

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
COMPANY PETITION NO.19/2001

Indore, Dated: 20.06.2023

Shri D.S.Kale, learned counsel for the applicant.

Shri H.y.Mehta, learned counsel for the O.L along with
Official Liquidator.

Shri Gaurav Chabra, learned counsel for Kotak Mahindra.

Reserved on 20.06.2023.

Pronounced on 16.08.2023.

1] Heard on I.A.No.5924/2004 as well as on
MCP.No.2769/2004.

I.A.No.5924/2004 has been filed by applicant M/s S.K.Corporation
(India) a partnership firm.

2] **MCP.No.2769/2004** has been filed under Section 446(1) &
(2) read with Section 529 of the Companies Act,1956 (hereinafter to
be referred to as Act of 1956).

3] The following reliefs have been sought in IA
No.**MCP.No.2769/2004**”-

“It is therefore, prayed that this Hon'ble Court be
pleased to grant the leave to proceed with the execution
petition No. 412/2000 pending before the Hon'ble High
Court at Bombay ar??? alternatively this Hon'ble Court
be please to allow the claim of the applicant and direct
the official liquidator to make the payment of

Rs.51,20,897.57/- being price of the goods as stated above, out of the sale proceeds collected by the sale of stock of the cloth. Any further relief which this Hon'ble Court may deem fit in the circumstances of the case be kindly also granted to the applicant.”

In **I.A.No.5924/2004**, which is actually the reply by the OL of the said MCP No.2769/2004 it is contended as under:-

“That, present application is badly hit by the provisions of Limitation Act, since the applicant has failed to resort to the legal course within the period of limitation. It is admitted fact by the applicant that the value of cloth which is sought to be recovered was supplied during the year 1991 and the company has been ordered to be wound up vide orders dated 22.01.2003 passed in Company Petition No.19/2001. The application is liable to be dismissed on this short ground itself.”

4] The case of the applicant is that he is engaged in the business of trading and had supplied 1,60,000 meters of Grey Cotton Fabrics to M/S Hukum Chand Mills (company in liquidation) from 27.09.1991 to 02/11/1991, for the purposes of processing. On 23/12/1991, one of the partners of the applicant firm visited the mills premises of the Company (in liquin.) at Indore for taking delivery of the goods by making payment of processing charges by demand draft. However, the goods could not be delivered on account of closure of the mills which led the applicant to file **Civil Suit No.3274/1992**, before the Bombay High Court in its original side, in which an *ex-parte* decree was passed on 06.07.1998, for

return of goods or alternatively for recovery of price of the Grey Cotton Fabrics with interest, and costs against the company in liquidation.

5] It is further the case of the applicant that the IDBI Bank had also filed a Civil Suit No.2084/1995 against the company in liquidation before the High Court of Bombay in which a court receiver was appointed who took the charge of the factory premises situated at Indore, and in the aforesaid suit, on an application filed by the applicant, the Court receiver was directed to deliver the goods to the applicant. However, the receiver could not deliver the goods to the applicant hence an execution petition no.412/2000 was also filed by the applicant, but in the meanwhile the Court receiver of the Bombay High Court handed over the possession of the factory premises to the official liquidator appointed by this Hon'ble Court and the applicant was directed to approach the official liquidator vide letter dated 21.06.2002, received from the Court receiver of the Bombay High Court. The applicant approached the official liquidator through its letter dated 15.07.2002, and requested him for inspection of the goods which were lying in the factory premises for more than 10 years, to which the official liquidator also sent his reply vide letter dated 22/07/2002, asking for the relevant documents including the copy of the plaint, decree and other documents which were sent to him by the applicant along with letter dated 29/07/2002, but thereafter no action was taken by the

official liquidator, and the applicant came to know that the official liquidator had already sold the entire stock of cloth lying in the factory premises of the company in liquidation including the applicant's clothes.

6] The applicant's contention is that he is entitled to receive the price of the Grey cloth with interest as per the decree passed by the Bombay High Court. Thus, a claim of Rs.51,20,897.57/- was also lodged with the official liquidator.

7] The applicant also sought to execute the decree through the Bombay High Court, but the execution of the decree has been stayed by the Bombay High Court in execution case.

8] Shri D.S.Kale, learned counsel for the applicant has submitted that none of the facts of the present case are disputed and the applicant is entitled to receive the amount of decree over and above other creditors of the company in liquidation for the reason that the applicant is not the creditor of the company but an entity who had given cloth for further processing to the company in liquidation and as such the company had received the aforesaid material from the applicant in capacity of a bailee and the goods were kept with the company without any interest.

9] Reference to Section 161 of the Contract Act 1872 has also been placed on reliance by learned counsel for the applicant.

10] In support of his submissions, Shri Kale has also placed reliance on the decisions rendered by various High Courts in the

case of *Sushil Prasad Vs. Official Liquidator Vinod Motors* reported in (1978) 48 Company Cases 462, in the case of *Dalbir Singh Vs. Sakaw Industries Pvt. Ltd* reported in (1983) 54 Company Cases 359, *Kshetra Mohan Dass Vs. D.Basu O.A Official Liquidator of East Bengal Sugar Mills Ltd, Defendant 1A and others* reported in the case of AIR (30) 1943 Calcutta 105, *Ganesh Export and Import Co. Vs. Mahadeolal Nathmal* reported in AIR 1956 Calcutta 188, *In re of Manasuba and Co. (P) Ltd Official Liquidator Vs. N.Chandranarayanan* reported in (1973) 43 Company Cases 244, in the case of *Baroda SPG & WVG Mills Co. Ltd Vs. Baroda SPG & WVG Mill Cooperative Credit Society Ltd and another* reported in (1976) 46 Company Cases 1 and in the case of *Nutan Mills Employees Coop. Credit Society Ltd Vs. Official liquidator of Nutan Mills Ltd* reported in (2001) 104 Company Cases 439.

11] On the other hand, the aforesaid application is opposed by the official liquidator contending that the application itself is not maintainable and is also barred by limitation.

12] Shri Hitendra Mehta, learned counsel for the official liquidator has submitted that the claim of the applicant for execution of the decree cannot be equated with the claims of secured creditors. Shri Mehta has also referred to Section 529(A) of the Act of 1956 which provides for preferential treatment of the workers and secured creditors, and it is submitted that by no stretch of imagination, the

applicant can claim the preferential treatment of its dues over and above the dues of workmen and secured creditors. He has also referred to Section 530 of the Act of 1956 to submit that the applicant's claim can be entertained only under Section 530 after full satisfaction of dues of workman and secured creditors u/s.529-A.

13] It is also submitted that even in respect of the interest claimed by the applicant, under Rule 156 of the Company (Court) Rules, 1959, the same cannot be accepted. R.156 provides for the interest and reads as under:-

“**R.156. Interest** - On any debt or certain sum payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, or the resolution as the case may be, the creditor may prove for interest at a rate not exceeding four percent per annum up to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment.”

14] Shri Mehta, learned counsel for the official liquidator has also referred to Section 125 of the Act of 1956 which provides for creation of charge and the applicant has not created any charge in the property and thus, he is not a secured creditor.

15] In support of his submission, Shri Mehta has also relied upon the decision rendered by the Supreme Court in the case of **Textile Labour Association and another Vs. Official Liquidator and**

another reported in 2004 Vol 120 Companies cases 505 wherein the supreme Court has also held that workmen will have priority over all other dues even over a decree. In the aforesaid case, reference to a decision of the Supreme Court in the case of **UCO Vs. Official Liquidator 1994(81) Companies case 780 (SC)** has also been made.

16] Shri Mehta, has also tried to distinguish the decision cited by Shri Kale on the ground that in none of the decision under Section 529 (A) of the Act of 1956 has been considered. It is also submitted that otherwise also, the claim of the applicant Firm being stale cannot be allowed as the decree has been passed by the Bombay High Court on 06.07.1998, whereas, the present application has been filed only on 16.10.2004, i.e., after a period of 6 years. Thus, it is submitted that no case for interference is made out and the application deserves to be dismissed.

17] The application has also been opposed by Shri Gaurav Chhabra, learned counsel for the Kotak Mahindra Bank and has submitted that since the applicant is claiming the amount only on the basis of the decree which cannot get preferential treatment over the secured creditors, therefore, the application deserves to be dismissed.

18] Heard, learned counsel for the parties and perused the record. Admittedly, the applicant is claiming its dues on priority basis, over and above the dues of the workmen and the secured creditors. In

such circumstances, s.529-A of the Act of 1956 would be relevant and can be reproduced for ready reference as hereunder :-

“S.529-A. Overriding preferential payments.—(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.]”

19] From the record it is apparent that the applicant was not a creditor of the Company (in liq.), and the transaction can be termed as one of bailment falling u/s.148 of the Contract Act, 1872. Even though the cloths were kept by the applicant with the Company (in liq.) for their further processing, and without any interest, this court is still of the considered opinion that the decree passed in favour of the applicant cannot override the aforesaid provision of s.529-A of the Act of 1956 as this court is also of the considered opinion that once a Company has gone into liquidation, its assets can be disposed of and appropriated only as provided under the Act of 1956, and no other or different treatment can be given to any person seeking any kind of recovery from the assets of the Company.

20] In the case of *Textile Labour Assn. v. Official Liquidator*, (2004) 9 SCC 741, at page 746 :

7. It is next contended that inasmuch as *mandamus* had been issued by this Court as to priority of claims in the matter of payment that *mandamus* will prevail over any law. This Court examined the plenary powers of this Court arising under Article 142 of the Constitution of India in *Supreme Court Bar Assn. v. Union of India* and held that:

This Court in exercise of its power under Article 142 cannot ignore any substantive statutory provision dealing with the subject and it is only a residuary power, supplementary and complementary to the powers specifically conferred on this Court by statutes, exercisable to do complete justice between the parties wherever it is just and equitable to do so. It is intended to prevent any obstruction to the stream of justice.

Though the order of this Court in respect of which review is sought for may be read as having been made pursuant to exercise of powers under Article 142 of the Constitution, still the same will have to be read in the light of the decision of this Court in *Supreme Court Bar Assn. v. Union of India*.

8. The effect of Sections 529 and 529-A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under Section 529-A to the extent of the workmen's dues. The purpose of Section 529-A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be *pari passu* with the charge of the secured creditors. There is no other statutory provision overriding the claim of the secured creditors except Section 529-A. This section overrides preferential claims under Section 530 also. Under Section 529-A the dues of the workers and debts

due to the secured creditors are to be treated *pari passu* and have to be treated as prior to all other dues.

9. Therefore, the law is clear on the matter as held in *UCO Bank case*² that Section 529-A will override all other claims of other creditors even where a decree has been passed by a court.

10. Therefore, claims, if any, of ONGC will have to be worked out in accordance with Sections 529 and 529-A of the Companies Act as well. The contention advanced on behalf of ONGC by Shri Raju Ramachandran that if a *mandamus* had been issued, it will prevail over any law is not tenable and is rejected.

11. In the result, we make it clear that order made by this Court on 17-10-1997 in IAs Nos. 168-78 of 1997 in Civil Appeals Nos. 8530-40 of 1983 will have to be read subject to provisions of Sections 529 and 529-A of the Companies Act.

(emphasis supplied)

21] The aforesaid decision of the Supreme Court makes it more than clear that s.529-A of the Act of 1956 shall have overriding effect and cannot be bypassed by any other law or even a writ.

22] So far as the decisions cited by Shri Kale are concerned, this court has carefully gone through the same and it is found that in none of them, the provisions of s.529-A of the Act of 1956 have been referred to or distinguished. It is true that the grey cloths kept by the applicant in the premises of the Company (in liq.) did not belong to the Company, but much water has flown since then, and even a decree has been obtained by the applicant to claim the goods or the price of such goods. In the considered opinion of this court, the law has been crystallized by the Supreme Court in the case of *Textile Labour Assn.(supra)* and need no further deliberations.

23] In view of the same, MCP.No.2769/2004 is hereby rejected, however, liberty reserved to the applicant that the decree sought to be executed by it shall be subject to the provisions of Section 529-A and Section 530 of the Act of 1956.

So far as **I.A.No.5924/2004** is concerned, it is also hereby *disposed of*, as it is found that the applicant Firm has been continuously and diligently pursuing its cause, in such circumstances it cannot be held that the application is barred by limitation.

24] Let the matter be listed for further hearing and also for consideration of I.A.No.7217/2015 on **21.08.2023.**

25] In the meantime, counsel for the State is also directed to come up with some concrete plan to settle the matter.

(SUBODH ABHYANKAR)
JUDGE