Pridhvi Asset Reconstruction and Securitization Company Ltd. Vs Pennar Paterson Limited

Court: Andhra Pradesh High Court

Date of Decision: April 22, 2014

Acts Referred: Companies Act, 1956 â€" Section 125, 125(1), 135
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) â€" Section 5, 5(3)

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

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.
This application is filed to direct the Official Liquidator to disburse the amount paid to the respondent-

Company (in liquidation) to the extent the applicant is entitled to.

2. Heard Sri S. Niranjan Reddy, learned Counsel representing Sri P. Sriharsha Reddy, learned Counsel for the applicant, Sri M. Anil Kumar,

learned Counsel for the Official Liquidator and learned Counsel representing Sri Ch. Gunaranjan, learned Counsel for the petitioner in Company

Petition No. 131 of 1999.

3. The applicant averred that as many as 13 banks and other financial institutions have lent money to the respondent-Company; that it is a

Company". incorporated under the provisions of the Companies Act, 1956 and registered as an Asset Reconstruction and Securitization Company

under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short

"S.A.R.F.A.E.S.I. Act"); that it entered into respective assignment agreements with the banks and public financial institutions, which have lent

money to the respondent-Company, except with the Small Industries Development Bank of India and that accordingly, all those banks and

financial institutions have unconditionally and irrevocably sold, assigned, transferred and released to the applicant the loan with the underlined

security interests (including the original charge and all the modifications thereto) and all its rights, title and interest in the loan to the applicant u/s 5 of

the S.A.R.F.A.E.S.I. Act; that in pursuance of the assignment claims, the applicant has filed Company Application No. 723 of 2012 for getting

itself substituted in place of the secured creditors of the respondent- Company and that by Order, dated 18.02.2013, this Court has allowed the

said application and substituted the applicant in place of banks and financial institutions, which are secured creditors. The applicant further averred

that by Order, dated 28.06.2013, in Company Application No. 758 of 2013, this Court has permitted the Official Liquidator to invite the claims

from the creditors of the respondent- Company and accordingly, the Official Liquidator has invited the claims by way of notice published in

newspapers on 07.08.2013 fixing the last date for receipt of claims as ''on or before 06.09.2013''; that the applicant has filed affidavit of proof of

debt in Form No. 66 of the Companies (Court) Rules, 1959, on 30.03.2013, claiming an amount of Rs. 66,19,23,649/- and that the same was

revised by filing another affidavit of proof of debt on 03.09.2013 claiming an amount of Rs. 2,97,66,56,684/-. Thereafter, the respondent issued

notice in Form No. 68 calling for appearance of the applicant on 04.10.2013 to prove its claim and the applicant addressed letters, dated

07.10.2013 and 06.03.2014, restricting its claim towards principal amount of Rs. 23.18 crores as on 24.11.1999, the date on which the Official

Liquidator was appointed, excluding the claim against ING Vysya Bank and Standard Chartered Bank. Considering the material available on

record, the Official Liquidator has finally adjudicated the claims and declared that the applicant is entitled to the principal amount of Rs. 23.18

crores as on 24.11.1999 and rejected the remaining claims by issuing Form No. 69, dated 12.03.2014.

4. The applicant pleaded that it is the sole secured creditor and that fifteen years had elapsed from the date of appointment of the provisional

liquidator. The applicant, therefore, prayed for a direction to the Official Liquidator to disburse money to the applicant in pursuance of adjudication

order, dated 12.03.2014, in Form No. 69 by the Official Liquidator.

5. The Deputy Official Liquidator has submitted two reports, dated 25.03.2014 and 10.04.2014. In his first report, he has referred to the

procedure followed by him in adjudicating the claims. He has stated that a sum of Rs. 23.18 Crores was adjudicated as the principal amount due

to the nine financial institutions, while rejecting the claims of ING Vysya Bank, Standard Chartered Bank and I.F.C.I. limited, for various reasons

mentioned in the report. In his second report, dated 10.04.2014, the Deputy Official Liquidator stated that as per the statement of affairs filed by

the Ex-Management of the respondent- Company, the liability of the fixed deposit holders is Rs. 24,80,45,000; that the Official Liquidator has

deducted the claim of the secured creditors and admitted a sum of Rs. 23.18 Crores and that as on today, only an amount of Rs. 9,89,63,113/- is

lying to the credit of the Company in liquidation towards the realization of debts, sale of assets and interest earned on investments made by the

Official Liquidator etc.

6. At the hearing, the learned Counsel for the Official Liquidator and the learned Counsel for the petitioner in Company Petition No. 131 of 1999

have not disputed that the petitioner is the assignee of the securities held by the nine banks in whose favour adjudication has been made by the

Official Liquidator. However, they have raised two objections. Firstly, that in its Order, dated 24-11-1999, in Company Application No. 735 of

1999, this Court, while appointing provisional liquidator and directing him to take steps to recover the amounts due to the respondent-Company

from various Companies, directed that he shall not distribute the same to any of the creditors; and secondly that the petitioner has not registered its

assignment with the Registrar of Companies as required u/s 125 of the Act read with Section 135 of the Act. In support of his submission, the

learned Counsel for the petitioner has placed reliance on the judgment of the Supreme Court in Rajasthan Financial Corporation v. Jaipur Spinning

and Weaving Mills Ltd. and another (2006) 133 Comp Cas 1 (SC).

7. Mr. S. Niranjan Reddy, learned Counsel for the Applicant, submitted that there is no provision under the Act, which envisages registration of

assignment of security, which is already registered before the Registrar of Companies (ROC). He has further submitted that the applicant is the

registered Asset Reconstruction and Securitization Company under the S.A.R.F.A.E.S.I. Act, 2002, and that u/s 5(3) of the said Act, in view of

its agreement with the Banks, which have lent money to the respondent-Company, its interests are protected.

8. I have carefully considered the submissions of the learned Counsel for the parties.

9. The only issue that needs consideration in this application is whether the applicant cannot claim disbursement of money without registration of the

assignment of the securities with the ROC.

10. Section 125(1) of the Companies Act, 1956 (for short "the Act") to the extent it is relevant reads as under:

(1) Subject to the provisions of this part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which

this section applies shall, so far as any security on the company''s property or undertaking is conferred thereby, be void against the liquidator and

any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or

evidence, or a copy thereof verified in the prescribed manner, are filed with the registrar for registration in the manner required by this Act within

(thirty) days after the date of its creation: (Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed

within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of

fee specified in Schedule X as the Registrar may determine, if the company satisfies the registrar that it had sufficient cause for not filing the

particulars, and instrument or copy within that period.)

(2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

11. Section 135 reads:

Provisions of Part to apply to modification of charges.

Whenever the terms or conditions, or the extent or operation, of any of the charge registered under this Part are or is modified, it shall be the duty

of the Company to send to the Registrar the particulars of such modification and the provisions of this Part as to registration of a charge shall apply

to such modification of the charge.

12. From the above reproduced provisions, it is evident that any charge created on or after the 1st day of April, 1914, by a Company is void

against the Liquidator and any creditor of the Company unless the prescribed particulars of the charge together with the instrument if any by which

the charge is created or evidenced and a copy thereof verified in the prescribed manner are filed with the Registrar for registration in the manner

within 30 days from the date of its incorporation. Section 135 adumbrates that whenever the terms or conditions or the extent or operation of any

charge registered under Part V are or is modified, it shall be the duty of the Company to send to the Registrar the particulars of such modification,

and the provisions of this Part as to registration of a charge shall apply to such modification of the charge.

13. As noted above, it is the admitted case that the provisions of Section 125 of the Act have been complied with by the banks in whose favour,

the charge of the assets of the respondent- Company was created. However, it does not appear that the applicant, in whose favour the charge of

assets of the respondent- Company is assigned, has sent the particulars of the assignment to the ROC and got the same registered. On a close

reading of Section 135 of the Act, I am unable to accept the submission of the learned Counsel for the petitioner and the Official Liquidator that a

deed of assignment falls within the provisions of Section 135 of the Act. The said provision takes within its sweep the modification pertaining to

terms or conditions of the charge or the extent or operation of any charge. It is no one''s case that any of the terms or conditions of the charge or

extent or operation of charge are modified. All that is done is that the banks, which held the charges and which are registered, have transferred

their interests to the applicant. If the parliament intended that such transfer or assignment is required to be registered with the ROC once again,

nothing would have been prevented it from using the words ''transfer'' or ''assignment'' in the said provision. Absence of these words would

indicate that once a charge is registered with the ROC, a subsequent assignment need not be once again registered. The reason for this is not far to

seek. The main purpose of registration of charge with the ROC is to prevent the Companies from indulging in creation of fake charges with intent

to defraud the shareholders and creditors of the Company. Once the charge is registered, it would hardly make any difference whether such charge

is held by X, Y or Z. That seems to be the obvious reason why no provision is made for registration of assignment.

14. The learned Counsel contended that in some cases the assignment has also been registered. Merely because such a practice was followed, the

same would not expand the scope of the extant statutory provision.

15. It is not the pleaded case of either the petitioner or the Official Liquidator that the transfer or assignment made by the Banks, which held

charge, is mala fide or that the same is intended to defeat the interests of the unsecured creditors. But for the assignment, the nine banks in whose

favour the adjudication has been made would have been entitled to receive the money. Hence, from the point of view of the unsecured creditors, it

hardly makes any difference whether the nine banks, which held the charge, or the applicant herein get money.

16. For the aforesaid reasons, I do not find any merit in the objections of the applicant and the Official Liquidator.

17. At the hearing, it has come out that except the sum of Rs. 9,89,63,113-85 ps. no other amount belonging to the respondent- Company is

available. Considering the fact that the Company Petition is pending and the Official Liquidator requires finances for pursuing the litigation, the

Official Liquidator is directed to release the sum of Rs. 9 Crores to the applicant for the time being within two weeks from the date of receipt of

this order. Liberty is given to the applicant to file appropriate application in future for the balance amount.

18. The Company Application is, accordingly, allowed.

19. As regards the objection that this Court, in Company Application No. 735 of 1999, directed the Official Liquidator not to disburse any

amount, the said order was passed as far back as the year 1999 when the provisional liquidator was appointed. More than 14 years had elapsed

since then. The claims of the secured creditors have since been adjudicated. Therefore, even the said condition cannot be allowed to continue as

the interests of secured creditors will suffer. Hence, the said condition is deleted from order, dated 24-11-1997, in Company Application No. 735

of 1999.