Referred by Bifr Vs. Chairman and M.D., Southern Transformers and Electricals Ltd., Renigunta, Chittoor Dist. and Others

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SooperKanoon Citation : sooperkanoon.com/438505

Court : Andhra Pradesh

Decided On : Feb-24-1999

Reported in : 1999(4)ALD289

Judge : Krishna Saran Shrivastav, J.

Acts : Companies (Court) Rules, 1959 - Rules 292 and 111(2); Companies Act, 1956 - Sections 529(1)-A; State Financial Corporation Act, 1951 - Sections 46-B

Appeal No. : RCC No. 3 of 1998

Appellant : Referred by Bifr

Respondent : Chairman and M.D., Southern Transformers and Electricals Ltd., Renigunta, Chittoor Dist. and Others

Advocate for Def. : Mr. P.R. Prasad, ;Mr. J. Gopala Krishna, and ;Mr. Y.N. Lohita, Advs., ;Mr. P.V. Rama Raju, Official Liquidator

Advocate for Pet/Ap. : Mr. P.S. Narayana, Adv.

Judgement :
ORDER

1. Heard the learned Counsel of both the parties.

2. In this case, the Board of Industrial and Financial Re-construction has come to the opinion that the Company has to be wound-up. It appears that this order has become final. In view of the recommendations of the BIFR, M/s. Southern Transformers and Electricals Ltd., Renigunta, Chittoor District is ordered to be wound-up. Notice of this order shall be sent forthwith to the Official Liquidator and he shall take into custody or under his control all the properties and assets of the Company. The order for winding up shall be drawn in Form No.52 with appropriate modifications and two certified copies shall be sent to the Official Liquidator. The Official Liquidator shall cause service of the Company as required by Rule 111(2) and also serve true copy of the same on the Managing Director of the Company by pre-paid post.

3. Since the sixth respondent-A.P. State Financial Corporation is reported to have either put the property to sale or has already effected the sale, therefore to meet the preliminary expenses by the Official Liquidator, the A.P. State Financial Corporation and A.P. State Industrial Development Corporation, the other secured creditor should deposit Rs.10,000/- in equalproportion. The learned Counsel appearing on behalf of Respondent No.6 argued that A.P. State Financial Corporation is entitled to stay outside, the liquidation proceedings and it can only be directed to pay reasonable amount to the Official Liquidator for preservation of the property of the Company in liquidation under Section 529-A of the Indian Companies Act (for short 'the Act'). There is no other provision under which the secured creditor can be directed to make payment to the Official Liquidator for carrying out the affairs of the Company in liquidation. He has also drawn my attention to the Rule 292 of the Companies (Court) Rules, 1959, which provides that where the Company against which winding-up order has been made, has no available assets, the Official Liquidator may, with the leave of the Court, incur any necessary expenses in connection with the winding up, out of any permanent advance or other fund provided by the Central Government and the expenses as incurred shall be recuped out of the assets of the Company in liquidation in priority to the debts of the Company. Reliance has been placed on the decision ia Gujarat State Financial Corporation v. Official Liquidator, 1996 Com. Cases (Vol.87), p. 658.

4. A Division Bench of Gujarat High Court in the case of Gujarat State Financial Corporation (supra) has observed that proviso to Section 529(1)-A of the Companies Act, 1956 comes into operation only where the secured creditor instead of relinquishing his security and proving his debt opts to realise the security, he shall be eligible to pay expenses incurred by the Official Liquidator for preservation of the security before its realisation by the secured creditor. That it appears that secured creditor in the aforementioned circumstances may be directed to pay expenses incurred by the Official Liquidator for preservation of the security before its realisation by the secured creditor. In this case, this question was neither raised nordecided whether the secured creditor can be directed to meet out the preliminary expenses ?

5. Proviso to Rule 292 provides that where any money has been advanced to the Official Liquidator by the petitioner or other creditor or contributory for meeting any preliminary expenses in connection with the winding-up, the Official Liquidator, may incur any necessary expenses out of such amount, and the money so advanced shall be paid out of the assets of the Company in priority to the debts of the Company. A simple reading of this proviso reveals that the petitioner-creditor or other creditors or contributory may be directed to meet the preliminary expenses in connection with the winding up and later the Official Liquidator should be directed to re-imburse out of the assets ofthe Company in priority to the other debts.

6. My attention has also been drawn to Section 46-B of the State Financial Corporation Act, 1951 which provides that notwithstanding anything inconsistent therewith contained in any other law for the time being in force etc., the provisions of this Act and of any Rule made thereunder shall have effect to. In my opinion this provision is not at all attracted because provisions provided in Rule 292 of the Companies (Court) Rules, 1959 does not appear to be inconsistent with any provision of the Act or any Rule made herein.

7. For the foregoing reasons, I order that respondent No.5-A.P. State Industrial Development Corporation and respondent No.6-A.P. State Financial Corporation shall pay an amount of Rs. 10,000/- in equal proportion to the Official Liquidator to

meet the preliminary expenses particularly because the Liquidator has no funds and the Official Liquidator shall reimburse this amount to the respondents 5 and 6 afterrealisation of the assets of the Company in priority to the other debts of the said Company. The respondents 5 and 6 should pay the said amount to the Official Liquidator within a period of three weeks from today. Vide docket order dated 8-2-1999, respondent No.6-A.P. State Financial Corporation was directed not to proceed to sell the property of the Company in liquidation without permission of this Court. It was also ordered that if sale has already been taken place, the sale proceedings shall be subject to further orders of this Court.

8. The sixth respondent is directed to appraise the Court regarding the proceedings taken by it against the Company in liquidation.

9. For filing proof of publication and cannier of the sixth respondent, call on 7-4-1999.