

A

UCO BANK

v.

THE OFFICIAL LIQUIDATOR HIGH COURT,
BOMBAY AND ANR.

B

JULY 11, 1994

[J.S. VERMA AND S.P. BHARUCHA, JJ.]

Companies Act, 1956: Sections 529, 529-A and 530 (As amended by Companies (Amendment) Act, 1985)—Scope and object of.

C

Proviso to Section 529—Held applicable to a secured Creditor's claim based on a decree obtained prior to its insertion.

D

The appellant-Bank, a secured creditor of a Company against which a winding up order was passed, obtained a decree to recover its debt against the Company. In the meantime, by the Companies (Amendment) Act, 1985, Sections 529 and 530 of the Companies Act, 1956 were amended and Section 529-A was inserted. The Proviso added to Section 529(1) provided that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen. The appellant's claim, that the amendment including the newly added proviso was inapplicable to its case since it had obtained the decree prior to the amendment, was allowed by the Company Court but on appeal the High Court rejected it.

E

F

In appeal to this Court, it was contended on behalf of the appellant-Bank that the said proviso does not apply to a decree obtained for realisation of the security available to the secured creditor if the decree was obtained prior to the amendment even though realisation of the security by execution of the decree is subsequent to the amendment.

G

Dismissing the appeal, this Court

H

HELD : 1. The proviso to sub-section (i) of Section 529 inserted by the Amending Act clearly provides that the security of every creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen. The effect of the proviso is to create, by statute, a charge *pari passu* in favour of the workmen on every security available to the secured creditor

of the employer company for recovery of their debts at the time when the amendment came into force. This expression is wide enough to apply to the security of every secured creditor which remained unrealised on the date of the amendment. The clear object of the amendment is that the legitimate dues of workers must rank *pari passu* with those of secured creditors and above even the dues of the Government. This literal construction of the proviso is in consonance with, and promotes the avowed object of the amendment made. [298-G, H 299-A]

2. The existence of the security on the date the amendment came into effect creates a *pari passu* charge in favour of the workmen upon that security. It is only if the security has been realised, pursuant to a decree, prior to the date of the amendment that the *pari passu* charge is not created, for there is no security upon which it can operate. There is, therefore, no retrospectivity in the operation of the provision as interpreted by this Court. [299-C]

3. A debt due to a secured creditor, when recovered by realisation of the security after commencement of the winding up proceedings, results in depletion of the assets in the hands of the Official Liquidator. In view of the nature of workmen's dues being similar to those of secured creditors, the purpose of the provision is to place the workmen at par with the secured creditors and create a statutory charge in their favour on all available securities forming part of the assets of the company in liquidation so that the workmen also share the securities *pari passu* with the secured creditors. The workmen contribute to the growth of the capital and must get their legitimate share in the assets of the company when the situation arises for its closure and distribution of its assets first among the secured creditors due to winding up of the company. The amendment made in the Act is a statutory recognition of this principle. To achieve this purpose, it is necessary that the amended provisions must apply to all available securities which form part of the assets of the company in liquidation on the date of the amendment. [299-D, E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 816 of 1992.

From the Judgment and Order dated 16.10.91 of the Bombay High Court in A.No. 920 of 1991.

A Dr. Shankar Ghosh, A.K. Sil, G. Joshi and G. Kandpal for the Appellant.

Arvind Kumar, Ms. Laxmi Arvind for the Respondent No. 1.

B Ms. Suruchi Aggarwal for Ms. Manik Karanjawala for the Respondent No. 2.

The Judgment of the Court was delivered by

C VERMA, J. In Company Petition No. 27 of 1971 for winding up of the Company - M/s. Glass Carboys & Pressedwares Limited - on the ground, contained in clause (e) of Section 433 of the Companies Act, 1956 (hereinafter referred to as "the Act"), that the Company was unable to pay its debts, the learned Company Judge of the Bombay High Court made a winding up order on 15.11.1972; and the Official Liquidator took possession of the assets of the Company. The appellant UCO Bank was a secured
D creditor of the Company. It chose to stand outside the winding up proceedings and obtained a decree on 22.4.1976 to recover its debt. In pursuance of the decree obtained by the appellant, the High Court's Commissioner for Taking Accounts was directed to sell certain movables of the Company. In the meantime, the Companies Act, 1956 was amended by the Companies
E (Amendment) Act, 1985 (hereinafter referred to as "the Amending Act") with effect from 24.5.1985 by which Sections 529 and 530 of the Principal Act were amended and Section 529A was inserted therein. One of the effects of the amendment, as mentioned in the Statement of Objects and Reasons of the Amending Act, is as under:—

F "2. Another announcement made by the Finance Minister in his Budget speech relates to the decision of the Government to introduce necessary legislation so that legitimate dues of workers rank
G *pari passu* with secured creditors in the event of closure of the company and above even the dues to Government. The resources of companies constitute a major segment of the material resources of the community and common good demands that the ownership and control of the resources of every company are so distributed that in the unfortunate event of its liquidation, workers, whose labour
H *and effort* constitute an invisible but easily perceivable part of the capital of the company are not deprived of their legitimate right to participate in the produce of their labour and effort. It is accordingly

proposed to amend sections 529 and 530 of the Companies Act and also to incorporate a new section in the Act, namely, section 529A (vide clauses 4, 5 and 6 of the Bill)."

(emphasis supplied)

In this appeal, the question for decision is as to the true meaning and scope of the proviso to sub-section (1) of Section 529 inserted by the above amendment as a part of the aforesaid scheme. Sub-section (1) of Section 529 including the said proviso is as under:—

Application of insolvency rules in winding up of insolvent companies.

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 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

* Inserted by the Companies (Amendment) Act, 1985." (emphasis supplied)

A (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.]

B The contention of the appellant, a secured creditor, which was accepted by the learned Company Judge but, on appeal, has been rejected by the Division Bench of the High Court in the impugned order dated 16.10.1991 in Appeal No. 920 of 1991, was that the aforesaid amendment including the above-quoted proviso is inapplicable in the present case since
C the decree had been obtained by the appellant prior to the above amendment made in the Principal Act. The submission of Dr. S. Ghose, learned counsel for the appellant, is that the above amendment including the said proviso has no application to a secured creditor's claim based on a decree obtained prior to the said amendment. In other words, the submission is
D that the said proviso does not apply to a decree obtained for realisation of the security available to the secured creditor if the decree was obtained prior to the amendment even though realisation of the security by execution of the decree is subsequent to the amendment. We find no merit in this contention.

E Part VII of the Companies Act, 1956 relates to 'Winding up' and therein Sections 528 to 530 pertain to 'Proof and ranking of claims' in Chapter V relating to 'Provisions applicable to every mode of winding up'. Section 529 deals with 'Application of insolvency rules in winding up of insolvent company', Section 529A with 'Overriding preferential payments, and Section 530 with 'Preferential payments'. It is obvious that these
F provisions, as they exist, apply to a winding up proceeding.

The proviso to sub-section (1) of Section 529 inserted by the Amending Act clearly provides that 'the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen'.
G The effect of the proviso is to create, by statute, a charge *pari passu* in favour of the workmen on every security available to the secured creditors of the employer company for recovery of their debts at the time when the amendment came into force. This expression is wide enough to apply to the security of every secured creditor which remained unrealised on the date of the amendment. The clear object of the amendment is that the
H legitimate dues of workers must rank *pari passu* with those of secured

creditors and above even the dues of the Government. This literal construction of the proviso is in consonance with, and promotes, the avowed object of the amendment made. On the contrary, the construction of the proviso suggested by the learned counsel for the appellant, apart from being in conflict with the plain language of the proviso also defeats the object of the legislation.

The existence of the security on the date the amendment came into effect creates a *pari passu* charge in favour of the workmen upon that security. It is only if the security has been realised, pursuant to a decree, prior to the date of the amendment that the *pari passu* charge is not created, for there is no security upon which it can operate. There is, therefore, no retrospectivity in the operation of the provision as interpreted by us.

A debt due to a secured creditor, when recovered by realisation of the security after commencement of the winding-up proceedings, results in depletion of the assets in the hands of the Official Liquidator. This provision is intended to protect the interests of the workmen in proceedings for winding-up. In view of the nature of workmen's dues being similar to those of secured creditors, the purpose of this provision is to place the workmen at par with the secured creditors and create a statutory charge in their favour on all available securities forming part of the assets of the company in liquidation so that the workmen also share the securities *pari passu* with the secured creditors. The workmen contribute to the growth of the capital and must get their legitimate share in the assets of the company when the situation arises for its closure and distribution of its assets first among the secured creditors due to winding up of the company. The aforesaid amendment made in the Act is a statutory recognition of this principle equating the legitimate dues of the workmen with the debts of the secured creditors of the company. To achieve this purpose, it is necessary that the amended provision must apply to all available securities which form part of the assets of the company in liquidation on the date of the amendment. The conclusion reached by the Division Bench of the High Court is supported by this reason.

Consequently, the appeal is dismissed with costs quantified at Rs.5000 (Rupees five thousand) only.

T.N.A.

Appeal dismissed.