

(2003) 09 AP CK 0082

In the Andhra Pradesh High Court

Case No : C.A. No. 336 of 2003 in C.P. No's. 35 of 1990, 34 of 1991 and 24 of 1992

A.P. State Financial Corporation

APPELLANT

Vs

Professional Grade Components Ltd.

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 28, 29, 446

Citation : (2004) 1 ALT 370 : (2005) 125 CompCas 345 : (2004) 51 SCL 772

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Y.L. Lohita, for the Appellant;

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—By this application, filed u/s 446 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 (for short "the Rules") and Sections 29 and 46-B of the State Financial Corporations Act, 1951 (for short "the SFC Act), M/s. A.P. State Financial Corporation (for short "the Corporation) prays to grant them permission to effect the sale of the Immovable properties, namely land and buildings of the company in liquidation, for a sale consideration of Rs.56.00 lakhs in favour of Sri. K. Srisailam, Managing Partner of M/s. Sai Enterprises, Hyderabad.

2. The factual matrix of the matter, which lies in a narrow compass, may be noted as under:

Previous to the respondent-M/s. Professional Grade Components Ltd., going into liquidation, by order dated 31-8-1994, the Corporation in purported exercise of its power u/s 29 of the SFC Act seized the properties of the respondent, which were under hypothecation/mortgage to them. While the matter stood thus, by order dated 7-7-1995, passed in C.P. Nos. 35 of 1990, 34 of 1991 and 24 of 1992, this Court ordered winding up of the respondent. Long after the passing of

winding up orders of the respondent, the Corporation moved an application in C.A. No. 464 of 1998 seeking permission of the Court to remain outside the liquidation proceedings for pursuing their statutory remedies for realization of their dues, which was allowed by this Court by order dated 30-9-1999, inter alia with the following directions:

1. The Official Liquidation shall be allowed to have inspection of the company's properties and assets to take inventory as and when required;
2. The applicant shall file the valuer's report in this Court before the properties covered under the mortgage deeds are put to sale;
3. The sale proceedings shall be conducted after wide publicity in consultation with the Official Liquidator who would be informed of each date of proceedings;
4. Permission of this Court shall be obtained before the sale of properties, moveable and immovable, is confirmed or finalized;
5. The applicant shall undertake to deposit and shall deposit the workmen dues with the Official Liquidator as and when quantified by him as also the debts of the secured creditors, Andhra Bank and APIDC, in full or in proportion to their claims strictly in pari passu, if their debts cannot be discharged fully by the sale proceeds of the assets of the company as per the provisions of Section 529-A of the Companies Act;
6. Whatever surplus remains after the sale and realization of the dues of the secured creditors and the workmen, as per law, the balance sale proceeds shall be made available to the Official Liquidator for being dealt with in accordance with the provisions of the Companies Act and the Rules.

3. It is the case of the Corporation that as required by Condition No.1 of the above order, they furnished a copy of the Valuation Report to the Official Liquidator, and in consultation with the Official Liquidator, they put the properties, namely land and buildings and machinery of the company in liquidation, to sale by giving wide publicity in newspapers. According to the applicant, in response to the first advertisement, they received the highest offer for Rs. 33.00 lakhs, but the same was rejected on the ground that the offer was very low when compared with the value of the properties put for sale. Thereafter, fresh advertisement was issued, and in pursuance of the said invitation, the Corporation received the highest offer for land and building alone at Rs. 56.00 lakhs from one Sri. K. Sri Sailam, Managing Partner, M/s. Sri Sai Enterprises, Hyderabad, on 100% down payment within 90 days from the date of confirmation of sale. The Corporation submits that they negotiated the sale in the presence of the officials of the APIDC and the Official Liquidator, and as the offer received by them was over and above the upset price, their Board of Directors, in their meeting held on 19-12-2002 resolved to approve the sale in favour of the highest bidder, and in pursuance of the said resolution, they addressed a letter dated 21-12-2002 to the Official Liquidator to accord them permission for

proceeding further with the sale. As Condition No. 4 of the order dated 30-9-1999 passed by this Court in C.A. No. 464 of 1998, requires the Corporation to obtain permission of this Court before the sale of moveable or Immovable properties is confirmed or finalized, the Corporation submits that they have filed the present application praying for the relief mentioned in the preliminary paragraph.

4. Opposing the application, the Official Liquidator filed report stating that as on 31-3-2002, the Corporation claimed an amount of Rs.11.33 crores, which is inclusive of interest and other charges. According to the Official Liquidator, the Corporation being one of the creditors, have to prove their debt before the Court, and unless they prove their debt, they cannot appropriate the proceeds realized through the sale of the properties of the company in liquidation, and in support of this contention, he placed reliance on the judgement of the apex Court in *International Coach Builders Ltd. v. Karnataka State Financial Corpn.* 2003 (2) Supreme 460, 2003 AIR SCW 1524.

5. According to the Official Liquidator, while confirming the sale in favour of the highest bidder, this Court should impose the following conditions, in the interests of the large body of the secured creditors:

1. The Corporation shall prove its claim against the respondent along with interest upto the date of the winding up order before the Official Liquidator, and until then they shall not appropriate any dues out of the proceeds realized by sale of the assets;

2. The Corporation shall prove that it is a secured creditor within the meaning of Section 125 and other regulatory provisions of the Companies Act, 1956 in the matter of registration of charge against the properties of the company;

3. The Corporation shall not discharge the liability of any other creditor either statutory liability or others and shall make over the excess sale proceeds to the Official Liquidator within one week;

4. The Corporation shall not create any new liability on the company and in the case of sale being held partly for cash and partly on loan basis, the realization of the sale proceeds should be considered for the entire sale consideration and the entire sale consideration therefore should be realized.

5. The Corporation shall keep the sale proceeds in interest bearing deposit till their claim is quantified and approved by this Court.

6. The sale proceeds are meant for distribution among the Corporation, workmen, who have a pari passu charge and other secured creditors, if any, having right over the same, and as such, the corporation shall file its claim before the Official Liquidator along with other creditors as and when invited and stand for scrutiny before this Court along with other creditors.

7. The sale proceeds should be realized within the time stipulated by the Court

and any default on the part of the buyer should be placed before the Court for appropriate directions;

8. Subject to verification and approval of this Court, the amount incurred by the Corporation for the preservation of the security/expenditure towards auction proceedings may be paid on priority basis out of the sale consideration realized.

6. The report of the Official Liquidator further states that before putting the properties to sale, the Corporation was required to place the Valuation Report before the Court, and by not doing so, they have violated the mandatory condition imposed by the Court, while allowing their application to remain outside the liquidation proceedings. The sale of the properties being subject to the confirmation by this Court, the Official Liquidator submits that the sale should have a rider that "the sale is subject to confirmation of this Court", which rider is conspicuous by its absence in the terms and conditions of the sale.

7. It is further reported by the Official Liquidator that the Valuation Report now filed by the Corporation discloses that the valuation of the properties covered thereby, was done by the officials of the Corporation on 12-11-2001. The value of the land, buildings and civil works was estimated at Rs. 54.58 lakhs. The respondent owns Ac. 5-03 guntas of land, and though the prevailing market value of the land per acre is estimated at Rs.12.00 lakhs, the Corporation has taken the average value of the land at Rs.6.83 lakhs per acre, while the registry rate is Rs.1.65 lakhs. The Corporation has not explained as to how it arrived the average rate of land per acre at Rs.6.83 lakhs, though the footnote to the Valuation Report says that "we have made a local enquiry in and around areas, the market value is rapidly increasing day by day due to real estate owners in that area, the prevailing market value is in between ten to twelve lakhs per acre, this unit is abutting to National Highway, opposite to this land the real estate owners are developing the land into plots and it is surrounded by industrial unit, hence we have taken highest value i.e. twelve lakhs per acre". Apart from this, it is reported by the Official Liquidator, that though the panchanama dated 31-8-1994, under which the Corporation seized the assets of the company in liquidation, discloses that machinery was seized under 131 heads, and under some heads, more than one machinery is accounted for, but in the valuation of the machinery done by the officials of the Corporation on 20-11-2001, they have shown the plant and machinery only under 29 heads, and whereas the report of the joint inspection and inventory conducted by the officials of the Official Liquidator and the Corporation on 13-2-2003, shows that the plant and machinery and other assets, excluding land and building, is covered only under 20 heads, as against 29 heads shown in the valuation done by the officials of the Corporation on 21-11-2001 and 131 heads shown in the original panchanama conducted by the Corporation on dated 31-8-1994. Though the officials of the Corporation admitted that some machinery was missing, they have failed to clarify as to how the machinery went missing, and despite the Official Liquidator addressing a letter in that regard to them on 25-2-2003, there is no response

from the Corporation. The Corporation without explaining the inconsistencies pointed out by the Official Liquidator, has come up with the present application seeking confirmation of sale of land and building, and that too without making APIDC, one of the secured creditors, a party to the proceedings.

8. The Corporation filed counter to the report of the Official Liquidator. It is stated that as on 31-3-2002, the respondent is liable to pay them a sum of Rs.11.33 crores, which is inclusive of interest. Inasmuch as the Corporation was permitted to stay outside the liquidation proceedings, now at the behest of the applicant, the Corporation cannot be brought into liquidation proceedings. It is stated by the Corporation that in the orders dated 30-9-1999 passed by this Court in C.A. No. 465 of 1998, as on 31-1-1998, a sum of Rs. 2,48,60,837/- was shown as due by the respondent to the Corporation, and apart from the statutory charge created in favour of the workmen, the Corporation in association with APIDC, has first charge over the properties of the company in liquidation. That unless and until the dues of the workmen are determined, the Official Liquidator cannot claim any amount or seek to enforce any charge on the monies realized by the Corporation through the sale of the properties mortgaged/hypothecated to them.

9. As against each of the conditions, which the Official Liquidator sought to be imposed at the time of confirming the sale, the Corporation sought to submit as follows:

1. There is no justification or requirement in law for a secured creditor to prove his debts by filing a claim before the Official Liquidator, especially when the Corporation was permitted to remain outside the liquidation proceedings by this Court.

According to the Corporation, the option given to them and which is spelt out in the proviso appended to Section 529 of the Companies Act, 1956, would become superfluous if the request made by the Official Liquidator is accepted by this Court.

Having regard to the provisions of Section 29 read with Section 46-B of the SFC Act, the Corporation submits that the provisions of Section 528 of the Companies Act, have no application to their case, and as such, the claim of the Official Liquidator for imposition of Condition No. 1 is misconceived.

2. Inasmuch as the Corporation was permitted to remain outside the liquidation proceedings, and its charge as a secured creditor having been registered u/s 125 of the Companies Act, the Corporation submits that there is no justification for imposition of Condition No. 2.

3. Inasmuch as Section 29 of the SFC Act provides the method and manner of description of the excess sale proceeds received, the question of the Corporation discharging any other liability does not arise, and therefore, Condition No. 3 as sought by the Official Liquidator, cannot be imposed.

4. As upon receipt of the sale consideration, the Corporation would close the loan account of the company in liquidation with a right to proceed against the promoters as per the right conferred upon the Corporation by virtue of the provisions contained in the SFC Act and the Revenue Recovery Act, the Corporation submits that the entire sale consideration would be duly given credit to in the Companies books of accounts, imposition of Condition No. 4, is not justified.

5. In so far as Condition No. 5 is concerned, the Corporation submits that there is no justification for the Official Liquidator to seek depositing of the amount realized by the Corporation in an interest bearing deposit, more so when the Official Liquidator has not even chosen to place before the Court the outstanding dues payable to the workmen. The Official Liquidator u/s 455 of the Companies Act, is under an obligation to file a preliminary report before the Court after an order of finding made by this Court within a period of six months duly disclosing the assets and liabilities payable by the company in liquidation. The Official Liquidator having failed to comply with the same, cannot seek to abuse his position and try to have control over the functioning of the Corporation contrary to the legal position. The Corporation having a perpetual succession on the sale of the properties, the charge in favour of the workmen can always be enforced by the Official Liquidator after their dues are ascertained in accordance with the provisions of Sections 529 and 529A of the Companies Act.

6. As the Corporation has not sought the aid of any Court or assistance of the Company Court in seeking to realize the amount due and payable to it by the company in liquidation, but has proceeded against the assets mortgaged/hypothecated in its favour, the Corporation, states that there is no justification for the Official Liquidator to insist upon the Corporation to file a claim before the Official Liquidator along with the other creditors. If Condition No. 6, as prayed for by the Official Liquidator is imposed, the Corporation states that the very existence of the Corporation as a first charge holder over the properties mortgaged/hypothecated, would be demolished, and more particularly when leave was granted to the Corporation to remain outside liquidation proceedings.

7. According to the Corporation, Condition No. 7, which is sought to be imposed by the Official Liquidator, is a figment of imagination on the part of the Official Liquidator in seeking to assume the powers conferred upon this Court and further directing the Court to pass orders. According to the Corporation, the Official Liquidator has chosen to adopt a hostile attitude towards them, even though he has gone by default in complying with the statutory obligation cast upon him by virtue of the provisions of the Companies Act.

8. Insofar as Condition No. 8, is concerned, it is stated that the same being statutorily required to be complied with, such a condition for the appropriation of the expenses incurred for preservation of securing having a priority goes without fail.

10. It is stated by the Corporation that before putting the properties to sale, they furnished copy of the Valuation Report to the Official Liquidator, who also participated in the sale proceedings along with APSIDC. It is further stated that the valuation of the properties was undertaken by them as per the guidelines framed by the Corporation and by following the due procedure, and that the sales conducted on earlier occasions on the basis of similar valuation reports, were confirmed. That though they submitted the Valuation Report to the Official Liquidator in the month of March, 2002, he has not responded and on the other hand, remained silent when the Negotiations Committee approved the sale on the basis of the Valuation Report. It is stated that if the Official Liquidator had anything to comment about the Valuation Report, he being a representative of the Court, was always at liberty to approach the Court. It is further stated that at the time of seizure of properties in the year 1994, they furnished copy of the panchanama to the Official Liquidator, but have not taken custody of any stocks or moveable assets hypothecated to any Bank lying at the factory premises. The counter denies the contention of the Official Liquidator that they have not clarified the queries raised by Corporation.

11. Heard the learned counsel for the Corporation and the learned Official Liquidator.

12. The learned Standing Counsel for the Corporation while conceding the fact that the Corporation has not placed the Valuation Report before this Court as directed by in Condition No. 2 of its order dated 30-9-1999, passed in C.A. No. 464 of 1998, submitted that inasmuch as the Valuation Report was furnished to the Official Liquidator, and the sale conducted on the basis of the said Valuation Report in the presence of the Official Liquidator and the other secured creditor, namely APSIDC, it is not open for the Official Liquidator at this juncture when the matter is coming up for confirmation of sale, to raise any objection to the non-placing of the Valuation Report before the Court before putting the properties of the company in liquidation to sale. As neither the Official Liquidator nor the APSIDC have taken any objection to the Valuation Report when sale was being conducted on the basis of the said Valuation Report, the learned Standing Counsel for the Corporation submits that non-placing of the Valuation Report before the Court in terms of Condition No. 2 of its earlier order, before proceeding to put the properties to sale, cannot not be treated as violation of a condition, warranting non-confirmation of the sale, and more so when placing such Valuation Report before the Court is an empty formality.

13. The learned Standing Counsel for the Corporation further submits that in the absence of any statutory provision shown by the Official Liquidator that he is entitled to seek imposition of conditions at the time of confirmation of the sale, no such conditions as sought for by him, can be imposed, and if any such conditions are imposed, it would de hors the provisions of the Companies Act, and to support this contention, he placed reliance on the judgement of the apex Court in Allahabad Bank v. Canara Bank, AIR 2000 SC 1535 and International

Coach Builders Ltd. v. Karnataka State Financial Corpn., on which even the Official Liquidator placed reliance, and also the judgement of the Delhi High Court in Shivalik Agro Poly Products Limited Vs. Disco Electronics Limited (In Liquidation), .

15. According to the learned Standing Counsel, upon an order of winding up of a company being passed and statement of affairs made to the Official Liquidator u/s 454 of the Companies Act, the Official Liquidator u/s 455 thereof, is required to file report within six months from the date of passing of winding up order, but in the instant case, the Official Liquidator has not chosen to file any report before this Court till this day. In the absence of any report having been filed by the Official Liquidator, the learned Standing Counsel submits, that the Official Liquidator is not entitled to seek enforcement of *pari passu* charge created in favour of the workmen in terms of the proviso appended to Section 529(1) of the Companies Act.

16. The learned Standing Counsel submits that the conditions which the Official Liquidator is seeking to be imposed run counter to the orders dated 30-9-1999, passed by this Court in C.A. No. 464 of 1998. It is submitted by him that a learned single Judge of this Court, before formally confirming the sale in favour of the highest bidder, had insisted the highest bidder to deposit the money with the Corporation, and imposition of any new condition at the time of confirming the sale, would be inequitable.

17. Per contra, the learned counsel for the Official Liquidator would contend that the conditions which the Official Liquidator is now seeking to be imposed at the time of confirming the sale are not new conditions, but owe their origin to the conditions, which this Court had imposed in its order dated 30-9-1999, while allowing the application C.A. No. 464 of 1998, filed by the Corporation seeking permission of the Court to remain outside the liquidation proceedings. The learned counsel further submits that the Corporation being one of the secured creditors, cannot be allowed to appropriate the entire sale proceeds for themselves, and as required by Condition Nos. 5 and 6 of the order dated 30-9-1999, passed by this Court in C.A. No. 464 of 1998, they are required to make provision for payment of the workmen's dues in terms of Section 529A of the Companies Act, as and when the Official Liquidator quantifies their dues, as also of the other secured creditors, in proportion to their claims strictly in *pari passu*, and make available the surplus amounts to the Official Liquidator, to enable him disburse the same in accordance with the provisions of the Companies Act.

18. The learned counsel for the Official Liquidator further submits that the conditions imposed by this Court in its order dated 30-9-1999 in C.A. No. 464 of 1998 cannot be treated as complete in themselves, for they only relate to sale of the properties of the company in liquidation, and do not speak of how the proceeds realized through the sale of the properties, should be appropriated or disbursed. According to the learned counsel for the Official Liquidator any

appropriation of the sale proceeds by the Corporation or for that matter, any other secured creditor, should only be in accordance with the provisions contained in Sections 529 and 529A of the Companies Act, and not any other. According to the learned counsel, unless and until the Corporation proves their claim before the Official Liquidator, and the Official Liquidator adjudicates the claims of all the secured creditors, including those of the workmen, who have pari passu charge over the properties in question, the Corporation cannot claim to appropriate the entire sale proceeds for themselves.

19. The learned counsel for the Official Liquidator would further contend that the Corporation without placing the Valuation Report before the Court, as required by condition No.2 of the order dated 30-9-1999 passed by this Court in C.A. No. 464 of 1998, has put the properties to sale, and therefore, the sale conducted on the basis of the said Valuation Report is vitiated. The learned counsel submits that a look at the Valuation Report would disclose that the valuation of the properties done by the officials of the Corporation themselves. The valuation of the properties was improperly done. Though the valuers in their report though indicated that there is great demand for the land having regard to its location on the National Highway, they however, have taken the average of the prevailing market rate, and there is no proper explanation forthcoming from the valuers on what basis they have taken such average rate. The learned counsel for the Official Liquidator while admitting that the Official Liquidator had participated in the sale, submitted that he being representative of the Company Court, had no role to accept or reject the Valuation Report or the sale, except to report to the Court.

20. Inventories of the properties of the company in liquidation were taken on three different occasions, the latest being in the year 2002. None of the inventories match with each other. A lot of machinery, which was accounted for in the 1994 inventory, did not find place in the later inventories taken during the years 2000 and 2002, and there is no proper explanation forthcoming from the Corporation about the missing machinery.

21. The learned counsel for the Official Liquidator would submit that the claims of the workmen and other creditors would be adjudicated only after this Court grants permission in that regard. As the Official Liquidator is not having any funds in relation to the estate of the company in liquidation, the learned counsel submits the amounts realized through the sale of the properties of the company in liquidation have to be deposited in interest earning deposits as an interim measure.

22. In the light of the pleadings and the contentions advanced on behalf of the rival parties, the following questions do arise for consideration:

1. Whether it was mandatory on the part of the applicant to place the Valuation Report before the Court before proceeding to put the properties to sale, as directed by this Court by Condition No. 2 of the order dated in C.A. No. 464 of

1998, dated 30-9-1999?

2. If so, whether the sale conducted by the applicant in favour of the highest bidder, without placing the Valuation Report before the Court, stood vitiated and is liable to be set aside or whether by reason of participation of the Official Liquidator and another secured creditor in the sale proceedings, the rigor of non-placing of the Valuation Report before the Court before proceeding to put the properties to sale, stood diluted?

3. And if not, whether the sale in favour of the highest bidder should be confirmed as prayed for by the applicant or any conditions as prayed for by the Official Liquidator should be imposed, while confirming the sale in favour of the highest bidder.

23. It is the admitted case of the Corporation that while allowing the application, C.A. No. 464 of 1998, filed by them seeking permission of the Court to remain outside the liquidation proceedings, this Court had imposed certain conditions, and according to Condition No. 2 of the said Conditions in the order, before proceeding to put the properties to sale, the Corporation was required to place the Valuation Report before this Court, which it is admitted was not placed.

24. It may be noticed whether the condition, requiring the Corporation to place the Valuation Report before the Court, before proceeding to put the properties to sale, was required to be complied with or not. Condition No. 2, of the said order, which required the Corporation to place the Valuation Report before the Court, read "the applicant shall file the valuer's report in this Court before the properties covered under the mortgage deeds are put to sale". From a reading of the said condition, there can be no manner of doubt, that before putting the properties covered by the mortgage deeds to sale, the Corporation was required to place the Valuation Report before the Court. By imposing such a condition, the Court obviously meant that the valuation of the properties covered by the Valuation Report, should be subjected to its assessment and scrutiny, so as to enable the Court to consider whether assessment and valuation of the properties covered by the Valuation Report, were done properly, as also the objections, if any, that may be raised by the other secured creditors, to whom the company in liquidation was liable to pay their dues. In the instant case, apart from the charge of the Corporation over the properties covered by the Valuation Report, there is charge of another secured creditor and pari passu charge of the workers of the company in liquidation, and by reason of non-placement of the Valuation Report, the other secured creditor as well as the Official Liquidator, who represents the interest of the workers, was affected, for they had no opportunity to file their objections to the Valuation Report, if any. It should be noted that the conditions imposed in a judicial order, cannot be taken lightly or for granted, for they are mandatory in nature and are binding on the parties concerned, and they have to be honoured in letter and spirit. It should be further noted that the Courts while disposing of the matters before them impose conditions having regard to the facts situation and circumstances appearing in the case, and if the

interests of justice demand imposition of conditions. A reading of the conditions imposed by this Court in its order dated 30-9-1999, while allowing the application C.A. No. 464 of 1998, filed by the Corporation to remain outside the liquidation proceedings would disclose that the Court was very much conscious of the need to protect the interests of the other secured creditors and workers who have pari passu charge over the properties covered by the Valuation Report. When a particular condition had directed the applicant to place the Valuation Report before the Court before the properties covered thereby are put to sale, it was obligatory on the part of the Corporation to place the same before the Court, and the Corporation cannot assume for themselves that placing of such Valuation Report before the Court was an empty formality, and therefore, its non-placement before the Court, need not be viewed as a serious omission, disabling the Court from confirming the sale of the properties covered by the Valuation Report. Non-placing of the Valuation Report as directed by this Court in its earlier order, is certainly a violation of the orders of this Court, and any sale of the properties conducted without placing the Valuation Report before the Court, is vitiated, and cannot be confirmed, and more so when it is alleged by the Official Liquidator that the Valuation Report on the basis of which the properties covered thereby were put to sale, is fraught with discrepancies. As rightly pointed out by the Official Liquidator, a look at the Valuation Report now filed along with this application would disclose that though the prevailing market value of the land is between Rs.10.00 to 12.00 lakhs, the Valuers have taken the average market value of the land per act at Rs.6.83 lakhs, which is quite contrary to the very note made by the Valuers themselves at the foot of the Valuation Report, wherein it is stated that "we have made a local enquiry in and around areas, the market value is rapidly increasing day by day due to real estate owners in that area, the prevailing market value is in between ten to twelve lakhs per acre, this unit is abutting to National Highway, opposite to this land the real estate owners are developing the land into plots, and it is surrounded by industrial unit, hence we have taken highest value i.e. twelve lakhs per acre". The counter filed by the Corporation to the report of the Official Liquidator is silent on this score, and there is no proper explanation forthcoming from the Corporation as to how the Valuers had taken the average market value of the land at such a low price, when according to their own report, they say that the current market value of the land is between Rs.10.00 lakhs and Rs. 12.00 lakhs per acre, and is on the appreciative move having regard to the location of the land on the National Highway and real estate activity be undertaken in and around the location of the land. Had the Valuation Report as directed by this Court in its earlier order been placed before the Court, and the sale conducted after obtaining the approval of this Court, after inviting and considering the objections of the Official Liquidator and the secured creditor, if any, the Corporation would have been justified in asking this Court to confirm the sale. But by non-placement of the Valuation Report before the Court, the secured creditor and the Official Liquidator who had charge over the properties covered by the Valuation Report, were deprived of their right to either support or oppose the Valuation Report. In that view of the

matter it should be held that Condition No. 2 imposed by the Court in its earlier order of placing the Valuation Report before the Court before proceeding to put the properties covered by the Valuation Report to sale, was a mandatory condition and was required to be complied with in letter and spirit. Merely because a learned Judge of this Court insisted the highest bidder to deposit some amount with the Corporation in relation to the sale transaction, it does not mean that the learned Judge had indicated his mind to confirm the sale in favour of the highest bidder. The sale of the properties of the company in liquidation being subject to confirmation by this Court, this Court is always entitled to consider the objections, if any, raised by the parties interested in the sale or having interest over the properties put to sale, before the sale is confirmed in favour of the highest bidder.

25. It should be further noted that the Official Liquidator is only a representative of the Court, and any power exercisable by him, is not independent, but is subject to the prior permission of the Court. It is no doubt true that the Official Liquidator and another secured creditor were furnished copies of the Valuation Report and they even participated in the sale proceedings. But merely because the Official Liquidator and another secured creditor participated in the sale proceedings, it cannot be said that the Official Liquidator and the other secured creditor have given their consent or expressed their no objection to the Valuation Report, and therefore, there was no need on the part of the Corporation to place the Valuation Report before the Court before proceeding to put the properties covered by the Valuation Report to sale. When the condition imposed in a judicial order in no uncertain terms directed the Corporation to place the Valuation Report before the Court, it was the bounden duty of the Corporation to place the same before the Court before proceeding to put the properties covered thereby to sale. In that view of the matter, it has to be held that the sale conducted by the Corporation of the properties covered by the Valuation Report, without placing the same before the Court, is vitiated and it does not confer any right on the Corporation to contend that by reason of participation of the Official Liquidator and the other secured creditor in the sale proceedings, Condition No.2, which required the Corporation to place the Valuation Report before the Court before proceeding to put the properties covered thereby to sale, stood diluted.

26. The contention of the Corporation that inasmuch as they filed the Valuation Report in the Section, they should be deemed to have complied with Condition No. 2 of the order dated 30-9-1999, passed by this Court in C.A. No. 464 of 1998, cannot be accepted. It may be noted that upon an order of winding up of a company being passed, the assets and liabilities thereof stand transferred to the custody of the Official Liquidator, who shall act in accordance with and under the directions of this Court, and therefore, any sale of the properties of the company, which stand transferred to the custody of the Official Liquidator, would only be in accordance with the directions and prior satisfaction of this Court, and after giving the secured creditor and the Official Liquidator an opportunity to file their objections to the sale, if any. When this Court had in no uncertain terms directed

the Corporation to place the Valuation Report before the Court before the properties covered by the Valuation Report are put to sale, it was the bounden duty of the Corporation to make sure that the Valuation Report was placed before the Court, as directed, for its perusal and consideration. Mere filing of the Valuation Report in the Section, without bringing the same to the notice, perusal and consideration of the Court, does not amount to compliance of the mandatory condition of placing the Valuation Report before the Court. By non-placing of the Valuation Report before the Court, it cannot be disputed that not only this Court was deprived of the opportunity of looking into the Valuation Report, but also the secured creditors and the Official Liquidator, who represents the interests of the workmen as representative of the Court, were deprived of the opportunity of either supporting or objecting the Valuation Report. In that view of the matter, it has to be held that mere filing of the Valuation Report in the Section would not tantamount to placing the Valuation Report as directed by this Court.

27. The contention of the Corporation that inasmuch as the Court had permitted them to remain outside the liquidation proceedings and inasmuch as the properties covered by the Valuation Report were hypothecated to them, they had absolute right over the said properties by reason of the power conferred upon them by Section 29 of the SFC Act, cannot be countenanced for the reason that the apex Court in *International Coach Builders Ltd. v. Karnataka State Financial Corpn.*⁴ considered similar contention in the light of the power conferred upon the Corporation by Section 29 of the State Financial Corporations Act, 1951 on the winding up of a company in relation to the provisions of Sections 529 and 529A of the Companies Act, and held thus:

28. Of course, even in such a situation, if the same property was mortgaged to more than one secured creditor, they had to either come to an agreement, or in the event of disagreement, there had to be a suit in which dissenting mortgagee had to be sued as a necessary party defendant. No doubt Section 29 of the SFC Act was intended to place the SFCs on a better footing. But, in our view, this better footing is available only so long as the debtor is not a company or is a going company. The moment a winding up order is made in respect of a debtor company, the provisions of Sections 529 and 529A come into play and whatever superior rights had been ensured to SFCs under the provisions of the SFC act are now subjected to and operate only in conjunction with the special rights given to the workmen, who as *pari passu* charge holders are represented by the Official Liquidator. We are, therefore, of the view that the unhindered right hitherto available to the SFCs to realize their security, without recourse to the Court, no longer holds true as the right vested in the Official Liquidator is a statutory impediment to such exercise and has to be reckoned with. And since the Official Liquidator can do nothing without the leave or concurrence of the Court, all necessary applications must, therefore, come to the Company Court.

29. The apex Court further held thus:

Finally, counsel for the SFCs urge that the view we are to take would obliterate

the difference between a creditor opting to stay outside winding up and one who opts to prove his debts in winding up. We are unable to accept it. As a result of the amendments made by the Act of 1985 in the Companies Act, 1956, the SFCs as secured creditors, must seek leave of the Company Court for the limited purpose of ensuring that the pari passu charge in favour of the workmen is safeguarded by imposition of suitable conditions under the supervision of the Company Court. If this amounts to impeding their hitherto unimpeded rights, so be it. Such is the Parliament intendment, according to us. This impediment is of a limited nature for the specific purpose of protecting the pari passu charge of the workmen's dues and subject thereto, SFCs can continue to exercise their statutory rights as secured creditors without being reduced to the status of unsecured creditors required to prove their debts in insolvency and stand in line with other unsecured creditors. Neither is the apprehension expressed justified, nor the contention sound.

30. The apex Court laid down the following principles:

1. The right unilaterally exercisable u/s 29 of the SFC Act is available against a debtor, to a company, only so long as there is no order of winding up;
2. The SFCs cannot unilaterally act to realize the mortgaged properties without the consent of the Official Liquidator representing workmen for the pari passu charge in their favour under the proviso to Section 529 of the Companies Act, 1956.
3. If the Official Liquidator does not consent, the SFCs have to move the Company Court for appropriate directions to the Official Liquidator who is the pari passu charge holder on behalf of the workmen. In any event, the Official Liquidator cannot act without seeking directions from the Company Court and under its supervision.

31. From the law, as laid down by the apex Court, in the aforementioned case, it would become clear that as long as a debtor company does not go into liquidation, the Corporation can exercise its unilateral power u/s 29 of the SFC Act for realization of its dues, but no sooner an order of winding up is passed, the Corporation loses its unilateral power to realize its debts by the sale of the properties mortgaged to it, and any realization of the dues, would only be with the consent of the Official Liquidator representing the workmen. In the instant case, after an order of winding up of the company was passed, the Corporation obtained permission of the Court to remain outside the liquidation proceedings, and having regard to the judgment of the apex Court in *International Coach Builders Ltd. v. Karnataka State Financial Corpn.*, even on the date when the Corporation was permitted to remain outside the liquidation proceedings, the Corporation did not have the absolute superior right conferred upon it by Section 29 of the SFC Act over the properties hypothecated to it, for by then an order of winding up of the company had already been passed, and all the assets of the company in liquidation stood transferred to the custody of the Official Liquidator.

Any superior right of the Corporation over the properties hypothecated to them, would be available to them only prior to the date of the company going into liquidation, and when once an order of winding up of a company is passed, whatever superior rights that were available to the Corporation u/s 29 of the SFC Act, became subjected to and were to operate in conjunction with the special rights given to the workmen under Sections 529 and 529-A of the Companies Act, who have pari passu charge over the properties of the company in liquidation. In that view of the matter, the Corporation cannot be allowed to contend that having regard to the power conferred upon them by Section 29 of the SFC Act, they can sell the properties hypothecated to them and appropriate the proceeds realized through the sale in their entirety for themselves nor can they be permitted to say that neither the Official Liquidator nor the secured creditors have any role to play, except to the extent of pari passu charge of the workmen over the properties of the company in liquidation.

32. In view of the findings arrived at above that placing of Valuation Report by the Corporation before the Court in terms of Condition No.2 of the order dated 30-9-1999 passed in C.A. No. 464 of 1998, before proceeding to put the properties covered by the Valuation Report, to sale, was mandatory and that by reason of non-compliance of the said Condition, the sale conducted in favour of the highest bidder, stood vitiated, the sale as prayed for by the Corporation, cannot be confirmed, and it is accordingly set aside.

33. In the result, and for the reasons foregoing, the application for confirmation of sale, is liable to be rejected, and it is accordingly rejected. No costs.