



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Company Application No. 24/2018

Asstt. Commercial Taxes Officer, Ward-II, Circle-O, Jaipur,
Rajasthan

-----Petitioner

Versus

M/s.Punusumi India Limited, B-16, Meera Marg, Bani Park,
Jaipur, through Official Liquidator attached to Hon'ble Rajasthan
High Court, Jaipur Bench, Jaipur

-----Respondent

Connected With

S.B. Company Application No. 6/2020

Assistant Commercial Tax Officer, Commercial Taxes Department,
Ward-II, Circle-Shahjahanpura, Alwar, Rajasthan

-----Petitioner

Versus

M/s. Vanasthali Textiles Industries Limited, through Official
Liquidator attached to Hon'ble Rajasthan High Court, Jaipur
Bench, Jaipur

-----Respondent

S.B. Company Application No.4/2021

Additional Commissioner (Law) Commercial Taxes Department,
Rajasthan, Jaipur.

-----Petitioner

Versus

M/s. Kesari Vanaspati Products Ltd., C-Scheme, Jaipur through
Official Liquidator attached to Hon'ble Rajasthan High Court,
Jaipur Bench, Jaipur

For Petitioner(s)	:	Mr.M.S.Singhvi, Advocate General assisted by Mr.Darsh Pareek & Mr.Sheetanshu Sharma, Advocate. Mr.Ayush Singh, Advocate on behalf of Mr.Punit Singhvi, Advocate.
For Respondent(s)	:	Mr.Rahul Lodha, Advocate and Mr.Vijay Choudhary, Advocate.
For Company in Liquidation	:	Mr.Ruvit Kumar, Official Liquidator.

**HON'BLE MR. JUSTICE ASHOK KUMAR GAUR****Order****12/05/2022****REPORTABLE**

This order will decide two company applications filed by the Assistant Commercial Taxes Officer as Company Application No.24/2018 in Company Petition No.6/2004, Company Application No.6/2020 in Company Petition No.28/2003 & Company Application No.4/2021 in Company Petition No.28/2003.

2. This Court finds that issue involved in the present two applications is identical, as such by this common order, both the applications are decided.

3. This Court also finds that the prayer made in both the applications by the applicant-Commercial Taxes Department (in short 'the applicant-department') is to seek priority and preference over other creditors and to release the amount said to be due in favour of the applicant-department.

4. This Court takes the Company Application No.24/2018 as a lead case for the purpose of narrating the facts.

5. The applicant-department has pleaded that the Company M/s.Punsumi India Ltd. is under liquidation and the Officer Liquidator (in short 'the OL') had invited claims with regard to outstanding dues against the said Company. The applicant-department had sent its claim vide communication dated 11.08.2004 and the OL communicated that claim was not in the



prescribed format and the same was time barred and delay was to be condoned from the High Court.

6. The applicant-department has pleaded that an application was filed as Company Application No.17/2014 before this Court and this Court vide order dated 07.05.2015 condoned the delay in filing the claim.

7. The applicant-department submitted its claim before the OL with the documentary evidence and affidavit and the OL called upon certain information from the applicant-department and the same was responded by them.

8. The OL on 11.02.2016 sent a communication in Form-70, whereby the applicant-department was allowed a sum of Rs.3,19,351/- as preferential claim under Section 530(1) of the Companies Act, 1956 (in short 'Act of 1956') and Rs.32,32,337/- as ordinary claim under Section 529/530 of the Act of 1956.

9. The applicant-department has pleaded that they made several communications with the OL for making entire payment as preferential claim and the OL informed vide communication dated 02.08.2017 that the High Court had declared 100% dividend and distributed the same amongst the workers and there was no sufficient fund in the credit of the Company-in-liquidation and the property had been sold to IFICI, who had distributed entire amount amongst the secured creditors of the Company-in-liquidation.

10. The applicant-department has pleaded that after receipt of the communication dated 02.08.2017, they again made a



representation and sent reminders to the OL and pointed out that as per Section 47 of the Rajasthan Value Added Tax Act, 2003 (in short 'the Act of 2003'), first charge of the property was created in favour of the applicant-department and as such, request was made to pay the outstanding amount to the applicant-department.

11. The applicant-department has pleaded that the OL failed to treat the claim of the applicant-department as preferential over and above the other claims and considering the statutory first charge under Section 47 of the Act of 2003, the applicant-department is entitled for receiving the entire amount as preferential claim and when such amount was not received, the applicant-department was constrained to file application before this Court.

12. The OL has filed reply to the application and submitted that vide order dated 23.05.2005, passed in S.B.Company Petition No.6/2004, the company was ordered to be wound up by the High Court and the OL was appointed as liquidator for conducting the winding up proceedings.

13. This Court vide order dated 16.10.2010 permitted IFCI to realize the assets by way of sale/auction and IFCI sold the assets of the company for Rs.962 lakhs to M/s.Reliable Informations Private Limited and the sale was confirmed by the High Court vide order dated 01.12.2011 and the entire sale proceeds amounting to Rs.962 lakhs were lying with IFCI. The OL has further pleaded that the High Court vide order dated 10.05.2013 directed the OL to invite claim of the workers and creditors of the company-in-



liquidation and in response to the aforesaid, the OL received 106 claims from the employees and other creditors including the applicant-department.

14. The OL has further pleaded that the claims were adjudicated by their CA and the Court directed the IFCI to deposit Rs.24,12,410/- towards claim of Employees Provident Fund and Rs.60,67,612/- towards claim of workmen for distribution of dividend amongst workmen on a pro-rata basis for their admitted amount of claims and the Court vide order dated 07.10.2016 permitted the OL to make payment of Rs.60,67,612/- to the Employees of the Company-in-liquidation and Rs.24,12,410/- towards EPF being full and final 100% dividend.

15. The OL has further pleaded that the claim of the applicant-department of Rs.8,48,285/- was rejected for the reasons that penalty levied and interest charged amounting to Rs.8,48,285/- after the winding up date was not admissible in the winding up of an insolvent Company under the provisions of Company Act and Law of Insolvency Act.

16. The OL has pleaded that name of the applicant-department was also included in the list of Government Authorities but payment was not made for the reason that priority claim under Section 529 A was only paid to workers and EPF and other amount was distributed amongst secured creditors on pari-passu basis and the claim of the applicant-department fell under Section 530 of the Act of 1956, as Government Dues were not considered by the OL due to lack of availability of funds.



17. The OL has also pleaded that Section 47 of the Act of 2003 would not confer any special power on the Authorities to claim their dues as no claim is maintainable after the winding up order is passed and the company is wound up and ceased to exist.

18. Mr. M.S. Singhvi, learned Advocate General has made following submissions in support of the claim of the applicant-department:-

18A. As per erstwhile Section 50 of the Rajasthan Sales Tax Act, 1994, the amount of tax or any other sum payable by a person under the Rajasthan Sales Tax Act was to be the first charge on the property of such person and after enactment of the Act of 2003, as per Section 47 of the said Act, the amount of tax or any other sum payable by a person, has the first charge on the property of such person and therefore the OL is under bounden duty to release the amount of tax, which was due against the Company-in-liquidation.

18B. The provision contained under Section 47 of the Act of 2003 starts with non-obstante clause and even if there is a provision under Section 529A of the Act of 1956, the liability of the OL to release the amount cannot be denied for the purpose of payment of tax and other sums due against the Company-in-liquidation.

18C. Section 529A of the Act of 1956, provides for overriding preferential payments but claim in respect of taxes or



revenue, will not be put on a lower pedestal as compared to the claim of workmen's dues.

18D. As per sub-section (1)(b) of Section 529A of the Act of 1956, interest of workmen's dues and dues of secured creditors to the extent of debts, as per clause (c) of the proviso to sub-section (1) of Section 529 of the Act of 1956 will be given priority over all other debts and the claim of the State cannot be defeated and priority has to be given to the State's claim after satisfying workmen's dues. The claim of the State will be over and above the claim of other secured creditors.

18E. Section 529A of the Act of 1956 was inserted w.e.f 24.05.1985 and the object of the amendment of the Act was only to give preferential payment to the workmen's dues but other creditors were not deprived to claim their amount only on account of protecting rights of the workmen.

18F. The Act of 2003 has been enacted by the Legislature of the Rajasthan State, as per Article 246(3) of the Constitution of India, as they have exclusive power to make law for imposing Value Added Tax and the said power is conferred in the State by virtue of Entry-54 of List-II of the 7th Schedule of the Constitution of India, which is commonly known as 'the State List'.

18G. Section 47 of the Act of 2003 is a special law with non-obstante clause and as such, even if there is a general law like the Companies Act, 1956, enacted by the Union of India (Entry-43 of List-I [Union List] of the 7th Schedule of the



Constitution of India), the law of State being a special law will prevail over the general law – the Companies Act, 1956.

19. Mr. M.S. Singhvi, learned Advocate General, in support of his contentions has placed reliance on following judgments:-

(i) **AIR 1963 SC 1019 – Mahendra Lal Jaini Vs. State of UP & Ors. (para 20)**

(ii) **2011 (10) SCC 727 – Employees Provident Fund Commissioner Vs. Official Liquidator of Esskay Pharmaceuticals Limited (para 18 to 21)**

(iii) **2018 (4) SCC 743 – Jayant Verma & Ors. Vs. UOI & Ors. (para 40, 41 and 44)**

(iv) **2009 (4) SCC 94 – Central Bank of India Vs. State of Kerala & Ors. (para 111 to 116)**

(v) **AIR 1988 Rajasthan 16 – M/s.Jaysynth Dyechem & etc. Vs. Mewar Textile Mills Ltd.**

20. Per contra, Mr. Vijay Choudhary counsel appearing for OL has submitted that the claim of the applicant-department may not be granted by this Court as the provisions contained in Section 529A of the Act of 1956 only protects the rights of the workmen and by making a special provision in the Companies Act, preferential claim has only been given to workmen's dues.

21. Counsel has submitted that provisions contained in the Section 529A of the Act of 1956 has an overriding effect and the same has a non-obstante clause and as such in respect of the Company which is wound up, the provisions of the Companies Act will prevail and even if there is a provision in the erstwhile Rajasthan Sales Tax Act, 1994, or the Rajasthan Value Added Tax, 2003, the creditor cannot have a preferential treatment in respect of payment and the applicant-department is treated like any other



creditor and the applicant-department cannot be treated as a secured creditor.

22. Counsel for the OL has submitted that had there been any preferential claim for any outstanding demand of taxes or of revenue of the Central Government or State Government or Local Authority, the same would have been protected by the Legislature by inserting special provision.

23. Counsel submitted that the Legislature has only kept in mind the interest of the workmen's dues and the dues of the secured creditors and as such, the applicant-department, by way of claiming parity with the workmen's dues, cannot be granted any relief.

24. Counsel for the OL has submitted that Section 530 of the Act of 1956 also provides priority for preferential payment in winding up subject to provisions of Section 529A of the Act of 1956 and the priority of all other debts including all revenues, taxes, cesses and other dues from the company, will be paid as per the preference and priority given under Section 530 of the Act of 1956.

25. Counsel submitted that if the interpretation of the learned Advocate General appearing for the applicant-Department is accepted, then the provisions contained in sub-section (1) (a) of Section 530 of the Act of 1956 will have no meaning and this Court has been asked to add or read certain provisions which are not enacted by the Legislature for the purpose of giving preferential payment to different creditors.



26. Counsel appearing for the OL has placed reliance on the following judgments:-

- (i) **2013 SCC Online (Ker.) 23815 – The Ass.Comm. (Assessment) Special Circle, Kollam & Ors. Vs. OL High Court of Kerala & Anr.**
- (ii) **2008 SCC Online (Guj.) 309 – State of Gujarat vs. OL of Kengold (India) Ltd.**
- (iii) **Judgment dt.17.09.2014 passed by the Patna High Court in Co.Petition No.11/1996 – M/s.Misrilall Jain (P) Ltd. Vs. M/s.Nacro Chemicals Ltd.**
- (iv) **(1991) 3 SCC 283 – Rajratha Naranbhai Mills Co. Ltd. Vs. Sales Tax Officer, Petland.**
- (v) **(2005) 8 SCC 190 – Rajasthan State Financial Corp. & Anr. Vs. Official Liquidator & Anr.**

27. I have heard learned counsel for the parties and with their assistance perused the material available on record.

28. It would be appropriate to quote the relevant provisions of the Rajasthan Value Added Tax Act, 2003 and relevant provisions of the Companies Act, 1956:-

“Rajasthan Value Added Tax Act, 2003”

47. Liability under this Act to be the first charge.-

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of such dealer or person.

“Companies Act, 1956”

529-A. Overriding preferential payment. (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.

530. Preferential payments. (1) In a winding up, subject to the provisions of section 529A, there shall be paid] in priority to all other debts-

(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date; XX XX XX XX"

29. This Court, on careful reading of the provisions of Section 529A of the Act of 1956 finds that it starts with non-obstante clause and provides for preferential payments to be made to (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.

30. The clause (c) of the proviso to sub-section (1) of Section 529 provides that if the due debt of secured creditor is not realized or the amount of workmen's portion in his security is less, the same shall rank *pari passu* with the workmen's dues for the purposes of Section 529A of the Act of 1956.

31. This Court finds that Section 530 of the Act of 1956 provides for preferential payments in a winding up proceedings and the different preferential payments are to be made subject to the provisions of Section 529A of the Act of 1956 and as per clause (a) of sub-section (1) of Section 530 of the Act of 1956, all revenues, taxes, cesses and rates due from the Company to the



Central or State Government or local authority, the same will be payable within the stipulated time.

32. The bare reading of the aforesaid two relevant provisions i.e. Section 529A and 530 of the Act of 1956 make it very clear that priority has to be given to the workmen's dues in winding up of a Company and further debts due to the secured creditor to the extent of debts under clause (c) of the proviso to sub-section (1) of Section 529 of the Act of 1956 are to be treated as *pari passu* with such dues.

33. This Court further finds that Section 530 of the Act of 1956 comes into play after priority is given to the dues of the workmen and debts due to the secured creditor and later on preferential payments are to be made in favour of the Central/State Government/local authority in respect of their dues, taxes, etc.

34. This Court finds that the Act of 2003 provides for creating of first charge on the property of a dealer or a person against whom any amount of tax or other sum payable, is due. The said provision of the Act of 2003 also starts with a non-obstante clause and as such it has provided right to the State Government that the amount of tax or any other sum payable, is required to be recovered and such authority will have first charge on the property of such dealer or person.

35. The core issue raised before this Court is with respect to preferential treatment or priority to be accorded to the State claim/crown's debt vis-a-vis the claim of workmen and other secured creditors.



36. The issue of priority of secured creditor's debt over that of the State Government, commonly known as crown's debt, has been examined by different High Courts and the Hon'ble Supreme Court. This Court deems it proper to narrate the facts and law, with respect to different High Courts, as how the priority issue has been dealt with by them, as under:-

36-1. In the State of Kerala, a similar provision existed in respect of Kerala General Sales Tax Act, 1963 and the issue of priority of Sales Tax Department over the secured creditors, as per Section 529A of the Act of 1956 was examined by the Kerala High Court in the case of **Assistant Commissioner (Assessment), Kollam & Ors. Vs. OL, High Court of Kerala, Ernakulam & Anr. [Company Appeal No.14 of 2013 and Company Petition No.29 of 1998]** decided on 18.12.2013. The extract of the judgment, relevant for the present purpose is reproduced as under:-

"11. When a Law is made by the parliament with reference to the field of legislation carved out exclusively to it under list I and a law is made by the State in exercise of its legislative power under Article 246(3) with regard to the legislative entry in list II of the Seventh Schedule, a question of repugnancy may arise. The first task entrusted to the court is to ascertain whether there is any repugnancy. The Court must employ the principle of pith and substance. If there is only an incidental encroachment and substantially the law falls within the exclusive domain of the legislature, the mere incidental encroachment would be ignored. But when the legislations are irreconcilable, the Constitution has accorded supremacy to the parliamentary legislation and parliamentary legislation will reign supreme. When the law is one made with reference to entries in the concurrent list, where both the Parliament and the State Legislature are sovereign powers in the matter of making laws, again in view of Article 254 of the Constitution unless it be a law made by the State, which is reserved for the assent of the President



and the assent is received, the state law, would otherwise if it is repugnant to the law made by the Parliament, must make way whether the parliamentary legislation is before or after the legislation made by the State.

12. In this Constitutional perspective let us examine the effect of Section 26B and whether, in view of the provisions contained in Sections 529A and 530 of the Act, the State can contend that the priority to be observed under Section 529A will not prevail.

Section 529A reads as follows:

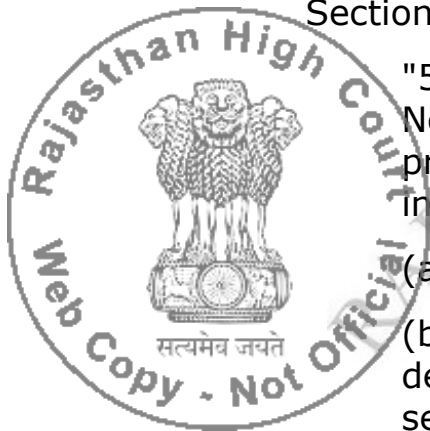
"529A. Overriding preferential payment.- Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company-

(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."

Section 529A talks about the overriding according priority to the debts due to the secured creditors and the workers. Section 530 in no uncertain terms makes the payment of taxes inter alia only subject to the priority embodied in Section 529A. If, as contended by the learned Special Government Pleader for taxes, despite the said statutory scheme, the priority is to be accorded to the taxes due to the State of Kerala on the basis of the first charge created under Section 26B of the Sales tax Act, then we would have to ignore Sections 529A and 530 of the Act. We are of the view that while it was indeed open to the State legislature to enact Section 26B giving first charge to the amounts due under the State Sales tax Act, it cannot prevail when it comes into collision with the mandate of Section 529A. It is Section 529A which must prevail. In other words, it is not as if Section 26B is any way void or of no use. Indeed it will have full force otherwise. But pit it against the mandate of Section 529A read with Section 530 Section 26B must indeed pale into inefficacy and insignificance. They cannot stand together. If they are allowed to stand together, then necessarily there is irreconcilable conflict and that conflict can only be resolved in favour of the parliamentary legislation. The resultant position is that, as Parliament has declared that in the case of a company which is being wound up, proceeds of its assets must ensure firstly to the secured creditors and workers and it is to be distributed pari passu





among them and then, if any proceeds remain, it is to be distributed among others including the State which may be creditors with unsatisfied demands following assessments which have been made under the Sales tax law as in this case. Giving effect to Section 26B will thwart the Parliamentary law.

13. It is in this regard we must see the judgment of the Apex Court in Central Bank of India's case (supra). It is true that in the Central Bank's case, the Apex Court was dealing with the question as to whether Section 26B of the Sales tax Act will prevail over the provisions of the Debts Due to Banks and Financial Institution Act 1993. It is in that context the Apex Court held that there is no provision akin to Section 529A of the Act in the DRT Act. In paragraph 129, it is held that if parliament intended to give priority to the amounts sought to be realised under the Debt Recovery Tribunal Act, it would have enacted provisions on the lines of Section 529A among other provisions. This is a case of clear indication that when the matter is to be decided between the claim under Section 529A and Section 26B, it is the claim under Section 529A which would prevail in view of the provisions of Section 530 of the Act as in no uncertain terms the claim of the State for payment towards taxes is made subject to Section 529A. This view of ours also finds support from the judgment of the Bombay High Court in State of Kerala v. Official Liquidator of Poysha Industrial Col Ltd. (2010 158 Comp. Case 582).

The aforesaid judgment passed by the Kerala High Court has been upheld by the Apex Court and the SLP (Civil) [CC No.6368/2014] has been dismissed vide order dated 25.04.2014.

36-II. The Gujarat High Court considered the issue of priority of sales tax dues over all creditors including secured and unsecured creditors under the Act of 1956 in the case of **State of Gujarat Vs. OL of Kengold (India) Ltd. & Ors.** reported in [2009] 149 CompCase 625 (Guj). The relevant portion of the judgment – para 28, is reproduced hereunder:-

"28. In the case of Regional Director, E.S.I. Corporation v. Official Liquidator of Prasad Mills Limited 2005 (3)] 46 (3) GLR 2019, the Division Bench of this Court has held that Section 529-A has been introduced in the year 1985. It



starts with a non-obstante clause. It clearly provides that "notwithstanding anything contained in any other provision of the Act or any other law for the time being in force". A true understanding of Section 529-A would make clear that the provisions of Section 529-A shall override the provisions contained in Section 530. Not only this, the provisions contained in Section 529-A shall override the provisions contained in the E.S.I. Act, because the E.S.I. Act is an Act of 1948, while the amendment in the Companies Act has been made in the year 1985 and with the fullest knowledge that it was to override the provisions contained in Section 530. If Section 94 of the E.S.I. Act and Section 530 of the Companies Act are made subordinate to Section 529-A, then Section 529-A shall march over the rights of the others to which the others are entitled either under the special laws or under Section 530 of the Companies Act. A combined / conjoint reading of Section 529-A of the Companies Act would make clear that in a matter of winding up, the workmen's dues and the debts due to the Secured Creditors to the extent such debts rank under Clause (c) of the proviso to Sub-section (1) of Section 529-A pari passu with such dues, shall be paid in priority to all other debts. If such dues and debts are paid in full, and even thereafter, some money is left with the Official Liquidator for its distribution, then such money can be distributed under Section 530 of the Companies Act. When such a situation crops up, the State Government or the Central Government or the Local Authority may file their claim before the learned Company Judge and at that point of time, they may say that in view of their preferential right, either under the Local Act or under Section 530 of the Companies Act, they be paid. The Court further held that in absence of Section 529-A, the answers certainly could be in favour of the E.S.I. Corporation. Since, after introduction of Section 529-A and amendment to Section 530 of the Companies Act, the legal position is changed. When the Official Liquidator acquires or possesses the securities mortgaged with the Secured Creditors, then the Official Liquidator would be obliged to serve the provisions of Section 529-A and Section 530 of the Companies Act. The question of equity would not arise because in a case where the securities / properties / assets are not sufficient to discharge the liability of the creditors described under Section 529-A of the Companies Act, the question of payment under Section 530 of the Act would not arise. Section 530 of the Companies Act would come into operation only after the liability under Section 529-A is discharged and some money is still left."

36-III. The High Court of Gujarat considered the issue of priority of Gujarat Value Added Tax, 2003 over SARFAESI Act, 2002 in the case of **Bank of Baroda Vs. State of Gujarat & Ors.** reported in



(2020) 4 GLR 2498. The extract of the judgment, relevant for the present purpose, is reproduced hereunder:-

"11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is, whether the Central Legislation would prevail over Section 48 of the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as, 'the VAT Act'). To put it in other words, whether the Bank will have the first priority to recover its dues being a secured creditor in view of Section 26E of the SARFAESI Act or the State will have the first priority by virtue of Section 48 of the VAT Act.

12 to 16. XX XX XX

17. The plain reading of Section 48 of the VAT Act indicates that it starts with a non-obstante clause 'notwithstanding anything to the contrary contained in any law for the time being in force'.

18. Section 31B of the RDB Act also starts with a non-obstante clause 'notwithstanding anything contained in any other law for the time being in force'.

19. Section 26E of the SARFAESI Act also starts with a non-obstante clause 'notwithstanding anything contained in any other law for the time being in force'.

20. XX XX XX

21. A non-obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provisions or Act mentioned in the non-obstante clause, the provision following it will have its full operation or the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment or the provision in which the non-obstante clause occurs. [See 'Principles of Statutory Interpretation', 9th Edition by Justice G.P.Singh Chapter V, Synopsis IV at pages 318 & 319]

22. When two or more laws or provisions operate in the same field and each contains a non-obstante clause stating that its provision will override those of any other provisions or law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a non-obstante clause. Two provisions in same Act each containing a non-obstante clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved proper consideration of giving effect to the object and purpose of two provisions and the language employed in each. [See for



relevant discussion in para 20 in *Shri Swaran Singh & Anr. v. Shri Kasturi Lal*; (1977) 1 SCC 750]

23. Normally the use of the phrase by the Legislature in a statutory provision like 'notwithstanding anything to the contrary contained in this Act' is equivalent to saying that the Act shall be no impediment to the measure [See Law Lexicon words 'notwithstanding anything in this Act to the contrary']. Use of such expression is another way of saying that the provision in which the non-obstante clause occurs usually would prevail over the other provisions in the Act. Thus, the non-obstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the non-obstante clause is attached. [See *Bipathumma & Ors. v. Mariam Bibi*; 1966(1) Mysore Law Journal page 162, at page 165]

24. Having regard to the nature of the controversy which I am called upon to resolve, I would like to look into two decisions of the Supreme Court; one, in the case of *Kumaon Motor Owners' Union Ltd. and another v. State of U.P.*, reported in AIR 1966 SC 785, and another, in the case of *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and others*, reported in (2001)3 SCC 71. Although the ratio of the two decisions referred to above may not be directly applicable to the case on hand, yet having regard to certain principles of law enunciated, I would like to follow and apply the same for the purpose of resolving the controversy as regards Section 48 of the VAT Act, Section 31B of the RDB Act and Section 26E of the SARFAESI Act.

25 & 26. XX XX XX

27. The principles discernible from the decision of the Supreme Court in the case of *Kumaon Motor Owners' Union Ltd. (supra)* are that, if there is a conflict between the provisions of the two Acts and if there is nothing repugnant, the provisions in the later Act would prevail. The second principle discernible is that, while resolving the conflict, the court must look into the object behind the two statutes. To put it in other words, what necessitated the legislature to enact a particular provision, later in point of time, which may be in conflict with the provisions of the other Acts. The third principle discernible is that the court must look into the language of the provisions. If the language of a particular provision is found to be more emphatic, the same would be indicative of the intention of the legislature that the Act shall prevail over the other statutes.

28. XX XX XX

29. The principles of law discernible from the decision of the Supreme Court in the case of *Solidaire India Ltd. (supra)* are that, if there is a conflict between the two special Acts, the



later Act must prevail. To put it in other words, when there are two special statutes which contain the non-obstante clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the legislature could be said to be aware of the earlier legislation and its non-obstante clause. If the legislature still confers the later enactment with a non-obstante clause, it means that the legislature wanted that enactment to prevail.

30. Let me clarify that in the case on hand there is no conflict between the two special statutes enacted by the Parliament. The conflict is with the State Act and the Central Act. I am trying to understand the true purport and effect of Section 26E of the SARFAESI Act which came to be enacted later in point of time and also the effect of Section 31B of the RDB Act which came to be enacted later in point of time.

31 to 33. XX XX XX

34. I am sure of one thing that there exists no repugnancy in the two legislations. The intention of the Parliament could not be said to nullify the State enactment providing the first charge on the property. The legislations have been made by the Central Government and the State respectively under Entries I and II of the Schedule and not of the Concurrent List. The amendment made by the Parliament is to give priority to the secured creditors vis-a-vis the State dues without speaking about the first charge. This aspect was duly considered by the Supreme Court in the case of Central Bank of India (supra). The amended provision, i.e. Section 26E of the SARFAESI Act and Section 31B of the RDB Act, would have been different as indicated by the Apex Court in the case of Central Bank of India (supra).

35 to 44. XX XX XX

45. Thus, the dictum of law as laid by the Supreme Court in the aforesaid decision is that the State's preferential right to the recovery of debts over other creditors is confined to ordinary or unsecured creditors. The Supreme Court took the view that the Common Law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for the recovery of its debts over a mortgagee or pledgee of the goods or a secured creditor. It is true that ultimately the bank was not granted any relief, but the same was not granted in the peculiar facts of the case. Otherwise, the principle of law as explained is very clear. In no uncertain terms, the Supreme Court held that the appellant, i.e. the bank, was right in submitting that on the date on which the State of Karnataka proceeded to attach and sell the property of the partners of the firm mortgaged with the bank, it could not have appropriated the sale proceeds to the sales-tax arrears payable by the firm, thereby defeating the bank's security. In taking such view, the Supreme Court relied on its earlier decision in the case of CST vs. Radhakishan, (1979) 43 STC 4 : AIR 1979 SC 1588."



36-IV. The Gujarat High Court in the case of **Bank of India Vs. State of Gujarat & Ors. [R/Special Civil Application No.13863 of 2014]** decided on 21.01.2020 again considered the provisions of Section 48 of the Value Added Tax Act, 2003 vis-à-vis the provisions contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the RDB Act') and whether Section 31B of the RDB Act give priority to the secured creditor to realize its dues over the Government debts. The Gujarat High Court held that the secured creditor will have priority over the dues of the State Government.

36-V. The High Court of Himachal Pradesh also considered the issue of preference of the secured creditor over the claim of the State Government in respect of Himachal Pradesh Value Added Tax, as per Himachal Pradesh Value Added Tax Act, 2005 in the case of **Punjab National Bank & Ors. Vs. State of Himachal Pradesh & Ors.** reported in **2021 (4) RCR (Civil) 837**. The extract of the judgment, relevant for the present controversy, is reproduced as under:-

"25. At this stage, it is necessary to quote the provisions of Section 38 of the Kerala Value Added Tax Act, 2003 (KVAT Act), which read as under:

"Tax payable to be first charge on the property.-- Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person."

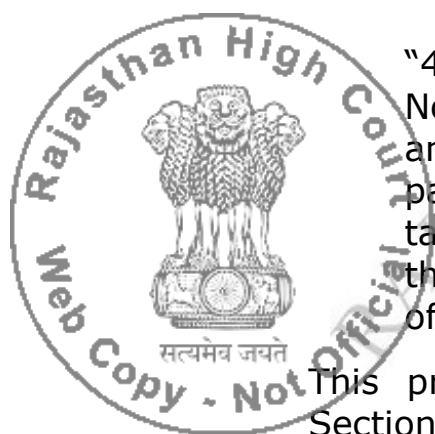
A perusal of the provisions of Section 38 of the KVAT Act and Section 26 of the HP VAT Act demonstrates that these provisions are almost pari materia. This Court concurs with



the reasoning of the Hon'ble High Court of Kerala that after coming into force of Section 31B of the RDB Act read with Section 26E of the SARFAESI Act, the first charge is created by way of priority in favour of the Banks/Financial Institutions to recover and satisfy their debts, notwithstanding any local statutory "first charge" in favour of the Revenue.

26 to 28. XX XX XX

29. Section 48 of the Gujarat Value Added Tax Act, 2003 reads as under:



"48. Tax to be first charge on property:-- Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person or account of tax, interest or penalty for which he is liable to pay to the Government shall be a first change on the property of such dealer, or as the case may be, such person."

This provision is also pari materia to the provisions of Section 26 of the Himachal Pradesh Value Added Tax Act, 2005.

The Hon'ble High Court of Gujarat in Bank of Baroda through its Assistant General Manager Vs. State of Gujarat & 3 others, R/Special Civil Application No. 12995 of 2018, decided on 16.09.2019, while interpreting the provisions of Section 48 of the Gujarat VAT Act vis-a-vis the provisions of Section 26 of the SARFAESI Act and Section 31B of the RDB Act has held that the first priority over the secured assets shall be of the Bank and not of the State Government on account of Section 48 of the Gujarat VAT ACT, 2003.

30. The Hon'ble Madhya Pradesh High Court also in Bank of Baroda Vs. Commissioner of Sales Tax, M.P., Indore and another, (2018) 55 GSTR 210 (MP) had the occasion to consider an identical issue while interpreting Section 31-B of the RDB Act vis-a-vis Section 33 of the MP VAT Act, 2002, which contained a non obstante Clause and created first charge on the property of a dealer in favour of the Government. It held that the State Government cannot be permitted to auction the property as the Bank was having priority in the matter in light of the amendment, i.e., Section 31B of the RDB Act.

31. A similar view has been taken by the Hon'ble High Court of Bombay in State Bank of India Vs. The State of Maharashtra, Writ Petition (ST.) No. 92816 of 2020, decided on 17th December, 2020, in which, the said Court has held that if any Central Statute creates priority of a charge in favour of a secured creditor, the same will rank above the charge in favour of a State for a tax due under the value added tax of the State.



32. Thus, Hon'ble High Court of Bombay has also held that in light of the provisions of Section 31B of the RDB Act, 1993, the first charge shall be that of the Banks/Financial Institutions and not the Revenue. However, it is important to state at this stage that there is a slight difference in the statutory provisions of Section 26 of the HP VAT Act vis-a-vis Section 37 of the Maharashtra Value Added Tax Act, 2002, which Section expressly also contains that the first charge on the property of the dealer of the State shall be subject to any provision regarding creation of first charge in any Central Act for the time being in force.

33. Be that as it may, a perusal of the judgment of the Hon'ble High Court of Bombay demonstrates that it has taken into consideration the pronouncements of all other Hon'ble Courts with regard to their respective VAT Acts, which contained a non obstante Clause in favour of the State akin to Section 26 of the H.P. VAT Act, 2005 vis-a-vis the amendments contained in the SARFAESI Act and the RDB Act

34. Thus, from what has been discussed above, now there is no ambiguity that in view of the provisions of Section 26E of the SARFAESI Act 2002 and Section 31B of the Recovery of Debts and Bankruptcy Act, 1993, a secured creditor has priority over the rights claimed by the Revenue."

37. The submission of the learned Advocate General that the State has first charge as crown's debt against other creditors by virtue of overriding effect of Section 47 of the Act of 2003 which starts with non-obstante clause and the State having full legislative competence to enact law – the Act of 2003 and as such, the OL has refused to give priority to the State dues, this Court finds that the Act of 1956 has been enacted by the Parliament on the basis of Entry 43 of the List-I (Union List) of 7th Schedule appended to the Constitution of India.

38. This Court finds that Article 246 of the Constitution of India opens with a non-obstante clause and the Parliament has been given exclusive power to make laws in respect of matters enumerated in List-I of the 7th Schedule, known as Union List.



39. This Court further finds that the State legislature can also make laws in respect of matters enumerated in List-II of the 7th Schedule, subject to clauses (1) and (2) of Article 246. The non-obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union legislature in the event of an overlap of the law made by the Parliament with respect to a matter enumerated in List-I and a law made by the State legislature with respect to a matter enumerated in List-II of the 7th Schedule.

40. This Court finds that both the Parliament and the State legislature are supreme in their respective assigned fields and it becomes duty of the Court to interpret the legislations made by both the Parliament and the State legislature in such a manner as to avoid any conflict.

41. This Court finds that if the conflict is unavoidable and two enactments are irreconcilable, then due to force of the non-obstante clause in clause (1) of Article 246 of the Constitution of India, the Parliamentary legislation shall prevail notwithstanding the exclusive power of the State legislature to make a law with respect to the matter enumerated in the State List.

42. This Court further finds that Section 529A of the Act of 1956 provides priority to the debts due to the secured creditors and the workers and Section 530 of the Act of 1956 makes payment of taxes subject to the priority embodied in Section 529A.

43. This Court finds that the State has full competence to provide for creating first charge under Section 47 of the Act of



2003 for recovering the amount due to the State under the earlier Sales Tax Act and now VAT, however, the same cannot have priority, when it comes in conflict with the mandate of Section 529A, then the Sections 529A and 530 of the Act of 1956 will prevail.

44. This Court in no way finds that the State had no competence to insert Section 47 in the Act of 2003 and the same law is in no way useless or redundant, however, if the Central Act, as enacted by the Parliament, provides for proceeds of the assets of a Company being wound up, to be given to the secured creditors and the workers, then the same has to be distributed *pari passu* among others, as per the priority given in Section 529A of the Act of 1956.

45. The submission of learned Advocate General that the Parliament by inserting Section 529A in the Act of 1956 has only given preferential treatment to the workmen's dues but other creditors like State Government cannot be deprived to claim their due amount, this Court finds that if the Parliament has made amendment in the Act of 1956 and only priority has been given to the claim of the workmen, no further inference can be drawn by the Court of depriving any other creditor to get its dues.

46. This Court finds that even the preferential payments to the revenues, taxes, cesses, etc. due from the Company in winding up to the Central or the State Government or the local authority, will be subject to the provisions of Section 529A of the Act of 1956. This Court, if accepts the plea of the learned Advocate General, in



a way, would be re-writing Section 530 of the Act of 1956 and the same cannot be done by this Court. The legislature-Parliament, if has brought any change in respect of the preferential payment and only the dues of workmen have been given priority, no grievance can be allowed to be raised by any other person including the State. The legislature, if in its wisdom has thought that dues of workmen and other secured creditors are required to be protected, no inference can be drawn that the legislature has caused any discrimination for the States to claim their dues.

47. The submission of learned Advocate General that the State Government has enacted a special law by enacting the Act of 2003 and the Companies Act, 1956 is a general law and as such, the special law of the State will prevail over the general law, suffice it to say by this Court that if the parliament has enacted the Companies Act, 1956 and the same also governs all the Companies, as per the provisions of the Companies Act, 1956, then the Act so framed by the Union Legislature cannot be treated as a general law vis-à-vis the Value Added Tax Act, 2003, enacted by the State Government.

48. The submission of the learned Advocate General that the Company-in-liquidation has been wound up and its assets have been sold off and as such, the State has no other option but to recover its dues through the OL, this Court finds that the claim/dues of the creditors are required to be settled by the OL in the manner and priority, as prescribed under the Act of 1956. The



State dues, in no way, can have preference over the dues/claims of the workmen and other secured creditors.

49. Reliance is placed by the learned Advocate General on the judgment passed by the Apex Court in the case of **Mahendra Lal Jaini Vs. State of UP & Ors.** (supra), this Court finds that the issue before the Apex Court was with respect to the constitutional validity of UP Land Tenures (Regulation of Transfer) Act, 1952.

50. Learned Advocate General has relied on this judgment for the purpose of the words "to the extent" for considering the provisions contained in clause (b) of sub-section (1) of Section 529A of the Act of 1956.

51. This Court finds that the words used "to the extent" have already been considered by this Court while interpreting Sections 529 and 530 of the Act of 1956, as such, this judgment is of no assistance to the learned Advocate General.

52. Reliance is placed by the learned Advocate General on the judgment passed by the Apex Court in the case of **Employees Provident Fund Commissioner Vs. OL of Esskay Pharmaceuticals Ltd.** (supra), this Court finds the issue before the Apex Court was with regard to priority to the dues payable by employer under Section 11 of Employee's Provident Funds and Miscellaneous Provisions Act, 1952 and whether the same would be subject to Section 529A of the Act of 1956 and in terms of which the workmen's dues and debts due to the secured creditors, are required to be paid in priority to all other debts.



53. The Apex Court on interpretation of the Section 11 of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 and Sections 529, 529A and 530 of the Act of 1956 found that the amendment in the Companies Act, 1985 was only to expand the scope of the dues of workmen and place them at par with the debts due to the secured creditors and there was no reason to interpret the amendment as giving priority to the debts due to the secured creditors over the dues of provident fund payable by the employer. This Court finds that the said judgment is of little assistance to the learned Advocate General.

54. Reliance is placed by the learned Advocate General on the judgment passed by the Apex Court in the case of **Jayant Verma & Ors. Vs. UOI & Ors.** (supra), this Court finds that the question before the Apex Court was in respect of Entry 45 of List-I and Entry 30 of List-II of the 7th Schedule of the Constitution of India and how those were to be harmonized, as per Article 246 of the Constitution of India and how the 'federal supremacy principle' was to be taken care of. This Court finds that the said judgment is of little assistance to the learned Advocate General as the Apex Court considered the pith and substance theory in the said judgment.

55. Reliance is placed by the learned Advocate General on the judgment passed by the Apex Court in the case of **Central Bank of India Vs. State of Kerala & Ors.** (supra), this Court finds that the issue before the Apex Court was with respect to considering the Section 26B of the Kerala General Sales Tax Act,



1963 providing for statutory first charge over the property of dealer, whether they will have priority over the rights created in favour of the secured creditor such as Banks and other financial institutions. The Apex Court found that there was no inconsistency between the provisions of the Kerala General Sales Tax Act, 1963 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short 'the DRT Act') and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Securitisation Act'). The Apex Court further held that the DRT Act and the Securitisation Act do not create first charge in favour of banks, financial institutions and other secured creditors and the provisions contained in Section 38C of the Bombay Act and Section 26B of the Kerala Act, were not inconsistent with the provisions of the DRT Act and the Securitisation Act so as to attract non-obstante clauses contained in Section 34(1) of the DRT Act or Section 35 of the Securitisation Act.

56. This Court finds that post decision of the **Central Bank of India Vs. State of Kerala & Ors.** (supra), the Parliament has made amendments in both the enactments and the financial institutions or secured creditors such as Banks, etc., have now been given preferential right over the State dues/crown's debt. In the humble opinion of this Court, the judgment relied upon by the learned Advocate General is of little assistance to him.

57. Reliance is placed by the learned Advocate General on the judgment passed by this Court in the case of **Jaysynth Dyechem**



& Ors. Vs. Mewar Textile Mills Ltd. reported in **AIR 1988 Raj.**

16, this Court finds that the issue before the Court was with regard to considering the provisions of the Rajasthan Relief Undertaking (Special Provisions) Act, 1961 and whether any 'proceedings' will include winding up petition or not pending before this Court. This judgment is of little assistance to the learned

Advocate General.

58. Accordingly, this Court finds that the claim of the applicant-State to give them priority for payment of their dues over other secured creditors, cannot be granted. Their applications, in the facts & circumstances, stand dismissed.

(ASHOK KUMAR GAUR), J.

Solanki DS, PS



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