Before Permod Kohli, J.

M/S VEDSONS ENGINEERS PVT. LIMITED (IN LIQUIDATION) ASHOK ANAND,—*Petitioner*

versus

M/S VEDSONS ENGINEERS PVT. LIMITED (IN LIQUIDATION) AND OTHERS,—*Respondents*

C.P. No. 123 of 2007

8th August, 2008

Companies Act, 1956—S.446—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Ss. 17, 18 & 25—Winding up proceedings against respondent Company—Settlement between company in liquidation, a bank and another company—Suit filed by another bank decreed and matter transferred to DRT—Recovery Officer seeking to attach property belonging to Company in liquidation— No proceedings pending against Company in liquidation before Recovery Officer nor Company is a defendant or a judgment debtor—Whether Comapny Court has jurisdiction to interfere with proceedings before Recovery Officer and to issue directions even if property of Company in liquidation is dealt with by it—Held, yes—During pendency of widning up proceedings it is statutory obligation of Company Court to protect all properties of Company in liquidation.

Held, that since it has been brought to the notice of respondent No. 2 that the property sought to be attached belongs to the company (in liquidation) and respondent No. 2 has already issued notice to the Official Liquidator, it has no business to sell the property without affording any opportunity to the official liquidator who represents the compay (in liquidation and has every right to object to the attachment and sale of the property of the company (in liquidation). Even though the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act have over-riding effect and the Tribuna/Recovery Officer has excluive jurisdiction to deal with the property and assets of the judgment debtor, but nonetheless it has no authority under law even

under the provisions of the Recorvery of Debts Due to Banks and Financial Institutions Act to deal with the property of the company in liquidation not a party or judgment debtor before the Debt Recovery Tribunal and to that extent, this Court can exercise a limited jurisdiction to protect the property of the Company (in liquidation). In view of the legal position, I direct respondent No. 2 to implead the Official Liquidator as a party to the proceedings before him and afford him reasonable and adequate opportunity to project the case on behalf of the Company (in liquidation). Respondent No. 2 shall not proceed to sell of the properties/assets of the company (in liquidation) without hearing the Official Liquidator till he decides the question of the status of the property of the Company (in liquidation). The Official Liquidator shall keep this Court informed about the proceedings before respondent No. 2.

(Para 26)

A.S. Narang, Advocate, *for the petitioner.*

Puneet Kansal, Advocate, *for respondent No. 1*

A.P. Jagga, Advocate, *for respondent No. 3*

PERMOD KOHLI, J.

(1) The petitioner is the Ex-Managing Director of M/s Vedsons Engineers Private Limited (in liquidation). Present petition has been moved invoking Section 446 of the Companies Act, 1956 to seek a direction for protection of property of respondent No. 1—Company from being sold by respondent No. 2 in execution of decree secured by respondent No. 3 against another Company, namely, Vedsons Private Limited. It is useful to briefly notice the facts and circumstances where under present petition has been filed in this Court.

(2) Respondent No. 1, namely, M/s Vedsons Engineers Private Limited, A-1, Sector 17-A, Chandigarh was ordered to be wound up vide order dated 22nd May, 1996 passed in Company petition No. 27 of 1983. Official Liquidator attached to this Court was appointed as the liquidator of the Company in liquidation. The Liquidator took possession of the assets of the Company on 23rd July, 1996. Respondent

No. 1 Company challenged the aforesaid order of winding up in Company Appeal No. 17 of 1996. Though initially, an interim stay was granted, however, Company Appeal came to be dismissed vide order dated 20th March, 1997. Aggrieved of the dismissal of the appeal, the Company preferred Special Leave Petition before the Hon'ble Supreme Court of India. Hon'ble Supreme Court of India vide its order dated 5th January, 1998 granted leave and stayed further winding up proceedings. During the pendency of the proceedings before the Hon'ble Supreme Court, a settlement came to be arrived at between M/s Punjab National Bank and the Company in liquidation. As a result thereof, the Special Leave Petition was disposed of by Hon'ble Supreme Court of India vide order dated 18th July, 2006. During all this period, the property of Company in liquidation taken over by the Official Liquidator remained in his possession and control. Before the Hon'ble Supreme Court of India, M/s Vedsons Steel and Wires Pvt. Ltd. was impleaded as appellant Nos. 2. The settlement before Hon'ble Supreme Court was allowed between respondent No. 1–Company, the Punjab National Bank and another Company–M/s Vedsons Steel and Wires Private Limited, added as appellant No. 2. The Hon'ble Supreme Court also observed that the terms of settlement are only between appellants No. 1 and 2 and the Punjab National Bank and not with reference to other creditors of the Company, if any. In so far as the winding up proceedings are concerned, the same are still pending before this Court.

(3) In the meanwhile, respondent No. 3, Central Bank of India filed a suit for recovery against M/s Vedsons Private Limited before Hon'ble Delhi High Court. The said suit came to be decreed on 10th May, 1991 in favour of respondent No. 3 Bank and against M/s Vedsons Private Limited. It appears that the matter was transferred to the Debt Recovery Tribunal-1, New Delhi, after the creation of the aforesaid Tribunal under Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Tribunal issued a recovery certificate in the year 1999 on the basis of the decree dated 10th May, 1991 for recovery of an amount of Rs. 18,77,267.64. From the recovery Certificate (Annexure A-7), it appears that besides the Company, M/s Vedsons Private Limited, Mohali, District Ropar, Punjab, there were other individuals who were judgment debtors in the said certificate of recovery including one

Smt. Raj Rani in her capacity as a guarantor of M/s Vedsons Private Limited. Respondent No. 3 seems to have filed an affidavit before respondent No. 2-Recovery Officer alleging that Raj Rani is co-owner of property known as "Anand Cinema" Plot No. 2853-A, Sector 17-A, Chandigarh and secured an order for attachment of the Anend Cinema to the extent of 1/3 share in the aforesaid property.

(4) Relevant extract from the order dated 13th February, 2004 passed by respondent No. 2 is quoted here under :

> "The counsel for CH Bank has filed affidavit wherein it is mentioned that C.D. No. 3 is one of the co-owner of mortgaged property i.e. Commercial property (Anand Cinema, Sector 17-A, Chandigarh) Commercial Plot NO. 2853-A, Sector 17-A and the other co-owners are Shri Ashok Anand, Shri Subhash Anand and Smt. Asha Anand. Counsel request for attachment of the property. Request is allowed. Registry is directed to issue attachment order and notice for settling sale proclamation in respect of the share of Smt. Raj Rani Anand (C.D. No. 3) aforesaid property. This be served Dasti, Regd. A.D., post. Affixation and by beat of drum in the vicinity. Counsel for CH Bank should filed service report by next date of hearing. Objections will be heard on the next date of hearing."

(5) It is stated on behalf of the petitioner that when this order came to the notice of the petitioner, he filed objections on behalf of Shri Ashok Anand son of late Shri Ved Pal Anand against the order of attachment inter alia pleading therein that the order of attachment has been procured by mis-statement of facts in the affidavit of the Bank officials. It was, inter alia, pleaded that the property, Plot No. 2853-A, Sector 17-A, Chandigarh belongs to the Chandigarh Administration and was leased out to M/s Vedsons Engineers Private Limited (in liquidation). This Company, lessee of the aforesaid plot is neither a judgment debtor nor a certificate debtor, nor even a guarantor in respect of the loan transaction between respondent No. 3 Bank and M/s Vedsons Private Limited. It has been further pleaded in the said objection that M/s Vedsons Engineers Private Limited (in liquidation) is a different

and distinct Company than M/s Vedsons Private Limited. It was also pleaded that Smt. Raj Rani, Certificate Debtor No. 3 is not all a co-owner of the property sought to be attached. The factum of winding up of M/s Vedsons Engineers Private Limited was specifically mentioned in Paragraph 5 of the objections.

(6) Respondent No. 2, however, without deciding these objections proceeded to enforce the attachment. The petitioner has placed on record a copy of the lease deed dated 28th July, 1981 granted by the President of India in favour of M/s Vedsons Engineers Private Limited (in liquidation) for a period of 99 years. From the perusal of these documents, it is clear that it is the Company in liquidation which is lessee of the plot and thus neither M/s Vedsons Private Limited, a distinct company named as judgment debtor in proceedings before respondent No. 2 nor Smt. Raj Rani are the owners of the plot and property raised thereon. It is admitted case of the parties that the objections filed by the present petitioner before the Recovery Officer have not been decided till date and the operation of the order dated 23rd October, 2007 has been suspended by this Court vide inter locutory order dated 1st November, 2007.

(7) This petition is opposed by respondent No. 3-Bank, the decree holder by filing a detailed written statement. It is relevant to mention that a paragraph 7 of the written statement, the Bank has specifically and categorically admitted that M/s Vedsons Engineers Private Limited is neither a judgment debtor nor a certificate debtor in proceedings against M/s Vedsons Private Limited. It is, however, stated that Smt. Raj Rani is holding 30% share in the Company (in liquidation) M/s Vedsons Engineers Private Limited and she being guarantor for M/s Vedsons Private Limited, the judgment debtors, he is deemed to be the title holder in the property upto 30% and thus proceedings against the property of the Company in liquidation to the extent of share of Smt. Ranj Rani are legal and valid. It is further mentioned that Shri Ved Pal Anand, Managing Director was a certificate debtor in M/s Vedsons Private Limited as guarantor. His entire assets have devloved upon his legal heirs who are Sarv/Shri Ashok Anand, Subhash Kumar Anand and Smt. Asha Anand, besides Smt. Raj Rani who are the shareholders in the Company, M/s Vedsons Engineers Pvt. Ltd. (in liquidation), they

are all liable for the payment of the debts of M/s Vedsons Private Limited as guarantors to the Bank.

(8) In the replication filed by the petitioner, it is denied that Smt. Asha Anand is the shareholder/Director in the Company (in liquidation). It is specifically stated that Shri Ashok Anand has not inherited any estate or share in the Company (in liquidation) from his father, Late Shri Ved Pal Anand. It is also mentioned that Shri Ved Pal Anand who was guarantor in case of M/s Vedsons Private Limited never held any share in the Company (in liquidation) and hence respondent No. 3 Bank is not a creditor of respondent No. 1 Company.

(9) Since notice of this petition was also issued to the Official Liquidator. He has also filed a written statement objecting the proceedings against the property in question at the instance of respondent No. 3. It is stated that the property of the Company (in liquidation) cannot be sold by respondent No. 2. In paragraph 9 of the reply, Official Liquidator has mentioned that in terms of the lease deed Vedsons Engineers Private Limited (in liquidation) is full and absolute owner of the property described Anand Cinema, Sector 17, Chandigarh. He has further stated that there is no record suggesting that Smt. Raj Rani Anand is the owner of the property, except being the shareholder of the Company in winding up. The Official Liquidator has further stated that he has no knowledge of the proceedings before respondent No. 2 as the same do not pertain to the Conpany in winding up. It is also pleaded that proceedings against the property of the Company in winding up are without jurisdiction.

(10) It is pertient to note that even when respondent No. 2 attached the property of the Company (in liquidation), no notice of the same was ever issued to the Official Liquidator or to the Company in liquidation at any time.

(11) Learned counsel appearing for respondent No. 3 Bank has relied upon the judgment of the Apex Court in case of **Allahabad Bank** *versus* **Canara Bank and another. (1)** wherein the Apex Court has ruled that the proceedings under the Recovery of Debts Due to Banks

(1) AIR 2000 S.C. 1535

and Financial Institutions Act (51 of 1993) cannot be stayed by the Company Court and can be continued without obtaining leave of the Court under Sections 446 (1) of the Companies Act. It may be useful to refer to some of the observations in the aforesaid judgment. Hon'ble Supreme Court framed following points for consideration :—

> "13. From the aforesaid contentions, the following points arise for consideration :
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> (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 ?
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> (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 S. 537 before a winding up order is passed against the Company or before provisional liquidator is appointed under S. 446(1) and whether the Company Court can pass orders of stay of proceedings before the Tribunal, in exercise of powers under S. 442 ?
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> (3) Whether after a winding up order is passed under S. 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 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 ?
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> (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 C.P.C. and sub-clauses (1) and (2) of Section 529, Section 530 of the Companies

Act also apply-apart from Section 529A-to the proceeding 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 entire sale proceeds realized by the appellant except to the limited extent restricted by Section 529A ? Can the secured creditors like the Canara Bank claim under S. 19(9) any part of the realizations 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 ?

(12) Point 1 was answered in paragraph 25 which reads as under :—

"25. 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. Point 1 is decided accordingly."

(13) Points 2 and 3 have also been answered in the following manner :—

"31.....We are of the view that 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.

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49. For the aforesaid reasons, we hold that at the stage of adjudication under S. 17 and execution of the certificate under S. 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurediction 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 realized under the RDB 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-company and also after a winding up order is passed. No leave of the Company Court is necessary for initiating or countinuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the appellant and against the respondent."

(14) While considering the purpose of the Companies Act and the Recovery of Debts Due to Banks and Financial Institutions Act, Hon'ble Supreme Court made following observations :—

"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 (1984 (4) SCC 657), 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 delay occuring in winding up proceedings could be avoided."

(15) Points 4 and 5 have been answered by the Hon'ble Supreme Court in the following manner :—

"53. Where the defendant is a company against which no winding up order is passed, the Company, in our view, is like any other defedant and if in such a situation a question of priority arises before the Tribunal, in respect of any monies realized under the RDB Act, as between the Bank or financial institutions on the one hand, and the other creditors on the other, it will, in our opinion be necessary for the Tribunal to decide such questions of priority bearing in mind principles underlying section 73 of the Code of Civil Procedure. Section 22 of the RDB Act, in our view, gives sufficiently wide powers to the Tribunal and the Appellate Tribunal to decide such questions of priorities, subject only to the principles of natural justice. This Court has explained that the powers under Section 22 are wider than those of Civil Courts and the only restriction on its powers is that principles of natural justice have to be followed. See Industrial Credit and Investment Corporation of India Ltd. *v.* Grapco Industries Ltd. (1999) 4 SCC 710.....

54. But under Section 73 C.P.C., sharing in the sale proceeds (here, sale proceeds realized under the RDB Act) is permissible only if a person seeking such share has obtained a decree or an order of adjudication from the Tribunal and has also complied with other conditions laid down under Section 73. In the present case, the Canara Bank is not in a position to invoke the principles underlying section 73 C.P.C. because it has not yet obtained any decree or adjudication of its debt from the Tribunal. Nor has it complied with other provisions underlying section 73 C.P.C. Hence no relief can be granted on the basis of the said principles."

(16) In view of the ratio of the aforesaid judgment, it has been contended on behalf of respondent No. 3 that the Company Court has absolutely no jurisdiction to interfere with the proceedings before the Recovery Officer and to issue any directions even if the property of the Company (in liquidation) is dealt with by it. With a view to understand and appreciate the contention of respondent No. 3, it is deemed necessary to notice some of the relevant provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, here under :—

"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.

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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 articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.

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34. **Act to have over-riding effect.**—(1) Save as provided under 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 thereunder shall be in addition no, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Finance Corporations 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 (I of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

(17) A conjoint reading of Sections 17 and 18 of the aforesaid Act indicates that the Tribunal constituted under the Act has exclusive jurisdiction to entertain and decide claims of the banks and financial institutions for recovery of debts due to such banks and financial institutions and no civil court or authority shall exercise jurisdiction in respect of such debts. However, the jurisdiction and power of the Supreme Court and High Court under Articles 226 and 227 of the Constitution of India have been saved, the same being the constitutional powers. Section 19 of the Act lays down the procedure for deciding the claims under the Act. Section 34 makes this Act a special statute

having over-riding effect over all other laws, including instruments having effect by virtue of any other law than this Act. There are some provisions of the Act specified under sub-section (2) saved under the Act. The aforesaid provisions clearly provides for exclusive jurisdiction of the Tribunal, the Appellate Authority created under the Act to entertain and adjudicate upon the claims of the Banks and financial institutions in respect of the debts due to them. Hon'ble Supreme Court in the case of **Allahabad Bank** (supra) has also clearly ruled in this regard. The Recovery Officer constituted and appointed under the Act has been conferred with the power to effect recovery in accordance with Section 25 of the Act which reads as under :—

> "25. **Modes of recovery of debts.**—The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of Section 19, procced to recover the amount of debt specified in the certificate by one or more of the following modes, namely :—
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> (a) attachment and sale of the movable or immovable property of the defendant;
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> (b) arrest of the defendant and his detention in prison;
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> (c) appointing a receiver for the management of the movable or immovable properties of the defendant."

(18) The aforesaid provisions of the Act empowers the Recovery Officer to recover the debts by any of the modes prescribed in Clauses (a) to (c). However, the emphasis in all these clauses is upon the property of the defendant in the suit The attachment and sale of the movable and immovable property of the defendant alone can be attached by the Recovery Officer in exercise of the jurisdiction and authority under Section 25 of the Act. It is in this context that the contention of the petitioners in the present case needs to be examined. It is not in dispute that M/s Vedsons Engineers Private Ltd.-Company in liquidation the petitioner was neither a defendant in the suit filed by respondent No. 3-Bank nor is a judgment debtor in the decree or a certificate debtor in the proceedings before respondent No. 2. This fact is admitted by respondent No. 3 in its written statement referred to here-in-above. Respondent No. 2 is, however, enforcing the decree against he property

which is claimed by and admittedly belong to the Company in liquidation. No material has been placed on record by respondent No. 3 to show that the Company in liquidation is a defendant/judgment debtor/certificate debtor/guarantor before respondent No. 2 or has suffered decree for recovery of any amount for which the recovery proceedings are pending before respondent No. 2. To the contrary petitioner has placed on record the copy of the lease deed dated 28th July, 1981 to establish that the property ordered to be attached,—*vide* order dated 13th February, 2007 belongs to the Company in liquidation and not to any individual including Smt. Raj Rani. The petitioner has also placed on record an order dated 23rd October, 2007 passed by respondent No. 2 whereby notice has been ordered to be issued to the Official Liquidator for the Company in liquidation, namely, Vedsons Engineers Private Ltd. However, simultaneously, the Recovery Officer has further directed the issuance of fresh notice for settling sale proclamation of 1/3 share of Anand Cinema. However, this order was suspended by this Court,—*vide* order dated 1st November, 2007.

(19) Since apparently, no proceedings are pending against the Company (in liquidation) before respondent No. 2 nor the Company in liquidation is a defendant or a judgment debtor, property belonging to the Company (in liquidation) is sought to be attached and sold in execution of a decree against another Company, M/s Vedsons Pvt. Ltd. The question that arises before this Court is as to whether it can exercise any control or authority to protect the property of the Company (in liquidation). Before this question is answered, another question which has been raised on behalf of the petitioner and objected to by respondent No. 3 is that all the properties sought to be attached in execution of the recovery certificate belongs to the Company (in liquidation) is the joint property of its shareholders. In the case of **Mrs. Bacha F. Fuzdar, Bombay** *versus* **Commissioner of Income Tax, Bombay (2),** the status of a shareholder of a Company has been examined. What has been observed by the Apex Court is reproduced here under :—

> "7..... That a shareholder acquire a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shares holder acquires any interest in the assets of the company. The use

(1) AIR 1955 S.C. 74

of the word "assets" in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company.

A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder 'vis-a-vis' the company was explained in the Sholapur Mills Case-'Charanjit Lal versus Union of India', AIR 1951 SC 41 at pp. 54, 55 (B). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company.

The company is a juristic person and is distinct from the shareholder. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act (12th Ed., page 894) where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company.

> The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company, which is a juristic person entirely distinct from the shareholders...."

(20) In the case of **Mrs. C. Mangala Vijayalakshmi** *versus* **K.S. Kasimaris Ceramique (P.) Ltd. and others (3),** the Madras High Court has observed as under :—

> "..... It is well-settled legal position that there is nothing to warrant for the assumption that a shareholder has any interest in the property of the company, which is a juristic person and which is entirely distinct from the shareholders. The true position of a shareholder is an investor, he will be entitled to participate in the profits of the company in which he holds shares as and when the company declares, subject to the articles of association that the profits or portion thereof should be distributed by way of dividends amount the shareholders. That apart, the shareholder has got a further right to participate in the assets of the company, which would be left over after winding up, but not in the assets as a whole....."

(21) In the case of **Punjab State Industrial Development Corporation Ltd.** *versus* **PNFC Karamchari Sangh and another (4),** Hon'ble Supreme Court set aside the order of the Company Judge directing the PSIDC, a Government Company to pay the debts of Punjab National Fertilisers and Chemicals Ltd., the company in liquidation on the ground that Punjab State Industrial Development Corporation Ltd. holds 46.23% shares in Punjab National Fertilizers and Chemicals Ltd.

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(3) 2003 Company Cases 562
(4) (2006) 4 SCC 367

Hon'ble Supreme Court held that even though PSIDC is a shareholder, it cannot be fastened with the liability on behalf of the Company in liquidation being a distinct entity.

(22) Section 34 of the Companies Act deals with the effect of registration of a Company which read as under :—

> "34. **Effect of registration.**—(1) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company that the company is limited.
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> (2) From the date of incorporation mentioned in the certificate of incorporation, such of the subscribers of the memorandum and other persons, as may from time to time be members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act."

(23) From the perusal of sub-section (2), it is evident that on incorporation of the company and registration of memorandum of the company with the Registrar, it shall be a body Corporate and thus becomes a separate and legal entity itself with its perpetual succession and a common seal. Section 49 of the Companies Act deals with the status of the investment of Company which reads as under :—

> "**49. Investments of company to be held in its own name** (1) Save as otherwise provided in sub-sections (2) to (5) [or any other law for the time being in force] and subject to the provisions of sub-sections (6) to (8),—(a) All investments made by a company on its own behalf shall be made and held by it in its own name ; and

(b) where any such investments are not so held at the commencement of this Act the company shall, within a period of one year from such commencement, either cause them to be transferred to, and hold them in, its own name, or dispose of them.

(2) Where the company has a right to appoint any person or persons.- or where any nominee or nominees of the company has or have been appointed, as a director or directors of any other body corporate, shares in such other body corporate to an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company jointly in the names of itself and of each such person or nominee or in the name of each such person or nominee.

(3) A company may hold any shares in its subsidiary in the name or names of any nominee or nominees of the company, if and in so far as it is necessary so to do, to ensure that the number of members of the subsidiary is not reduced, where it is a public company, below seven, and where it is a private company, below two.

(4) Sub-section (1) shall not apply to investments made by a company whose principal business consists of the buying and selling of shares or securities.

(5) Nothing in this section shall be deemed to prevent a company—

(a) from depositing with a bank, being the bankers of the company any shares or securities for the collection of any dividend or interest payable thereon ; or

[(aa) from depositing with, or transferring to, or holding in the name of, State Bank of India or a Scheduled Bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof :

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a Scheduled Bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities retransferred to it from the State Bank of India or the Scheduled Bank or, as the case may be, again hold the shares or securities in its own name ; or]

(b) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it ;

(c) from holding investments in the name of a depository when such investment are in the form of securities held by the company as a beneficial owner.]

(6) The certificate or letter of allotment relating to the shares or securities in which investments have been made by a company shall, except in the cases referred to in sub-sections (4) and (5), be in the custody of such company or [with the State Bank of India or a Scheduled Bank], being the bankers of the company.

(7) Where, in pursuance of sub-section (2), (3), (4) or (5) and shares or securities in which investments have been made, by a company are not held by it in its own name, the company shall forthwith enter in a register maintained by it for the purpose—

(a) the nature, value, and such other particular as may be necessary fully to identify the shares or securities in question; and

(b) the bank or person in whose name or custody the shares or securities are held.

The register kept under sub-section (7) shall be open to the inspection of any member or debenture holder of the company without charge, during business hours, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so that not less than two hours in each day are allowed for inspection.

(9) If default is made in complying with any of the requirements of sub-sections (1) to (8), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [fifty thousand rupees].

(10) If any inspection required under sub- section (8) is refused, the [Central Government] may, by order, direct an immediate inspection of the register.

Nothing in this sub-section shall be construed as prejudicing in any way the operation of sub-section (9).

(11) In this section, "securities" include stock and debentures."

(24) The aforesaid Section provides that the investment made by Company shall be held by it in its own name. From the conjoint reading of various clauses, there is no manner of doubt that any investment or property held by Company belongs to the Company and not to its shareholders, though the shareholders may have right to participate in the profits of the Company and on its liquidation, the assests and properties of the Company are required to be distributed and shared in accordance with the provisions of Sections 529, 529-A and 530 of the Companies Act. In view of this clear legal position what emerges is that no shareholder irrespective of the value of the share has any right or title over the assets and properties of the company so as to deal with the same individually or his shares can be attached in execution of a decree against the individual shareholders. In view

of the above circumstances, it can be safely concluded that any property held in the name of the Company belongs to the Company and in the event of winding up has to be distributed in accordance with the preferential claims and other claims of its secured creditors, workmen and other creditors. On passing of the winding up order, the entire property vests with the Official Liquidator as its trustees, custodian and manager. During the pendency of the winding up proceedings, it is the statutory obligation of the Company Court to protect all the properties of the Company in liquidation, except to distribute its sale proceeds etc. for the purposes and for the benefit of secured creditors, workmen and other creditors and if any amount still survives to be left with the shareholders/contributory members.

(25) Proceedings initiated by respondent no. 2 may be valid in so far against the properties and assets of the judgment debtors are concerned, but by no stretch of imagination respondent no. 2 can be permitted to take over or sell the properties of the company (in liquidation) without the company being a debtor much less a judgment debtor.

(26) Since it has been brought to the notice of respondent no. 2 that the property sought to be attached belongs to the company (in liquidation) and respondent no. 2 has already issued notice to the Official Liquidator, it has no business to sell the property without affording an opportunity to the official liquidator who represents the company (in liquidation) and has every right to object to the attachment and sale of the property of the company (in liquidation). Even though the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act have over-riding effect and the Tribunal/Recovery Officer has exclusive jurisdiction to deal with the property and assets of the judgment debtor, but nonetheless it has no authority under law even under the provisions of the Revovery of Debts Due to Banks and Financial Institutions Act to deal with the property of the company in liquidation not a party or judgment debtor before the Debt Recovery Tribunal and to that extent, this Court can exercise a limited jurisdiction to protect the property of the Company (in liquidation). In view of the legal position, I direct respondent no. 2 to implead the Official Liquidator

as a party to the proceedings before him and afford him reasonable and adequate opportunity to project the case on behalf of the Company (in liquidation). Respondent no. 2 shall not proceed to sell any of the properties/assets of the company (in liquidation) without hearing the Official Liquidator till he decides the question of the status of the property of the Company (in liquidation). The Official Liquidator shall keep this Court informed about the proceedings before respondent no. 2.

(27) With the aforesaid directions and observations, this petition is disposed of.

R.N.R.

Before M.M. Kumar and Jitendra Chauhan, JJ.

KANWALJEET SINGH,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 14790 of 2007

14th August, 2008

Constitution of India, 1950—Art. 226—Non-consideration of case for promotion to rank of Sub Inspector—High Court directing to decide representation—Retrospective promotion granted—Claim for payment of arrears for ante-dated promotion—Denial of—Challenge thereto—Principle of 'no work no pay-Not applicable in such a case—No fault of petitioner—Inequitable to first deny promotion for more than three years and then also to deny arrears of salary—Petition allowed—Petitioner held entitled to arrears of salary.

Held, that in cases where the respondents have wrongly denied due promotion to their employee then in that eventually he should be given full benefit including monetary benefit and the principle of 'no work no pay' would not govern the issue. Applying those principles