

(2009) 09 GUJ CK 0047

Gujarat High Court

Case No: Spl. Civil Application No. 13525 of 2008

Gujarat Kamgar
Panchayat

APPELLANT

Vs

Gujarat Industrial
Investment Corporation
Ltd.

RESPONDENT

Date of Decision: Sept. 2, 2009

Acts Referred:

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13(7), 13(9), 35
- State Financial Corporations Act, 1951 - Section 29, 29(4), 46B
- Bombay Sales Tax Act, 1959 - Section 38C
- Constitution of India, 1950 - Article 226 , 372
- Contract Act, 1872 - Section 176
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 34(1)

Citation: (2010) 4 BC 312 : (2009) 3 GLH 788

Hon'ble Judges: Anant S. Dave, J

Bench: Single Bench

Advocate: Maulik J. Shelat, for the Appellant; Manish Bhatt and Mauna M. Bhat, for the Respondent

Final Decision: Dismissed

Judgement

Anant S. Dave, J.

This petition under Article 226 of the Constitution of India is filed by the Petitioner, a registered Union having its registration No. G-4748 dated 17th January, 1991 under the Trade Unions Act and workmen of one Company Micro Precision Pumps and Gears Ltd. are the members of the Petitioner-Union. Since, the Company is closed and dues of workmen remained unpaid, this petition is filed against Respondent, with whom the

Company had mortgaged the land and hypothecated machineries and thus charge was created and subsequently powers came to be exercised u/s 29 of the State Financial Corporations Act, 1951 (in short "S.F.C. Act").

2. One of the main contentions raised by the Petitioner is that, dues of workers have priority over other dues and at least pari passu with that of secured creditor and keeping in mind provisions of Section 29(4) Respondent is duty-bound to take care of interest of the dues of workers as a trustee and amount if any realized by Respondent-Corporation by sale of movable and immovable of the assets of the Company whose management and assets have been taken over, the members of the Petitioner-Union are entitled to recover their dues.

2.1. It is further submitted that during pendency of this petition, the competent authority under Payment of Gratuity Act has adjudicated dues of workers towards gratuity and order is already passed on 3rd October, 2008, and therefore, now dues towards gratuity have not only been ascertained, but established and crystallized in favour of workmen and that amount is also protected and Respondent being trustee of the amount that may be received by sale of properties/assets of the Company, appropriate direction be given to Respondent to release dues accordingly.

3. Learned Advocate for the Petitioner placed reliance on the decision in the case of [Union Bank of India Vs. General Workers Union and Another](#), and it is submitted that when the assets and management are taken over by Respondent-Corporation in exercise of powers u/s 29 of S.F.C. Act, 1951, workmen are entitled to claim priority and/or pari passu with dues of other secured creditor as provided u/s 529-A of the Companies Act, 1956. That, another decision relied on by learned Advocate for the Petitioner is of the Apex Court in the case of [Central Bank of India Vs. State of Kerala and Others](#),

Therefore, in view of the above submissions, it is submitted that the relief prayed in this petition deserves to be granted.

4. Mr. Manish Bhatt, learned Advocate for Respondent-Corporation raised a preliminary objection about maintainability of petition under Article 226 of the Constitution of India and drawn attention of this Court to various prayers made in the petition and it is submitted that in view of absence of any legal right accrued to the Petitioner under provisions of any of the Act, no duty is cast upon Respondent-corporation to consider claim of the Petitioner under S.F.C. Act, 1951 and no writ therefore, can be issued much less any relief can be granted.

4.1. It is further submitted that Section 29 of the S.F.C. Act is pertaining to rights of Financial Corporation in case of default in repayment of any loan or advance or any instalment thereof by any industrial concern, the Financial Corporation has right to take over management or possession of both of such industrial concerns and realize its dues by way of lease or sale of such property pledged, mortgaged, hypothecated or assigned

to the Financial Corporation. According to learned Advocate for the Respondent, Section 29(4) of the Act empowers Corporation to adjust proceeds of sale towards payment of cost, charges and expenses and secondly to discharge of the debt due to the Financial Corporation and holding of such amount does not mean that it is to be given to workers on basis of priority or pari passu over any other secured creditor as provided u/s 529-A of the Companies Act. It is further submitted that provisions of Section 13(7) and (9) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SRFAESI Act, 2002"), where certain observations have been made by this Court in case of Union of India v. General Workers Union (supra) was a case, where the Petitioner-Bank was aggrieved by the order of the Labour Court of joining the Bank as a party in the proceedings pending before the Labour Court. At the same time, provisions of Section 13(9) and provisos therein begin with phrase that in case of a company in liquidation, a company being wound upon or commencement of the Act, and therefore, when a company which is not under liquidation, claim of workmen on the basis of pari passu or u/s 529-A of the Companies Act, 1956 cannot be made applicable to the Corporation governed by provisions of altogether a different Act namely S.F.C. Act, 1951 and just because phraseology or some words are similar in Sub-section (4) of Section 29 of S.F.C. Act, 1951 to that of provisions of Section 13(7) of SRFAESI Act, 2002 ipso facto no analogy can be drawn granting benefits to the workmen of the company whose assets and management are taken over by Financial Corporation in exercise of powers u/s 29 of S.F.C. Act.

5. Mr. Bhatt, learned Advocate for the Respondent-corporation has placed reliance on the decision in the case of [Rajasthan Financial Corporation and Another Vs. The Official Liquidator and Another](#), and it is submitted that right to sale the property under S.F.C. Act or RDDBFI Act when creditor claiming within those Acts and standing outside the winding-up is different from distribution of proceeds of sale of the security and distribution of sale proceeds of assets of a company in winding-up can only be in terms of Section 529-A read with Section 529 of the Companies Act, 1956 with the association of Official Liquidator and under supervision of Company Court, and therefore, in the present case, Company is not under liquidation and no analogy can be drawn.

5.1. That, another decision is relied on by learned Advocate for the Respondent is in the context of Section 176 of the Contract Act, 1872 in the case of [Central Bank of India Vs. Siriguppa Sugars and Chemicals Ltd. and Others](#), where the Apex Court held that in absence of liquidation of company, Cane Commissioner and workman stand only as unsecured creditor and in present case when there is no liquidation the claim of workmen cannot be said to be better than any unsecured creditor. And, lastly reliance was placed on the decision of the Apex Court in the case of [Union of India \(UOI\) and Others Vs. SICOM Ltd. and Another](#), and it is submitted that the rights of grant to recovery of debts, ordinarily prevail over, where it is held that, when Parliament or a State Legislature makes an enactment, the same would prevail over common law and a debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property

having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt which is an unsecured one. In view of the above it is submitted that workmen cannot claim priority over their dues and barred with dues of secured creditor or where the charge is credited over the property by operation of the statute.

6. Having heard learned Advocates appearing for the parties, considering the facts and circumstances of the case, it is not in dispute that the company against which dues are claimed by the members of the Petitioner-Union is not under liquidation. If provisions of Section 29 of S.F.C. Act, 1951, Section 46-B of S.F.C. Act, 1951 and Section 529-A of the Companies Act, 1956 are considered it reads as under:

"29. Rights of Financial Corporation in case of default--(1) 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 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.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under Sub-section (1), shall vest in the transferee all rights in or to the property transferred (as if the transfer) had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods, forming part of the security held by it as it had with respect to the original goods.

(4) (Where any action has been taken against an industrial concern) under the provisions of Sub-section (1), all costs, (charges and expenses which in the opinion of the Financial Corporation have been properly incurred) by it (as incidental thereto) shall be recoverable from the industrial concern and the money which is received by it [* *] shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses, and secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.)

(5) (Where the Financial Corporation has taken any action against an industrial concern) under the provisions of Sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purpose of suits by or against the concern, and shall sue and be sued in the name of [the concern].)"

Section 46-B of the State Financial Corporations Act, 1951 reads as under:

"46B. Effect of Act on other laws--The provisions of this Act and/or any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time-being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time-being applicable to an industrial concern."

Section 529-A of the Companies Act, 1956 reads as under:

"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."

Section 13(7) and (9) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 reads as under:

13. Enforcement of security interest--

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) Where any action has been taken against a borrower under the provisions of Sub-section (4), all costs, charges and expenses which in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied,

firstly, in payment of such costs, charges and expenses, and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) xxx xxx xxx

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditors shall be entitled to exercise any or all of the rights conferred on him under or pursuant to Sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided further that, in the case of a company in liquidation, the amount realized from the sale of secured assets shall be distributed in accordance with the provisions of Section 529-A of the Companies Act, 1956(1 of 1956):

Provided further that, in the case of a company being wound-up on or after the commencement of this Act, the secured creditor of such Company, who opts to realize his security instead of relinquishing his security and proving his debt under proviso to Sub-section (1) of Section 529 of the Companies Act, 1956(1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen"s dues with the liquidator in accordance with the provisions of Section 529-A of that Act:

Provided also that, the liquidator referred to in the second proviso shall intimate the secured creditors the workmen"s dues in accordance with the provisions of Section 529-A of the Companies Act, 1956 (1 of 1956) and in case such workmen"s dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen"s dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that, in case the secured creditor deposits the estimated amount of workmen"s dues, such creditor shall be liable to pay the balance of the workmen"s dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that, the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen"s dues, if any.

Explanation--For the purposes of this Sub-section--

(a) "record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date:

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor."

7. That, Section 29 of S.F.C. Act, 1951 confers right upon a Financial Corporation to recover its dues in case of default by taking over assets and management of such industrial concern whose properties namely land, building, machineries, etc. are mortgaged, pledged, hypothecated or over which security is created towards advancing loan, etc., by way of an agreement and there is a default in repayment of such loans and advances. Sub-section (4) of Section 29 further empowers Financial Corporation to recover money and adjust it against costs, charges and expenses and also in discharge of debt due to Financial Corporation and such amount -is to be held by Financial Corporation, in trust. Therefore, exclusive right is conferred in favour of Financial Corporation coupled with powers to adjust money which is received by it towards discharge of debt due to it. Nowhere, Parliament thought it fit by providing similar provisions like Section 529 or Section 529-A of the Companies Act, or Section 13(7) and (9) of SRFAESI Act, 2002 where workers dues have been given a status of pari passu with that of dues of secured creditor. At the same time when powers u/s 29 of S.F.C. Act are exercised and assets and management of such company or industrial concern is taken over it cannot be said that such company is in liquidation, and therefore, provisions of Section 529 or 529-A of the Companies Act, 1956 are applicable. Even in SRFAESI Act, 2002 provisos to Sub-section (9) of Section 13 refer to the case of a company in liquidation or a Company being wound up and not otherwise. Therefore, even wordings in Sub-section (7) of Section 13 about holding money which is received by the secured creditor in absence of any contract to the contrary in trust and similar wordings in Sub-section (4) of Section 29 ipso facto will not cast any duty on the Corporation exercising powers u/s 29 of the Act to give any priority or pari passu over worker dues.

7.1. That, pari passu can be claimed by workers of industrial concern incorporated under Companies Act, 1956 to recover their dues on par with secured creditor, when such company is under liquidation pursuant to applicability of provisions of Companies Act, 1956. In industrial concern, not governed by provisions of the Companies Act, 1956 and not under liquidation and assets and management of such industrial concern is taken over in exercise of powers u/s 29 of S.F.C. Act by finance corporation workers of such industrial concern cannot invoke provisions of Section 529-A of the Companies Act or claim any similarity on the basis of dues of workmen.

7.2. The Apex Court in the case of [A.P. State Financial Corporation Vs. Official Liquidator](#), while considering a case of Company in liquidation and the liquidation proceedings were pending before learned Company Judge of the High Court considered provisions of Section 29 of S.F.C. Act, 1951 and Section 529 proviso and Sections 529-A and 446(1) of the Companies Act, 1956 and in above facts of case, it was held in para 10 as under:

"10. 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. The proviso to Sub-section (1) of Section 529 and Section 529-A being a subsequent enactment, the non obstante Clause in Section 529-A prevails over 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 u/s 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 (sic. enforce) the above pari passu charge. Therefore, the Company Court was fully justified in imposing the above conditions to enable the Official Liquidator to discharge his function properly under the supervision of the Company Court as the new Section 529-A of the Companies Act confers upon a Company Court the duty to ensure that the workmen's dues are paid in priority to all other debts in accordance with the 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 the secured creditor may frustrate the above pari passu right of the workmen."

7.3. Thus, the Apex Court considered provisions of Section 29 of S.F.C. Act, 1951 and proviso to Section 529 and Sections 529-A and 446 (1) of the Companies Act, 1956 and held in a case of company in liquidation that Section 29 of S.F.C. Act will have to give way to provisions of Section 529 proviso and 529-A of the Companies Act.

7.4. The Apex Court once again had to consider above provisions in the case of [International Coach Builders Ltd. Vs. Karnataka State Financial Corpn.](#), and reiterated what was held in the case of A.P. State Financial Corporation v. Official Liquidator (supra) after analyzing various case laws and the provisions as above the Apex Court held that Section 29 of the S.F.C. Act was intended to place S.F. Cs. on a better footing, but this better footing is available only so long as the debtor is not a company or is a going company. The moment a winding-up order is made in respect of debtor-company, the provisions of Sections 529 and 529-A of the Companies Act come into play and whatever superior rights had been ensured to S.F. Cs. under the provisions of the S.F.C. Act are not subjected to and operate only in conjunction with the special rights given to the workmen on pari passu basis.

7.5. The above observations were made in para 25 of the above judgment and in para 32, it was held as under:

"32(1) The right unilaterally exercisable u/s 29 of the S.F.C. Act is available against a debtor, if a company, only so long as there is no order of winding up.

(2) S.F. Cs. cannot unilaterally act to realise the mortgaged properties without the consent of the Official Liquidator representing workmen for the pari passu charge in their favour under the proviso to Section 529 of the Companies Act, 1956.

(3) If the Official Liquidator does not consent, S.F. Cs. have to move the Company Court for appropriate directions to the Official Liquidator who is the pari passu charge-holder on behalf of the workmen. In any event, the Official Liquidator cannot act without seeking directions from the Company Court and under its supervision."

7.6. Therefore, it has been consistently held by the Apex Court that right u/s 29 of S.F.C. Act is available against the debtor company, only so long as there is no order of winding-up. Therefore, in the facts of this case, company to which Union representing workmen is not under proceedings of liquidation, and therefore, contention of learned Advocate for the Petitioner to treat dues of workmen on pari passu with that of secured creditor cannot be accepted and no direction to this extent can be issued in exercise of powers under Article 226 of the Constitution of India.

8. The decision relied on and as submitted by the learned Advocate for "the Petitioner in the case of Central Bank of India v. State of Kerala (supra), where the view expressed by the Apex Court in Union of India v. Sicom Ltd. (supra) was distinguished is not correct reading of the decision of the Apex Court inasmuch as, in case of Central Bank of India v. State of Kerala (supra), the Apex Court was concerned with Section 26-B of the Kerala General Sales Tax Act, 1963, and Section 38-C of the Bombay Sales Tax Act, 1959 where first charge by State statutes on the property of dealer was created and such a statutory charge was considered in view of the provisions of Section 34(1) of RDDBFI Act of 1993 and Section 35 of SRFAESI Act, 2002, and therefore, it was held that Parliament intended to give priority to the dues of Banks, financial institutions and other secured creditors over the first charge created under State legislations, then it would have been provided by specific incorporation of such priority as it is provided in other acts namely Workmen's Compensation Act, 1923, Employees Provident Fund Act, 1952, etc. Thus, it was held in para 158 as under:

"158. On the basis of the above discussion, we hold that the RDDBFI Act and the SRFAESI Act do not create first charge in favour of Banks, financial institutions and other secured creditors and the provisions contained in Section 38-C of the Bombay Act and Section 26-B of the Kerala Act are not inconsistent with the provisions of the RDDBFI Act and the SRFAESI Act so as to attract non obstante Clauses contained in Section 34(1) of the RDDBFI Act or Section 35 of SRFAESI Act."

8.1. Thus, the Apex Court considered special provisions of RDDBFI Act and SRFAESI Act containing non obstante Clauses vis-a-vis provisions of State statutes pertaining to General Sales tax Act providing first charge over the property of dealer liable to pay tax.

8.2. That, reliance, placed on decision of Union Bank of India v. General Workers Union (supra) of this Court observing while interpreting certain provisions of Section 13(7) and (9) of SRFAESI Act, 2002, this Court observed in the backdrop of facts where the Bank was permitted to be joined in a proceedings pending before the Labour Court. As per extracted provisions of Section 13(7) and unnumbered proviso to Sub-section (9) of Section 13 of SRFAESI Act, 2002 are seen, first unnumbered proviso begins with a phrase "Provided further that in the case of a company in liquidation" and second unnumbered proviso begins with "Provided that in the case of company being wound up on or after the commencement of this Act", therefore, applicability of provisions of Section 529-A of Companies Act, 1956 will be available to the company in liquidation or in case of a Company being wound-up on or after commencement of SRFAESI Act, 2002 and not prior to that. If decision relied on by learned Advocate for the Petitioner in case of Central Bank of India v. State of Kerala (supra) is closely perused, Their Lordships also considered noteworthy features of RDDBFI Act as well as SRFAESI Act and specific observations were made in paras 114 and 115 of the above decision as under:

"114. By enacting various provisos to Sub-section (9) of Section 13, the Legislature has ensured that priority given to the claim of workers of a company in liquidation u/s 529-A of the Companies Act, 1956 vis-a-vis the secured creditors like Banks is duly respected. This is the reason why first of the five unnumbered provisos to Section 13(9) lays down that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of Section 529-A of the Companies Act, 1956. This and other provisos do not create first charge in favour of the worker of a company in liquidation for the first time but merely recognise the existing priority of their claim under the Companies Act. It is interesting to note that the provisos to Sub-section (9) of Section 13 do not deal with the companies which fall in the category of borrower, but which are not in liquidation or are not being wound-up.

115. It is thus clear that provisos referred to above are only part of the distribution mechanism evolved by the Legislature and are intended to protect and preserve the right of the workers of a company in liquidation whose assets are subjected to the provisions of the SRFAESI Act and are disposed of by the secured creditor in accordance with Section 13 thereof."

8.3. Therefore, even under SRFAESI Act, 2002 the Parliament has thought it fit to provide mechanism with regard to distribution of dues of workmen but no such provisions are exclusively provided under S.F.C. Act. It may be altogether a different aspect if any industrial concern is in liquidation, and therefore, will be subject to provisions of Sections 529 and 529-A of the Companies Act, 1956 and claim of workers" dues will have priority and pari passu with secured creditor.

8.4. That being so, to give similar treatment to dues of workers of any industrial concern irrespective of its registration under Companies Act, 1956 similar to that of a company against whom a measure is taken u/s 13(4) or subsequent section of SRFAESI Act where

unnumbered provisos of Section 13(9) take care of workers" dues cannot be given in absence of such specific provisions under S.F.C. Act Therefore, the contention of learned Advocate for the Petitioner based on wordings of Section 13(7) similar to that to Sub-section (4) of Section 29 of S.F.C. Act 1951 and proviso to Sub-section (9) of Section 13 of SRFAESI Act, 2002 providing mechanism of workers" dues cannot be accepted.

9. On the contrary, the decisions relied on by learned Advocate for Respondent in case of Rajasthan State Financial Corporation v. Official Liquidator (supra) and Union of India v. Sicom Ltd. (supra) are clearly held to be applicable in the facts of this case.

9.1. In the case of Rajasthan State Financial Corporation v. Official Liquidator (supra) Their Lordships while summoning up legal position in para 18 held as under:

"18.(i) A D.R.T. acting under the RDDBFI Act, 1993 would be entitled to company in liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(ii) A District Court entertaining an application under S.F.C. Act. S.F.C. Act will have the power to order sale of the assets of a borrower company in liquidation, but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(iii) If a Financial Corporation acting u/s 29 of S.F.C. Act seeks to sell or otherwise transfer the assets of a borrower company in liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the Company Court and acting in terms of the directions issued by that Court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529-A and Section 529 of the Companies Act.

(iv) In a case where proceedings under the RDDBFI Act, 1993 or the S.F.C. Act are not set in motion, the creditor concerned is to approach the Company Court for appropriate directions regarding the realisation of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company in liquidation."

9.2. Therefore, the above conclusion (iii) of para 18 cast duty on a Financial Corporation acting u/s 29 of S.F.C. Act who seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation then such power can be exercised by Financial Corporation only after obtaining the appropriate permission from the company Court and as per the directions issued by the Court as regards associating the Official Liquidator with the sale, fixing of upset price, confirmation of the sale and the distribution thereto among creditors in terms of Section 529-A and Section 209 of the Companies Act. So, when members of the Petitioner-Union and employees of industrial concern whose powers, assets and management is taken over by Respondent-Corporation in exercise of powers u/s 29 of S.F.C. Act, 1951 ipso facto do not get any legal right to recover their dues since the

industrial concern in the case on hand is not under liquidation or no proceedings of liquidation are pending before Company Court.

9.3. Therefore, the claim of the Petitioner as prayed for in this petition cannot be accepted and no direction can be given to Respondent in exercise of powers under Article 226 of the Constitution of India.

10. So far as order passed by Controlling Authority exercising powers under the Payment of Gratuity Act, 1972 is concerned, inbuilt provisions are thereunder the Act to enforce the above order. At the same time, perusal of Section 13 of the above Act provided protection of gratuity and Section 14 of the Act to override other enactments in case if anything inconsistent therewith contained in any enactment other than the Payment of Gratuity Act and as provided in Section 11(2) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, where unpaid dues from employer towards contribution of the employee or employer is to be treated as first charge on the assets of the establishment and such unpaid amount to be paid in priority to all other debts, notwithstanding anything contained in any other law for time being in force, no such provision is made in Payment of Gratuity Act, and, therefore, also claim of priority of workmen"s dues vis-a-vis powers u/s 29 of S.F.C. Act, cannot be accepted.

10.1. Thus, order of controlling authority under the Payment of Gratuity Act, 1972 can be enforced as provided under the Payment of Gratuity (Central) Rules, 1972.

11. In view of the discussion hereinabove, this petition fails. Rule is discharged. Interim order stands vacated. No order as to costs.