

**(2005) 02 AP CK 0024**

**In the Andhra Pradesh High Court**

**Case No : OSA No's. 2 and 13 of 2004**

A.P. State Financial Corporation, Mahabubnagar Branch

APPELLANT

Vs

Professional Grade Components

RESPONDENT

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**Date of Decision :** 15-02-2005

**Acts Referred:**

Companies (Court) Rules, 1959 — Rule 9  
Companies Act, 1956 — Section 446, 529, 529A  
State Financial Corporations Act, 1951 — Section 29, 46B

**Citation :** (2005) 3 ALD 326 : (2005) 3 ALT 359 : (2005) 3 BC 527 : (2005) 125 CompCas 365 : (2005) 63 SCL 143

**Hon'ble Judges :** J. Chelameswar, J;Goda Raghuram, J

**Bench :** Division Bench

**Advocate :** Y.N. Vivekananda Swamy, for Y.N. Lohitha, in OSA No. 13 of 2004, for the Appellant; Ramesh Ranganatham, for Official Liquidator in OSA NO. 2 of 2004 and for Respondent No. 1 in OSA No. 13 of 2004 and Y.N. Lahitha, in OSA No/ 13 of 2004, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Goda Raghuram, J.—In OSA No. 2 of 2004, we have heard Sri Y.N. Vivekananda Swamy, learned Counsel for the appellant Corporation, Sri A. Narasimha Reddy, learned Counsel for the appellant in OSA No. 13 of 2004 and Sri Ramesh Ranganatham representing Sri M. Anil Kumar, Official Liquidator.

2. The first of these appeals is by the A.P. State Financial Corporation (the Corporation) and the second by the purchaser of the property in the auction sale by the Corporation u/s 29 of the State Financial Corporation Act, 1951 (for short "1951 Act").

3. The Corporation filed a Company Application No. 336 of 2003 u/s 446 of Companies Act, 1956 (for short "1956 Act") read with Sections 29 and 46B of the 1951 Act read with Rule 9 of the Company Court Rules seeking the permission of this Court for sale of the immovable properties viz., land and

buildings of the respondent Company in liquidation for a consideration of Rs. 56.00 lakhs in favour of the appellant in OSA No. 13 of 2004. This application was rejected and the sale by the Corporation was set aside by the impugned order of the learned Company Judge dated 12-9-2003. These two appeals are preferred against the said order.

4. The assets of the respondent Company were seized, on 31-8-1994 by the Corporation, in exercise of its power u/s 29 of the 1951 Act. Earlier three petitions viz., CP Nos. 35 of 1990, 34 of 1991 and 24 of 1992 were filed seeking winding up of respondent Company. By an order dated 7-7-1995, this Court ordered the winding up of respondent Company. Thereafter, in CA No. 464 of 1998, the Corporation sought permission of this Court to remain outside the liquidation proceedings with a view to pursue the available statutory remedies to realize its dues (under Section 29 of 1951). By an order dated 30-9-1999, this Court allowed CA No. 464 of 1998, permitting the Corporation to remain outside the liquidation proceedings subject to the following conditions:

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 529A 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.

5. Thereafter, CA No. 336 of 2003 was filed by the Corporation seeking the permission of this Court, in terms of Condition No. 4 above, for confirming the sale in favour of the appellant in OSA No. 13 of 2004. It requires to be noticed that pursuant to the order dated 30-9-1999 in CA No. 464 of 1998, the Corporation had advertised the properties of the respondent Company for sale and received an offer of Rs. 33.00 lakhs. The Corporation rejected this offer on the ground that the offer was inadequate. A fresh advertisement was issued and the Corporation received an offer of Rs. 56.00 lakhs from the appellant in OSA

No. 13 of 2004 on 100% down payment basis payable within 90 days from the date of confirmation of the sale. The Corporation pleaded that it negotiated the sale in the presence of the officials of the APIDC and other secured creditors and the Official Liquidator as well. As the offer received from the other appellant herein was the highest and over and above the upset price fixed by the Corporation, its Board of Directors, at a meeting held on 19-12-2002 resolved to approve the sale in favour of the appellant and addressed a letter dated 21-12-2002 to the Official Liquidator to accord them permission for proceeding further with the sale. As the permission of this Court is required before confirmation or finalization of sale by the Corporation, the Corporation filed CA No. 336 of 2003. The Official Liquidator opposed this application of the Corporation contending, inter alia, that the Corporation violated Condition No. 2 namely "filing of a valuer's report before this Court before the properties covered under the mortgage deeds are put to sale". It was the case of the Official Liquidator that in view of the violation by the Corporation, the condition being mandatory, the sale stood vitiated and no permission for confirmation of sale should be accorded by this Court.

6. Condition No. 2 of the conditions imposed by this Court in CA No. 464 of 1998 of the Corporation was not complied with by the Corporation. No Valuation Report was placed before this Court before the Corporation proceeded with the sale of properties. In these circumstances, the learned Company Judge rejected CA No. 336 of 2003 and invalidated the sale, recording the following reasons therefor:

"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".

7. Pursuant to the auction, the appellant in OSA No. 13 of 2004 paid an E.M.D of Rs. 3.00 lakhs and another Rs. 3.00 lakhs as against the total sale consideration of Rs. 56.00 lakhs. The appellant/auction purchaser contends that it will be put to irreparable hardship if the confirmation of sale is withheld by this Court on account of what it terms as an "irregularity" of the Corporation in having failed to file a Valuation Report. As the purchaser is an inadvertent victim of the negligence of the Corporation, it should not be put to loss on account of a mere irregularity.

8. According to the Corporation, the learned Company Judge failed to consider

that the value fetched at the sale was reasonable and in conformity with the market value at the time when the sale took place and, therefore ought not to have invalidated the sale on the mere ground that inadvertently the Valuation Report was not placed before this Court before proceeding with the sale. Further as the Official Liquidator was informed and was furnished with a copy of the Valuation Report, there is substantial compliance with Condition No. 2. It is also contended on behalf of the Corporation that the remedy available to it to sell the properties of a defaulting company for recovery of the amounts due to it is a special remedy u/s 29 of the 1951 Act and therefore the Company Court acted beyond its jurisdiction in imposing conditions while permitting it to remain outside the liquidation proceedings, in an application filed by the Corporation u/s 446 of the 1956 Act. In any event, contends the Corporation, the order of the learned Company Judge setting aside the sale is unwarranted and works to the detriment of the Corporation as it has not been established on any material or by the Official Liquidator that a higher price would be fetched if the properties were now put to sale after invalidating the sale which has already been made. It is alternatively contended that Condition No. 2 is merely directory, violation of such condition would not ipso-facto vitiate the sale and that the learned Company Judge ought to have exercised his discretion to confirm the sale notwithstanding the transgression by the Corporation of Condition No. 2.

9. It requires to be noticed that the order of this Court dated 30-9-1999 in CA No. 464 of 1998 has become final. The conditions imposed by this Court in the order dated 30-9-1999 are binding on the Corporation and obligate strict and unswerving compliance. After an order of winding up is passed, as it was passed in this case by the order dated 7-7-1995, the Company Court is in custody and control of the assets of the Company in liquidation and thus it is that even a secured creditor (who/which has alternative and effective statutory remedies for realizing its dues), is required to obtain the leave of the Company Court to stay outside the liquidation proceedings. In fact, in *International Coach Builders Ltd. Vs. Karnataka State Financial Corpn.,* , the Supreme Court has declared as under:

"We, therefore, hold as under:

1. The right unilaterally exercisable u/s 29 of the SFC Act is available against a debtor, if a company, only so long as there is no order of winding up.
2. SFCs cannot unilaterally act to realize the mortgaged properties without the consent of the Official Liquidator representing workmen for the part passu charge in their favour under the proviso to Section 529 of the Companies Act, 1956.
3. If the Official Liquidator does not consent, 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.

10. The above principles were enunciated by the Supreme Court in the context of

the facts and issues arising in the case before the Supreme Court which required the delineation of the liberties of the SFC in the context of the special remedies available to it u/s 29 of the 1951 Act vis-a-vis the statutory responsibility of the Official Liquidator and thus the corresponding powers, in view of the provisions of Section 529 of the Companies Act, 1956.

11. The Official Liquidator in respect of a Company ordered to be wound up represents not only the interests of the workmen of such Company u/s 529 of 1956 Act, but the interests of the secured and unsecured creditors and the shareholders and others interested in the affairs/assets of the Company as well.

12. As observed by the Supreme Court in Allahabad Bank etc. etc. Vs. Bengal Paper Mills Co. Ltd. and Others, , upon liquidation, the custody and control of the assets and properties of a Company in liquidation vest in the Official Liquidator for the benefit of its creditors and others too. To ensure that the creditors of the Company can hope to recoup their dues and to ensure that the best possible price is realized upon the sale of such assets and properties, the sale by the Liquidator is required to be confirmed by the High Court. It is the obligation of the High Court to the creditors of the Company in liquidation to ensure that the best possible price is realized. It is in the effectuation of such composite and holistic jurisdiction of the Company Court that the provisions of Section 446 of the 1956 Act obligate a secured creditor who seeks to remain out of the liquidation proceedings to seek the leave of the Court. The Corporation had filed CA No. 464 of 1998 seeking permission of the Court to remain outside the liquidation proceedings. While granting such permission, this Court imposed certain conditions. Condition No. 2 obligated the Corporation to file the valuer's report in this Court before proceeding to put the properties to sale. This condition was to ensure that the best possible price for the properties is realized by the Corporation. The condition operationalises the legitimate concerns of the Company Court in furtherance of its statutory obligations under the provisions of the 1956 Act.

13. In the aforesaid analysis, the conditions imposed in CA No. 464 of 1998 are mandatory and obligate, rigid and require unswerving compliance by the Corporation. The contention of the Corporation that Condition No. 2 was only to ensure that the pari passu charge in respect of the obligations u/s 529 of the 1956 Act are safeguarded, does not merit acceptance. The concerns of the Company Court and of the Official Liquidator are not restricted to safeguarding the amounts due to the workmen u/s 529. The interests of the various other class of creditors as well as shareholders are equally the concern of the Company Court.

14. The conditions specified in the order dated 30-9-1999 in CA No. 464 of 1998 are conditions imposed by this Court subject to which Corporation was permitted to stay outside the liquidation proceedings. The conditions thus constitute the mandate of this Court. If it were open to the Corporation to itself determine whether and which of the conditions are merely directory and on that basis

consider itself as having a licence or discretion to ignore one or more of the conditions, the legislative purpose underlying the conferral of jurisdiction and the custody and control of the assets and properties of a Company in liquidation in the Company Court, would be frustrated. When an order of winding up is passed, the jurisdiction of this Court encompasses ensuring effective custody, control and management of the Company in liquidation and securing the best possible price on sale of its assets, in the interests of a varied class of creditors, shareholders and others. An interpretation which subverts the effective exercise of such wholesome jurisdiction must be eschewed.

15. The next aspect that falls for consideration in these appeals is as to what are the consequences of violation of the conditions imposed by the Company Court in an order passed in an application u/s 446 of the Companies Act, 1956. In the order under appeal the learned Judge has held that the conditions are mandatory and a violation thereof nullify the sale proceedings. Such an inflexible principle would not, in the considered view of this Court, in all events, every factual and circumstance and in all cases, enure to the overall interests of the varied class/ category of the creditors, shareholders and others who are interested in realisation of the best possible price on the sale of the assets of the company in liquidation. Even the interests of the workmen of such company which have been specially protected u/s 529 of the Companies Act might suffer in a given factual matrix if an invariable principle is spelt out that violation of a condition would nullify the sale proceedings. As already noticed the jurisdiction of the Company Court and therefore its corollary obligation is the effective management of the assets and properties of a company in liquidation. This obligation may on an occasion be frustrated if it is held as a rule that violation of a condition would invalidate the sale proceedings.

16. When conditions are specified by the Company Court while permitting a creditor to remain outside the liquidation proceedings, it is not open to such creditor to contend that the Court should ignore such transgression and permit confirmation of the sale for the mere asking. However, the invariable consequences of violation of a condition cannot be the invalidity of the sale proceedings. It may some times happen that putting the properties of the company for sale afresh may not fetch the price for which it was earlier sold though in violation of a condition specified by the Court. This may happen for a variety of reasons including the dynamics of market, the efflux of time between one sale and initiation of fresh steps for sale of the property, the nature of the assets/ properties of the company in respect of which the sale is contemplated local, national or international market conditions and a host of such complex factors. In a given factual matrix if the Company Court is satisfied that invalidating the sale of the properties held in violation of the conditions specified by the Court would not be beneficial, the Court must possess ample discretion to take an appropriate decision in the matter of addressing the transgression by the creditor. Declaring a sale as invalid could be one of the options. In an appropriate case however the Court may while declining to interfere with the sale conducted

in violation of the conditions, consider taking appropriate steps against the creditor who has violated the conditions imposed by the Court.

17. On the above analysis we are of the considered view that the learned Judge in the order under appeal did not lay down an inflexible rule that violation of the conditions would ipso facto result in invalidity of the sale proceedings without any discretion left to the Court in the matter. In the facts and circumstances of the case on hand the learned Judge exercised the discretion to withhold permission of the Court to the corporation to confirm or finalise the sale.

18. In the report dated 15.7.2003 of the Official Liquidator filed in opposition to CA No. 336703, it is categorically asserted in Paragraph 6 as under:

"The Official Liquidator submits, that as per the Valuation Report given by the applicant Corporation, it is seen that the valuation was done by the officials of the corporation itself on 20-11-2001. The value of the land, buildings and civil works were estimated to realize at Rs. 54.58 lakhs. It is also seen stated in the Valuation Report, that the company owns A.c.5.03 guntas and the market rate was estimated at Rs. 12.00 lakhs per acre in which event, the value of the land itself comes to more than Rs. 60.00 lakhs apart from civil works and building. However, the value of the land was taken @ Rs. 6.83 lakhs per acre considering the average rate of market rate @ Rs. 12.00 lakhs and registry rate of Rs. 1.65 lakhs per acre. This is clearly more than Rs. 10.00 lakhs difference between market rate and the registry rate but what is the basis to take the average rate of the above has not been spelt out. The report of the valuer's also contains a foot note which reads as under:

"We have made a local enquiry in and around areas, the market rate is rapidly increasing day by day due to real estate owners in that area, the prevailing market 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 high value i.e. twelve lakhs per acre."

19. It is the assessment of the Official Liquidator which assessment has commended acceptance by the learned Company Judge that the assets of the company in liquidation are capable of fetching a higher value than the amount of Rs. 56 lakhs, at which they were sold to the appellant in OSA No. 13/04, (in a sale held in violation of Condition No. 2 of the conditions specified by this Court in its order dated 30-9-1999 in CA No. 464/98). There is no material on record before this Court placed by any of the parties which permits a different view than the one taken by the learned Company.

20. In the facts and circumstances of the case, the order dated 12-9-2003 in CA No. 336/03 in CP Nos. 35/90, 34/91 and 24/92, holding that the sale in favour of appellants in OSA No. 13/04 ought not to be confirmed, warrants no interference. We only clarify that as a legal principle the violation by a creditor of a condition imposed by this Court while granting leave to remain outside the

liquidation proceedings would not ipso facto lead to invalidity of the sale of the properties of the company in liquidation. In an appropriate case the Court may, in the context of the fact situation before it, decline to interfere with the sale while considering what alternative and appropriate steps should be pursued for the violation of the conditions mandated by it.

21. We also place on record our appreciation for the assistance rendered, thoroughness of preparation and the professional commitment of Mr. Y.N. Vivekananda, a young lawyer who appeared for the appellant-Corporation in OSA No. 2 of 2004.

22. The appeals are dismissed. No order as to costs.