A

ALLAHABAD BANK

v.

CANARA BANK AND ANR.

APRIL 10, 2000

B [M. JAGANNADHA RAO AND SANTOSH HEGDE, JJ.]

Debt Laws :

Recovery of Debts Due to Banks and Financial Institutions Act, 1993—
C *Sections 17, 18, 19, 25-30 and 34—Jurisdiction of Recovery Officer as against Companies Court—Held, Recovery officer has exclusive jurisdiction in respect of decree passed by Tribunal.*

Companies Act 1956—Secs. 442, 537, 446(1), (2), (3), 529, 529-A and 530—Debt Recovery Tribunal passing a decree against a Company—Recov-
D *ery Proceedings pending—Petition for Winding Up of debtor Company by other creditors—Held, execution of certificate of debts payable to Banks and Financial Institutions are within the exclusive jurisdiction of Tribunal—Legal Proceedings before Tribunal cannot be stayed by Company Court.*

Recovery of Debts—One of the creditors of a Company obtaining
E *certificate—Proceedings for recovery pending—Other creditors whose claim has not been adjudicated by the Tribunal, cannot be impleaded at recovery stage.*

Civil Procedure Code 1908—Section 73—Decree obtained by unsecured
F *creditor—Monies deposited in Court—Held, priorities among creditors to be decided by Tribunal—Companies Act—Sec. 529-A—Directions issued to Supreme Court Registry to release monies to Tribunal—Tribunal to disburse monies after ascertaining workmen's dues.*

Interpretation of Statutes—Principle of Purposive interpretation—Dis-
G *cussed.*

Maxims—Maxim "Generalia Speicalibus non derogant"—Meaning of.

The appellant filed an application before the Debt Recovery Tribu-
nal, Delhi under section 19 of the Recovery of Debts Due to Banks and
H **Financial Institutions Act, 1993 for recovery of same due to them and a**

simple money decree was passed with interest at 18% and interest tax levy at 0.75% p.a. Recovery Case was filed by them for recovery before the Recovery Officer. The debtor company filed an appeal before the appellate Tribunal and there was no stay since the company defaulted in deposit of the money directed to be deposited. An application was filed by respondent No. 1 also under the Act of 1993 in the Debit Recovery Tribunal, Delhi for recovery. The said application of the Respondent is pending in the Delhi Tribunal under the Act of 1993.

Canara Bank filed an interlocutory application before the Recovery Officer for impleadment in the recovery case of the appellant, seeking pro-rata distribution of sale proceeds from auctions of the debtor company's properties. The appellant Banks opposed the same contending that since no orders have been passed in favour of Canara Bank in its application filed before the Delhi Tribunal against the same company, there was no question of impleading the Canara Bank. As regards proportionate disbursement of sale proceeds, it was observed that the question was premature and that the said issue could be considered after sale proceeds were received by the Tribunal. These applications were dismissed.

Since the Recovery Officer declined to confirm a sale in respect of a property of the debtor company and directed a fresh auction, the appellant Bank filed a writ petition under Articles 226 and 227.

Canara Bank then filed applications in the Debt Recovery Tribunal under section 22 of the Act of 1993 seeking stay of recovery proceedings in the recovery proceedings, which were pending. Canara Bank filed an application in the companies court in a pending winding up petition under sections 442 and 537 of the Companies Act 1956 seeking stay of recovery proceedings and for staying sales of assets of company by the appellant Bank.

In the said application the Company Judge passed an order staying the further sale of assets of the Company in the recovery case in the DRT and also restraining disbursement of monies already realised in other sales.

In appeal to this Court, the Appellant contended that the Act of 1993 is a special statute intended for expeditious adjudication and recovery of debts due to Banks and financial institutions and it contains two crucial

A provisions viz., Section 18 which ousts the jurisdiction of all Courts or other authorities (except the Supreme Court and the High Court exercising powers under Articles 226 and 227) in relation to matters covered by Section 17 which covers the entire procedure from the filing of an application under section 18, to the 'adjudication' and 'recovery', that these
B matters are taken out from the purview of the Companies Act 1956, including Sections 442, 537 and Section 446 of the said Act, that the proceedings under the Act of 1993 cannot be stayed by the Company Court nor can they be transferred to the Company Court, that no leave from the Company Court is necessary either for the filing of the OA for adjudication of the debt nor for executing the decree passed by the Tribu-
C nal, that Section 34(1) gives overriding effect to the provisions of the Act save as provided in Section 34(2), Section 34(2) as amended by Ordinance 1/200 saves only six statutes from the purview of Section 34(1) and the Companies Act, 1956 is not one of them, that hence, the Act of 1993, overrides sections 442 and 537 and also section 446 of the Companies Act.
D The Appellant further contended that even otherwise Section 446 of the Act of 1956 cannot be invoked in this case because there is no winding up order nor an order appointing a provisional liquidator so far in respect of the debtor Company, that principles underlying Section 73 CPC are not attracted before the Tribunal since no decrees have been obtained from any Civil Court or Debt Recovery Tribunal by the Respondent nor any
E steps have been taken by the Canara Bank, that Courts must interpret the Act of 1993 so as to subserve the purpose of realisation of thousands of crores of Bank funds which are due, that the legislature intended to avoid the long drawn proceedings in the Civil Court as well as under Sections 442, 446 and 537 of the Act of 1956 and this is now clear from Section
F 19(19) as re-enacted by Ordinance 1/2000 which permits even the working out of priorities by the Tribunal.

The appellant Bank contended that having obtained a decree and having got the properties sold it was solely entitled to the entirety of these proceeds and there is no question of the appellant sharing the sale
G proceeds with others nor is it necessary to wait till the Canara Bank gets a decree in its O.A. pending before the Delhi Tribunal, that only Section 529-A of the Companies Act is attracted and that too for a limited purpose if a question of "workman's portion" is involved, that no other provisions of the Companies Act, much less section 529(1) or (2) are attracted, that if a
H secured creditor wants to come before the Company Court in the winding

up proceedings he has to give up his security and prove his debt before the liquidator to seek dividends as per the insolvency rules mentioned in Section 529(1), read with Sections 45 to 50 of the Provisional Insolvency Act and stand in the queue along with all unsecured creditors under Section 529(2), that even that is applicable only in respect of any monies realised by the Company Court and not by the Tribunal that the limited extent to which secured creditors can claim priority under the Act of 1993 is as limited by Section 19(19) of the Act of 1993 and this is covered by Section 529-A alone read with sub-clause (c) to the proviso to Section 529(1) and that the effect of these provisions is that if any monies are realised by Canara Bank by standing outside winding up and if any part of such realisations of Canara Bank are taken away by the liquidator for payment of workmen, only to the extent of such "workmen's portion", can the Canara Bank have priority over other creditors, and otherwise, Canara Bank cannot invoke Section 529(1), (2) and that too before the Tribunal.

Appellant contended that in respect of the monies realised under the Act of 1993, the only restriction on the distribution of dividends is the one specified in Section 529-A, so far as secured creditors are concerned that the secured creditor has no other general right of preference, sections 529(1) and (2) are also not attracted and that workmen's dues are entitled to highest priority even as against other secured creditors, that where a secured creditor keeps himself outside as stated in the proviso to Section 529(1) and seeks to recover his dues outside the Company Court, if he loses part of his security towards workmen's dues, he gets reimbursed to that extent as a secured creditor, with an overriding priority under Section 529-A(1)(b), over all other creditors before the Tribunal to be compensated for this loss out of the monies that may have been realised at the instance of other creditors before the Tribunal, and that Canara Bank has neither realised any amount outside winding up nor has it lost any part of its security towards workmen's dues.

Respondents - Canara Bank contended that when a winding up Petition is pending in the Company Court, it is necessary that the leave of the Company Court is obtained for obtaining a decree before the Tribunal or for execution before the Recovery Officer, that Sections 442, 446 and 537 of the Act of 1956 applied even to proceedings under the Act of 1993, that leave is necessary under Section 537 even if no winding up order is

A passed, that it is therefore necessary to stay the sale proceedings before the Recovery Officer or the distribution of sale proceeds, that the Company Court alone can sell the properties of the Company in the winding up proceedings, that the recovery proceedings must be stayed and then the proceedings must be transferred to the Company Court and thereafter, B once the proceeds of sale come before the Company Court, the said Court alone will have to distribute the monies according to priorities as mentioned in Sections 446(2)(d), 528, 529-A and 530 etc., that Canara Bank is also a nationalised bank and merely because the Allahabad Bank has been able to get a decree from the Debt Recovery Tribunal earlier than Canara Bank, under the Act of 1993, Allahabad Bank can not be allowed to C appropriate the entire sale proceeds recovered by it, that if Canara Bank has only a 'claim' and not a decree - in view of Section 2(g), its security has preference and that unlike Section 73 CPC, Section 446 of the Act of 1956 does not required a decree and it is sufficient to prove a debt before the liquidator. Alternatively, the Respondent contended that even before the D Tribunal, Section 73 CPC and also Section 529(1) and (2) of Act 1956 read with Section 529-A, 530 etc. are attracted for purposes of distribution of the sale proceeds and working out priorities, assuming that jurisdiction of the Company Court is excluded in so far as recovery of debts due to Banks and financial institutions are concerned. Respondent also contended that E the proceedings before the Tribunal/Recovery Officer under the Act of 1993, are 'legal proceedings' and could be stayed under Section 537 read with Section 442 of the Act of 1956, that as per sec. 19(19) other secured creditors of the debtor company could seek or share the realisation made by the Recovery Officer and that the words in the first part of the clause F (c) to proviso to Section 529(1) "so much of the debt due to such secured creditor as could not be realised by him" meant the entire unrealised amounts of the secured creditor and not merely the "workmen's portion".

Allowing the Appeal, the Court

G HELD : 1. The jurisdiction of the Tribunal in regard to adjudication is exclusive. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 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 H Section 19(22) formerly under section 19(7) to the Recovery Officer for

recovery of the debt specified in the certificate. 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 of adjudication upon the 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 or 227 of the Constitution). [1127-A-C] A B

2.1. It is not the intendment of the Act of 1993 that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the Banks/Financial institutions should go to the Civil Court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificates granted under Section 19 (22) has to be executed only by the Recovery Officer. No dual jurisdiction at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provision of the Act of 1993. The provisions of Section 34(1) clearly state that the Act of 1993 overrides other laws to the extent of 'inconsistency'. The prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner. [1121-F-G; 1122-C] C D

2.2. In view of the special procedure for recovery prescribed in Chapter V of the Act, and Section 34, execution of the certificate is also within the exclusive jurisdiction of the Recovery Officer. 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. [1122-F-G] E F

Tiwary Committee Report, referred to.

3. There is no need for the appellant to seek leave of the Company Court to proceed with its claim before the Debt Recovery Tribunal or in respect of the execution proceedings before the Recovery Officer. Nor can they be transferred to the Company Court. 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 power under Section 442 against the Tribunal/Recovery G H

A Officer. Thus, Sections 442, 446 and 537 cannot be applied against the Tribunal. [1125-E; H]

Damji Valiji Shah and Anr. v. *LIC & Ors.*, [1965] 3 SCR 665, referred to.

B 4. The principle of purposive interpretation cannot be invoked in the present case against the Debt Recovery Tribunal in view of the superior purpose of the Act of 1993 and the special provisions contained therein. The very same principle mentioned above equally applies to the Tribunal/ Recovery Officer under the Act of 1993, because the purpose of the said Act is something more important than the purpose of Sections 442, 446 C 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 due to the Banks and to financial institutions, so that the delays occurring in winding up proceedings could be avoided. Section 19(19) is clearly inconsistent with section 446 and other provisions of the Companies Act. D Only Section 529A is attracted to proceedings before the Tribunal. Thus, on questions of adjudication, execution and working out priorities, the special provisions made in the Act of 1993 have to be applied. The jurisdiction of the Tribunal/Recovery Officer under the Act of 1993 is exclusive and Section 34 gives overriding effect to the provisions of the Act of 1993. [1126-G-H; 1127-A-B; 1128-D-E] E

Governor General in Council v. *Shirmani Sugar Mills Ltd.*, AIR (1946) 33 SC 16; *Sudarshan Chits (India) Ltd.* v. *O. Sukukmaran Pilai and Ors.*, [1984] 4 SCC 657; *Union of India* v. *India Fisheries*, [1965] 3 SCR 679; *Life Insurance Corporation of India* v. *D.J. Bahadur*, AIR (1980) SC 218 and F *Maharashtra Tunes Ltd.* v. *State of Industrial and Investment Corporation of India*, [1993] 2 SCC 144, referred to.

Ram Narain v. *The Simla Banking & Industrial Co. Ltd.*, AIR (1958) SC 614; *M.K. Ranganathan* v. *Govt. of Madras*, AIR (1955) SC 604; *ICICI* v. *Srinivas Agencies*, [1996] 4 SCC 165 and *Rajasthan Finance Corporation* v. G *Official Liquidator*, (1963) 2 Comp. L.J. 309, distinguished.

M/s. Major Syntex Ltd. v. *Punjab and Sind Bank*, (1977) 67 DLT 836 and *UCO Bank* v. *Concast Products Ltd.*, (1966) 2 Com. L.J. 449, disapproved.

H *ICICI* v. *Vanjinad Leathers Ltd.*, AIR (1997) Ker. 273 and *In Re Bihar*

Sales Pvt. Ltd., vol. 96 Comp. Cases 40, approved. A

Re Webb and Co., (1922) 2 Ch. 369(A) and *Food Controller* v. *Cork*, (1923) AC 647, referred to.

Tiwari Committee Report (1981) Chapter VIII para 82 in *Narasimham Committee Report*, referred to. B

5. At the stage of adjudication under Section 17 and execution of the certificate under Section 25 etc. the provisions of the Act of 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 C 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 Act of 1993, the question of priorities among the Banks and financial institutions and other creditors can be decided only by the Tribunal under the Act of 1993 and in accordance with Section 19(19) D read with Section 529-A of the Companies Act and in no other manner. The provisions of the Act of 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 E initiating or continuing the proceedings under the Act of 1993. [1134-D-F]

6. The adjudication order in respect of the present debt has already been made long back and therefore Section 19(2) does not permit any impleadment in the main application under Section 19(1) at this stage. F Hence, the relief for impleadment cannot be granted. [1135-D]

7. Where the defendant company is a company against which no winding up order is passed, the company, is like any other defendant and if in such a situation a question of priority arises before the Tribunal, in respect of any monies realised under Act of 1993, as between the bank or G financial institutions on the one hand and the other creditors on the other, it will, be necessary for the Tribunal to decide such question on priority bearing in mind the principles underlying Section 73 of the Code of Civil Procedure. Section 22 of the Act of 1993, gives sufficiently wide powers to the Tribunal and the Appellate Tribunal to decide such questions of *priori-* H

A ties, subject only to the principles of natural justice. In the present case, Canara Bank is not in a position to invoke the principles underlying Section 73 CPC 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 CPC. Hence no relief can be granted on the basis of
B the said principles. [1135-F; G; 1136-C]

Industrial Credit and Investment Corporation of India Ltd. v. *Grapco Industries Ltd. & Others,* [1999] 4 SCC 710 and *Allahabad Bank, Calcutta* v. *Radha Krishna Maity & Others,* [1999] 6 SCC 755 relied on.

C 8.1. The contention of the Respondent that Section 19(19) gives priority to all "secured creditors" to share in the sale proceeds before the Tribunal/Recovery Officer cannot, be accepted. The said words are qualified by the words "in accordance with the provision of Section 529A". Hence, it is necessary to identify the above limited class of secured creditors who have
D priority over all others in accordance with Section 529A. [1139-E]

8.2. The words in proviso section 529(1) that, "so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of the proviso" obviously mean the amount taken away from the private realisation of the secured creditor by the liquidator
E by way of enforcing the charge for workmen's dues under clause (c) of the proviso to Section 529(1), "rateably" against each secured creditor. To that extent, the secured creditor - who has stood outside the winding up and who has lost a part of the monies otherwise covered by security - can come before the Tribunal to reimburse himself from out of other monies avail-
F able in the Tribunal, claiming priority over all creditors, by virtue of Section 529A(1)(b). [1141-E]

8.3. The secured creditor who stands outside the winding up and whose claims are restricted to Section 529-A read with the clause (c) of
G proviso to Section 529(1), does not in the ultimate analysis stand to lose any part of his security merely because the "workmen's portion" is taken away from his security. Whatever he loses towards "workmen's portion" out of his security, can be claimed by him as a secured amount with priority over such creditors out of other realisations made by other creditors whose monies are lying in the Tribunal. At the same time, his position would not improve
H from what it was originally and his priority would not extend to his entire

unrealised sums which might be in excess of his security. [1142-G-H] A

8.4. If none of the conditions required for applying Section 19(19) and Section 529A is, satisfied, then the claim of Canara Bank before the Tribunal can only be on the basis of principles underlying Section 73 CPC. There being no decree in its favour from any Court or from any Tribunal, and the other conditions of Section 73 not having been satisfied, no dividend can be claimed out of monies realised at the instance of the Allahabad Bank, even if the Allahabad Bank is an unsecured creditor. [1143-E] B

8.5. Even if Section 19(19) read with Section 529A of the Companies Act does not help the Respondent, the said provisions can still have an impact on the Appellant 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 528A(1)(a). There is no material to hold that workmen's dues of the defendant company have all been paid. 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. The court is therefore, unable to release any amounts in favour of the Appellant Bank straightway. [1143-H; 1144-A-B] C D

[The court directed 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 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 Canara Bank are lying in the two other sheds already sold, it will be open to Canara Bank to move the Tribunal/ Recovery Officer for their removal and for an inventory.] [1144-C-E] E F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2536 of 2000.

From the Judgment and Order dated 9.3.99 of the Delhi High Court in H

A C.A. No. 323 of 1999.

Soli J. Sorabjee, Attorney General, Kapil Sibal, Indveer Singh Alag, Pradeep K. Bhakshi, Y.P. Narula, Abhijeet Chatterjee, Mrs. Sarla Chandra, Suresh A. Shroff, Manish Singhvi, Ms. Rashmi Verma, Sunil Dogra, Ms. Monica Sharma, Ms. Sayali Pathak, A.S. Chandok, Siboney Sagar and V. Sibal for the appearing parties.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Leave granted.

The case raises issues relating to the impact of the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter called the RDB Act) on the provisions of the Companies Act, 1956. The immediate dispute before us is between two nationalised Banks, the Allahabad Bank (appellant) on the one hand which has obtained a simple money decree against the debtor-company (M/s M.S.Shoes (East) Co. Ltd. from the Debt Recovery Tribunal at Delhi under the RDB Act and the Canara Bank on the other, whose claim as a secured creditor is still pending before the same Tribunal at Delhi against the same company. The Allahabad Bank has appealed before us against an order passed by the learned Company Judge under sections 442 and 537 of the Companies Act, (in a winding up petition by Ranbaxy Ltd.) staying the sale proceedings taken out by the Allahabad Bank before the Recovery Officer under the RDB Act. Applications for winding up the defendant company are pending in the Delhi High Court. As yet no winding up order has been passed nor a provisional liquidator appointed as contemplated by section 446(1). Point has been raised by the respondent - Canara Bank that the appellant Allahabad Bank is obliged to seek leave of the Company Court under the Companies Act, 1956 and the Company Court can stay these proceedings as aforesaid under Sections 442 and 537 for the ultimate purpose of deciding the priorities, in the event of a winding up order or other order appointing a provisional liquidator being passed under section 446(1) of the Companies Act, 1956. After the appellant obtained decree from the Debt Recovery Tribunal, some properties of the company have been sold by the Recovery Officer. Appellant contends that the Tribunal under the RDB Act can itself deal with the question of appropriation of sale proceeds in respect of sales of the company properties held at the instance of the appellant and the priorities and that the appellant alone is

entitled to all the sums so realised. A

The matter was argued and judgment was reserved. Thereafter, our attention was invited by the learned counsel for the respondent - Canara Bank to the Amending Ordinance (Ordinance 1 of 2000) which came into force with effect from 17.1.2000. The effect of the Ordinance and in particular section 19(19) then fell for consideration. Question of distribution of the sale proceeds by Company Court/Tribunal and method of working out *priorities* among creditors was argued. B

The facts of the case are as follows:

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The appellant Bank filed O.A.No.109 of 1995 before the Debt Recovery Tribunal, Delhi under section 19 of the RDB Act, 1993 for recovery of Rs. 21,49,29,520 and a simple money decree was passed on 13.1.1998 with interest at 18% and interest tax levy at 0.75% p.a. Recovery Case (R.C.No.9 of 98) was filed by the Allahabad Bank for recovery before the Recovery Officer. The debtor Company filed appeal No.270 of 1998 before the appellate Tribunal and there was no stay inasmuch as there was default in deposit of the money directed to be deposited. O.A. No.784 of 1996 was filed by the Canara Bank also under the RDB Act in the Debt Recovery Tribunal, Delhi for a decree for Rs. 14,40,05,982.98 plus interest and it was said that a sum of about Rs. 25 crores was due from the same company. The said O.A. of Canara Bank is pending in the Delhi Tribunal under the RDB Act. D E

The Canara Bank filed interlocutory application before the Recovery Officer for impleadment in the said recovery case of the appellant, viz., R.C.9/98 seeking pro-rata distribution of sale proceeds from auctions of the debtor company's properties. The appellant Bank resisted the same contending that inasmuch as no orders have been passed in favour of the Canara Bank in its claim filed before the Delhi Tribunal against the same company, there was no question of impleading the Canara Bank. As regards proportionate disbursement of sale proceeds, it was observed that that question was premature and that the said issue could be considered after sale proceeds were received by the Tribunal. These applications were dismissed on 28.9.98. F G

The property of the debtor company situated at Village Kherki Daula, admeasuring Ac 32.64 was sold on 8.1.99 for Rs. 2,30,11,200. The sale was confirmed on 16.2.99 by the Recovery Officer. Property of the Company at H

A village Dundahera admeasuring Ac 4.23 was also sold on 15.1.99 for Rs.3,17,34,375, but the Recovery Officer declined to confirm that sale and directed fresh auction and the appellant Bank filed W.P. under Articles 226, 227.

B Canara Bank then filed applications in the Debt Recovery Tribunal under section 22 of the RDB Act in January,1999 seeking stay of recovery proceedings in RC No.9/98. They were heard on 25.2.99, adjourned to 3.3.99 then to 5.3.99. On 5.3.99, the counsel for Canara Bank informed the Recovery Officer that it had filed Company application No. 296 of 1999 in Company Petition No.141/95 (being a winding up petition filed by Ranbaxy Ltd. against C M.S.Shoes Co.) under sections 442, 537 of the Companies Act for stay of the appellant's Recovery Case, RC No. 9/98. The said CA 296/99 was filed by Canara Bank in CP 141/95 under section 442 and section 537 of the Companies Act seeking stay of RC 9/98 and for staying sales of assets of company by the appellant Bank. Later on Canara Bank filed CA 323/99 again D under section 442 and section 537 for similar reliefs as in CA 296/99.

On 9.3.99, the learned Company Judge passed the impugned order in CA 323/99 under section 442 read with section 537 of the Companies Act staying the further sale of assets of the Company in RC 9/98 in OA 109/95 and also restraining disbursement of monies already realised in other sales. E It is against the above order dated 9.3.99 that this appeal has been preferred. (While narrating the facts, we have not referred to a number of other proceedings taken out by the debtor-company before various Courts to stall the sales. In fact allegations have been made that the action of the Canara Bank in trying to stall sales - which are being held at the instance of the F Allahabad Bank - was intended to benefit the debtor-company.These allegations were, of course, denied by the Canara Bank.

We shall refer to some subsequent events which took place during the pendency of this appeal. On 14.5.99 this Court passed an order in favour of the Allahabad Bank directing that the sale of the debtor company's property G in Shed No.15 to go on but that the sale proceeds be not distributed. Unfortunately, the sale was not held for quite some time due to an omnibus stay order dated 29.6.99 passed by the Tribunal at Delhi. That order was stayed by the Appellate Tribunal, Bombay on 29.6.99. The sale did not take place even by 7.1.2000. This Court then issued further orders on 7.1.2000 for H sale of the company's property in Shed No.15. Thereafter, sale of Industrial

Shed No.15/Category-II under SFS at Rohtak Road, Industrial Complex, New Delhi-110005 was held on 28.1.2000. (The raw material and machinery in the shed which were said to have been mortgaged to Canara Bank were removed and segregated. An order was passed that an inventory be prepared and to remove the pledged property). It appears the sale proceeds of about Rs. 20 lakhs are in deposit in this Court. Now, the position is that some sale proceeds are in deposit in the Tribunal and some in this Court, all such sales having been held at the instance of the appellant Bank alone. Questions have been raised by the respondent as to whether the Tribunal can entertain proceedings for recovery, execution proceedings, and also for distribution of monies realised by sales of properties of a company against which winding up proceedings are pending, whether leave is necessary and as to which Court is to distribute the sale proceeds and according to what priorities among various creditors?

In this appeal, Sri Soli Sorabjee, the learned Attorney General for India appearing for the appellant, Allahabad Bank has submitted that the RDB Act of 1993 is a special statute intended for expeditious *adjudication* and *recovery* of debts due to banks and financial institutions and it contains two crucial provisions. One of them is *section 18* which ousts the jurisdiction of all Courts or other authorities (except the Supreme Court and the High Court exercising powers under Articles 226, 227) in relation to matters covered by section 17 and that section 17 covers the entire procedure from the filing of an application under section 19, to the 'adjudication' and 'recovery'. These matters are taken out from the purview of the Companies Act, including sections 442, 537 and section 446 of the said Act. The proceedings under the RDB Act cannot be stayed by the Company Court nor can they be transferred to the Company Court. No leave of the Company Court is necessary either for the filing of the OA for adjudication of the debt nor for executing the decree passed by the Tribunal. *Section 34(1)* gives overriding effect to the provisions of the Act save as provided in section 34(2). Section 34(2) as amended by Ordinance 1/2000 proceedings saves only six statutes from the purview of section 34(1). The Companies Act, 1956 is not one of them. Hence, the RDB Act, 1993 overrides sections 442, 537 and also section 446 of the Companies Act. It is contended that even otherwise section 446 cannot be invoked in this case because there is no winding up order nor an order appointing a provisional liquidator so far. So far as principles underlying section 73 CPC are concerned, even if applicable,- on facts, they are not attracted before the Tribunal since no decrees have been obtained from any

A Civil Court or Debt Recovery Tribunal by the Canara Bank (respondent) nor any steps as visualised by section 73 have been taken by the Canara Bank. It is urged that Courts must interpret the RDB Act of 1993 so as to subserve the purpose of realisation of thousands of crores of Bank funds which are due. The legislature intended to avoid the long drawn proceedings in the Civil B Court as well as under section 442 and 446 and 537 of the Companies Act and this is now clear from section 19(19) as re-enacted by Ordinance 1/2000 which permits even the working out of priorities by the Tribunal. Several rulings of this Court and of High Courts under various other statutes have been cited before us and we shall refer to them at the appropriate stage. It is submitted that the appellant Bank having got a decree and having got the C properties sold is solely entitled to the entirety of these proceeds and there is no question of the appellant sharing the sale proceeds with others nor is it necessary to wait till the Canara Bank gets a decree in its O.A. pending before the Delhi Tribunal.

D Important submissions have been made by the learned Attorney General as to the effect of section 19(19) introduced by Ordinance 1/2000, it is contended by the learned Attorney General that only section 529A of the Companies Act is attracted and that too for a limited purpose if a question of "workman's portion" is involved. No such question has arisen so far. E Hence no other provision of the Companies Act, much less section 529(1) or (2) are attracted. In the Company Court, any secured creditor who has not stood out of winding up but wants to come before the Company Court has to give up his security and prove his debt before the liquidator to seek dividends as per the insolvency rules mentioned in section 529(1), read with sections 45 to 50 of the Provincial Insolvency Act and stand in the queue F along with all unsecured creditors under section 529(2). Even that procedure is applicable only in respect of any monies realised by the Company Court and not by the Tribunal. The limited extent to which secured creditors can claim priority under the RDB Act is as limited by section 19(19) of the RDB Act and this is covered by section 529A alone read with sub-clause (c) to the G proviso to section 529(1). The effect of these provisions is that if any monies are realised by Canara Bank by standing outside winding up and if any part of such realisations of the Canara Bank are taken away by the liquidator for payment to workmen, only to the extent of such "workmen's portion", can the Canara Bank have priority over other creditors. Otherwise, Canara Bank cannot invoke Section 529(1), (2) and that too before the Tribunal.

H

On the other hand, learned counsel for the Canara Bank Sri Y.P.Narula has submitted that when a winding up petition is pending in the Company Court, it is necessary that the leave of the Company Court is obtained for obtaining a decree before the Tribunal or for execution before the Recovery Officer. Sections 442, 446, 537 applied even to proceedings under the RDB Act. Leave is necessary under section 537 even if no winding up order is passed. It is therefore necessary to stay the sale proceedings before the Recovery Officer of the distribution of sale proceeds. The Company Court alone can sell the properties of the Company in the winding up proceedings. The recovery proceedings must be stayed and then the proceedings must be transferred to the Company Court and thereafter, once the proceeds of sale come before the Company Court, the said Court alone will have to distribute the monies according to priorities as mentioned in sections 446(2)(d), 529, 529A and 530 etc. The Canara Bank is also a nationalised bank and merely because the Allahabad Bank has been able to get a decree from the Debt Recovery Tribunal earlier than the Canara Bank, under the RDB Act, the Allahabad Bank can not be allowed to appropriate the entire sale proceeds recovered by it. Even if the Canara Bank has only a 'claim' and not a decree - in view of section 2(g), its security has preference. Unlike section 73 CPC, section 446 does not require a decree and it is sufficient to prove a debt before the liquidator. Alternatively, it is submitted that even before the Tribunal section 73 CPC and also section 529(1) and (2) of the Companies Act read with sections 529A, 530 etc. are attracted for purposes of distribution of the sale proceeds and working out priorities, assuming that jurisdiction of the Company Court is excluded in so far as recovery of debts due to Banks and financial institutions are concerned.

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 Sections 537 *before* a winding up order is passed against the

A 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 B 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?

C

(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-clause (1) and (2) of section 529, section 530 of the Companies Court also apply - apart from section 529A - to the proceedings before the Tribunal D 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 realised by the appellant except to the limited extent restricted by section 529A? Can the secured creditors like E 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?

F (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?

Points 1:

G This point concerns the question as to the exclusive jurisdiction of the Tribunal and the Recovery Officer in their respective spheres.

The RDB Act is, as disclosed by its preamble, an Act to provide for the establishment of Tribunals for expeditious *adjudication* and *recovery* of H debts due to banks and financial institutions.

The said Act is the result of two Reports, one of 1981 of a Committee headed by Sri T. Tiwari and the other by a Committee headed by Sri M. Narasimham in 1991. As on 30.9.90, more than 15 lakh cases filed by public sector Banks and about 304 cases filed by financial institutions were pending in various civil courts, and recovery of debts to Banks in a sum of Rs.5622 crores and to financial institutions in a sum of Rs. 391 crores, was held up. That was the immediate cause for the passing of the Act.

Under sub-clause (4) of Section 1 of the RDB Act, it is stated that the Act will not apply if the debt due is less than Rs. 10 lakhs or such other amount as may be notified. Section 2(d) defines 'Banks' as including (i) Bank Companies, (ii) corresponding new banks, (iii) State Bank of India, (iv) subsidiary Banks and (v) Regional Rural Banks. 'Banking Company' is defined in Section 2(e) and 'Corresponding New Bank' is defined in Section 2(f) and it refers to Section 5(da) of the Banking Regulation Act, 1949. Clause (da) of Section 5 of the Banking Regulation Act, 1949, defines 'corresponding new banks' as Banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. About 20 nationalised banks have come under the purview of RDB Act. Section 2(h) defines '*financial institutions*' and refers to public financial institutions falling within Section 4A of the Companies Act, 1956 - namely (i) the Industrial Credit and Investment Corporation of India Ltd; (ii) the Industrial Finance Corporation of India; (iii) the Industrial Development Bank of India; (iv) the Life Insurance Corporation of India and (v) the Unit Trust of India. Other financial institutions since notified are large in number.

Section 2(g) as amended by Ordinance 1/2000 defines 'debt' as meaning any liability which is "claimed" as due from any person to a Bank or financial institutions. It includes the liability and interest in cash or otherwise, whether secured or unsecured or whether payable under a decree or *order* of any *civil Court* or *otherwise* and subsisting, and legally recoverable on, the date of the application filed to the Tribunal.

Exclusive Jurisdiction of the Tribunal under Sections 17, 18 and 25 of the RDB Act: (i) adjudication, (ii) execution

The initial question is as to the jurisdiction of the Tribunal under Sections 17 and 18 of the RDB Act in the matter passing the order of *adjudication* and to what extent it is exclusive. The next question will be

A whether the jurisdiction of the Recovery Officer is also exclusive for purposes of execution of the adjudication order passed by the Tribunal.

(i) adjudication by Tribunal: Does the Tribunal have exclusive jurisdiction?

B We shall refer to Sections 17 and 18 in Chapter III of the RDB Act which deal with *adjudication* of the debt.

"Section 17: Jurisdiction, powers and authority of Tribunals -

C (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.

D (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.

E *Section 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."

F It is clear from Section 17 of the Act that the Tribunal is to decide the applications of the Banks and Financial Institutions for recovery of debts due to them. We have already referred to the definition of 'debt' in Section 2(g) as amended by Ordinance 1/2000. It includes "*claims*" by Banks and financial institutions and includes the liability incurred and also liability under a decree or otherwise. In this context Section 31 of the Act is also relevant. That G section deals with transfer of pending suits or proceedings to the Tribunal. In our view, the word 'proceedings' in Section 31 includes an 'execution proceedings' pending before a Civil Court before the commencement of the Act. The suits and proceedings so pending on the date of the Act stand transferred to the Tribunal and have to be disposed of "in the same manner" H as applications under Section 19.

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 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 or 227 of the Constitution). This is the effect of Sections 17 and 18 of the Act.

We hold 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 Bank is concerned.

(ii) e*xecution of Certificate by Recovery Officer: Is his jurisdiction exclusive?*

Even in regard to '*execution*', the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the Banks/Financial institutions should go to the Civil Court or the Company court or some other authority outside the Act for the actual realisation of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, section 34 of the Act gives overriding effect to the provisions of the RDB Act. That section reads as follows:

"Section 34 (1): Act to have over-riding effect-

(1) Save as otherwise provided in sub-section (2), the provisions of this Act shall effect notwithstanding anything inconsistent therewith

A 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 to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations B 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) and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)."

C The provisions of section 34(1) clearly state that the RDB Act overrides other laws to the extent of 'inconsistency'. In our opinion, the prescription of an exclusive Tribunal both for *adjudication* and *execution* is a procedure clearly *inconsistent* with realisation of these debts in any other manner.

D There is one more reason as to why it must be held that the jurisdiction of the Recovery Officer is exclusive. The Tiwari Committee which recommended the constitution of a Special Tribunal in 1981 for recovery of debts due to Banks and financial institutions stated in its Report that the exclusive jurisdiction of the Tribunal must relate not only in regard to the *adjudication* of the liability but also in regard to the *execution* proceedings. It stated in E Annexure XI of its Report that all "execution proceedings" must be taken up only by the Special Tribunal under the Act. In our opinion, in view of the special procedure for recovery prescribed in Chapter V of the Act, and section 34, *execution* of the certificate is also within the exclusive jurisdiction of the Recovery Officer.

F 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 G Act. Point 1 is decided accordingly.

Points 2 and 3:

Does the Act override the provisions of Sections 442 and 537 and Section 446 H *of the Company Act?*

These points deal with the question whether the Company Court can stay proceedings before the Tribunal or the Recovery Officer under section 442 and whether the said court can stall proceedings under section 537 unless leave is obtained. Question also arises in regard to 'priorities' under section 446(2)(d), read with sections 529, 529A, 530 of the Companies Act and whether the Company Court alone can *distribute* and decide *priorities* among creditors or whether the Tribunal can do this in view of section 19(19) of the RDB Act, as introduced by Ordinance 1 of 2000.

It is necessary first to refer to Sections 442, 537 and then to 446(1)(2) and 446(3). of the Companies Act. Sections 442 and 537 deal with situations before the passing of a winding up order.

Under section 442, at any time after the filing of a winding up petition and before the passing of a winding up order, the Company, or any creditor or contributors may apply for stay of suits or proceedings before the High Court/Supreme Court and for this purpose file an application in those Courts. If, they are pending in other courts, applications may be filed in the Company court to *stay* those proceedings and the said Courts where applications are filed can stay the suits or proceedings. Under section 537, where any Company is being wound-up by or subject to the supervision of the Court, any attachment, distress or execution put in force, *without leave* of the Company Court, against the estate or effects of the Company, after the commencement of the winding up, or any sale held - *without the leave of* the Court, if any of the properties or effects of the Company, after such commencement, shall be *void.* Nothing in this section applies to any proceedings for the recovery of any tax or import or any dues payable to the government.

After a winding up order is passed, provisions of section 446 become applicable. Under sub-clause (1) of section 446, when a winding up order is passed or the official liquidator is appointed as a provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of winding up order, shall be proceeded with against the company,except by *leave of the Court* and subject to such terms as the Court may impose. Under sub-clause (2), the Company court shall, *notwithstanding anything contained in any other law for the time being inforce*, 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

A 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. This provision applies whether such suit or proceeding has been instituted, or is instituted, or such claims or question has
B 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. Sub-clause (3) of section 446 is important. It states that any suit or proceeding by or against the Company which is pending in any Court other than that in which the winding up of the Company if proceeding, may, *notwithstanding anything*
C *contained* in any other law for the time being in force, be transferred to and disposed of by that Court.

Question of leave and control by the Company Court:

D Learned Attorney General has, in this connection, relied upon *Damji Valji Shah & Another* v. *Life Insurance Corporation of India & Others*, [1965] 3 SCR 665 = AIR (1966) SC 135 to contend that for initiating and continuing proceedings under the RDB Act, no leave of the Company court is necessary under section 446. In that case, a Tribunal was constituted under the Life Insurance Corporation Act, 1956. Question was whether under section 446 of
E the Companies Act, 1956, the said proceedings could be stayed and later be transferred to the Company Court and adjudicated in that Court. It was held that the said proceedings could not be transferred. Section 15 of the Life Insurance Corporation Act, 1956 - which we may say, roughly corresponds to *section 17* of the RDB Act - enabled the Life Insurance Corporation of
F India to file a case before a special Tribunal and recover various amounts from the erstwhile Life Insurance Companies in certain respects. Section 41 of the LIC Act conferred exclusive jurisdiction on the said Tribunal just like section 18 of the RDB Act, 1993. There the Company was ordered to be wound up by an order of the Company court passed under section 446(1) on
G 9.1.1959. The claim was filed by the LIC against the Company before the Tribunal and its Directors in 1962. The respondents before the Tribunal contended that the claim could not have been filed in the Tribunal without the leave of the company court under section 446(1). This Court rejected the said contention and held that though the purpose of section 446 was to enable the company court to transfer proceedings to itself and to dispose of the suit
H or proceedings so transferred, unless the Company Court had jurisdiction to

decide the questions which were raised before the LIC tribunal, there was no purpose of requiring leave of the Company Court or permitting transfer. It was held by this Court:

> "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 may be pending before the Tribunal or which may be sought to be commenced before or."

Just as the Company Court was held incompetent to stay or transfer and decide the claims made before the LIC Tribunal because the Company Court could not decide the claims before the LIC Tribunal, the said Court cannot, in our view, decide the claims of Banks and financial institutions. On the same parity of reasoning as in *Damji Valji Shah's* case, there is no need for the appellant to seek leave of the Company Court to proceed with its claim before the Debt Recovery Tribunal or in respect of the execution proceedings before the Recovery Officer. Nor can they be transferred to the Company Court.

It may also be noticed that in the LIC Act of 1956, there was no provision like section 34 of the RDB Act giving overriding effect to the provisions of the LIC Act. Still this Court upheld the exclusive jurisdiction of the LIC Tribunal observing as follows:

> "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."

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.

A *Purposive interpretation adjudication, execution and working out priorities :*

As there is some difference between various High Courts as to the applicability of the principle of purposive interpretation to the RDB Act, we shall deal with the said question.

B

It is true that it has been held in several judgments of this Court that there is a special purpose behind the provisions in sections 442, 446 and 537 of the Companies Act, 1956. It has been, in fact, so stated by the Federal Court in *Governor General in Council* v. *Shirmani Sugar Mills Ltd.*, AIR 33 C (1946) SC 16 under the Old Companies Act, 1913. Similarly, this Court in *Sudarshan Chits (India) Ltd.* v. *O. Sukukmaran Pillai and Ors.*, [1984] 4 SCC 657 observed that -not satisfied with sections 442 and 537 and also with Section 446(1) (which was similar to Section 171 of the Old Companies Act, 1913),- Parliament enacted the Companies (Amendment) Act, 1960 and D brought in the present sub-sections (2) and (3) into section 446. This Court pointed out that instead of allowing claims to be proceeded with against these companies in various Civil courts, Parliament declared that wherever winding up proceedings were pending or when an order of winding up was passed, it was necessary to save the company "from this prolix and expensive litigation and to accelerate the disposal of winding up proceedings", and "a E *cheap* and *summary remedy*" was devised by conferring jurisdiction on the Company Court to entertain suits and proceedings in respect of claims for and against the company. That being the *object* behind enacting Section 446(2), it was held that the Companies Act "must *receive such construction* at the hands of the court as would *advance the object* and at any rate not thwart it". F In other words, the principle of purposive interpretation was, as contended by respondent's counsel, applied while construing these provisions of the Companies Act. This principle was applied by some High Courts to hold that provisions of the Companies Act can be invoked against the Tribunal.

G 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 H 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.

Tiwari Committee Report: adjudication, execution & priorities:

In the Tiwari Committee Report of 1981, it was stated in Chapter VIII, para 8.2 that in respect of suits by Banks and financial institutions there have been abnormal delays at the stage of *trial* as well as the stage of execution in various courts and hence it stated:

> "the principle that the State should have a *special procedure to enforce its own demands* should equally be extended to the *recovery* of dues of banks and financial institutions as well".

In fact, it was recommended that a Tribunal under Articles 323A and 323B should be constituted. The Tribunal should not be bogged down by the Civil Procedure Code but should have a simple procedure guided only by principles of natural justice. It was stated by the tribunals:

> "should follow simple and *summary procedure* in accordance with the principles of natural justice".

The Tiwari Committee also prepared a draft of the proposed legislation, in Annexure XI to its Report. It recommended disposal of cases in three months. It stated in Annexure XI to the Report that all "*execution proceedings*" were to be initiated only before the Adjudication Officer so that such execution proceedings could be completed speedily. The above Report of 1981 was followed ten years later by the M. Narasimham Committee Report which in Chapter V stated that the 'special legislation' recommended by the Tiwari Committee in 1981 should be immediately enacted. The latter Committee too observed: "We regard setting up the Special Tribunals as critical to the successful implementation of the financial sector reforms", to ensure speedy *remedy* of *adjudication* and *execution* against defaulters.

Even in regard to '*priorities*' among creditors, the said Committee stated in Annexure I as follows:

A "The Adjudication Officer will have such power to *distribute* the sale proceeds to the Banks and Financial Institutions being secured creditors, in accordance with inter-se agreement/arrangement between them and to the *other persons* entitled thereto in accordance with the *priorities* in the law."

B The above recommendations as to working out '*priorities*' have now been brought into the Act with greater clarity under section 19(19) of Ordinance 1/2000. Priorities, so far as the amounts realised under the RDB Act are concerned, are to be worked out only by the Tribunal under the RDB Act. Section 19(19) of the RDB Act reads as follows:

C "Where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal *may order* the sale proceeds of such company *to be distributed among its secured creditors* in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the Company."

D Section 19(19) is clearly inconsistent with section 446 and other provisions of the Companies Act. Only section 529A is attracted to proceedings before the Tribunal. Thus, on questions of *adjudication*, *execution* and working out *priorities*, the special provisions made in the RDB Act have to be applied.

E *Special law* v. *general law*:

At the same time, some High Courts have rightly held that the Companies Act is a general Act and does not prevail under the RDB Act. They have relied upon *Union of India* v. *India Fisheries*, [1965] 3 SCR 679.

F There can be a situation in law where the same statute is treated as a special statute *vis-a-vis* one legislation and again as a general statute *vis-a-vis* yet another legislation. Such situations do arise as held in *Life Insurance Corporation of India* v. *D.J. Bahadur*, AIR (1980) SC 2181. It was there observed:

G "for certain cases, an Act may be general and for certain other purposes, it may be special and the Court cannot blur a distinction when dealing with finer points of law".

For example, a Rent Control Act may be a special statute as compared to the H Code of Civil Procedure. But vis-a-vis an Act permitting eviction from public

premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in *Damji Valji Shah and Anr.* v. *Life Insurance Corporation of India and Ors.*, [1965] 3 SCR 665 = AIR (1965) SC 135 already referred to, this Court has observed that *vis-a-vis* the LIC Act, 1956, the *Companies* Act, 1956 can be treated as a *general* statute. This is clear from para 19 of that judgment. It was observed:

> "Further, the provisions of the Special Act, i.e. LIC Act, will override the provisions of the general Act, viz; the Companies Act which is an Act relating to companies in *general*".

Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.

Special law versus special law :

Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, section 34. A similar situation arose in *Maharashtra Tubes Ltd.* v. *State Industrial and Investment Corporation of India*, [1993] 2 SCC 144 where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J. that both special statutes contained non-obstante clauses but that the "1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one". Therefore, in view of section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts.

Other rulings of Supreme Court and High Courts cited by counsel:

It was then argued for the respondents that the proceedings before the Tribunal/Recovery Officer under the RDB Act, 1993 are 'legal proceedings' and could be stayed under section 537 read with section 442 and reliance was placed on the decision of the Federal Court in *Governor General in Council*

A v. *Shirmani Sugar Mills Ltd.*, AIR (1946) 33 FC 16. In our view, this judgment cannot help the respondents. In the above case the Income Tax Officer tried to demand income tax from the Company through a certificate got issued by the Collector and the demand was sent to the official liquidator. The official liquidator filed an application under Section 171 of the Old Act (corresponding to Section 446(1) of the 1956 Act) and obtained stay and required a direction from the Company Court that the Income Tax Officer should seek leave under Section 232(1)(a) (corresponding to section 537 of the 1956 Act). It was held that the limited priority extended to Crown debts was not sufficient to enable the Income Tax Officer to avoid the provisions of the Companies Act and that the Crown was bound by the provisions of the C Companies Act. The cases in *Re Webb and Co.* (1922) 2 Ch.369 (A) and *Food Controller* v. *Cork*, (1923) AC 647 were followed. It was also held that the proceedings taken by the Income Tax Officer though they were not akin to proceedings in a court, they were still 'legal proceedings' as they were initiated under a statute. In our opinion, this decision cannot help the D respondents inasmuch as, as pointed out above, the jurisdiction of the Tribunal/Recovery Officer under the RDB Act is exclusive and Section 34 gives overriding effect to the provisions of the RDB Act. No provision similar to section 34 was available in the above case before the Federal Court.

The decision of this Court in *M.K. Ranganathan* v. *Govt. of Madras*, E AIR (1955) SC 604 cannot also help the respondent. That was a case in which a secured creditor standing outside the winding up sold the property of the company, pending a winding up petition, by private sale. It was pointed out by this Court (see para 15) that such a sale by a secured creditor, who opted to stand outside the winding up proceedings, would be permissible without F leave of the Company Court. It might be different if the secured creditor tried to sell the property through a Court by filing a suit or other proceeding. It was argued there that the 1936 Amendment to the Companies Act in section 232(1) (corresponding to Section 537 of the new Act) introduced the words "or any *sale* held without leave of the court of any of the properties", and those words were introduced for the purpose of staying even private sales by G the secured creditor unless leave was obtained for such sales. This contention was rejected and it was held that, even after the 1936 Amendment, the private sale by the secured creditor standing outside the winding up proceedings was valid without leave of the Company Court. Learned counsel for respondent relied upon para 24 of the judgment which stated that Section 171 (corre- H sponding to section 446(1)) was supplementary to Section 232 and 229 (

corresponding to Section 529 of the new Act). But the said observations, in our view, cannot help the respondents, in view of the reasons given above. A

When the matter was listed for fresh arguments, learned counsel for the respondent relied upon *Ram Narain* v. *The Simla Banking & Industrial Co. Ltd.*, AIR (1956) SC 614 to contend that in that case the Court (the High Court of Punjab) which was winding up the Banking company was held entitled to transfer the execution case pending before a Tribunal to the High Court and to dispose of the same. That case is, in our view, distinguishable. The facts there were that the Tribunal was one constituted under the Displaced Persons (Debt Adjustment) Act, 1951, while the High Court of Punjab was exercising special powers under sections 45A, 45B & 45C of the Banking Companies Act, 1949 (as amended in 1953) for winding up a Banking Company. Earlier, under the 1913 Act, the District Court was dealing with winding up proceedings but so far as Banking Companies were concerned, the Banking Companies Act, 1949 was amended in 1953 giving powers to the High Court to wind up Banking companies. It was held that the latter Act of 1953 prevailed over the former Act of 1951 in view of section 45A, and that the legislative intention was to prescribe a speedy procedure for the winding up of the Banking companies outside the provisions of the Companies Act, 1913. Section 45B conferred exclusive jurisdiction on the High Court (there the Punjab High Court) in this behalf. The more important distinguishing feature between that case and the present one is that section 2 of the Banking Companies Act, 1949 specifically provided that its provisions would be in *addition* to those in the Companies Act and it was held that sections 171 and 232 of the Companies Act, 1913 were available to the High Court as a winding up Court to stay the execution proceedings taken pursuant to the decree of the Tribunal under the 1951 Act and to transfer them to the High Court. But the position under the RDB Act is different. Sections 442, 446 and 537 are not saved by the RDB Act. Even section 34(2) of the RDB Act does not save the provisions of the Companies Act. B C D E F

Learned counsel for the respondent then relied upon certain observations in a recent case in *Industrial Credit and Investment Corporation* v. *Srinivas Agencies*, [1996] 4 SCC 165 made in relation to RDB Act, 1993 and to sections 529 and 529A of the Companies Act. That judgment related to a batch of appeals against the judgment of the Andhra Pradesh High Court dated 23.8.89 and certain SLPs. (C) 10101/91 and 11055/91 (from Kerala)(the Kerala SLPs were registered as C.As.of 1996). (see here facts in *ICICI* v. G H

A *Vanjinad Leathers Ltd.*, AIR 1997 Ker. 273). It has to be noticed that when the A.P. High Court decided the matter and when the special leave petitions from Kerala were filed in 1991, the RDB Act, 1993 had not yet been enacted. But much later by the time the Civil appeals came up for disposal on 22.2.96, the RDB Act of 1993 had been passed. The above ruling of this Court did not concern itself with the RDB Act directly on facts. The only issues which arose in that case, as stated in para 5 of the judgment, were viz. (1) when should leave of the winding up court be granted to a secured creditor to proceed with the *suit after* an order of winding up has been made (2) when should a winding up court transfer to itself any *suit* or *proceedings* by or against the Company during the period of the winding up? It was in that connection that in para 9, a reference was made to an argument by one of the counsel that in the case of *suits* which were pending before the date of liquidation, the court could grant leave imposing "reasonable conditions" even against secured creditors so that genuine claims of other secured creditors were not affected. As appears from para 10 of the judgment, the learned counsel appearing for one of the parties in that case, appears to have incidentally referred to the provisions of the RDB Act, 1993 which had by then come to be enacted, for contending that while staying suits, the Company Court could impose reasonable conditions, keeping the rationale of the provisions of the RDB Act in mind. In para 12, this Court accepted the submission of counsel and in para 13, it was observed that while granting leave to such secured creditors i.e in *suits*, the company court "would also bear in mind the *rationale* behind the RDB Act". In that connection sections 529 and 529A were also referred to. The said observations do not, in our opinion, have any bearing on the questions before us relating to the exclusive jurisdiction of the Tribunal/Recovery Officer under the RDB Act. Further, as we shall explain under Points 4 and 5, section 19(19) of the Ordinance 1 of 2000, refers only to section 529A and not to sections 529 (1) or (2) and this is one other clear indication that the other provisions of the Companies Act are completely excluded.

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G The decision of the Delhi High Court in *M/s Major Syntex Ltd.* v. *Punjab and Sind Bank*, 67 (1977) Delhi Law Times 836 no doubt supports the contention of the respondents that the Company Court's jurisdiction prevails over that of the Tribunal/Recovery Officer under the RDB Act, 1993. The learned Company Judge in that case does, in fact, accept that a statute which is a general one *vis-a-vis* another statute can also be a special one, *vis-a-vis* yet another statute. But the Court, in our view, was not correct in its

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conclusion that, in this context, the Companies Act, 1956 was not a general statute. Further in the said judgment it was stated that the "non-obstante clause in section 34 of the RDB Act cannot apply because the Acts did not overlap". According to the High Court, there was no provision like Section 446 in the RDB Act laying down the procedure as to what should be done in case of the passing of a winding up order by the Company Court nor a provision for recovery of amounts due from a company against which a winding up petition was pending or was ordered or for distribution from a common pool. But, now section 19(19) introduced by the Ordinance 1/2000 clarifies and removes any such doubts in as much as it refers to execution and distribution of sale proceeds by the Tribunal/Recovery Officer. The observation that the RDB Act does not operate in the same field and hence, leave of the Company Court is necessary under Section 446(1), cannot therefore be accepted. We hold that the Delhi High Court's decision is not correctly decided.

We are also unable to agree with the decision of the Calcutta High Court in *UCO Bank* v. *Concast Products Ltd.*, (in liquidation) (1996) 2 Com. L.J. 449. In that case a suit which was filed in the High Court by the Bank against the company stood transferred to the Tribunal under the RDB Act by virtue of section 31. Later on, the Company went into liquidation. The High Court held that in view of section 446 of the Companies Act, 1956, the suit had to be transferred back to the Company Court. This was done on the basis that the Companies Act applied even to proceedings before the Tribunal. This is not correct.

In our view, the decision of the Kerala High Court in *ICICI* v. *Vanjinad Leathers Ltd.*, AIR (1997) Ker. 273 relied upon for the appellant, is correctly decided. It was pointed out in that case that the records leading to the decision in *Srinivas Agencies and batch* [1996] 4 SCC 165 show that suits filed by Banks and financial institutions were pending in civil Courts and a winding up petition was filed later on in the High Court. The Kerala High Court held that the suits would stand transferred to the Debt Recovery Tribunal under section 31 of the RDB Act automatically and that section 446 of the Companies Act, 1956 could not be invoked in view of section 34 of the RDB Act. The RDB Act was a special law overriding another special law, the Companies Act. Leave of the Company Court under Section 446(1) was not necessary nor could the suit be transferred to the Company Court under Section 446(2).

A Similarly, we are of the view that the Patna High Court's decision in *Bihar Sales Pvt. Ltd. In re* (Vol.96) Comp. Cases. 40 is also correctly decided. There the decision of this Court in *Srinivas Agencies* was not accepted as laying down anything specific about the RDB Act and as to its interpretation. The decision of the Kerala High Court in *Vanjinad Leathers Ltd.* was
B followed.

The decision of the Rajasthan High Court in *Rajasthan Finance Corporation* v. *Official Liquidator*, (1963) 2 Comp. LJ 309 relied upon for the respondent cannot be of any help. That was a case which concerned itself with the State Finance Corporation Act, 1951. Section 537 of the Companies
C Act was applied and it was held that the Companies Act did not yield to the provisions of the State Finance Corporation Act, 1951. There was no provision in the State Finance Corporation Act, 1951 like section 34 which gave overriding effect to its provisions.

For the aforesaid reasons, we hold that at the stage of *adjudication*
D 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,
E 1956. In respect of the monies realised 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
F 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 continuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the appellant and
G against the respondents.

Point 4 and 5:

We have already held that the adjudication, execution and distribution of the sale-proceeds and working out priorities as between Banking and
H financial institutions and other creditors of the defendant company - so far as

the monies realised under the RDB Act are concerned - has to be done only by the Tribunal and not by the Company Court. The next question is as to the manner of distribution of these monies between the Banks or financial institutions on the one hand and the other creditors, secured or unsecured of the company under winding up. This question depends upon the effect of section 19(19) of the RDB Act as introduced by Ordinance 1/2000.

Before we go to section 19(19), we would like to dispose of another minor point raised by the respondent on the basis of section 19(2). That sub-section permits other banks or financial institutions to be impleaded in the main application filed under section 19(1) by a Bank or a financial institution. Question is whether Canara Bank can be impleaded in the main application under section 19 at this stage. We may point out that section 19(2) permits such impleadment "at any stage of the proceedings *before a final order is passed*". The final order here is the order of adjudication under section 19(1) as to whether the debt is due or not. In the present case, the adjudication order in respect of the debt has already been made long back and therefore section 19(2) does not permit any impleadment in the main application under section 19(1) at this stage. Hence, this relief for impleadment cannot be granted.

We shall now go into the effect of section 19(19) of the Ordinance 1/2000.

(a) Case where defendant company is not ordered to be wound up:

Where the defendant company is a company against which no winding up order is passed, the Company, in our view, is like any other defendant and if in such a situation a question of priority arises before the Tribunal, in respect of any monies realised 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. & Others*, [1999] 4 SCC 710 and

Allahabad Bank, Calcutta v. *Radha Krishna Maity & Others*, [1999] 6 SCC 755.

But under section 73 CPC, sharing in the sale proceeds (here, sale proceeds realised 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 CPC 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 CPC. Hence no relief can be granted on the basis of the said principles.

(b) Position of secured creditors standing outside winding up and also not so standing out:

The discussion here is confined to sharing the realisations made by the Recovery Officer under the RDB Act where winding up proceedings are pending in the Company Court against the defendant company.

This is the crucial aspect of the case upon which detailed arguments have been advanced by both sides. Learned counsel for the respondent contended that other secured creditors of the defendant company could seek or share in the realisations made by the Recovery Officer. Counsel relied upon the following words in section 19(19) "to be distributed among its secured creditors" and contended that though the said words are followed by the words "in accordance with the provisions of section 529A of the Companies Act, 1956", it is implicit that out of the sale proceeds secured creditors are paid first. Counsel submitted that, in any event, even if section 529A is attracted, the provisions of section 529(1) and (2) are also attracted by implication. The sale proceeds realised by the appellant Bank will be subject to "claims" of the Canara Bank as a secured creditor, even if it has not obtained a decree or adjudication from the Tribunal. The mere existence of the security is sufficient. And as a secured creditor the Canara Bank will have priority over the appellant Bank which has no security in its favour.

On the other hand, learned Attorney General has contended that in respect of the monies realised under the RDB Act, the only restriction on the distribution of dividends is the one specified in section 529A, so far as

secured creditors are concerned. The secured creditor has no other general right of preference. Sections 529(1) and (2) are also not attracted. Workmen's dues are entitled to highest priority even as against other secured creditors. Any other secured creditor like the respondent Bank has only a limited claim of priority to the extent stated in section 529A and that too in case the said secured creditor has opted to stand outside the winding up proceedings and realised his dues on the security as per the terms of contract or by private sale as might have been permissible in law. It is argued that in that event, the secured creditor has only the benefit given by sub-clause (b) of section 529A(1), namely, to the extent permitted by clause (c) of the proviso to section 529(1). Reading the definition of 'workmen's portion' in section 529(3)(c) read with the illustration given in that clause, a secured creditor who stands outside the winding up, in case he loses any part of that security towards 'workmen's dues' at the instance of the liquidator under clause (a), (b) of the proviso to section 529(1), then to that extent only he has priority over all other creditors under section 529A(1)(b). His priority is confined again to amounts not realised by him or the 'workmens portion' above referred to, *whichever is less.*

In reply to this submission, learned counsel for the respondent has submitted that the words in the first part of the clause (c) to proviso to section 529(1) "so much of the debt due to such secured creditor as could not be realised by him" meant the entire unrealised amounts of the secured creditor and not merely the "workmen's portion".

To understand the submission, it is necessary to refer to section 529A as well as section 529, to the extent relevant for this discussion. They read as follows:

> "*Section 529-A: Overriding preferential payments* - (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company -
>
> (a) workmen's dues; and
>
> (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

"*S.529. Application of insolvency rules in winding up of insolvent companies* -- (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to --

(a) debts provable;

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

provided that the *security of every secured creditor* shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the *workmen's portion* therein, and, where a secured creditor, instead of *relinquishing his security* and *proving his debt*, opts to realise his security--

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(c) *so much of the debt* due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, *shall rank pari passu* with the *workmen's dues* for the purposes of section 529A.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section.

(3)(a)..... A

(b).....

(c) "*workmen's portion*", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's B dues bears to the aggregate of-

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors. C

Illustration — The value of the security of a secured creditor of a company is Rs.1,00,000. The total amount of the workmen's dues is Rs.1,00,000. The amount of the debts due from the company to its secured creditors is Rs.3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors D is Rs.4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs.25,000."

The respondent's contention that section 19(19) gives priority to all "secured creditors" to share in the sale proceeds before the Tribunal/Recovery Officer cannot, in our opinion, be accepted. The said words are qualified by E the words "in accordance with the provision of section 529A". Hence, it is necessary to identify the above limited class of secured creditors who have priority over all others in accordance with section 529A.

Secured creditors fall under two categories. Those who desire to go F before the Company Court and those who like to stand outside the winding up.

The first category of secured creditors mentioned above are those who go before the Company Court for dividend by relinquishing their security in accordance with the insolvency rules mentioned in section 529. The insol- G vency rules are those contained in sections 45 to 50 of the Provincial Insolvency Act. Section 47(2) of that Act states that a secured creditor who wishes to come before the official liquidator has to prove his debt and he can prove his debt only if he relinquishes his security for the benefit of the general body of creditors. In that event, he will rank with the unsecured creditors and H

A has to take his dividend as provided in section 529(2). Till today, the Canara Bank has not made it clear whether it wants to come under this category.

The second class of secured creditors referred to above are those who come under section 529A(1)(b) read with proviso (c) to section 529(1). These are those who opt to stand outside the winding up to realise their security. Inasmuch as section 19(19) permits distribution to secured creditors only in accordance with section 529A, the said category is the one consisting of creditors who stand outside the winding up. These secured creditors in certain circumstances can come before the Company Court (here the Tribunal)and claim priority over all other creditors for release of amounts out of the other monies lying in the Company Court (here, the Tribunal). This limited priority is declared in section 529A(1) but it is restricted only to the extent specified in clause (b) of section 529A(1). The said provision refers to sub-clause (c) of the proviso to section 529(1) and it is necessary to understand the scope of the said provision.

Under sub-clause (c) of the proviso to section 529(1), the priority of the secured creditor who stands outside the winding up is confined to the "workmen's portion" as defined in section 529(3)(c). 'Workmen's portion' means the amount which bears to the value of the security, the same proportion which the amount of the workmen's dues bears to the aggregate of (a) workmen's dues and (b) the amounts of the debts due to all the creditors. This is explained in the illustration under the said provision. If the workmen's dues in all are (say) Rs.1 lakh and the debt due to all secured creditors is Rs.3 lakhs, the total amount due to all of them comes to Rs.4 lakhs. Therefore, the workmen's share come to 25%(Rs.1 lakh out of Rs. 4 lakhs). Now if the value of the security of a secured creditor (like Canara Bank) is Rs.1 lakh, the 'workmen's portion' will be Rs. 25,000 which is the pro-rata amount to be shared by the said secured creditor. By virtue of section 529A(1)(b) his priority over all others out of other monies available in the Tribunal is restricted to Rs.25,000 only.

Reliance is placed by the learned counsel for the respondent on the words "so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso" occurring in the first part of the said proviso (c) to section 529(1).

Learned Attorney General on the other hand submitted that the first part

of clause (c) of the proviso to section 529(1) is to be read along with the words "or the amount of the workmen's portion in his security, *whichever is less*". In other words, the priority of the secured creditor is only to the extent that any part of the said security is lost in favour of the workmen consequent to demands made by the liquidator under clause (a), (b) or the said proviso to section 529(1). No such situation has arisen so far. It is contended that where a secured creditor keeps himself outside as stated in the proviso to section 529(1) and seeks to recover his dues outside the Company Court, if he loses part of his security towards workmen's dues, he gets reimbursed to that extent as a secured creditor, with an overriding priority under section 529A (1)(b). He gets priority over all other creditors before the Tribunal, to be compensated for this loss out of the monies that may have been realised at the instance of other creditors before the Tribunal. It is pointed out that Canara Bank has neither realised any amount outside winding up nor has it lost any part of its security towards workmen's dues. In our view, this contention of the learned Attorney General is well founded and is entitled to be accepted.

In our opinion, the words "so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of the proviso" obviously mean the amount taken away from the private realisation of the secured creditor by the liquidator by way of enforcing the charge for workmen's dues under clause (c) of the proviso to section 529(1) "rateably" against each secured creditor. To that extent, the secured creditor - who has stood outside the winding up and who has lost a part of the monies otherwise covered by security - can come before the Tribunal to reimburse himself from out of other monies available in the Tribunal, claiming priority over all creditors, by virtue of section 529A(1)(b).

This can be exemplified by three more examples. (i) Let us assume that the total amount due to a secured creditor is Rs.90,000 and he has a security valued at Rs.1 lakh. This security is sufficient to cover his entire dues. Let us assume that the total amount due to all secured creditors is Rs.3 lakhs and workmen's dues are Rs.1 lakh, as in the illustration given under section 529A(3). This creditor can be made to part pro-rata upto with Rs.25,000 out of his security of one lakh towards the workmen's dues. This is the "workmen's portion". That still leaves with him Rs.75,000 of his security but that is not sufficient to meet his total dues of Rs.90,000. Still Rs.15,000 of his dues have to be cleared. By virtue of section 529A (1)(b), he can claim this sum

A of Rs.15,000 from monies realised by other creditors in the Tribunal on the basis of section 529A (1)(b) claiming overriding priority as against all other creditors. This is because the above amount is less than the 'workmen's dues of Rs.25,000 taken away from the realisation out of his security, as prescribed in clause (c) of the proviso to section 529(1). That is what is meant by the B words "whichever is less".

(ii) Take a case where the total dues of a secured creditor are only Rs.65,000 and his security is Rs. 1 lakh in value. The other facts being the same as in the illustration to section 529(3), the secured creditor loses his security rateably in a sum of Rs.25,000. The balance of the available security C is Rs.75,000 and that is sufficient to meet his entire debt of Rs.65,000. He has no occasion to claim any extra amount as a secured creditor under section 529A(1)(b). This situation presents no difficulty.

(iii) Take yet another case where the secured creditor has a security valued at Rs.1 lakh, but his total dues are Rs.1.10 lakhs. In other words, Rs. D 10,000 are not secured. Other facts are as in illustration to section 529(3). He is made to part with Rs.25,000 towards workmen's dues rateably. He has Rs.75,000 available from his security but he has to meet Rs.1,10,000 and that leaves a balance of Rs.35,000 (Rs.1,10,000 - Rs.75,000) to be recovered. He can claim overriding priority only upto Rs.25,000 as a secured creditor, under E clause (c) to proviso to section 529(1). The priority is restricted to Rs.35,000 only because as between Rs.25,000 and Rs.35,000, the amount of Rs.25,000 answers the description *whichever is less*. It will be noticed that, after claiming Rs. 25,000 as a secured creditor out of the realisation of other creditors before the Tribunal, he has still dues upto Rs.10,000 which remain F unsecured. That was also the unsecured amount to start with initially.

The above examples show that the secured creditor who stands outside the winding up and whose claims are restricted to section 529A read with the clause (c) of proviso to section 529(1), does not in the ultimate analysis stand to lose any part of his security merely because the "workmen's portion" is G taken away from his security. Whatever he loses towards "workmen's portion' out of his security, can be claimed by him as a secured amount with priority over such creditors out of other realisations made by other creditors whose monies are lying in the Tribunal. At the same time, his position would not improve from what it was originally and his priority would not extend to his H entire unrealised sums which might be in excess of his security.

But the point here is that the occasion for such a claim by a secured creditor (here the Canara Bank) against realisations by other creditors (like the Allahabad Bank) under section 529A read with proviso (c) to section 529(1) can arise before the Tribunal only if the Canara Bank has stood outside winding up and realised amounts and if it shows that out of the amounts privately realised by it, some portion has been rateably taken away by the liquidator under sub-clauses (a) and (b) of the proviso to section 529(1). It is only then that it can claim that it is to be re-imbursed at the same level as a secured creditor with priority over the realisations of other creditors lying in the Tribunal. None of these conditions is satisfied by Canara Bank. Thus, Canara Bank does not belong to the class of secured creditors covered by section 529A(1)(b).

Therefore, the result is that the Canara Bank cannot rely on the words in section 19(19) vis, "to be distributed among its secured creditors" for claiming any amount lying in the Tribunal towards its security nor can it claim priority as against the Allahabad Bank.

If none of the conditions required for applying section 19(19) and section 529A is, therefore, satisfied, then the claim of Canara Bank before the Tribunal can only be on the basis of principles underlying section 73 CPC. There being no decree in its favour from any court or from any Tribunal, and the other conditions of section 73 not having been satisfied, no dividend can be claimed out of monies realised at the instance of the Allahabad Bank, even if the Allahabad Bank is an unsecured creditor.

We hold accordingly on points 4 and 5.

Point 6 :

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.

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

A 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 & Others*, AIR (1983) SC 75 there is an obligation resting on this Court to see B 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.

We, therefore, direct the Registry of the Supreme Court to make over C 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 D released towards the workmen's 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 E 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.

V.M. Appeal allowed.