

(2008) 01 KAR CK 0031

In the Karnataka High Court

Case No : Writ Appeal No's. 165 and 447 of 2007

Karnataka State Industrial Investment and Development
Corporation Ltd.

APPELLANT

Vs

Karnataka Horologicals Ltd., Karmikara Sangha and Others

 Karnataka Horologicals Limited Vs Karnataka State
Industrial Investment and Development Corporation Ltd. and
Karnataka Horologicals Limited, Karmikara Sangha

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Companies Act, 1956 — Section 529, 529 A
State Financial Corporations Act, 1951 — Section 29, 31

Citation : AIR 2008 Kar 93 : (2008) ILR (Kar) 756 : (2008) 3 KarLJ 507

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : Puttige R. Ramesh and Laxmi S. Holla, in W.A. No. 165/2007 and J. Kanikaraj, in W.A. No. 447/2007, for the Appellant; A.J. Srinivasan, for R1, R5, R6, R9, R12, R13, R15 and R17, Gopala Krishna, for R3 and J. Kannikaraj, for R2 in W.A. No. 165/2007 and Puttige R. Ramesh, for R1 and A.J. Srinivasan, for R2 in W.A. No. 447/2007, for the Respondent

Judgement

1. Writ appeal No. 165/2007 is filed by the Karnataka State Industrial Investment and Development Corporation Limited (for short "the Corporation"). Writ appeal No. 447/2007 is filed by M/s Karnataka Horological limited (for short "the Industry"). Both the appeals are directed against the common order dated 8th December, 2006 passed by the learned Single Judge, dismissing writ petition Nos. 35393/2000 and 5332/2003 filed by the appellants herein and allowing writ petition No. 1172/2005 filed by M/s. Prime Technologies Ltd., (for short "the Purchaser").

Factual Matrix in brief:

2. The management of M/s. Karnataka Horological Limited, had availed financial assistance of over Rs. 1 crores from the Corporation. For non-payment of the

amount advanced, notice u/s 29 of the State Financial Corporation Act, 1951 (for short "SFC Act") was issued by the Corporation to the industry. By an order dated 30.06.1994, passed u/s 29 of SFC Act, the Corporation took over the assets of the industry, to realise the amount due to it. After publication of sale notice in the newspapers, Corporation sold the assets of the industry in favour of M/s Prime Technologies, for a bid amount of Rs. 160 Lakhs. An agreement of sale dated 7.10.1994 was entered into between the Corporation and the Purchaser, conveying the assets of the industry.

3. On account of the lockout of the industry, sale of the assets of the industrial concern and other factors, on a representation of the association of the workmen of the industry, a reference u/s 10(1)(C) of the Industrial Disputes Act (for short "I.D. Act") was made by the Government to the Industrial Tribunal. In the meanwhile "the workmen" through their union filed writ petition No. 24759/1994 for a direction to the Corporation, Industry and others to lift the seizure of the industry effected on 06.08.1994 and for various other reliefs. The said writ petition was dismissed as withdrawn on 27.09.1995. After adjudication, the Industrial Tribunal (for short Tribunal¹), found the lockout by the management as illegal and held that the Purchaser, M/s. Prime Technologies, is liable for payment of dues to the workmen. It further held that the industry is liable to pay the wages for the lock-out period and the Corporation is liable to pay the claim of the workmen for the period from 06.08.1994 to 07.10.1994 and from 07.10.1994 M/s Prime Technologies, is liable to pay the demand of the workmen.

4. The award passed in I.D. No. 25/1995 dated 29.04.2000 by the Tribunal was questioned by filing 3 separate writ petitions i.e. by the Corporation, the industry and the Purchaser. Learned Single Judge has disposed of the three writ petitions, by a common order, i.e., by allowing the writ petition filed by the Purchaser holding that, in the light of the judgment of the Apex Court reported in Bhol Nath Mukherjee and Others Vs. Govt. of W.B. and Others, , no liability can be fastened on it and has dismissed the writ petitions filed by the Corporation and the industry, thereby modifying the award and has directed the Corporation and the industry, to settle the claims of the workmen, jointly and severally.

Background facts before Labour Court:

5. The workmen, through their union pursued the reference before the Tribunal. The points of dispute referred for adjudication to the Tribunal, read as follows:

1. Whether the Lockout dated 6.8.1994 by the Management of M/s. Karnataka Horologicals Ltd., 393, Judges Colony, R.T. Nagar, Bangalore-560032, is justified in law?

2. Whether M/s. Karnataka State Industrial Investment and Development Corporation is justified in law in acquiring the institution and selling the same to other (Prime Technology) without keeping in mind the interest of workmen?

3. Whether M/s. Karnataka State Industrial Investment and Development

Corporation was justified in not revoking the suspension orders of Sri T.C. Jayakumar, Sri B.H. Nagaraj, Sri Chandrashekaradhya, Sri M.L. Narasappa, Sri R. Krishnalah, Sri C.R. Nanjunda Murthy and Sri M. Gopal even though there enquiry was concluded on 2.3.1994?

6. The workers union filed claim petition. The employer did not file counter statement Both the purchaser and the Corporation filed their counter statements. On completion of the pleadings, the following were raised by the Tribunal for its consideration.

1. Whether the First party proves that It Is authorised to espouse the cause of the workmen?

2. Whether the II Party prove that the Second party (B) M/s Prime Technologies is not the successor-in-interest of M/s Karnataka Horologicals Ltd., by virtue of the Agreement dated 7.10.94 and that they are not liable to concede the Demands placed by the first Party workmen?

7. The workers union examined three witnesses, W.Ws 1 to 3 and the documents on its behalf were marked as Exs. W1 to 35. For the second party, MW1 was examined and Exhibits M-1 to 13 were marked. After hearing, the Tribunal passed the award, the operative portion of which reads as follows:

The reference to allowed, The II party (a) Karnataka Horologicals Ltd., is liable to pay the lock-out period wages. The II Party (c) is liable to consider the claim of the I Party workmen for the period from 6.8.1994 to 7.10.1994 and after 7.10.1994 the II Party (b) M/s. Prime Technologies is liable to consider the demand of the I Party workmen including the employment The suspended employees are entitled for allowance from the II Party (a) & (c) w.e.f. 8.7.94 to 7.10.94 and from 8.10.94 they are entitled for their demands from M/s. Prime Technologies - II Party (b). No order as to costs.

Contentions:

8. Sri Pullige R. Ramesh, learned Advocate appearing for the Corporation would contend that, learned Single Judge was not justified in holding that "when the industrial concern is sold by the Corporation, appropriation of the sale proceeds, to itself ignoring the interest, of the workmen in not just and proper". Learned Counsel would contend that the learned Single Judge has misdirected himself in not applying the provisions of SFC Act in the correct perspective and the dismissal of the writ petition filed by the Corporation, is erroneous. It was contended that the learned single Judge has erred in relying upon the case law, which have no application, both on facts and in law and the order is unsustainable. Learned Counsel also reiterated the grounds raised in the Appeal Memorandum.

9. Sri Kanikaraj, learned Advocate appearing for the industry would contend that, the employer has lost every thing and it is not in a position to satisfy the award. It was contended that, learned Single Judge has not taken into account the fact

that, in view of the loss suffered by the industrial concern, the employer should not be saddled with the liability of the workmen. Learned Counsel urged to relieve the industry from the liability.

10. Sri A.J. Srinivasan, learned advocate appearing for the workmen, by taking us through the record of the case and also placing strong reliance on the judgment of the Hon'ble Supreme Court in the cases of Workers of Rohtas Industries v. Rohtas Industries Ltd. reported in 1987 (Supp) SC 462 Pramod Mehra Vs. Vivek Textile Mill Karmikara Sangha and Others, ; Mohan Kamalkar Sindgikar and Others Vs. Joshi Metal Industries, Bijapur and Others, and Textile Labour Association Vs. State of Gujarat and Others, would vehemently urge that the workers' interest is paramount, they are entitled for payment on priority basis and a very sympathetic approach is required to be adopted. It was submitted that, since learned Single Judge by considering the facts, has recorded the findings, impugned order be upheld.

Points for consideration:

11. The points that arise for our consideration are:

1) Whether the "Corporation" was justified in exercising its rights u/s 29 of SFC Act, to take over the assets of the industrial concern to realise the dues?

2) Whether the amount realised by the Financial Corporation from sale of assets of the industrial concern in exercise of its rights u/s 29 of the SFC Act, be ordered to be paid by it, to the workmen of the industrial concern, by applying the provisions of Section 529A of the Companies Act, when the Industry/ Company, is not under winding up proceedings?

3) Whether the learned Single Judge is justified in directing the Corporation to satisfy the award, jointly and severally?

4) Against whom the workmen can proceed to realise the closure compensation and other dues?

Findings:

Regarding point No. 1.

12. The facts which are not in dispute are that the industry, after availing loan from the Corporation became a chronic defaulter. The industry had pledged all its assets/unit, in favour of the Corporation as security to avail the loan. For non payment of the dues, the Corporation issued notice u/s 29 of SFC Act to the industry and thereafter took over the assets of the industry. Though the workers association filed W.P. No. 24759/1994 for a direction to the Corporation to lift the seizure of the factory effected on 06.08.1994 and for other reliefs, the writ petition was dismissed as withdrawn on 27.09.1995. The industry did not question the action of the Corporation in taking over and sale of assets. After due publicity, the Corporation sold the assets in "as is where is" condition and realised Rs. 160 Lakhs. After completion of the sale proceedings, an agreement

dated 7.10.1995 was executed by the Corporation transferring the asset of the industry in favour of the Purchaser. The amount realised by sale, has fallen short of the amount due to be paid by the industry and the debt due to the Corporation, still remains undischarged.

13. The legislative intent in enacting SFC Act has been made clear by the Hon"ble Supreme Court, in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, as follows:

7. As was observed by this Court in Cem Cap's case (supra), the legislative intent, in enacting the statute in question was to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of "loans and advances, repayable within a stipulated period. Though the Corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the Corporation and the borrower is that of creditor and debtor. That basic feature cannot be lost, sight of. A Corporation is not supposed to give loan and then to write it. off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization which is the intended object can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money. As was rightly observed in Gem Cap's case (supra), promoting industrialization does not serve public interest if it. is at. the cost of public funds.

Hon"ble Supreme Court, in the case of Himachal Pradesh State Financial Corporation, Shimla v. Prem Nath Nanda and Ors. reported in AIR 2001 SC 5, while considering the scope of power conferred on a Financial corporation u/s 29 of the SFC Act has held as follows:

5. The Corporation, subject to the provisions of the Act, can carry on and transact any of the business specified in Section 25 of the Act The said section authorises the Corporation to grant loans or advances to the industrial concerns on such terms and conditions as may be agreed to. The Corporation deals with public money for public benefit. Default in payments of the loans and advances thus, ultimately affects the public at large. An obligation is cast upon the loanee to pay back the amount of the loan or advance received under the Act. In case of failure to make the payment, the Corporation is expected to adopt an approach which has to be public oriented rendering a helping hand to the loanee to come out of the financial losses and constrains if any but without causing any loss to the Corporation. To protect the public interest, the Act provides a mechanism for recovery of loan. Section 29 of the Act authorises the Corporation to take over the; management or possession or both of the industrial unit and transfer the same by way of lease or sale where it finds that any industrial concern, who had taken loan, had made default in repayment of any loan advanced or any installment thereof or in meeting of its obligation in relation to any guarantee

given by the Corporation or otherwise fails to comply with the terms of its agreement with the Corporation.

6. Powers conferred u/s 29 of the Act are intended to achieve the object of the Act. The amount realised in consequence of the sale or lease of the property of the defaulter can be adjusted in the liability of the defaulter and the excess amount thus realised, if any, to be paid to the person whose unit was proceeded against u/s 29 of the Act. The activities of the Corporation are visualised not as profit earning concern but an extended arm of the State to harness the business potential of the country to benefit the common man.

Hon'ble Supreme Court, in the case of State of Karnataka and Another Vs. Shreyas Papers Pvt. Ltd. and Others, while considering the provisions of Section 29 of the SFC Act, has held as follows:

11. Section 29 of the SFC Act gives an extraordinary power to the Corporation. It provides that in the event of a borrower making a default in its obligations towards repayment or in relation to any guarantee, then the Corporation:

...shall have the right to take over the management or possession or both of the industrial concerns, 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.

Sub-section (2) of Section 29 provides that:

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.

Finally, Sub-section(5) of this Section provides:

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 purpose of suits by or against the concern, and shall sue and be sued in the name of the concern.

14. From the aforesaid pronouncements, it is clear that the Corporation is empowered to effect recovery of its dues, by resorting to the measures, both u/s 29 and 31 of SFC Act. Since the industry which was under a liability to the Corporation in terms of the agreements executed by it, defaulted in repayment of the loan and failed to comply with the terms of the loan agreements executed by it, the Corporation took over the assets of the industry, with the right to transfer by way of sale and realise the dues, from sale of the assets.

15. Since the Corporation set in motion, action under Sub-section (1) of Section 29, took over possession of the assets and sold the assets in auction to "the purchaser" to realise the dues, by transferring the property/assets, under Sub-section (2) of Section 29, the property vested in the purchaser, Sub-Section (4)

of Section 29 provides the manner in which the amount realised, should be apportioned. As per the said provision, all monies received when action is taken under Sub-Section (1) of Section 29, be applied firstly, in payment of cost, charges and expenses, secondly, in discharge of the debt due to the financial corporation and the residue of the money received shall be paid to the person entitled thereto. Sub-Section (4) of Section 29 itself provides the manner in which the money should be realised. The Corporation is obligated to act in terms of the said provision. The amount that was realised from sale was Rs. 160 lakhs. The liability of the employer towards the Corporation is admittedly much more than the amount realised by invoking Sub-section (1) of Section 29. Since no residue of the money was left with the Corporation, it had no obligation to pay any amount, either to the industry or to any other person, falling under the meaning of "person entitled thereto". Since SFC Act itself provides the manner in which, action should be initiated and applied, it has to be done in that manner and not otherwise. The Corporation has acted in terms of the provisions contained in Section 29.

16. Learned Counsel for the Corporation contended that, the proceedings against the Corporation, impleading it, by its own name, to fasten the liability, either jointly or severally, was not maintainable. Learned Counsel drew our attention to Sub-section (5) of Section 29. From a reading of the said provision, it is clear that when the financial corporation has taken any action against an Industrial concern under the provisions of Sub-section (1) of Section 29, 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. Thus the proceedings against the Corporation, Impleading It, by its own name, on account of the action taken by it against the industry under Sub-section (1) of Section 29 could not lie.

17. The Corporation took over possession of the assets of the industry and admittedly did not take over the management ,to run the industry by Itself. Had it taken over the management, then it should have run the industry, in which event the provisions contained under Sections 32A to 32G of SFC Act would have come into operation.

In view of the above, point No. 1 is answered in favor of the Corporation.

Regarding Point No. 2:

18. It is not in dispute that, no proceedings for the winding up of the industry was initiated by any person or body, on the date the Corporation took over possession of the assets and/or on the date on which the assets of the industrial concern was sold, in exercise of the right u/s 29. The Industrial Tribunal has not adverted to the applicability or otherwise of the provisions, applicable to the winding up of the industry. Learned Single Judge even though has taken notice of the provisions of Section 529A of the Companies Act, has held that "the sale of

the entire assets of the company is not less than the winding up of the company and the workmen cannot be made to suffer". It has been further held that "the sale of assets of the industry is more than the winding up of the industry and in such an event the workmen who are legitimately entitled for the compensation cannot be ignored for the purpose of appropriating the realised amount only towards the debt of the Corporation". In our view the finding of the learned Single Judge, to the said effect is contrary to law. Section 29 of SFC Act makes it abundantly clear that the right of the Corporation to walk in and take over all the assets is available to it when the industrial concern is in charge and control of its assets. The Corporation cannot exercise its rights, if the assets of the industrial concern, has already vested in the company court or if the official liquidator had been put in charge of the assets of the industrial concern. It is not the case of, either the industry or the workmen that, the winding up proceedings had either been set in motion nor had taken place. In the said circumstances, the action taken by the appellant Corporation in setting into motion, its rights u/s 29 of the SFC Act to recover its dues, is lawful. There was no legal impediment to the Corporation to take action u/s 29 and permission of company Court in the matter, was not required to be obtained. The provisions of Sections 529 and 529A of the Companies Act, in the absence of commencement of winding up proceedings can not be made applicable.

19. Sub-Section (4) of Section 29 itself mandates, the manner in which the money realised by sale of the property, should be applied and paid by the Financial Corporation. The award of the Industrial Tribunal and modified by the learned Single Judge, in the facts of the case, is contrary to Sub-Section (4) of Section 29 of the SFC Act. It is to be made clear that If the winding up proceedings had commenced and official liquidator had put in charge of the industry-company, distribution of the proceeds of sale of the assets held at the instance of the financial Corporation coming under the purview of the SFC Act, could have been only with association of the official liquidator and under the provision of the Companies Act. Such is not the factual position herein. Further the Corporation took over only the assets and not the management, which option was also available to it u/s 29. Hence, it has to be held that the money realised, by effecting sale under Sub-section (2) of Section 29, cannot be apportioned or ordered to be paid to the workmen of the industrial concern, when the industrial concern is not under the winding up proceedings, in terms of the provisions under the Companies Act. Hon''ble Supreme Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad and Others, has held as follows:

It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner.

Thus the Corporation was Justified in appropriating the amount realised to itself, in view of absence of the contract to the contrary or the applicability of any other overriding statutory provision.

20. Learned Counsel appearing for the workmen relied upon the case of A.P. State Financial Corporation Vs. Official Liquidator, to contend that the workmen's dues are to be paid in priority, to all other debts/liabilities of the industry.

In the said case, the 2 companies therein, were in liquidation and the liquidation proceedings were pending before the Company Judge of the High Court. The companies had obtained loans from the Corporation, constituted under the SFC Act. The Corporation for realising the dues had invoked the provisions of Section 29 of the SFC Act. The Hon'ble Supreme Court held that, if a company is in liquidation, then in view of the non obstinate provisions contained in Sections 529 and 529A of the Companies Act, apply. Industry herein, is not in liquidation and hence the provisions of Companies Act cannot be applied.

21. A.P. State Financial Corporation case supra, was considered by the Hon'ble Supreme Court subsequently in the case of International Coach Builders Ltd. Vs. Karnataka State Financial Corpn., wherein It was held as follows:

25. Of course, even in such a situation, if the same property was mortgaged to more than one secured creditor, they had to either come to any agreement, or in the event of disagreement, there had to be a suit in which dissenting mortgagee had to be sued as a necessary party defendant. No doubt Section 29 of the SFC Act was intended to place the SFCs on a better footing. But, in our view, this better footing is available only so long as the debtor is not a company or is a going company. The moment a winding up order is made in respect of a debtor company, the provisions of Sections 529 and 529A come into play and whatever superior rights had been ensured to SFCs under the provisions of the SFC Act are now subjected to and operate only in conjunction with the special rights given to the workmen, who as pari passu charge-holders are represented by the official liquidator. We are, therefore, of the view that the unhindered right hitherto available to the SFCs to realise their security, without recourse to the Court, no longer holds true as the right vested in the official liquidator is a statutory impediment to such exercise and has to be reckoned with. And since the official liquidator can do nothing without the leave or concurrence of the Court, all necessary applications must, therefore, come to the Company Court.

(underlining is by us)

From the said decision, it is dear that Section 29 of the SFC Act is intended to place the SFCs on a better footing and the right u/s 29 is available so long as the company is not in liquidation.

Hence point No. 2 is answered holding that, when the industry/company is not under winding up proceedings, the provisions of Sections 529 and 529A of the Companies Act cannot be applied and the amount realised by sale of assets of the industry, by the Corporation under SFC Act, in exercise of its right u/s 29, cannot be ordered to be paid on priority/part passu arrangement to the workers, when the amount due to the Corporation itself has not been realised in full and no residue amount is left with the Corporation.

Re. Point No. 3:

22. Learned Single Judge has relied upon Pramod Mehra Vs. Vivek Textile Mill Karmikara Sangha and Others, Whether the learned Single Judge is justified in relying upon Pramod Mehra case is the point for consideration. In the case of Pramod Mehra, the facts that arose for consideration, with regard to the prayer for issue of directions to KSFC to furnish the particulars of the assets of the mill and the amount realised was for non payment of the dues by the management of the mill was that, the land and machinery of the mill were sold in public auction. Since there were no bidders to purchase the assets of the mill, KSFC itself had purchased the assets for Rs. 81,00,000/- and the sale was confirmed. The sale proceeds were apportioned between KSFC and KSIIDC, in addition to the payment made to the KEB towards dues and the expenditure incurred. It was noticed that the mill was due, on the date of confirmation of sale, Rs. 70,87,000/- and the property of the mill was sold for Rs. 81,00,000/-. An excess amount of Rs. 10,13,000/- was due by KSFC to the mill. Taking said facts into consideration, it was held that, the Corporation has got right only to recover dues of itself, from the sale proceeds and nothing beyond that. The apportionment of the excess amount of sale proceeds over its dues, to other statutory bodies was directed to be paid, to the workmen, by taking into account the fact that, the mill had not paid the closure compensation to the workmen on account of the mill being closed on 31.1.1984, The Labour Court had passed the award with regard to the backwages payable to the workmen on 28.1.1987 which was modified in the writ petition by an order dated 25.9.1995. In the said factual situation, it was held that the apportionment of the excess amount of sale proceeds was bad and writ petition was allowed in part, directing the KSFC to pay the excess amount to the Union of the Workmen, for effecting payment proportionately on pro rata basis.

As is clear from the brief facts of the said case, KSFC had excess amount realised by the sale of the assets of the mill and apportionment amount of the excess amount, over its dues, was held to be not permissible and was directed to be paid to the workmen. In this case, the Corporation has not been able to realise the amount due to it, by sale of the assets of the industry. Even after sale of the assets, the industry is still due, to the Corporation. Hence, the case of Pramod Mehra could not have been applied by the learned Single Judge as having laid down the ratio to the effect that when the industry is sold, it amounts to more than winding up and the amount realised should be paid on priority to the workmen. The silent facts of Pramod Mehra case, the circumstances in which the order was passed by learned Single Judge of this Court, the payment being limited to the amount realised by KSFC over and above its dues, being only ordered to be paid to the workmen, have not been noticed by the learned Single Judge while passing the impugned order herein, modifying the award. Hence, we hold that Pramod Mehra case is distinguishable, both on facts and in law.

23. Learned Counsel for the workmen relied upon the case of Mohan Kamalkar

Sindgikar and Others Vs. Joshi Metal Industries, Bijapur and Others, wherein the learned Single Judge taking into consideration the certificate obtained u/s 33-C(1) of the Industrial Disputes Act from the labour Court, by the workmen of the respondent establishment, has held that they should have priority in proceeds of sale of assets, brought about by a co-operative bank, as a secured creditor. The provisions of Section 29 of SFC Act has not been considered therein. In our view, the decision has no application.

24. Learned Counsel for the workmen placed reliance on the decision of Rohtas Industries Limited, *supra*, to contend that, the workers should get priority when the assets of the industry are sold. Hon''ble Supreme Court in the case of State of U.P. and Anr. v. Uptron Employees Union, CMD and Ors. reported in AIR 2000 SC 2081 has explained the decision rendered in the case of Rohtas Industries Limited, *supra*, as follows:

16. Counsel for the respondents have placed reliance on Workmen of M/s. Rohtas Industries Vs. Rohtas Industries and others, In that case this Court passed an order directing the State Government and the Central Government to contribute a sum of Rs. 30 crores each with a view to work the Industry which has closed down, having regard to its potential. However, as noticed by the Court, the experiment did not yield any result and this Court noted that the unprecedented course adopted by this Court of assuming direct control over the functioning of the undertaking with a view to secure its revival and rehabilitation had failed, and it was therefore constrained to put an end to the proceedings and permit resumption of the winding up proceedings before the High Court. It would, thus, appear that the order passed in the matter of Rohtas Industries (*supra*) was passed in the peculiar facts of the case and no principle had been laid down that in such a case it is the duty or obligation of the State Government or the Central Government to provide funds for payment of dues of workers. Reliance was also placed on the decision of this Court in the case of Kapila Hingorani Vs. State of Bihar, . The order passed therein was passed in the peculiar facts and circumstances, where a large number of employees employed in a large number of government corporations and undertakings were not paid their dues for years together. Invoking the principles enshrined in Articles 21 and 23 of the Constitution, this Court directed the State of Bihar to deposit a sum of Rs. 50 crores before the High Court for disbursement of the salaries to the employees of the corporations. It also vested a discretion in the High court to direct disbursement of some funds to the needy employees on ad hoc basis so as to enable them to sustain themselves for the time being. There was also a clear direction that the rights of the workmen shall be considered in terms of Section 529A of the Companies Act.

In the case of Rohtas Industries Limited, *supra*, the industry was closed and the workers were not paid in spite of the order passed by the Hon''ble Supreme Court. Taking into account the scheme for revival of the industry initiated by the Government and the concession by the learned Counsel for the State of Bihar,

taking a broad and humane view of the situation, the goods which were lying in stock shown by the liquidator, were ordered to be sold and out of the sale proceeds, the workers were directed to be paid their dues, up to the date of closure. It is to be noticed that, the Hon''ble Supreme Court Itself has said that the arrangement made therein in the peculiar circumstances indicated therein, may not be treated as a precedent. Even otherwise, the industry which was the subject matter of consideration in Rohtas case, was under liquidation and the liquidator was in-charge of the assets and in that view of the matter, since the provisions of Sections 529 and 529A of the Companies Act could be applied, the arrangement appears to have been made.

25. Learned Counsel for the workmen also relied upon the decision in the case of Textile Labour Association, *supra*, which had followed the decision of the Supreme Court in Rohtas Industries Limited case *supra*. Having perused the said Judgment, in our view, it has no application to the points that have arisen for consideration in these appeals.

26. Learned Counsel for the industry placed reliance upon the judgment of Allahabad Bank v. Candra Bank AIR 2000 SC 1535 to contend that the workmen's dues shall have priority over all other debts. We have perused the said decision, wherein the issue considered is, the question of jurisdiction of Debts Recovery Tribunal under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, vis-a-vis the Company Court. It was held that even where a winding up petition is pending or winding up order has been passed against the debtor company, the adjudication of liability and execution of the certificate in respect of debts payable to bank and financial institutions are respectively within the exclusive jurisdiction of the Debts Recovery Tribunal and the recovery officer under that Act in such a case, the company Court's jurisdiction under Sections 442, 537 and 446 of the Companies Act stood ousted. Hence, no leave of companies Court is necessary for initiating proceedings under the Recovery of Debts Act.

It has to be noticed that the decision of Allahabad Bank, *supra*, has no application herein, as the issue that was the subject matter of consideration in Allahabad Bank's case, *supra*, was in respect of a company-in-liquidation and the provisions of Sections 529 and 529A of the Companies Act applied. As already pointed out, in respect of the industry herein, no proceedings for winding up were initiated at any point of time, much less when the assets of the industry were taken over, sold and the sale proceeds were appropriated towards the debt due by the industry to the Corporation, in exercise of the rights of the Corporation u/s 29 of SFC Act.

Regarding Point No. 4

27. Industry did not contest the claim of the workmen before the Tribunal. After the award, the industry filed the writ petition. Learned Single Judge has held that the industry and the Corporation are liable jointly and severally. Order passed by

the learned Single Judge, allowing the writ petition of the purchaser by relying upon the decision of the Apex Court in the case of Bhola Nath Mukherjee and Others Vs. Govt. of W.B. and Others, has not been questioned either by the workmen or the industry. Thus the purchaser has been relieved from the liability. In view of the findings recorded on Points 1 to 3, the Corporation cannot be held liable either jointly or severally to pay the closure compensation or other claims of the workmen. The industry was under lock out prior to the taking over of the assets by the Corporation. The industry, had the legal obligation to pay the wages of the lock out period and the closure compensation to the workmen. Hence, it is the management of the industry which is liable to pay the wages of the lock out period and the closure compensation to the workmen. Order passed by the learned Single Judge to the extent of making the industry liable, is justified. Writ appeal filed by the management of the industry, is devoid of merit.

28. In view of the foregoing discussion and reasons, we pass the following:

ORDER

(i) Writ Appeal 165/2007 filed by the Karnataka State Industrial Investment and Development Corporation Limited, is allowed. Order dated 8.12.2006 passed by learned Single Judge, dismissing W.P. 35393/2000, is set aside and the said writ petition stands allowed, quashing the award passed by the Industrial Tribunal in I.D. 25/1995 dated 29.4.2000, in so far as the same is against the Karnataka State Industrial Investment and Development Corporation Limited.

(II) Writ Appeal 447/2007 is dismissed. Order dated 8.12.2006 passed by learned Single Judge, is modified and it is held and ordered that the management of M/s Karnataka Horological Limited, shall pay the wages of the Sock out period and closure compensation to the workmen and it alone shall be liable to satisfy the award passed in LD. 25/1995 dated 29.4.2000 by the Industrial Tribunal, Bangalore.

(iii) In the facts and circumstances of the case, we direct the parties to bear their respective costs.