Rajasthan High Court - Jodhpur
The Specified Undertaking Of The ... vs M/S Derby Testiles Limited on 27 July, 2022
Bench: Pushpendra Singh Bhati
HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR S.B. Company Petition No. 7/2000 The Specified Undertaking Of The Uti

----Petitioner Versus M/s Derby Textiles Limited

----Respondent Connected With S.B. Company Petition No. 9/2014 Dinesh Gaur

----Petitioner Versus Derby Textiles Ltd. Through Director

----Respondent S.B. Company Application No. 2/2015 Dinesh Gaur

----Petitioner Versus Derby Textiles Ltd. Through Director

----Respondent For Petitioner(s) : Mr. Manoj Bhandari Sr. Advocate assisted by Mr. Aniket Tater.

Mr. Siddarth Tatiya Mr. Shailendra Gwala For Respondent(s) : Mr. Sanjay Jhanwar Sr.Advocate assisted by Mr. Rajat Sharma & Mr. Pranav Bafna.

Mr. Sanjay Nahar Mr. Anil Vyas Mr. Sanjeet Purohit with Mr. Surendra Thanvi Mr. Naman Mohnot Mr. Pushkar Taimini HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI Order (2 of 37) [COP-7/2000] Reserved on 22/07/2022 Pronounced on 27/07/2022

1. This Court is seized with two company petitions, bearing No.7/2000, which has been preferred by the Specified Undertaking of the Unit Trust of India (UTI/Corporation) and another company petition bearing No.9/2014 preferred by the workman.

1.1 The company petition bearing 7/2000 was preferred with an averment that the Company, named, M/s. Derby Textiles Limited (respondent-Company herein) was incorporated on 22.05.1980 as a Public Limited Company, limited by shares.

1.1.1. The UTI was requested by the respondent-Company, vide letter dated 21.08.1995 for sanction of Unsecured Transferable Notes (UTN) of Rs.1.00 crore to meet some capital expenditure, which was agreed upon by the UTI, and thus, they proceeded with the transaction in the year 1996.

1.1.2. The UTI was also requested by the respondent-Company vide letter dated 20.12.1995 to subscribe for Secured Redeemable Non-convertible Debentures (for short, 'SRNCD') of the face value of Rs.4.00 crores, which was also agreed upon. The respondent-

Company also executed a Memorandum of Hypothecation and the Trustee Agreement on 12.09.1996 in favour of the Debenture Trustee IDBI.

1.1.3. The UTI disbursed the amount of Rs.4.00 crores to the respondent-Company and the Company issued SRNCD of the face value of Rs.4.00 crores in favour of the UTI.

(3 of 37) [COP-7/2000] 1.1.4. The respondent-Company however, started deviating from the payments. The UTI thus, gave a recall notice on 04.01.2000, specifying the demand for payment of the outstanding debt alongwith interest. Since the respondent-Company was unable to pay the requisite amount, therefore, the company petition No. 7/2000 was preferred under Sections 433, 434 and 439 of the Companies Act, 1956, seeking winding of the company. The prayer included appointment of an official liquidator regarding all the assets and properties of the respondent-Company.

1.1.5. This Court takes note of the following factual aspects.

1.1.6.The company petition seeking winding up of the respondent-

Company was filed on 18.12.2000 and notices were issued by this Hon'ble Court on 01.03.2000 to the respondent-Company; the said company petition was admitted by this Hon'ble Court on 23.03.2001; on 08.09.2003, this Hon'ble Court directed that the respondent-Company shall not alienate any of its properties; on 27.11.2014, company petition No.9/2014 and company application No.2/2015 were filed, which were ordered to be connected with company petition No.7/2000, vide order dated 09.01.2015; on 23.01.2015 notices were issued in company petition No.9/2014.

The adjudication took a long time because the Company avoided service of notice. Thereafter, a detailed order was passed by this Hon'ble Court on 10.01.2018.

1.1.7.During adjudication, the official liquidator attached to this Court tried to make inventory of the assets of the respondent-

Company, but the Directors of the company did not cooperate, and therefore, the official liquidator moved this Court to break open (4 of 37) [COP-7/2000] the locks; accordingly, vide order dated 02.05.2003, this Court directed that if the Directors refuse to supply the keys on the request being made, the official liquidator will be at liberty to break open the locks for making inventory and he can make arrangements for security at the cost of the company. On 28.07.2003, it was submitted on behalf of the company that they will provide all assistance to the official liquidator in making the inventory and would give an undertaking that they will not alienate any of the assets. Accordingly, the Court adjourned the matter to 25.08.2003 with further directions that on that date, the arguments will be heard for possibility of appointment of the official liquidator; a report was filed by the official liquidator with regard to inventory of the respondent-Company on 25.08.2003.

1.1.8.Thereafter, the respondent-Company filed preliminary objections to the inventory report filed by the official liquidator. On 25.11.2003, the matter was adjourned to 04.12.2003 for hearing arguments on the aspect of liquidation. On 04.05.2004, noticing the fact that the inventory list has not been so far completed, the Court adjourned the matter to 28.05.2004.

1.1.9. The respondent-Company meanwhile made an application that it has been registered as sick company with BIFR, and accordingly, vide order dated 02.01.2006, while observing that when any decision is finally taken by the BIFR, the petitioner will have liberty to move before this Court, the matter was adjourned.

1.1.10. On 07.12.2010, the counsel appearing on behalf of the respondent-company submitted that the matter is pending before AAIFR, and therefore, the matter may be adjourned. Accordingly, (5 of 37) [COP-7/2000] the matter was adjourned to February, 2011. Even thereafter, the matter was adjourned from time to time on count of pendency of the proceedings before the AAIFR. On 10.10.2014, the counsel appearing for the respondent-company submitted that the appeal pending before the AAIFR stands decided, but a fresh reference in respect of the subsequent financial year is registered with the BIFR, thus sought deferring of the hearing.

1.1.11. On 23.01.2015, the counsel appearing for the respondent-

company submitted that the appeal pending before the AAIFR was coming up for hearing on 09.03.2015, and accordingly, the matter was again adjourned.

1.1.12. On 04.02.2016, the counsel appearing on behalf of the respondent-Company submitted that the proceeding pending before the AAIFR stood concluded, but he sought to bring on record the proceedings of the AAIFR. The company kept in dilly-

dallaying on some or the other issues thereafter in the Court and the matter kept on getting adjourned, even when the Court cautioned the parties that no further adjournments would be given.

1.1.13. The arguments were concluded between the parties before the Court on 10.01.2018, but thereafter, a permission was sought by the respondent-company to make further arguments, which was permitted by the Court vide order dated 24.01.2018, in the interest of justice.

1.1.14. While such adjudication was going on, an application was pressed by one of the applicants i.e. workman, which was application No.2/15 in company petition No.9/2014, and it was (6 of 37) [COP-7/2000] submitted by the learned counsel for the petitioner that the auction proceedings had already taken place, and unless an official liquidator is appointed to secure the debts of the petitioner, the petitioner's rights shall be permanently prejudiced being a prioritized creditor. Since no one appeared for the respondent-

company on 28.03.2022, when the said application was being heard, in the interest of justice, an interim order was passed by this Court on 28.03.2022, which reads as under:

> "In wake of instant surge in COVID-19 cases and spread of its highly infectious Omicron variant, abundant caution is being maintained, while hearing the matters in Court, for the safety of all concerned.
>
> The matter comes up on an application no.02/2015 in Company Petition No.9/2014.

Learned counsel for the petitioner submits that auction in question has already taken place. Learned counsel for the petitioner further submits that unless an Official Liquidator is appointed to secure the debts of the petitioner, the petitioner shall be permanently prejudiced being a prioritized creditor.

Despite service, none appears for the respondent-Company.

In the interest of justice, further proceedings in case No.144/2004 before the Debt Recovery Tribunal, Jaipur shall remain stayed.

List after one week."

1.1.15. An SLP being Petition(s) for Special Leave to Appeal (C) Nos.10206-10207/2022 was preferred against the aforementioned interim order dated 28.03.2022 before the Hon'ble Supreme Court, which was decided on 30.05.2022 by passing the following order"

"Heard learned counsel for the petitioner.

(7 of 37) [COP-7/2000] We find no ground to interfere with the judgment impugned passed by the High Court.

The special leave petitions are, accordingly, dismissed.

Pending applications, if any, stand disposed of accordingly."

1.1.16. An application No.02/2022 for impleadment was filed on behalf of Kotak Mahindra Bank Limited, which was allowed by this Court vide order dated 18.05.2022, and Kotak Mahindra Bank Limited was impleaded as party respondent.

1.1.17. Another application No.01/2022 (in company petition No.7/2000) was filed on behalf of Kotak Mahindra Bank Limited seeking vacation of the interim order dated 28.03.2022.

1.1.18. Yet another application No.4/2022 (in company petition No.9/2014) was filed by Mr. Anil Vyas, Advocate (on behalf of the auction purchaser- M/s. Noble Art & Craft House, Jodhpur) seeking modification of the aforementioned interim order dated 28.03.2022; the copies were permitted to be given to the regularly appearing counsel in the case.

2. On 22.07.2022, the matter came up on application (No.1/22) preferred on behalf of Kotak Mahindra Bank Limited seeking vacation of the interim order dated 28.03.2022 and application (No.4/22) preferred on behalf of the auction purchaser seeking modification of the said interim order; on that date, the arguments were concluded and the order was reserved, on both the said applications.

3. Mr. Sanjay Jhanwar, learned Senior Counsel assisted by Mr. Sanjay Nahar, Mr. Rajat Sharma and Mr. Pranav Bafna appearing on behalf of the applicant-Kotak Mahindra Bank Limited (in application No.1/22) submitted that the application is being (8 of 37) [COP-7/2000] preferred on behalf of the applicant-Bank seeking vacation of stay of R.C. No.144/2004 before the Debts Recovery Tribunal (DRT), Jaipur, vide order dated 28.03.2022 passed by this Court.

3.1 He further submitted that the petitioner has intentionally failed to implead the proposed applicant in the present proceedings initiated by the proposed applicant against the respondent. He also submitted that no such application has been filed by the petitioner raising its claim before the DRT, despite being aware about the pendency of recovery proceedings before the DRT, Jaipur, which is the appropriate forum.

3.2 He further submitted that the original lenders (Now the Kotak Mahindra Bank Limited - proposed applicant herein) substituted in place of Industrial Development Bank of India (IDBI) as per Assignment Agreement dated 26.10.2007, the financial institutions who have advanced certain loan to the M/s.

Derby Textiles Ltd., impleaded as the respondent in the present proceedings.

3.3 He also submitted that the original lender M/s. Industrial Investment Bank of India (IIBI) also assigned the debts to the proposed applicant vide deed of assignment dated 22.05.2012.

3.4 He further submitted that in furtherance of the aforesaid final order, the recovery proceedings being R.C. No.144/2004 were pending adjudication before DRT, Jaipur for recovery of the outstanding dues of the proposed applicant and the same were listed for hearing on 05.04.2022.

3.5. He also submitted that the order dated 28.03.2022 is hampering the recovery proceedings of the proposed applicant, which has to recover huge dues to the tune of Rs.114,38,52,758/-

as on 15.03.2022.

(9 of 37) [COP-7/2000] 3.6. He also submitted that the application is bona fide and in the interest of justice, and therefore, in order to ensure an effective and wholesome adjudication of the issues raised in the instant matter and with a view to prevent multiplicity of litigation, the applicant prays that the order dated 28.03.2022 passed by this Court staying recovery proceedings initiated by the applicant before the recovery officer warrants reconsideration and deserves to be modified; thereby, a prayer has been made to allow the application, while vacating the interim order dated 28.03.2022 passed by this Court.

3.7 He mainly relied upon the precedent law laid down by the Hon'ble Supreme Court in Allahabad Bank Vs. Canara Bank & Ors., (2000) 4 SCC 406, relevant portion of which reads as under:

> "13. From the aforesaid contentions, the following points arise for consideration:

(1) Whether in respect of proceedings under the RDB Act at the stage of adjudication for the money due to the Banks or financial institutions and at the stage of execution for recovery of monies under the RDB Act, the Tribunal and the Recovery Officers are conferred exclusive jurisdiction in their respective spheres?

(2) Whether for initiation of various proceedings by the Banks and financial institutions under the RDB Act, leave of the Company Court is necessary under Section 537 before a winding up order is passed against the Company or before provisional liquidator is appointed under Section 446(1) and whether the Company Court can pass orders of stay of proceedings before the Tribunal, in exercise of powers under Section 442?

(3) Whether after a winding up order is passed under Section 446(1) of the Company Act or a provisional liquidator is appointed, whether the Company Court can stay proceedings under the RDB Act, transfer them to itself (10 of 37) [COP-7/2000] and also decide questions of liability, execution, and priority under Section 446(2) and (3) read with Sections 529, 529A and 530 etc. of the Companies Act or whether these questions are all within the exclusive jurisdiction of the Tribunal?

(4) Whether, in case it is decided that the distribution of monies is to be done only by the Tribunal, the provisions of Section 73 CPC and Sub- Clauses (1) and (2) of Section 529, Section 530 of the Companies Court also apply - apart from Section 529A - to the proceedings before the Tribunal under the RDB Act?

(5) Whether in view of provisions in Section 19(2) and 19(19) as introduced by Ordinance 1/2000, the Tribunal can permit the appellant-Bank alone to appropriate the an tire sale proceeds realised by the appellant except to the limited extent restricted by Section 529A? Can the secured creditors like the Canara Bank claim under Section 19(19) any part of the realisations made by the Recovery Officer and is there any difference between cases where the secured creditor opts to stand outside the winding up and where he goes before the Company Court?

(6) What is the relief to be granted on the facts of the case since the Recovery Officer has now sold some properties of the company and the monies are lying partly in the Tribunal or partly in this Court?

21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to Banks or Financial Institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) (formerly under Section 19(7)) to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word 'recovery' in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the (11 of 37)

[COP-7/2000] liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226, 227 of the Constitution). This is the effect of Sections 17 and 18 of the Act.

34. While it is true that the principle of purposive interpretation has been applied by the Supreme Court in favour of jurisdiction and powers of the Company Court in Sudarshan Chits (P) Ltd. case, and other cases the said principle, in our view, cannot be invoked in the present case against the Debt Recovery Tribunal in view of the superior purpose of the RDB Act and the special provisions contained therein. In our opinion, the very same principle mentioned above equally applies to the Tribunal/Recovery Officer under the RDB Act, 1993 because the purpose of the said Act is something more important than the purpose of Sections 442, 446 and 537 of the Companies Act, It was intended that there should be a speedy and summary remedy for recovery of thousands of crores which were due to the Banks and to Financial Institutions, so that the delays occurring in winding up proceedings could be avoided.

50. For the aforesaid reasons, we hold that at the stage of adjudication under Section 17 and execution of the certificate under Section 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction in the Tribunal and the Recovery Officer in respect of debts payable to Banks and Financial Institutions and there can be no interference by the Company Court under Section 442 read with Section 537 or under Section 446 of the Companies Act, 1956. In respect of the monies realised under the ROB Act, the question of priorities among the Banks and Financial Institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19(19) read with Section 529A of the Companies Act and in no other manner. The provisions of the RDB Act, 1993 are to the above extent inconsistent with the provisions of the Companies act, 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding up petition against the debtor-

(12 of 37) [COP-7/2000] company and also after a winding up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the appellant and against the respondents.

75. By the sale of Shed No. 15, a sum of Rs. 20 lakhs has been realised and is lying in this Court. Other sale proceeds in respect of previous sales are lying with the Recovery Officer. In view of our findings on points 1 to 5, no part of the said amounts is payable to the Canara Bank.

76. The next question is whether the amounts realised under the RDB Act at the instance of the appellant can be straightway released in its favour. Now, even if Section 19(19) read with Section 529A of the Companies Act does not help the respondent-Canara Bank, the said provisions can still have an impact on the appellant- Allahabad Bank which has no doubt a decree in its favour passed by the Tribunal. Its dues are unsecured. The 'workmen's dues' have priority over all other creditors, secured and unsecured because of Section 529A(1)(a). There is no material before us to hold that workmen's dues of the defendant company have all been paid. In view of the general principles laid down in National Textile Workers' Union etc. v. P.R. Ramakrishnan and Ors. :

(1983)ILLJ45SC there is an obligation resting on this Court to see that no secured or unsecured creditors including Banks or Financial Institutions, are paid before the workmen's dues are paid, we are, therefore, unable to release any amounts in favour of the appellant Bank straightway.

77. We, therefore, direct the Registry of the Supreme Court to make over the monies deposited in this Court pursuant to sale of Shed No. 15, to the Debt Recovery Tribunal, Delhi and it will be for the said Tribunal to find out if there are any workmen's dues by issuing notice to the workmen or other persons/bodies which can furnish information in this behalf. The above monies to be sent from this Court as well as the monies realised by earlier sales,- in case they are not subject to any pending litigation - have to be first released towards the workmen's (13 of 37) [COP-7/2000] dues. The balance remaining will then be released in favour of the appellant-Bank in accordance with law and subject to the various principles stated in this judgment. In case any machinery or goods pledged to the Canara Bank are lying in the two other sheds already sold, it will be open to the Canara Bank to move the Tribunal/ Recovery Officer for their removal and for an inventory. The impugned order of the High Court is set aside, the appeal is allowed and disposed of as stated above. There will be no order as to costs."

3.8 He also relied upon the precedent law laid down by the Hon'ble Supreme Court in Andhra Bank Vs. Official Liquidator & Ors., (2005) 5 SCC 75, relevant portion of which reads as under:

> "25. While determining the Point No. 6, however, a stray observation was made to the effect that the "workmen's dues" have priority over all other creditors, secured and unsecured because of Section 529-A(1)(a). Such a question did not arise in the case as the Allahabad Bank was indisputably an unsecured creditor.
>
> 26. Such an observation was, thus, neither required to be made keeping in view the fact situation obtaining therein nor does it find support from the clear and unambiguous language contained in Section 529-A(1)(a). We have, therefore, no hesitation in holding that finding of this Court in Allahabad Bank (supra) to the aforementioned extent does not lay down the correct law."

3.9 He further relied upon the precedent law laid down by the Hon'ble Supreme Court in The Official Liquidator, U.P. and Uttarakhand Vs. Allahabad Bank & Ors., (2013) 4 SCC 381, relevant portion of which reads as under:

> "27. It has been submitted by Mr. Banerji, learned senior counsel, that if the Company Court as well as the DRT can exercise jurisdiction in respect of the same auction or sale after adjudication by the DRT, there would be duality of (14 of 37) [COP-7/2000] exercise of jurisdiction which the RDB Act does not envisage. By way of an example, the learned senior counsel has submitted that there are some categories of persons who can go before the DRT challenging the sale and if the Official Liquidator approaches the Company Court, then such a situation would only bring anarchy in the realm of adjudication. The aforesaid submission of the learned senior counsel commends acceptance as the intendment of the legislature is that the

dues of the banks and financial institutions are realized in promptitude. It is to be noted that when there is inflation in the economy, the value of the mortgaged property/assets depreciates with the efflux of time. If more time is consumed, it would be really difficult on the part of the banks and financial institutions to realize their dues. Therefore, this Court in Allahabad Bank's case has opined that it is the DRT which would have the exclusive jurisdiction when a matter is agitated before the DRT. The dictum in the said case has been approved by the three-Judge Bench in Rajasthan State Financial Corporation and Anr. (supra). It is not a situation where the Official Liquidator can have a choice either to approach the DRT or the Company Court. The language of the RDB Act, being clear, provides that any person aggrieved can prefer an appeal. The Official Liquidator whose association is mandatorily required can indubitably be regarded as a person aggrieved relating to the action taken by the Recovery Officer which would include the manner in which the auction is conducted or the sale is confirmed. Under these circumstances, the Official Liquidator cannot even take recourse to the doctrine of election. It is difficult to conceive that there are two remedies. It is well settled in law that if there is only one remedy, the doctrine of election does not apply and we are disposed to think that the Official Liquidator has only one remedy, i.e., to challenge the order passed by the Recovery Officer before the DRT. Be it noted, an order passed under Section 30 of the RDB Act by the DRT is appealable. Thus, we are inclined to conclude and hold that the Official Liquidator can only take recourse to the mode of appeal and further appeal under the RDB Act and (15 of 37) [COP-7/2000] not approach the Company Court to set aside the auction or confirmation of sale when a sale has been confirmed by the Recovery Officer under the RDB Act."

4. Mr. Anil Vyas, learned counsel for the auction purchaser (applicant in application No.4/2022) submitted that the Kotak Mahindra Bank Limited, being a secured creditor of the respondent-Company, approached the DRT for their claim, and the matter of Recovery Case No.144/2004 (Kotak Mahindra Bank Limited Vs. M/s. Derby Textile Ltd. & Ors.) was initiated and proclamation of sale was issued in the recovery proceedings and drawn the Recovery Certificate No.15/2004 in O.A. No.144/2004 in OA No.500/2000 dated 08.10.2004; vide the proclamation of sale, the reserve price below which the property shall not be sold was fixed at Rs.126 Crores.

4.1 He further submitted that the applicant-auction purchaser participated in the E-auction purchase of the said property and became the successful bidder, and in this regard, the DRT, Jaipur passed an order dated 08.02.2022, and it was further directed that the EMD amount and the amount of any further payments received towards auction proceeds shall be converted into FDRs and kept in safe custody.

4.2 He further submitted that in pursuance of the E-auction, the present applicant/non-petitioner through its partner deposited 25% of the total amount and the next date was fixed in the matter.

4.3 He also submitted that thereafter on 11.03.2022, the applicant/non-petitioner was declared the purchaser after depositing the entire remaining auction amount and order of confirmation of sale of

immovable property was issued alongwith (16 of 37) [COP-7/2000] the certificate of sale of immovable property and in the said certificate the specification of the property was also given.

4.4 He further submitted that thereafter, in pursuance of the auction proceedings, the recovery officer handed over the partial possession of the property in question on 14.03.2022 and the receipt was executed in presence of the parties and the remaining possession of the property was kept pending.

4.5 He also submitted that an order was passed on 11.03.2022, while recording that the applicant approached the DRT, while putting one important condition that they may accept the possession provided an assurance is given that the auction money shall not be appropriated till full vacant possession is handed over to them; in the event of failure to ensure removal of unauthorized occupants, the refund of auction money shall be ensured.

4.6 He further submitted that the applicant/non-petitioner has invested huge amount and also took loan for the same and if the property is not given with all rights, then the entire purpose of purchasing the property in auction will become infructuous and the applicant is facing financial hardship as they are making about Rs.1 crore payment to the bank for the loan.

5. Mr. Manoj Bhandari, learned Senior Counsel assisted by Mr.Aniket Tater for the non-applicant/petitioner (UTI) submitted that the petitioner had bonafidely as a secured creditor came before this Court, and thus, adjudication of his case, has to be made while keeping into consideration provisions of Sections 433 and 434 of the Companies Act, apart from other provisions of law, in view of the judgment rendered by a Division Bench of the Hon'ble High Court of Delhi in Bank of Nova Scotia & Anr. Vs. (17 of 37) [COP-7/2000] RPG Transmission Limited & Anr., 2005 (79) DRJ 214 (DB), relevant portion of which reads as under:

> "12. In order to appreciate the aforesaid contentions of the counsel for the parties, it would be necessary to extract the various relevant provisions to which reference was made by the counsel during the course of their submissions.
>
> 13. Section 433 of Companies Act provides as under:- "433. Circumstances in which company may be wound up by Tribunal. - A company may be wound up by the Tribunal,-
>
> (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
>
> (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
>
> (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(e) if the company is unable to pay its debts;

(f) if the tribunal is of the opinion that it is just and equitable that the company should be wound up;

(g) if the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years;

(h) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(i) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G:

Provided that the Tribunal shall make an order for winding up of a company under clause (h) on application made by the Central Government or a State Government."

(18 of 37) [COP-7/2000]

14.Preamble to the RDB Act as also Sections 17, 18 and 34 provide as under:

"Preamble: An Act to provide for the establishment of Tribunals for expeditions adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. Sec.17: Jurisdiction, powers and authority of Tribunals.- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act. Sec.18. Bar of Jurisdiction.- On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in section 17. Sec.34. Act to have over-riding effect. - (1) Save as otherwise provided in sub-section (2), 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.

(2) The provisions of this Act or the rules made there under shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial

Corporation Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

15. In Allahabad Bank v. Canara Bank (supra), the Supreme Court was called upon to decide the issue relating to the impact of the provisions of RDB Act on the (19 of 37) [COP-7/2000] provisions of the Companies Act, 1956. In the said case the Supreme Court discussed various questions as to whether the Tribunal can entertain proceedings for recovery, execution proceedings and also for distribution of moneys realised by sale of assets of company against which winding up proceedings are pending and as to whether or not leave is necessary and the priority in which money is to be distributed amongst various creditors. After discussing the various provisions like Section 17 and 18 of the RDB Act, it was held that it is clear from the provisions of Section 17 of the RDB Act that the Tribunal is to decide the application of the banks/financial institutions for recovery of debts due to them. It was also held that by virtue of Section 18 the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is held to be exclusively vested in the Tribunal. The Supreme Court, however, hastened to add that this exclusion would not, however, apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution. After observing in the aforesaid manner, it was held by the Supreme Court in paragraph 22 of the Judgment that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant.

16. In paragraph 25 of the said judgment, the Supreme Court held thus:

"Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act."

17. While analysing and discussing the various issues raised before it, the Supreme Court referred to the decision of Damji Valji Shah (supra) wherein the Supreme Court has held as follows:

(20 of 37) [COP-7/2000] "the provisions of the special Act i.e. the LIC Act will override the provisions of the general Act, the Companies Act which is an Act relating to Companies in general." After referring to the aforesaid decision, the Supreme Court in the case of Allahabad Bank (supra) observed as follows in paragraph 31 of the judgment:-

"the appellant's case under the RDB Act - with an additional section like section 34 - is on a stronger footing for holding that leave of the Company Court is not necessary under section 537 or under section 446 for the same reasons. If the jurisdiction of the Tribunal is exclusive, the Company Court cannot also use its powers under section 442 against the Tribunal/Recovery Officer. Thus sections 442, 446 and 537 cannot be applied against the Tribunal."

The Supreme Court also held that Section 19(19) of RDB Act is clearly inconsistent with section 446 and other provisions of the Companies Act and that only section 529A is attracted to proceedings before the Tribunal. Therefore, on the questions of adjudication, execution and working out priorities, the special provisions made in the RDB Act shall have to be applied. It was, however, held by the Supreme Court in the said decision that in view of Section 34 of RDB Act, the said Act would override the Companies Act to the extent there is anything inconsistent between the Acts. An analysis of the decision of the Allahabad Bank (supra) would reveal that the said decision was rendered mainly in the context of the provisions of the RDB Act and sections 442, 446, 529A and 537 of the Companies Act. The provisions of sections 433, 434 and 439 were not at issue and not at all considered by the Supreme Court in the said judgment. The issues that also arose for consideration in that case have no relevance and bearing in respect of the facts and issues at hand. Consequently, the said decision has no relevance and bearing and does not answer the issues that arise for our consideration in this case.

(21 of 37) [COP-7/2000]

18. Therefore, our consideration, enquiries and discussion would also extend to ascertaining the object, purpose and intendment in enacting the two legislations and also whether the remedy provided in the said two acts are concurrent or exclusive of each other and as to whether or not there is any inconsistency between the two Acts. At this stage, we have to make a special mention of a decision of the Supreme Court in Haryana Telecom Ltd. (supra) wherein a similar question was raised in respect of Arbitration and Conciliation Act, 1996 vis-a-vis Companies Act. In the aforesaid appeal, the contention raised was that when a winding up petition is filed in respect of an agreement between the parties, which contains an arbitration clause, in that event such disputes, which are the subject matter of the winding up petition, should be referred to arbitration. The Supreme Court while dealing with the aforesaid plea referred to the provisions of Section 8 of the 1996 Act, which provides that the judicial authority before whom an action is brought in a matter governed by an arbitration agreement, would refer the parties to arbitration in accordance with the arbitration agreement. After considering the said provision as also the facts of the said case, the Supreme Court held that what can be referred to the arbitrator is only that dispute or matter which the arbitrator is competent or empowered to decide. In paragraph 5, the Supreme Court held as follows:

"The claim in a petition for winding up is nor for money. The petition filed under the Companies Act would be to the effect, in a matter like this, that the company has become commercially insolvent and, Therefore, should be wound up. The power to order winding up of a company is contained under the Companies Act and is conferred on the court. An arbitrator, notwithstanding any agreement between the parties, would have no jurisdiction to order winding up of a company."

19. We may also refer to some of the other decisions on which reliance was placed by the counsel for the parties. In Viral Filaments Ltd. (supra), a similar legal issue, which is raised in the present petition, came up for (22 of 37) [COP-7/2000] consideration. A Division bench of the Bombay High Court in the said decision held that the argument that what could be done by the Company Court can equally be done by the DRT under the RDB Act was erroneous. It was held in the said decision that there is no provision in the RDB Act empowering the Tribunal to wind up a company which

owes the debt to the applicant financial institution. The Bombay High Court held thus:

"jurisdiction of the Tribunal under the RDB Act is only to adjudicate the liability of the respondent before it, ascertain the 'debt' due to the bank/financial institution and issue a certificate for recovery thereof."

The High Court also held as follows:

"once such a certificate of recovery is issued to the Recovery Officer, the Recovery Officer is empowered to execute the same in the manner prescribed under the RDB Act. The jurisdiction to wind up the company is wholly unavailable to the DRT."

It was further held that:-

"what could be done by the Company Court under Section 433(e) could obviously not be done by DRT."

20. While coming to the aforesaid conclusions, the Bombay High Court referred to and relied upon the provisions of Sections 17 and 18 of RDB Act as also Sections 433, 434 of the Companies Act and on appreciation thereof came to the aforesaid conclusions that there was no merit in the contention that merely because the petitioning creditor before the company Court was a bank/financial institution or because an application had already been filed before the DRT under the provisions of the RDB Act, the petition for winding up would not be maintainable. In the said decision, the Bombay High Court referred to the decision of the Supreme Court in Haryana Telecom Ltd. (supra). In paragraph 5 of the said judgment, the Bombay High Court, after referring to the provisions of Sections 17 and 18 of the RDB Act, held as follows:

(23 of 37) [COP-7/2000] "Section 18 of the RDB Act provides that, on and from the appointed day, jurisdiction of Courts and other authorities in relation to matters specified in section 17 is barred. Section 17 provides that on and from the appointed day, a Tribunal constituted under the RDB Act shall exercise the jurisdiction, powers and authority 'to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions'. Thus, it is obvious that the exclusion of the jurisdiction of all other Courts and authorities is only to the extent the jurisdiction is specifically vested in the DRT."

In respect of the submission that what could be done by the Company Court can equally be done by the DRT under the RDB Act, the Bombay High Court held in paragraph 6 of the said judgment as follows, while observing that the said plea is erroneous:

"There is no provision in the RDB Act empowering the Tribunal to wind up a company which owes the debt to the applicant financial institution. The jurisdiction of the Tribunal under the RDB Act is only to adjudicate the liability of the respondent before it, ascertained the 'debt' due to the bank/financial institution and issue a certificate for recovery thereof. ..... We find that the jurisdiction to wind up the company is wholly unavailable to the DRT. Hence, what could be done by

the Company Court under Section 433(e) could obviously not be done by DRT." The Bombay High Court, while recording the aforesaid conclusions also noticed the decision of the Supreme Court in Allahabad Bank's case (supra) and summarised the issues which were raised and considered by the Supreme Court in the said decision. The Bombay High Court specifically extracted the contents of paragraph 50 of the said judgment of the Supreme Court in its decision. It also examined the issue of conflict between special and general law. The Bombay High Court summarised the law as follows in paragraph 5 thus:

"There is no provision in the RDB Act empowering the Tribunal to wind up a company which owes the debt to the applicant financial institution. The jurisdiction of the (24 of 37) [COP-7/2000] Tribunal under the RDB Act is only to adjudicate the liability of the respondent before it, ascertained the 'debt' due to the bank/financial institution and issue a certificate for recovery thereof. ..... We find that the jurisdiction to wind up the company is wholly unavailable to the DRT. Hence, what could be done by the Company Court under Section 433(e) could obviously not be done by DRT."

21. In respect of the plea raised before the Bombay High Court that the role played by the Company Court under Section 433and the DRT under the RDB Act is more or less equivalent since in the company petition also the Company Court has to adjudicate the amount due to the petitioning creditor before it can admit petition under Section 433(e), it held in the negative. It was the observation of the High Court that the admission of petition for winding up under Section 433(e) need not be preceded by an adjudicated liability of the company, for, it proceeds upon the inability of the company to pay its debts.

22. During the course of arguments before us in addition to the above, Mr. Chandhiok, learned counsel for the appellant bank also made reference to the decision of this Court in Madhya Pradesh Iron & Steel Company v. G.B. Springs (P) Ltd. reported as 102 (2003) DLT 120. A plea was raised in the said case that in view of pendency of a civil suit for recovery of money on the Original Side of the High Court, the Company Petition filed by the petitioner for winding up of the company could not be entertained. The aforesaid submission that the Company Petition should be dismissed since a civil suit has been filed was not accepted by the learned Single Judge of this Court. It was held in the said decision that admission of a winding up petition would not necessarily and invariably result in recovery of amount due and, Therefore, filing of a civil suit for recovery of money is essential since the decree passed in such a suit is executable.

23. In Andhra Steel Corporation Ltd. v. Bank of Baroda : AIR1995Cal367 , it was held by the Calcutta High Court in paragraph 6 as follows:

(25 of 37) [COP-7/2000] "In my opinion an application for winding up is a special right or remedy given under the Companies Act and the Court while hearing a winding up application decides only whether the company is liable to be wound up or not and does not decide the question as to recovery of debts due to any bank or financial institution. The winding up court is only concerned to decide whether the company comes within the ambit of the provisions as mentioned in Section 433 of the Companies Act, 1956."

In paragraph 8, the learned Single Judge of Calcutta High Court held as follows:

"In my opinion a winding up proceeding cannot be filed before the Tribunal formed under the aforesaid Act of 1993, and the Tribunal does not have jurisdiction to entertain any application for winding up of a company, whether it is made by any bank or financial institution or any other parties."

24. To the same effect is the decision of the learned Single Judge of Kerala High Court in The Industrial Credit and Investment Corporation of India Limited and etc. v. Vanjinad Leathers Ltd. and etc. : AIR1997Ker273 . A Division Bench of the Calcutta High Court decided the case of Maxlux Glass Private Limited v. ICICI Limited Company reported as I (2002) BC 182 wherein a similar plea was raised as to whether the Company Court under the Companies Act will have jurisdiction to entertain a petition filed by the bank for winding up of a company. After considering the provisions of Sections 17, 18 and 34 of the RDB Act and Sections 433 and 434 of the Companies Act and decisions rendered by different courts including that of Supreme Court, it was held by the Division Bench of the Calcutta High Court in paragraph 26 as follows: "..... filing of a petition under Sections 433 and 434 of the Companies Act, 1956 before the Company Court cannot be said to be inconsistent with the provisions of the Act of 1993. Once it is held that the petition is not only for the recovery of debts but they are more than that as mentioned above then in that case it cannot be said that the jurisdiction of the Company Court is ousted by virtue of Section 34 read with Sections 17 and 18 of the Act of (26 of 37) [COP-7/2000] 1993. Had it been a case where the petition was filed for recovery of debts only then perhaps the arguments raised by the learned counsel for the appellant would derive support from the decisions given in the case of Allahabad Bank v. Canara Bank (supra), but it has been the consistent view of the Apex Court that the petitions filed under Sections 433 and 434 of the Companies Act are not petitions for mere recovery of debts then in that case the provisions contained in the Act of 1993 cannot prevent the Banks or Financial Institutions in approaching the Company Court for an order of winding up."

In paragraph 29, it was held that when the matter is closely examined with reference to both the Acts, it appears that the provisions of Section 433(e) has been interpreted by their Lordships in a number of decisions that such petitions under Sections 433 and 434 of the Companies Act, 1956 are not merely for recovery of debts and it is meant for the benefit of the public at large that such institutions who are unable to pay their debts should not be allowed to function for public purpose. Accordingly it was observed that the petitions filed under Sections 433 and 434 of the Companies Act are not inconsistent with the provisions of the RDB Act rather both the provisions of the Acts can co-exist without doing any harm to the provisions of the RDB Act.

25. The aforesaid decisions referred to at the Bar make it crystal clear that the intention and the purpose for initiating a proceeding under the RDB Act is to recover the amount which is allegedly due and payable to the bank / financial institution whereas the purpose for invoking the provisions of Sections 433 and 434 is to wind up a company on the ground that it has become commercially insolvent. The aforesaid position is also crystal clear when the relevant provisions of both the acts are noticed. The Preamble of the RDB Act lays down the object and purpose for which the said Act was enacted where it clearly provides that the purpose is expeditious disposal and recovery of debts

due to banks and financial institutions and matters ancillary thereto like issuance of certificate for such recovery, etc. Section 17 of the Act (27 of 37) [COP-7/2000] reiterates the same position when it speaks of the extent of jurisdiction. On the other hand, the entire purpose of instituting a proceeding under sections 433 and 434 of the Companies Act is to wind up a company for its inability to pay a debt and for becoming commercially insolvent. The intention and purpose for instituting the two proceedings are, Therefore, distinctly separate and not identical. Haryana Telecom Ltd. (supra) clearly lays down that claim in a petition for winding up is not for recovery of money but to the effect that the company has been commercially insolvent and, Therefore, should be wound up. Therefore, the two Acts provide for two different remedies. The jurisdiction of the Tribunal under the RDB Act is to adjudicate the liability of the debtor during the course of which it is ascertained as to what debt is due to the bank / financial institution and after ascertainment of the said liability a certificate of recovery thereof is issued. The Tribunal has not been given the power and jurisdiction to declare a company as commercially insolvent. Therefore, the Tribunal constituted under the RDB Act is an exclusive Tribunal for the purpose of adjudication and determination of the liability and dues and also for recovery of the same by execution of the certificate which would be within exclusive jurisdiction of the DRT and the Recovery Officer and the said jurisdiction is not vested on the Company Court as it has been conclusively held in the decision of Allahabad bank (supra) that the Company Court has no jurisdiction to decide questions, which were left exclusively to the jurisdiction of the DRT. Both the said Acts operate in two distinct and mutually exclusive jurisdiction and each one of the Act does not and would and could not interfere with and/or override their respective area of jurisdiction.

26. In our considered opinion there is no inconsistency between the provisions of winding-up and that of the recovery proceedings initiated under the RDB Act and, Therefore, the provisions of Section 34 of RDB Act would have no application in respect of the proceedings initiated under the provisions of Sections 433 and 434 of the Companies Act.

(28 of 37) [COP-7/2000]

27. There can be no dispute with regard to the proposition sought to be advanced by Mr. Tripathi that in case of inconsistency between the general law and a special law, the special law would override the provisions of the general law and that the latter Act would also have precedence over the earlier Act. We accept the proposition that if there be any inconsistency between the provisions of the RDB Act and that of the Companies Act, it is the RDB Act, which would prevail. But on the other hand, if there is no inconsistency between the two Acts and the provisions of winding up and the provisions of recovery are found to be two distinct remedies and procedures mutually exclusive of each other, in that event we find no reason as to why a financial institution or a bank should be deprived of invoking the remedy provided to institute a proceeding for winding up a company in respect of which it has also instituted a recovery proceeding under the provisions of RDB Act.

28. The contention of Mr. Tripathi that the pith and substance of a winding up petition is also recovery of money is also misconceived inasmuch as, according to us, the pith and substance and intention for instituting such proceeding is to get a declaration against the said company that it is commercially insolvent and, Therefore, is required to be wound up. The aforesaid conclusion is

reinforced by the very fact that for recovery of the amount the bank or the financial institution has already taken recourse to the specific remedy which is provided for recovery of the amount due and payable to the said bank or financial institution under the provisions laid down under the RDB Act.

29. So far as the procedure for recovery of the dues is concerned, the same is provided for under the RDB Act, which covers the entire field. Therefore, there could be no dispute with the proposition of law laid down in the decisions of the Supreme Court in Custodian, Evacuee Property, Punjab and Ors. v. Jafran Begum: [1967]3SCR736 ; Firm of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh : [1963]50ITR93(SC) ; M/s Kamala Mills Ltd. v. State of Bombay :

(29 of 37) [COP-7/2000] [1965]57ITR643(SC) on which strong reliance was placed by Mr. Tripathi. However, the aforesaid decisions have no application to the facts of the present case as we are of the opinion that the winding up proceeding is initiated with the intention of declaring a particular company as commercially insolvent and to see that such insolvent company is wound up in the interest of the general public whereas the very intention of filing a proceeding under the RDB Act is to recover money. Neither the RDB Act nor any other legislation has vested the power and jurisdiction on the Tribunal to declare a company as insolvent and also to wind up such a company. The said jurisdiction is exclusively vested on the Company Court whereas the exclusive jurisdiction to ascertain the liability and to recover the said amount through a certificate is vested with the Tribunal when such liability is more than the amount stipulated in the said Act.

30. Therefore, it cannot be said that RDB Act covers the field for winding up an insolvent company and, Therefore, the contentions of Mr. Tripathi are misconceived and are accordingly rejected. The contention that the petitioner could chose one of the remedies available in case where two or more than two remedies are available is applicable when the remedy provided for is one and the same but when two different remedies are provided for two different reliefs, in that event the plea of election of remedies is not applicable. We, Therefore, hold that the winding up court is concerned with the issue as to whether or not a company could be declared as commercially insolvent and, Therefore, comes within the ambit of provisions of Section 433 of the Companies Act. The Debt Recovery Tribunal does not have any jurisdiction to entertain any such application for winding up of a company whether the same is by any bank and/or other financial institution. We also hold that both the remedies and jurisdictions are mutually exclusive of each other and, Therefore, there cannot be any inconsistency between the two different remedies provided for in two different legislations. We respectfully agree with the Division Bench decisions of Bombay and Calcutta High Court referred to above. The legal issue, (30 of 37) [COP-7/2000] which arises for our consideration is answered accordingly. The impugned order passed by the learned Single Judge on 31st of October, 2002 in CP No. 323/2001 is set aside and the entire matter is remitted back to the learned Company Judge for re-consideration and for giving a decision on the facts of the said case.

31. Consequently, the legal issue raised in the other appeal i.e. Company Appeal No. 34/2004 is also answered accordingly. We find no infirmity in the order passed by the learned Single Judge in the said case on 31.8.2004. However, as we have answered the legal issue raised before us, which was kept open by the learned Company Judge, now the Company Court may consider the matter in terms of the observations made herein. The impugned order passed by the learned Company Court

in the aforesaid appeal (Company Appeal No. 34/2004) is upheld and the matter shall now be considered by the learned Company Judge in accordance with law.

32. In the facts and circumstances of the present appeals, we leave the parties to bear their own costs."

5.1 He referred to the judgment rendered by the Hon'ble Supreme Court in Anita International Vs. Tungabadra Sugar Works Mazdoor Sangh & Ors., (2016) 9 SCC 44, relevant portion of which reads as under:

> "53. Despite our above conclusion, it is imperative for us to notice, that for recovery of a debt due to a bank or a financial institution, the concerned bank or financial institution, can legitimately initiate proceedings, by filing a winding up petition before the jurisdictional Company Court, or alternatively, intervene in a pending winding up petition. Since there is no bar restraining a bank or a financial institution from approaching a Company Court, by filing a winding up petition, it is not possible to conclude, that the jurisdictional Company Court, is not possessed with the determinative authority/competence to entertain a claim raised by such bank or financial institution. In view of the above, it is not possible for us (31 of 37) [COP-7/2000] to accept, as was suggested on behalf of the Appellants, that the order passed by the Company Court in the High Court at Madras dated 10.3.2000, lacked the jurisdictional authority. Since we have concluded that the Company Court which passed the order dated 10.3.2000 did not lack jurisdiction, we hereby hold, that in the facts of this case, the above order dated 10.3.2000 was neither invalid nor void."

6. Mr. Siddharth Tatiya, learned counsel appearing on behalf of the petitioner-workman in company petition No.9/2014 submitted that the adjudication of the claims of the workman dues before the Company Court can only be done through the official liquidator.

6.1 He relied upon the precedent law laid down by the Hon'ble Supreme Court in Rajasthan State Financial Corporation & Anr. Vs. Official Liquidator & Anr., (2005) 7 SCC 190, relevant portion of which reads as under:

> "16. In International Coach Builders Limited v. Karnataka State Financial Corporation: [2003]2SCR631 , this Court considered the correctness of the views expressed by the Karnataka High Court and the Gujarat High Court. This Court held that a right is available to a financial corporation under Section 29 of the SFC Act against a debtor, if a company, only so long as there is no order of winding up. When the debtor is a company in winding up, the rights of financial corporations are affected by the provisions in Sections 529 and 529A of the Companies Act. It was also held that the proviso to Section 529 of the Companies Act creates a "pair passu' charge in favour of the workmen to the extent of their dues and makes the liquidator the representative of the workmen to enforce such a charge. The decision of the Bombay High Court in Maharashtra State Financial Corporation. v. Ballarpur

> Industries Ltd.: AIR1993Bom392 was approved. The reference to a larger bench was occasioned by the fact (32 of 37) [COP-7/2000] that the decision in Allahabad Bank v. Canara Bank and Anr. (supra) was not adverted to in this decision. This decision recognizes that, whether a creditor is standing outside the winding up or not, the distribution of the proceeds has to be in terms of Section 529 of the Companies Act read with Section 529A of that Act in a case where the debtor is a company-in-liquidation. As far as we can see, there is no conflict on the question of the applicability of Section 529A read with Section 529 of the Companies Act to cases where the debtor is a company and is in liquidation. The conflict, if any, is in the view that the Debts Recovery Tribunal could sell the properties of the Company in terms of the Recovery of Debts Act. This view was taken in Allahabad Bank v. Canara Bank and Anr. (supra) in view of Recovery of Debts Act being a subsequent legislation and being a special law would prevail over the general law, the Companies Act. This argument is not available as far as the SFC Act is concerned, since Section 529A was introduced by Act 35 of 1985 and the overriding provision therein would prevail over the SFC Act of 1951 as amended in 1956 and notwithstanding Section 46B of the SFC Act. As regards distribution of assets, there is no conflict. It seems to us that whether the assets are realized by a secured creditor even if it be by proceeding under the SFC Act or under the Recovery of Debts Act, the distribution of the assets could only be in terms of Section 529A of the Act and by recognizing the right of the liquidator to calculate the workmen's dues and collect it for distribution among them pair passu with the secured creditors. The Official Liquidator representing a ranked secured creditor working under the control of the company court cannot, therefore, be kept out of the process.

17. Thus, on the authorities what emerges is that once a winding up proceeding has commenced and the liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be with (33 of 37) [COP-7/2000] the association of the Official Liquidator and under the supervision of the company court. The right of a financial institution or of the Recovery Tribunal or that of a financial corporation or the Court which has been approached under Section 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the company court the right to ensure that the distribution of the assets in terms of Section 529A of the Companies Act takes place. In the case on hand, admittedly, the appellants have not set in motion, any proceeding under the SFC Act. What we have is only a liquidation proceeding pending and the secured creditors, the financial corporations approaching the company court for permission to stand outside the winding up and to sell the properties of the company-in-liquidation. The company court has rightly directed that the sale be held in association with the Official Liquidator representing the workmen and that the proceeds will be held by the Official Liquidator until they are distributed in terms of Section 529A of the Companies Act under its supervision. The directions thus, made, clearly are consistent with the provisions of the relevant Acts and the views expressed by this Court in the decisions referred to above. In this situation, we find no reason to interfere with the decision of the High Court. We

clarify that there is no inconsistency between the decisions in Allahabad Bank v. Canara Bank and Anr. (supra) and in International Coach Builders Limited v. Karnataka State Financial Corporation (supra) in respect of the applicability of Sections 529 and 529A of the Companies Act in the matter of distribution among the creditors. The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security and the distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529A read with Section 529 of the Companies Act. After all, the liquidator represents the entire body of creditors and also holds a right on behalf of (34 of 37) [COP-7/2000] the workers to have a distribution pair passu with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the company court. In other words, the distribution of the sale proceeds under the direction of the company court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure, in the light of the directions of the company court, that a proper price is fetched for the assets of the company in liquidation. It was in that context that the rights of the Official Liquidator were discussed in International Coach Builders Limited (supra). The Debt Recovery Tribunal and the District court entertaining an application under Section 31 of the SFC Act should issue notice to the liquidator and hear him before ordering a sale, as the representative of the creditors in general."

6.2 He also relied upon the judgment rendered by the Hon'ble High Court of Bombay in Sanjay Sadanand Varrier Vs. Power Horse India Pvt. Ltd., 2017 SCC Online Bom 328, relevant portion of which reads as under:

> "16. We therefore hold that an employee can maintain a Petition for winding up of a Company under section 439 read with sections 433(e) and 434 of the Companies Act, 1956 as a creditor based on the claim of the recovery of his unpaid salary and wages. Further we hold that a winding up Petition at the instance of a Trade Union and for the dues that are payable to its members is maintainable as it clearly falls within section 439 of the Companies Act, 1956. The issue is answered accordingly. Let this Company Petition be now placed before the Company Judge to be decided on its own merits and in accordance with law."

7. After hearing learned counsel for the parties at length on the applications of the secured creditor (Kotak Mahindra Bank Limited) (35 of 37) [COP-7/2000] as well as the auction purchaser, alongwith the judgments cited at the Bar, this Court finds that the principal stand of the applicants in the applications under consideration is that their proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) is on a stronger footing, and that, leave of the Company Court is not necessary under Sections 537 or 446 of the Companies Act, is a settled proposition and there cannot be any second thought in the mind of the Court.

7.1 It is also noted by this Court that the jurisdiction of the Tribunal and the Recovery Officer, in terms of the RDDB Act, is exclusive, in respect of the debts payable to Banks and Financial Institutions, and the Company Court cannot use its powers under Section 442 read with Section 537

or under Section 446 of the Companies Act, 1956, against the Tribunal/recovery officer, and thus, Sections 442, 446 and 537 cannot be applied against the Tribunal, is a settled proposition.

8. However, this Court finds that in the Allahabad Bank (supra), the decision has been rendered mainly in the context of the provisions of RDDB Act and Sections 442, 446, 529 and 537 of the Companies Act, whereas the provisions of Sections 433, 434 and 439, were not before the Hon'ble Supreme Court in the said case, for kind consideration.

9. In the present case when the company petition No.7/2000 has been filed on 18.12.2000 and admitted by the Hon'ble Court on 23.03.2001 and the official liquidator was issued notice and has been appearing since 10.5.2002; whereas the report regarding inventory has also filed long back on 25.08.2003, then merely because the company was not cooperating and the adjudication of the matter took a long time, the company petitioner cannot be (36 of 37) [COP-7/2000] rendered remediless by this Court on account of the complete assets being disbursed by the DRT in a separate proceedings under the RDDB Act.

9.1 The RDDB Act acting independently would definitely clinch the issue for the applicant, but here is a unique case where one of the secured creditors UTI and workman have preferred their petitions way back in the year 2000 and 2014 respectively, and are awaiting result of the winding up and the protection of their respective interests, and thus, they cannot be allowed to suffer merely because some subsequent proceedings in the DRT would consume all the assets of the company and give away the auction proceeds to the Kotak Mahindra Bank Limited and the auction purchaser, who are subsequent entrants in the dispute. Kotak Mahindra Bank Limited itself has entered the dispute in 2012 way ahead when the UTI and the workman had taken their remedies.

10. This Court also took note of the submissions made at length by Mr. Sanjeet Purohit, leaned counsel for the RIICO, who vehemently submitted that the RIICO has cancelled the original lease of the respondent-Company in respect of the land in question for default, and thus, once the lease itself has gone, then the auction by the DRT is unlawful. But at this stage, in the applications under consideration, this Court does not find it necessary to decide the rights of the RIICO; however, the RIICO can continue to pursue its case on merits before DRAT subject of course to the final outcome of the company petitions.

11. While making the aforementioned observations, this Court is in complete agreement with the law laid down by the Hon'ble High Court of Delhi in Bank of Nova Scotia (supra).

(37 of 37) [COP-7/2000]

12. In view of the above, this Court is not inclined to allow application No.1/22 in company petition No.7/2000 filed on behalf of the Kotak Mahindra Bank Limited seeking vacation of the interim order dated 28.03.2022 and application No.4/2022 in company petition No.9/2014 filed on behalf of the auction purchaser seeking modification of the said interim order; accordingly, while dismissing the said applications, the interim order dated 28.03.2022 is maintained.

13. However, in the interest of justice, the office is directed to list the company petitions and company application No.2/2015 for final hearing on 10.10.2022.

(DR.PUSHPENDRA SINGH BHATI), J.

SKant/-