

Before Permod Kohli, J.

LOH CONTINENTAL FOODS LIMITED,—Applicant

versus

**PUNJAB WIRELESS SYSTEMS LIMITED
(IN LIQUIDATION) AND OTHERS,—Respondents**

*C.A. No. 865 of 2006
In C.P. No. 226 of 1999*

14th March, 2008

Constitution of India, 1950—Art. 226—Companies Act, 1956—S.446—Punjab Regional and Town Planning and Development Act, 1955—S.45—Auction of assets and property of a company in liquidation—Applicant with highest bid declared successful bidder—Deposit of balance amount—Delay in handing over possession—PUDA ordering resumption of property u/s 45 of 1995 Act—Jurisdiction of E.O. PUDA to pass resumption order u/s 45—Exercise of—Only with leave of Company Court—Property held by company in liquidation as on date of passing of order—Provisions of S.446 of Companies Act prevail—Power u/s 45 of 1995 Act cannot be exercised de hors S.446 of Companies Act—Application allowed, order passed by E.O. PUDA resuming property of company held to be illegal and invalid while respondent directed to execute conveyance deed in favour of applicant.

Held, that there is no apparent conflict between the provisions of Section 45 of the PRTPD Act and Section 446 of the Companies Act. Both the laws operate in their respective fields. Section 446 of the Companies Act, in no way restricts the power of the Estate Officer to deal with the matter if a case falls within the scope and precincts of Section 45 of the PRTPD Act. It only creates an embargo for the authorities to take over the property of the company in liquidation or proceed to decide in respect to such properties without leave of the Court. Even if, it is assumed and contention of respondent No. 3 is accepted that it had has the jurisdiction and competence to pass the impugned order dated 16th May, 2005, such jurisdiction could only be exercised with the leave of the Court, the property

in question being held by the company in liquidation as on the date of the passing of the order and for this purpose the provisions of Section 446 of the Companies Act will prevail and powers under Section 45 of the PRTPD Act cannot be exercised *de hors* Section 446 of Companies Act.

(Para 16)

Further held, that the availability of alternative remedy under Section 45(5) or 45(8) of the PRTPD Act is, no answer to the question involved. It is not the question of validity of the order of resumption on its merits. It may be valid or its validity on any other ground can definitely be questioned in appeal or revision. However, in the present case, the question is of jurisdiction to decide without leave of the Company Court. Order may otherwise be valid or invalid. I am not required to dwell upon this question and I refrain myself to do so. Since the order has been passed in contravention to the provisions of Section 446 of the Companies Act, it cannot be sustained for want of leave of the Company Court which alone can entitle the authorities under Section 45 of the PRTPD Act to initiate proceedings, to continue and even to implement the order in respect to the property belonging to the company in liquidation.

(Para 16)

Sanjiv Bansal, Advocate, *for the applicant*.

Puneet Kansal, Advocate, *for the Official Liquidator*.

Rupinder Khosla, Advocate, *for PUDA*.

PERMOD KOHLI, J.

(1) The applicant is the auction purchaser of the property of the Punjab Wireless Systems Limited, Company in Liquidation Through the medium of this application, a prayer is made for the following directions :—

- (i) To execute the necessary conveyance deed in favour of the applicant ;
- (ii) Annul the order dated 16th May, 2005 passed by the Estate Officer, PUDA for resumption of the property.

- (2) The application proceeds on the following admitted facts :—
- (i) Respondent No. 1 company was ordered to be wound up,—*vide* order dated 1st February, 2001 and the Official Liquidator was appointed as the Liquidator for the Company.
 - (ii) The Official Liquidator,—*vide* advertisement dated 10th March, 2006 informed the general public about the sale of assets and property of the company in liquidation by way of Court auction to be conducted by the Company Court on 20th April, 2006.
 - (iii) The bids/tenders were invited from the general public under the sealed cover along with earnest money. The immovable property of the Company was shown as lease hold property. The property was sought to be sold in different lots as notified.
 - (iv) The applicant submitted its bid for lot No. XX which, *inter alia*, included the land measuring 10814.45 sq. yards situated at A-15, Phase-VI, Mohali. The applicant also deposited a sum of Rs. 36 lacs as earnest money,—*vide* demand draft dated 16th April, 2006.
 - (v) The Auction was held on 20th April, 2006 and the applicant was declared as successful bidder with highest bid of Rs. 6.90 crores which was approved by the Company Court. The balance amount of Rs. 5.54 crores was deposited by the applicant,—*vide* demand draft No. 420170, dated 24th April, 2006 drawn on Punjab National Bank, Mohali, on 24th April, 2006 with the Official Liquidator. The applicant requested the Official Liquidator respondent No. 2 to hand over the possession of the property,—*vide* its letter dated 25th April, 2006 as also,—*vide* letter dated 26th April, 2006.
- (3) It appears that on account of certain delay, the applicant filed CA No. 451 of 2006 before this Court which came to be disposed of,—*vide* order dated 25th May, 2005 on the statement of the Official Liquidator that the representatives of the Company can contact him and they will decide how to proceed with issuance of the sale certificate. The applicant claims that he approached respondent No. 2 through various communications for execution of the sale deed in its favour. In the meantime applicant came

across order dated 16th May, 2005 passed by the Estate Officer, PUDA, for resumption of the property (land) under Section 45 of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as “the PRTPD Act”). The order further provides for forfeiture of the price of the plot including 10% interest and penalty in favour of the PUDA. It has been pleaded in the application that this order has been passed by the Estate Officer, PUDA- respondent No. 3, in utter disregard of the provisions of Section 446 of the Companies Act and is liable to be treated as void *ab initio*.

(4) The Official Liquidator in his reply has admitted the entire factual background and so is the case of respondent No. 3. The only plea raised by respondent No. 3 is that the impugned order dated 16th May, 2005 has been passed by the Estate Officer, PUDA in exercise of his powers under Section 45 of the PRTPD Act which is special statute and the same is not controlled by Section 446 of the Companies Act. It is further pleaded that the applicant has the alternative remedy of filing an appeal against the order of the Estate Officer, PUDA, before the Chief Administrator, PUDA under Section 45 (5) of the PUDA Act and also a revision before the State Government against the order passed the Chief Administrator (Appellate Authority). In sum and substance, the plea raised is that the Company Court cannot interfere in such matters.

(5) I have heard Mr. Sanjiv Bansal, Advocate, for the applicant, Mr. Puneet Kansal, Advocate, for the Official Liquidator and Mr. Rupinder Kohsla, Advocate, for respondent No. 3, at length.

(6) Section 446 of the Companies Act, prohibits institution and continuance of legal proceedings against the Company in liquidation except with the leave of the Court. For the sake of convenience, Section 446 of the Companies Act is reproduced as under :—

“446. Suits stayed on winding up order :—

- (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceedings shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose.

- (2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—
- (a) any suit or proceeding by or against the company ;
 - (b) any claim made by or against the company (including claims by or against any of its branches in India) ;
 - (c) any application made under section 391 by or in respect of the Company ;
 - (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company ;

Whether such suit or proceedings has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

(3) * * *

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”

(7) Order dated 16th May, 2005 has been passed by respondent No. 3 in exercise of powers under Section 45 of the PRTPD Act and respondent No. 3 has taken a refuge of alternative remedy available under the statute and also that the provision is a special statute and, thus, overrides Section 446 of the Companies Act. It is deemed appropriate to examine Section 45 of the PRTPD Act which is noticed here under :—

“45. Resumption and forfeiture for breach of transfer :—(1) Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the transfer of any land or building or both, under Section 43, the Estate Officer may, by notice in writing, call upon the transferee to show cause, within a period of thirty days, why a penalty as may be determined by the Authority be not imposed upon him :

Provided that the penalty so imposed shall not exceed the amount due from the transferee.

- (2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order imposing the penalty and direct that the amount of money due alongwith the penalty shall be paid by the transferee within such period as may be specified in the order.
- (3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2) or commits a breach of any other condition of transfer, the Estate Officer may, by notice in writing call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the transfer of the land or building or both, should not be made.
- (4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in respect of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order resuming the land or building or both, as the case may be, and direct the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such transfer.
- (5) Any person aggrieved by an order of the Estate Officer under Section 44 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed :

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he thinks fit.
- (7) The Chief Administrator may either on his own motion or on an application received in this behalf at any time within a period of six months from the date of order, call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit :

Provided that the Chief Administrator shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard.

- (8) Where a person is aggrieved by any order of the Chief Administrator, deciding the case under sub-section (6) or sub-section (7), he may, within thirty days of the date of communication to him of such order, make an application in writing to the State Government for revision against the said order and the State Government may confirm, alter or rescind the order of the Chief Administrator.”

(8) Scope, purport and applicability of Section 446 of the Companies Act has been examined by the Hon’ble Supreme Court vis-a-vis various statutes including the special statutes, it is deemed appropriate to refer some of the judgments.

(9) In the case of **Kerala State Financial Enterprises Ltd. versus Official Liquidator, High Court of Kerala, (1)**, it has been held as under :—

“13. Save and except certain special statutes in relation to recovery of debts from the properties of a company which has been directed to be wound up, the provisions of the Companies Act shall apply. An order of attachment made prior to passing of an order of winding up may not be void, but then the execution proceedings must be allowed to continue with the leave of the court in terms of Section 446 of the Companies Act [See *Ovation International (India) (P) Ltd., Re.2*].

(1) (2006) 10 S.C.C. 709

23. It may be true that if there exists a statute like SICA, the provisions thereof may prevail over the Companies Act. But in absence of a clear provision, the Companies Act cannot be held to give way to another Act providing for recovery only leaving the rights and liabilities of the parties to be dealt with a general law [See NGEF Ltd. *versus* Chandra Developers (P) Ltd. And Jay Engg. Works Ltd. *versus* Industry Facilitation Council].”

(10) In the case of **Titan Industries Ltd. *versus* Punwire Mobile Communications Ltd. (2)**, it has been observed as follows:—

“17. In my considered view, the aforesaid claim merits acceptance. Section 537 in unambiguous terms mandates that after the commencement of a winding up petition against a company, an order *inter alia* of the attachment of its properties or effects shall be void except when the same is with the leave of the Court. Insofar as the commencement of winding up proceedings is concerned, section 441 of the Companies Act does not leave any ambiguity in the matter. It has been expressly provided therein that winding up of a company by the court would be deemed to have commenced with effect from the date of presentation of a petition winding up. It is not disputed that the winding up proceedings have commenced against the respondent-company prior to the passing of the order of attachment dated 2nd February, 2000. The order of attachment having been passed without leave of this Court, it is liable to be considered as void in terms of the mandate of Section 537. A void order is an order which does not exist in the eyes of law. In view of the fact that the order dated 2nd February, 2000, i.e., the order of attachment has been found to be an order which does not exist in the eyes of law the order of appointment of receivers dated 18th December, 2000 based thereon (order dated 2nd February, 2000) must be necessary implication be deemed to have been nullified/abated and for the same reason must be considered to be non-existent in the eyes of law.”

(11) On the other hand, Mr. Rupinder Khosla, learned counsel appearing for respondent No. 3 has also relied upon the following judgments :—

(12) **Damji Valji Shah and another (In C.A. No. 676 of 1962), 2. Ghanshyamdas (In C.A. No. 677 of 1962) versus Life Insurance Corporation of India and others, (3).**

“18. It is in view of the exclusive jurisdiction which sub-section (2) of Section 446 of the Companies Act confers on the company Court to entertain or dispose of any suit or proceeding by or against a company or any claim made by or against it that the restriction referred to in sub-section (1) has been imposed on the commencement of the proceedings against a company after a winding-up order has been made. In view of Section 41 of the LIC Act the company Court has no jurisdiction to entertain and adjudicate upon any matter which the Tribunal is empowered to decide or determine under that Act. It is not disputed that the Tribunal has jurisdiction under the Act to entertain and decide matters raised in the petition filed by the Corporation under Section 15 of the LIC Act. It must follow that the consequential provisions of sub-section (1) of Section 446 of the Companies Act will not operate on the proceedings which be pending before the Tribunal or which may be sought to be commenced before it.

19. Further, the provisions of the special Act i.e. the LIC Act, will override the provisions of the general Act viz. the Companies Act which is an act relating to companies in general.”

(13) In the case of Ghanshyamdas (*supra*), Hon'ble Supreme Court was considering the application of one of the Central Act. Since both the Acts i.e. LIC of India Act and Companies Act are passed by Parliament and LIC Act specifically deals with the issue, it has been held that LIC Act being a Special Statue will have over-riding affect over Companies Act which deals generally with companies.

(14) However, position in the present case is different. The Companies Act is a Central legislation, whereas the PRTPD Act, is a State

legislation. The Companies Act has been enacted by the Union Legislature by virtue of entry 43 in the List-1 of Schedule-VII, Constitution of India whereas the PRTPD Act has been enacted by virtue of entry in the State List (List-II) of Schedule-VII to the Constitution. The Companies Act is deemed to be a special statute as it deals with almost all issues relating to the companies. The Companies Act being a Central Act, will have an over-riding effect upon the provisions of all other State laws enacted by the State legislature relating to any issue concerning companies. Assuming that the PRTPD Act is also a special statute and there is apparent conflict between the provisions of Section 446 of the Companies Act and Section 45 of the PRTPD Act, even then the law enacted by the Union legislature shall have an over-riding effect and to that extent the State law is deemed to be inoperative under the doctrine of eclipse. The powers of the Parliament and the State legislature are prescribed under Article 246 of the Constitution of India. The Union legislature has exclusive jurisdiction and competence to enact laws in respect to any of the entry specified under the Union (List-I) Schedule-VII, Constitution of India which is field of legislation for it. The State legislature by virtue of Clause (3) has the exclusive jurisdiction to make laws in respect to the matters enumerated in list-II of VII Schedule (State List). Companies Act and the PRTPD Act have been enacted by the respective legislatures in exercise of their legislative powers vested under Article 246 (1) and (3) of the Constitution of India respectively.

(15) The question is which of the Statute will have precedence and over riding effect in the event of explicit or implicit conflict between the laws made by the Parliament and the State legislature. In such a situation law enacted by Parliament should have precedence and doctrine of eclipse will be attracted.

(16) However, in the present case, I do not find that there is any apparent conflict between the provisions of Section 45 of the PRTPD Act and Section 446 of the Companies Act. Both the laws operate in their respective fields. Section 446 of the Companies Act, in no way restricts the power of the Estate Officer to deal with the matter if a case falls within the scope and precincts of Section 45 of the PRTPD Act. It only creates an embargo for the authorities to take over the property of the company in liquidation or proceed to decide in respect to such properties without leave of the Court. Even if, it is assumed and contention of respondent No. 3 is accepted that it had has the jurisdiction and competence to pass

the impugned order dated 16th May, 2005, such jurisdiction could only be exercised with the leave of the Court, the property in question being held by the company in liquidation as on the date of the passing of the order and for this purpose the provisions of Section 446 of the Companies Act will prevail and powers under Section 45 of the PRTPD Act can not be exercised *dehors* Section 446 Companies Act. The availability of alternative remedy under Section 45 (5) or 45 (8) of the PRTPD Act is, no answer to the question involved. It is not the question of validity of the order of resumption on its merits. It may be valid or its validity on any other ground can definitely be questioned in appeal or revision. However, in the present case, the question is of jurisdiction to decide without leave of the Company Court. Order may otherwise be valid or invalid. I am not required to dwell upon this question and I refrain myself to do so. Since the order has been passed in contravention to the provisions of Section 446 of the Companies Act, it cannot be sustained for want of leave of the Company Court which alone can entitle the authorities under Section 45 of the PRTPD Act to initiate proceedings, to continue and even to implement the order in respect to the property belonging to the company in liquidation. The ratio of the judgment of the Hon'ble Supreme Court in **Kerala State Financial Enterprises Limited's** case (*Supra*) is squarely application to the facts and circumstances of the present case.

(17) For what has been stated above, order dated 16th May, 2005 passed by the Estate Officer, PUDA-respondent No. 3 resuming the property of the Company is illegal and invalid having been passed without leave of the Company Court and shall be deemed to be void *ab initio* and *non-est* in the eyes of law. Respondent No. 3 cannot be permitted to implement the aforesaid order which has no legal existence.

(18) As a consequence of the above, I direct respondent No. 2 to execute the necessary conveyance deed in favour of the applicant on the basis of the order dated 20th April, 2006 passed by the Company Court. Since the Official Liquidator has categorically stated in his reply that the property is free hold property and it was only due to inadvertent mistake that it was notified as lease hold property, conveyance shall convey fee hold and unencumbered rights to the applicant.

(19) C.A. disposed of.

R.N.R.