

(2007) 10 AHC CK 0131
In the Allahabad High Court

U.P. Industrial Cooperative Association Ltd.	APPELLANT
Vs	
Official Liquidator, attached to Hon. High Court of Judicature at Allahabad	RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Companies Act, 1956 — Section 529, 529A, 530

Citation : (2007) 10 AHC CK 0131

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri V.K. Birla, learned Counsel for the appellant and Sri Ashok Mehta, learned Counsel appearing for the Official Liquidator.
2. This appeal u/s 483 of the Companies Act read with Chapter VIII Rule 5 of the High Court Rules has been preferred against the order dated 17.09.2007 passed by Hon''ble Company Judge rejecting the application of U.P. Industrial Cooperative Association Ltd. (hereinafter referred to as the "appellant") claiming for deduction of the amount of loan as a result of credit sale to the workman of the company and pay directly to the appellant.
3. It appears that certain goods were provided on loan to the workman of M/s U.P. State Cement Corporation Limited (hereinafter referred to as the "Company") and for payment of the cost of such article the procedure adopted was that the amount was to be paid in six instalments to the appellant by making deduction from monthly salary of the concerned workman, by the Company, and was to be paid to the appellant directly. Since the regular monthly salary of the workman itself could not be paid by the Company, the amount of loan instalments also could not be paid to the appellant. The appellant submits that as a result of auction of the Company, the amount of wages are being paid to the worker by the Official Liquidator and from that amount his dues should be deducted and be paid directly by the Official Liquidator to the appellant. The

Hon''ble Single Judge has rejected the application on the ground that since the "workman dues" are to be treated as overriding preferential payments under Sections 529, 529A and 530 of the Companies Act, 1956 (hereinafter referred to as the "Act") and the dues of the appellant being unsecured debts, the appellant cannot be paid the said dues by the Official Liquidator.

4. Sri Birla placing reliance on a judgment of Hon''ble Gujarat High Court in Baroda Spinning & Weaving Mills Co. Ltd. v. Baroda Spinning & Weaving Mills Co-operative Credit Society Ltd. and Anr. 1976 (46) Comp Cas 1 and earlier order of the Hon''ble Single Judge in Misc. Company Application No. 4 of 1997 in the matter of U.P. State Cement Corporation Ltd. passed on 27.04.2007 contended that the amount of the appellant was a "money in trust" lying with the Company and therefore, it did not fall in the category of secured or unsecured debts and in fact falls in a third category i.e. "money in trust" and was liable to be paid by the Official Liquidator directly. The learned Single Judge, the contended, has erred in law in rejecting the application ignoring the said legal position.

5. However, we do not find any force in the submission in view of the specific provision of Section 529A of the Act which has been inserted by Companies (Amendment) Act 1985 and reads as under:

529k (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,

(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.

The "workmen's dues" has been defined in Sub-section 3(b) of Section 529 which has also been inserted by Companies (Amendment) Kr Act, 1985 and reads as under:

3(b) "workmen's dues", in relation to a company, means the aggregate of the following sums dues from the company to its workmen, namely:

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order of resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in Section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

It is not disputed that the entire amount which was liable to be deducted from the wages payable to workers comes within the definition of "workman dues" and therefore, it was liable to be paid full as provided by Sub-section 2 of Section 529-A of the Act.

In Baroda Spinning & Weaving Mills (Supra) the Hon"ble Gujarat High Court has considered this issue in 1975 when Section 529A of the Act was not on the statute book and the definition of "workmen's dues" contained in Section 529, which was inserted in 1985 was also not there. The controversy came up for consideration before the Hon"ble Gujarat High Court was at the time when statutory provisions were existing differently and, in our view, in view of the specific provision contained u/s 529-A of the Act, there is no scope to take a different view than what has been held by the Hon"ble Single Judge in the judgment impugned in this appeal.

So far as the order of Hon"ble Single Judge relied upon by the appellant having been passed earlier, firstly we find that the Hon"ble Company Judge therein had not taken into account Section 529 and Section 529-A of the Act and further the Cooperative Society which came up for consideration earlier before the Hon"ble Company Judge was U.P. Cement Vetanbhogi Rin Samiti Ltd., Churk and was a Cooperative Society of the workmen of the Company (sic), established for their welfare. Since the said society was confined to the workman of this very Company, the Hon"ble Company Judge passed the said order. It cannot be said to be a binding precedent or the law laid down on the subject concerned, particularly the issue involved in the present appeal.

6. We are therefore, of our opinion that the two judgements (sic) by Sri Birla, learned Counsel appearing on behalf of the appellant do not help him in any manner in view of the facts and circumstances and the statutory provisions applicable in the case in hand. We are in respectful agreement with the view taken by the Hon"ble Single Judge and do not find any reason to interfere in the judgment under appeal. The appeal, therefore, lacks merit and is accordingly dismissed.