

(2006) 01 AHC CK 0138

In the Allahabad High Court

Case No : Special Appeal Nos. 1466 and 1465 of 2005

Grasim Industries Ltd. and Etc.(M/s.)

APPELLANT

Vs

U.P. Cement Corporation Ltd. and another etc.

RESPONDENT

Date of Decision : 16-01-2006

Acts Referred:

Companies Act, 1956 — Section 457

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 34

Citation : (2006) 01 AHC CK 0138

Hon'ble Judges : Sushil Harkauli, J and Ashok Bhushan, J

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These two appeals have been filed against the judgment and order dated 5.12.2005 passed by the Company Judge in Miscellaneous Company Application No. 4 of 1997 (M/s. Grasim Industries Ltd. v. Uttar Pradesh Cement Corporation Ltd.).

2. We have heard Sri S.P. Gupta, Senior Advocate for Dalmia Cement (Bharat) Ltd. and Sri Gaurav Banerjee, Senior Advocate for M/s. Grasim Industries Ltd., Sri Navin Sinha, Senior Advocate has been heard for the respondent Jai Prakash Associates Ltd.. We have also heard Sri Ashok Mehta, advocate for Official Liquidator, Sri Anil Mehrotra for the State of U.P., Sri P.N. Tripathi for Allahabad Bank, Sri O.P. Misra for I.F.C.I, and I.C.C.I, (now taken over by Kotak Mahendra), Sri Siddhartah Singh has also appeared before us.

3. Brief facts which are necessary to be noted for disposal of these appeals are :

The Uttar Pradesh Cement Corporation Ltd. (hereinafter referred to be as the "Corporation") was declared as Sick Industrial Company by Board of Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. The Board formed opinion that the Corporation be wound up. The opinion was forwarded to this Court vide order dated 2.7.1997. This Court by an order dated 8.12.1999 ordered for winding up

of the Corporation. The State Government published advertisement on 10.2.2001 titled as "Tender notice for taking over of Cement Plant", various reliefs and concessions were mentioned in the advertisement. In pursuance of the advertisement M/s. Grasim Industries Ltd. gave its offer. The State Government applied before the Company Judge seeking approval for accepting the offer of M/s. Grasim Industries Ltd., Allahabad Bank which is a secured creditor of the Corporation filed Claim Petition O.A. No. 149 of 1999 for recovery" of its dues against the Corporation and the State Government under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred as the 1993 Act). Allahabad Bank filed objection before the Company Judge opposing the application of the State Government for accepting the offer of M/s. Grasim Industries Ltd. The Allahabad Bank raised objection before the .Company Judge that the provisions of 1993 Act have overriding effect over the Company Act, conferring exclusive jurisdiction in respect of adjudication of the claim and execution of the final order of the Tribunal and there can be no interference by the Company Judge in respect of the payment due to the Bank payable before the Debt Recover)" Tribunal. The Company Judge vide its order dated 14.2.2002 refused to approve the offer of M/s. Grasim Industries Ltd. and directed the Official Liquidator for sale of assets of the Company expeditiously. The Official Liquidator was directed to firstly explore the possibility of sale of the assets "as a while" .as going concern", and in the alternative, by sale of assets in such parcels as may be convenient and expedient with the approval of the Court. The objection of the Allahabad Bank, which objection was also supported by the State Bank of India that 1993 Act have overriding effect over the Companies Act, was over ruled by the learned Company Judge. The Court held that the sale of assets to be made by the Official Liquidator under Section 457 of the Companies Act, was not in any manner be inconsistent with, or affect the right of adjudication of the claims of the Bank. The learned Company Judge held that the Bank do not have a right at this stage to object the sale of the assets of the Company in liquidation. Against the order of the Company Judge dated 14.2.2002 an appeal was filed by the Allahabad Bank being Special Appeal No. 346 of 2002 pressing the ground on basis of 1993 Act. An affidavit was filed in the appeal whereby the Allahabad Bank agreed to the sale of the property by this Court in winding up proceedings. In view of the above fact the Special Appeal was dismissed. M/s. Grasim Industries Ltd. hasalso filed Special Appeal against the order dated 14.2.2002 which too was dismissed. Company Judge has appointed Committee for sale of assets of the Company. The Official Liquidator published a notice dated 8.8.2005 calling for expression of interest. The copy of the advertisement has been filed as Annexure1 to the Affidavit filed in support of the appeal.

4. The Assets Sale Committee held its meeting and report was submitted to the Company Judge. Certain points were raised by the intending bidders regarding certain clarification with regard to reliefs and concessions. The learned Company Judge vide order dated 26.10.2005 issued certain clarification and date for

submission of financial bidding was extended till 16.11.2005. Another order was passed on 9.11.2005 extending the date for submitting the sealed tender upto 6.12.2005 by 11.00 a.m. An application was filed by Dalmia Cement (Bharat) Ltd. making certain prayers before the Company Judge, including the prayer for extension of time of receiving financial bids. The learned Company Judge passed an order on 5.12.2005 disposing of the application filed by the Dalmia Cement (Bharat) Ltd. against which order the appeal has been filed by the Dalmia Cement (Bharat) Ltd. as well as M/s. Grasim Industries Ltd. which are before us. In the appeal of Dalmia Cement (Bharat) Ltd. the reliefs claimed is that the order of Company Judge dated 5.12.2005 be set aside to the extent of not allowing the extension of time for receiving financial bids by the Assets Sale Committee and this Court may be pleased to extend the time for receiving the financial bids for a further period of four weeks. In the appeal filed by M/s. Grasim Industries Ltd. the relief claimed is to set aside the order dated 5.12.2005 and to issue direction of Official Liquidator to provide complete clarifications as requested by the appellant and to further stay the proceedings of Miscellaneous Company Application No. 4 of 1997 till such clarifications are supplied.

5. Sri S.P. Gupta, learned Senior Advocate who appeared for the Dalmia Cement (Bharat) Ltd. who is one of the intended bidders has expressed his apprehension with regard to the jurisdiction of the Official Liquidator to sell the assets under liquidator. Sri Gupta submitted that the bidders have to invest huge sum of the amount and in view of the fact that the Allahabad Bank, State Bank of India and some other financial institutions have filed claim petitions before the Debt Recovery Tribunal under 1993 Act, the exclusive jurisdiction for adjudication and recovery being vested with Debt Recovery Tribunal, the sale conducted by Official Liquidator may not be valid sale which may subsequently cause great loss and harassment to the bidders. Sri Gupta placed reliance on the judgment of the Apex Court in (2000) 4 SCC 406, Allahabad Bank v. Canara Bank and another as well as on Single Judge judgment of Bombay High Court reported in (2005) 127 Comp Cases 853 (Bom), Divya Chemicals Ltd., In re and the recent judgment of the Apex Court reported in (2005) 8 SCC 190, Rajaslhan State Financial Corporation and another v. Official Liquidator and another, Sri Gupta submitted that by virtue of Section 34 of 1993 Act, which have an overriding effect it is exclusive jurisdiction of the Tribunal to adjudicate and affect recovery. Sri Gupta further submitted that the fact that the financial institutions have consented in the proceedings by the Official Liquidator before the Company Judge shall not confer jurisdiction to the Official Liquidator to proceed to shall the property.

6. Sri Gaurav Banerjee in support of appeal of M/s. Grasim Industries Ltd. has submitted that certain quarries have not been specifically replied which shall adversely affect the best price which might be fetched by the assets. The sale of assets cannot be affected without absolute clarity with regard to terms and conditions of such sale and the clarification should precede opening and finalisation of financial bids. He submits that there is no clarification with regard to manner to treatment of the former employees of the Corporation reliefs and

concessions, the purchaser might require heavy investments for running of the units and as to whether the reliefs and concessions shall be available on such new investments? What is concept of sales "on going" basis. No time limit has been given for handing over possession. Whether protection of Sales Tax, waiver benefit in case VAT is implemented by the State Government shall be given? Reliance has been placed by Sri Banerjee on (2000) 5 SCC 274, Union Bank of India v. Official Liquidator H.C. of Calcutta and others, AIR 1983 Bombay 364, Jayprakash Shamsunder Mandare v. L.M. Mundade and others, and (2001) 1 SCC 736, Allahabad Bank v. ARC Holding Ltd. and others.

7. Sri Navin Sinha replying the submissions of Sri S.P. Gupta submitted that none of the submissions raised by Sri Gupta needs any consideration since only relief claimed in the appeal is to extend the time for receiving financial bids. He further submits that Allahabad Bank, State Bank of India and other financial institutions have consented for sale by the Official Liquidator of the assets of the Company. The judgment of the Apex Court in Allahabad Bank v. Canara Bank and another (supra) was a case confined to Sections 442, 537 and 446 of the Company Act which judgment cannot be read as laying down any such wide proposition that winding up proceedings before the Company Judge cannot proceed when a claim is filed under the 1993 Act by any financial institution. Sri Sinha relied on subsequent judgment of the Apex Court in Rajasthan State Financial Corporation and another v. Official Liquidator and another, (supra) and has submitted that the said judgment explains and clarifies the Apex Court judgment in Allahabad Bank v. Canara Bank and another, (supra). Replying to the submission of Sri Banerjee, Sri Sinha submitted that all clarifications have already been issued by the Official Liquidator and also by Court's order dated 26.10.2005 and 9.11.2005. He submits that the orders dated 26.10.2005 and 9.11.2005 have not been challenged. The conditions have already been clarified by the State Government vide letter of the Principal Secretary dated 2.8.2005. He submitted that the liability of the employees shall be in accordance with Section 529A of the Companies Act, with regard to possession the order of this Court dated 9.11.2005 already clarifies the position. Sri Ashok Mehta, learned Counsel for the Official Liquidator submitted that all clarifications have already been issued. The appeal filed against the order dated 14.2.2002 has already been dismissed. He also referred to a Division Bench judgment of this Court dated 27.4.2005 passed in Public Interest Writ Petition 33922 of 2005 filed for seeking payment to the workers which was dismissed with the observations that the workers will prove their claim before the Official Liquidator and will get payment in priority as provided by Section 529A of the Companies Act. Sri Anil Mehrotra, learned Counsel appearing for the State submitted that the State shall extend its full cooperation for carrying out the orders passed by this Court including handing over possession. He submits that the reliefs and concessions are clear which needs no further clarification.

8. We have considered the submissions raised by the Counsel for the parties and have perused the record.

9. Sri S.P. Gupta although has made submissions regarding exclusive jurisdiction of adjudication and recovery by the Debt Recovery Tribunal in accordance with the provisions of 1993 Act but in the memo of appeal neither any such ground has been taken nor before the learned Company Judge any such submission appears to have been raised. In view of this it was not necessary for us to give any consideration to the above submission raised by Sri Gupta. However, since Sri Gupta has raised apprehension with regard to jurisdiction of Official Liquidator to proceed with the sale of assets we propose to deal the above submission We make it clear that our consideration on the submission raised by Sri Gupta is confined to the facts of the present case and we do not propose to lay down by broader proposition for which neither there is foundation nor any pleading.

10. In substance, the submission of Sri Gupta is that 1993 Act having been given over riding effect under Section 34 of the Act only exclusive jurisdiction for adjudication and execution is vested in the Tribunal. He also refers to Sections 17 and 18 of the Act Sections 17, 18 and 34 of the Act which are relevant for our consideration are extracted below :

"17. Jurisdiction, powers and authority of Tribunals. (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and exercise, on and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such bank and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

18. Bar of jurisdiction. On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.

34. Act to have overriding effect. (1) Save as provided under subsection (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948). the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1948 (62 of 1948), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

11. Sri Gupta has however, not submitted that winding up proceedings of the Company are without jurisdiction. It has been submitted that the Allahabad

Bank, State Bank of India, and some other financial institutions have already filed applications for recovery of their dues under 1993 Act, and in one of the case filed by the Allahabad Bank the application of Bank has also been allowed and execution is pending. Application of I.D.B.I., has also been allowed. The cases of some other Bank are pending under 1993 Act.

12. In the present case, there is no issue with regard to applications filed under 1993 Act, and the orders passed therein. The stage of distribution of sale proceeds has also not arrived Neither any assets have been sold in accordance with 1993 Act. nor till date assets has been sold in the winding up proceedings.

13. There are more than one reasons for not accepting the submissions of Sri Gupta. Firstly, same objection was raised by the Allahabad Bank before the learned Company Judge in the year 2001 by filing detailed objection on the basis of the application filed by the Allahabad Bank under 1993 Act. The said objection has been elaborately considered and rejected by the learned Company Judge vide its judgment and order dated 14.2.2002 [reported in (2002) 5 Comp LJ 289]. Against the order of the Company Judge dated 14.2.2002 the appeal was filed by the Allahabad Bank being Appeal No. 346 of 2002 on the strength of 1993 Act but in the said appeal an affidavit was filed by the Senior Manager of Allahabad Bank where the Allahabad Bank agreed to sale of the properties in the winding up proceedings before this Court. In view of above, the Special Appeal was dismissed on 20.12.2004. M/s. Grasim Industries Ltd. one of the bidders has also filed an appeal against the judgment dated 14.2.2002 which, too, was rejected vide judgment dated 20.12.2004. The matter was not pursued any further and the order of the learned Company Judge rejecting the objection has become final.

14. Secondly, the winding up proceedings have commenced on the basis of the opinion of Board of Industrial Financial Reconstruction under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. The said proceedings are saved by Section 34(2) of 1993 Act. The winding up order was passed by the High Court under Section 20(2) of the Sick Industrial Companies (Special Provisions) Act, 1985. Section 20 of the said Act is extracted below :

"20. Winding up of sick industrial company. [(1) Where the Board, after making inquiry under Section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.]

(2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause, to proceed with the winding up of the sick industrial company in accordance with the provisions

of the Companies Act, 1956.

(3) For the purpose of winding up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of the sick industrial company and the officer so appointed shall for the purposes of the winding up of the sick industrial company be deemed to be, and have all the powers of the official liquidator under the Companies Act, 1956.

(4) Notwithstanding anything contained in subsection (2) or subsection (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of Section 529A, and other provisions of the Companies Act, 1956."

15. 1985 Act is special provisions with regard to sick industrial company which specifically contemplate winding up in accordance with the Companies Act. Section 22 of 1985 Act, relates to suspension of legal proceedings which has overriding effect. Section 34 of 1983Act, which is a provision giving overriding effect to 1993 Act, itself saves certain proceedings under several Acts including 1985 Act. Subsection (2) of Section 34 makes it clear that the provisions of 1993Act, are in addition to and not in derogation of the Act mentioned thereunder.

16. Section 18 in general terms provides that no Court or other authority shall have or be entitled to exercise jurisdiction in relation to matters specified in Section 17 and Section 17 provides for the jurisdiction and powers and authority to entertain application from the Bank and financial institutions for recovery of debts due to such Bank and financial institutions. Sections 18 and 34 has to be harmoniously construed. Reading of Section 18 in strict sense does not admit any exception. According to Section 18 no Court or authority can have any jurisdiction with regard to matters enumerated under Section 17 and the Debt Recovery Tribunal shall have exclusive jurisdiction but Section 17 and the Debt Recovery Tribunal shall have exclusive jurisdiction but Section 34(2) contemplate that the proceedings under the Acts mentioned therein may continue. This can be explained by taking as illustration e.g., under State Financial Corporation Act, 1951 the financial institution has power to take action under Section 29 of the Act and also sell assets of any Company. In the event financial institutions has initiated such proceedings against a Company those proceedings can very well go on without being in any manner hindered by Section 18. The Apex Court in AIR 2003 SC 2103, M/s. Unique Butyls Tube Industries Pvt. Ltd. v. U.P. Financial Corporation and others, had occasion to consider Section 34 of the 1993Act. The Apex Court held that the Bank or financial institutions have the option to proceed either under the 1993Act, or under the modes of recovery contemplated under the other Acts as mentioned in Section 34 (2). Paragraph 9 of the judgment is extracted below :

"9. Section 34 of the Act consists of two parts. Subsection (1) deals with the overriding effect of the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. Subsection (1) itself makes an exception as regards matters covered by subsection (2). The U.P. Act is not mentioned therein. The mode of recovery of debt under the U.P. Act is not saved under the said provision i.e., subsection (2) which is of considerable importance so far as the present case is concerned. Even a bare reading therein makes it clear that it is intended to be in addition to and not in derogation of certain statutes; one of which is the Financial Act. In other words, a Bank or Financial Institution has the option or choice to proceed either under the Act or under the modes of recovery permissible under the Financial Act. To that extent, the High Court's conclusions quoted above were correct. Where the High Court's went wrong is by holding that proceedings under the U.P. Act were permissible, U.P. Act deals with separate modes of recovery and such proceedings are not relatable to proceedings under the Financial Act."

17. Provisions of Sections 18 and 34(2) has to be harmoniously construed to permit both the provisions to have their play. A strict construction of Section 18 will destroy the effect of Section 34 (2). Section 18 is a provision in general term whereas Section 34(2) is a special provision which has to be excluded from general provision of Section 18. The Apex Court in AIR 1958 SC 255, Sri Venkataramana Devaru and others v. State of Mysore and others, has laid down principle of harmonious construction in paragraph 29 :

"(29) The result then is that there are two provisions of equal authority, neither of them being subject to other. The question is how the apparent conflict between them is to be resolved. The rules of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25 (2) (b) will be come wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26 (b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25 (b) will be put wholly out of operation. In the latter, effect can be given to both that provision and Article 26 (b). We must accordingly, hold that Article 26 (b) must be read subject to Article 25 (a) (b)."

18. From the judgment of the Company Judge dated 14.2.2002 it does appear that reference under 1985 Act was made on 7.10.1992 and the Board of Industrial and Financial Reconstruction after being satisfied forwarded the opinion to this Court for winding up the Company. Thus the proceedings under 1985 Act has commenced much before filing any application under 1993 Act by

any financial institution. Section 20 of the 1985 Act specifically contemplates winding up according to the provisions of the Companies Act, 1956 by specific reference of the companies Act. Can it be said that the proceedings initiated as per opinion of the Board under 1985 Act has become illegal, without jurisdiction merely by filing of application under 1993 Act. The answer is obviously "No". 1985 Act, has been specifically saved under Section 34(2) of the 1993 Act and winding up proceedings initiated in accordance with Section 20 of the 1985 Act has to be brought to its logical end. As noted above, no sale has yet taken place of any assets in accordance with the 1993 Act and there is no question of distribution of sale of assets to satisfy the claim of different financial institutions. As this stage we are not concerned even with the adjudication of respective claims of various financial institutions nor it is required to express any opinion with regard to adjudication of claim if already made under 1993 Act. Thus winding up proceedings which have been initiated in accordance with 1985 Act can proceed and have to be brought to its logical end.

19. Thirdly, the Allahabad Bank which has filed claim petition under 1993 Act has specifically stated before this Court, which is recorded in the Special Appellate judgment of this Court dated 20.12.2004 as referred to above that it is agreeable with the sale of the assets in the winding up proceedings. Counsels for all other financial institutions have stated before us that they are fully agreeable in conduct of sale by Official Liquidator in winding up proceedings. All the financial institutions who are secured creditors having not challenged the conduct of sale of Official Liquidator the apprehensions raised by Sri Gupta are misplaced.

20. The judgment of the Apex Court relied by Sri Gupta of Allahabad Bank (supra) was a case where the Debt Recovery Tribunal, Delhi has already passed an order on the application of Allahabad Bank which was secured creditor, after obtaining of the decree from the Tribunal some properties of the Company were sold by the Recovery Officer. The winding up petition was pending before the Delhi High Court in which the learned Company Judge stayed the sale proceedings taken out by the Allahabad Bank before the Recovery Officer. The another secured creditor Canara Bank objected to the sale proceeding by Allahabad Bank on the ground that Allahabad Bank is obliged to seek leave of the Company Court under Sections 442 and 537 of Companies Act for purposes of deciding the priorities. The questions which were raised before the Apex Court was as to whether the Tribunal can entertain proceedings for recovery, execution proceedings and also for distribution of money realised by sales of properties of the Company against which winding up proceedings are pending? Whether leave is necessary and is to which Court has to distribute the sale proceeds and in accordance with what priorities amongst various creditors. The Apex Court held that no leave of the Company Court is necessary for initiating or continuing the proceedings under 1993 Act. In a subsequent recent judgments of the Apex Court in Rajasthan State Financial Corporation and another v. Official Liquidator and another (supra), the case of Allahabad Bank v. Canara Bank and others (supra) was considered. A three Judges Bench in the case of Rajasthan State

Financial Corporation and another v. Official Liquidator and another (supra) made the following observations in paragraphs 16 and 17 which are extracted below :

"16..... As for as we can see, there is no conflict on the question of the applicability of Section 520A read with Section 529 of the Companies Act to cases where the debtor is a Company and is in liquidation. The conflict, if any, is in the view that the Debts Recovery Tribunal could sell the properties of the Company in terms of the Recovery of Debts Act. This view was taken in Allahabad Bank v. Canara Bank, in view of the Recovery of Debts Act being a subsequent legislation and being a special law which would prevail over the general law, the Companies Act. This argument is not available as far as the SFC Act is concerned, since Section 529A was introduced by Act 35 of 1985 and the overriding provision therein would prevail over the SFC Act of 1951, as amended in 1956 and notwithstanding of Section 46B of the SFC Act., As regards distribution of assets, there is no conflict. It seems to us that whether the assets are realised by a secured creditor even if it be by proceedings under the SFC Act or under the Recovery of Debts Act, the distribution of the assets could only be in terms of Section 529A of the Act and by recognising the right of the Liquidator to calculate the workmen's dues and collect it for distribution among them pari passu with the secured creditors. The Official Liquidator representing a ranked secured creditor working under the control of the Company Court cannot, therefore, be kept out of the process."

"17..... The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security. The distribution in a case where the debtor is a Company in the process of being wound up, can only be in terms of Section 529A read with Section 529 of the Companies Act. After all, the Liquidator represents the entire body of creditors and also holds a right on behalf of the workers to have a distribution pari passu with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the Company Court. In other words, the distribution of the sale proceeds under the direction of the Company Court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure, in the light of the directions of the Company Court that a proper price is fetched for the assets of the company in liquidation."

21. The case of Allahabad Bank v. Canara Bank and another (supra) has no application on the facts of present case and distinguishing features of the present case as noted above. In the present case neither the question is involved as to whether the proceedings under 1993 Act for adjudication and execution can be continued with the leave of the Company Court nor there is any question of distribution of any assets between the secured creditors.

22. Thus the case of Allahabad Bank (supra) does not help the appellant in the

present case. In Divya Chemicals Ltd. In re (supra) the financial institutions have raised objection in the winding up proceedings that Official Liquidator cannot take steps for sale of the properties and the properties are to be sold by the Recovery Officer under the Debt Recovery Tribunal Act where proceedings for recovery were pending. In the present case none of the financial institutions have raised objection regarding the proceedings of sale by the Official Liquidator: To the contrary all the financial institutions have agreed that the sale of conducted by the Official Liquidator in the winding up proceedings. The case of Divya Chemicals Ltd. In re (supra) is also distinguishable and has no application in the facts of the present case.

23. Now the submissions raised by Sri Banerjee are to be considered. Sri Banerjee has submitted at the very outset that he is not making the broader submission as made by Sri Gupta and M/s. Grasim Industries Ltd. are fully agreeable to the conduct of sale by Official Liquidator under the Companies Act. He, however, submits that the quarries raised by M/s. Grasim Industries Ltd., and certain other bidders have not been fully met and satisfied the result of which shall be that best price of the assets will not be fetched. He submits that object of the Court is to get the best price which requires clarification of the quarries. He also submits that against several quarries answer has been given that the matter has been referred to High Power Committee of the State Government and with regard to certain quarries it has been only said that as per order of the Court. The grievances raised by Sri Banerjee are basically on three aspects. First is clarification as to what is meant by as a "going concern". He apprehends that sale of assets as "going concern" may not be meant as liability to take the employees of the Corporation also be purchaser. Second is as to whether reliefs and concessions would also be available if the purchaser makes new investments. What shall be modus operandi for handing over the vacant and peaceful possession of all the assets, what happens if VAT is implemented by the State Government.

24. The advertisement reads "State of U.P. has agreed to grant following reliefs and concessions (except of Churk plant and lease of Ghurma Mines) if the expression of interest is submitted as a going concern (intends to run the unit). The words "going concern" has been clarified in the advertisement itself. As noted earlier the State of Uttar Pradesh itself has earlier made advertisement on 10.2.2001. "Going concern" has been clarified in bracket as "intends to run the unit". The winding up order has been passed on 8.12.1999.

25. Sri Banerjee has placed reliance on the judgment of the Apex Court in Union Bank of India (supra). In the facts of that case the Court had held that there was no material on record for holding that the Company could be revived and the employees would be reinstated in service by giving them reemployment. It was held that without indulging in any exercise straight away to state that the property would be sold as going concern, was totally without basis and, therefore, unjustified. The Court in that very case also observed that it is duty of

the Court to see that the properties are sold at a reasonable price. In the circumstances of that case the Apex Court allowed the appeal and directed the Official Liquidator to resale the property. In another case of Allahabad Bank v. ARC Holding Ltd. and others (supra), the sale of assets of the Company were directed to be sold as a "going concern". The Company Court had directed to sell the assets of the Company as "going concern". In the aforesaid case although the Apex Court observed that it would be no doubt ironical and unjust to get order for the sale of the assets of the Company as a going concern. But, at the same time to give a last try to the fond hopes expressed on behalf of the erstwhile workers, on more chance was given to have it so done within a strict frame of time limit. Paragraph 13 of the judgment is extracted below :

"13. When indisputably the order of winding up made on 4.6.1990 had become final and the Company has been nonfunctional for long, even Board of Industrial and Financial Reconstruction could not come to its rescue and the attempt of the workers" union to resuscitate the Company by getting a committee constituted for management was repelled by a Division Bench of the High Court and this Court when the SLP filed by the workers" union came to be dismissed on 5.12.1997, it would no double be ironical and unjust to get order for the sale of the assets of the Company as a going concern. But, at the same time to give a last try to the fond hopes expressed on behalf of the erstwhile workers, we considered giving one more chance to have it so done within a strict frame of time limit."

26. The judgment of the Bombay High Court in Jaiprakash Shamsunder (supra) docs not help the appellant in the present case. One more factor is required to be noted at this stage. The Company Judge had directed vide its order dated 14.2.2002 as follows :

"The Official Liquidator is directed to take steps for sale of the assets of the Company expeditiously keeping in view the facts and circumstances of the case and observations made in this order and the reliefs and concessions offered by the State Government to any intending higher offerer. The Official Liquidator will firstly explore the possibility of sale of the assets "as a whole" as going concern, and in the alternative by sale of assets in such parcels as may be convenient and expedient with the approval of the Court."

27. The M/s. Grasim Industries Ltd. has already filed appeal against the order dated 14.2.2002 which appeals has already been dismissed on 20.12.2004. Thus, in the present case, we cannot hear any agreement with regard to terms and manner in which sale has been directed by the Company Judge. The affect and consequence of selling assets as "going concern" are well known in law and no further clarification in that regard is required by us.

28. It is not the case of any of the parties that Units were functioning either immediately before the winding up or subsequent to the winding up. The reliefs and concessions were provided by the State Government to give incentive to the

purchaser to run the unit which may give opportunities of the employment including exemployees of the wound up Company to get employment. Object for which the State offered to give reliefs and concessions is loudabl. The terms of the advertisement are clear and needs no clarification. With regard to the rights of the employees the learned Company Judge in his order dated 26.10.2005 has observed :

"The successful bidders obligations in law, towards exworkers is limited by the Companies Act, 1956 and the Companies (Court) Rules, 1959. Anyfurther offer/ obligation shall be subject to the arrangement between the successful bidders and cxworkers/employces of the Company (In Liquidator)."

29. Rights and liabilities of the employees are to be regulated in accordance with the Companies Act, 1956 and no further clarification is required.

30. With regard to reliefs and concessions on new investments clarification has been given that Trade Tax exemption will not be available for expansion/ diversification (In the reply given to the quarries as contained in Annexure 11 to the appeal), with regard to VAT the VAT has not yet been enforced in the State and what will happen if any future law is made, is not matter of consideration for us at this stage. With regard to handing over of possession the learned Company Judge in his order dated 26.10.2005 has observed :

"The Court as far as possible under the provisions of the Companies Act, 1956 shall secure, and give possession of the land and building and other assets, immediately after the deposit of the entire sale consideration."

31. The Counsel appearing for the State has also submitted before us that the State machinery shall extend all cooperation for handing over the possession in accordance with the provisions of the Companies Act and Rules. For handing over of possession no time limit can be fixed by us. Learned Single Judge has already directed in his order dated 26.10.2005 that the State Government shall not consider any further or to withdraw any reliefs and concessions which have been offered. In above view no further clarification is justified.

32. Sri Gaurav Bancrjcc has lastly submitted that the appellant can submit their offer in five days time which may be provided by this Court.

33. In view of foregoing discussions none of the submissions raised by the Counsels appearing for the appellants have any substance. However, in view of the fact that the appeal remained pending for consideration, ends of justice be served in extending the time for submitting the scaled tender as permitted by the learned Company Judge for a period of two weeks subject to fixation of date and time of such submission by the learned Company Judge. All the parties may appear before the learned Company Judge on Wednesday the 18.1.2006 for such fixation.

34. Subject to above both the appeals are dismissed.

Appeals dismissed.