

HALDIRAM INCORPORATION PVT. LTD. v. AMRIT HATCHERIES PVT. LTD. (2023-4)212 PLR 469 (SC) PLRonline 470684

SUPREME COURT OF INDIA

Present : Justice Aniruddha Bose and Justice Vikram Nath

HALDIRAM INCORPORATION PVT. LTD.

v.

AMRIT HATCHERIES PVT. LTD. and Ors.

Civil Appeal No. 1733 of 2022

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(4), 14 - Sale of property under Sarfaesi prior to declaration of moratorium in petition filed under Section 9 of the IBC - Sale certificate stood issued and hence auction sale stood concluded before declaration of moratorium - These properties cannot be treated to be liquidation assets of the Corporate Debtor for the purpose of further steps to be taken in the liquidation proceeding - Insolvency and Banking Code, S. 9.

Cases referred to:

1. 2021 PLRonline 5209 (SC), *Esjaypee Impex Private Limited v. Assistant General Manager and Authorised Officer, Canara Bank*
2. SLP(C)No. 16949 of 2022, decided on 11.11.2022, *Inspector General of Registration v. G. Madhurambal.*

ORDER

(06.12.2023) - The appellant before us is the purchaser in an auction sale of certain properties of a defaulting borrower. A sale certificate was issued on 19th August 2019 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in relation to the immovable properties in respect of which auction sale was held i.e. two blocks of land situated in Howrah district in the State of West Bengal. The auction sale took place in respect of properties mortgaged by the borrower (respondent no.1 in this case, now represented before us by the Liquidator appointed under the provisions of the Insolvency and Bankruptcy Code, 2016) for availing credit facilities. The latter had defaulted in repayment of the same. It is the case of the appellant that payment was completed by it on 16.08.2019. An operational creditor filed a petition under Section 9 of the 2016 Code before the National Company Law Tribunal (NCLT) and consequently on 20.08.2019 moratorium was declared, initiating the Corporate Insolvency Resolution Process (CIRP). An erstwhile Director of the Corporate Debtor had taken out a notice of motion resisting the sale of the

said properties. The NCLT, by an order passed on 25.02.2020 found issue of sale certificate and handing over of the property to be illegal and hence held that the subject-property shall continue to be assets of the Corporate Debtor. The NCLT had proceeded on the basis that sale was not concluded and while commencing the resolution process, directed the Liquidator to take possession of the subject-properties. The Punjab National Bank had appealed against the aforesaid order of the Adjudicating Authority, which was dismissed on 14.02.2022, by a 2:1 majority decision, with a technical member of the Appellate Tribunal taking a dissenting view.

2. Though both the erstwhile Director and the Liquidator have filed counter-affidavits contesting the auction sale under the SARFAESI Act, 2002, at the time of hearing before us, the learned counsel representing them conceded the legitimacy of the transaction resulting from sale of the subject property through auction, and both of them agreed that the auction sale stood concluded before declaration of moratorium. This changed position left the appeal without any effective contest.

3. In the case of *Esjaypee Impex Private Limited v. Assistant General Manager and Authorised Officer, Canara Bank* [2021 PLRonline 5209 (SC), (2021) 11 SCC 537], it has been held:-

“16. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the Bank under the Sarfaesi Act to hand over the duly validated sale certificate to the auction-purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act.”

This view has been subsequently followed by a Coordinate Bench of this Court in the case of SLP(C)No. 16949 of 2022 titled “*Inspector General of Registration and Another v. G. Madhurambal and Another*” decided on 11.11.2022.

4. As we have already indicated, the Liquidator (now representing the Corporate Debtor in liquidation), the erstwhile Director/Promoter of the Corporate Debtor as also the Bank does not dispute the factual position that the sale stood concluded before declaration of moratorium. No reason was cited before us to demonstrate as to why the sale certificate would be held illegal. No case has been made out before us on behalf of the respondents about any defect or default in forwarding the sale certificate in terms of Section 89(4) of the Registration Act, 1908. On the other hand, all the three respondents have concurred at the time of hearing on the point that the sale stood concluded.

5. In these circumstances, the present appeal shall stand allowed to the extent the properties in question are concerned. These properties cannot be treated to be liquidation assets of the Corporate Debtor for the purpose of further steps to be taken in the liquidation proceeding. The impugned order is set aside and that would also render the order of the Adjudicating Authority invalid to the extent the two properties of the Corporate Debtor located in the district of Howrah are concerned.

6. Pending application(s), if any, shall also stand disposed of.

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