THE HIGH COURT OF JUDICDATURE FOR THE STATE OF TELANGANA : HYDERABAD

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W.P.NO.20196 OF 2019

State Bank of India, A Government of India
Undertaking Rep by its DGM and Branch Head
Stressed Asset Management Branch, Hyderabad .. Petitioner

Vs.

The Union of India, Ministry of Finance
Rep by its Secretary Services Tax Wing,
South Block, New Delhi and others .. Respondents

DATE OF THE JUDGMENT PRONOUNCED: 21.04.2020

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

***HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**
AND
HONOURABLE SRI JUSTSICE T.AMARNATH GOUD

+ W.P.NO.20196 OF 2019

% DATED 21st APRIL, 2020

State Bank of India, A Government of India
Undertaking Rep by its DGM and Branch Head
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Vs.

$ The Union of India, Ministry of Finance
Rep by its Secretary Services Tax Wing,
South Block, New Delhi and others .. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Mr. E.Madan Mohan Rao

^Counsel for 1 to 3 Respondents : Mrs. Sundari R. Pisupati

^Counsel for 4th Respondent : --

^Counsel for 5th Respondent : Mr. B.Manoj Kumar

^Counsel for 6th Respondent : Mr. Vedula Srinivas

? CASES REFERRED:

1. 1 (2009) 4 SCC 94
2. MANU/GJ/1885/2019
3. (2001) 3 SCC 71
4. (1993) 2 SCC 144
5. (1977) 1 SCC 750
6. (2000) 4 SCC 406
7. AIR 1956 SC 614

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.20196 of 2019

O R D E R: (*Per* Hon'ble Sri Justice M.S. Ramachandra Rao)

The petitioner in this Writ Petition is the State Bank of India, rep by it's DGM and Branch Head, Stressed asset Management Branch, Hyderabad.

2. In this Writ Petition, the petitioner has challenged the notice F.No.INV/DGCEI/HZU/ST/49/2016-17 dt.11.6.2019 issued by the Deputy Director, Directorate General of GST Intelligence, Hyderabad Zonal Unit (3rd respondent) issued under Sec.87 of the Finance Act,1994 as being contrary to the Recovery of Debts and Bankruptcy Act,1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (for short 'the SARFAESI Act, 2002') and seeks to have it set aside.

3. The 1st respondent herein is the Union of India, Ministry of Finance rep.by it's Secretary, Service Tax Wing, New Delhi; the 2nd respondent is the Director General of GST Intelligence, Hyderabad Zonal Unit; the 4th respondent is the Deputy commissioner of Income tax, circle 3 (1), Hyderabad; the 5th respondent is the Regional Provident Fund Commissioner-II & it's Recovery Officer, Regional Office, Hyderabad.

4. The 6th respondent is M/s SEW Infrastructures Limited, Greenlands, Hyderabad, a Company incorporated under the Companies Act,1956.

5. The petitioner Bank in it's banking activity had sanctioned limits of Rs.820 Crores to the 6th respondent with working capital limits of Rs.198 crores (Fund based) and Rs.622 Crores (Non Fund based) and the limits were renewed during February,2016 along with consortium Banks.

6. The 6th respondent created a first charge by way of hypothecation of all it's current assets and receivables as primary security and a mortgage over it's immoveable properties as collateral security.

7. The loan accounts of the 6th respondent were classified as 'Non Performing Assets' as on 8.1.2016 as per the Reserve Bank of India norms. The petitioner then initiated proceedings under the SARFAESI Act, 2002 by issuing a demand notice under Sec.13 (2) of the said Act and also took possession of 6th respondent's properties under Sec.13 (4) of the said Act on 19.2.2018. These had been challenged by the 6th respondent in other forums.

8. The petitioner also filed on 13.4.2018 OA No.223 of 2018 before the Debt Recovery Tribunal, Hyderabad invoking the Recovery of Debts and Bankruptcy Act,1993 for recovery of Rs.280.68 Crores against the 6th respondent and it is pending.

9. In the meantime the 6th respondent received an Income Tax Refund Order for Rs.35,75,95,400/- on 20.5.2019 and it was credited into the TRA account of the 6th respondent in the petitioner Bank at petiitoner's CCG Branch, Hyderabad.

10. According to the petitioner, this amount, being a receivable, is subject the charge created by 6th respondent in it's favor, and is entitled to be adjusted by it towards repayment of dues owed to it by the 6th respondent.

11. However the 3rd respondent issued the impugned notice dt.11.6.2019 to the Petitioner Bank invoking Sec. 87 of the Finance Act,1994 stating that 6th respondent owes Rs.59,20,19,079/- towards dues of Service Tax; invoking Sec.87(b)(i) r/w Sec.73 (1B) of the Finance Act,1994 it demanded that the petitioner Bank pay forthwith the Income Tax refund amount to the credit of the Central Government (i.e the 1st respondent) by way of a demand draft drawn in favor of "SBI Treasury Branch, Hyderabad for service Tax payment"; and if the amount falls short of Rs.59,20,19,079/-, he directed the petitioner Bank to subsequently transfer any amount becoming due from the petitioner to 6th respondent or any other amount held by it for or on account of 6th respondent to the extent of the shortfall to be paid to the 1st respondent. The 3rd respondent also threatened to treat the petitioner as an 'assessee in default' otherwise.

12. A summons was also enclosed to the impugned notice under the repealed Central Excise Act,1944 r/w Sec.174(2) of the CGST Act,2017 asking the petitioner to appear before the 3rd respondent.

13. The Deputy General Manager of the petitioner appeared before the 3rd respondent and gave a statement contending that dues owed by 6th respondent to petitioner are more than Rs. 2000 Crores, that it is a secured debt, and the petitioner is entitled to adjust the Income Tax refund credited to 6th respondent's account in petitioner's CCG Branch, Hyderabad towards it's dues pointing out it has got priority over claims of the respondents 1-3 under Sec.31-B of the Recovery of Debts and Bankruptcy Act,1993.

14. Petitioner also contends that there was a claim lodged by the 5th respondent with it under Sec.8 F of the Employees Provident Fund and Miscellaneous Provisions Act,1952 for the same amount and that it is not possible to pay it to the respondents 1-3.

15. Petitioner also contends that as per sec.88 of the Finance Act,1994, the service tax and government dues have no priority over the secured debts covered by the Recovery of Debts and Bankruptcy Act,1993 and the SARFAESI Act,2002.

16. Petitioner further contends that it is not a party to the adjudication proceedings against the 6th respondent taken by the respondents 1-3 and the very issuance of the notice under sec.87 (b)(i) of the Finance Act,1994 is without jurisdiction and is arbitrary.

IA No. 1 of 2019

17. Petitioner had filed IA No. 1 of 2019 in the Writ Petition to suspend the impugned notice issued by the 3rd respondent on 11.6.2019.

18. On 17.9.2019, this court granted interim suspension of the impugned notice.

I.A.nos. 2 and 3 of 2019

19. I.A.no. 2 of 2019 is filed by the 6th respondent and I.A.No.3 of 2019 is filed by the respondents 1-3 to vacate the said order.

20. The 5th respondent filed a counter affidavit disputing the petitioners' contentions.

The stand of the respondents 1-3

21. In the affidavit filed along with IA.No.3 of 2019, the respondents 1-3 contended that the 3rd respondent has the jurisdiction under sec.87 of the Finance Act,1994 to issue the impugned notice under rule 6A of the Service Tax Rules ,1994 [which states that "*where an amount of service tax payable has been self-assessed under Sec.70(1) of the Act, but not paid, either in full or in part, the same shall be recoverable along with interest in the manner prescribed under Sec.87 of the Act."].*

22. It is contended that the 6th respondent had failed to pay the self – assessed service tax. It is also contended that Sec.174(2) of the CGST Act,2017 validates the action for recovery of the service tax under Sec.87 of the Finance Act,1994 due from the 6th respondent and in turn from the petitioner.

23. It is contended that the creation of first charge by 6th respondent by way of hypothecation of all it's current assets and receivables as primary security was not brought to the notice of the 3rd respondent and that only in the pleadings taken by petitioner in the Writ Petition, this became known to respondents 1-3. However it is contended that petitioner has not stated under what provisions of which enactment a mere hypothecation of assets (current or otherwise) by 6th respondent can prevent and/or nullify the proceedings initiated by the 3rd respondent.

24. The respondents 1-3 also claim that they have no knowledge that the loan account of 6th respondent with petitioner was classified as a 'Non-Performing Asset' on 8-1-2016 and that an OA was filed before the Debts

Recovery tribunal by the petitioner against the 6th respondent. It is contended that the petitioner has not submitted any copy of the Recovery certificate under Sec.31-A(2) of the Recovery of Debts and Bankruptcy Act,1993 and in the absence of such a certificate, petitioner's claim over the Income Tax refund amount is not justified.

25. It is contended that though petitioner approached the NCLT invoking Sec.7 of the Insolvency and Bankruptcy Code, 2016, the said petition has not been admitted by the said forum; that petitioner has not produced proof of taking possession of the assets of the 6th respondent under Sec. 13(4) of the SARFAESI Act,2002; and that petitioner's claim that it has a first charge or statutory lien on the Income tax refund amount is not a valid claim.

26. It is contended that the Finance act,1994 is still existing even after the commencement of the CGST Act,2017, that it has not been repealed and under Sec.174(2) of the CGST Act r/w Sec.142(8) of the CGST Act , the action of the 3rd respondent is valid in law.

The stand of the 6th respondent

27. In the affidavit filed along with IA No.2 of 2019, the 6th respondent Company supported the stand of the respondents 1-3 and contended that petitioner cannot challenge the impugned notice.

28. While admitting that the 6th respondent had borrowed loans from the petitioner, it is stated that it is still a going concern, but is passing through a bad phase financially. It admitted that it has liability towards service tax and also was in default of provident fund contributions.

29. It claimed that it had made a claim under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in so far as service tax arrears are concerned on 31.10.2019 under ARN NO.LD3110190000255; that in view of the amnesty scheme, the demand for service tax would get settled at 60% of the tax component and that the interest component would be totally waived of, subject to acceptance by the Determination Committee under the scheme.

30. It also stated that the PF arrears are to the tune of Rs.3,89,42,739/- and already a Garnishee notice was served by the 5th respondent on the bank account of the petitioner lying with the petitioner.

31. It is contended that the petitioner is only one of the Banks of the consortium and that there are other Bankers/lenders and the petitioner cannot claim the entire amount of the Income Tax refund given to the 6th respondent.

The stand of the 5th respondent

32. In it's counter the 5th respondent stated that the 6th respondent is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act,1952; that 6th respondent did not remit Provident Fund Contributions from April, 2016 to September,2018; that the authorized Officer issued order under Sec.7-A and 14-B of the said Act determining the dues payable under the said Act; that Recovery officer received Recovery certificates for Rs.4,23,39,801/- against which only Rs.25,58,161/- was recovered leaving a balance of dues of Rs.3,97,83,640/-.

33. It is also stated that under Sec.8F(3) (X), a notice dt.27.8.2019 was also issued to the Branch Manager, State Bank of India, SAM Branch-2, Kacheguda, Hyderabad.

34. It is stated that it has initiated action under Sec.8B to 8G of the said Act and as part of such recovery actions prohibitory order has been issued under sec. 8F against the petitioner, who is the banker of the 6th respondent, which had committed default in payment of Provident Fund Contributions. Reliance is also placed on Sec. 11 of the said Act which deals with 'priority of payment o contributions over other debts'. Reference is also placed to certain unreported decisions of various courts none of which are furnished to the Court.

35. It is contended that the 5th respondent has priority over the dues of the Banks or Government departments.

36. It prayed that a direction be given to the petitioner to make payment of the Income Tax refund amount to it .

The consideration by the Court

37. From the above narrated facts it is clear that the 6th respondent owed amounts to the petitioner for loans borrowed by it, Service Tax dues to respondents 1-3 and Provident Fund dues to the 5th respondent. The 6th respondent supports the claim of respondents 1-3.

38. The 6th respondent received an Income Tax refund Order for Rs.35,75,95,400/- on 20.5.2019 and it was credited into the TRA account of the 6th respondent in the petitioner Bank at it's CCG Branch, Hyderabad.

39. The question is *"which of the parties is entitled to take this amount?"*

Whether the claim of petitioner prevails over the claim of the respondents 1-3?

40. In this regard, we shall first consider the rival claims of the petitioner Bank and the respondents 1-3.

41. Sec.87(b) (i) of the Finance Act,1994 states:

> *" **87. Recovery of any amount due to Central Government**.—Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:—*
>
> *(a) … the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;*
>
> *(b)(i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;*
>
> *……" (emphasis supplied)*

42. Sec. 88 of the Finance Act, 1994 states:

> *" **88. Liability under Act to be first charge**.—Notwithstanding anything to the contrary contained in any Central Act or State Act**, any amount of [3][tax]**, penalty, interest, or any other sum **payable by an assessee** or any other person under this chapter**, shall, save as otherwise provided in** Section 529-A of the Companies Act, 1956 (1 of 1956) and **the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) [the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002** and the Insolvency and Bankruptcy Code, 2016], **be the first charge on the property of the assessee** or the person as the case may be." (emphasis supplied)*

43. Thus the claim of the service tax dues of 6th respondent of Rs.59,20,19,079/- made by the respondents 1-3 will be a first charge is subject to the provisions in the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) (later renamed as recovery of debts and Bankruptcy Act,1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (SARFAESI Act,2002).

44. The Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 was renamed as Recovery of Debts and Bankruptcy Act,1993 by Sec.249 of the Fifth Schedule of the Insolvency and Bankruptcy Code,2016.

45. Sec.31-B of the Recovery of Debts and Bankruptcy Act,1993 inserted by Act 44 of 2016 w.e.f 1.9.2016, states:

> *" **Sec.31-B. Priority to secured creditors.**— Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.*
>
> *Explanation.— For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."*

46. Sec.26-E of the SARFAESI Act,2002 introduced by Act 44 of 2016 w.e.f 1.9.2016 also contains an identical provision which states:

> *"26-E. Priority to secured creditors.- Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in*

priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation.- For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

47. Thus both these provisions give priority to claims of secured creditors like the petitioner Bank over the dues of the State such as Service Tax dues/ Income Tax dues and the *non-obstante* clause therein overrides the provisions of the Finance Act,1994.

48. Sec.35 of the SARFAESI Act, 2002 gives overriding effect to the said statute over anything inconsistent therewith in any other law. It states:

*" Sec.**35. The provisions of this Act to override other laws**.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

49. The Counsel for the respondents 1-3 Mrs.P.Sundari however placed reliance on the decision of the Supreme Court in **Central Bank of India v. State of Kerala**[1] wherein the Supreme Court held that claim of the State of Kerala under the Kerala State General Sales Tax Act, 1963 would prevail over the claims of a secured creditor like the Central Bank of India. In that case the Supreme Court held :

" 110. The DRT Act facilitated establishment of two-tier system of tribunals. The tribunals established at the first level have been vested with the jurisdiction, powers and authority to summarily adjudicate the claims of banks and financial institutions in the matter of recovery of their dues without being bogged down by the technicalities of the Code of Civil Procedure. The

[1] (2009) 4 SCC 94

Securitisation Act drastically changed the scenario inasmuch as it enabled banks, financial institutions and other secured creditors to recover their dues without intervention of the courts or tribunals. The Securitisation Act also made provision for registration and regulation of securitisation/reconstruction companies, securitisation of financial assets of banks and financial institutions and other related provisions.

111. *However, what is most significant to be noted is that there is no provision in either of these enactments by which first charge has been created in favour of banks, financial institutions or secured creditors qua the property of the borrower.*

112. *Under Section 13(1) of the Securitisation Act, limited primacy has been given to the right of a secured creditor to enforce security interest vis-à-vis Section 69 or Section 69-A of the Transfer of Property Act. In terms of that sub-section, a secured creditor can enforce security interest without intervention of the court or tribunal and if the borrower has created any mortgage of the secured asset, the mortgagee or any person acting on his behalf cannot sell the mortgaged property or appoint a Receiver of the income of the mortgaged property or any part thereof in a manner which may defeat the right of the secured creditor to enforce security interest. This provision was enacted in the backdrop of Chapter VIII of the Narasimham Committee's Second Report in which specific reference was made to the provisions relating to mortgages under the Transfer of Property Act.*

113. *In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the non obstante clause in Section 13 and gave primacy to the right of secured creditor vis-à-vis other mortgagees who could exercise rights under Sections 69 or 69-A of the Transfer of Property Act. However, this primacy has not been extended to other provisions like Section 38-C of the Bombay Act and Section 26-B of the Kerala Act by which first charge has been created in favour of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc. Sub-section (7) of Section 13 which envisages application of the money received by the secured creditor by adopting any of the measures specified under sub-section (4) merely regulates distribution of money received by the secured creditor. It does not create first charge in favour of the secured creditor.*

…

126. While enacting the DRT Act and the Securitisation Act, Parliament was aware of the law laid down by this Court wherein priority of the State

dues was recognised. If Parliament intended to create first charge in favour of banks, financial institutions or other secured creditors on the property of the borrower, then it would have incorporated a provision like Section 529-A of the Companies Act or Section 11(2) of the EPF Act and ensured that notwithstanding series of judicial pronouncements, dues of banks, financial institutions and other secured creditors should have priority over the State's statutory first charge in the matter of recovery of the dues of sales tax, etc. However, the fact of the matter is that no such provision has been incorporated in either of these enactments despite conferment of extraordinary power upon the secured creditors to take possession and dispose of the secured assets without the intervention of the court or Tribunal. The reason for this omission appears to be that the new legal regime envisages transfer of secured assets to private companies."(emphasis supplied)

50. Thus the Supreme Court based it's decision on the *absence* of a provision in the Recovery of Debts and Bankruptcy Act, 1993 and SARFAESI Act,2002 giving priority to the secured creditors' claims over the claims of the State like Sales Tax dues.

51. But when the decision in **Central Bank of India** (1 supra) was delivered on 27.2.2009, the provision of Sec.31-B of the Recovery of Debts and Bankruptcy Act, 1993 or Sec.26E of the SARFAESI Act,2002 were not in existence.

52. Sec.31-B of the Recovery of Debts and Bankruptcy Act, 1993 and Sec.26E of the SARFAESI Act,2002 were introduced in the respective statutes only on 1.9.2016 by Act 44 of 2016.

53. So, in our opinion, after introduction of Sec.31-B of the Recovery of Debts and Bankruptcy Act, 1993 and Sec.26-E of the SARFAESI Act,2002 w.e.f. 1.9.2016, the claim of the petitioner Bank would prevail over that of the

respondents 1-3, and the decision in **Central Bank of India** (1 supra) cannot be relied on by the respondents 1-3.

54. But the following discussion in **Central Bank of India** (1 supra) about the interpretation of a *non-obstante* clause is relevant for our purposes.

55. The Supreme Court explained in **Central Bank of India** (1 supra):

> *"**103.** A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used."*

56. The said non-obstante clause in both Sec.31-B of the Recovery of Debts and Bankruptcy Act, 1993 and Sec.26E of the SARFAESI Act,2002 would override over the provisions of the Finance Act,1994 like Sec.87(b) (i).

57. The Gujarat High court in **Bank of Baroda vs. State of Gujarat and Ors**[2] has also taken an identical view and has held that the insertion of Section 31B of the Recovery of Debts and Bankruptcy Act,1993 with the *non-obstante* clause contained therein, will give priority to the secured creditors even over the subsisting charges under other laws on the date of the implementation of the new provision, i.e. 1.9.2016.

58. We respectfully agree with the said view and hold that having regard to the clear language contained in Sec.31-B of the Recovery of Debts and Bankruptcy Act, 1993 giving priority to rights of secured creditors (to realise secured debts due and payable to them by sale of assets over which security interest is created) over all other debts and Government dues including

[2] MANU/GJ/1885/2019

revenues, taxes, cesses and rates due to the Central Government, State Government or local authority, the law has undergone a sea change; and in view of Sec.31-B of the Recovery of Debts and Bankruptcy Act, 1993 and sec.26E of the SARFAESI Act,2002 w.e.f.1.9.2016 the claims of secured creditors such as the petitioner Bank have priority over the claims of the respondents 1-3 for service tax dues.

59. So we reject the claim of the respondents 1-3 that they are entitled to the Income Tax refund amount credited to the 6th respondent's Bank account with the petitioner Bank and that the petitioner cannot claim it.

Finding:

60. Consequently we hold that the impugned notice under Sec.87 of the Finance Act,1994 issued by the 3rd respondent cannot be sustained in law.

Whether the 5th respondent's claim prevails over the claim of the petitioner?

61. We have already noted that the claim of the 5th respondent for Provident Fund contributions and damages against the 6th respondent is based on Sec.11 of the Employees Provident Fund and Miscellaneous Provisions Act,1952. The said provision states:

> " **11. Priority of payment of contributions over other debts**.—
> *(1)Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due—*
>
> *(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme] applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14-B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or*
>
> *(b) from the employer in relation to an exempted establishment in respect of any contribution to the Provident Fund or any Insurance Fund (in so far as it relates to exempted employees), under the rules of the Provident Fund or any Insurance Fund any*

contribution payable by him towards the Pension Fund under sub-section (6) of Section 17, damages recoverable under Section 14-B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under Section 17,

shall, where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under Section 49 of the Presidency Towns Insolvency Act, 1909, or under Section 61 of the Provincial Insolvency Act, 1920 or under Section 530 of the Companies Act, 1956, are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

Explanation.—In this sub-section and in Section 17, 'insurance fund' means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.

(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer , whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution], the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts." (emphasis supplied)

62. While subsection (2) of Sec.11 of the said enactment contains a *non-obstante* clause creating a first charge to claims for Provident Fund dues over all other debts, we have already seen that *there is also a non obstante clause in* Sec.31-B of the Recovery of Debts and Bankruptcy Act, 1993 and Sec.26-E of the SARFAESI Act,2002.

63. The former statute is one of 1952 while the other two were enacted in 1993 and 2002 respectively.

64. It is settled law that if there is conflict between two special Acts and both contain *non obstante* clauses, the said clause in the later Act will prevail as held in **Solidaire India Ltd. v. Fairgrowth Financial Services Ltd[3].**

[3] (2001) 3 SCC 71

65. The Supreme Court **Solidaire India Ltd** (3 supra) had the occasion to consider the effect of conflict between two special Acts. In the case before the Supreme Court, the conflict was between the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 with the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The Supreme Court took the view that the later one would prevail**.** It held:

> ***" 7. … …*** *there is no doubt that the 1985 Act is a special Act. Section 32(1) of the said Act reads as follows:*
>
> *"32. Effect of the Act on other laws.—(1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act."*
>
> ***8.*** *The effect of this provision is that the said Act will have effect notwithstanding anything inconsistent therewith contained in any other law except to the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. A similar non obstante provision is contained in Section 13 of the Special Court Act which reads as follows:*
>
> *"13. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority."*
>
> ***9.*** *It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows:* ***Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of***

Maharashtra Ltd.[4]; Sarwan Singh v. Kasturi Lal;[5] Allahabad Bank v. Canara Bank[6] and Ram Narain v. Simla Banking & Industrial Co. Ltd.[7]"

(emphasis supplied)

Finding:

66. In view of this settled legal position, even the 5th respondent's claim for the Income Tax refund amount credited to the 6th respondent's Bank account with the petitioner Bank cannot prevail over petitioner's claim for the same by way of adjustment to it's dues.

67. Therefore the Writ Petition is allowed; the notice F.No.INV/DGCEI/HZU/ST/49/201617 dt.11.6.2019 issued by the 3rd respondent is set aside; and it is held that the petitioner Bank is entitled to appropriate the sum of Rs. 35,75,95,400/- deposited towards Income Tax refund by the 4th respondent in the Bank account of the 6th respondent with the petitioner's branch at CCG Branch at Hyderabad towards dues owed to petitioner by the 6th respondent. IA No. 2 and 3 of 2019 are dismissed. No costs.

68. As a sequel, miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 21.04.2020
Note: L.R. copies to be marked.
B/o Vsv

[4] (1993) 2 SCC 144
[5] (1977) 1 SCC 750
[6] (2000) 4 SCC 406
[7] AIR 1956 SC 614