**(2004) 09 KAR CK 0048**

**In the Karnataka High Court**

**Case No :** Company Application No''s. 1063 of 2002, 608 and 611 of 2003 in Company Petition No. 45 of 1994

Gromax Papers and Boards Ltd. APPELLANT

Vs

Ramgopal Paper Mills Ltd. RESPONDENT

**Date of Decision :** 02-09-2004

**Acts Referred:**
State Financial Corporations Act, 1951 — Section 29

**Citation :** (2004) 4 KCCR 2523 : (2005) 58 SCL 281

**Hon'ble Judges :** D.V. Shylendra Kumar, J

**Bench :** Single Bench

**Advocate :** R. Sreedhar and L.S. Srinath, for the Appellant; Deepak, N. Krishna Nanda Gupta and Ashok B. Hinchigeri, for the Respondent

**Final Decision :** Dismissed

## Judgement

D.V. Shylendra Kumar, J.—C.A. 1063/2002 is filed by M/s. Gromax Papers and Boards Limited, a company which has purchased the assets of M/s. Ramgopal Paper Mills Limited, Company under liquidation in terms of an order dated 3-9-1997 passed by this Court.

2. The Official Liquidator attached to this Court has been put in charge of the winding up operations of the Company ever since the order was passed for winding up of the company and has been taking steps for realization of the assets.

3. M/s. Karnataka State Industrial Investment and Development Corporation is a secured creditor of the Company under liquidation and it appears the secured creditor had taken over the factory unit of the Company under liquidation in exercise of its powers u/s 29 of the State Financial Corporations Act even prior to the winding up order having came to be passed by this Court. As on the day, when the winding up order was passed, M/s. KSIIDC was in charge of the assets of the Company.

4. During the winding up proceedings, M/s. KSIIDC sought for permission to effect sale of the assets of the company in its possession and it was so permitted to conduct sale in association with the Official Liquidator.

5. It is the common version of the parties that a paper publication for the sale of the assets had been caused by M/s. KSIIDC which came to be published in many news dailies in Bangalore and Mysore dated 27-6-2000 and the applicant was one amongst the persons who had responded to such publication and who had evinced interest in purchasing the assets of the company under liquidation.

6. Ultimately, the offer of Rs. 1,90,00,000/- by the applicant was found to be best price that M/s. KSIIDC on its part could fetch and at their request, this Court confirmed the sale in favour of the applicant as per order dated 5-4-2002.

7. It is subsequent to this development, this application is now filed by the purchaser praying for directions to be issued to the Official Liquidator to effect payment of a sum of Rs. 3,20,864/- to the Thandavapura Gram Panchayat, Nanjangud Taluk and payment of a sum of Rs. 6,21,176/- to the Mangalore Electricity Supply Company from out of the funds available by the sale of the assets of the company, purporting to be the arrears of property tax and electricity consumption charges of the company under liquidation which the company owed to the Panchayat and the Electricity Board.

8. It is the submission of Sri Sreedhar, learned counsel appearing for the applicant that the sale was one free from encumbrances even as indicated in the sale deed executed by M/s. KSIIDC on 29-1-2003 that is much later to the confirmation of sale, that was so in terms of a minutes recorded at a meeting of creditors etc., held on 12-7-2000 and as such any liability that had been attached to the property which is sold free of encumbrances should be discharged by the Company that which in effect means by the Official Liquidator who is now in charge of the Company and as non-payment of this amount has come in the way of the purchaser reaping full benefit of his purchase, the present application is made for issue of such directions to the Official Liquidator.

9. Objections have been filed on behalf of the Official Liquidator. It is pleaded that the Official Liquidator in fact was not even aware of the amounts due to Thandavapura Gram Panchayat or the Mangalore Electricity Supply Company as the former Directors of the Company under liquidation had not filed the statement of affairs of the Company on the day the winding up order was passed as required under the provisions of the Companies Act. If any amounts were due by the Company in favour of the Panchayat and Electricity Company, it is for them to put forth a claim respect of the amount due to them by the Company in the winding up proceedings and there is no question of the Official Liquidator being asked to make any preferential payment either to the Panchayat or to the Electricity Company, particularly at the instance of the applicant.

10. Though M/s. KSIIDC who has executed the sale deed is not impleaded as the party-respondent to this application, Sri Ashok Hinchigeri, learned counsel

 

appearing for this institution who is present before the Court is made aware of such an application has also been heard in the matter. However, M/s. KSIIDC has been impleaded as a party respondent in C.A. 608 & 611/2003 and Sri Ashok B. Hinchigeri, learned counsel appearing for M/s. KSIIDC has also been heard. So also Mr. Sreedhar, learned counsel appearing for the applicant and Sri Deepak, learned counsel appearing for the Official Liquideator.

11. While it is the submission of Sri Deepak, counsel appearing for the Official Liquidator that an application of this nature cannot be entertained inasmuch as any property sold by the Official Liquidator for realising the assets of a company under liquidation is always on an as is where is basis and the purchaser takes all liabilities that have attached to the property and there is no assurance on the part of the Official Liquidator for doing anything further than to hand over the property in question, in the instant case, the effort to sell the property had been made by M/s. KSIIDC, the secured creditor and the role of the Official Liquidator was only to ensure that the sale was not a distress sale, in the sense that the legitimate entitlement of other creditors were not defeated in any manner.

12. The sale terms as had been published by M/s. KSIIDC is not placed before the Court. However, Sri Sreedhar, learned counsel appearing for the petitioner has filed a memo along with a copy of the minutes of the meeting held at the sale of secured assets of M/s. Ramgopal Paper Mills Ltd., a company under liquidation dated 12-7-2000 held at the office of M/s. KSIIDC at 3 p.m. on that day and it is indicated that the Official Liquidator was also present at such meeting. The submission of Sri Sreedhar, learned counsel appearing for the applicant is that the terms inter alia indicate that the final bid for entire assets was free from encumbrances and on the stipulated terms for payment. Learned Counsel further relies upon the covenants in the sale deed which, inter alia, reads as under :-

"5. The Corporation hereby covenants with the purchaser that the said property is not subject to any court proceedings, attachments, encumbrances, claims, charges, or acquisition proceedings or any other liabilities and is absolutely free of all encumbrances. The purchaser is not liable for any liabilities, statutory or otherwise, of the erstwhile company viz., Ramgopal Paper Mills Limited.

6. The Corporation further convenants that the Corporation or its successors-in-interest or assigns shall keep the purchaser fully indemnified against all losses, liabilities, costs, expenses, charges and damages that may arise either against the purchaser or the said property hereby conveyed by reason of any law or defect or want of title on the part of the Corporation or any other reason whatsoever relating to the title or the breach of any of the covenants and conditions herein and the Corporation hereby also covenants that the said property is free of all encumbrances and all charges and the same is not subject to any equitable mortgage, or any other form of mortgage, charge, attachment before judgment, execution proceedings etc. and the same has been conveyed without any encumbrances whatsoever."

 

13. Sri Ashok B. Hinchigeri, learned Counsel appearing for the Corporation, which has executed the sale deed submits that the Corporation does not assure any purchaser to clear charges or arrears of any taxes etc., in respect of a property sold but that it is sold on as is where is condition.

14. Be that as it may. The question before the Court is whether directions as sought for by the applicant can be issued to direct the Official Liquidator to make payment of the amounts payable by the company under liquidation in respect of an asset which has already been sold and subject to certain conditions of sale etc.

15. Official Liquidator possibly cannot undertake to discharge the loans and liabilities of the company under liquidation by making such an assurance to any third party and by his voluntary act. All liabilities of the company are to be met in accordance with the statutory provisions and in the order of priority provided for under the Companies Act itself. The Official Liquidator is not at liberty or has the freedom to give any such assurances to any purchaser that the liability of the company vis-a-vis a property of the company that is being sold will be taken care by the Official Liquidator for ensuring that the purchaser gets good and proper title. Law does not permit that. This is the reason why all sales effected by the Official Liquidator while acting as a liquidator of any company, the terms are indicated to be on as is where is condition. The Official Liquidator who is in charge of a company under liquidation is only for the purpose of realizing the assets and to distribute amongst the creditors, shareholders and other stake holders. The Official Liquidator has to function within the limits of statutory provisions. An assurance which cannot even be given by the Official Liquidator cannot be given by any one else also, if the asset of a company under liquidation is being sold even under the permission of the Court by such other person and in the instant case by a secured creditor.

16. While it is not possible and permitted in law to direct the Official Liquidator to make payment of the amounts due to the Panchayat and the electricity company in full and final settlement of some of the dues due to them in preference and at the instance of a person like the applicant from out of the sale proceeds realized from the assets of the company under liquidation, even as to the entitlement of the applicant the matter is not free from doubt. Assuming for arguments sake that the applicant has put forth his claim based on the covenant in the sale deed, it is for the applicant to enforce such rights vis-a-vis M/s. KSIIDC - secured creditor who has executed the sale deed as a secured creditor of the company under liquidation. Even the question as to whether the creditors of a company under liquidation like the Panchayat and the electricity company can subsequent to the sale of the asset for utilization of which asset the service had been received earlier and the company was due in a sum can put forth the claim by joining amongst the unsecured creditors or as to whether such liabilities are to be met only by the purchaser is not free from doubt. The question really does not arise for answer in this case as it is the secured creditor, who has executed the sale deed with such covenant.

 

17. It is open to the applicant to work out such rights, if any, under the sale deed as against the secured creditor. The liability cannot be fastened on the amount available with the liquidator as part of the realization of the assets of the company. It should be made available for distribution amongst all stakeholders and as per the statutory provisions. Reserving liberty to the applicant to work out his rights, if any as against the secured creditors of the company M/s. KSIIDC who has executed the sale deed, these applications are dismissed.

 