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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4538 OF 2015

Ahmednagar Zilla Shramik Sanghatana, PETITIONER
A trade Union registered under thereafter
Trade Union Act, 1926 (Registration No. NSK/A-175)
Shramik Tilak Road, Ahmednagar
District Ahmednagar
Through its General Secretary,
Shri. Anandrao Pandurang Waykar
Age – 49 years, Occ – Social service
R/o Shramik Tilak Road, Ahmednagar
District - Ahmednagar

VERSUS

1. Ahmednagar Municipal Corporation RESPONDENTS
Ahmednagar, District – Ahmednagar
Through Municipal Commissioner
2. State Bank of India, Mumbai
Having its Branch Office at
Main Branch, Ahmednagar
Through its Branch Manager
3. M/s Modern Foundry and Machine Works Ltd.,
Pune Road, Kedgaon, Near Railway Station,
Ahmednagar, District – Ahmednagar
4. Dinesh Hirachand Munot
Age – Major, Occ – Business
R/o C/o Z. F. Stearing (India) Ltd.,
Vadhu (Budruk) Tq-Shirur
District – Pune
5. Jitendra Hirachand Munot
Age – Major, Occ – Business
R/o C/o Z. F. Stearing (India) Ltd.,
Vadhu (Budruk) Tq-Shirur
District – Pune
6. Shankar Nahhari Pund

Age – 67 years, Occ – Nil
R/o At Post Arangaon
Talula and District – Ahmednagar

7. Sakharam Maruti Wavhal
Age – 66 years, occ – Nil
R/o Kedgaon Mohini Nagar,
Ahmednagar, Taluka & District – Ahmednagar
8. Shaikh Yasin Shaikhj Lal
Age – 78 years, Occ – Nil
R/o Shahunagar, Khedgaon
Taluka and District – Ahmednagar
9. Shrawan Sakharam Gaikwad
Age – 58 years, Occ – Nil
R/o At Post Chas, Ahmednagar
Taluka and District – Ahmednagar
10. Bhausahab Vitthal Bhagat
Age – 66 years, Occ – Nil
R/o Baburdi, Ghumat Ahmednagar
Taluka and District – Ahmednagar
11. Sahebrao Dam Karle
Age – 61 years, Occ – Nil
R/o At Post Chas, Ahmednagar
Taluka and District – Ahmednagar

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Mr. Avishkar S. Shelke, Advocate for the petitioner
Mr. V. S. Bedre, Advocate for respondent No. 1
Mr. P. B. Paithankar, Advocate for respondent No. 2

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**[CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.]**

DATE : 1st APRIL, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.

2. Facts, leading up to present petition, would be succinctly referred to in order to have proper appreciation of the matter.

3. Respondent No. 3 company had declared lockout around October, 1996 while strength of workmen in employment had been about 147. The lockout continued over a long period of time constraining majority of workmen to resign to the circumstances ending up in collection by them of their gratuity and other amounts due.

4. It appears that case of respondent No. 3 had been referred to Board of Industrial Finance and Reconstruction (BIFR) under Sick Industrial Companies Act and BIFR had recommended winding up of the company and accordingly, order dated 13th July, 2001 had been passed by High Court. Care of thirty one employees, who continued to be on the roll of the company was not being taken. They had approached labour court at Ahmednagar under various proceedings in application (IDA) No. 12 of 2001 to 40 of 2001 under section 33 C (2) of the Industrial Disputes Act, 1947. Their claims were allowed by labour court under judgment and order dated 6th August, 2005. Pursuant to the same, on 18th August, 2005, Assistant Commissioner of Labour, Ahmednagar had issued a recovery certificate for an amount of Rs.34,72,924/-. In yet another application bearing

IDA No. 4 of 2004, claim of workmen to the tune of Rs.26,98,200/- had been allowed by the labour court, Ahmednagar on 18th March, 2006. Judgment of the labour court got confirmed under order of high court dated 18th February, 2008.

5. While these events were taking place on labour and workmen side , it appears that respondent No. 2 - bank had moved Debts Recovery Tribunal, Aurangabad in original application No. 94 of 2002 for recovery of its secured dues. Said application had been granted by the tribunal in November, 2003. With reference to the same, recovery certificate had been issued in December, 2003 in favour the bank for recovery of amount to the tune of Rs.1,93,08,973.79. Accordingly, execution proceedings were initiated by respondent No. 2 bank bearing RP No. 119 of 2003. In said proceedings, notice for public auction of properties of respondent No. 3 had been published, specifically referring to that *"From the balance amount if left after satisfaction of amount as per Recovery Certificate, the dues on account of MSEB, Corporation, Workers claim etc. have to be paid if the amount is available"*. This was around March, 2005. Properties of the debtor had been put on sale in April, 2005. Highest bid offered had been of Rs. 3,27,00,000/- and purchaser had deposited entire amount with the debts

recovery tribunal and accordingly the sale had been confirmed in May, 2005. From the same, after payment of amount of decree holder bank, towards satisfaction of the dues, a sum of Rs.71,27,000/- had remained surplus in balance.

6. During this process, an attempt had been made on behalf of the petitioner to stall proceedings and operation of order passed by the debts recovery tribunal in November, 2005. However, the company court had ruled that it would have no jurisdiction over the powers exercised by debts recovery tribunal and had thus turned down request of the petitioner.

7. Eventually, petitioner had appeared before the recovery officer of debts recovery tribunal at Aurangabad by filing objection bearing Exhibit-69 in RP No. 119 of 2003, pursuant to section 19 (19) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, pointing out that an amount to the tune of Rs.1.5 crore towards dues of workmen and requesting allocation / apportionment according to decisions on the claims of the workmen by competent court.

8. As referred to above, labour court had allowed the claims of the workmen in applications bearing (IDA) No. 12 of 2001 to 40 of 2001 and recovery certificate had been issued by Assistant

Commissioner of Labour. Those were placed on record before recovery officer under application Exhibit-117 dated 26th August, 2005.

9. It appears that around middle of June, 2005, municipal corporation, Ahmednagar had filed application Exhibit-106 in RP No. 119 of 2003 staking claim for an amount of Rs. 43,31,063/- towards arrears of corporation tax. Similar claim under applications Exhibits-109, 112 and 116 had been made by the corporation. However, those were not served on the petitioner.

10. Under order dated 19th October, 2005, recovery officer, debts recovery tribunal had allowed application dated 26th February, 2005 filed by the municipal corporation purporting to reject other applications. It is the claim of the petitioner that rejection of their application is cryptic and without addressing the same on merits.

11. The petitioner, in the circumstances, had preferred Appeal No. 19 of 2005 before Presiding Officer, Debts Recovery Tribunal, Aurangabad. Said appeal came to be allowed under order dated 10th November, 2006 setting aside order dated 19th October, 2005 passed by the recovery officer and directing the recovery officer to hear objections of the objectors and if satisfied, to refer

the file to presiding officer for issuing revised recovery certificate. Consequently, recovery officer had directed respondent No. 1 corporation to pay back amount of Rs.43,31,063, recovered by the corporation.

12. Respondent No. 1 corporation, purported to prefer appeal No. 26 of 2007 before Debts Recovery Appellate Tribunal at Mumbai. Chairperson of the debts recovery appellate tribunal, Mumbai under order dated 17th July, 2014 had purportedly allowed the appeal filed by respondent No. 1, restoring order dated 19th October, 2005 passed by recovery officer.

13. It is against this order, the petitioner is before this court in present writ petition.

14. Mr. Avishkar Shelke, learned advocate appearing on behalf of the petitioner, during the course of his submissions meticulously points out the events in their chronological order. He earnestly requests this court to consider that order dated 17th July, 2014 by debts recovery appellate tribunal, Mumbai, would not be said to be an order under which relevant aspects involved in the matter have been considered. He purports to draw attention to that only consideration which has weighed with the tribunal is that amount of the corporation's tax had been due for

over three and half years and the same had neither been disputed by the borrower nor by the bank. The question according to appellate tribunal, he submits, has been as to whether municipal corporation can file an application before debts recovery tribunal. He submits that the appellate tribunal purports to have considered Maharashtra Municipal Corporations Act and purports to have found that to recover local taxes from an assessee, corporation can simply take steps by selling building/land. While the property has been sold in public auction and the corporation is making a statutory claim, would be entitled to the amount. View of the presiding officer, debts recovery tribunal is considered not to be proper and that the view of the recovery officer to be correct. As such, the debts recovery appellate tribunal went on to restore the order passed by recovery officer, setting aside order passed by the debts recovery tribunal.

15. He submits that order passed by presiding officer, debts recovery tribunal, Aurangabad would show that it had properly considered the legal provisions governing the situation, particularly that sale proceeds of a debtor are to be distributed among creditors in accordance with provisions of section 529 A of the Companies Act, 1956 and since recovery certificate had

been issued disregarding the same, exercise of powers by the recovery officer would be in excess of delegation.

16. Mr. Shelke submits that situation would be covered by the priorities under section 529 A of the Companies Act, 1956 giving precedence to workmen's claims, and submits that claims by workmen were made and were pending even before recovery proceedings had been initiated by the bank before the debts recovery tribunal. He submits, impugned order has been cursorily passed and deserves to be set aside by granting application Exhibit-69 filed by the petitioner before recovery officer.

17. On the other hand, Mr. V. S. Bedre, learned advocate appearing on behalf of respondent No.1 – corporation submits that taxes dues of the corporation were in arrears and were pending for over a long period of time. Having regard to the provisions of Maharashtra Provincial Municipal Corporation Act, dues of the corporation have been given precedence and preferential charge over property. He submits that this has been aptly considered before two forums – recovery officer and debts recovery appellate tribunal. He submits that the issue as it would emerge from order dated 21st November, 2006 in writ petition

No. 2845 of 2006 passed at principal seat at Bombay with reference to section 212 and its effect along with sections 151 and 149 of the Maharashtra Municipal Corporations Act, 1949 have been dealt with and the matter was referred for consideration to division bench. It appears, eventually, writ petition No. 2845 of 2006 has been dismissed by division of this court on 4th August, 2017 for non prosecution. He submits that, while the corporation is having dues over property, in the sale proceeds of such property, corporation shall have priority for recovery of its dues. He further goes on to submit that it is not the case that petitioner was not heard. Petitioner has been heard. Its case has been considered and the matter has been decided. No error can be found in the orders passed by debts recovery appellate tribunal or for that matter recovery officer. He further submits that the balance amount remaining after satisfaction of corporation's dues can be available, subject of course to other claims.

18. Learned advocate for respondent No. 1 bank leaves it to the court to decide upon the matter in accordance with merits and law.

19. While this is the situation, learned advocate for the

petitioner has referred to catena of decisions of the Supreme Court finding that in the sale of assets of a debtor company in execution of recovery certificate a *pari passu* charge in favour of workmen gets created against the company, though not in liquidation at the time of sale, but goes into liquidation before sale proceeds are finally disbursed, referring to section 19 (19) of the Recovery of Debts Due to Banks and Financial Institutions Act. For said purpose he refers to a judgment in the case of *“Bank of Maharashtra V/s Pandurang Keshav Gorwadkar and others”* reported in *AIR 2013 SC 2036*. He also refers to a decision in the case of *“Axis Bank Limited V/s State of Maharashtra”* 2017 DGLS (Bom) 233 : 2017 (3) Bom. CR 456. He also refers to *“AI Champdany Industrial Limited V/s Official Liquidator and Another”* 2009 DGLS (SC) 262 : 2009 (4) SCC 486, to consider that municipal taxes dues are to be considered as personal liability and that municipal council is unsecured creditor and not preferential one. He further refers to *“Union Co-operative Bank V/s Official Liquidator, High Court Bombay”* reported in *1994 DGLS (SC) 1210 : 1994 (5) SCC 1*, wherein in paragraphs No. 5 and 7 it has been considered thus –

“ 5. THE proviso to Ss. (1 of Section 529 inserted by the Amending Act clearly provides that “the security of every secured creditor shall be deemed to the subject to a *pari passu* charge in favour of the workmen”. The effect of the proviso is to create, by statute, a charge *pari passu* in favour of the workmen on every

security available to the secured creditors of the employer company for recovery of their debts at the time when the amendment came into force. This expression is wide enough to apply to the security of every secured creditor which remained unrealised on the date of the amendment. The clear object of the amendment is that the legitimate dues of workers must rank pari passu with those of secured creditors and above even the dues of the government. This literal construction of the proviso is in consonance with, and promotes, the avowed object of the amendment made. On the contrary, the construction of the proviso suggested by the learned counsel for the appellant, apart from being in conflict with the plain language of the proviso also defeats the object of the legislation.

7. *A debt due to a secured creditor, when recovered by realisation of the security after commencement of the winding up proceedings, result in depletion of the assets in the hands of the Official Liquidator. This provision is intended to protect the interests of the workmen in proceedings for winding up. In view of the nature of workmens dues being similar to those of secured creditors, the purpose of this provision is to place the workmen on a par with the secured creditors and create a statutory charge in their favour on all available securities forming part of the assets of the company in liquidation so that the workmen also share the securities pari passu with the secured creditors. The workmen contribute to the growth of the capital and must get their legitimate share in the assets of the company when the situation arises for its closure and distribution of its assets first among the secured creditors due to winding up of the company. The aforesaid amendment made in the Act is a statutory recognition of this principle equating the legitimate dues of the workmen with the debts of the secured creditors of the company. To achieve this*

purpose, it is necessary that the amended provision must apply to all available securities which form part of the assets of the company in liquidation on the date of the amendment. The conclusion reached by the division bench of the High court is supported by this reason.”

20. Learned advocate Mr. Bedre, during the course of his submissions, has referred to a decision in the case of *“Municipal Corporation of Delhi V/s M/s Trigon Investment and Trading Company Private Limited and Another”* reported in *AIR 1996 SC 1579*. It appears that in said case the supreme court had been dealing with about obligation of a transferee or liability of a transferee to pay property taxes even for a period prior to transfer, which appears to have been referred to while referring the matter to division bench by learned single judge in writ petition No.2845 of 2006 at principal seat at Bombay.

21. Mr. Bedre has also referred to the judgment in the case of *“Ahmedabad Municipal Corporation V/s GTL Infrastructure Ltd” AIR 2017 SC 597*. It was a case in respect of levy of taxes on mobile towers and can hardly be said to be dealing with the situation involved in present matter. Learned advocate has also referred to *“Girnar Traders (3) V/s State of Maharashtra and others” (2011) 3 SCC 1* to claim priority of payment over workmen's payment, however, it does not appear that said matter as well deals with the situation as

involved in the present matter.

22. Gujrath high court, in the case of *“Ahmedabad Municipal Corporation V/s Saurashtra Paints Pvt Ltd.”* AIR 2002 Gujrath 221 referred to by the recovery officer in his order had not been dealing with such situation. On the other hand, it appears that it was examining obligation of purchaser in public auction in execution of decree by State Financial Corporation against owner / mortgagor having notice of the first charge of corporation in respect of building and land, holding that transferee is liable to pay property taxes.

23. It is discernible that the submissions with respect to recommendations of BIFR to high court for winding up of respondent No. 3 company have neither been controverted nor there is any dispute about that the workmen had raised their claims with the competent fori, before initiation of proceedings for recovery of dues by the secured creditor before debts recovery tribunal, Aurangabad. Debts recovery tribunal had decreed claim of the secured creditor and in execution of the same, from the sale proceeds of the properties of respondent No. 3, an amount of Rs.71,27,000/- had been in surplus. It was only after sale certificate had been issued and matter had been

placed for execution with recovery officer, upon notice, respondent No. 1 corporation had raised its claim. The workmen, it appears, have lodged their claims with the recovery officer debts recovery tribunal, after company court had expressed its inability to pass order in respect of decree by the debts recovery tribunal. Their claims, it appears, had been lodged before recovery officer, even prior to respondent No. 1 - Corporation had filed applications. Recovery officer, it appears, had been under an impression that claims of workmen had been rejected by high court while it emerges that it does not appear to be so. In the circumstances, there were various claims being raised in respect of balance amount lying in surplus.

24. Case of respondent No. 3 had already been referred to Boards of Industrial Finance and Reconstruction and in 2001 the BIFR had already recommended winding up of the company to high court. Even otherwise, auction notice refers to that dues of workmen are to be satisfied from the sale proceeds. Neither chronology of events nor legal position has at all been considered by the debts recovery appellate tribunal. The order by the appellate tribunal is vague and regardless of facts, circumstances and provisions of law. The order hardly answers relevant aspects involved.

25 Perusal of the order would reveal that neither the tribunal has appreciated the facts in proper perspective nor has considered legal provisions governing the field and has failed to appreciate prevailing legal position.

26. Section 19 (19) of the Recovery of Debts Due to Banks and Financial Institutions Act, reads, thus -

19. Application to the Tribunal.— (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction -

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of 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.

27. Section 529A of Companies Act, 1956 reads, thus-

“ 529A. (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”

28. Section 326 of the Companies Act, 2013 has been *pari*

materia with section 529A of erstwhile Companies Act, 1956, relevant extract thereof reads, thus-

“ 326. *Overriding preferential payments.- (1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:-*

(a) workmen's dues; and

(b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security (if payable under the law), whichever is less, pari passu with the workmen's dues:

Provided that in case of the winding up of a company, the sums referred to in sub-clauses (I) and (ii) of clause (b) of the explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due secured creditor), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions. ”

29. Coupled with aforesaid, the public auction notice refers to that after recovery of dues of secured creditor from the sale proceeds of properties of debtors, dues of various authorities

viz., MSEB, Corporation, workmen etc. would have to be satisfied.

30. The impugned order neither reflects upon either chronological factual order nor upon the legal provisions and their effect in the present proceedings or for that matter, even publication of auction notice of properties of respondents No. 3 to 5 and its effect and operation.

31. Taking overall view of the matter in the circumstances, it would be expedient and it would be appropriate that the presiding officer, debts recovery tribunal would take into account all the relevant aspects involved in the matter and grant proper revised certificate. This shall not affect already satisfied claim of the secured creditor.

32. Having regard to aforesaid, writ petition is allowed in terms of prayer clause "A". Appeal No.19 of 2005 filed by the petitioner against the order of recovery officer dated 19th October, 2005 is restored for consideration of the matter as referred to above. Rule is made absolute in aforesaid terms. Writ petition stands disposed of.

[R. G. AVACHAT]
JUDGE

drp/wp4538-15

[SUNIL P. DESHMUKH]
JUDGE