

(1994) 07 KAR CK 0015

In the Karnataka High Court

Case No : O.S.A. No"s. 13 of 1990 and 1 of 1991 and I.A. No. 2 for impleading
Mysore Surgical Cotton (P.) Ltd. APPELLANT
Vs
Karnataka State Financial Corporation
 Feroz Asgar Ali RESPONDENT
Vs Mysore Surgical Cotton Co. (P.) Ltd. and another

Date of Decision : 13-07-1994

Acts Referred:

Companies Act, 1956 — Section 449, 529

Citation : (1999) 96 CompCas 86

Hon'ble Judges : S.B. Majmudar, C.J.; Hari Nath Tilhari, J

Bench : Division Bench

Advocate : S.M. Chandrashekhar, for the Appellant; N.B. Bhat and K.R.D. Karanth, for the Respondent

Judgement

S.B. Majmudar, C.J.—We have heard the learned advocates for the parties finally and we are disposing of these appeals which involve common questions, by this judgment. Both these appeals are moved by Mysore Surgical Cottons (Private) Limited (in liquidation), represented by the official liquidator of this court. The common respondent is the Karnataka State Financial Corporation. The Mysore Surgical Cotton Co. (P.) Ltd. was ordered to be wound up by the order of this court dated August 9, 1985, in Company Petition No. 8 of 1984 presented on January 27, 1984. By reason of the provisions of section 449 of the Companies Act, 1956 (the "Act" for short), the official liquidator attached to this court became the liquidator of the company. The respondent, which is established u/s 3 of the State Financial Corporations Act, 1951 (for short, "the SFC Act"), claims that it is a secured creditor of the company in liquidation. The respondent-corporation took out Company Application No. 610 of 1988 in Company Petition No. 8 of 1984 K. Sp. V. Shanmugam Vs. Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. and another, along with other similar applications. That application was admitted with other similar applications in company matters. In all these applications, one of the questions that arose for decision by the company court was whether the respondent can contend that it

can exercise the powers u/s 29 of the State Financial Corporations Act, by standing outside the winding up and enforce the security in its favour and against the company (in liquidation). These applications were heard by the learned company judge, and an order was passed on February 23, 1989. The sum and substance of this order was that the official liquidator is competent to initiate action to recover sums due to the secured creditors; that the Legislature directs the official liquidator to represent the workmen and enforce the charge created by fiction of law under the first proviso to section 529(1) of the Act; that even a secured creditor standing outside the winding up, comes within the jurisdiction of the company court u/s 446(2)(b) and (d) of the Act; that the workmen of a company in liquidation should be represented by the official liquidator for the enforcement of the charge and that sections 529 and 529A take away the right of the Karnataka State Financial Corporation to deal with the property of the company in liquidation. It was thus held that the appropriate orders to be made was to direct the official liquidator to cause the sale of properties of the company in liquidation by public auction. A further direction was given to the official liquidator to take out notices in newspapers inviting claims from former workmen of the company in liquidation and to have the application brought up after four weeks. The official liquidator got published the notices and by the order dated March 30, 1989, the learned company judge permitted the Karnataka State Financial Corporation to sell the assets of the company in liquidation, which was opposed as inconsistent with the earlier order dated February 23, 1989, wherein it was categorically held that the right of the Karnataka State Financial Corporation to deal with the property and assets of the company in liquidation is taken away by reason of the provisions of sections 529 and 529A of the Act, and the official liquidator was to cause the sale of properties in public auction. The appellant herein took out C.A. No. 95 of 1990 for orders recalling or reviewing the order dated March 30, 1989. The learned company judge by order dated June 15, 1990, dismissed the said application. Meaning thereby, he reiterated the order dated March 30, 1989. Against the order dated June 15, 1990, refusing to recall the order, O.S.A. No. 13 of 1990 is moved by the official liquidator representing the company (in liquidation); while O.S.A. No. 1 of 1991 is moved by the official liquidator against the order dated June 15, 1990, made on C.A. No. 1464 of 1989 in C.P. No. 8 of 1984. The respondent moved Company Application No. 1464 of 1989 in Company Petition No. 8 of 1984 for directing the official liquidator to hand over possession of the assets of the company (in liquidation) to the respondent, so that the respondent could put the property to sale u/s 29 of the Act. That application was granted on June 15, 1990. It is that order of the learned judge in C.A. No. 1464 of 1989, in C.P. No. 8 of 1984, that has resulted in O.S.A. No. 1 of 1991.

2. In both these appeals, learned counsel for the official liquidator vehemently contended that even though the respondent is a secured creditor and stands outside the winding up, once the company is in liquidation and the official liquidator is appointed, it would be appropriate that the official liquidator may

also associate with the sale of the assets of the company (in liquidation), which will be conducted by the respondent. Learned counsel for the respondent was agreeable to the said course being adopted and he rightly submitted that his request is in consonance with the decision of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, For all these reasons, therefore, even though the secured creditor stands outside the winding up, pursuant to section 529(1) of the Act, once the official liquidator is appointed for the company (in liquidation) whose properties are sought to be disposed of by the secured creditor like the respondent, the official liquidator has to be associated in such exercise. Consequently, these appeals are disposed of by passing the following order :

"(1) The assets of the company for winding up will be advertised for sale by the respondent-corporation in co-operation with the official liquidator - the appellant herein. The appellant will associate with the respondent from the stage of serving the terms of advertisement;

(2) As and when any negotiations with the tenderers arise pursuant to the said advertisement, both the appellant and the respondent will submit a joint report about the processing of the tenders and the result of the negotiations and also indicating highest offer which should be accepted according to the report, to the learned company judge in C.P. No. 8 of 1984 which is pending, after the stage of winding up order. It will be for the learned company judge to pass appropriate orders in the light of the joint report after hearing the concerned parties. It will also be open to the respondent to apply for appropriation of sale proceeds.

(3) The initial cost of advertisement and other ancillary cost in this connection will be borne by the respondent - secured creditor, subject to the respondent getting appropriate directions about defraying of these expenses ultimately."

3. Now remains the question of disposing of I.A. No. 2 moved by the applicant - Feroz Asgar Ali, in O.S.A. No. 13 of 1990. Learned counsel for the applicant submitted that pursuant to the earlier advertisement issued by the respondent, he had already submitted his offer by way of a tender and he was also called for negotiations and ultimately he emerged as the highest offerer and towards his offer to purchase the assets of the company - both movable and immovable including machinery, he deposited Rs. 1,00,000 in all, with the respondent and the said money is lying with the respondent. His offer was to the tune of Rs. 13 lakhs. It is obvious that the appellant and respondent will keep in mind this offer while fixing the upset price pursuant to the advertisement to be issued now. So far as the applicant in I.A. No. 2 is concerned", all that we can direct is that his offer will also be kept in view by the respondent in connection with the fresh advertisement to be issued and the amount of Rs. 1,00,000 lying with the respondent, as submitted by the applicant, will abide by the final result of the scrutiny of offers. It will also be open to the applicant to give his fresh offer and in that case, he will not be required to make a fresh deposit because Rs. 1,00,000 is already lying with the respondent. In case the applicant does not

ultimately emerge as the highest offerer and his offer is not accepted, then it will be open to the learned company judge to pass appropriate orders regarding repayment of Rs. 1,00,000 to the applicant. It will also be open to the respondent-corporation to resist the said application in accordance with law. It will be for the learned company judge to decide the claim in such a future application even if such an eventuality would arise.

4. In view of the aforesaid clarification and reserving the liberty to the applicant as aforesaid, the application - I.A. No. 2 stands disposed of. Consequently, both the O.S.A. Nos. 13 of 1990 and 1 of 1991 also stand disposed of.