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(2015) 08 SC CK 0082

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5803, 5804 and 5805 of 2005

Laxmi Fibres Ltd. — APPELLANT

Vs

A.P. Industrial Dev. Corpn. Ltd. and Others — RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:
Companies Act, 1956 — Section 445, 529(1), 529A
State Financial Corporations Act, 1951 — Section 29, 31, 46

Citation : (2015) 9 AD (SC) 129 : AIR 2015 SC 3289 : (2015) 4 AKR 191 : (2015) 112 ALR 651 : (2015) 4 BC 195 : (2015) 127 CLA 456 : (2015) 192 CompCas 84 : (2015) 3 CompLJ 433 : (2015) 3 JLJR 461 : (2015) 4 PLJR 113 : (2015) 4 RCR(Civil) 596 : (2015) 129 RD 593 : (2

Hon'ble Judges : Vikramajit Sen, J;Shiva Kirti Singh, J

Bench : Division Bench

Advocate : G. Ramakrishna Prasad, Suyodhan Byrapaneni and Filza Moonis, for the Appellant; A.V. Rangam, Buddy A. Ranganadhan, D.V. Raghu Vamsy, T.V. Ratnam and Y. Prabhakara Rao, Advocates for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.

Civil Appeal No. 5805 of 2005

1. In this appeal preferred by the Appellant-company under liquidation represented by the Official Liquidator the question of law arising for consideration is whether the Official Liquidator can claim any power or jurisdiction in itself to adjudicate and quantify the claim of statutory corporations such as Respondent No. 1, A.P. Industrial Development Corporation and Respondent No. 2, A.P. State Financial Corporation when the Company Judge has permitted them to stand outside the liquidation proceeding subject to certain conditions under which the Respondent Corporations may pursue the powers available to them Under Section 29 of the State Financial Corporations Act, 1959 (for brevity referred to as ''the SFC Act'').

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2. The relevant facts are not at all under dispute and to answer the issue of law indicated above it is not necessary to delve deeper into facts. It would suffice to notice that the Official Liquidator has taken over the charge of the company by virtue of Section 445 of the Companies Act and the property of the company is also seized by the first Respondent (the Corporation) Under Section 29 of the SFC Act. The sale of the assets of the company was conducted by first Respondent as per conditions imposed by the High Court. To comply with one of the conditions the corporation was required to obtain permission of the High Court for finalizing/confirming the sale. The Official Liquidator had already been allowed to inspect the properties and assets of the company and to take inventory as and when required. The valuer''s report was also placed before the court before the properties covered under the mortgage deeds in favour of Corporation were put to sale. The Respondent-corporation had also submitted to the order of the Company Judge requiring the corporation to undertake to deposit workmen''s dues with the Official Liquidator as and when quantified by him as per the provisions of Section 529A of the Indian Companies Act with interest at the bank rate and whatever surplus would remain after the sale and realization of the dues of the secured creditors and the workmen, as per law, the balance sale proceeds could be made available to the Official Liquidator for being dealt with as per the provisions of the Companies Act and the Rules.

3. On the application filed by the Respondent-corporation seeking confirmation of sale of the mortgage assets of the company, the learned Single Judge vide order dated 19.11.2003 noted the contention of all the parties and finding that there was no objection to sale of the properties either by the second charge holder or by the Official Liquidator, confirmed the sale of land, buildings, plant and machinery in favour of M/s. Sri Venkataswara Industries represented by Sri Adarsha Gupta for a sum of Rs. 86 Lacs and carding machine in favour of M/s. Supreme Associates, Coimbatore for a sum of Rs. 2.45 Lacs. However, the learned Single Judge made the order of confirmation subject to the following conditions:

Before the applicant and 2nd Respondent seek to appropriate the sale proceeds for themselves, they should prove their claim before the Official Liquidator. The proceeds realised through the sale of the properties shall be kept by the Applicant-Corporation in interest earning deposits till the Official Liquidator adjudicates and quantifies the claim of the Applicant and 2nd Respondent Corporations. The Applicant and 2nd Respondent shall deposit 1/4th of the sale proceeds with the Official Liquidator to enable him to proceed with the adjudication of the claims of the workmen and for distribution among themselves. They shall make over the excess sale proceeds, if any, to the Official Liquidator.

After receiving the entire sale consideration only, the Petitioner is directed to hand over possession of the properties to the highest bidders and execute necessary sale papers in their favour.

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4. Aggrieved only with the condition extracted above, the Respondent No. 1 preferred an intra-court appeal bearing OSA No. 85 of 2003. The learned Division Bench disposed of the appeal by order impugned dated 07.01.2004 directing that the confirmation of sale of the properties in favour of the highest bidder would be subject to only one condition that the Official Liquidator shall quantify the amounts liable to be paid to the workmen. The Division Bench accepted the objection raised by Respondent-corporation that there could be no question of establishing the claim of the corporation before the Official Liquidator as the corporation was a secured creditor.

5. The Division Bench in our view came to a correct conclusion that the Official Liquidator does not have jurisdiction to ascertain or adjudicate the claim of a secured creditor who has been permitted by the Company Judge to stand outside the liquidation proceeding with liberty to pursue its remedy as per statutory rights available under the SFC Act, subject only to the conditions imposed by the court. The reasons for such a view are apparent on a perusal of the following three judgments of this Court:

1. A.P. State Financial Corporation Vs. Official Liquidator, AIR 2000 SC 2642 : (2000) 102 CompCas 1 : (2000) 8 JT 587 : (2000) 5 SCALE 486 : (2000) 7 SCC 291 : (2000) 2 SCR 288 Supp : (2000) AIRSCW 2804 : (2000) 5 Supreme 495 ;

2. International Coach Builders Ltd. Vs. Karnataka State Financial Corpn., AIR 2003 SC 2012 : (2003) 114 CompCas 614 : (2003) 2 CompLJ 166 : (2003) 2 JT 395 : (2003) 2 SCALE 677 : (2003) 10 SCC 482 : (2003) 2 SCR 631 : (2003) AIRSCW 1524 : (2003) 2 Supreme 460 ; and

3. Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another, AIR 2006 SC 755 : (2005) 4 BC 551 : (2005) 128 CompCas 387 : (2005) 6 CompLJ 129 : (2005) 12 JT 156 : (2006) 142 PLR 404 : (2005) 8 SCALE 255 : (2005) 8 SCC 190 : (2005) 63 SCL 468 : (2005) 3 SCR 1073 Supp : (2005) 2 UJ 1515 : (2006) AIRSCW 113 : (2005) 6 Supreme 709

6. In A.P. State Financial Corporation this Court had the occasion to examine the extent of powers available to a Financial Corporation Under Sections 29 and 46 of the SFC Act in the light of later amendments to the Companies Act incorporating proviso to Section 529(1) and Section 529A of the Companies Act through Amendment Act 35 of 1985. The object of the amendment was to protect the dues of the workmen. This Court held that the power available to a corporation Under Section 29 to sell the property of a debtor company under liquidation is not absolute but is subject to the proviso to Section 529(1) and non obstante clause in Section 529A of the Companies Act providing for pari passu charge of the workmen.

7. In International Coach Builders Ltd. this Court not only followed the view taken in A.P. State Financial Corporation case but went on to explain in paragraph 31 as to how the view adopted would not obliterate the difference between a creditor opting to stay outside winding up and one who opts to prove

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his debt in winding up. Para 31 of the judgment provides thus:

31. Finally, counsel for SFCs urge that the view we are to take would obliterate the difference between a creditor opting to stay outside winding-up and one who opts to prove his debts in winding-up. We are unable to accept it. As a result of the amendments made by the Act of 1985 in the Companies Act, 1956, SFCs as secured creditors, must seek leave of the Company Court for the limited purpose of ensuring that the pari passu charge in favour of the workmen is safeguarded by imposition of suitable conditions under the supervision of the Company Court. If this amounts to impeding their hitherto unimpeded rights, so be it. Such is the parliamentary intendment, according to us. This impediment is of a limited nature for the specific purpose of protecting the pari passu charge of the workmen''s dues and subject thereto, SFCs can continue to exercise their statutory rights as secured creditors without being reduced to the status of unsecured creditors required to prove their debts in insolvency and stand in line with other unsecured creditors. Neither is the apprehension expressed justified, nor the contention sound.

8. It is clear from the aforesaid judgment that no doubt the changes brought about in the Companies Act through amendments of 1985 impede even the statutory powers available to a secured creditor like SFCs Under Section 29 and the other relevant sections of the SFC Act but the impediment is indeed of a limited nature; its specific purpose being to protect the pari passu charge of the workmen''s dues. After ensuring that this purpose is achieved or ensured, the State Financial Corporations can continue to enjoy their statutory rights as secured creditors. They will not be reduced to the status of unsecured creditors and equally will not be required to prove their debts nor will be required to stand in line with other unsecured creditors.

9. A three Judges'' Bench in the case of Rajasthan State Financial Corporation (supra) approved and followed the earlier views in A.P. State Financial Corporation and in International Coach Builders Ltd. In paragraph 17 of this judgment it was again clarified that the "right of a financial institution or of the Recovering Tribunal or that of a financial corporation or the Court which has been approached Under Section 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the Company Court the right to ensure that the distribution of the assets in terms of Section 529A of the Companies Act takes place.

(Emphasis added)

10. In our considered view, the rights of a financial corporation available under the provisions of the SFC Act have been compromised or impeded by the amendment of 1985 in the Companies Act, particularly the proviso added to Section 529(1) and Section 529A, only to a limited extent and for the limited purpose of securing the right of the workers for distribution of their wages as pari

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passu charge. But such limited impediment to their rights under the SFC Act will not alter the status of State financial corporations as secured creditors and they will not be required to prove their debt which they are entitled to realize under the provisions of the SFC Act subject to right of the workers to receive their wages also as secured creditors on pari passu basis. The control of the Company Judge and the Official Liquidator if authorized, can extend only to ensure that the aforesaid purpose of Section 529A is effectively achieved. Like any other affected person, if the Company represented by the Official Liquidator has reasons to be aggrieved by claims made by a financial corporation under the SFC Act, its remedy would be to initiate appropriate civil proceedings to challenge such claim or debt of a State financial corporation before an appropriate forum and not to assume jurisdiction to sit in adjudication and decide entitlement of the financial corporation when it has opted to stand outside the liquidation proceeding as a secured creditor. As noted earlier, the statutory powers of SFCs have suffered only a limited impediment only to serve the purpose of protecting workers'' dues.

11. In view of law noticed above, we find no error in the impugned order of the Division Bench. The appeal is, therefore, dismissed but without any order as to costs.

Civil Appeal Nos. 5803 and 5804 of 2005

12. The orders under appeal dated 07th January 2004 in O.S.A. No. 74 and 86 of 2003 respectively simply follow the reasons recorded by the Division Bench in another judgment of a same date, i.e., 07th January 2004 passed in O.S.A. No. 85 of 2003. In the connected appeal bearing C.A. No. 5805 of 2005 we have passed a reasoned order to uphold that order of the Division Bench. Following the said judgment and for the same very reasons these appeals are also dismissed but without any order as to costs.

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