

(1992) 01 KAR CK 0013

In the Karnataka High Court

Case No : O.S.A. No. 26 of 1991 in Company Application No. 218 of 1991 in
Company Petition No. 131 of 1988

International Coach Builders Ltd. (In Liquidation) APPELLANT

Vs

Karnataka State Financial Corporation RESPONDENT

Date of Decision : 23-01-1992

Acts Referred:

Companies Act, 1956 — Section 529, 529 A
State Financial Corporations Act, 1951 — Section 2 (c), 29, 46 B

Citation : (1993) 76 CompCas 119 : (1992) ILR (Kar) 2207 : (1993) 2 KarLJ 367

Hon'ble Judges : R.V. Vasantha Kumar, J;N. Venkatachala, J

Bench : Division Bench

Advocate : S. Vijayashankar, for S.M. Chandrashekhar, for the Appellant; C.B. Nandeeshwar, for the Respondent

Final Decision : Dismissed

Judgement

N. Venkatachala, J.—This original side appeal filed u/s 483 of the Companies Act, 1956 (hereinafter referred to as "the Act"), read with Section 4 of the Karnataka High Court Act, 1961, is that of the International Coach Builders Ltd. (hereinafter referred to as "the company") in liquidation represented by the official liquidator attached to this court, which seeks the setting aside of the company court's order dated October 8, 1991, made on Company Application No. 218 of 1991, in Company Petition No. 131 of 1988, by which the Karnataka State Financial Corporation, a secured creditor of the company, is permitted to stand outside the liquidation proceeding and work out its remedies u/s 29 of the State Financial Corporations Act, 1951, subject to payment of the workmen's dues as undertaken.

2. As the contentions raised before us in support of the appeal require their examination with reference to the facts which led the company court to make the order under appeal, it would be advantageous to refer to such facts at the very outset.

3. Globe Detective Agency Pvt. Ltd., which was rendering security services to the company, presented on November 2, 1988, before the company court, "Company Petition No. 131 of 1988, purporting to be under Sections 433(e), 433(f) and 434 of the Act seeking the winding up of the company. There were similar petitions presented before the company court, earlier as well as later, the earliest of such petitions having been presented on May 23, 1988, and the latest of them having been presented on April 22, 1989. The company court, by a common order made in them on November 30, 1990, while ordering the winding up of the company as sought in the petition and appointing the official liquidator as its liquidator, directed the liquidator to take charge of all the assets of the company other than those the possession of which had already been taken by the Karnataka State Financial Corporation. However, in the course of that order, mention having been made that the entire business establishment and factory of the company having been obviously taken over by the Karnataka State Financial Corporation in exercise of its power u/s 29 of the State Financial Corporation Act, it (the company court) was not going into the question whether such taking over was valid, legal or not.

4. Company Application No. 218 of 1991 on which the order under the present appeal is made was filed by the Karnataka State Financial Corporation on March 4, 1991. That application having been made under Sections 446(2)(b) and 537 of the Act, the prayers, the grant of which was sought in that application from the company court, were these :

"(1) recognise the Corporation's right as secured creditor for the realisation of Rs. 43,69,266.74 due as on November 2, 1990, along with the amounts that have become due subsequent to November 2, 1990, from the company,

(ii) recognise the right of the Corporation as such secured creditor to stand outside the winding up proceedings and to sell the secured properties in accordance with law, in exercise of its statutory power u/s 29 of the Act for the realisation of the amounts due to the Corporation,

(iii) to permit the Corporation to effect the sale as proposed in annexures 5 and 6, board note and board resolution,

(iv) to permit the Corporation to continue to remain in possession of the secured properties till such sale is effected, and

(v) to hand over possession of the properties to the purchaser as proposed in annexure 6, board resolution dated November 30, 1990."

5. The official liquidator, by his objection statement filed respecting that application, objected to the grant of the prayers therein pleading, inter alia, (i) that the remedy u/s 29 of the State Financial Corporations Act was not available to the Karnataka State Financial Corporation since the company had ceased to be an industrial concern within the definition Clause (c) of Section 2 of the State Financial Corporations Act after its winding up ; (ii) that Section 529, as

amended, and Section 529A, as inserted into the Act by Central Act No. 35 of 1985, conferred on the official liquidator alone the right to realise the workmen's dues by selling the assets of the company wound up even if the secured creditor of such assets opted to stand outside the winding up proceeding to realise its security ; (iii) that since the winding up order of the company court though made on November 30, 1990, related back to the date of presentation of the petition for winding up, the taking of possession of the assets of the company by the Karnataka State Financial Corporation purporting to be for sale, u/s 29 of the State Financial Corporations Act, subsequent to the date of such presentation, cannot empower it to sell the same ; and (iv) that the official liquidator not being aware of the fact that the Karnataka State Industrial Investment and Development Corporation and the Karnataka State Financial Corporation had acted in consortium in giving financial assistance to the company, enforcement of the security by the Karnataka State Financial Corporation--one secured creditor alone, was violative of Section 531 of the Act. The company court which examined the said objections raised in the objection statement filed respecting the company application found that none of those objections could come in the way of grant of the prayers in the application made by the Karnataka State Financial Corporation because of its unequivocal undertaking that the company's workmen's dues in their entirety would be made good to the official liquidator for payment to the workmen. Consequently, the company court granted the prayers in the application subject to the undertaking given by the Karnataka State Financial Corporation respecting the workmen's dues of the company in winding up, by its order which is now under appeal.

6. Contentions raised by Sri S. Vijayashankar, learned senior advocate, in support of the appeal, being virtually those which had been raised as objections by the official liquidator against the grant of prayers in the company application by the company court for sale of the assets of the company in liquidation in exercise of the Karnataka State Financial Corporation's power u/s 29 of the State Financial Corporations Act could, for purposes of their consideration in this appeal, be set out thus :

(i) that the remedy u/s 29 of the State Financial Corporations Act was not available to the Karnataka State Financial Corporation since the company had ceased to be an industrial concern within the definition Clause (c) of Section 2 of the State Financial Corporations Act after its liquidation (winding-up) ;

(ii) that Section 529, as amended, and Section 529A, as inserted in the Act by Central Act No. 35 of 1985, conferred a right on the official liquidator alone to realise the workmen's dues by selling the assets of the company in liquidation even if the secured creditor of such assets opted to stand outside the winding up proceeding to realise its security ;

(iii) that since the winding up order of the company court, though made on November 30, 1990, related back to the date of the presentation of the petition for winding up, the taking of possession of the assets of the company by the

Karnataka State Financial Corporation purporting to be for sale, u/s 29 of the State Financial Corporations Act subsequently cannot empower it to sell the same ;

(iv) that the Karnataka State Financial Corporation, though a secured creditor respecting the company in liquidation, cannot enforce its security by standing outside the winding up proceeding when there were two more secured creditors including the Karnataka State Industrial Investment and Development Corporation of the company in liquidation ; and

(v) that the application u/s 446 read with Section 537 of the Act on which the order under appeal is made was unmaintainable in the absence of determination of the amounts of debts owed by the company either by the company court or by any authority constituted under the State Financial Corporations Act.

7. The question which arises from the said contentions and needs our consideration and decision in this appeal, therefore, is whether the company court, in making the order under appeal, permitting the Karnataka State Financial Corporation to sell the assets of the company in liquidation, in exercise of its powers u/s 29 of the State Financial Corporations Act by denying to the official liquidator the carrying out of such sale, has not acted according to law.

8. The Karnataka State Financial Corporation is a financial corporation established for the State of Karnataka under the State Financial Corporations Act. Its object is the rendering of financial assistance to industrial concerns which might have been engaged or may be engaged in the manufacturing, preservation or processing of goods or in mining or in the hotel industry or in the transport of passengers or goods by road or by water or in the generation or distribution of electricity or any other form of power or in the development of contiguous areas of land as an industrial estate, obviously for encouraging the growth of industry needed in the economic progress of the country. Finances needed for rendering such assistance are mainly those got from the State Government, the Reserve Bank, scheduled banks, insurance companies and other financial institutions. Section 29 of the Act which provides for recovery of monies owed to the Financial Corporation concerned from the industrial concern which commits default in repayment reads thus :

"29. (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its

powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of Sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern."

9. A company under the Act (Companies Act) which is an industrial concern under the State Financial Corporations Act, cannot cease to be an industrial concern either because the company ceases to carry on its activity or because it becomes the subject of winding-up under the Act, as urged on behalf of the appellant. It would be so particularly for the reason that the industrial concern as defined under definition Clause (c) of Section 2 of the State Financial Corporations Act, covers an industrial concern which has not even commenced its activity. That the Karnataka State Financial Corporation, a secured creditor of the industrial concern--the company now wound up by an order of the company court, had taken possession of the assets of the company which were the subject of security for repayment of defaulted loan, in exercise of its powers u/s 29 of the State Financial Corporations Act even before the order of winding up was made by the company court is an admitted fact. In fact, the company court, in making the winding-up order of the company, has so stated and has left undecided the question whether such taking of possession of the assets of the company by the Karnataka State Financial Corporation was permitted in law or not.

10. The company application on which the order under appeal is made by the company court with a prayer for permission to sell the concern in its possession u/s 29 of the State Financial Corporations Act, is made under Sections 446(2)(b) and 537 of the Act, which read :

"446. Suits stayed on winding-up order.-- ... (2) The court which is winding up the company shall, notwithstanding anything contained in any other law for the

time being in force, have jurisdiction to entertain, or dispose of-- ...

(b) any claim made by or against the company (including claims by or against any of its branches in India) ; . . .

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960."

"537. Avoidance of certain attachments, executions, etc., in winding up by or subject to supervision of court--(1) Where any company is being wound up by or subject to the supervision of the court-

(a) any attachment, distress or execution put in force, without leave of the court, against the estate or effects of the company, after the commencement of the winding up ; or

(b) any sale held, without leave of the court, of any of the properties or effects of the company after such commencement ;

shall be void,

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government."

11. Our Supreme Court, in its decision in *Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others*, had an occasion to deal with the legislative object in enacting Section 446(2) and has observed thus (at pages 637, 638 of 58 Comp Cas) :

"In the absence of a provision like Section 446(2) under the repealed Indian Companies Act, 1913, the official liquidator in order to realise and recover the claims and subsisting debts owed to the company had the unenviable fate of filing suits. These suits, as is not unknown, dragged on through the trial court and courts of appeal resulting not only in multiplicity of proceedings but in holding up the progress of the winding up proceedings. To save the company which is ordered to be wound up from this prolix and expensive litigation and to accelerate the disposal of winding up proceedings, Parliament devised a cheap and summary remedy by conferring jurisdiction on the court winding up the company to entertain petitions in respect of claims for and against the company. This was the object behind enacting Section 446(2) and, therefore, it must receive such construction at the hands of the court as would advance the object and at any rate not thwart it."

12. The said observation makes it obvious that the company court which is winding up the company under the Act is conferred jurisdiction under Clause (b) of Section 446(2) of the Act to entertain applications in respect of claims for and against the company. That the contours of its jurisdiction under Sub-section (2) cover a wide range of matters concerning the company in winding up is now

settled.

13. When this court, in *Bank of Maharashtra Ltd. v. Official Liquidator* AIR 1969 Mys 260 : [1970] 40 Comp Cas 466 had to deal with the claim of a-secured creditor of Sree Yellamma Cotton, Woollen and Silk Mills Co. Ltd. (in liquidation), made under Clause (b) of Sub-section (2) of Section 446, Narayan Pai J. who decided that case held that the Bank of Maharashtra, being a mortgagee of immovable properties and hypothecate of movable properties of the company (in liquidation), in exercise of the rights and powers conferred upon it by the mortgagor under the hypothecation documents, is entitled to take or to retain possession of the properties described in such documents for the purpose of recovering moneys due to it by enforcing its security against such properties ; that the Bank of Maharashtra has the power of selling, without the intervention of the court, such properties in accordance with the relevant sections of the Contract Act and the Transfer of Property Act governing the exercise of such power, for the purpose of recovering the moneys due to it; that the Bank of Maharashtra, in possession of such properties as a mortgagee in possession, has to account for their income to the company (in liquidation) ; that the Bank of Maharashtra, if it exercises its right of private sale without the intervention of the court, will have to account for moneys realised in accordance with or in terms of Sub-section (4) of Section 69 of the Transfer of Property Act, The legal position, as emerges from the decision of this court, is that a secured creditor of a company in winding-up could stand outside its winding up and enforce his security by taking possession of the properties given as security as allowable by the terms of the contract or by law and selling them either through the court or by private sale as allowable in terms of the contract or by law.

14. The settled legal position as to the right of a secured creditor of a company in winding up to realise his security by taking possession of properties of such company subjected to security and selling them by standing outside the winding up, being what is adverted to hereinbefore, it cannot be said that the company court, in the case of the company (ICBL) under winding up, has not acted in accordance with law--the provisions of the Companies Act, when it has permitted the Karnataka State Financial Corporation to stand outside the winding up of that company (ICBL) and realise its security by selling the assets which were in its possession and constituted the security, in exercise of the Karnataka State Financial Corporation's power conferred under the statutory provision in Section 29 of the State Financial Corporations Act itself, making, however, the Karnataka State Financial Corporation liable to pay the workmen's dues of the company in winding up as undertaken by it. But, the contentions advanced on behalf of the appellant-official liquidator, in sum and substance, being that though the permission accorded or leave granted by the company court by its order under appeal to the Karnataka State Financial Corporation, a secured creditor of the company (ICBL) in winding up, to effect sale of the properties of that company in its possession, by standing outside the winding up proceeding, could have been done before the amendment of Section 529 of the Companies Act and insertion

of Section 529A into the Companies Act, by the Amendment Act 35 of 1985, such thing could not have been done after the said amendment of Section 529 and insertion of Section 529A, we shall now proceed to examine the question under consideration in that light.

Sections 529 and 529A of the Act, as amended and as inserted, respectively, by Act 35 of 1985, 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 pay his portion of the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realisation 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 an 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 a contract with insurers as is mentioned in Section 14 of 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 payments--(1) 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 dues.

(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."

15. Section 529, even before its amendment by Act 35 of 1985, had imported into Part VII of the Act containing provisions relating to winding up of a company, the law (Rules) of insolvency applicable to estates of persons adjudged insolvent as regards--(a) debts provable ; (b) the valuation of annuities and future and contingent liabilities ; and the respective rights of secured and unsecured creditors [Sub-section (1)]. Sub-section (2) thereof which enabled persons entitled to prove for and receive dividends out of the assets of the company under the winding up, to make claims in that regard, by its proviso, made the secured creditor who realised his security by standing outside such winding up, liable to pay to the official liquidator the whole expenses incurred by him for preservation of the security before its realisation by the secured creditor.

16. By the insertion of the proviso below Clause (c) of Sub-section (1) by Act 35 of 1985, what has been done is, first, by a legal fiction, to make the security of every creditor subject to pari passu charge for the workmen's dues owed by the company under winding up ; and, second, when the secured creditor opts to realise his security by standing outside the winding up, to entitle the liquidator to join the secured creditor to realise the pari passu charge for workmen's dues created on the very security of the secured creditor, needed for discharging the workmen's dues, as provided for therein.

17. The proviso to Sub-section (2) as amended by Act 35 of 1985 and the Explanation added to the proviso, again by Act 35 of 1985, if read together, make it abundantly clear that the secured creditor who stands outside the winding up and realises his security which is subjected to a pan passu charge for the workmen's dues is relieved of paying such portion of the expenses of the liquidator incurred for preservation of such security before its realisation by him (the secured creditor) which become attributable to workmen's dues statutorily charged on the security. The proviso to subsection (2), as it stands after its amendment by Act 35 of 1985, states in unequivocal words that the liability of paying the expenses incurred by the liquidator for preservation of secured creditor's security till its realisation by the secured creditor arises, if such secured creditor, instead of relinquishing his security and proving his debt, proceeds to realise his security. From this position in law itself, it becomes evident that the liquidator's entitlement to represent the workmen and enforce

the pari passu charge for workmen's dues under Clause (a) of the proviso to Clause (c) of Sub-section (1) of Section 529, cannot arise when he wants to have it standing inside the winding up proceeding, but only when he wants to have it standing outside the winding up along with the secured creditor.

18. Coming to Section 529A, inserted into the Act by Act 35 of 1985, all that it does is to put the workmen's dues and debts due to the secured creditors which are a charge on the security of the secured creditor, to the extent such debts rank under Clause (c) of the proviso to Sub-section (1) of Section 529 pari passu with such dues in a single class or category and rank them as top priority debts of the company in winding up to be paid in preference to other debts of such company. In so far as the provision in Clause (b) of the proviso to Clause (c) of Sub-section (1) is concerned, it provides for rateable discharge of the workmen's dues out of the amount realised by the liquidator by enforcement of the pari passu charge for workmen's dues on the secured creditor's security. Then, in so far as the provision in Clause (c) of the proviso to Clause (c) of Sub-section (1) is concerned, it declares that, when from the security of the secured creditor respecting which the statutory pari passu charge for workmen's dues is created, the whole of the debt due to the secured creditor is not realised or the whole of the amount of workmen's dues is not realised, under the foregoing provisions in the proviso, the lesser of the two shall rank pari passu with the workmen's dues for the purposes of Section 529A. Thus, none of the said provisions in Section 529 or Section 529A, as found from their detailed examination, can even remotely suggest that a secured creditor of a company in winding up cannot stand outside such winding up to enforce his security. On the contrary, some of the said provisions --the proviso to Sub-section (1) and the proviso to Sub-section (2) of Section 529, by which the secured creditor's security is subjected to a pari passu charge for workman's dues and expenses for preservation of the security by the liquidator till its realisation, in unequivocal language, advert to a secured creditor who, instead of relinquishing his security and proving his debt, opts (proceeds) to realise his security, which cannot happen as before, except when the secured creditor opts to stand outside the winding-up and proceeding to realise his security. Confining the liability of the secured creditor to his portion of the expenses incurred by the liquidator in preserving the security by amending the proviso to Sub-section (2) indicating how such expenses are to be apportioned to the secured creditor who has a charge on the security, and by giving deduction on account of workmen's pari passu charge, by adding an Explanation to the proviso to Sub-section (2) by amendment, leaves no scope for any one even to think that, after amendment of Section 529 and insertion of Section 529A, a secured creditor of a company in winding up cannot opt to stand outside the winding up to realise his security. The important change brought about by amendment of Section 529 and insertion of Section 529A by Act 35 of 1985 is of subjecting the security of a secured creditor to a pari passu charge for the workmen's dues and empowering the liquidator to join the secured creditor in enforcing the workmen's charge on the security when the secured creditor

proceeds to realise his security by standing outside the winding up. As the view that, after the amendment of Section 529 in the Act and insertion of Section 529A into the Act, by Act 35 of 1985, the secured creditor" of a company in winding up cannot be permitted to stand outside the winding up to realise his security because of the pari passu charge for the workmen's dues statutorily created respecting such security and the liquidator of the company should be permitted to sell such security for realisation of workmen's dues, taken by a learned judge of this court in *Karnataka State Financial Corporation Vs. Patil Dyes and Chemicals (P) Ltd. (in liquidation) Chaitanya Food Products (P) Ltd. (in liquidation) Mysore Surgical Cotton (P) Ltd. (in liquidation) Electromobiles India Ltd. (in liquidation) Kabini Papers Ltd. (in liquidation)*, and by a learned judge of the Kerala High Court in *Kerala Financial Corporation v. Official Liquidator* [1991] 71 Comp Cas 324 to which our attention was invited by learned counsel for the appellant, ignores the import of various express provisions contained in the amended Section 529 to which we have already adverted, there is no alternative left to us except to express our disagreement with the same. It is true that the amendment of Section 529 of the Act and insertion of Section 529A into the Act are brought about by the Amendment Act 35 of 1985 with a view to enable the workmen of the company under winding up to get the benefit of dues which such company owed to them, on top priority being ranked with the dues to the secured creditors, but the right expressly conferred on the secured creditor of the company under winding up under the very provisions in the matter of realisation of his security opting to stand outside the winding up subject to sharing of such security with workmen and payment of his portion of the expenses to the liquidator for preserving the security cannot be taken away by any court in its endeavour or anxiety to place a construction on such provisions as could benefit the workmen.

19. For the foregoing reasons, we are not left in doubt that the permission granted to the Karnataka State Financial Corporation, a secured creditor of the company (ICBL) in winding up, to sell that company's assets, which are already in its possession and constitute security for repayment of the loan, and realise its security subject to payment of workmen's dues as undertaken by it by standing outside such winding up, is well in accordance with the provisions of Section 529, as amended, and Section 529A, as inserted in the Companies Act and Section 29 and Section 46B of the State Financial Corporations Act, 1951.

20. In the result, we dismiss the appeal, however, without costs, having regard to the facts of the case.