

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORIGINAL JURISDICTION)

Monday, the 20th day of December, 2010.

THE HON'BLE MR. JUSTICE S. RAJESWARAN
COMP. APPLN. Nos. 1114 and 1115 of 2010
in
Comp. Petn. NO. 265 OF 2002

In the matter of the Companies
Act, 1956 and
In the matter of M/s. SPIC
Petrochemicals Limited

C. P. NO. 265 OF 2002:

M/s. Ion Exchange (India Limited,
having its Registered Office at
'Tiecion House', Dr. E. Moses Road,
Mahalakshmi,
Mumbai 400 011. .. Petitioner

Vs.

M/s. SPIC Petrochemicals Limited,
having its Registered office at
'SPIC Centre', No. 97 Mount Road,
Guindy, Chennai 600 032. .. Respondent.

COMP. APPLN. NO. 1114 and 1115 of 2010:

Asset Reconstruction Company
(India) Ltd., ('Arcil'),
Shreepati Arcade,
August Kranti Marg,
Nana Chowk,
Mumbai 400 036. .. Applicant in both
applications.

Vs.

SPIC Petro Chemicals Limited,
a company in liquidation
represented by the Official Liquidator,
High Court, Madras,
'Corporate Bhavan', 2nd Floor,
No. 29, Rajaji Salai, Chennai 600 001. .. Respondent in
both applications

C.A.No.1114 of 2010:

This Company Application praying this Court to uphold the actions of the applicant as a rightful exercise of its entitlement under the provisions of the Act.

C.A.No.1115 of 2010:

This Company Application praying this Court to put back the applicant in possession of the Schedule mentioned property to the applicant herein.

These Company Applications coming on this day before this Court for hearing in the presence of Mr.N.R.Chandran, Senior Advocate for M/s.Surana and Surana, Advocate for the Applicant in both applications, and Mr.M.Jayakumar, Deputy Official Liquidator, for Official Liquidator, High Court, Madras the respondent in both applications, and upon reading the Judge's Summons, and the the affidavit of Himanshu Palkar filed in C.A.No.1114 of 2010, and the the affidavit of Himanshu Palkar filed in C.A.No.1115 of 2010, and the report dated 14.7.2010 of the Official Liquidator, High Court, Madras herein, and the Court made the following order:-

Comp.A.No.1114 of 2010 has been filed by the applicant to uphold the actions of the applicant as a rightful exercise of its entitlement under the provisions of the Act.

Comp.A.No.1115 of 2010 has been filed by the applicant to direct the Official Liquidator, High Court, Madras to put back the applicant in possession of the Schedule mentioned property to the applicant herein.

2. I have heard Mr.N.R.Chandran, learned senior counsel representing the applicant and the learned Deputy Official Liquidator.

3. The case put forth by the learned senior counsel Mr.N.R.Chandran is that as the applicant company is a registered as a securitization and reconstruction company, Banks and financial institutions assign their debts in

favour of the applicant and thus the applicant becomes a lender having stepped into the shoes of the lender Banks. Consequently the applicant is entitled to take all acts under any contract and agreement. As such, the financial loans given by ICICI Bank, Bank of Baroda, Chennai, Dena Bank, Chennai and Union Bank of India assigned their debts to the applicant. Thus the applicant became the secured creditor of the company in liquidation and they took steps under SARFAESI Act. The applicant has also taken possession of the assets of the company in liquidation. While so, the Official Liquidator has taken possession exercising their right under Section 456 and 457 of the Companies Act 1956. Since the Official Liquidator has exceeded his jurisdiction in taking possession of the properties from the secured creditor, the above two applications have been filed for the aforesaid reliefs.

4. In reply to these two applications and to the submissions made by the learned senior counsel, the learned Deputy Official Liquidator would submit that possession was taken on the vacation of the stay by the Division Bench. However, he adds that they shall hand over possession back to the applicant/company subject to the following conditions:

(1) Whenever the applicant sells the assets/the property, they must associate the Official Liquidator and it must be done with his knowledge;

(2) The applicant must settle the charges paid by the Official Liquidator towards security charges;

(3) The selling is subject to the Provisions of Section 529 (A) of the Companies Act.

5. Since this proposal is acceptable to the applicant that the orders be passed closing these two applications.

6. Accordingly, these two applications are closed and

the Official Liquidator shall hand over the possession of the property to the applicant on or before 04.01.2011.

7. The Official Liquidator shall give a statement of charges paid/payable to the security personnel who are guarding the property to the applicant and the applicant on getting the same shall arrange to settle the same immediately.

8. In the result, these two applications are closed in the above terms.

SCHEDULE: