

(2012) 07 GUJ CK 0007
In the Gujarat High Court

Case No : Co. Application No. 26 of 2010 and Co. Petition No. 18 of 1999

IFCI Ltd.

APPELLANT

Vs

Official Liquidator of Gujarat Inject Ltd.

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Companies Act, 1956 — Section 124, 125, 446, 529, 529(1)
Industrial Disputes Act, 1947 — Section 2(s)
Provincial Insolvency Act, 1920 — Section 2(e)
Registration Act, 1908 — Section 17, 17(I)(b)(c), 18
Transfer of Property Act, 1882 — Section 100

Citation : (2012) 111 CLA 238 : (2012) 115 SCL 125

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Indravadan Parmar, for the Appellant; Hiren M. Modi, Bharat Jani, S.S. Panesar, Dipak R. Dave and Anip A. Gandhi, for the Respondent

Judgement

K.M. Thaker, J.—The applicant bank has taken out summons dated 27.1.2010 seeking below mentioned direction:-

(A) Your Lordships may be pleased to direct the official liquidator to determine the inter se ratio for the purpose of final distribution between the secured creditors and the workers in a time bound schedule.

(B) Your Lordships may be pleased to direct the official liquidator to notify before the Hon"ble High Court the exact amount available for distribution to the secured creditors and the workers.

(C) Your Lordships may be pleased to direct the official liquidator to make ad-hoc disbursement of an amount as deemed fit and just by this Hon"ble Court pending hearing and final disposal of this company application.

(D)...

In support of the summons the applicant has filed affidavit wherein the applicant

has stated, inter alia, that:-

(a) The company (in liquidation) is ordered to be wound up vide order dated 20.1.2000 passed in Company Petition No. 18 of 1999.

(b) In pursuance of the order dated 20.1.2000 the OL took possession of the assets of the company and on 28.2.2008 issued advertisement in the newspapers for disposal of the specified assets of the company.

(c) Sale of some of the properties/assets was confirmed, vide order dated 14.10.2008 in favour of the highest bidder viz. M/s. Selco Automotive Limited who offered Rs. 1.90 Crores during the inter-se bidding.

(d) In the recovery proceedings initiated by present applicant (i.e. Original Application No. 293 of 2000) learned tribunal passed order dated 12.3.2004 and thereafter also issued Recovery Certificate. On the basis of the Recovery Certificate, the Recovery Officer commenced proceedings under R.P. No. 2060/A to recover the amount awarded by learned Tribunal (i.e. Rs. 12,87,76,858/- with running interest @ of 12% per annum).

2. In response to the notice by the Court, the OL filed his report dated 20.3.2010 stating, inter alia, that

(a) After the sale confirmation order dated 14.10.2008 passed in OLR No. 115 of 2008 vide order dated 30.7.2009 passed in Company Application No. 297 of 2009, OL was permitted to invite claims from the creditors and the workers.

(b) In response to the advertisement published on 21.8.2009 OL received claims from the applicant and other creditors and workers, the details whereof are mentioned by OL in his report dated 20.3.2011. In his report OL also declared that after deducting the expenses incurred by office of OL, as on 28.2.2010 sum of Rs. 1,74,65,840/- remain available for disbursement.

3. The said report of OL was followed by another report dated 24.8.2010 wherein the OL having regard to the amount available for disbursement vis-?-vis the amount claimed by the applicant and other creditors and the workers as well as the disbursement ratio recommended by Chartered Accountant, OL suggested below mentioned pattern for disbursement of the available amount of Rs. 1,75,00,000/-:-

4. At this stage it is necessary to mention that after the above referred report dated 24.8.2010 was filed by OL, one of the creditors i.e. opponent No. 2 (IDBI) filed affidavit dated 27.9.2010 raising objection against the report and more particularly the application filed by applicant - IFCI.

The said opponent also raised objection against the report of the Chartered Accountant and submitted that:-

5. I say and submit that the said chartered accountant has further seriously erred in not taking into consideration the secured amount for the loan of Rs.

84,26,000/-financed by IDBI in joint participation with IFCI Limited and ICICI Bank Limited. IFCI Limited is a lead bank. Though he has stated that the charge is registered with ROC (Registrar of Companies) for Rs. 164 lakh by filing from No. 8 on 14.7.1986, he has stated that it is an exclusive charge of IFCI Limited and thereby he has declared IDBI as unsecured creditor so far as the amount financed by IDBI is concerned in jointly with IFCI Limited and ICICI Bank Limited. This fact is evident from the letter issued by the applicant bank on 28.7.2010 to the said chartered accountant. A copy of letter dated 28.7.2010 is annexed hereto and marked as Annexure-R1 to this affidavit in reply. In this letter, the applicant bank has clearly stated that rupee term loan of Rs. 164 Lakh was sanctioned and disbursed by three creditors viz. IFCI Limited, IDBI and ICICI Bank Limited under Project Finance Participation Certificate Scheme and the said amount of Rs. 164 lakh was shared by three institutions as under:-

IFCI Limited Rs. 17.92 lakh

IDBI Rs. 84.26 lakh

ICICI Bank Limited Rs. 44.82 lakh

The certificate of registration of the charge is placed on record at page No. 37 which tallies with figure shown in the letter of IFCI Limited.

5, The said opponent No. 2 IDBI claimed that the Chartered Accountant committed mistake in considering the claim by ICICI bank inasmuch as the Chartered Accountant considered the claim of ICICI Bank at Rs. 4,65,24,121/-as on 20.1.2000 i.e. date of winding up whereas according to the judgment of the learned tribunal, the claim of ICICI bank was to the extent of Rs. 1,05,27,945 /- only, as on 1.3.2000 and that therefore on 20.1.2000 i.e. date of winding up it could not be Rs. 4,65,24,121/- as considered by the Chartered Accountant. Accordingly, the report of the Chartered Accountant came to be assailed.

5.1 In the wake of said objection by the opponent No. 2 the OL filed further report dated 24.12.2010 wherein OL stated, inter alia, that:-

2. That, M/s. Kirti J. Nayak and Associates, Chartered Accountant vide letter dated 24.11.2010 have submitted the supplementary report in the office of the official liquidator regarding verification of claims of the secured creditors and workers and also a report regarding ratio of disbursement amongst the secured creditors and workers. A copy of the supplementary report dated 24.11.2010 received from the chartered accountant, M/s. Kirti J. Nayak and Associates is annexed and marked as Annexure-B

3. It is most respectfully submitted that on perusal of the supplementary report of the chartered accountant, it is observed that the claims of the secured creditors and workers have been quantified by the chartered accountant and the revised ratio of distribution has been worked out by them as under:-

This report is submitted in compliance of the order dated 27.9.2010 for such

other and further orders and directions as may be considered just and appropriate by this Hon"ble Court.

5.2. After above referred details and objection came on record, respondent No. 5 Bank of India came out with its affidavit claiming, inter alia, that vide judgment dated 23.10.2000 the learned tribunal had allowed its application No. 149 of 1996 and passed judgment in its favour for sum of Rs. 4,65,24,121.85 with running interest @ 17.5% per annum from 30.7.1996. The said bank claimed that it has to recover a sum of Rs. 7,50,20,145.96 from the company, however the Chartered Accountant has wrongly quantified its claim to the extent of only Rs. 4,65,24,121/- whereas its correct claim amount is Rs. 7,50,20,145.96 (and the reduction to the extent of Rs. 2,84,96,024.96 was incorrect).

5.3 Thereafter, the applicant bank filed further affidavit dated 18.7.2011. On the other hand, the opponent No. 2 IDBI again came out with affidavit objection dated 20.7.2011 (pages 173 to 175) and opponent No. 8 ARCIL filed its affidavit/objection dated 21.7.2011. The said opponent ARCIL has tried to present bifurcation of the sale consideration of Rs. 1.90 Crores so as to demonstrate as to what amount was received from disposal of which particular properly and on that basis what would be the percentage amount received from disposal of the particular property vis-?-vis the total amount received from disposal of the properties. The details mentioned by opponent No. 8 read thus:-

5.4 In the interregnum OL had called for fresh report of the Chartered Accountant in light of the objection raised by the creditors. The Chartered Accountant submitted his fresh report dated 21.9.2011 and on that basis OL filed his report dated 12.10.2011.

6. After the above referred report dated 21.9.2011, the applicant filed an affidavit dated 21.11.2011 raising objections against the said report. The applicant has claimed that the said report dated 21.9.2011 contradicts the earlier report by the same Chartered Accountant and it does not comply the directions vide order dated 22.7.2011.

6.1 Thereafter, in furtherance of the order dated 1.12.2011 passed in Company Application No. 26 of 2010 and 27 of 2010, Official Liquidator filed report dated 15.12.2011 stating inter alia, that in view of the order dated 1.12.2011, the Chartered Accountant was asked to clarify factual position with regard to registration of charge against immovable property, by IFCI, ICICI and IDBI. The Official Liquidator has stated in the said report that:-

...and they orally informed that no charge on the immovable property is appears to be filed with Registrar of Companies, Gujarat by IFCI, ICICI and IDBI u/s 125 of the Companies Act, 1986. The said Chartered Co. again confirmed the said position in the letter dated 15.12.2011 i.e. on the Company's immovable properties such as land and building IDBI, ICICI and IFCI have no charge and they are not a secured creditors on that property...." In this context, it would be appropriate to take into account the exact clarification made by the Chartered

Accountant in the communication dated 15.12.2011. It is stated, inter alia, therein, that"... none of the Financial Institutions viz. IFCI, IDBI and ICICI has complied with the requirements of section 125 of the Companies Act, 1956 for registration of their charge with the Registrar of Companies, Gujarat in respect of immovable properties of Company. We again confirm on the basis of documents supplied by the financial institutions in support of their claims and also from online search of RoC records from MCA 21 website that no charge is registered on the immovable property of the company in favour of IFCI, IDBI and ICICI. Therefore in view of section 125 of Companies Act, 1956, the aforesaid Financial Institutions can not claim the status of secured creditors qua immovable property of the Company.

[Emphasis supplied]

7. Thus, what has ultimately emerged from the reports by the Chartered Accountant is the fact that so far as the immovable properties of the company are concerned, any charge over any immovable properties of the company has not been registered in accordance with the provisions contained u/s 125 of the Act either by the applicant - IFCI or the other creditors and in that view of the fact - situation, the Chartered Accountant has reported that the said financial institutions cannot claim status of "secured creditors.

7.1 In this context, it is pertinent to note that in reply to Court's query during hearing of present application, even learned Counsel Mr. Parmar for the applicant has not disputed the fact that the applicant did not get the charge against immovable properties (which the applicant is presently claiming against immovable properties of the company) registered within 30 days with the Registrar of Companies in accordance with section 125 of the Act and that it does not hold "registered charge" against the immovable properties.

7.2 The applicant/creditor(s) upon being confronted by the Chartered Accountant's report that the creditors cannot claim status of secured creditor, have now contended that they hold order dated 12.3.2004 passed by learned Debts Recovery Tribunal and their claim is supported by the said order passed by the learned tribunal and that therefore their claims are secured claim and status of secured creditor cannot be denied to them.

7.3 Thus the applicant and other creditors who allegedly hold charge against the assets of the company - particularly immovable properties - but have not got the charge registered are aggrieved by the said report of the chartered accountant. The applicant has sought to rely on the said order dated 12.3.2004 passed by the learned tribunal.

8. Mr. Parmar, learned counsel, appearing for the applicant has contended that the omission to register the charge would not affect the right of the creditor to recover the amount and would not affect the cause of action. He also contended that omission to register the charge would not affect the security so as to deny the right to enforce the mortgage or to realize the security. He also contended

that the liquidator cannot go behind the decree so as to reject the claim on the ground that it is void. Mr. Parmar also claimed that the applicant has the status of secured creditor in view of the order passed by the learned tribunal. Mr. Parmar, learned advocate for the applicants, relied on below mentioned decisions:-

- (1) A. Shanmugham Vs. Official Liquidator, High Court, Madras and others,
- (2) Maharashtra State Financial Corporation Vs. Masvi and Company Pvt. Ltd. and another,
- (3) UCO Bank v. Official Liquidator, High Court of Bombay (1994) 2 SCL 276 (SC)
- (4) Indian Bank v. Official Liquidator, Chemmeens Exports (P.) Ltd. (1998) 16 SCL 524 (SC)
- (5) Allahabad Bank Vs. Canara Bank and Another,
- (6) Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another,
- (7) ICICI Bank Ltd. Vs. Sidco Leathers Ltd. and Others,
- (8) Bharat Petroleum Corporation Ltd. Vs. The Great Eastern Shipping Co. Ltd.,
- (9) Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport and Another,

8.1. Per contra, learned counsel appearing for workmen has contended that in view of the provisions u/s 125 of the Act registration of charge is compulsory and any charge which is not registered with the Registrar of the Companies in accordance with the said provision will be void against the liquidator and the workmen or other secured and unsecured creditors can raise objections against claim made by a creditor on the basis of unregistered charge. He also contended that since the order by the learned tribunal is not registered with the Registrar in accordance with the said provision neither the applicant can claim status of secured creditor on the strength of the order by the learned tribunal nor their claim made on the basis of such order can be considered as secured claim and that therefore, such claim cannot be entertained u/s 529A read with Section 529 of the Act and such claim cannot be included or taken into account for determining the total eligible claim of all secured creditors and for determining the disbursement ratio for preferential and priority disbursement on pari-pasu basis amongst the secured creditors and the workmen. The learned counsel for the workmen contended that the claim made by the applicants on the basis of the said order is rightly excluded by the Chartered Accountant on the ground that the applicant does not have status of secured creditor and the claim is not secured claim so far as the amounts realized from sale of immovable properties is concerned. Learned counsel for the workmen relied on the decision in case of Rajasthan Financial Corpn. v. Jaipur Spg. & Wvg. Mills Ltd. (2006) 71 SCL 505 (SC).

9. At the outset, couple of clarifications would not be out of place.

(a) It is necessary to mention that immovable and movable properties of the company have been auction sold and amounts have been realized from such auction sale.

(b) In the report dated 20.3.2010 OL stated that total sale consideration received from sale of movable and immovable assets of the company was to the tune of Rs. 1.90 crores.

(c) The applicant has made reference of and has heavily relied on order dated 12.3.2004 passed by the learned Tribunal which declares that the applicant is entitled for Rs. 1,79,00,000/- from the three opponents (before the tribunal).

(d) On the other hand, in the affidavit in support of the judge's summons the applicant has stated that the learned Tribunal has issued recovery certificate in a sum of Rs. 12,87,76,858/- plus interest @ 12% from the date of application, in favour of the applicant.

(e) The recovery certificate said to have been issued by the learned tribunal is not placed on record along with the application.

(f) The gap between Rs. 1,79,00,000/- allowed by the learned tribunal's order dated 12.3.2004 and the amount said to have been mentioned in the recovery certificate is not explained by the applicant.

(g) On the ground that it is a secured creditor (i.e. by claiming status of secured creditor) applicant has also requested for interim disbursement until final ratio for disbursement is determined.

(h) However, vide his communication dated 15.12.2011 and by earlier report the chartered accountant appointed by OL has reported that the financial institutions viz. IFCI (present applicant), IDBI and ICICI have not complied with the requirement of Section 125 of the Act for registration of charge with the Registrar in respect of immovable property and that therefore the said financial institutions cannot claim status as secured creditors qua immovable property of the company.

(i) Therefore, the workmen have opposed the claim of the applicant and other financial institutions for disbursement by presetting their claim as claim by secured creditors.

(j) In the report dated 21.9.2011 by the chartered accountant or in the report filed by OL including the aforesaid last report dated 12.10.2011 the position related to charge, if any, against movable property of the company is not clarified with reference to the requirement prescribed and contemplated u/s 125 of the Act.

(k) It is not disputed by the creditor/s - applicant/s that the charge of the applicant is not registered in accordance with Section 125 of the Act. So as to

come out of the said difficulty, reliance is placed on the order dated 12.3.2004 passed by the learned tribunal.

(I) In the application No. 293 of 2000 (wherein the said order dated 12.3.2009 is passed) present applicant - IFCI as well as IDBI and ICICI Bank Ltd. were party applicants and Official Liquidator of the company was impleaded as one of the defendants along with the Directors of the company.

10. In light of the facts of present case and in view of rival submissions, as well as the report of Chartered Accountant and the said order dated 12.3.2004, it is appropriate to take into account relevant observations in the order and also the relevant provisions i.e. the provisions u/s 125, Section 529 and Section 529A of the Act.

10.1 So far as the order dated 12.3.2004 is concerned, learned tribunal has observed inter alia, that:-

(b) The applicant bank in proof of debts filed affidavit vide Exh. A/ 7, which is sworn by the DGM (Law) of the applicant No. 1 Bank and on behalf of the applicants No. 1, 2 and 3 has stated on oath that he is conversant with the facts and circumstances of the case and the various agreements and documents executed from time to time are summarized in the affidavit that respondent No. 2 and 3 are the guarantors and they have unconditionally guaranteed the entire repayment of the financial facilities granted by the applicant No. 1, 2 and 3 that the respondent No. 1 company in liquidation on 28.10.2008 and from time to time executed Loan Agreement and Debt of Hypothecation under its common seal; that on 4.11.1997 respondent No. 2 & 3 executed deed of guarantee in favour of IFCI w.r.t. foreign currency loan of Japanese Yen 164,900,000; that equitable mortgage was created on 19.8.1987 by depositing title deeds and documents relating to its immovable properties at Alindra; that applicants have produced various documents with regard loan transactions vide index from Sr. No. 1 to 34 in the O.A.; that he has pursued the same and verified all the said documents and that contents of all the above documents are true and correct.

10.2 In the operative part of the said order dated 12.3.2004, the learned tribunal has passed below mentioned directions:-

(A) The applicant bank is entitled to recover from the respondents 1 to 3, jointly and severally, a sum of Rs. 1,79,00,000=00 p. with cost and further interest at the rate of 12% per annum, from the date of filing of the application till realization.

(B) Respondent are given one month's time to settle the claim of the applicant bank; failing which, the bank may proceed to sell the movable assets and mortgaged and other immovable properties of the said respondents and adjust the sale proceeds towards the amount due. This period of one month will not bar the Recovery Officer to issue demand notice.

(C) Issue recovery certificate accordingly and parties be informed.

(D) Bill for the cost of the suit be drawn in accordance with the Form No. 2 of the Appendix D to the CPC 1908 read with relevant rules and regulations applicable under the Act.

10.3 So far as the relevant provision under said Section 125 of the Act is concerned, the said provision reads thus:-

125. Certain charges to be void against liquidator or creditors unless registered. -
(1) Subject to the provisions of this Part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the registrar for registration in the manner required by this Act within [thirty] days after the date of its creation:

Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.

(2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

(3) When a charge becomes void under this section, the money secured there by shall immediately become payable. (4) This section applies to the following charges:-

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge on uncalled share capital of the company;
- (c) a charge on any immovable property, wherever situate, or any interest therein;
- (d) a charge on any book debts of the company;
- (e) a charge, not being a pledge, on any movable property of the company;
- (f) a floating charge on the undertaking or any property of the company including stock-in-trade;
- (g) a charge on calls made but not paid;
- (h) a charge on a ship or any share in a ship;
- (i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright.

(5), (6), (7) and (8)

11. The said section 125 of the Act provides, inter alia, that any charge created against any properties of the company in liquidation shall be void qua the Liquidator, if such charge is not registered with the Registrar of Companies within 30 days (or such extended period by order of the Registrar).

11.1 In the cases where the company is in liquidation and payments are to be disbursed amongst secured creditors in light of the provisions contained u/s 529A read with Section 529 of the Act, the effect of the said provision u/s 125 of the Act would be that so much of charge which is not registered in accordance with provision u/s 125 of the Act will not acquire status of, and will not be treated as, "secured charge" for the purpose of Section 529A and Section 529 of the Act and the creditor holding such unregistered charge will not be treated and considered, to that extent, a "secured creditor" in respect of the said charge. The relevant provision u/s 529 and Section 529A read thus:-

529. Application of insolvency rules in winding up of insolvent companies. - (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to-

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security,-

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied ratably for the discharge of workmen's dues; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor instead of relinquishing his security and

proving for his debt proceeds to realise his security, he shall be liable to 3 [pay his portion of the expenses] incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.

Explanation. -For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(3) For the purposes of this section, section 529A and section 530,-

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947(14 of 1947);

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:-

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such contract with insurers as is mentioned in section 14 the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of-

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.

529A. Overriding preferential payment. - Notwithstanding anything contained in any other provision of this 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.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

11.2 Section 529 provides, *inter alia* that, the provision under law of insolvency shall be applicable in the process of winding up of insolvent company. Clause (c) of sub-section (1) of Section 529 prescribes the rights of creditors. It further provides that the security of every secured creditor shall be deemed to be subject to *pari passu* charge in favour of the workmen to the extent of workmen's portion therein and that workmen's due would mean aggregate of all wages or salary, all accrued holiday remuneration becoming payable to the workmen on termination of his employment before or by effect of winding up order in case of his death to any other person and all sums due to the workmen from Provident Fund, Pension Fund, Gratuity fund or any other Welfare fund and that the workmen's portion in relation to the security of secured creditor would mean the amount which bears to the value of the security, same proportion as the amount of workmen dues bears to the total of the dues of the workmen and the debts due to the "secured creditors."

So far as the term "workmen" is concerned, in view of the provision u/s 529(3) (a) the definition of the term u/s 2(s) of the Industrial Disputes Act, 1947, has to be taken into consideration.

The term "secured creditor" is defined u/s 2(e) of Provincial Insolvency Act, 1920. The said definition reads thus:-

Section 2(e) Secured Creditor means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor.

Thus, a person who holds a mortgage, charge or lien over a property of the

debtor would be considered "secured creditor" under the Insolvency Act.

So far as the term "charge" is concerned, Section 124 of the Act prescribes that :-

124. "Charge" to include mortgage in this Part- In this Part, the expression "charge" includes a mortgage.

Section 100 of the Transfer of Property Act defines the term "charge". The said section reads as follows:-

100. Charges. - Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained [which apply to a simple mortgage shall, so far as may be, apply to such charge].

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, [and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge].

Thus, according to Section 100 charge can be created against immovable property either by act of parties or by operation of law.

11.3 So far as the provision u/s 529A is concerned, it confers right of overriding preferential payment in favour of the dues of the workmen and debts due to the secured creditors. Section 529A of the Act confers preference and priority to dues and claims of (a) workmen; and (b) secured creditors. In view of the provision u/s 529A the "secured creditors" and the workmen are entitled for preferential and priority disbursement out of realization from company's assets. In the decision in the case of Rajasthan State Financial Corpn. (supra) the Apex Court has observed that:-

A combined reading of Sections 529A and 529 indicates that notwithstanding anything contained in any other law for the time being in force or in the Companies Act itself, there is a preferential payment provided for workmen's dues and debts due to the secured creditors to the extent such debts rank under clause (c) of the proviso to Section 529(1) *pari passu* with such dues. Therefore, when the assets of the company are sold and the proceeds realized, the debts by way of workmen's dues and that of the secured creditors have to be paid in full if the assets are sufficient to meet them and if they are not sufficient, in equal proportions.

11.4 The provision u/s 529A and Section 529 of the Act prescribe right of preferential or priority payment in favour of the workers and secured creditors.

However, what is pertinent that the said right would be available in respect of only those securities which create "charge" and only those charge which are duly "registered" with the Registrar within 30 days (i.e. in accordance with Section

125 of the Act) can be taken into account for the purpose of Section 529A read with Section 529 of the Act. Furthermore according to the said provision the security should be alive and available for realization of its value.

11.5 Thus, so as to claim status of secured creditor and to claim priority and preferential payment at the time of disbursement of the proceeds realized upon disposal of company's assets, it is necessary that (I) the creditor must be holding "charge" over/against company's assets (given as security for recovery of debt) and (ii) such charge must be registered in accordance with section 125 of the Act.

11.6 In the background of applicable provision viz. Section 529 and Section 529A read with Section 125 of the Act, the situation which would emerge is that if any creditor holds security against any asset of the company but if the charge in respect of such security is not registered within 30 days with the Registrar of Companies then such charge cannot be considered "secured charge" or secured debt for the purpose of Section 529 and 529A of the Act and therefore while determining the aggregate of workmen's due and debt of the secured creditors the claim/debt in respect of which the charge is not registered, should be excluded.

11.7 When the facts of present case are examined in light of the above mentioned provisions it emerges from the record that in present case the dispute is with reference to the immovable properties because the applicant and other two creditors claim that by virtue of order of learned tribunal they are secured creditors in respect of immovable properties as well. Whereas the chartered accountant has mentioned in his report that any creditor has not got registered with the Registrar any charge against any immovable property -assets of the company.

11.8 In present case even if it is assumed that charge was created against immovable properties (as claimed by the applicant) then also mere creation of charge (assuming it was created) against immovable properties will not suffice because for present case the important requirement is the one prescribed u/s 125 viz. the charge must be registered within 30 days with the Registrar of Companies.

11.9 Therefore, so as to cross the hurdle of the condition prescribed u/s 125 of the Act the applicant - creditor has claimed that the learned tribunal has passed order dated 12.3.2004 in its favour whereby declaration and directions are passed by the learned tribunal and it being order of the Court the non-compliance of section 125 will not render its claim void qua OL or other creditors or workers.

12. So as to appreciate the said contention, it is relevant to take into account the provisions under the Registration Act 1908, particularly the provision contained u/s 17 of the Registration Act which makes registration of certain documents compulsory. The provision under sub-section (1) of Section 17 of the Registration

Act enlists the documents of which registration is compulsory. Section 18 enlists the documents of which registration is optional. In the facts of present case Section 17(l)(b)(c) and (e) and sub-clause (vi) of sub-section (2) of Section 17 are relevant. The said provisions read thus:-

17. Documents of which registration is compulsory. -

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a)....

(b) other non-testamentary instrument which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d)...

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided....

[(1A)...

13. According to clause (b) non-testamentary instruments which purport to or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in immovable property of the value of Rs. 100/-; are required to be registered; and according to clause (c) the non-testamentary instruments under which payment of consideration on account of creation, declaration, assignment, limitation or extinction of any right, title or interest is acknowledged or the non-testamentary instrument which acknowledge the receipt of any consideration on account of creation, declaration, assignment, limitation or extinction of any right or interest, are required to be registered and according to clause (e) non-testamentary instruments transferring or assigning any decree or award or order of a Court which create, declares assigns, limits, or extinguishes right, title or interest, are required to be registered. In present case there is no transfer or assignment of Court's order or decree.

13.1 So far as the provision under clause (b) and clause (c) are concerned it is also necessary to take into account sub-section (2) of Section 17 and particularly clause (vi) of said sub-section (2). The said sub-section (2) of Section 17 and clause (vi) thereof read thus:-

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings];

13.2 Sub-section (2) of Section 17 provides, inter alia, that the requirement prescribed under clause (b) and clause (c) of sub-section (1) (viz. the requirement for registration of documents mentioned and described in the said two clauses) will not apply to the items mentioned in clause No. (i) to clause No. (xii) of said sub-section (2) of Section 17. The said twelve clauses [i.e. the items mentioned in sub-section (2)] include a decree or order of a Court (except decree or order expressed to be made on compromise or comprising immovable property which is the subject matter of the suit). Consequently, the requirement prescribed under clause (b) and/or clause (c) of sub-section (1) of Section 17 will not apply to any decree or order of a Court (except decree or order expressed to be made on compromise comprising immovable property which is the subject matter of the suit).

13.3 A special and new right can be created and conferred by a special statute and even a separate and special remedy for enforcement of such new right can be created by law (such special Act) and new and special or additional obligation can also be created by special Act (or appropriate provision).

13.4 Section 125 of the Act is one such special provision.

13.5 A charge, which, ordinarily may not require registration under Registration Act or the registration of which may be optional under Registration Act or other general laws, requires registration within 30 days with the Registrar of the Companies, for the purpose of Section 529 and 529A of the Act, otherwise, in view of the provision under said sections the charge would be void against the liquidator, other secured creditors and the workmen.

14. At this stage slight diversion or detour is necessary. It is necessary to mention that from the order dated 12.3.2004 passed by the learned Tribunal it emerges that OL was impleaded as party defendant in the application before the learned tribunal. It also appears that the said order dated 12.3.2004 is not challenged by OL. Not only this, but it also appears from the record that even during proceeding before the learned tribunal OL did not oppose the claim of the bank that the documents of title of four immovable properties (bearing survey number 23, 25/1, 24/2 and 30/2) were deposited with it and that they were deposited by one of the Directors of the company.

14.1 However it does not become clear from the order as to whether the said

four immovable properties are properties of the company or not and as to whether the said Director (viz. Mr. Mankodi) was duly authorized by appropriate resolution passed by the company to deposit the title deeds of the said four properties with the bank, or not.

14.2 So far as the issue regarding authority of said Mr. Mankodi is concerned, the company Court at this stage, cannot go behind the learned tribunal's order and examine the said issue afresh. More so when OL, despite being party to the proceeding, neither opposed the said details nor took care to examine the record and/or to place on record any other material from which correct and complete factual position may emerge.

14.3 Therefore, at this stage Court will have to proceed on the basis of the said order dated 12.3.2004 passed by the learned tribunal and notwithstanding the said limitation, it will have to be examined, as to whether the said four properties are properties of the company or not or they are personal properties of the Director/s.

14.4 Once this aspect is examined and if it comes out that the said four properties are properties of the company then OL or the Court cannot go behind the order and the claim will have to be examined in light of the said order dated 12.3.2004.

15. The question which would then arise is about the requirement prescribed u/s 125 of the Act. Section 125 of the Act prescribes, a special or new and additional requirement viz. to get the "charge" registered within 30 days with the Registrar of the Companies. Consequently, although under General Law a charge may not be required to be registered but in view of said special provision under special Act (Companies Act, 1956) registration of "charge" is necessary otherwise it would be void against all creditors, workmen and OL. However, according to the applicant in view of the order by the learned Tribunal, non-registration of charge will not render the charge void.

16. Thus, it would be necessary to ascertain as to whether the order in question creates a "charge" or not.

Whether charge is created by a particular decree or order of Court; or not, is matter of interpretation of the decree or order.

17. If on interpretation of the decree it emerges that the decree has created "charge" then the next question which would arise is whether, in view of the requirement prescribed u/s 125 of the Act, registration of charge created by decree or order of the Court is necessary or not. Differently put, the question which would then arise is as to whether an order or a decree by Court and charge created by / on account of Court's order or decree is not covered by the requirement prescribed u/s 125 of the Act. Therefore, in present case, it would be necessary to examine and understand the effect of the said order dated 12.3.2004 is concerned.

17.1 So far as the said order dated 12.3.2004 passed by the learned tribunal is concerned, learned tribunal has, by the said order, granted declaration that the applicant bank is entitled to recover a sum of Rs. 1,79,00,000/- with cost and further interest @ 12% per annum.

17.2 The learned Tribunal granted one month's time for such payment and further directed that in the event of failure to make payment within prescribed time the bank may proceed to sell the movable assets and mortgaged and other immovable properties of the respondents and that period of one month will not bar the Recovery Officer to issue demand Notice. Learned Tribunal also directed to issue Recovery Certificate. The relevant part of the said order read thus:-

(A) The applicant bank is entitled to recover from the respondents 1 to 3, jointly and severally, a sum of Rs. 1,79,00,000=00 p. with cost and further interest at the rate of 12% per annum, from the date of filing of the application till realization.

(B) Respondent are given one month's time to settle the claim of the applicant bank; jailing which, the bank may proceed to sell the movable assets and mortgaged and other immovable properties of the said respondents and adjust the sale proceeds towards the amount due. This period of one month will not bar the Recovery Officer to issue demand notice.

(C) Issue recovery certificate accordingly and parties be informed.

(D) Bill for the cost of the suit be drawn in accordance with the Form No. 2 of the Appendix D to the CPC 1908 read with relevant rules and regulations applicable under the Act."

[Emphasis supplied]

17.3 In this context it is relevant to refer to the observation by the Apex Court in decision in the case between Indian Bank's case (supra) wherein the Apex Court has observed that:-

9. In *Praga Tools Ltd. v. Official Liquidator of the Bengal Engineering Co. (P.) Ltd.* [1984 (56) Company Cases 214], a consent decree for repayment of money was passed against the Bengal Engineering Company on the suit filed by Praga Tools Company. The decree provided, inter alia, that in the event of non-payment of the decreed amount, the Praga Tools Company would be entitled to execute decree and in the event of execution of the decree, the security furnished by the Bengal Engineering Company with the Registrar under an earlier order of the court to the extent of Rs. 53,000/- would continue as security for the decree. That decree was not registered. Thereafter, Bengal Engineering Company went into liquidation and its entire assets were sold by the official liquidator. The Praga Tools Company applied claiming to be a secured creditor to the extent of Rs. 50,000/-. A learned Single Judge of the Calcutta High Court held that as the charge was created by an order of the court, it would not require registration u/s 125 of the Companies Act and that the Praga Tools Company should be treated

as secured creditor to the extent of Rs. 50,000/- and was entitled to recover the amount from the official liquidator. We approve the principle laid down by the learned Single Judge of the Calcutta High Court. We also make it clear that an order or decree of a Court creating charge on the properties of a company has to be distinguished from a preliminary decree passed in a mortgage suit based on an unregistered charge which is hit by Section 125 of the Act. We shall advert to this aspect presently.

[Emphasis supplied]

17.4 On plain reading of the said order and direction and in light of the observation by the Apex Court in the said decision in case of Indian Bank (supra) it comes out that the said order directs and stipulates that in the event of failure to make payment and settling the Bank's claims within one month the amount/dues can be realized by sale of movable assets and other immovable assets. It is directed therein that:-

(A)...

(B) Respondent are given one month's time to settle the claim of the applicant bank; failing which, the bank may proceed to sell the movable assets and mortgaged and other immovable properties of the said respondents and adjust the sale proceeds towards the amount due...

(C) and (D)

17.5 Thus the said observations and directions in the said order has extinguished the unregistered charge and the said unregistered charge, upon expiry of period of one month after the date of the order merged in the order of the Court. Accordingly as a result of and in view of the above noted observations and directions, the bank became entitled to realise its dues by sale of the immovable properties in question. The charge created by act or conduct of the parties/by a contract was kept alive for one month. During the said period the charge continued to be matter of contract but after one month the charge travelled into the realm of order of Court and merged into the order.

17.6 Section 125 of the Act will be applicable in cases where property of company in liquidation is offered as security and "charge" is created. However charge created by conduct or act of a person/company and/or by contract cannot be equated with or cannot be put on par with decree or order of Court. It may be, in given case, that the Court's order or decree is passed on the basis of mortgage created by the company however if the charge created by the act of a person/company or contract by a person/company is merged in the order or decree of the Court the security as well as relationship of the parties will be governed by the directions passed by the Court and reflected in the order or decree and, as observed by the Apex Court in the case of Indian Bank's case (supra), it will not be hit by Section 125 of the Act. If on reading and construction of the decree or order of the Court it emerges that the charge which

was within the domain of contract has not travelled into the realm of order or decree by the Court and has not merged into the Court's order then, undoubtedly, Section 125 of the Act will be attracted and will be applicable and in such situation unregistered charge will be void against all creditors and OL, however if it emerges that it has merged into Court's order or decree then Section 125 of the Act will not be applicable.

17.7 So far as the dispute between the workmen and other secured creditors on one hand and the applicant on other and their rival contentions viz. nature and scope of the requirement prescribed u/s 125 of the Act viz. Registration of the charge with the Registrar of Companies within 30 days, and its applicability to the decree or order passed by the Court, are concerned, the Apex Court has observed in paragraph Nos. 7, 18 and 19 of the decision in case of Indian Bank (supra) that:-

7. On a plain reading of sub-section (1) it become clear that if a company creates a charge of the nature enumerated in sub-section (4), after 1st day of April, 1914, on its properties, and fails to have the charge together with instrument, if any, by which the charge is created, registered with the Registrar of the Companies within thirty days, it shall be void against the liquidator and any creditor of the company. This, however, is subject to the provisions of Part-V of the Act. The proviso enables the Registrar to relax the period of limitation of thirty days on payment of specified additional fees, on being satisfied that there has been sufficient cause for not filing the particulars and instrument or a copy thereof within the specified period. Subsections (2) and (3) deal with repayment of money secured by the charge. Subsection (2) provides that the provision of sub-section (1) shall not prejudice the contract or obligation for repayment of money secured by the charge and subsection (3) says that when a charge becomes void under the section, the money secured shall become payable immediately. Though as a consequence of non-registration of charge under Part-V of the Act, a creditor may not be able to enforce the charge against the properties of the company as a secured creditor in the event of liquidation of the company as the charge becomes void against the liquidator and the creditor, yet he will be entitled to recover the debt due by the company on par with other unsecured creditors. It is also evident the Section 125 applies to every charge created by the company on or after the 1st day of April, 1914. But where the charge is by operation of law or is created by an order or decree of the court. Section 125 has no application.

18. In *Suryakant Natvarlal Surati & Ors. v. Kamani Bros Pvt. Ltd.* [1985 (58) CC 121], the company created a charge under a mortgage in favour of the trustees of the Employees' Gratuity Fund. The creditors by a preliminary decree of December 3, 1977 were entitled to receive the amount secured on the property of the company; the court fixed Decembers, 1988 as the date for redemption and ordered that in default of payment of the sum due by that date, the property was to be sold by public auction. On an application made on February 16, 1978,

the company was ordered to be wound up by an order dated August 3, 1979. As default in payment of the decreed amount was committed, the mortgages applied for leave of the court u/s 446 to execute the decree against the official liquidator by application dated July 10, 1981. Three contributories sought injunction against taking any further action on the ground that the charge created by the company was not registered u/s 125 of the Companies Act, therefore, the mortgages should be treated only as unsecured creditor. Their application was dismissed by a learned Single Judge. On appeal, speaking for the Division Bench of the Bombay High Court Justice Bharucha (as he then was) laid down, inter alia, the principle that the question of applicability of Section 125 had to be decided on the terms of the decree - whether the unregistered charge created by the mortgagor was kept alive or extinguished or replaced by an order of sale created by the decree; if upon a construction of the decree, the court found that the unregistered charge was kept alive, the provisions of Section 125 would apply and if, on the other hand, the decree extinguished the unregistered charge, the section would not apply. We are in respectful agreement with that principle. We hold that a judgment creditor will be entitled to relief from the Company Court accordingly.

[Emphasis supplied]

19. Reverting to the facts of this case, on the construction of the decree we have already held that the charge was kept alive till August 28, 1982 and thereafter in default of payment of decree amount the sale order would take effect. In this case, admittedly the decree amount was not paid before August 28, 1982, as such the matter had passed from the domain of contract to the realm of the judgment. The official liquidator filed application on March 21, 1983 seeking to declare the decree as void. By that date what was operative in the decree as void. By that date what was operative in the decree was not a mere unregistered charge but an order for sale of mortgaged property for realisation of decree amount. The preliminary decree cannot therefore be said to be void and inoperative.

17.8 The Apex Court observed that according to sub-section (1) of Section 125 of the Act if a company creates a charge on its properties and fails to have the charge together with instrument, if any, by which the charge is created, registered with the Registrar of Companies within 30 days, it shall be void against liquidator and any creditor of the company, subject to provision of part-(v) of the Act. However what is important for the issue on hand is that the Apex Court has observed in the said decision that:-

But where the charge is by operation of law or is created by an order of decree of the Court, Section 125 has no application

17.9 Having held so, the Apex Court made reference of the decision in case of Overseas Aviation Engg. (G.B.) Ltd., In re (1963) 33 Comp. Cas. 315 (CA) in which case the Court of Appeal held that the order passed by the Court giving

effect to the charge unregistered u/s 95 of the Companies Act (which is *pari materia* with Section 125 of the Act) would not be void against liquidator of the company.

17.10 The Apex Court, in the said decision in case of Indian Bank (*supra*), also considered the decision by the Division Bench of Bombay High Court wherein the Court held that the question of applicability of Section 125 of the Act should be decided in terms of the decree i.e. whether the unregistered charge created by mortgage was kept alive or was extinguished or replaced by order of sale created by decree and if upon consideration of the decree it is found that unregistered charge was kept alive, the provision of Section 125 of the Act would apply but if decree extinguished the unregistered charge then section 125 of the Act would not apply, 18.11 The legal position in connection with Section 125 of the Act clarified and declared by the Apex Court is applicable to order or decree passed by the Court inasmuch as the Apex Court has, as mentioned above, held that "where the charge is by operation or created by order or decree of the Court, section 125 has no applicability".

17.12 In light of the said observation by the Apex Court it has to be held that even though special and additional obligation is created by section 125 of the Act which requires registration of "charge" (and the instrument, if any), the said requirement will not be applicable to the cases where the charge is created by order or decree of Court if the unregistered charge is extinguished by and it has merged into order or decree of the Court. However if the decree or order of the Court has kept the charge alive then the obligation created by section 125 would be applicable with all force. Differently put, if the unregistered charge has merged in the decree or order of the Court then the relationship would be governed by the terms of the decree or order of the Court which would not be affected by obligation u/s 125 of the Act.

18. In light of the foregoing discussion of reasons it follows, so far as facts of present case and particularly the order by the learned Tribunal is concerned, that the observations and directions in the said order has extinguished the unregistered charge and the said unregistered charge, upon expiry of period of one month after the date of the order merged in the order of the Court. Accordingly as a result of and in view of the above noted observations and directions, the bank became entitled to realise its dues by sale of the immovable properties in question. The charge created by act or conduct of the parties/by a contract was kept alive for one month. During the said period the charge continued to be matter of contract but after one month the charge travelled into the realm of order of Court and merged into the order.

Thus, as held by the Apex Court, the non-registration of charge against the immovable properties of the company is not hit by the requirement u/s 125 of the Act and is not rendered void.

19. In this view of the matter, OL shall have to re-examine the claim and/or the

objections of the applicant and other creditors as well as by workers, in light of the legal position declared by the decision in case of Indian Bank (supra).

20. The OL will also have to ascertain as to whether the four properties of which reference has been made in the order passed by the learned tribunal are personal properties of the directors/guarantors or they were properties of the company.

21. The OL will also have to ascertain as to whether any other properties i.e. any properties other than the properties mentioned in the order of the learned tribunal have been auction sold. If any other properties not covered by/not mentioned in the learned Tribunal's order are auction sold they would not get the protection or benefit of the order of the learned tribunal because the protection of said order would be available to the petitioner only qua the properties mentioned in the said order dated 12.7.2004. Consequently if it is found that there was no charge against the said properties or if there was any charge it was not registered then the claim against such properties would be governed by the provision u/s 125 of the Act.

22. The above mentioned aspects entail re-verification of the claim.

23. Therefore, present application is disposed of with the clarification that OL will consider and decide the claim of the applicant and other creditors and the workers in light of the foregoing discussion and accordingly determine the disbursement ratio. The OL will also verify the aspects mentioned in the foregoing paragraphs. If OL considers it necessary then he may take assistance of chartered accountant for the said purpose and also for the purpose of getting the claims reverified by chartered accountant in Light of the above discussion. In such event the OL shall forward copy of present order to the chartered accountant so as to enable the concerned chartered accountant to examine the claims and relevant documents in accordance with legal position settled by the Apex Court.

The application is accordingly partly allowed. However, in the facts of this case, no cost.