

**In Re: Vaishu Engineering Industries Ltd.**

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**Court :** Andhra Pradesh

**Decided On :** Jun-09-2006

**Reported in :** 2006(5)ALD115

**Judge :** Bilal Nazki and; D. Appa Rao, JJ.

**Acts :** Andhra Pradesh State Financial Corporation Act, 1951 - Sections 29; [Indian Contract Act, 1872](#) - Sections 172, 173, 176 and 529; [Companies Act, 1956](#) - Sections 125, 125(4), 126, 529, 529(1) and 529A

**Appeal No. :** OSA No. 22 of 2002

**Appellant :** In Re: Vaishu Engineering Industries Ltd.

**Advocate for Def. :** M. Anil Kumar, Amicus Curiae for the Respondent No. 1 and; Kodanda Ram, Adv. for Respondent No. 11

**Advocate for Pet/Ap. :** K. Gopala Krishna Murthy, Adv.

**Disposition :** Appeal allowed

**Judgement :**

ORDER

**Bilal Nazki, J.**

1. Before the 1st respondent-Company was ordered to be wound up by this Court on 15-2-1997, another respondent i.e., A.P. Industrial Development Corporation, which was a creditor of the Company, in exercise of powers under Section 29 of the A.P. State Financial Corporation Act, 1951, seized the assets of the Company. After seizure, the Industrial Development Corporation sold the assets of the Company to the 11th respondent. This sale took place prior to orders of winding up passed by the Court. The appellant-State Bank of India is one of the creditors of the Company in liquidation and it advanced amounts to the Company in liquidation against the security of current assets like raw-materials and semi-finished goods.

2. The case of the appellant before the Company Court was that the respondent Company in liquidation had pledged goods in favour of the Bank, within the meaning of expression under Section 172 of the [Indian Contract Act, 1872](#) (hereinafter referred to as 'the Contract Act'). The goods pledged were lying in the factory premises of the Company in liquidation when the sale took place. The 11th respondent, after purchasing the fixed assets, took possession of the factory premises and called upon the applicant-appellant to remove the goods which were pledged in its favour by the Company in liquidation. The applicant, however, called upon the Official Liquidator to redeem the said pledged goods as liquidation orders of the Company had been passed. The applicant created a demand of Rs. 3,37,63,184.42 on account of the pledge. The applicant also claimed interest. The notice given to the Official Liquidator did not evoke any response and petitioner filed an application before the Company Court. Before the Company Court, the Official Liquidator stated that he had no objection for the proposed sale of the pledged goods by the applicant-bank, but insisted that while permitting the bank to conduct auction of pledged goods, an order be made directing the bank to undertake to meet necessary contribution towards the workmen dues whenever Official Liquidator determines their dues. The Official Liquidator also prayed that orders be passed that the bank would keep him informed with the steps being taken for the sale of pledged goods. The learned Company Judge allowed the application of the applicant-bank permitting them to sell the goods, and also directed that the bank should also satisfy the demand of the Official Liquidator as and when made to meet the liability of the workmen. This part of the order is the

bone of contention in the present appeal.

3. The contention of the appellant-bank is that in terms of the Contract Act, the bank was a pledgee and amounts advanced to the Company in liquidation were secured and Section 529A of the [Companies Act, 1956](#) (hereinafter referred to as 'the Companies Act') had no application. It is contended by learned Counsel appearing for the appellant that such a question is already concluded by a judgment of the Supreme Court in *The Bank of Bihar v. The State of Bihar* : AIR 1971 SC1210 , which was not appreciated by the learned Company Judge.

4. Section 172 of the Contract Act defines 'Pledge', 'Pawnor' and 'Pawnee', and according to this Section, the bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called the 'pawnor'. The bailee is called 'pawnee'. In terms of Section 173 of the Contract Act, Pawnee has a right to retain the goods pledged. In terms of Section 176 of the Contract Act, if pawnor makes a default in payment of the debt or performance at the stipulated time in respect of which the goods were pledged, the pawnee has a right to bring a suit against the pawnor upon the debt or promise and retain the goods pledged as a collateral security. He is also within his rights to sell the thing pledged on giving the pawnor reasonable notice of the sale.

5. The contention of the learned Counsel for the appellant is that the properties, which are pledged, cannot be termed to be the assets of the Company in liquidation, and as such, cannot be subject-matter of distribution in terms of Section 529A of the Companies Act. On the other hand, the learned Counsel for the respondents submitted that Section 529A of the Companies Act starts with a non-obstante clause that notwithstanding anything contained in any other provision of this Act or any other law for the time being in force.

6. Section 529A of the Companies Act lays down:

529A. Overriding preferential payment :- 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.

7. The question that is to be answered is whether the goods pawned in favour of the appellant could be taken as the property of the Company under winding up, or they are the goods, which, by virtue of pledge, all along belong to the pawnee i.e., the bank.

8. The learned Counsel for the appellant submits that even under Section 125(4)(e) of the Companies Act, pledge is excluded from application under Sections 125 and 126 of the Companies Act, which shows that it was never intended that pledged goods could also be subject-matter of Section 529A of the Companies Act, or these goods would be considered to be the property of the Company.

9. In our view, the matter is covered by the judgment of the Supreme Court in *The Bank of Bihar v. The State of Bihar* (supra). In this case, a bank had advanced cash credit to a Co. and secured its debts by taking pawn of sugar. On the relevant date, the bank was holding certain quantities of sugar in the godown of the Company and the key of the lock of the godown was in the custody of the bank. The District Magistrate, Patna and the Rationing Officer got the locks of the godown broke opened and forcibly and illegally removed 1818 bags of sugar. The total quantity removed weighed about 5,000 maunds. The payment was not made to the bank, which held the bags of sugar as pledged under the cash credit agreement. Suit was filed for recovery of the price of the sugar. The defence taken by the State of Bihar was that the Company was in default and there were arrears on account of sugar cess in terms of Public Demands Recovery Act, and these

arrears were to the tune of about rupees two lakhs. The sugar seized in terms of the Public Demands Recovery Act was sold and an amount of Rs. 1,50,039/- was deposited towards cess in the Treasury. The Trial Court framed certain issues, thereafter decreed the suit. The High Court agreed with the defendant and the appeal went to the Supreme Court. One of the issue which was determined by the trial Court and which finally was determined by the Supreme Court was:

Was the sugar seized by the Government in possession of the bank as a pledgee at the time of the seizure and have the rights of the bank as such pledgee been determined by the seizure in question ?

10. The question before this Court would be, whether the goods, which are pledged, are the property of the bank or the property of the Company under liquidation. If the pledged goods are held to be the property of the bank, then obviously they cannot be subject-matter of distribution under Section 529A of the Companies Act, but if the goods are held to be the property of the Company under liquidation, then certainly even the pledged goods could be subject-matter of distribution amongst the claimants under Section 529A of the Companies Act.

11. In our opinion, the goods pledged towards the bank, at no point of time, became the property owned and possessed by the Company. The judgment of the Supreme Court referred to above quotes Halsbury's Laws of England for proper appreciation of the controversy in the context of the definition of 'pawn' in Halsbury's Laws and ultimately in Para 7, it stated:

In our judgment of the High Court is in error in considering that the rights of the pawnee who had parted with money in favour of the pawnor on the security of the goods can be defeated by the goods being lawfully seized by the Government and the money being made available to other creditors of the pawnor without the claim of the pawnee being fully satisfied. The pawnee has special property and a lien which is not of ordinary nature on the goods and so long as his claim is not satisfied no other creditors of the pawnor has any right to take away the goods or its price. After the goods had been seized by the Government it was bound to pay the amount due to the plaintiff and the balance could have been made available to satisfy the claim of other creditors of the pawnor. But by a mere act of lawful

seizure the Government could not deprive the plaintiff of the amount which was secured by the pledge of the goods to it. As the act of the Government resulted in deprivation of the amount to which the plaintiff was entitled it was bound to reimburse the plaintiff for such amount which the plaintiff in ordinary course would have realized by sale of the goods pledged with it on the pawnor making a default in payment of debt.

12. Following the judgment of the Supreme Court, we hold that the pawned goods never became the property of the Company and even if used, they continue to remain the goods of the Bank. Therefore, we allow the application of the bank and hold that the Official Liquidator would have no claim over the amounts received by sale of pledged goods by the bank. The judgment of the learned Company Judge is modified accordingly.

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