

TEXTILE LABOUR ASSOCIATION AND ANR.

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v.

THE OFFICIAL LIQUIDATOR AND ANR.

APRIL 12, 2004

[S. RAJENDRA BABU, DR. AR. LAKSHMANAN AND
G.P. MATHUR, JJ.]

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Companies Act, 1956:

Ss. 529, 529-A and 530—Company under liquidation—Priority of claims—Held, s.529-A will override all claims of other creditors even where a decree has been passed by a court—Purpose of s.529-A is to ensure that workers should not be deprived of their legitimate claims and assets of the Company would remain charged for payment for workers' dues— Such charge will be pari passu with the charge of secured creditors and have to be treated accordingly—Constitution of India, 1950—Article 142.

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In the civil appeals disposed of by the Supreme Court, the official liquidator filed an application seeking permission to sell immovable properties of the Company under liquidation and to disburse the sale proceeds. In the said application neither any of the Workers' Union nor the workmen were impleaded as parties. The Court by its order dated 17.10.1997 directed that out of the assets of the company full dues of the ONGC would be paid first and payment to any other creditor would be considered thereafter. When the petitioner-Labour Unions made claim for outstanding dues of the workmen of the company, the Official Liquidator communicated to them that in view of Supreme Court's order dated 17.10.1997, he was unable to make payment to anyone except the ONGC. Aggrieved, the Labour Unions filed the present petitions seeking review of the order dated 17.10.1997.

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Allowing the petitions, the Court

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HELD: 1.1. Section 529A of the Companies Act, 1956 will override all claims of other creditors even where a decree has been passed by a court. Though the order of this Court in respect of which review is sought for may be read as having been made pursuant to exercise of powers under

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A Article 142 of the Constitution, still the same will have to be read in the light of the decision of this Court in Supreme Court Bar Association's case*. [1166-B-E]

**Supreme Court Bar Association v. Union of India and Anr.*, [1998] 4 SCC 409 and *UCO Bank v. Official Liquidator, High Court, Bombay and Anr.*, [1994] 5 SCC 1, relied on.

B *Industrial Credit and Investment Corporation of India Ltd. v. Srinivas Agencies and Ors.*, [1996] 4 SCC 165; *Allahabad Bank v. Canara Bank and Anr.*, [2000] 4 SCC 406 and *A.P. State Financial Corporation v. Official Liquidator*, [2000] 7 SCC 291, cited.

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 1.2. The effect of Sections 529 and 529A of the Companies Act is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under Section 529A to the extent of the workmen's dues. The purpose of Section 529A is to ensure that the workmen should not be deprived of their legitimate claims in the event of liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues. Under this Section dues of workers and debts due to the secured creditors are to be treated *pari passu* and have to be treated as prior to all other dues. There is no other statutory provision overriding the claim of the secured creditors except Section 529A. This Section overrides preferential claims under Section 530 also. Therefore, claims, if any, of ONGC will have to be worked out in accordance with Sections 529 and 529A as well. Order made by this Court on 17.10.1997 will have to be read subject to provisions of Sections 529 and 529A of the Companies Act. [1166-C-F]

CIVIL APPELLATE JURISDICTION : Review Petition Nos. 1193-1203 of 2001.

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G I.A. Nos. 168-178 of 1997

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Civil Appeal Nos. 8530-40 of 1983.

From the Judgment and Order dated 30.7.83 of the Gujarat High Court in S.C.A. Nos. 883/79 with S.C.A. Nos. 913/79, 1897/81, 2316, 2384, 2445, H 2470, 2977, 4194, 4520 and 2542 of 1982.

Raju Ramachandran, Additional Solicitor General, Mahendra Anand, A.K. Ganguli, R.F. Nariman, P. Krishnamurthy, Collin Gonsalvas, Rajan Narain, Ms. Puja Sharma, Siddharth Datta, Ms. Louleen Bhullar, K.R. Sasiprabhu, Shahid Rizvi, Manish Garg, Ms. G. Indira, M.K.S. Menon, Rakesh K. Sharma, Ms. Manik Karanjawala, Arun K. Sharma, Ms. Vandana Sharma, V. Pal Singh, Ms. Pratibha Jain, Sushil Kumar Jain, Vinay Garg, Shri Narain, Sandeep Narain, Ms. Anjali Jha, Ms. B. Vijayalakshmi Menon, A. Deb Kumar, Sudarsh Menon, B.S. Sharma, K.V. Mohan, P.H. Parekh, Ms. Ranjeeta Rohatgi, Pramod, B. Agarwala, Ms. Aparna Bhat and Ms. P. Ramesh Kumar for the appearing parties. A B

The Judgment of the Court was delivered by C

RAJENDRA BABU, J. This Court in a set of appeals arising out of certain orders made in a batch of writ petitions by a Division Bench of High Court of Gujarat in *Association of Natural Gas Consuming Industries and Ors. v. Oil and Natural Gas Commission and Anr.*, (1983) 24 (2) Gujarat Law Reports 1437, examined various aspects of the matter in relation to price fixation and upheld the prices fixed by the appellant and allowed the appeals. However, during the pendency of the appeals in this Court, the interim orders granted by the High Court continued to be in operation and the respondents received gas at Rs.1000 per 1000M3. D

In I.A. No. 168-178 of 1997 filed by the Official Liquidator appointed in respect of Ambica Mills Ltd. in Civil Appeal No. 8530-40 of 1983, this Court on 17.10.1997 held as under :- E

“All that is necessary to be said is that out of the assets of the company under liquidation, the dues of ONGC Ltd., are required to be paid off first and the question of making any payment to any other creditor can arise only out of the surplus, if any, remaining after the full dues of the ONGC Ltd. have been paid off. The High Court is, therefore, to proceed with the matter in this manner. I.As stand disposed of.” F

The petitioners in these review petitions contend that an application had been made before the High Court of Gujarat in Company Application No. 143 of 1997 in Company Petition No. 121 in which the High Court directed that the Official Liquidator should make an application before this Court after impleading the company concerned; that pursuant thereto, he filed an application No. 168-178 seeking for permission to sell the immovable properties of the Company and to disburse the sale proceeds in accordance G H

A with law; that to this application none of the Unions of the workmen or other workmen were impleaded as respondents nor did the Official Liquidator in course of his application raised any pleading regarding the priority of disbursement of sale proceeds or application of Sections 529 and 529-A of the Companies Act; that Petitioner No. 1 before us is a labour Association representing the workmen of Shri Ambica Mills Ltd. and petitioner No. 2 is labour Union representing the workmen of Ambica Tubes, a division of Shri Ambica Mills Ltd.; that the workmen of these two establishments have not received wages and employment benefits amounting to more than Rs. 40 crores by their employer Shri Ambica Mills; that on 15.4.1987 this Court had directed ONGC to supply gas to its consumers subject to the undertaking that they would not charge, encumber or alienate any of their immovable assets without the leave of this Court; that Company Petition No. 66 of 1988 was filed for winding up of Shri Ambica Mills Ltd.; that, however, during the pendency of this petition, a reference under the Sick Industrial Companies (Special Provisions) Act, 1985 was filed before the Board for Industrial and Financial Reconstruction ('BIFR' for short); that BIFR forwarded its opinion to this Court under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 to the effect that it was just and equitable that the company should be wound up; that the opinion of BIFR was registered as Company Petition No. 121 of 1995 and winding up order came to be passed on 17.1.1997 on Company Petition No. 66 of 1998 with Petition No. 121 of 1995 and others. The petitioners made claim of the outstanding dues of the workmen of Shri Ambica Mills and the Official Liquidator in this regard communicated to the petitioners that he does not have any funds at his disposal and even if the amounts are realised out of sale of the assets he would not be in a position to make any payment to anybody including the workmen, except ONGC in view of the order made by this Court in I.A. No. 168-178 in C.A. No. 8530-40 of 1983. Similar letter was also sent to Vatva Industries Mazdoor Sabha on 12.8.1989. The Textile Labour Association received that letter on 6.9.1999. It is only on coming to know from the Official Liquidator that the workmen who are members of the petitioners' association would not be able to get their dues, they sought for intervention in the matter.

G The basic submission made before us is that the review petitioners were not parties to the proceedings before this Court and on the passing of the winding up order on 17.1.1997 the provisions of the Companies Act will come into force and will be effective in the light of the decisions of this Court in *UCO Bank v. Official Liquidator, High Court, Bombay and Anr.*, [1994] 5 SCC 1; *Industrial Credit and Investment Corporation of India Ltd.*

v. *Srinivas Agencies and Ors.*, [1996] 4 SCC 165; *Allahabad Bank v. Canara Bank and Anr.*, [2000] 4 SCC 406 and *A.P. State Financial Corporation v. Official Liquidator*, [2000] 7 SCC 291. A

Shri Raju Ramachandran, learned Additional Solicitor General appearing for ONGC in these review petitions, submitted that there is inordinate delay on the part of the review petitioners in approaching this Court and, therefore, this Court should recall its order condoning the delay in filing the review petitions. In this context, it is contended that the review petitioners were aware of the proceedings pending before this Court in the company proceedings in which they sought for their participation and the High Court had directed them to take appropriate steps in this Court and they did not do so till October, 1999 and they filed review application only in August 2001; that, therefore, these review petitions are not filed with due diligence. B C

It is clear from the records that the order made by the High Court of Gujarat in Company Application No. 193/95 had been filed by Vatva Industries Mazdoor Sabha. The Textile Association were not made a party in these proceedings. No notice was given to them. The Textile Association is a separate union of workmen and had no knowledge of the proceedings with the High Court of Gujarat in relation to Shri Ambica Mills filed by Vatva Industries Mazdoor Sabha. The participation of the Vatva Industries Mazdoor Sabha in the High Court of Gujarat was only for the purpose of disbursement of amounts realised from the sale of the finished products and for payment of wages since September 1994 and bonus for 1994-95. It is in these circumstances, it is stated that a direction had been issued by the High Court of Gujarat to the Official Liquidator to make an application for impleading necessary parties and to furnishing copies to them and the Official Liquidator did not implead any of these parties. Therefore, no negligence can be attributed to the writ petitioners in these cases and, therefore, the order made condoning the delay does not require any reconsideration. D E F

It is next contended that inasmuch as mandamus had been issued by this Court as to priority of claims in the matter of payment that mandamus will prevail over any law. This Court examined the plenary powers of this Court arising under Article 142 of the Constitution of India in Supreme Court *Bar Association v. Union of India and Anr.*, [1998] 4 SCC 409 and held that 'this Court in exercise of its power under Article 142 cannot ignore any substantive statutory provision dealing with the subject and it is only a residuary power, supplementary and complementary to the powers specifically conferred H

- A on this Court by statutes exercisable to do complete justice between the parties wherever it is just and equitable to do so. It is intended to prevent any obstruction to the stream of justice'. Though the order of this Court in respect of which review is sought for may be read as having been made pursuant to exercise of powers under Article 142 of the Constitution, still the same will have to be read in the light of the decision of this Court in *Supreme Court Bar Association v. Union of India and Anr.* (supra).
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- The effect of Sections 529 and 529A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under Section 529A to the extent of the workmen dues. The purpose of Section 529A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be *pari passu* with the charge of the secured creditors. There is no other statutory provision overriding the claim of the secured creditors except Section 529A. This Section overrides preferential claims under Section 530 also. Under Section 529A the dues of the workers and debts due to the secured creditors are to be treated *pari passu* and have to be treated as prior to all other dues.
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- E Therefore, the law is clear on the matter as held in UCO Bank's case that Section 529A will override all other claims of other creditors even where a decree has been passed by a court.

- F Therefore, claims, if any, of ONGC will have to be worked out in accordance with Sections 529 and 529A of the Companies Act as well. The contention advanced on behalf of ONGC by Shri Raju Ramchandran that if a mandamus had been issued, it will prevail over any law is not tenable and is rejected.

- G In the result, we make it clear that order made by this Court on 17.10.1997 in I.A.No. 168-178/1997 in Civil Appeal No. 8530-40/1983 will have to be read subject to provisions of Sections 529 and 529A of the Companies Act.

The review petitions stand allowed in the manner stated above.