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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE PRANAY VERMA
ON THE 24th OF JULY, 2023
COMPANY APPEAL No. 10 of 2019**

BETWEEN:-

**ANIL KUMAR KHANDELWAL S/O SHRI GIRDHARILALJI
KHANDELWAL, R/O 31/1, RADHASWAMI NAGAR,
INDORE, 3-IMLI SQUARE, NEMAWAR ROAD, INDORE
(MADHYA PRADESH)**

.....APPELLANT

***(SHRI AMIT AGRAWAL, LEARNMED SENIOR COUNSEL WITH SHRI D.S.
PANWAR, LEARNED COUNSEL FOR THE APPELLANT)***

ND

- 1. LAKHANI FOOT CARE PVT. LTD.(IN -
LIQUIDATION) OFFICIAL LIQUIDATOR FIRST
FLOOR, OLD CIA BUILDING, OPPOSITE GPO
CAMPUS, RESIDENCY AREA, INDORE (MADHYA
PRADESH)**
- 2. CHIEF MANAGER, CORPORATION BANK, ASSET
RECOVERY MANAGEMENT BRANCH, 16/10,
SECOND FLOOR, MAIN ARYA SAMAJ ROAD,
KAROLBAGH, NEW DELHI (DELHI)**

.....RESPONDENTS

***(SHRI H.Y. MEHTA, LEARNED COUNSEL WITH SHRI PRABUDDHA ARYA,
LEARNED COUNSEL FOR THE RESPONDENT NO.1/OFFICIAL
LIQUIDATOR)***

***(SHRI ANAND SINGH BAHRAWAT, LEARNED COUNSEL FOR THE
RESPONDENT NO.2)***

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*This appeal coming on for hearing this day, JUSTICE SUSHRUT
ARVIND DHARMADHIKARI passed the following:*

ORDER

The present appeal has been filed under Section 483 of the Companies

Act, 1956(in short ... "the Act of 1956") read with Section 303 of Companies Act, 2013 being aggrieved by the order dated 14.10.2019(Annexure-A/1), passed by the Company Judge in pending Company Petition No.08/2014. whereby, I.A. No.8850/2018 has been rejected in which the appellant had sought directions from the Company Court to direct the Official Liquidator to execute the sale-deed of "subject property".

02. Brief facts of the case are that the appellant is the purchaser of the property comprising of Plot Nos.23, 38-A to 38-F, 38-G to 38-I and 39 situated at Udhyog Nagar, admeasuring 50,000 Square feet comprising in Survey Nos. 155, 156, 158 to 164 and 322 to 329, in Village Musakhedi, Devguradiya Road, Tehsil and District Indore(M.P.) (hereinafter referred to as the "subject lands").

03. The "subject lands" belong to a company duly incorporated under the Act of 1956 namely Lakhani Footcare Pvt. Ltd. Another company, namely M/s Lakhani India Ltd. obtained certain financial services from the respondent No.2 Corporation Bank, New Delhi and "subject lands" were mortgaged by the Lakhani Foot Care Pvt. Ltd. as a guarantor by way of "simple mortgage". As the financial debt was not paid, on 25.07.2012 the respondent No.2 filed O.A. No.182/2012 under section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993(for short "RDB Act"). In the O.A. at Para - 5(iii), the factum of "simple Mortgage" was pleaded. On 14.09.2015, the defendants (M/s Lakhani India Ltd., P.D. Lakhani and Lakhani Foot Care Pvt. Ltd.) filed an application under Section 19(25) read with Section 22 of the RDB Act praying inter alia for releasing of the "subject lands" and consequent permission to sell the "subject lands" subject to deposit of Rs.4.50 Crores with DRT-(II). On 01.07.2016, the respondent No.2 Bank filed a reply to the said

application stating that average market value of the "subject lands" is Rs.6.47 Crores. On 11.08.2016 in O.A. No.182/2012, an order was passed by the DRT, New Delhi that subject to deposit of a sum of Rs.6.00 Crores within two months w.e.f. 11.08.2016, the "subject lands" were directed to be released alongwith title documents to the defendants therein.

04. The aforesaid order dated 11.08.2016 was not challenged by any of the parties, thus, has attained finality. The Company Petition No.08/2014 came to be filed on 09.09.2016 which was admitted and winding up order was passed. Thereafter, on 14.08.2017, the borrowers and the guarantors filed an application under Section 19(25) read with Section 22 of the RDB Act praying for extension of time for depositing the amount of Rs.6.00 Crores. As per order dated 27.02.2018, the DRT again passed an order and the present appellant was ready to deposit an amount of Rs.6.00 Crores. On 15.03.2018, a sum of Rs.6.00 Crores was deposited by the appellant before the Registrar, DRT-II, New Delhi. On 14.05.2018, the DRT passed an order directing for redemption of the "subject lands" in favour of the mortgager(Lakhani Foot care Pvt. Ltd.) alongwith NOC and it was further directed that the mortgager(defendant No.3) in O.A. No.182/2012 shall execute the sale-deed in favour of the present appellant. Thereafter, on 13.09.2018, the respondent No.2 issued NOC and redeemed the "subject lands" to the mortgager namely Lakhani Foot Care Pvt. Ltd. The appellant filed an application - I.A. No.8850/2018 on 11.12.2018 in the pending Company Petition No.08/2014 under Rule 9 of the Companies(Court) Rules, 1959 seeking direction to the Official Liquidator to execute a sale-deed in the name of the appellant.

05. The Official Liquidator on 18.01.2019 filed a reply to the aforesaid

I.A. In the said reply, it was stated that there could be no sale of "subject lands" without leave of the Company Court under Section 446(2) of the Act of 1956. It was further stated in the prayer clause of the reply that the respondent No.2 Bank should be directed to deposit Rs.6.10 Crores alongwith interest received thereon before the Official Liquidator to satisfy the dues of the Workmen as per Section 529(A) of the Act of 1956. The respondent No.2 Corporation Bank also filed reply on 25.02.2019 stating that it is not obligated to deposit the amount realized under the RDB Act before the Official Liquidator. A rejoinder was filed by the Official Liquidator on 14.03.2019 claiming that the amount of Rs.6.10 Crores with interest should be deposited by the respondent No.2 before the Official Liquidator.

06. After hearing the learned counsel for the parties, the learned Company Judge vide the impugned order held in Para -11, 12, 13, 14 and 15 that without the leave of the Company Court under Section 446(2) of the Act of 1956, the DRT could not have passed subsequent orders dated 27.02.2018(Annexure-A/8) and 14.05.2018(Annexure-A/10), therefore, I.A. No.8850/2018 was rejected granting liberty to the appellant to resort to appropriate proceedings for refund of the amount before DRT.

07. Learned Senior Counsel appearing for the appellant contended that the learned Company Judge erred in rejecting the application I.A. No.8850/2018. That, in the aforesaid backdrop, the sole question arising for consideration is regarding the interface between Section 446(2) of the Act of 1956 and Sections 17, 18 and 34 of the RDB Act. He further contended that the aforesaid issue is no more *res integra* rather is settled by the Apex Court in the case of **Swaraj Infrastructure Private Limited Vs. Kotak Mahindra Bank Limited** reported in (2019) 3 SCC 620 holding that the RDB Act

overrides the Companies Act, therefore, leave of the Company Court under Section 446(2) of the Companies Act is not a *sine-qua-non*.

08. On the other hand, Shri Mehta, learned counsel appearing on behalf of Official Liquidator as well as Shri Bahrawat, learned counsel for the respondent no.2 opposed the prayer and submitted that the learned Company Judge has rightly rejected the I.A. No.8850/2018 by directing the appellant to resort to appropriate proceedings for refund of the amount before the DRT. He further contended that the appellant is now estopped from saying that the rejection of the application is bad in law. The Hon'ble Company Judge in Para - 15 has categorically held that there is no agreement of sale. The Bank cannot give the consent of sale of the property under liquidation because after the date of winding up, consent is required from either the Company Court or the Official Liquidator and technically consent cannot be granted since the sale has to be conducted by option auction to its highest price. He further stated that even for auctioning the property the association of the Official Liquidator is mandated as per settled law in the case of **Allahabad Bank Vs. Canara Bank reported in 2000 SCC 406[2000 177 SCC]** and prays for rejection of the appeal. In view of the aforesaid, prayer has been made to reject the appeal.

09. Heard the learned counsel for the parties and perused the record.

10. The Apex Court in the case of **Swaraj Infrastructure Private Limited(supra)**, in Para 15 and 16 has held as under:-

15. In answering whether the [Recovery of Debts Act](#) overrides the provisions of [Sections 442 and 537 and 446](#) of the [Companies Act, 1956](#), this Court held that the [Recovery of Debts Act](#) is a special statute which would necessarily override the aforesaid provisions of the more general statute, namely, the [Companies Act, 1956](#). Even otherwise, if both are treated as special laws, since the [Recovery of Debts Act](#) is later in point of time, together with a non-obstante clause contained in [Section 34](#), the said Act will prevail to the extent set out

in the *Recovery of Debts Act*. This Court then concluded: (Allahabad Bank case, SCCpp.431-32, para 50)

“50. For the aforesaid reasons, we hold that at the stage of adjudication under Section 17 and execution of the certificate under Section 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on 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 under Section 442 read with Section 537 or under Section 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 529- A 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. Points 2 and 3 are decided accordingly in favour of the appellant and against the respondents.”

16. It is important to note that the aforesaid statement of the law was made in the context of non-requirement of leave of the Company Court to initiate, continue with, and execute orders passed under the *Recovery of Debts Act*. What is important to note is that the *Companies Act*, 1956 is overridden to the extent of the inconsistency between the *Companies Act*, 1956 and the *Recovery of Debts Act* only qua recovery of debts due to banks and financial institutions.

11. In view of the above factual backdrop, it is settled legal proposition that the RDB Act overrides the Companies Act, therefore, the leave of the Company Court under Section 446(2) of the Companies Act is not a *sine-qua-non*.

12. In view of the aforesaid, the order passed by the learned Company Judge cannot be allowed to stand. Accordingly, the impugned order dated 14.10.2019(Annexure-A/1) is hereby set-aside.

13. As a consequence, I.A. No.8850/2018 is allowed. The Official

Liquidator is directed to execute the sale-deed of the "subject property" in favour of the appellant.

14. This appeal is allowed. No orders as to costs.

(S. A. DHARMADHIKARI)
JUDGE

(PRANAY VERMA)
JUDGE

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