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In the Calcutta High Court

Case No : Appeal from Original Order No. 990 of 1992 and C.P. No. 671 of 1989

United Bank of India APPELLANT

Vs

The Official Liquidator RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:
Companies Act, 1956 — Section 529, 529(1), 529A, 529A(1), 529A(1)(b)

Citation : 1 CWN 366

Hon'ble Judges : Shyamal Kumar Sen, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Joy Saha, for the Appellant;Mithua Sen, for the Respondent

Final Decision : Allowed

Judgement

Altamas Kabir, J.—The United Bank of India, hereinafter referred to as "the Bank", has preferred this appeal against the order passed by the learned Company Judge on 3rd July, 1992, in connection with sale of the assets of the Company in liquidation. When the assets of the Company in liquidation were put up for sale one M/s Sree Ram Constructions had offered a sum of Rs. 76.00,000/-, which had been accepted. Thereafter, on the intervention of the workmen, the sale was re-advertised on the ground that there had been a substantial misdescription of the land belonging to the company in liquidation. Subsequent advertisement, only one offer was received and that was also from M/s. Sree Ram Constructions whereby the earlier offer Rs. 76,00,000/- was enhanced to Rs. 96,00,000/-.

2. The said offer of M/s. Sree Ram Construction was accepted on the terms and conditions set out in the said order of 3rd July, 1992, passed by the learned Company Judge.

3. At this juncture it may be profitable to mention that the initial offer of Rs. 76,00,000 had been made by M/s. Sree Ram Constructions in respect of about 11 bighas of land which had been mortgaged to the Bank. The subsequent

enhancement of the offer by Rs. 20,00,000/- to Rs. 96,00,000/- was in respect of the balance area which had not been advertised earlier and which did not form part of the lands mortgaged to the Bank.

4. While accepting the aforesaid offer of M/s. Sree Ram Constructions the learned Company Judge held that since the claim of the Bank as a secured creditor was limited to the said 11 bighas of land for which M/s Sree Ram Constructions had offered Rs. 76,00,000/-, and the difference in the subsequent offer represented the value of the land not covered by the mortgage to the Bank, it could not rate as a secured creditor in respect of the enhanced amount of Rs. 20,00,000/-. The learned Judge consequently directed that the workers would, therefore, be entitled to the said sum of Rs. 20,00,000/- in preference to any other creditor, subject to the payment of the usual costs of the Official Liquidator.

5. It is the said portion of the order of the learned company Judge which has been impugned in this appeal.

6. Appearing for the Bank, Mr. Joy Saha submitted that the scope of the appeal was limited to the question as to whether having had to part with a portion of its security on account of the pari passu charge in favour of the workmen u/s 529 of the Companies Act, 1956, the learned Company Judge was justified in directing that only the workmen would be entitled to the additional sum of Rs. 20,00,000/- offered by the purchaser to the exclusion of the Bank.

7. Mr. Saha urged that having regard to the provisions of Clause (c) of the proviso to sub-section (1) of Section 529 of the Companies Act and Section 529A thereof, the Bank was also entitled to participate in the disbursement of the additional sum of Rs. 20,00,000/-, even though the same was offered on the basis of the re-advertisement and in respect of the property which was not covered by the Bank''s mortgage.

8. Section 529(1) and more particularly clause (c) of the proviso thereto, which is relevant for our purpose reads as follows :

"Application of involvancy rules in winding up of insolvent companies. 529(1) in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to --

(a) debts provable;

(b) the valuation of amenities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors;

as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent;

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen''s portion therein, and, where a secured creditor, instead of

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relinquishing his security and proving his debt, opts to realise his security, ?

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen''s dues; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this, proviso or the amount of the workmen''s portion in his security, whichever is less, shall rank pari passu with workmen''s dues for the purpose of Section 529A".

9. Mr. Saha submitted that under the proviso to sub-section (1) of Section 529 the security of every secured creditor is to be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen''s portion therein and consequently as the secured creditor had to part with a portion of his security, specific provision had been made in clause (c) of the said proviso to secure the secured creditor to the extent of the dues unrealised by him by directing that the same would rank pari passu with the workmen''s dues for the purpose of Section 529A which reads as follows :

"Overriding preferential payments.

529A(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company --

(a) workmen''s dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of Section 529 pari passu with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.--

10. Mr. Saha urged that Clause (b) of sub-section (1) of Section 529A specifically provides for preferential payment of debts due to secured creditors to the extent such debts rank under Clause (c) of the proviso to sub-section (1) of Section 529 pari passu with the workmen''s dues. Mr. Saha urged that having regard to Clause (c) of the proviso to subsection (1) of Section 529, the unrealised portion of the Bank''s dues on account of the said proviso would rank pari passu with the workmen''s dues as far as the additional sum of Rs. 20,00,000/- was concerned in view of the provisions of Clause (b) of Section 529A(1) of the Companies Act, and notwithstanding the fact that the said amount was offered in respect of the assets of the Company in liquidation which were not covered by the Bank''s mortgage.

11. Mr. Saha referred to a bench decision of the Madras High Court in the case of

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Indian Bank v. S. Perianal Raja & Ors., reported in 76 Company Cases, page 787, which supports his contention.

12. As has been very aptly observed in the said decision. Section 529A of the Companies Act enables the secured creditor who had to suffer in paying the workman''s dues out of the realisation of his security, to preferentially recover what he had so suffered from the other assets in the hands of the liquidator.

13. We respectfully agree with the views expressed in the aforesaid decision, inasmuch as, the scheme of Clause (e) of the proviso to subsection (1) of Section 529 read with Section 529A(1)(b) of the above Act is that the amount suffered by the secured creditor is to be paid to him, along with the workmen''s dues, in priority to all other debts.

14. The learned Judge does not appear to have taken into account the scope of the provisions of Clause (c) of the proviso to Section 529(1)* and Clause (b) of Section 529A(1) of the Companies Act, 1956, possibly because the said aspect of the matter was not brought to the notice of the learned Judge resulting in the direction that the workers, in preference to any other creditor, would be entitled to the additional sum of Rs. 20.00,000/-.

15. It may be recorded that despite service of notice of the appeal, the workers did not appear and contest the appeal.

16. In any event, for the reasons indicated hereinbefore, we are of the view that the said direction of the learned Company Judge cannot be sustained and we, therefore, set aside the same. The appellant Bank will also be entitled to preferential payment, alongwith the workers, in respect of the additional sum of Rs. 20,00,000/- in keeping with the provisions of clause (b) of Section 529(A) of the Companies Act, 1956. The other portions of the impugned order dated 3rd July, 1992, shall remain in full force.

17. The appeal is accordingly allowed.

18. There will be no order as to costs. All parties to act on a signed copy of the operative portion of this judgment on the usual undertakings.

Shyamal Kumar Sen, J.

I agree.

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