

A.P. State Financial Corporation

versus

Official Liquidator

Civil Appeal Nos. 3439-3440 of 1997

(Mr. S. Rajendra Babu and Mr. S.N. Phukan, JJ.)

09.08.2000

JUDGMENT

S.N. Phukan, J.:— The appellant is a Corporation established under The State Financial Corporations Act, 1951 (for short 'Act of 1951'). Two companies vs. M/s Nagarjuna Paper Mills and M/s. Chandra Pharmaceuticals Limited were in liquidation and the liquidation proceedings were pending before the learned company Judge of the High Court. The above two companies obtained loans from the appellant and for realisation of dues the appellant invoked the provisions of Section 29 of Act of 1951. As both the companies were under liquidation, the appellant filed two separate applications under Section 446(1) of the Companies Act read with Sections 29 and 46 of Act of 1951 before learned company Judge of the High Court for staying outside the liquidation proceeding. The learned Judge passed two similar orders in respect of both the companies and granted permission to the appellant to stay outside the liquidation proceedings subject to the following conditions:

- "1. The petitioner will undertake to discharge its liability due to the workers, if any under Section 529 (A) of the Companies Act.
2. The petitioner shall inform at least 10 days in advance before a date fixed for receipt of tenders, to the Official Liquidator about the proposed sale or properties of the company; and
3. The petitioner shall also obtain the permission of the Court before finalising the tenders."

The appeal filed were dismissed by the Division Bench of the High Court by the impugned judgement and hence these appeals.

We have heard Mr. Y. Prabhakara Rao, learned counsel for the appellant and Mr. A.D.N. Rao, learned counsel for the respondent.

The short question to be decided in these appeals is whether the order of the High Court imposing the above three conditions is lawful.

To appreciate the above point we may quote below-sub-section (1) of Section 29 of Act of 1951 and sub-Section (1) of Section 529 and Section 529A of the Companies Act. It may be stated that the proviso to sub-section (1) of Section 529 and Section 529A were inserted by the Companies (Amendment) Act, 1985.

"29 (I) — 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 instalment 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, 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.

"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 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 providing 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 dues for the purposes of section 529A".

"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".

The only contention of Mr. Y. Prabhakara Rao, learned counsel for the appellant was that the Act of 1951 being a special Act, power of the appellant-corporation to invoke provisions of Section 29 of the 1951 is absolute and cannot be restricted.

By inserting the proviso of Section 529 of the Companies Act by the amending Act of 1985 legislature has 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 the security and providing the debt, opts to realise

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; 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 the proviso or the amount of the workmen's portion in the security, whichever is less, shall rank *pari passu* with the workmen dues for the purposes of section 529A.

Section 529 A which was also inserted by the amending Act of 1985 starts with the non obstante clause and provides that in winding up of a Company, 'workmen's dues and debts due to secured creditors to the extent of 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 with all other dues.

Now the question is whether Section 29 of the Act of 1951 can override above provisions of the proviso to sub-section (1) of Section 529 529 A of the Companies Act. In other words whether the Corporation can exercise its rights under above Section 29 ignoring a *pari passu* charge of the workmen.

The Act of 1951 is a special Act for grant of financial assistance to industrial concerns with a view to boost up industrialisation and also recovery of such financial assistance if it becomes bad and similarly the Companies Act deals with companies including winding up of such companies. Both Section 29 of Act of 1951 and Section 529 A of the Companies Act have competing non obstante provisions but the proviso to sub-section (1) of 529 and Section 529 A being a subsequent enactment, the non obstante clause in Section 529 A prevails over the non obstante clause found in Section 29 of the Act of 1951 in view of the settled position of law. We are, therefore, of the opinion that the above proviso to sub-section (1) of Section 529 and Section 529 A will control Section 29 of the Act of 1951. In other words the statutory right to sell the property under Section 29 of the Act of 1951 has to be exercised with the rights of *pari passu* charge to the workmen created by the proviso to Section 529 of the Companies Act. Under the proviso to sub-section (1) of Section 529, the liquidator shall be entitled to represent the workmen and force the above *pari passu* charge. Therefore, the Company Court was fully justified in imposing above conditions to enable the Official Liquidator to discharge his function properly under supervision of the Company Court as the new Section 529 A of the Companies Act confers upon a Company Court a duty to ensure that the workmen's dues are paid in priority to all other debts in accordance with provisions of the above Section. The legislature has amended the Companies Act in 1985 with a social purpose viz. to protect dues of the workmen. If conditions are not imposed to protect the right of the workmen there is every possibility that secured creditor may frustrate the above *pari passu* right of the workmen.

In the impugned judgment High Court expressed the views as follows:

"In our opinion, therefore, it was not at all necessary for the Financial Corporation to approach this Court for permission to stay outside the winding up proceedings. In spite of the same, the Financial Corporation did venture to make such application in view of the fact that *pari passu* charge was created on the assets of the company for payment of arrears to workmen of the company..."

In view of the above opinion of the High Court that it was not necessary for Financial Corporation to approach the Court for permission to stay outside the winding up proceedings, the learned counsel for appellant has urged that High Court erred in imposing the above conditions. We are of

the opinion that above observation of the High Court was uncalled for as we have stated that power under Section 29 of the Act of 1951 can be exercised subject to the above provisions of the Companies Act.

For what has been stated above, we hold that imposition of the above conditions by the High Court was lawful.

The present appeals have no merit and accordingly dismissed.

The present appeals have no merit and accordingly dismissed. Cost on the parties.