(1991) 01 KL CK 0021

In the High Court Of Kerala

Case No : Application No. 190 of 1990 in C.P. No. 18 of 1988

Kerala Financial Corporation APPELLANT

Vs

Official Liquidator and Another RESPONDENT

Date of Decision : 23-01-1991

Acts Referred:

Companies Act, 1956 — Section 446, 529A
State Financial Corporations Act, 1951 — Section 29

Citation : (1991) 71 CompCas 324 : (1991) 2 ILR (Ker) 815

Hon'ble Judges : K. John Mathew, J

Bench : Single Bench

Advocate : M. Ramanathan Pillai, for the Appellant; K. Moni and V. Rajendran, for the Respondent

Final Decision : Dismissed

Judgement

K. John Mathew, J.—The Kerala Financial Corporation (hereinafter referred to as "the KFC") has filed this application for an order granting leave to initiate proceedings against Prime Wood Products (P.) Ltd. (in liquidation) (hereinafter referred to as "the company"), as provided u/s 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the SFC Act").

2. The company is being wound up by this court. The official liquidator attached to this court is the liquidator of the company. The liquidator has filed a counter-statement The KFC, State Bank of Travancore and Small Industries Development and Employment Corporation are the secured creditors of the company. The State Bank of Travancore has got charge over stock-in-trade, raw materials, etc., of the company. The KFC has got charge over land and building, plant and machinery. The Small Industries Development arid Employment Corporation has got second charge over the machinery of the company. The State Bank of Travancore, after obtaining leave of this court, sold the movable assets.

3. The KFC can exercise its rights u/s 29 of the State Financial Corporations Act only against industrial concerns. According to the liquidator, the company is not

an industrial concern since it is being wound up. It is also contended that the liquidator is entitled to represent the workmen of the company and enforce pari passu charge in favour of workmen as per the provisions contained in Sections 529 and 529A of the Companies Act. Therefore, the official liquidator representing the workmen has an important role to play in the disposal of the charged assets. According to the counter-statement, rights u/s 29 of the State Financial Corporations Act can be resorted to only if the winding up proceedings are lifted in order to enable the KFC to take over the management. The counter-statement also refers to an earlier order by which this court indicated that the best course was to dispose of the entire assets and keep the amounts in court for disbursement to the persons or institutions entitled to the same. Such claims were directed to be considered as and when they were raised. There was no proposal to take action u/s 29 at that time. It was also pointed out that there was an attachment in respect of the building and plant and machinery from O. S. No. 78 of 1987, Sub-court, Pathanamthitta, and the attachment has to be vacated if proceedings u/s 29 of the State Financial Corporations Act are to be taken.

4. The additional second respondent is Veneers and Laminations (India) Ltd., which is the holding company of the company in liquidation. The company had taken a loan of Rs. 12.12 odd lakhs from the KFC. The loan is secured by a first charge on the fixed assets of the company in liquidation and also by a guarantee given by the second respondent-company. No reasons are stated as to why the KFC is taking recourse to their power u/s 29 of the State Financial Corporations Act. According to them, KFC has not chosen to exercise this power in many other cases where the outstanding dues are higher than that of the company in liquidation. According to them, this application is an instance of the misuse of the power u/s 29 with a view to cause difficulties to the additional second respondent. The KFC has turned down all requests for reviving the company, even though all other institutions like Industrial Reconstruction Bank of India, Kerala State Industries Development Corporation and State Bank of India were agreeable for revival. All these show the unhelpful attitude of the KFC. Due to this biased attitude taken by the officers of the KFC, the additional second respondent apprehends that the sale of the properties by the KFC will fetch only a lower price than what may be realised by the sale by the official liquidator. In view of the guarantee given by the additional second respondent, they have to make good any shortfall in realisation. The counter-affidavit also refers to the pari passu charge of the workers u/s 529A of the Companies Act. According to the. additional second respondent, the rights of the workers as well as other creditors are likely to be prejudicially affected by the sale by KFC and that a public auction by the official liquidator under the supervision of this court will fetch the maximum price for the property.

5. u/s 29 of the State Financial Corporations Act, the financial corporations are given 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". The prayer in the application is to permit the KFC to exercise this right and to sell the property.

6. u/s 529A of the Companies Act, workmen''s dues are made an overriding preferential payment pari passu with the debts due to secured creditors. There is a non-obstante clause in Section 529A. The said section, therefore, has to prevail over Section 29 of the State Financial Corporations Act in case of a conflict. Thus, the workmen''s dues which rank pari passu with the dues of the secured creditors will have to be paid from the proceeds of the assets of the company including the security given to the secured creditors.

7. In case of any dispute about the apportionment of the dues to the workers, such a dispute cannot be left to be decided by the KFC. So also, if there is a dispute regarding the amount due to the KFC, that dispute also cannot be left to be decided by the KFC. For example, a question may arise as to what is the date on which the amount due to the KFC is to be fixed for the purpose of apportioning the amount, whether it is the date of winding up or the date on which apportioning is done. It is likely that KFC is applying interest on the amount due to them, even though normally no interest is charged in respect of other debts payable by the company like the dues to the workmen. If so, while apportioning, the amount due to the workmen will be considerably reduced. There may be other similar questions also which may have to be determined before a proper apportionment is effected.

8. Another aspect to be noticed is this. The State Bank of Travancore has a charge over the movables. The movables are sold and the proceeds of the sale are available for distribution. The workers can legitimately claim pari passu charge with the State Bank of Travancore also. Therefore, the proper method of apportionment of the proceeds of the immovable as well as movable properties has to be fixed. This also cannot be left to the decision of the KFC.

9. Therefore, in the best interest of all concerned, the sale will have to be conducted by the official liquidator under the supervision of this court. The sale will he free of encumbrances and the KFC will get its charge transferred to the proceeds of the sale. The interest of the KFC, the workmen and other creditors ban be safeguarded by adopting this method. The liquidator is directed to move this court for directions regarding the sale of the immovable property. C. A. No. 190 of 1990 is accordingly dismissed.