

(2006) 12 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 1172 of 2005 (L-Ter) connected with Writ Petition No. 35393 of 2000 (L) connected with Writ Petition No. 5332 of 2003 (L-Res)

Prime Technologies, Doddaballapura

APPELLANT

Vs

Karnataka Horological Limited, Bangalore and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Companies Act, 1956 — Section 529A
Industrial Disputes Act, 1947 — Section 11A
State Financial Corporations Act, 1951 — Section 29

Citation : (2007) 3 KarLJ 93

Hon'ble Judges : Subhash B. Adi, J

Judgement

1. In all these petitions the award dated 29-4-2000 passed by the Industrial Tribunal in I.D. No. 25 of 1995 has been called in question.

2. M/s. Prime Technologies, II(b) party before the Tribunal has filed Writ Petition No. 1172 of 2005, Karnataka State Industrial Investment and Development Corporation (for short, "KSIIDC"), II(c) party before the Tribunal has filed W.P. No. 35393 of 2003 and Karnataka Horological Limited (for short, "KHL"), II(a) party before the Tribunal has filed W.P. No. 5332 of 2003.

3. Brief facts of the case are:

That M/s. KSIIDC had advanced loan to M/s. KHL. For non-payment of the loan amount all the assets of M/s. KHL were sold in a public auction by M/s. KSIIDC to M/s. Prime Technologies i.e., petitioner in W.P. No. 1172 of 2005 as it was successful bidder and its bid was accepted, an agreement was entered into between the petitioner-Prime Technologies and the KSIIDC, petitioner-Prime Technologies took the assets as mentioned in the Schedule specified in the agreement. The public auction took place on 6-8-1994. On account of sale of the assets of M/s. KHL by the KSIIDC the workmen-respondents herein were not permitted to continue their services in the industry. On account of forcible

stopping the work, the respondent-workmen sought for reference under Section 10(1)(b) of the Industrial Disputes Act, 1947 (for short, "the Act"). On reference the Industrial Tribunal, found the lockout of M/s. KHL is illegal and held that the petitioner-M/s. Prime Technologies being a successor in interest of M/s. KHL by virtue of agreement dated 7-10-1994 is liable for payment of due to the workmen. The Tribunal also held that M/s. KHL is liable to pay the lockout period wages and M/s. KSIIDC is liable to pay the claim of the workmen from 6-8-1994 to 7-10-1994 and from 7-10-1994 it is the petitioner, M/s. Prime Technologies liable to pay the demands of the workmen.

4. It is this award which has been called in question in all these petitions. The facts which are not in dispute are: that the respondent-workmen were engaged by M/s. KHL; M/s. KHL had availed loan amount from M/s. KSIIDC and KSIIDC held a public auction under Section 29 of the State Financial Corporations Act, 1951, for recovery of the debt due; that the petitioner-M/s. Prime Technologies was the successful bidder in sale of the assets of M/s. KHL. The agreement dated 7-10-1994 is also not in dispute. In terms of the said agreement M/s. Prime Technologies purchased all the assets specified in Schedules I and II of the agreement. Clause 5 of the agreement dated 7-10-1994 reads as under:

"5. It is agreed between the parties that no labour liability shall be taken over by the purchaser/company, any/all liabilities which may arise on this account, it shall be the sole responsibility of the borrower M/s. Karnataka Horologicals Limited to satisfy such claim/demands which may arise from time to time".

5. The agreement Clause 5 specifies that M/s. Prime Technologies is not responsible for the liability towards the labour and that is the sole responsibility of M/s. KHL. It is seen from the agreement that what is sold by M/s. KSIIDC is land, assets, machineries and unfinished products vis-a-vis the entire assets of M/s. KHL has been sold by M/s. KSIIDC to M/s. Prime Technologies (petitioner in W.P. No. 1172 of 2005) and has collected the entire sale proceeds.

6. It is not disputed by the petitioner in all these writ petitions, that the members of respondent the workmen of M/s. KHL. It is also not in dispute that their services were not terminated; that they were not continued by the purchasing company or they were paid compensation under Sections 25-F, 25-FF or 25-FFF of the Act. The Tribunal on appreciation of the evidence found that on account of transfer of the undertaking M/s. Prime Technologies is liable for payment of compensation under Section 25-FF of the Act.

7. R. Gopalakrishna, learned Counsel appearing for M/s. Prime Technologies submitted that M/s. KHL was a debtor of M/s. KSIIDC for having not paid the amount and M/s. KSIIDC had advertised sale of the assets of M/s. KHL in public auction. Petitioner-M/s. Prime Technologies participated in the said auction and was the successful bidder. Petitioner while entering into an agreement with M/s. KSIIDC has made it clear, that it is not liable to pay any compensation to the workmen of M/s. KHL. He also submitted that all the persons who were

appointed to M/s. Prime Technologies are fresh appointees and no workmen continued on the sale of the assets and further submitted that it being the purchaser it is not liable to pay compensation to the workmen under Section 25-F, 25-FF or 25-FFF of the Act.

8. Sri Kanikraj, learned Counsel appearing for the petitioner in W.P. No. 5332 of 2003 submitted that under the agreement dated 7-10-1994 the entire assets of the company were auctioned and M/s. Prime Technologies has purchased the same. He has also pointed out from the Schedule that the lands, assets, machineries unfinished products which are available in the premises has been sold by M/s. KSIIDC and nothing have been left out with M/s. KHL. He also submitted that out of the sale proceeds M/s. KSIIDC ought to have settled the claim of the respondent-workmen. In this regard he relied on the judgment in the matter of A.P. State Financial Corporation v Official Liquidator, AIR 2000 SC 2642 and submitted that in an identical circumstances under the company law, Section 529-A of the Companies Act, 1956, provides for fixation of liability on the Financial Corporation to settle the claims of the workmen. He also pointed out that Section 529-A of the Companies Act, will prevail over the Financial Corporations Act. He also pointed out that the right of the workmen is of pari passu charge and relying on this judgment, learned Counsel for M/s. KHL submitted that when the entire assets were sold in an auction M/s. KHL has left with nothing and is not in a position to settle the claim of the workmen. He further pointed out that the sale proceeds are in the hands of M/s. KSIIDC and KSIIDC has to settle the claim of the workmen.

9. Sri Ashok Patil, learned Counsel appearing for M/s. KSIIDC submitted that Section 29 of the State Financial Corporations Act does not provide for payment or settlement of compensation or payment of wages of the workmen. There is no provision under the Financial Corporations Act or any other law requires the KSIIDC to settle the claims of the workmen first. He also submitted that the decision in A.P. State Financial Corporation's case, is not applicable to the facts and circumstances of the case. It is only when a company is in a winding up proceedings, claim of the workmen would be settled out of sale proceeds. In this case there is no such winding up proceedings.

10. Learned Counsel appearing for the workmen, submitted that there is no dispute as to the fact that respondents are workmen and they are entitled for the claim for illegal lockout, or sale of undertaking. He also submitted that now the assets of the company having been sold and the sale proceeds are collected by M/s. KSIIDC, M/s. KSIIDC is required to settle the claim of the workmen. He further submitted that the claim of the workmen will have charge on the amount of sale proceeds as otherwise they will be left in a high and dry position and they will be thrown to street for no fault of theirs. In support of his contention he relied on the judgment of this Court, in the matter of Mohan Kamalkar Sindgikar and Others v Joshi Metal Industries, Bijapur and Others, 1999(6) Kar. L.J. 347 and submitted that in an identical circumstances when an award was passed under

Section 33(1)(c) of the Act the money due to the workmen was treated as first charged on the sale proceeds. In this regard he also relied on another judgment in *Pramod Mehra v Vivek Textile Mill Karmikara Sangha and Others*, 2000-I-LLJ-631 (Kar.) and submitted that the said Financial Corporation is required to meet the statutory closure compensation under Section 25-FFF which is due to the workmen. In this regard he also pointed out to para 26 of the said judgment and submitted that the State Financial Corporation has not justified in appropriating the sale proceeds in respect of the other claims, without taking into consideration the claim of the workmen. He also submitted that the liability to pay the claim of the workmen has to be treated on priority, as against any other claim. From the reading of the agreement between M/s. KSIIDC and M/s. Prime Technologies it is clear that the auction purchaser has made it clear that he would not be liable for the claim of the workmen. It is also not in dispute that the sale proceeds are with M/s. KSIIDC.

11. What is necessary to be seen in this case is, that whether the workmen who were forced to stop their work by unlawful lock out or closure of the industry on account of sale of the assets are entitled for their claim either under Section 25-FF or Section 25-FFF. Though under Section 529-A of Companies Act, operates when winding up proceedings are initiated. From the reading of the provision of Section 529-A of the Companies Act, it is clear that when a company is closed under the winding up proceedings and its assets are sold the intention of the Legislature is to see that the claim of the workmen be settled on par with other claims. It is also clear from the judgment in *A.P. State Financial Corporation's* case, that Section 529-A prevails over the non obstante clause found in Section 29 of the State Financial Corporations Act. It was also held that the statutory right to sell the property under Section 29 of the Financial Corporations Act has to be exercised with the rights of *pari passu* charge to the workmen created by proviso to Section 529-A of the Companies Act. In the case of winding up proceedings the workmen's interest to be protected from out of the sale proceed. It cannot be said that in case of sale of the entire assets of the company that the workmen are not entitled for compensation just because the company is not in winding up proceedings. Even otherwise as it has been held by this Court in *Pramod Mehra's* case referred to above, in an identical circumstances when the industrial establishments are sold by the Financial Corporation, ignoring the amount payable to the workmen and apportion of sale proceeds by the Financial Corporation is not just and proper and the sale proceeds of the Corporation on *pari passu* charge basis had been made ignoring the amount payable to the workmen pursuant to the award of the Labour Court. This Court relying on the judgment in the matter of *Workers of M/s. Rohtas Industries Limited v M/s. Rohtas Industries Limited*, (1987)2 SCC 588, has further held that the Financial Corporation was not justified in apportioning the sale proceeds without taking into consideration the claim of the workmen by referring to Section 529-A of the Companies Act though there is no provision under the State Financial Corporations Act for apportionment of the amount

towards payment of compensation due to the workmen, nevertheless what is required to be noticed is that the sale of entire assets of the company is not less than winding up of the company and workmen cannot be made to suffer. The sale of assets of the company is more than the winding up of the industry. In such an event the workmen who are legitimately entitled for the compensation cannot be ignored for the purpose of appropriating the amount only towards the debt of the Financial Corporation. In such circumstances as found by the Apex Court as well as this Court in the cases referred to above the interest of the workmen is required to be protected, otherwise the workmen would be put to suffer more hardship than what already he is suffering. In this case auction of the agreement entered into between KSIIDC and M/s. Prime Technologies clearly shows that the assets are sold for recovery of the debt, in which event the KSIIDC cannot say, it can ignore the workmen. In my considered view M/s. KSIIDC as well as M/s. KHL are required to settle the claim of the workmen under Section 25-FF of the Industrial Disputes Act. Therefore, the award passed by the Industrial Tribunal requires modification and a direction is required to be issued. Insofar as M/s. Prime Technologies is concerned under the agreement of sale no liability is fixed on it, and also in the light of the judgment of the Apex Court in *Bhola Nath Mukherjee and Others v Government of West Bengal and Others*, 1997-II-LLJ-59 (SC), W.P. No. 1172 of 2006 is allowed, W.P. Nos. 35393 of 2000 and 5332 of 2003 are hereby dismissed and accordingly the award dated 5-4-2004 passed by the Labour Court, Bijapur in K.I.D. No. 76 of 2001 is modified by directing M/s. KSIIDC and M/s. KHL to settle the claim of the workmen jointly and severally.