(2010) 09 JH CK 0116

In the Jharkhand High Court

Case No : C.A. No. 10 of 2008 and C.A. No. 01 of 2010

Indradeo Prasad, Chhatu Yadav and Ranjit Kumar Sahu — APPELLANT

Vs

U.M.I. Special Steel Ltd.
 Jitendra Nath Singh Vs The Official Liquidator and Others — RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:
Companies Act, 1956 — Section 125, 529, 529A, 530
Provincial Insolvency Act, 1920 — Section 2(1)

Citation : AIR 2011 Jhar 49

Hon'ble Judges : Sushil Harkauli, J;D.N. Patel, J

Bench : Division Bench

Advocate : K.M. Verma and Lakhan Sharma, for the Appellant; M. Patra, for the Respondent

Judgement

1. Company Appeal No. 10 of 2008 was filed earlier by a workman of a company known as M/s L.M.I. Special Steel Ltd. {hereinafter referred as the Company (in liquidation)}, challenging the order dated 28.11.2008 passed by the learned Company Judge of this Court.

2. In that appeal an interim order was passed on 24.04.2009 directing that the money shall be disbursed by the Official liquidator only after obtaining permission of the Court.

3. The said interim order is still continuing and in the meantime Company Appeal No. 1 of 2010 has been filed by three workmen of the Company (in liquidation) challenging the order dated 16.04.2010 passed by the learned Company Judge, whereby the claim of these Appellants was rejected at that stage, on the ground of the aforesaid interim order passed by the Division Bench in Company Appeal No. 10 of 2008. These three workmen had prayed before the learned Company Judge that they should also be paid 50% of their verified claim in respect of wages by the Liquidator.

4. It appears that the company known as M/s. U.M.I. Special Steel Limited was ordered to be wound up. Some of the property of the company was sold by the Official Liquidator, Out of the sale-proceeds so received, some workmen had been paid 50% of their verified claim of wages. The three workmen who are Appellants in Company Appeal No. 1 of 2010 submitted their claims to the Official Liquidator late. After condoning the delay the liquidator is alleged to have verified their claim:; with regard to wages.

5. For convenience we will take up the Company Appeal No. 10 of 2008 first.

6. With nave heard the learned Counsel for the Appellants as well as the Official Liquidator in respect of the said appeal.

7. In the said Company Appeal No. 10 of 2008 the claim of the workman-Appellant basically is that the wages of the workman should get priority over and above the verified claims of the secured creditors of the company in liquidation.

8. The contention of the workman-Appellant proceeds to say that in respect of the amounts realised from the sale proceeds of the properties bearing the charge of a particular secured creditor are liable to be distributed pro rata between the workman and the creditor in whose favour the said properties were mortgaged. The workman-Appellant further proceeds to argue that money realised from the sale proceeds of such properties over which a particular secured creditor did not have any charge should be distributed to the workmen first, and the left over alone was liable to be distributed in accordance with Sections 529, 529A and 530 of the Companies Act, 1956.

9. We are unable to agree with the said submission. A reading of the aforesaid provisions i.e. Sections 529, 529A and 530 indicates that workmen of a company in liquidation have been placed at par with secured creditors and u/s 529A distribution of the money realised from the sale of the assets of the company in liquidation has to be done by giving priority to the workmen''s dues and to the dues of the secured creditors, In comparison to the dues of the others.

10. We are of the considered opinion that this statutory priority given to the workman in respect of their dues, does not oust the secured creditors in matter of preference of payment. We are also of the opinion that secured creditor is not confined, for getting the preference, to the money realised from sale of such assets of the company in liquidation over which such secured creditor has a charge.

11. Learned Counsel for the workman-Appellant has pressed into service the definition of "secured creditor" given in Section 2(1)(e) Of the Provincial Insolvency Act, 1920. While it is true that in Section 529 of the Companies Act 1956, it is provided that in winding up of an insolvent company, the same rule shall prevail and be observed as are in force for the time being under law of insolvency, but in view of the clear provision in Section 530 dealing with preferential payments, that it is subject to the provisions of Section 529A, we

have to look to Section 529A first. That Section 529A places the workmen''s dues and par with debts due to secured creditors.

12. Thus standing at par, the workmen''s dues and the debts dues to secured creditors will receive pro rata distribution out of the funds realised from the sale of the assets of the company in liquidation and none of these two have preference over the other.

13. The decision of Madras High Court in the case of A. Shanmugham v. Official Liquidator reported in (1992) 73 Comp Cas 181 is a decision treating the two dues at par.

14. A secured creditor has two options. The first option is to join the liquidation proceeds by submitting his claim before the Official Liquidator in which case he gives up his security. In such cases in distribution of the sale proceeds, the secured creditor gets preference along with the workmen''s dues on a pro rata basis, over and above the other claims satisfied in Section 530 of the Companies Act. The other option is that the secured creditor may elect to stand outside the winding up proceeds, and initiate independent recovery proceeds on the strength of the security. In such a case also it has been held that he will have to accommodate the workmen''s statutory charge created under the Companies Act, which is at par with his own charge.

15, We do not find anything either in the Companies Act or in any of the decisions relied upon from the said of the workmen which are listed below, to hold either that the workmen''s statutory charge created under the Companies Act will have precedence over the contractual charge created for favour of the secured creditors. Nor do we find anything on the basis of which it can be held that the secured creditor if he chooses to join the liquidation proceeds will be confined to the extent of the fund collected by way of sale proceeds from out of those assets of the company only on which contractual charge had been created. If a creditor were to initiate independent proceedings, by standing outside the liquidation, proceedings, the amount decreed in his favour would not be restricted to the extent of the sale proceeds of those assets of the company over which such creditor had a charge. If the sale proceeds are not sufficient to satisfy the debt of the secured creditor, the balance can be recovered from other properties of the company i.e. to say those properties which are not subject to charge of that secured creditor. That being the legal position, there is no logical reason to restrict the words "secured creditor" within the meaning of the Sections 529, 529A, and 530 of the Companies Act. In our opinion a "secured creditor" means any creditor who has a valid charge u/s 125 of the Companies Act, over any property of the company in liquidation.

The decisions relied upon from the side of the workmen are the following:

1. A.P. State Financial Corporation Vs. Official Liquidator,

2. UCO Bank Vs. Official Liquidator, High Court, Bombay and Another,

3. U.P. Industrial Co-operative Association Ltd. Through its Managing Director v. Official Liquidator, Attached to Hon''ble High Court of Judicature at Allahabad, reported in 2008 (70) ALR 392.

4. Canara Bank v. Official Liquidator and Ors. reported in (70) Comp Cas 295.

5. A.P. State Financial Corpn. v. Mopeds India Ltd. (AP) reported in (2006) 65 SCL 38 (A.P.),

6. Maharashtra State Co-op. Bank Ltd. v. Assistant Provident Fund Commissioner reported in AIR 2009 SCW 6784.

16. These decisions basically hold that the contractual charge of a secured creditor does not get precedence over the statutory Charge as It were, created by the Companies Act in respect of the workmen''s dues, whether the secured creditor chooses to join the liquidation proceeds or whether he chooses to stand outside the liquidation proceedings.

17. Another argument advanced from the side of the workmen is that in this case some of the secured creditors are actually not secured creditors, because their charge was not registered. We are not examining this issue and leave the same to be decided by the learned Company Judge in the light of Section 125 of the Companies Act 1956, because this issue was not the subject matter of the impugned order.

18. We therefore, dismiss the Company Appeal No. 10 of 2008.

19. So far as Company Appeal No. 1 of 2010 is concerned, since we have dismissed the Company Appeal No. 10 of 2008 consequently vacating the interim order operating therein, which interim order was the ground for rejection of the claim of the Appellants of Company Appeal No. 1 of 2010, therefore, we dispose of this Appeal leaving it to the learned Company Judge to examine there claims afresh in the light of the law applicable.

