there was no proper and valid notification or valuation of the property and since the winding up process has been initiated by it, the Indian Bank cannot claim any priority.

3. In view of the above circumstances, the points that arise for consideration are:-

- 1) Whether a valid sale has been conducted on behalf of the Indian Bank by the Authorized Officer under SARFAESI Act?
- 2) Whether the sale is void and fraudulent as contended by the Official Receiver?
- 3) Whether the sale is vitiated for several of the irregularities raised by the auction purchaser and if so it is liable to be set aside?

POINTS:

4. The contention of Sri S. Ravi, Senior Advocate appearing for the Indian Bank is that under the statutory provisions of SARFAESI Act, the sale has been conducted and it is a special enactment and if any party is aggrieved, the remedy is only to approach the Debt Recovery Tribunal (DRT) as contemplated u/s 17 of the Act. According to him, the Company Court does not have any jurisdiction since SARFAESI Act is later enactment and as held by the Supreme Court in several decisions. He relied upon a decision reported in [Mardia Chemicals Ltd. Vs. Union of India \(UOI\) and Others Etc. Etc.](#), whereunder the constitutional validity of the SARFAESI Act was considered and the remedy was found before the Debt Recovery Tribunal. He also relied upon a decision reported in [The Official Liquidator, U.P. and Uttarakhand Vs. Allahabad Bank and Others](#), whereunder the same principle has been reiterated the above decision shows that if the matter is pending before the Debt Recovery Tribunal then the Official Receiver should be associated with the actions, if the matter is not before the Debt Recovery Tribunal it is the Company Court that has to deal with the validities. He also relied on a decision reported in [Smt. Saroj Shivhare and Others Vs. M/s. Gaurav Enterprises and Others](#), whereunder it was held that the issue of the sale certificate itself is a completion of a sale and no registration is necessary. According to him, the correspondence and the admissions of the auction purchaser clearly goes to show that the possession was delivered. According to him, when once the possession was delivered, the subsequent interference is not the duty of the Bank to protect. He also contends that it is for the buyer to verify whether there are any encumbrances or not and if there are arrears of taxes etc., it shall be paid by the auction purchaser only in substance. According to him, neither the Official Liquidator nor the auction purchaser can question the sale before the Company Court and therefore their claims have to be rejected as the sale having been confirmed. The Registrar shall be directed to register the property.

5. On the other hand, the Official Liquidator contends that his attack on the sales is u/s 531 and 531(A) of the Companies Act and it is the exclusive jurisdiction of the Company Court alone and the Debt Recovery Tribunal has no jurisdiction. According to him, in the decision relied on by the senior counsel, the matters were pending before the Debt Recovery Tribunal and before the sale the part of the Official Liquidator was dealt with. But in this case, the sale was completed and, therefore, the facts are quite different. According to him, the question of fraudulent preference cannot be considered by the Debt Recovery Tribunal. Further more, if a sale is not

void under the Statute, the remedy is only to approach the forum, which has got jurisdiction to decide the issue and the later Act does not apply as u/s 37 of the SARFAESI Act, the provisions of the Company Act are not made inapplicable and they are held to be only additional. According to him, if a valid sale is conducted by the Authorized Officer, even if the contention of the senior counsel is to be accepted then only the Debt Recovery Tribunal has to be approached, but when the sale itself is void there being no necessity to be set aside the question of approaching the Debt Recovery Tribunal does not arise.

6. The Official Liquidator has relied upon a Division Bench decision of the Madras High Court reported in [Asset Reconstruction Company \(India\) Limited Vs. The Official Liquidator, High Court as the liquidator of SIV Industries Ltd. \(in liquidation\)](#), whereunder even under the SARFAESI Act for the sale of the property and the distribution of the assets, the association of the Official Liquidator is stressed. He also relied upon a decision of the Madras High Court reported in [Administrator, MCC Finance Ltd. Vs. Ramesh Gandhi](#), whereunder the provisions of 531, 531-A and 536 of the Companies Act were considered. He also relied upon a decision of the Gujarat High Court reported in [Official Liquidator of Piramal Financial Services Ltd. Vs. Reserve Bank of India](#), whereunder the instances of fraudulent preference or transfer have been considered. He also relied upon another decision reported in [Archean Granites Pvt. Ltd Vs. RPS Benefit Fund Limited, ICICI Bank Ltd., \(Formerly Bank of Madura Ltd.\) and M. Muthusamy, Addl. Administrator, R.P.S. Benefit Fund Ltd., Madras Bar Association](#), whereunder the instances of fraudulent preference and sale of the property for lesser price etc., were considered.

7. The learned counsel appearing for the auction purchaser has also relied upon a decision of this Court reported in [M/s. India Finlease Securities Limited, Chennai Vs. Indian Overseas Bank and others](#), whereunder the provisions of SARFAESI Act, the notion of sale and transfer have been considered and opined that the sale is not complete unless the property for which the price was paid is transferred to the buyer by a written proceedings. It was also considering the provisions of Rule 9 (2) and 9 (4) and found that the confirmation shall be by the secured creditor and not by the Authorized Officer. Incidentally, it was held that a sale certificate is not required to be registered and no registered sale deed is to be executed after the sale was confirmed by the Banks. He also relied upon a decision of the Supreme Court reported in [Haryana Financial Corporation and Another Vs. Rajesh Gupta](#), whereunder the defects in the formation of a contract can be agitated by the auction purchaser.

8. Therefore, in view of the above contentions, it is necessary now to see the provisions u/s 531, 531A and 537 of the Companies Act:-

531: Fraudulent Preference:- 1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its

winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the even of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly;

Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by [the Tribunal], and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

531A: Avoidance of voluntary transfer:- Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by [the Tribunal] or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.

537: Avoidance of certain attachments. executions, etc. in winding up by Tribunal:-

1) Where any company is being wound up by the Tribunal--

(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement, shall be void.

2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

9. Section 531 deals with the case of fraudulent preference and in such a circumstance the sale is held to be invalid. In fact, though several complaints were made about the nature of the publication and the contents therein, there is no material before the Court as to whether proper publication was given. It cannot be disputed that the S.B.I. Global is also a secured creditor, if the interest of the other creditors is not taken care of and if it is only for the benefit of single creditor even applying the principles under the Insolvency Law, the sale is a fraudulent one. The argument that the Indian Bank is prepared to place before the Court the amount realized by the sale for distribution of all the creditors does not hold good, for the reason that if at the time of the sale, if the auction purchaser is to know that there

are other encumbrances on the property then the price to be quoted will be definitely different. In fact, there is no material on record as to what was the sale price quoted by the Authorized Officer and as to whether it was less or more than the price quoted by the auction purchaser.

10. There cannot be any doubt of the fact from the dates given earlier that the transfer was within a period of six months from the date of presentation of the liquidation proceedings and consequently it is statutorily invalid and the law does not recognize it. In fact, an attempt was sought to be made that there is no reference to sale in either of the Sections and it only refers to transfer and consequently these provisions can have no application. It has to be held that the transfer of interest in immovable property is in consequence of a sale and therefore the word transfer takes in its fold the very act of sale. Therefore, by applying Section 531 it is quite clear that the transfer shall be deemed to be invalid.

11. Even u/s 531-A it is quite clear if the sale was within a period of one year from the date of presentation of the liquidation proceedings as against the Official Receiver who represents the body of the creditors on his appointment after the winding up proceedings, the sale is void. Therefore, by applying Section 531 or 531-A it is quite clear from any angle the sale in this case is hit by the above provisions and when the sale is statutorily invalid or void there is no need for a relief to be asked by the Official Receiver to set aside the sale or approach the Debt Recovery Tribunal, since these two provisions are to be exclusively dealt by the Company Court alone, which is rightly contended by the Official Liquidator. I hold that this Court alone can decide the binding nature of the transactions u/s 531 or 531(A) of the Companies Act.

12. In fact, the amendments made to SARFAESI Act in 2004 deletes the word Appeal u/s 17 and only provides for an application to be made to the Debt Recovery Tribunal. The right of Appeal is quite different from an application to be presented before the Debt Recovery Tribunal. The Legislative intent is not very clear for deleting word "Appeal". Therefore, it cannot be said that this Court cannot entertain this application and consider the objections of the Official Receiver to consider the sale as not binding and his consequential request for not registering the properties as being without jurisdiction.

13. Though no specific pleadings are made by the parties challenging the procedure of the sale, since the Court is considering the validity of the sale under the statute, it is the question of law and the Court has to deal with it. If the provisions of SARFAESI Act have been violated in conducting sale, the sale cannot be said to be a valid sale. It is to be noted that the powers conferred under the SARFAESI Act for the Bank or the Authorized Officer is only in order to avoid the delay of legal proceedings and it does not give any right or advantage to misuse the power of quasi judicial nature in order to convert a Non Performing Asset and realize the money by adopting improper mode. Any Authorized Officer who is conducting the sale is discharging

the quasi-judicial functions and he has to follow the rules and conduct the sale according to law. There cannot be an understanding or agreement between the borrower, auction purchaser or the creditor by violating mandatory provisions, in order to get undue benefit to the Creditor Bank.

14. In this connection, it is useful to refer to Rule 9 (1) (2) (3) (4) and (5) of SARFAESI Act:-

Rule 9: Time of Sale, issues of sale certificate and delivery of possession, etc.:-

1) "No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent, of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall be forthwith be sold again.

4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

15. The provisions are akin to the provisions of the Court sale to be conducted under Order XXI Rule 85 and 86 of Civil Procedure Code. Order XXI, Rules. 85 and 86 reads as under:-

Order XXI, Rules. 85 and 86:-

85. Time for payment in full of purchase-money:-



The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule. 72.

86. Procedure in default of payment:- In default of payment within the period mentioned in the last proceeding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government and the property shall be re-sold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

16. Under the provisions of Rules 85 and 86, if the full purchase money is not paid within fifteen days, further steps have to be taken. But the only difference under Rule 9 (4) is that the time can be extended by agreement in writing between both the parties, it evidently means that such an extension shall be within 15 days period stipulated under Clause 4. But, in this case no such thing has happened.

17. The tender cum bid agreement also stipulates the same, which reads as under:-

33. Sale is subject to confirmation by the Bank. Bank will confirm the sale only after ensuring that initial payment of 25% of sale price is paid/deposited (on the same date) by way of DD/BPO.

34. The EMD deposited by the successful tenderer shall be held as Security Deposit for due performance of the contract. Successful tenderer shall deposit the balance amount within 15 days of confirmation of the sale by the Bank or within the extended period as agreed between the parties. Such deposit will be made in the form of Demand Draft/ Bankers' Pay Order on a Bank, payable at Hyderabad.

35. No time extension for making the payment after the stipulated period will be granted nor shall the successful tenderer be allowed to make part payments. However, the Seller may, in his discretion, entertain and consider request for extension of time for making payment provided the request has been made in writing and duly signed by the successful tenderer/representative himself.

Evidently, the above stipulations are keeping in view the provisions under Rule 9 of SARFAESI Act.

18. To be more clear, the auction was held on 29.09.2010 and the amount has to be deposited by fifteenth day that comes by 14.10.2010, if both the parties have agreed between themselves in writing, the extension of the time should have been given by the Authorized Officer. But, in this case, it did not happen and on the other hand on 18.10.2010 the auction purchaser has written a letter repudiating the sale and for refund of the money, which clearly goes to show that no extension is sought within a period of 15 days. Therefore, if the rigor under Rule 9 is to be followed, there is no occasion for the Authorized Officer except to go for re-auction. In fact, this is the

principle of law even under the Court sale which has been repeatedly held and in this connection it will be useful to refer to a decision of this Court reported in [V. Vedanda Vyasulu \(Died\) per L.Rs. and Others Vs. K. Purushotam and Y. Subbarayudu Darwaza,](#). The Authorized Officer has no option or discretion rather than to cancel the sale.

19. Further, the manner in which the further steps were taken are also objectionable and it cannot be said to be fair play either by the creditor or the Authorized Officer, when the sale consideration was not paid. An application for loan was given on 24.11.2010, evidently, it is not an application for loan for purchase of the property. A loan of nearly Rs. 19 to 20 Crores was granted on 07.01.2012 and from this loan amount the sale price was adjusted and the balance was treated as a separate loan account. It is crystal clear that the Authorized Officer has violated the mandatory provisions in conducting a sale, which a civil Court itself cannot violate and, therefore, facilitated the creditor to grant a loan and thereafter appropriated the same towards the sale consideration and thereafter the sale certificate was issued on 17.01.2011 without there being a request in writing for extension of the time within the fifteenth day for payment of balance consideration and an order in writing granting such extension, as claimed, which are mandatory under Rule 9 and Tender-cum-Bid agreement. The above facts are telltale about the failure of the Authorized Officer to proceed according to law and the consequential advantage the creditor bank has got. It is abundantly fraudulent. When once the sale fails to have any legal effect by application of Rule 9 it cannot be said to be a valid sale and neither the auction purchaser nor the creditor can derive any benefits and such sales are to be ignored.

20. Therefore, taking any view of the matter, it is quite clear the sale in this case is statutorily void u/s 531, 531-A and 537 of the Companies Act and also under Rule 9 of the SARFAESI Act, that being so the creditor cannot claim any benefits.

21. It is sought to be contended that there was no need for registration and the sale certificate itself is sufficient probably under the SARFAESI Act it appears to be so. But if the parties have contracted to the contrary, the same cannot be avoided. In this connection, it is useful to refer to Clause 42, 43 and 44 of the tender given bid documents for sale.

42) On confirmation of sale by the Bank and upon payment of the full amount of price, the Authorised Officer will execute the Sale Certificate in favour of the Purchaser. The registration charges, payment and stamp duty etc., shall be borne by the Purchaser.

43) It will be the responsibility of the Purchaser to take all steps necessary for registration of the Sale Certificate.

44) The cost towards registration if, expenses incurred towards stamp duty, etc., and any other expenses will be borne by the purchaser. The seller will not bear any

expenses what so ever.

It clearly goes to show that the parties contemplated registration, but however, it shall be at the expenses of the purchaser consequently, it cannot be argued by the creditor.

22. Therefore, when the auction purchaser wants the sale deed to be executed, the Authorized Officer or the creditor cannot deny the same.

23. There is a question about the maintainability of the application by the auction purchaser about the validity of the sale. It is true that on the basis of the decisions relied on by the learned senior counsel Sri S. Ravi, it may be correct that the auction purchaser has to approach the Debt Recovery Tribunal. But, however, it has been fairly well settled that when the proceedings before the lower authorities are not properly conducted, the Writ jurisdiction of the High Court is not denied. The substance of the writ is about the several irregularities in conducting the sale, which were found to be valid by this Court and the sale having been held to be void, the right of the auction purchaser to quick redressal in the writ is sustainable. Though in ordinary circumstances, if the application is singularly filed by the auction purchaser, then it may be that he has to approach the Debt Recovery Tribunal, but, however in this case the other applications challenging the action of the Official Liquidator and the exclusive jurisdiction of the Company Court u/s 531 and 531(A) of the Companies Act are being considered and the benefit of such proceedings cannot be denied to the auction purchaser and consequently I hold that in the particular circumstances of this case, the application filed by the auction purchaser can be held to be maintainable.

24. Therefore, I hold that as the sales are statutorily void and the Official Liquidator has got every right to take possession of the property by ignoring them, the letter written by him for restraining the registration itself is an action of assertion that the sale is void. In fact, such action is being questioned in the Writ Petition and also Comp. A. No. 1927 of 2011. The point in these cases is the binding nature of the sale on the Official Liquidator and when once the sales are void and when the decision rests on this aspect, there need not be any separate application to be filed by the Official Liquidator for setting aside the sale. If once his letter seeking for stopping of registration is held to be valid, consequently, it has to be held that as the void sale need not be set aside, they have to be ignored and challenge made by the Creditor Bank is not valid.

25. So far as the auction purchaser is concerned, evidently, he is challenging the letter written by the Creditor Bank about the pressure for realization of the amount due under a void sale and the reasons given above clearly goes to show that the Creditor Bank cannot take advantage of the void sale and therefore, the necessary relief has to be granted to the auction purchaser restraining the Creditor Bank enforcing the liability. So far as it relates to the auction sale proceedings and the

adjustment or payment, which has been realized by it, since substantial relief is granted in the Writ filed by the auction purchaser, the benefit of it cannot be denied in the application to set aside the sale.

26. Therefore, for all the above reasons, I hold that the sale as held by the Authorized Officer on behalf of the Creditor Bank is void and the right of the Official Receiver in the liquidation proceedings cannot be defeated and as the sale is void, it goes to the root of the obligations between the auction purchaser and the Authorized Officer and when once the sale is set aside as void, it is needless to say that the Creditor Bank cannot take advantage of the void sale and the auction purchaser shall be restored to the same position prior to the sale and any amount realized by the Creditor Bank cannot be retained by it. Accordingly, W.P. No. 19297 of 2012 is allowed granting the reliefs claimed thereunder. W.P. No. 33655 of 2011 and Company Application No. 1972 of 2011 are dismissed. Consequent on the orders holding that the sale as void as it comes within the purview of this Court, Company Application No. 421 of 2013 is also allowed as a consequence of the sale being held as void u/s 531 and 531(A) of the Companies Act. No costs.

That Rule Nisi has been made absolute as above witness the Hon"ble Sri N.V. Ramana, the Acting Chief Justice on this Monday, the Twenty Ninth day of April, Two Thousand and Thirteen.