
(1995) 12 AP CK 0024

In the Andhra Pradesh High Court

Case No : O.S. Appeal No. 17 of 1995

Andhra Pradesh State Financial Corporation

APPELLANT

Vs

Electrothermic (P.) Ltd. and Another

RESPONDENT

Date of Decision : 18-12-1995

Acts Referred:

Companies Act, 1956 — Section 171, 529(1), 629(A)
State Financial Corporations Act, 1951 — Section 29

Citation : (1996) 86 CompCas 402

Hon'ble Judges : P.S. Mishra, C.J.; S. Sudershan Reddy, J

Bench : Division Bench

Advocate : Y.N. Lohita, for the Appellant; P. Ravi Prasad and V.L.N.G.K. Murthy, for the Respondent

Judgement

P.S. Mishra, C.J.—Electrothermic Private Limited (hereinafter referred to as "the company") is in liquidation and an order to wind it up has already been passed by the learned company judge on December 2, 1993. The State Bank of Hyderabad is a secured creditor. The Andhra Pradesh State Financial Corporation (for short "APSFC"), however, is another secured creditor and has proceeded against the assets of the company u/s 29 of the State Financial Corporations Act, 1951 (63 of 1951) (for short "the Act"). The learned company judge, it appears, on a petition in this behalf, passed an order of stay and directed the APSFC to see that none of the assets of the company were handed over to any one pending further directions or orders. The APSFC moved a petition seeking vacation of the said order. The learned company judge has vacated the stay and ordered as follows :

"The sale of secured property of the company, by respondent No. 1, which are in its possession, shall be held only after a notice of seven days to the official liquidator. The amount of sale if realised and if it exceeds the amount of Rs. 26.83 lakhs then the excess amount shall be deposited in court and shall be invested in Government security. The amount shall be so invested by the

Registrar of the court as to bring maximum return. Even otherwise respondent No. 1 shall be liable to pay so much dues of workmen as are permitted by the court and/or directed by the court on application of the official liquidator as a pari passu chargeholder u/s 529A of the Companies Act."

2. It has transpired, however, that the State Bank of Hyderabad has filed O.S. No. 547 of 1993 in the court of the Subordinate Judge, Ranga Reddy District, against the company for realisation of dues of Rs. 2,17,06,301. The APSFC had sanctioned a term loan to the company. The company committed default in matter of repayment. The APSFC issued a notice, accordingly, u/s 29 of the Act to bring to sale the properties of the company for realising its loan. The company challenged the said notice by filing Writ Petition No. 9533 of 1992, in this court and the court granted interim stay on condition of payment of Rs. 5,00,000 to APSFC. Although the company paid the said amount of Rs. 5,00,000, finally the writ petition was dismissed on April 26, 1994, as not pressed. The company addressed a letter dated December 15, 1993, to the APSFC that it was ready to hand over the unit to the APSFC. The State Bank of Hyderabad, however, got an order in C.A. Nos. 5 and 6 of 1994 that such assets of the company on which there was a charge of the bank be not taken over by the APSFC.

3. Although the case of APSFC appears to be simple, as has been shown to us in the light of some of the provisions of Act 63 of 1951, we have been persuaded to examine whether there is any incompatibility between the provisions of this Act and the Companies Act, 1956.

4. Section 3 of the Act empowers the State Government to establish a financial corporation for the State by notification in the Official Gazette and it is not in dispute that the APSFC has been so established by the State Government. Section 25 of the Act provides for the financial corporation carrying on and transacting any of the following kinds of business :

"(g) granting loans or advances to, or subscribing to debentures of, an industrial concern, repayable within a period not exceeding 20 years from the date on which they are granted or subscribed to, as the case may be :

Provided that the financial corporation may, with the prior approval of the Development Bank, exceed the said limit of twenty years up to a further period of ten years :

Provided further that nothing contained in this clause shall be deemed to preclude the financial corporation from granting loans or advances to, or subscribing to debentures of, an industrial concern to which may attached an option to convert such debentures or loans into stock or shares of the industrial concern :

Provided also that the financial corporation may, in the exercise of such option, convert the amounts outstanding on such debentures or loans into stock or shares of the industrial concern and may also subscribe to stock or shares of the

industrial concern increases its subscribed capital by the issue of further stock or shares in accordance with, and subject to, the provisions of section 81 of the Companies Act, 1956.

Explanation. - In this clause, the expression "the amounts outstanding on such debentures or loans" shall mean the principal, interest and other charges payable on such debentures or loans as at the time when the amounts are sought to be converted into stock or shares..."

5. Section 29 of the Act speaks of the rights of the financial corporation in case of default of the borrower in these words :

"29. (1) Where any industrial concern, which is under a liability to the financial corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the corporation or otherwise fails to comply with the terms of its agreement with the financial corporation, the financial corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the financial corporation.

(2) Any transfer of property made by the financial corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The financial corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the financial corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the financial corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the financial corporation has taken any action against an industrial concern under the provisions of sub-section (1), the financial corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern."

6. Special provisions, without prejudice to the provisions of section 29 of the Act and of section 69 of the Transfer of Property Act, 1882, are made in section 31 and section 32 of the Act under which it is contemplated that where an industrial

concern in breach of any agreement makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the corporation or otherwise fails to comply with the terms of its agreement with the financial corporation or where the financial corporation requires an industrial concern to make immediate repayment of any loan or advance u/s 30 and the industrial concern fails to make such repayment, any officer of the financial corporation, generally or specially authorised by the board, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the reliefs, inter alia, for an order for the sale of the properties pledged, mortgaged, hypothecated or assigned to the financial corporation as security for the loan or advance or for enforcing the liability of any surety or for transferring the management of the industrial concern to the financial corporation or for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the board where such removal is apprehended.

7. In a case, however, where a winding up order has been made in respect of a company or pending proceeding to wind up the company, section 446(1) of the Companies Act, 1956, creates a bar to any suit or other legal proceedings. It does not permit any suit or other legal proceedings to commence, or if pending at the date of the winding up order, to be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose. It makes it obligatory upon any person suing the company under liquidation or the official liquidator in a suit or any other legal proceedings, to seek the leave of the court, obviously the court which has ordered the winding up or the court in which the winding up proceeding is pending. Sub-section (2) of section 446 of the Companies Act, 1956, confers or creates a special jurisdiction in the court which is winding up the company, which jurisdiction the court winding up the company gets notwithstanding anything contained in any other law for the time being in force, in respect of the matters enumerated in clauses (a), (b), (c) and (d) thereof. This provision of a special jurisdiction of the court winding up the company extends to disposing of :

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company (including claims by or against any of its branches in India);
- (c) any application made u/s 391 by or in respect of the company;
- (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company.

8. Whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or

after the commencement of the Companies (Amendment) Act, 1960. Sub-section (3) of this section provides, "any suit or proceeding by or against the company which is pending in any court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time before in force, be transferred to and disposed of by that court."

9. Dealing with the scope of the provisions u/s 181(1)(a), (b), 446(3), 457 and 460 of the Companies Act, 1956, in the case of V. Radhakrishnan v. P. R. Ramakrishnan [1993] 78 Comp Cas 694, a Bench of the Madras High Court of which one of us (P. S. Mishra J., as he then was) was a member, has pronounced that clause (b) of sub-section (2) of section 446 extends the jurisdiction of the court which is winding up of the company to "claims of any kind made by or against the company and includes in it claims made by or against any of the branches of such company in India". A reference is made in the said judgment to the judgment of the Supreme Court in Sudarsan Chits (I.) Ltd. v. G. Sukumaran Pillai [1985] 58 Comp Cas 633 in which it is held as follows (at page 639) :

"Sub-section (2) of section 466 confers jurisdiction on the court which is winding up the company to entertain and dispose of proceedings set out in clauses (a) to (d). The expression "court which is winding up the company" will comprehend the court before which a winding up petition is pending or which has made an order for winding up of the company and further winding up proceedings are continued under its directions. Undoubtedly, a look at the language of section 446(1) and (2) and its setting in Part VII, which deals with winding up proceedings, would clearly show that the jurisdiction of the court to entertain and dispose of proceedings set out in clauses (a) to (d) of sub-section (2) can be invoked in the court which is winding up the company."

10. After quoting the above, the Madras High Court judgment has proceeded to state as follows (at page 729 of 78 Comp Cas) :

"Clause (a) of sub-section (2) of this section makes, however, the court which is winding up the company, competent to entertain any suit or proceeding by or against the company. Clause (b) says, "any claim made by or against the company". This clause extends the jurisdiction of the court which is winding up the company to "claims" of any kind made by or against the company and includes in it claims made by or against any of the branches of such company in India. The word "claim" in this clause must receive a wider meaning and must not be confined to matters for which a proceeding by or against the company or a suit by or against a company is ordinarily permissible. If a restricted meaning to the word "claim" is given and it is sought to be read to be confined to such claims only for which a suit or proceedings can ordinarily be instituted, clause (b) may not serve its purpose. Clause (c), with which we are not concerned, relates to applications u/s 391 of the Companies Act by or in respect of the company. Clause (d) is a further illustration or enlargement of the jurisdiction, as what may not be found in clauses (a) and (b) may still be found in clause (d), for the words in this clause are "any question of priorities or any other question whatsoever,

whether of law or fact, which may relate to or arise in the course of the winding up of the company". This special jurisdiction of the court which ordered winding up or in which the winding up proceeding is pending and the official liquidator is appointed as provisional liquidator, is wide and comprehensive, and it is designed to facilitate the protection and realisation of the assets of the company under liquidation with a view to ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. If a suit or proceeding by or against the company or a claim made by or against the company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company, shall lie in the court which is winding up the company, it is obvious that any person who has got a right to represent the company or who has a claim against the company can apply to the court which is winding up the company, and the court may entertain thus any dispute with respect to the property or assets of the company and dispose of the proceedings in accordance with law. It is not necessary for us in the instant case to indicate the broad distinctions with respect to suits or proceedings in any other court and suits or proceedings in the court which is winding up the company. Nor are we required to decide whether there would be any difference between a matter which should be brought as a suit and a matter which should be brought by way of any other proceedings, for a procedure in this behalf shall always be in the hands of the court which is winding up the company. The provisions in sub-section (2) of section 446 put a stop to the proceedings by way of suit, execution or other process and remove all fetters of procedures in legal proceedings since they intend to provide a forum which on the one hand ensures that the properties and assets of the company under liquidation are fully protected, and, on the other hand, all suits and proceedings are expeditiously disposed of."

11. Specifically, however, the issue with respect to the role of section 29 of the Act has been dealt with in quite a few cases, one being a judgment of a Bench of this court in *Andhra Pradesh State Financial Corporation Vs. Official Liquidator*, .

12. Before, however, coming to the said judgment of the court, we may take notice of the expression in sub-section (1) of section 446 of the Companies Act, 1956, that "by leave of the court and subject to such terms as the court may impose" a suit or other legal proceedings can be commenced, or if pending, can be proceeded with, against the company and of the power which is envisaged for the company court under sub-section (3) of section 446 to transfer the suit or proceeding to itself which is pending in any court, "notwithstanding anything contained in any other law for the time being in force." The Supreme Court in the case of *Central Bank of India v. Elmot Engineering Co.* [1994] 81 Comp Cas 13 has quoted from *Palmer's Company Precedents*, Part II, 17th edition, page 302, and, on the position of a secured creditor, from the judgment of the Supreme Court in the case of *M. K. Ranganathan v. Government of Madras* [1955] 25 Comp Cas 344 and other authorities and stated as follows (at pages 16-19 of 81

Comp Cas) :

"In order to appreciate these rival contentions we will briefly set out the scope of section 466. Palmer's Company Precedents, Part II, 17th edition, page 302, states :

"When a winding up order is made, the court, acting by its officer - the official receiver - lays its hand upon the assets and says, no creditor or claimant must touch these assets or take proceedings by way of action, execution or attachment pending the distribution by the court in due course of administration. This protection is indispensable equally in winding up and in bankruptcy to prevent a scramble for the assets, but it is not always enough. An evenhanded justice requires that the court should have power to intervene at an early stage for the protection of the assets, and this power is given by this section."

This section aims at safeguarding the assets of a company in winding up against wasteful or expensive litigation as far as matters which could be expeditiously and cheaply decided by the company court. In granting leave under this section, the court always takes into consideration whether the company is likely to be exposed to unnecessary litigation and cost. The position of secured creditors came to be decided by this court in *M.K. Ranganathan and Another Vs. Government of Madras and Others*, , it was held :

"The position of a secured creditor in the winding up of a company has been thus stated by Lord Wrenbury in *Food Controller v. Cork* [1923] AC 647 (HL) :

The phrase "outside the winding up" is an intelligible phrase if used, as it often is, with reference to a secured creditor, say a mortgagee. The mortgagee of a company in liquidation is in a position to say "the mortgaged property is to the extent of the mortgage my property". It is immaterial to me whether my mortgage is in winding up or not. I remain outside the "winding up" and shall enforce my rights as mortgagee. This is to be contrasted with the case in which such a creditor prefers to assert his right, not as a mortgagee, but as a creditor... If so, he comes into the winding up."

It is also summarised in Palmer's Company Precedents, Part II, page 415 :

"Sometimes the mortgagee sells, with or without the concurrence of the liquidator, in exercise of a power of sale vested in him by the mortgage. It is not necessary to obtain liberty to exercise the power of sale, although orders giving such liberty have sometimes been made."

The secured creditor is thus outside the winding up and can realise his security without the leave of the winding up court, though if he files a suit or takes other legal proceedings for the realisation of his security he is bound u/s 231 (corresponding with section 171 of the Indian Companies Act) to obtain the leave of the winding up court before he can do so although such leave would almost automatically be granted. Section 231 has been read together with section 228(1) and the attachment, sequestration, distress or execution referred to in

the latter have reference to proceedings taken through the court and if the creditor has resort to those proceedings he cannot put them in force against the estate or effects of the company after the commencement of the winding up without the leave of the winding up court. The provisions in section 317 are also supplementary to the provisions of section 231 and emphasise the position of the secured creditor as one outside the winding up, the secured creditor being, in regard to the exercise of those rights and privileges, in the same position as he would be under the Bankruptcy Act.

The corresponding provisions of the Indian Companies Act have been almost bodily incorporated from those of the English Companies Act and if there was nothing more, the position of the secured creditor here also would be the same as that obtaining in England and he would also be outside the winding up and a sale by him without the intervention of the court would be valid and could not be challenged as void u/s 232(1) of the Indian Companies Act."

That case no doubt dealt with the forerunner to section 446, namely, section 171 of the Indian Companies Act, 1913. But that does not matter.

In this case, the appellant is admittedly a secured creditor. It sues on a mortgage by deposit of title deeds. Such a suit is not likely to involve a long drawn out trial. On the scope of section 446(2) of the Act, this court had occasion to observe in *Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others*, :

"Sub-section (2) of section 446 confers jurisdiction on the court which is winding up the company to entertain and dispose of proceedings set out in clauses (a) to (d). The expression "court which is winding up the company" will comprehend the court before which a winding up petition is pending or which has made an order for winding up of the company and further winding up proceedings are continued under its directions. Undoubtedly, a look at the language of section 446(1) and (2) and its setting in Part VII, which deals with winding up proceedings, would clearly show that the jurisdiction of the court to entertain and dispose of proceedings set out in clauses (a) to (d) of sub-section (2) can be invoked in the court which is winding up the company.""

13. In *Andhra Pradesh State Financial Corporation Vs. Official Liquidator*, , this court has categorically stated that a statutory right to sell the property u/s 29 of the Act has to be exercised with the right of *pari passu* charge holder in whose favour the statutory charge is created by the proviso to section 529(1) of the Companies Act, 1956. When the company is in liquidation such a power can be exercised only with the concurrence of the liquidator and the official liquidator is required to take permission of the court before giving such concurrence since he is an officer of the court and is required to act under the direction of the court while exercising his powers on behalf of the workmen. The court has, in his judgment, observed as follows :

"Referring to the arguments of Mr. Y. Shivarama Sastry, learned counsel for the appellant, during the course of his submissions, relied upon a decision of the

Rajasthan High Court in the case of Boolani Engineering Corporation v. Asup Synthetics and Chemicals Ltd. [1994] 81 Comp Cas 872 in which the court has held that the option of a State Financial Corporation, as a secured creditor of a company, to remain outside the winding up of the company was not affected by the insertion of section 529A of the Companies Act, 1956. Despite the fact that winding up had commenced, the financial corporation having taken possession of properties charged to it, in exercise of the powers u/s 29 of the State Financial Corporations Act, 1951, and the charge having been registered by the Registrar of Companies, the corporation was entitled to put the properties to sale for realisation of its dues and that section 537 of the Companies Act would not apply, as the sale was not through the intervention of the court. There could be no two opinions about the fact that the financial corporation was entitled to put the properties to sale for realisation of its dues u/s 29 of the State Financial Corporation Act, 1951, and that section 537 of the Companies Act would not apply. However, the amendment to section 529 of the Companies Act and the insertion of new section 529A by the Amendment Act 35 of 1985, made it obligatory upon the liquidator to represent the workmen and enforce the pari passu charge in favour of the workmen and to ensure that the amount realised was applied rateably for the discharge of workmen's dues which made it necessary for the court to intervene and impose conditions which may be found necessary for the realisation of the pari passu charge in favour of the workers. In that view of the matter, in spite of the fact that the right of the financial corporation to realise its dues u/s 29 of the State Financial Corporations Act, 1951, could not be interfered with, the imposition of conditions to be observed by the financial corporation could not be dispensed with and could not be treated as an illegal encroachment on the right of the financial corporation."

14. The judgment of the Karnataka High Court in International Coach Builders Ltd. v. Karnataka State Financial Corporation [1994] 81 Comp Cas 19 is referred to and the Bench of this court has said as follows (at page 356 supra) :

"We have no dispute in the present case with the proposition of law that the secured creditor was entitled to stay outside the liquidation proceedings and realise its dues even in a case where a pari passu charge of the workmen was found to exist. However, respectfully we are not in agreement with the view expressed in the aforesaid decision of the Karnataka High Court that the security could not be taken away by any court in its endeavour or anxiety to place a construction on such provisions as could benefit the workmen. We have held that reasonable conditions could be imposed simultaneously with allowing the financial corporation to realise its dues by staying outside the liquidation proceedings when the question of discharging the pari passu charge of the workmen emerges for consideration. It is not our intention to say that the conditions could be imposed for the benefit of the workmen, but our anxiety is to ensure that the dues of the workmen which stand, by a legal fiction, on par with the charge of the secured creditor should be allowed to be rateably apportioned and paid. For the purpose of determining the rateable portion of the workmen's

dues even at the cost of repetition, we must recapitulate the factors to be taken into consideration for the purpose of arriving at such rateable distribution. Under the amended portion of section 529 of the Companies Act, the following factors are required to be taken care of (a) that the liquidator should be enabled to enforce the charge of the workmen; (b) that the amount realised by the liquidator by way of enforcement of such charge should be applied rateably for the discharge of the workmen's dues; and that (c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the provisions of new proviso to sub-section (1) of section 529 of the Companies Act or the amount of workmen's portion in his security, whichever is less is held to rank *pari passu* with the workmen's dues for the purpose of section 529A. "Workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of - (i) the amount of workmen's dues, and (ii) the amounts of the debts due to the secured creditors, as defined in clause (c) of sub-section (3) of section 529 of the Companies Act."

15. Section 529A and section 530 of the Companies Act, 1956, speak of overriding preferential payments and preferential payments in a winding up. Section 530 says, "subject to the provisions of section 529A", there shall be paid in priority to all other debts -

"(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date;

(b) all wages or salary (including wages payable for time or piecework and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (2);

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of, the winding up order of resolution;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with

insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to an vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;

(f) all sums dues to any employee from a provident fund, a pension fund, a gratuity fund, or any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of section 235 or 237, in so far as they are payable by the company..."

16. Sub-section (1) of section 529A of the Companies Act, 1956, provides, notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company, (a) workmen's dues; and (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues; shall be paid in priority to all other debts; Sub-section (2) says that the debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions. Section 529 of the Companies Act, 1956, says that in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to -

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent :

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security, -

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.

17. The learned single judge has proceeded, however, on the footing that the

official liquidator is required to represent the workmen and realise from the assets of the company their claim in full. The court, in the case of Andhra Pradesh State Financial Corporation Vs. Official Liquidator, has also proceeded almost with the same presumption although a clear mention is made therein of the proviso to section 529(1) and it is stated, "under section 29 of the State Financial Corporations Act, 1951, a statutory right to sell the property has to be exercised with the rights of pari passu charge holder in whose favour the statutory charge is created by the proviso to section 529(1) of the Companies Act, 1956." Section 529A of the Companies Act has put the workmen's dues as well as debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues on the same priority and in the case of an insolvent company, when assets are going to be subjected to the claim of the creditors, it is indeed necessary to reckon that a secured creditor who does not have the advantage of a provision like section 29 of the Act cannot be thrown out and all assets, subject, of course, to the charge of the workmen, will be left for the benefit of the financial corporation. Once it comes to notice, as rightly held in the case of Andhra Pradesh State Financial Corporation Vs. Official Liquidator, that the workmen's claims are unpaid, the liquidator has a duty to realise from the assets which are under a debt or charge of the financial corporation, their claims. The same, on principle, being pari passu with the dues of the financial corporation, has to be applied to the claims of any other secured creditor provided, of course, when the assets of the company are insufficient to meet all pari passu claims.

18. The Andhra Pradesh State Financial Corporation cannot claim appropriation of the assets under its charge unless it is found that the remaining assets of the company are sufficient to meet all other debts. We have the support for the above view of the judgment of the Madras High Court in *K. Saradambal v. Jagannathan and Brothers* [1972] 42 Comp Cas 359 in which it is pointed out that section 529 applies to all kinds of winding up and it must be noted, only to an insolvent company, though every company in liquidation may presumably be treated as coming under the section unless its assets are shown to be sufficient to meet its liabilities in full including interest and the expenses of the winding up. In other words, it means a company which is being wound up on account of its inability to pay debts.

19. The view that we have taken leads us to the conclusion that the financial corporation shall stand in the queue of the secured creditors pari passu with the claim of the State Bank of Hyderabad. As the case appears to us fully covered by section 529(1)(c) of the Companies Act, 1956, the liquidator has a duty to bring this fact to the notice of the court and to ensure that the two secured creditors apportion, if their debts in full are not likely to be discharged by the assets of the company, in such a manner that they get their claims discharged in proportion to their claims strictly pari passu. The learned single judge has taken care of the claims of the workmen. The claim of the State Bank of Hyderabad, however, cannot be ignored simply because another secured creditor, i.e., the financial

corporation has chosen to remain outside the winding up and has the advantage of executing its claim only by a notice as contemplated u/s 29 of the State Financial Corporations Act. We are, however, informed that the assets of the company which were under the charge of the A. P. State Financial Corporation have been disposed of. It will not be possible to put the clock back for the liquidator to play his role on behalf of the secured creditors beyond proceeding to realise, from the sale proceeds of the assets which are in the hands of the A. P. State Financial Corporation, the claims of the workmen and proportionate share of the other secured creditors, in the instant case the State Bank of Hyderabad. This can be achieved by keeping the sale proceeds available for the claims of the workmen and other secured creditors until the order in this behalf by the court which has ordered the winding up. The liquidator shall proceed accordingly. The financial corporation shall keep the sale proceeds ready for such claims which, besides its claims, are pari passu.

20. In the result, the appeal is allowed to the extent indicated above. The order passed by the learned single judge is accordingly modified.