
(2007) 07 P&H CK 0084
In the Punjab And Haryana At Chandigarh

Haryana Financial Corporation	Vs	APPELLANT
The Official Liquidator and Others		RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 528, 529, 529A, 530
State Financial Corporations Act, 1951 — Section 29, 31, 46B

Citation : (2008) 3 BC 362 : (2007) 139 CompCas 500 : (2007) 147 PLR 770

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The Haryana Financial Corporation (hereinafter referred to us "the Corporation"), a secured creditor, has filed this appeal under Rule 164 of the Companies (Court) Rules, 1959, against the order dated 20.2.2006 (Annexure A-4) passed by the Official Liquidator, respondent No. 1 herein, adjudicating the claim of the appellant as secured creditor, while holding that put of the sale proceeds of the assets of the company in liquidation, the appellant Corporation is entitled to Rs. 7,47,622/- and another secured creditor i.e. State Bank of India is entitled to Rs. 70,52,897/- and the remaining amount of the sale proceeds i.e. Rs. 4,44,032/- will be distributed to other claimants as per the provisions of Section 530 of the Companies Act, 1956 (hereinafter referred to as "the Act").

2. The brief facts of the case are that vide order dated 2.11.1995 passed by this Court in C.P. No. 9 of 1994, M/s Malook Chand Agro Oils Limited, Sirsa was ordered to be wound up by this Court on account of non-payment of debts by it. The assets of the company in liquidation were sold by the Official Liquidator for Rs. 1,03,54,149/- to Parkash Aggarwal, Ex. Director, respondent No. 4 herein. The said sale was confirmed by the this Court vide order dated 17.12.2004, passed in C.A. No. 719 of 2004.

3. In the year 1987, the appellant Corporation advanced a loan of Rs. 34.11 lacs

to the company in liquidation. To secure the loan, a mortgage deed dated 24.4.1987 was executed between the company in liquidation and the appellant Corporation. The company in liquidation committed default in the repayment of loan to the appellant Corporation. Consequently, on 20.7.1993, the loan was recalled by the Corporation in exercise of the powers conferred by Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as "the SFC Act"). The Corporation also took possession of the unit of the company in liquidation u/s 29 of the S.F.C. Act on 21.11.1995. Prior to that, the company was ordered to be wound up by this Court on 2.11.1995. Therefore, possession of the unit of the company in liquidation was handed over by the appellant Corporation to the Official Liquidator on 25.12.1995. Vide order dated 17.8.2001, the appellant Corporation was permitted to sell the land, building and machinery of the company in liquidation in association with the Official Liquidator and other secured creditors. It was ordered that the sale proceeds shall be deposited with the Official Liquidator after deducting the auction expenses. Subsequently, the appellant Corporation moved an application before the Company Court for recalling the order dated 17.8.2001 and for permission to settle the account of the company under the one time settlement scheme of the appellant Corporation. The said application was disposed of by this Court vide order dated 11.7.2003 and the Official Liquidator was permitted to sell the assets of the company in liquidation, as the Corporation was settling its accounts with Ex-Managing Director of the company. The expenses of the sale were also ordered to be incurred by the secured creditors. Subsequently, a compromise was arrived at between the appellant Corporation and the company in liquidation for a sum of Rs. 28,32,720/-. In pursuance of the said compromise, an amount of Rs. 17,72,123/- was paid by the Ex-Managing Director to the appellant Corporation. Subsequently the said compromise was not materialized. Thereafter, in terms of the order passed by this Court, the Official Liquidator sold the assets of the company for a sum of Rs. 1,03,54,149/-, which was confirmed on 17.12.2004.

4. As per the records of the Register of Companies, the appellant Corporation is first charge holder on land/building and plant/machinery, but second charge holder on current assets. The another secured creditor i.e. State Bank of India is the first charge holder on the current assets and the second charge holder on fixed assets of the Company in liquidation.

5. After the sale, the Official Liquidator invited claims of secured as well as unsecured creditors. He held various meetings for adjudicating, the claim of the secured creditors. The appellant corporation filed claim of Rs. 99,17,686/- with future interest at the rate of 18% per annum from 1.6.2005. As per the account statement, on the date of winding up of the company i.e. on 2.11.1995, only an amount of Rs. 21,89,932/- was due to the appellant Corporation. The remaining amount claimed by the appellant Corporation is on account of" interest. Keeping in view the provisions of Sections 529A and 530 of the Act read with Rule 154 of the Companies (Court) Rules, 1959, the Official Liquidator, vide impugned order, adjudicated the claim of the appellant corporation, while coming to the

conclusion that on the date of winding up of the company, an amount of Rs. 21,89,932/- was outstanding, which is to be paid to the appellant Corporation. He further came to the conclusion that at one time, the appellant Corporation entered into settlement with the company in liquidation for Rs. 28,32,000/- and under that settlement, an amount of Rs. 17,72,123/- was paid to the corporation. Therefore, after deducting the said amount, the appellant Corporation is entitled for Rs. 7,47,622/-, which includes Rs. 3,29,813/- towards expenses to be reimbursed to the Corporation. The Official Liquidator also adjudicated the claim of another secured creditor i.e. State Bank of India and found that out of the sale proceeds of the company in liquidation, the said creditor is entitled for Rs. 70,52,897/-. After distributing the sale proceeds to these two secured creditors and deducting the expenses incurred by the Official Liquidator, an amount of Rs. 4,44,032/- was found balance, which was ordered to be distributed to the other creditors u/s 530 of the Act. The appellant Corporation has challenged the said order.

6. Shri Puneet Gupta, Advocate, learned Counsel for the appellant Corporation made three fold submissions in this appeal. Firstly, that the appellant Corporation disbursed the loan to the company in liquidation and its repayment was secured by execution of a registered mortgage deed between the Company in liquidation and the appellant corporation. As per the mortgage deed, the appellant Corporation was entitled for interest on the outstanding dues till the repayment of the entire dues. He submitted that Section 29 of the S.F.C. Act confers special rights on the appellant Corporation to secure the loan amount with interest as per mortgage deed by selling the assets of the loanee Company. According to mortgage deed, the interest is payable to the Corporation on the outstanding dues till the payment of the entire dues irrespective of the date of winding up order. He submitted that under the S.F.C. Act, there is no provision stopping the interest due to a Suite Financial Corporation on the passing of the winding up order. He submitted that in case of the appellant Corporation, the provisions of the Companies Act and the Rules made thereunder are not applicable as far entitlement of interest after passing up of the winding order of the loanee company is concerned. He further submitted that Section 46B of the S.F.C. Act will override the provisions under the Act being special statute. He further submitted that the provision of Rule 154 of the Companies (Court) Rules, 1959 is not applicable in the instant case and the right of the appellant Corporation to have interest on the outstanding loan amount till its payment cannot be denied.

7. Secondly, learned Counsel for the appellant Corporation submitted that the appellant Corporation being secured creditors stands outside the winding up. He submitted that since the appellant has right to sell the assets of the Company in liquidation under the provisions of the SFA. Act and stands outside the winding up, the procedure of distribution of sale proceeds of the assets of the Company in liquidation is different from the procedure of distribution of proceeds of the sale of security and in such cases, the distribution of proceeds of the sale is not governed by Section 529 read with Section 529A of the Act, rather distribution of

the sale proceeds has to be made in accordance with the agreement between the company in liquidation and the appellant Corporation. While relying upon a decision of this Court in *State Bank of Patiala v. North Land Sugar Complex Ltd.* 2004(1) I.S.J. 448, learned Counsel submitted that the appellant Corporation, being secured creditor, stands outside the winding up and is entitled to realize the interest on the due amount as per the mortgage agreement. He submitted that the provision of Rule 154 of the Companies (Court) Rules, 1959 is not applicable in respect of the secured creditor, who stands outside the winding up.

8. Thirdly, learned Counsel submitted that the Official Liquidator was not justified in adjusting the amount of Rs. 17,72,123/- paid by the guarantor to the Corporation in the year 2003. He submitted that the said payment made by the Ex-Managing Director being guarantor cannot be adjusted towards the amount due as on the date of winding up. He further submitted that the said amount was paid towards the interest accrued to appellant Corporation after the date of winding up. In view of these submissions, learned Counsel submitted that the impugned order passed by the Official Liquidator is patently illegal and the same is liable to be set aside and out of the sale proceeds, the appellant Corporation is entitled for Rs. 99,17,686/- with the future interest from 1.6.2005.

9. On the other hand, Shri L.M. Suri, Senior Advocate, learned Counsel for the Ex. Managing Director of the Company in liquidation and Shri Neeraj Khanna, Advocate, learned Counsel for the Official Liquidator, submitted that a right to financial corporation 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. When the winding up order of the debtor company is passed, the rights of financial corporations are governed by the provisions of Section 529 and 529A of the Act and the Rules made thereunder. It is further submitted that whether a creditor is standing outside the winding up or not is irrelevant as far as distribution of the sale proceeds of the company in liquidation is concerned. Where the debtor is a Company in liquidation, the distribution of the sale proceeds of such company has to be in terms of Sections 529, 529A and 530 of the Act read with Rules 154 and 179 of the Companies (Court) Rules. It is submitted that Section 529A of the Act, which was introduced by Act No. 35 of 1985, will prevail over the SFC Act, as amended in 1956, being a subsequent legislation and being a special law, which will prevail over general law. It is further submitted that against an insolvent company interest can be claimed only upto the date of presentation of the winding up petition and no interest can be claimed after commencement of the winding up proceedings. While referring to a decision of the Kerala High Court in *Kerala Financial Corporation v. Official Liquidator*, High Court of Kerala (1996)87 Company Cases 183, learned Counsel submitted that whether a creditor is secured or unsecured, the insolvency proceedings do not permit payment of interest for the period after the date of adjudication of insolvency. A secured creditor is entitled to get his claim regarding interest admitted only upto the date of winding up and the payment of interest after that date will be governed by Rule 179 of the Companies (Court) Rules, 1959. While further

referring to a decision of the Allahabad High Court in *U.P. Oil Mills Agency v. Saraswati Soap and Oil Mills Ltd.* (1954)24 CompCas 450, it is submitted that the debtor is entitled to interest only upto the date of presentation of the winding up petition. The debtor is not entitled to interest upto the date of repayment nor even upto the date of the winding up order. Learned Counsel also relied upon a decision of the Andhra Pradesh High Court in *A.P. State Financial Corporation v, Mopeds India Limited (in liquidation) and Ors.* (2005) 124 CompCas 833 and submitted that in view of Rule 154 of the Companies (Court) Rules, 1959, the liabilities of the company in liquidation have to be determined as on the date of winding up and not subsequent thereto. Thus, learned Counsel submitted that the Official Liquidator has rightly decided the claim of the appellant Corporation by taking the outstanding dues including the interest on the date of winding up order and held that on that date, an amount of Rs. 21,89,932/- was due to the appellant-Corporation. The claim of the appellant-Corporation regarding interest after the date of winding up order has rightly been rejected. Learned Counsel further submitted that against the outstanding loan amount, an amount of Rs. 17,72,123/- was paid by the Ex-Managing Director on behalf of the company in liquidation under the settlement, which was not finalized, but the payment of the said amount has rightly been adjusted by the Official Liquidator towards liability of the Company. It is further submitted that the appellant Corporation did not produce any proof that the said payment was made towards the interest. Therefore, on this account also, there is no illegality in the impugned order passed by the Official Liquidator.

10. After hearing the arguments of learned Counsel for the parties, I am of the opinion that no illegality has been committed by the Official Liquidator, while adjudicating the claim of the appellant Corporation. The object of a winding up is to realise the assets, and discharge the liabilities and then, if there be any surplus, to pay it off to the shareholders, according to their respective interests. In order to ascertain the liabilities, Section 528 of the Act requires that all persons having claims of whatever nature against the Company, should submit proofs of what is due to them. Every kind of liability whether, present or future, certain or contingent, and however difficult of valuation, is provable and has got to be proved. Before considering the claim of various persons and distributing the sale proceeds of the assets of the company in liquidation, the Official Liquidator is to decide the question of priority between different classes of creditors. As secured creditor is entitled to receive his dues, firstly out of the sale proceeds. It is not necessary for a secured creditor to prove his debt in the winding up. He may rely on his security and proceed to realise his debt. The proviso to Section 529 of the Act further provides that security of every secured creditor shall be deemed to be subject to a *pan passu* charge in favour of the workmen to the extent of the workmen's portion therein. Section 529A further provides that notwithstanding anything contained in any other provision of the Act or any other law for the time being in force in the winding up of a company (a) workmen's dues; and (b) debts due to secured creditors to the extent such debts rank under

Clause (c) of the proviso to Sub-section (1) of Section 529 *pari passu* with such dues, shall be paid in priority to all other debts. The purpose of these provisions is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company. Under these provisions, the workmen of the company become secured creditors by operation of law to the extent of workmen's dues, provided there exists secured creditor by contract. Section 530 of the Act provides the manner in which preferential payment is to be made to the creditor of a company under liquidation. A creditor cannot claim preferential treatment outside the provision of this section. This section is subject to the provision 529A of the Act. Therefore, only if there is any balance left after satisfying the claim u/s 529A, the other creditors will get the remaining balance. Therefore, the sale proceeds of the assets of the company in liquidation are to be distributed among various claimants in accordance with the aforesaid provisions of the Act and Rules 154 and 179 of the Companies (Court) Rules, 1959. Rules 154 and 179 are re-produced below:

154. The value of all debts and claims against the company shall, as far as is possible, be estimated according to the value thereof at the date of the order of the winding up of the company or where before the presentation of the petition for winding up, a resolution has been passed by the company for voluntary winding up, at the date of the passing of such resolution.

179. In the event of there being a surplus after payment in full of the claims admitted to proof, creditors whose proofs have been admitted shall be paid interest from the date of the winding up order or of the resolution, as the case may be, up to the date of the declaration of the final dividend, at a rate not exceeding 4 per cent per annum, on the admitted amount of the claim, after adjusting against the said amount the dividends declared as on the date of the declaration of each dividend.

(emphasis added)

These provisions have been interpreted by various courts. The cut off date for following the ratio at which sale proceeds are divided on a *pari passu* basis as per Section 529 of the Act should be the date of winding up order (See: *A. Shanmugham Vs. Official Liquidator*, High Court, Madras and others, *In Kerala Financial Corporation v. Official Liquidator*, High Court of Kerala (supra), it was held that a secured creditor can not claim interest after the date of winding up order. It was further held that whether it be an unsecured creditor or a secured creditor, the insolvency proceedings do not permit payment of interest after the date of adjudication of insolvency. A secured creditor is, entitled to get his claim admitted regarding interest only upto the date of winding up and the payment of interest after that date will be governed by Rule 179 of the Companies (Court) Rules, 1959. In both cases, payment of interest after the date of winding up will arise only where there is surplus. In *U.P. Oil Mills Agency v. Saraswati Soap and Oil Mills Ltd.* (supra), it was held by the Allahabad High Court that in the winding up of a company, the debtor is entitled for interest only upto the date of

presentation of the winding up petition and he is not entitled to interest upto the date of repayment nor even upto the date of the winding up order. In *Mattoor Chits and Finance (P.) Ltd. (In Liquidation) Vs. Mrs. Mary Baby*, it has been held by the Kerala High Court that after passing of the winding up order, no new rights can be created and no uncompleted rights can be completed. Even a continuing contract between the respondent and the claimant comes to an end by commencement of the winding up proceedings. It has been held that after commencement of the winding up proceedings, no interest can be claimed by the creditor.

11. Though the aforesaid general legal position has not been controverted by learned Counsel for appellant Corporation, but he submitted that position of the appellant Corporation is different, in view of Sections 29, 31 and 46B of the SFC Act. According to him, the loan advanced to the company in liquidation was secured by a registered mortgage deed, which was executed in accordance with the provisions of the SFC Act. It is the case of the appellant Corporation that under the provisions of the said Act, the Corporation is entitled to recover the outstanding dues along with interest till the outstanding amount is paid. It is the further case of the appellant Corporation that in view of the provision of Section 46B of the SFC Act, the limitation that no interest can be granted to the secured creditor after order of winding up, is not applicable in case of appellant Corporation. Learned Counsel submitted that keeping in view the provisions of SFC Act, a secured creditor coming within those Acts stands outside the winding up and his position is different from the ordinary creditor. These contents of learned Counsel for the appellant Corporation cannot be accepted. In *International Coach Builders Ltd. Vs. Karnataka State Financial Corpn.*, the Supreme Court has held that a right is available to a Financial Corporation u/s 29 of the SFC Act against a debtor, if a company, only so long as there is no order of winding up. When the debtor is a company in winding up, the rights of financial corporations are effected by the provisions in Sections 529 and 529A of the Act. It was further held that the proviso to Section 529 of the Act creates a *pari passu* charge in favour of the workmen to the extent of their dues and makes the Liquidator the representative of the workmen to enforce such a charge. It was further held that whether a creditor is standing outside the winding up or not, the distribution of the proceeds has to be in terms of Section 529 read with Section 529A of the Act, in case where the debtor is a company in liquidation. Therefore, there is no conflict on the question of applicability of Section 529 read with Section 529A of the Act to cases where the debtor is a Company and is in liquidation. The only conflict, if any, is in view of the right of the debtor to recover the amount under the provisions of the SFC Act or under the provisions Recovery of Debts Act. It was held by the Supreme Court in *Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another*, that as far as the SFC Act is concerned, Section 529A of the Act, which was introduced by Act No. 35 of 1985, with over-riding provision would prevail over the SFC Act, as amended in 1956, notwithstanding Section 46B of the SFC Act. It was held that

where the assets are realised by the secured creditor, even if it be by provisions under the SFC Act, distribution of the assets of a company under winding up could only be made in terms of Section 529 of the Act. It was held that as far as distribution of assets of the company in winding up is concerned, there is no conflict. In this regard, the Supreme Court summarised the legal position as under:

Thus, on the authorities what emerges is that once a winding up proceeding has commenced and the Liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be with the association of the official Liquidator and under the supervision of the Company Court. The right of a financial institution or of the Recovery Tribunal or that of a financial corporation or the court which has been approached u/s 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the Company Court the right to ensure that the distribution of the assets in terms of Section 529A of the Companies Act takes place. In the case on hand, admittedly, the appellants have not set in motion any proceeding under the SFC Act. What we have is only a liquidation proceeding pending and the secured creditors, the financial corporations approaching the Company Court for permission to stand outside the winding up and to sell the properties of the company-in-liquidation. The Company Court has rightly directed that the sale be held in association with the Official Liquidator representing the workmen and that the proceeds will be held by the Official Liquidator until they are distributed in terms of Section 529A of the Companies Act under its supervision. The directions thus, made, clearly are consistent with the provisions of the relevant Acts and the views expressed by this Court in the decisions referred to above. In this situation, we find no reason to interfere with the decision of the High Court. We clarify that there is no inconsistency between the decision in *Allahabad Bank v. Canara Bank* and in *International Coach Builders Ltd. v. Karnataka State Financial Corporation*, in respect of the applicability of Sections 529 and 529A of the Companies Act in the matter of distribution among the creditors. 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. It was in that context that the rights of the Official Liquidator were discussed in *International Coach Builders Ltd.* The Debts Recovery Tribunal and the District Court entertaining an application u/s 31 of the SFC Act should issue notice to the Liquidator and hear him before ordering a sale, as the representative of the creditors in general.

Thus, from the above legal position, it is clear that once a winding up proceeding has commenced, the Liquidator is in charge of the assets of the company being wound up and the sale proceeds of the security is to be distributed in accordance with the provisions of the Act i.e. Section 529 read with Section 529A of the Act and rules made thereunder. In the instant case also, the appellant Corporation has not set in motion any proceeding under the SFC Act, rather the appellant Corporation has participated in the liquidation as well as sale proceedings. Therefore, it cannot be said that the appellant Corporation stands outside the winding up. Even otherwise, it is immaterial whether a creditor stands outside the winding up or not as distribution of the sale proceeds after the winding up order is to be made in accordance with the provisions of the Act. Thus, the judgment of this Court in *State Bank of Patiala v. North Land Sugar Complex Ltd.* (supra) is not applicable to the facts and circumstances of this case and on the basis of the said judgment, it cannot be held that a secured creditor, who stands outside the winding up can claim interest out of the sale proceeds of the company in liquidation after the order of winding up. Thus, in view of the aforesaid legal position, the Official Liquidator has rightly valued the claim of the appellant-Corporation on the date of winding up order and it has been rightly held that on that date, an amount of Rs. 21,89,932/- was outstanding and the remaining amount, which was of interest, was to be considered u/s 530 of the Act being unsecured preferential creditor.

12. In last, the contention of learned Counsel for the appellant Corporation that the Official Liquidator has committed illegality while adjusting the amount of Rs. 17,72,123/- paid by the Ex-Managing Director of the company in liquidation to the appellant Corporation in the year 2003 under a proposed settlement, cannot be accepted. Undisputedly, the said amount was paid by the Ex-Managing Director on behalf of the company in liquidation in discharge of its liability. There is no proof on the record which indicates that the said amount was paid by the Ex-Managing Director only against interest. Therefore, the Official Liquidator has rightly adjusted the said amount towards the liability of the Company in liquidation to pay the amount of Rs. 21,89,932/- on the date of liquidation. I do not find any illegality in the said adjustment made by the Official Liquidator.

13. In view of the above, this appeal is without any merit and the same is, accordingly, dismissed.