(2007) 12 AP CK 0076

In the Andhra Pradesh High Court

Case No : Company Application No. 2109 of 2007 in R.C.C. No. 5 of 1993

IFCI Ltd. and Others APPELLANT

Vs

A.P. Scooters Ltd. (In Liquidation) RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Companies (Court) Rules, 1959 — Rule 159, 163, 169, 9
Companies Act, 1956 — Section 457, 529, 529A, 530

Citation : (2008) 141 CompCas 911 : (2008) 84 SCL 128

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : P.V. Markandayulu, for the Appellant; M. Anil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This application is filed by M/s. IFCI, IDBI and Standard Chartered Bank under Sections 457 and 529A of the Companies Act, 1956 ("the Act", for brevity) read with Rule 9 of the Companies (Court) Rules, 1959. The following relief is prayed:

To direct the official liquidator, respondent No. 1 herein to disburse 50 per cent, of the amount of the balance sale proceeds towards the dues of interest on the basis and ratio of principal outstanding to the applicants being secured creditors pending adjudication of proof of claims after retaining balance 50 per cent, of the sale proceeds towards workmen dues, if any.

2. The three applicants are secured creditors of M/s. A.P. Scooters Ltd. The said company was ordered to be wound up by this Court by an order dated August 18, 1994, in R.C.C. No. 5 of 1993. The official liquidator attached to this Court was appointed as liquidator, who took possession of the assets on January 24, 2006, from the receiver appointed by the High Court of Judicature, Mumbai. As ordered by this court, the official liquidator sold the assets of the company in liquidation. An amount of Rs. 31.25 crores was realised by sale of land and

buildings and an amount of Rs. 3.60 crores was realised by sale of plant and machinery. When the liquidation proceedings are pending, an application was moved by these three secured creditors for interim payment. Alt order was passed by this Court on March 29, 2007, for payment of Rs. 561.50 lakhs to all the secured creditors. The applicants again moved C. A. No. 1101 of 2007 for disbursement of at least 50 per cent. pending adjudication of claims by the official liquidator. This application was dismissed, directing the official liquidator to complete the adjudication. Yet again present application is filed.

3. The official liquidator has filed report opposing the application. Two grounds are urged. First, in pursuance of invitation of claims in Form No. 63 by the official liquidator, workmen and secured creditors filed their claims before the official liquidator and they are pending. The workmen claim a sum of Rs. 22.08 crores and that as per the statement of affairs (SoA), Rs. 3.10 crores is due to the workmen. The adjudication is underway and it is likely to take some time.

4. Learned standing counsel for the applicants vehemently and strenuously contends that even according to the official liquidator, an amount of Rs. 27.63 crores is lying to the credit of the company and therefore there cannot be any objection to make interim payment of 50 per cent, to the three applicants herein. Per contra learned Counsel for the official liquidator submits that unless and until claim of workmen is adjudicated in accordance with Sections 529, 529A and 530 of the Act, no further amount can be released or disbursed to the secured creditors. He would like this Court to take into consideration that the entire amount of principal advanced by IFCI, IDBI and Standard Chartered Bank was already paid and therefore he would urge that they have to await final adjudication.

5. The point for consideration is whether secured creditor as of right is entitled to be paid any amount due, even before adjudication of claim by the liquidator?

6. The application is moved by the applicant under Sections 457 and 529A of the Act. A careful perusal of these provisions would show no such power inheres either in the court or in the official liquidator to make interim payment out of liquidation assets to the secured creditors even before claims of such secured creditors are adjudicated by the official liquidator in accordance with Rules 159, 163 and 169 of the Rules. Indeed no provision of law has been brought to the notice of this court, which confers jurisdiction on the court to grant interim payment. Therefore, the application is not maintainable. Secondly, admittedly, a similar application filed by applicants was already rejected by this Court and hence this application cannot be entertained.

7. Learned Counsel for the official liquidator has placed reliance on Textile Labour Association and Another Vs. The Official Liquidator and Another, . In the said case, a Division Bench of the Supreme Court considered question of right of secured creditor to claim debt due from the company in liquidation. The Supreme Court observed that as Section 529A of the Act overrides preferential claim u/s

530 of the Act as well, workers dues and the dues to secured creditors are to be treated pari passu and that workmen dues are to be treated as prior to other dues. It was laid down as under (page 509):

The effect of Sections 529 and 529A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen''s dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors u/s 529A to the extent of the workmen dues. The purpose of Section 529A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers'' dues and such charge will be pari passu with the charge of the secured creditors. There is no other statutory provision overriding the claim of the secured creditors except Section 529A. This section overrides preferential claims u/s 530 also. u/s 529A the dues of the workers and debts due to the secured creditors are to be treated pari passu and have to be treated as prior to all other dues.

8. In view of the above legal position, payment of moneys to secured creditors by way of interim disbursement ignoring Section 529A of the Act does not arise. Furthermore, admittedly, the claims made by the secured creditors as well as the workers are under adjudication and in such a situation even if interim order is passed in exercise of inherent jurisdiction, the same would result in denying the right of workers to claim their dues and also renders Section 529A of the Act ineffective. Such an interpretation is neither permissible nor proper.

9. It is no doubt true that as is the practice in this Court immediately after realisation of the assets by sale of the properties of the company in liquidation by the official liquidator, this Court is permitting the official liquidator to make interim payment to secured creditors. This is so in spite of the fact that there is no such power. Reason for this Court in allowing such interim payment is that by paying at least a part of loan amount to the secured creditors, financial damage already done can be ameliorated to certain extent. Rule of practice as is in vogue cannot however ignore Sections 529, 529A and 530 of the Act. When the liquidator is adjudicating the claim made by the secured creditors, other creditors and also workmen, this Court by resorting to such practice cannot and should not make orders directing the official liquidator to make interim payment.

The company application is devoid of merit and is accordingly dismissed.

