

**'REPORTABLE'**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 6079 OF 2009**

**OFFICIAL LIQUIDATOR,  
M/S.METALLIC SOAPS & CHEMICALS (PVT.) LTD.**

**Appellant(s)**

**VERSUS**

**THE MANAGER,  
KARNATAKA STATE FINANCIAL CORPORATION & ANR.**

**Respondent(s)**

**O R D E R**

M/s. Metallic Soaps and Chemicals (Pvt.) Limited, a company incorporated and registered as a private limited company under the Companies Act, 1956 (hereinafter referred to as 'Companies Act') went into financial difficulties which resulted in winding up petitions being filed by two creditors - Company Petition No. 90/1987 on 08.10.1997 and Company Petition No. 74/1989 filed on 10.07.1989. The said company had availed of loan facilities from respondent No. 1 - Karnataka State Financial Corporation, a Corporation within the meaning of the State Financial Corporation Act, 1951 (hereinafter referred to as the 'SFC Act'). The immovable property and the machinery were mortgaged and hypothecated respectively with respondent No. 1. At the stage when the company petitions were still pending, respondent No. 1 took action under Section 29 of the SFC Act on 25.04.1992 to realise its dues. The relevant provisions read as under:

"29.Rights of Financial Corporation in case of default.  
-(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any installment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concerns, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern."

The winding up order in the company petitions filed in 1987-1989 was made on 13.08.1993. The property taken possession of by respondent No. 1 was sold to respondent No. 2 on 21.02.1994.

It appears that the proceedings in respect of the company, now represented by the official liquidator as the appellant before us, under the SFC Act continued oblivious of the other proceedings.

The endeavour to set at nought the sale in favour of respondent No.2 resulted in the proceedings before the Karnataka High Court. In terms of the impugned order dated 14.02.2007, it was opined that since respondent No. 1 had taken possession of the premises under Section 29 of the SFC Act

prior to the order for winding up, the transaction in favour of respondent No.2 could not be effected and the only direction to be made was that the amount realised by respondent No. 1 would be equitably distributed amongst respondent No. 1 and any claim of the workmen lodged and verified by the official liquidator in view of Sections 529A and 529 of the Companies Act. Section 529 and 529A of the Companies Act read as under:

"529. APPLICATION OF INSOLVENCY RULES IN WINDING UP OF INSOLVENT COMPANIES.-(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 annuities 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 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 the workmen's dues for the purposes of section 529A.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor instead of

relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realisation by the secured creditor.

Explanation. - For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(3) For the purposes of this section, section 529A and section 530, -

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) ;

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due 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 or 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;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of -

(i) the amount of workmen's dues ; and  
(ii) the amounts of the debts due to the secured creditors.

529A. OVERRIDING PREFERENTIAL PAYMENTS.- 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."

Learned counsel representing the appellant sought to contend that in view of the provisions of Section 441(2) read with Section 537 of the Companies Act, the sale is liable to be set at nought since the winding up order would relate to the date of the filing of the company petitions. The relevant provisions are as under:

441. COMMENCEMENT OF WINDING UP BY TRIBUNAL.-(1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud

or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

537. AVOIDANCE OF CERTAIN ATTACHMENTS, EXECUTIONS, ETC., IN WINDING UP BY TRIBUNAL.-(1) Where any company is being wound up by the Tribunal -

(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement;

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

On the other hand, learned senior counsel appearing for respondent No.1 seeks to contend that the rights exercised under Section 29 of the SFC Act, the said Act being special Act, the provisions in respect thereof would prevail and, in any case, the special right, the Official Liquidator had, was right of participation in the process of sale of the secured assets. Since the possession was already taken over, the property was already vested in respondent No. 1 who had sold it to respondent No. 2. The passage of time was another factor pleaded before us. Learned senior counsel also draw our attention to the provisions of Section 46B and 32 E(c) of the

SFC Act which reads as under:

32E. Application of Act 1 of 1956.—(1) Where the management of an industrial concern, being a company as defined in the Companies Act, 1956 (1 of 1956), is taken over by the Financial Corporation, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such concern,—

(c) no proceeding for the winding up of such concern or for the appointment of receiver in respect thereof shall lie in any court, except with the consent of the Financial Corporation.

46B. Effect of Act on other laws.—The provision of this Act and of any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.

A perusal of the impugned order shows that the reasoning of the Division Bench is predicated on the judgment of this Court in '*Rajasthan State Financial Corporation and Anr. v. Official Liquidator and Anr.*' [2005 (8) SCC 190].

"17. Thus, on the authorities what emerges is that once a winding-up proceeding has commenced and the Liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be with the association of the Official Liquidator and under the supervision of the Company Court. The right of a financial institution or of the Recovery 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 529-A of the Companies Act takes place. In the case on hand, admittedly, the appellants have not set in motion any proceeding under the SFC Act. What we have is only a liquidation proceeding pending and the secured creditors, the financial corporations approaching the company Court for permission to stand outside the winding up and to sell the properties of the company-in-liquidation. The Company Court has rightly directed that the sale be held in association with the Official Liquidator representing the workmen and that the proceeds will be held by the Official Liquidator until they are distributed in terms of Section 529-A of the Companies Act under its supervision. The directions thus, made, clearly are consistent with the provisions of the relevant Acts and the views expressed by this Court in the decisions referred to above. In this situation, we find no reason to interfere with the decision of the High Court. We clarify that there is no inconsistency between the decisions in *Allahabad Bank v. Canara Bank* [(2000) 4 SCC 406] and in *International Coach Builders Ltd. v. Karnataka State Financial Corpn.* [(2003) 10 SCC 482] in respect of the applicability of Sections 529 and 529-A of the Companies Act in the matter of distribution among the creditors. The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security. The distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529A read with Section 529 of the Companies Act. After all, the Liquidator represents the entire body of creditors and also holds a right on behalf of the workers to have a distribution *pari passu* with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the Company Court. In other words, the distribution of the sale proceeds under the direction of the Company Court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure, in the

light of the directions of the company Court, that a proper price is fetched for the assets of the company-in-liquidation. It was in that context that the rights of the Official Liquidator were discussed in *International Coach Builders Ltd.* The Debts Recovery Tribunal and the District Court entertaining an application under Section 31 of the SFC Act should issue notice to the Liquidator and hear him before ordering a sale, as the representative of the creditors in general."

Learned senior counsel appearing for respondent No. 1 thus, emphasised that in the aforesaid given facts, no action under the SFC Act had been taken till that time, nor was the winding up proceedings commenced with the Official Liquidator being appointed. The object, it was submitted, was to associate the Official Liquidator with the sale.

Learned senior counsel also referred to '*Bank of Maharashtra v. Pandurang Keshav Gorwardkar & Ors.*' [2013 (7) SCC 754], '*Laxmi Fibres Limited v. Andhra Pradesh Industrial Development Corporation Ltd. and Ors.*' [2015(16) SCC 464] and '*Pegasus Assets Reconstruction P. Ltd. v. Haryana Concast Ltd. & Anr.*' [2016 (4) SCC 47] to advance the proposition that the ultimate object was only association of the Official Liquidator for purposes of distribution of the assets of company in liquidation in terms of section 529A of the Companies Act.

At the conclusion of hearing, what has come to light, is that neither any claim of the workmen have been invited nor are pending with the Official Liquidator. Thus, for over 25 years nothing has been done by the Official Liquidator in this behalf while merely asserting a theoretical right of *pari passu*

right of the workmen with respondent No. 1 corporation.

On a perusal of the legal provisions expounded before us, we have no doubt that the role of the official liquidator and his association with the sale of the assets, where action is taken under the SFC Act, is to ensure that a proper price is obtained for the assets sold so as to protect the rights of the other secured creditors. In this behalf, we may note the judgment of this Court in '*Bakemans Industries Pvt. Ltd. v. New Cawnpore Flour Mills & Ors.*' [2008 (15) SCC 1] where it has been categorically opined that the provisions of Section 29 of the SFC Act, that being a special statute, would prevail over the general powers of the Company Judge under the Companies Act.

Learned senior counsel for respondent No. 1 fairly concedes that were any verified dues of the workmen to be paid, respondent No. 1 would be liable for the same to the extent of *pari passu* rights over the proceeds realised from respondent No.2. In fact, even the impugned order has issued a direction in terms of paragraph 4 that the sale proceeds are to be distributed in terms of Section 529A and Section 529 of the Companies Act.

We are, thus, of the view that the rights of the workmen, as and when the Official Liquidator verifies the dues, are fully protected as their rights would be *pari passu* with the rights of respondent No. 1 so far as the distribution of sale proceeds realised from respondent No. 2 are concerned.

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We, thus, dismiss the present appeal in terms of the aforesaid leaving the parties to bear their own costs.

....., J.  
[ SANJAY KISHAN KAUL ]

....., J.  
[ AJAY RASTOGI ]

New Delhi;  
February 06, 2019.

ITEM NO.109

COURT NO.14

SECTION IV-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6079/2009

OFFICIAL LIQUIDATOR,  
M/S.METALLIC SOAPS & CHEMICALS (PVT.) LTD. Appellant(s)

VERSUS

THE MANAGER,  
KARNATAKA STATE FINANCIAL CORPORATION & ANR. Respondent(s)

Date : 06-02-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr. Delep Goswami, Adv.  
Mr. Anirrud Goswami, Adv.  
Mr. Jay Kishor Singh, AOR

For Respondent(s)

Mr. Vikas Mehta, AOR  
Mr. Vasanth, Adv.  
Mr. Rajat, Adv.  
  
Ms. Kiran Suri, Sr. Adv.  
Mr. S. J. Amith, Adv.  
Dr. (Mrs. ) Vipin Gupta, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal stands dismissed in terms of the signed  
reportable order.

(NIDHI AHUJA)  
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)  
ASSISTANT REGISTRAR

[Signed Reportable order is placed on the file.]