

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.2718 of 2011

and

M.P.No.1 of 2011

The Authorised Officer,
Indian Overseas Bank,
Regional Office,
Five Roads, Salem presented by
Assistant General Manager / Constituted Attorney ... Petitioner

..Vs..

- 1.The Employees' Provident Fund Organisation,
Sub-Regional Officer, S.J.Plaza,
Swarnapuri, Salem - 4.
- 2.The Assistant Provident Fund Commissioner,
& Recovery Officer,
The Employees' Provident Fund Organisation,
Sub-Regional Office, P.J.Plaza,
Swarnapuri, Salem - 4.
- 3.Uma Maheswari Mills Ltd.,
(Company in Liquidation) rep. By
The Official Liquidator,
1st Line Beach Road, Chennai - 600 001. ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order bearing No.TN/SLM/16681/Recovery/2011 dt.18/01/11 on the file of the respondents 1 & 2, quash the same.

For Petitioner	: Mr.F.B.Benjamin George
For Respondents	: Mr.R.Thirunavukarasu for R1 & R2 Mr.K.K.Senthilvelan for R3

O R D E R

The Writ on hand is filed to quash the order dated 18.01.2011, passed by the Regional Provident Fund Commissioner and Recovery Officer.

2. The Writ Petitioner is the Authorized Officer Attorney of Indian Overseas Bank. The Petitioner challenges the order of the 2nd Respondent declaring the Writ Petitioner as a "Deemed Defaulter" and directing the petitioner to remit a sum of Rs. 8,20,91,568/- on or before 2nd February, 2011.

3. The 3rd Respondent M/s. Uma Maheswari Mills Limited (Company Liquidation), availed various credit facilities and loans such as Open Cash Credit Limit, Term Loan, Purchase of Bills under letter of credit limit, etc., from the petitioner. The factory land and the building, entire stocks and part of plant and machinery belonging to the said Company have been mortgaged/hypothecated to the petitioner to secure the dues in the said loan accounts. The charges over the said secured assets have been duly registered with the Registrar of Companies.

4. The 3rd Respondent Company defaulted in repayment of the dues and consequently, the loan accounts become NPA. As on 01.10.2002, a total sum of Rs. 21,71,77,747/- was due from the said Company besides other charges. Thus, the petitioner bank invoked the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "SARFAESI Act"] and issued a demand notice on the company on 01.10.2002 calling upon to pay the said sum of Rs. 21,71,77,747/- together with interest from 01.10.2002 and other charges. The Company filed Writ Petition No. 32932 of 2003 challenging the said notice and the same was dismissed on 18.06.2004.

5. Meanwhile, the Company made a reference before the BIFR under Section 15(1) of the Sick Industrial Company (Special Provision) Act, 1985. The reference was taken on file in case No. 250 of 2002, and the Company was declared sick on 08.11.2002. One of the secured creditors, namely IDBI was appointed as the Operating Agency. After considering the case on merits, BIFR formed a prima facie opinion to wind up the Company U/s. 20(1) of SICA Act and vide order dated 22.09.2003 forwarded the opinion of the High Court of Madras for

further action. Pursuant to the opinion, the Company Court took the said opinion on file in CP No. 28 of 2004, served on the Writ Petitioner in the Company Petition.

6. The Company filed an appeal against the order dated 22.09.2003 before the Appellant Authority for industrial and financial reconstruction which was taken on file in Appeal No. 333 and 440 of 2003. The said appeals were dismissed as infructuous on 17.05.2004 and 26.07.2005 respectively.

7. The petitioners states that the properties of the Company in liquidation were brought for sale through Official Liquidator on 19.08.2008, 07.04.2010 etc. However, the said sale deed did not take place for one reason or other viz., order obtained by the promoters of the Company in liquidation on the false assurance of revival scheme, want of bidders etc.

8. As far as the other facts and circumstances enumerated in the Writ Petition are concerned those aspects with reference to the transactions of the Company with the bank loan are irrelevant and the present Writ Petition is filed challenging the Impugned Order dated 08.01.2011 passed by the Employees Provident Fund Organization.

9. Thus, this Court is not inclined to consider those facts, which all are not relevant to the Impugned Order and the loan transactions of the Petitioner Bank of the Company in liquidation. Thus, the Writ Petition confined in respect of the facts and circumstances aroused on account of passing of the Impugned Order by the Employees Provident Fund Organization in proceedings dated 18.01.2011.

10. The learned counsel appearing on behalf of the writ petitioner vehemently contended that the Hypothecation charge over the movable assets were created in favour of the writ petitioner. The said hypothecation was extended periodically on renewal and enhancement of loan. The last modification as per Registrar of the Company was on 08.10.1999. The Mortgage over the immovable properties were created in favour of the writ petitioner, which was lastly renewed on 08.10.1999. On 01.10.2002, the Demand Notice under Section 13(2) of the SARFAESI Act was issued for the recovery of Rs.21,71,77,747/-

together with interest @ 16.5% Per annum. In December 2002, the borrower M/s.Uma Maheswari Mills Ltd., (company in liquidation) made a reference to BIFR vide case No.250 of 2002. On 25.06.2003, BIFR permitted the petitioner to initiate legal proceedings including proceedings under SARFAESI Act. On 22.09.2003, the Borrower Company (company in liquidation) was ordered to be wound up. On 26.07.2005, the appeal filed by the borrower before AAIFR was dismissed as withdrawn. On 20.12.2006, in CP.No.173 of 2001, the borrower company by name Uma Maheswari Mills (company in liquidation) was ordered to be wound up. On 28.03.2007, the 1st respondent filed proof of debt, claiming statutory PF dues of Rs.3,20,31,251/- penal damages of Rs.2,99,18,816/- and penal interest of Rs.1,71,10,439/-. Thus, in total in to Rs.7,90,60,506/- for the period covering July 1998 to September 2006. Another affidavit of proof of debt was filed by the 1st respondent before the 3rd respondent, claiming statutory PF dues of Rs.16,32,879/-, penal damages of Rs.10,55,771/- and penal interest of Rs.3,42,412/-. Thus, totaling to Rs.30,31,062/- for the period covering October 2006 to March 2007. During the year 2007, IDBI, Shakthi Finance Corporation, Cholanandabalam DBS have filed company application bearing Nos.1810 of 2007, CA.No.2365 of 2007 etc., and obtained orders for the sale of various movable assets of the company in liquidation. The assets were sold and the aforesaid companies received the sale consideration. The 1st respondent did not make any claim against those financial institutions. On 08.07.2010, the immovable property belonging to the company in liquidation was attached by the 2nd respondent. On 02.09.2010, in CA.No.1312 of 2010, the Hon'ble High Court permitted the petitioner to sell the immovable property of the company in liquidation under SARFAESI Act. On 19.10.2010, the petitioner issued sale Notice for the sale of Immovable properties. On 26.11.2010, the immovable properties were sold for a sum of Rs.12.57 crores in favour of M/s.Rajsriya Auto motives. On 20.12.2010, Show cause notice was issued, why the petitioner shall not be declared as "Deemed Defaulter". On 21.12.2010, Demand notice under section 8 (F) of the EPF Act was issued by the 2nd respondent. On 03.01.2011, the 1st respondent issued notice under Sub Section 3 Section 8F EPF Act to the petitioner. On 06.01.2011, the petitioner sent a reply. On 18.01.2011, the impugned order was passed, holding the petitioner as "Deemed Defaulter". On 20.10.2012, the 1st respondent issued a notice under Section 8(b) to 8(e) of EPF & MP Act, calling upon the petitioner to pay a sum of Rs.8,20,91,568/-. On 26.03.2013, the company application bearing No.493 of 2011 filed by the 2nd respondent before the Company Court was dismissed, holding that the remedy of the 2nd respondent lies before the Debts Recovery Tribunal under SARFAESI Act and that to after the disposal of W.P.No.2718 of 2011. On 22.02.2017, OSA.No.369 of 2013 and OSA.No.370 of 2013 were dismissed, upholding the order of the learned Single Judge.

11. The learned counsel mainly contended that Whether the writ petitioner Bank can be declared as "Deemed Defaulter" by the 1st respondent. The sale proceeds recovered by the petitioner bank by exercising the rights granted under SARFAESI Act after getting permission from the Company Court to sell the secured asset could not be termed as a "Deemed Defaulter".

12. It is further contended that the remedy to the respondents lies under Section 13(9) and Section 13(7) of the SARFAESI Act. The effect of Section 26E of SARFAESI Act, granting priority to the secured creditor is also available. The claim of the respondents 1 and 2 are their own and there is no adjudication of the claim amount by any other authority or by the Court. Under these circumstances, the proceedings of the respondents is not only in violation of the statutory provisions, but also, in violation of the Principles of Natural Justice. Relying on the said grounds, the learned counsel for the petitioner reiterated that enforcement of secured assets and distribution of sale proceedings can be only under the provisions of the SARFAESI Act and therefore, the respondents cannot have any direct claim by declaring the writ petitioner Bank as a "Deemed Defaulter".

13. In support of the said ground, the learned counsel for the petitioner cited the judgment in the case of Central Bank of India v. State of Kerala reported in (2009) 4 SCC 94 and Paragraph 158 is extracted hereunder:

"158. On the basis of the above discussion, we hold that the DRT Act and the Securitisation Act do not create first charge in favour of banks, financial institutions and other secured creditors and the provisions contained in Section 38-C of the Bombay Act and Section 26-B of the Kerala Act are not inconsistent with the provisions of the DRT Act and the Securitisation Act so as to attract non obstante clauses contained in Section 34(1) of the DRT Act or Section 35 of the Securitisation Act."

In the said judgment, the Hon'ble Supreme Court of India held that the DRT Act and the Securitisation Act do not create first charge in favour of banks, financial institutions and other secured creditors.

14. The learned Single Judge of the Madras High Court in the case of V.S.Murugan Vs. The Regional Provident Fund Commissioner, Tamilnadu & Pondicherry, reported in 2011 SCC Online Mad 1271, held as follows:

"9. The point in issue is as to whether the order dated 19.4.2010 directing the petitioner to pay penal

damages for the non-payment of EPF contribution to the second respondent is justified?

13. Section 7A(2) of the Act contemplates conducting enquiry and according to the petitioner the erstwhile employer was not able to appear for enquiry due to non-availability of records. The Division Bench of this Court in the decision reported in (2003) 3 LLJ 795 (Q793, Madathupatti Weavers Co-Operative Production and Sales Society Ltd. v. Regional Provident Fund Commissioner, Madurai) considered similar question regarding conducting of enquiry and in paragraph 9 held thus,

"9. As far as the determination under Section 7-A of the Act is concerned, it is seen that the provision comprises two parts. Firstly, the authority has to decide whether the Act applies to the establishment and secondly, he has to determine the amount due from the employer. For the purpose of this determination, the officer has to conduct such inquiry as deemed necessary. A reading of sub-Section (2) of Section 7-A of the Act shows that the officer conducting the inquiry has to decide the issue as if he is trying a suit in a civil Court with powers under the Code of Civil Procedure. The inquiry shall be deemed to be judicial proceedings. Sub-Section (3) shows that no order shall be made under sub-Section (1), unless the employer concerned is given a reasonable opportunity of representing his case. Sub-Section (3) empowers the officer to compel the attendance of the person concerned or the production of documents to decide the applicability of the Act or determination of the amount due from the employer. From the reading of these provisions, it is clear that no order under Section 7-A of the Act can be passed without conducting a full-fledged inquiry as if the matter is decided in a suit and that the officer determining the question has to decide both the coverability as well as the determination of the amount".

(Emphasis Supplied)

The said decision was followed by the Division Bench of Madurai Bench of this Court, in which I was also a party, in W.A.(MD) Nos. 833 to 835 of 2010 judgment dated 4.1.2011 and set aside the demand and remitted the matter to follow Section 7A and pass fresh orders by conducting enquiry."

15. The Hon'ble Supreme Court of India in the case of Pegasus Assets Reconstruction (P) Ltd. v. Haryana Concast Ltd.,

reported in (2016) 4 SCC 47 and the paragraph 47 is held as follows:

"25. In the event, in the capacity of a borrower the Official Liquidator is not satisfied with the decisions or steps taken by the secured creditor or the authorised officer, at appropriate stage it has sufficient opportunity to avail the right of appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. There is a right of further appeal under Section 18 before the Appellate Tribunal. On the other hand, if the view taken by the Punjab and Haryana High Court in Pegasus is accepted, there shall be a conflict of rights and interest of the secured creditor who have the right and liberty to realise their secured interest in accordance with the provisions of the SARFAESI Act on one hand, and the statutory rights and liability of the Official Liquidator acting under the orders of the Company Judge as per provisions of the Companies Act, on the other. The appellate for a shall also differ, leading to a situation of uncertainty and conflict between the two Acts. In such a scenario, we respectfully agree with the Delhi view and disapprove that of the Punjab and Haryana High Court."

16. The Full Bench of the High Court of Madras in W.P.No.2675 of 2011 dated 10.11.2016, held as follows:

"3. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with 'notwithstanding' clause and has come into force from 01.09.2016."

4. The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending."

17. Relying on the above judgments as well as the provisions, the learned counsel for the writ petitioner emphasized that in no circumstances, the petitioner can be declared as "Deemed Defaulter" and therefore, the very action of the respondents are null and void.

18. With reference to the Impugned Order, the Writ Petitioner Bank declared as "Deemed Defaulter" under Section 8B to 8G of the 'Employee's Provident Fund and Miscellaneous Provisions Act, 1952' [hereinafter referred to as 'EPF & MP Act']. In this regard, the contention of the Writ Petitioner was that the Bank holds the first charge as the property belonged to the Company were hypothecated / mortgaged with the Writ Petitioner Bank. To substantiate the said contention, the Writ Petitioner Bank contends that as per Proviso to section 13 (9) SARFAESI Act, in the case of company in liquidation, the amount realized from the sale of secured assets shall be distributed in accordance with the provisions of Section 529A of the Companies Act, 1956.

19. The Writ Petitioner Bank is not agreeable to the contention that the sale of properties under SARFAESI Act, is subject to the rights of PF under Section 11(2) of the EPF & MP Act, 1952. The Bank has given an undertaking to share the sale proceeds with the workmen as provided under Section. 13(9) of SARFAESI Act, read with Section 529A of Companies Act. Section 529A of Companies Act, was enacted subsequent to Section 11(1) (2) of EPF & MP Act. It is contended that PF are deemed to be debt under Section 530 of Companies Act.

20. At the outset, it is contended on behalf of the Writ Petitioner that they are holding the first charge over the properties belonged to the Company in liquidation and therefore, actions initiated under SARFAESI Act, should prevail over the provisions of the EPF Act. Thus, the actions of the EPF Authorities are improper and once it is declared as debt under SARFAESI Act, all dues to the employees are to be settled under SARFAESI Act and not under the EPF & MP Act.

21. The learned counsel appearing on behalf of the Respondents Employee Provident Fund Organization disputed the contentions by stating that the impugned order itself is a speaking order, wherein the dues raised by the Writ Petitioner Bank was clarified. The findings in the Impugned Order categorically enumerates Section 11(2) of EPF & MP Act, reads as follows:-

"Section 11(2): Without prejudice to the provisions of Sub-Section (1), if any amount is due from an employer (whether in respect of the employees contributions (dedicated from the wages of the employee) or employers

contribution the amount so due shall be deemed to be first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other laws for the time being in force, be paid in priority to any other debts"

22. The above provision of the Act is clear that the dues payable by the employer to PF has got to be paid in priority to all other debts of the Company and such amounts due by the Writ Petitioners shall be deemed to be first charge and the assets of the establishment, notwithstanding anything contained in any other laws for the time being in force, be paid in priority to all other debts. Thus, PF dues are to be paid in full by the Authorized Officer under SARFAESI Act from out of the sale proceeds of the defaulting Company, as the PF due is first and paramount charge on the assets of the Company in preference to all debts whether secured or unsecured.

23. The Bank has exercised its power of sale under SARFAESI Act in respect of the property mortgaged by the Company for loan amounts due to it as per the conditional permission granted by the High Court. The condition imposed by the Court is that the mortgaged properties are to be sold by the Bank in consultation with Official Liquidator, so as to settle on priority basis in respect of the workmen under Section 529A of Companies Act, 1956. Thus, it was made clear that the order of this Court is to settle the workmen under priority.

24. In support of the contention, the Judgment of the Hon'ble Supreme Court of India in the case of Maharashtra State Co-operative Bank Limited Vs. Employees Provident Fund and Others reported in (2009) 10 SCC Page 123 was also referred and the relevant portions of the judgment are extracted hereunder:-

"Para 31:

We shall now consider the question whether the question whether the provision contained in Section 11 (2) of this Act operates against other debts like mortgage, pledge, etc. Answer to this question is clearly discernible from the plain language of Section 11. The priority given to the dues of provident fund, etc., in section 11 is not hedged with any limitation or condition. Rather, a bare reading of the Section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the

width; and scope of Section 11 over other debts is removed by the use of expression "all other debt" in both the sub sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Subsection (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by subsection (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all type of debts.

Page 67:-

The expression "any amount due from the employer" appearing in subsection (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including subsection (1) of Section 11 and Section 7-A, 14-B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer is required to pay interest in terms of the mandate of Section 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.

Para 69:-

If interest payable by the employer under Section 7-Q and damages leviable under Section 14 (sic Section 14-B) are excluded from the ambit of expression "any amount due from an employer", every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the authorities concerned to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to

other debts. Any such interpretation would frustrate of object of introducing the deeming provision and non obstante clause in Section 11(2). Therefore, it is not possible to agree with the learned Senior Counsel for the Appellant Bank that the amount of Interest payable under Section 7Q and damages leviable under section 14B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act."

25. Relying on the above judgments, the learned counsel appearing on behalf of the Respondents contended the rights of EPFO in respect of all its claims under Section 7A, 7Q and 14B of the Act have got first and paramount charge as against all, including a mortgagee who is a secured creditor, as against the properties belonging to and mortgaged by erring company in payment of statutory dues to EPFO.

26. The Official Liquidator also submitted a report, stating as follows:-

"1. That M/s. Uma Maheswari Mills Ltd. Was ordered to be wound up by an order dated 20.12.2006 in CP No. 173 of 2001 and the Official Liquidators become the Liquidator of the Company in liquidation and was directed to take possession of the assets and effects of the Company in liquidation.

2. That the secured creditor, the sole secured creditor of the movable and immovable assets of Plot Nos. 86, 87, 88 and 89, SIPCOT Industrial Complex at Hosur approached the Hon'ble Company Court by filing the CA No. 1312 of 2010 seeking orders for sale of assets secured in its favour under SARFAESI Act. That the Hon'ble Company Court vide its order dated 29 of 2010 was pleased to permit the above said bank to bring the property for sale. Accordingly, the property was sold to M/s. Rajsriya Automotive Industries Pvt. Ltd., of Hosur for a sum of Rs. 12,57,00,000/-

3. That during the life time of the Company it had employed a number of employees for doing its commercial activities and was covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It failed to make timely remittance of the dues towards the Provident Fund Department, a demand of Rs. 08,20,91,568/- was created against the Company in

liquidation.

4. That the Official Liquidator submits that as per the order High Court of Madras dated 22.09.2008 made in CA No. 2344 of 2008 in CP No. 173 of 2001, the Official Liquidator has called for claims from the creditors of the Company in liquidation. In response to that the Official Liquidator has received a claim from Regional Provident Fund Commissioner-III, Salem on 28.03.2007 for Rs.7,90,60,506/-. The EPFO also filed a additional supplementary claim for Rs.30,31,062/-. The Official Liquidator adjudicated their claims by admitting the first claim for sum of Rs.7,90,60,506/- being the Statutory dues under the provisions of the Companies Act, 1956 as a preferential claim and rejected the second claim of Rs.30,31,062/- as the same was supplementary Form 66 filed claiming dues for the period subsequent to the date of winding up order. A copy of the adjudication order is enclosed and marked as Annexure "A" to this report.

5. That the funds position as on 01.06.2016 is as follows:-

Cash	-	NIL
Bank	-	Rs.70,937.49
Investment	-	Rs.1,00,000.00

6. The Official Liquidator therefore, prays that this Hon'ble Court may be pleased to take this report on record and issue necessary directions to the secured creditors to release the amounts to the applicant herein and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice."

27. As per the Report of the Official Liquidator, the dues to be settled to the employees of the company in liquidation was assessed as Rs. 7,90,60,506/-. The Employees Provident Fund Organization made a demand for a sum of Rs. 8,20,91,568/-. The Official Liquidator on adjudication arrived a conclusion that the Employees Provident Fund Organization is entitled to recover a sum of Rs. 7,90,60,506/-. However the Regional Provident Fund Commissioner-III, Salem filed an additional supplementary claim for Rs. 30,31,062/-. In view of the fact that the Official Liquidator adjudicated the claims of the Provident Fund Organization and arrived a conclusion that Provident Fund Organization is entitled for a sum of Rs. 7,90,60,506/- for the purpose of settling the dues to the employees, the Writ Petitioner Bank is liable to pay the said amount in favour of the Respondent No.2.

28. It is made clear that the issues between the Writ Petitioner as well as the Company in liquidation has no implications with reference to the settlements to be made in favour of the employees, who all are in lurch for many number of years. Thus, the urgency in settling the dues to the employees are to be considered by this Court as already several years lapsed and the employees are unable to get any settlement on account of the pendency of litigations.

29. The learned counsel appearing on behalf of the Respondents in nutshell contended that the issue had already been settled by the Hon'ble Apex Court of India as well as the High Court of Madras. The rights of the employees are to be protected and on account of the dispute between the Bank as well as the company in liquidation with reference to the provisions of the SARFAESI Act, should not affect the settlement of dues to the workmen, who all are longing and struggling to get their dues and to lead their livelihood. The priority must be based on these criterias and in the absence of considering these basic aspect, the plight of the poor employees will be in peril. Thus, the protection of these employees, who all are out of employment or otherwise are to be considered at the first instance and in respect of other dues the Bank as well as the company in liquidation has to settle with reference to the provisions of the SARFAESI Act. In other words an account of the legal battle between the Nationalized Bank and the Company in liquidation, the rights of the employees to get their settlement cannot be denied and they cannot be deprived of their livelihood which is the fundamental right ensured under the Constitution of India.

30. The Central Enactment EPF & PF is a welfare legislation. The Act was enacted in order to provide social protection, more specifically, for the livelihood of these class of employees working in various companies, industries, factories and establishments. Thus, a constructive interpretation is to be adopted so as to adopt a pragmatic view to safe guard the interest of these employees, who all are out of employment on account of the liquidation of the company. In the event of not providing such a social protection, the Constitutional Courts are also failing in its duty to protect the Social Justice, as adopted as a resolution, by "We the People of India" in the Preamble of our Constitution. Thus, providing "social justice" is of paramount important to these class of employees, who all are already deprived on account of liquidation of these

companies. Such social and financial protection is to be extended as expeditiously as possible in order to save the livelihood of family of these employees, who all are made to suffer on account of the legal battle between the Nationalized Banks as well as the companies in liquidation. Liberal interpretations are also required, regarding which Act will prevail over in the interest of justice. However, welfare legislation, which was enacted to protect the livelihood and the interest of the employees must be held as prevail over the other legislations, as it involves the fundamental rights of the workers including right to life.

31. This exactly is the view taken by this Court in a case of Central Bank of India Vs. The Authorized Officer, Employees Provident Fund Organization in W.P.No. 1209 of 2016 dated 05.09.2018 and the relevant paragraphs are extracted hereunder:-

"4.This Court has tested the similar issue in the case of Phoenix ARC Pvt Ltd., .Vs. The Asst. Provident fund Commissioner & Recovery Officer in WMP Nos.5236 & 5237 of 2018 in W.P.No.4259 of 2018 dated 04.04.2018, and the relevant paragraphs of the order are extracted here under:

"13.The two separate writ petitions are filed, challenging the actions initiated by the 1st respondent/Assistant Provident Fund Commissioner. However, the fact remains that the present writ petitions are filed in respect of the actions initiated by the 1st respondent/ Assistant Provident Fund Commissioner under the provisions of the Provident Fund Act. The other related provisions are to be considered at the time of final adjudication of the present writ petitions. However, Section 11(2) of the Employee's Provident Fund and the Miscellaneous Provisions Act, 1952 unambiguously states that the amount so due, shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being force, be paid in priority to all other debts. Thus, the very purpose of Section 11(2) of the Act is unambiguous that notwithstanding anything contained in any other law for the time being force, the provident fund contributions are to

be given priority to all other debts. The Act being a welfare legislation, the very purpose of settling the provident fund dues to the labourers are ensured and therefore, the same is to be achieved in all respects. Because of certain disputes between the management and the financial institutions, the plight of the poor labourers cannot be stalled. The Court has to ensure that the grievances of the labourers in respect of the provident fund dues are settled in all respects without any undue delay.

14. Therefore, the prima facie opinion of this Court is that the first charge shall be of the provident fund claims and all the debts are to be treated as secondary, because the said provision unambiguously stipulates that notwithstanding anything contained in any other law for the time being in force. When such a phraseology is used in the provision itself, then the Court has to interpret the same in a constructive manner.

15. After all, the Employee's Provident Fund and Miscellaneous Provisions Act, is a welfare legislation. In a welfare legislation, when certain benefits are extended to the labourers/employees, the same cannot be denied on certain technical grounds. It is the constitutional obligation on the part of the Court to see that the poor families struggling to meet out their day-to-day expenditure are saved.

16. The Constitution makers were highly influenced by the feeling of social equality and welfare of the common man. On principle, they agreed that this sacrosanct work could only be done by State. For this reason, they incorporated such provisions in the Constitution of India which made the role of state important and went towards social welfare and ideal state.

17. The Concept of government in which the state plays a key role in protecting and

promoting the economic and social well-being of its citizens, is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life. The term may be applied to a variety of forms of economic and social organization. A basic feature of the welfare state is social insurance, intended to provide benefit during periods of greatest need (Example: old age, illness, unemployment). The welfare State also usually includes public provision for education, health services, and housing.

18.A welfare state strives to achieve many ideals, some of them are -

- ◆ Removal of inequalities in distribution of economic resources
- ◆ Equality of opportunity for employment
- ◆ Equal pay for equal work.
- ◆ Elimination of exploitation of labourers
- ◆ Establishment of a welfare state
- ◆ Initiation of schemes relating to health, education, social security, and other such essential matters.

19.The Constitution Bench of the Hon'ble Supreme Court of India in the case of D. S. Nakara v. Union of India, reported in (1983) 1 SCC 305, held that the principal aim of a Socialist State is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey, every state action, whenever taken, must be so directed and interpreted so as to take the society one step towards the goal.

20.The Apex Court in the case of Excel Wear v Union of India, reported in AIR (1979) SC 25 held that the addition of the word "socialist" might enable the courts

to learn more in favour of nationalisation and State ownership of an industry. But, so long as private ownership of industries is recognized which governs an overwhelming large principles of socialism and social justice can not be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private owners of the undertaking.

21.The Indian Constitution set certain values which struck happy balance between individualism and socialism. It eliminates the vices of unbridled private enterprises, and protects interests by social control and welfare measures. The value system structured by our Constitution finds its expression in its various provisions and, more particularly, in Part III, Part IV and the Preamble of the Constitution.

22.In Meneka Gandhi v. Union of India, reported in AIR 1978 SC 597, the Hon'ble Supreme Court of India gave a new dimension to Article 21.It held that the right to "live" is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Article 38 of the Indian Constitution provides State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

23.Employee's Provident Fund Act is one such Act enacted for the purpose of achieving constitutional perceptions. Therefore, this Court is of an opinion that the provisions contained in such Act to be given paramount importance, more specifically, in

the matter of settlement of provident fund to the employees/labourers”.

5.The said judgment of this Court was taken by way of an Appeal by Phoenix ARC Private Limited in W.A.Nos.998 and 999 of 2018, and the Hon'ble Division Bench also confirmed the order of this Court on 28.04.2018. The said orders were taken by way of a SLP before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) Nos.14005-14006/2018, and the Hon'ble Supreme Court also dismissed the SLP filed by the Company on 01.06.2018. Thus, the order passed by this Court on 04.04.2018, has been confirmed. The legal principles followed in the said order is to be followed in the present case also, in view of the similarity in facts and the legal questions raised. In view of the afore mentioned judgments, the 2nd respondent-Recovery Officer is entitled to proceed in accordance with law, if necessary by issuing fresh orders to recover the amount and settle the same to the employees of the Company.”

32. The view taken by this Court was upheld by the Hon'ble Supreme Court of India.

33. Undoubtedly, the writ petitioner Bank is entitled to proceed under the SURFAESI Act against the Company in liquidation. It is an admitted fact that there is a mortgage over the immovable property, which were created in favour of the writ petitioner Bank. Further, it is admitted that the Company was wound up. The various circumstances arouse on account of such complex facts and circumstances deserves an adjudication by this Court. The Bank sanctioned loan in favour of the Company in liquidation. The properties were mortgaged. The company, which is a legal entity and registered under the provisions of the Companies Act has got various components including the benefits to be settled in favour of the employees working in the Company. The SURFAESI Act contemplates certain procedures in respect of the creditors. In this regard, the petitioner states that the respondent Provident Fund organisation has to made their claim before the appropriate authority. However, there is no answer for the long legal battle between the writ petitioner Bank and other creditors. Undoubtedly, the poor labourers, who served in the Company, for long years were sandwiched in between the legal battles. They are incapable of fighting against these bigbrothers. They are incapable of realizing their entitlements, more specifically, the compensation and other service benefits.

The livelihood of these workmen are in peril. Their fundamental right to 'life' is being affected on account of the long legal battle between the writ petitioner as well as the company and other authorities. The Court, under these circumstances, has to adopt a constructive interpretation, so as to uphold the constitutional perspectives, Philosophies and Ethos. The mere interpretation of statutory provisions would not save the 'life' of these poor workmen. Each Act has got its own objects, and provisions for redressing the grievances and the procedures are also contemplated. Now, the question posed before this Court is that, which Act will prevail over and which claim is to be settled on priority. As contended by the learned counsel for the petitioner, there is a provision for settlement under the SURFAESI Act itself and therefore, the respondents are bound to approach the authorities under the SURFAESI Act. Equally, the EPF and MP Act also provides mechanism to recover the dues and settle the same in favour of the workers of the company. Thus, the impugned order in the present writ petition was issued under the provisions of the EPF and MP Act. Undoubtedly, the authorities respondent are empowered to issue such orders and the powers conferred under the Act is not disputed. However, what is under dispute is that the writ petitioner has sanctioned and disbursed loan and the property belonged to the company in liquidation was under mortgage and therefore, the respondents should approach the authorities under the SURFAESI Act for placing their claims.

34. In *Queen v. London County Council* [(1893) 2 QB 454], Bowen, L.J. lucidly explained the difference between a General Act and a Special Act.

"Now, a general Act, *prima facie*, is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and, as regards the individual, in its effects; and as opposed to that you get statutes which may well be public because of the importance of the subjects with which they deal and their general interest to the community, but which are limited in respect of area - a limitation which makes them local - or limited in respect of individuals or persons - a limitation which makes them personal."

35. In *LIC v. D.J. Bahadur* [(1981) 1 SCC 315], this Court held that the ID Act is a special act vis-a-vis the Life Insurance Corporation Act, 1956. Krishna Iyer, J. was of the view that in determining whether a legislation is a general or a special legislation, focus should be on the principal subject matter and the particular perspective.

36. There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and as a general statute vis-a-vis another legislation. (see Allahabad Bank v. Canara Bank [(2000) 4 SCC 406]).

37. Yet another perspective to the problem that can arise in a conflict between provisions of two different statutes has been dealt with in Ashoka Marketing v. Punjab National Bank [(1990) 4 SCC 406]. The question before this Court was whether the Public Premises Act (Eviction of Unauthorised Occupants) was a special legislation vis-a-vis the Delhi Rent Control Act, 1958. After examining object of both the legislations carefully, this Court was of the opinion that both the Rent Control Act and the Public Premises Act are special statutes.

38. In the present case, the EPF and MP Act is also a Special Enactment as far as the Provident Fund is concerned. The SURFAESI Act is also a Special Act with reference to the context. However, when the matter of priority comes before the Courts, all mitigating factors are to be adjudicated, so as to arrive a conclusion, which would be in the interest of justice as far as the respective parties are concerned. While considering the mitigating factors, as well as for providing complete justice, the very object, purpose and spirit of the respective Statutes are to be considered, more specifically, in consonance with the Constitutional mandates and perspectives. Thus, a pragmatic approach is required, so as to hold that where exactly the priority would lie. Under these circumstances, the Constitutional perspectives are the helpful elements, which all are to be considered to arrive a conclusion. Examining under this perspective, this Court has no hesitation in coming to the conclusion that the dues to the workers are to be settled on priority basis and on account of the legal battle between the Bank and the Company, the workers cannot be made to suffer for an unspecified period, compromising their livelihood and the other social implications.

39. When the EPF and MP Act itself provides a mechanism for recovery. The learned counsel for the respondents reiterated that they need not depend upon the actions to be initiated by the petitioner Bank with the company in liquidation. There is a possibility of irregularity or otherwise or other disputes in respect of loan transactions, mortgage transactions etc., However, the EPF and MP Act is concerned, it is a Welfare legislation and therefore, the benefits due to the labourers cannot be stalled on account of these disputes between the petitioner Bank and the company. The solidarity and the

independence of the EPF and MP Act is to be protected, so as to ensure that the dues to the labourers are settled at the first instance without reference to the disputes raised by the company in liquidation and other authorities or persons.

40. This Court would like to remind that the social and economic justice as well as the equality of status and opportunity has resolved by "We, the People of India" in the Preamble of Constitution cannot be forgotten. The social justice or justice, economic and political as well as equality of status has to be achieved, as they being the philosophy of the Constitution. The various Enactments of the Central or the State are to be interpreted with reference to the concepts and the goals as resolved by "We, the People of India" in the Constitution. Therefore, the constructive interpretation of the statutes, so as to minimize the injustice to be adopted. The balancing attitude by weighing the facts and circumstances are of paramount importance. Thus, the persons who all are disadvantageous, economically weak as well as status wise are to be taken care of by the Constitutional Courts, keeping in mind, the Constitutional perspectives and the goals. Any Enactment or Enactments, if creates a conflict in between and two mechanisms are provided in two different Acts, then the Constitutional Courts are bound to consider and arrive a conclusion, which should have the priority over the other Act and such a decision is to be taken keeping in mind the Constitutional Ethos and the principles. Thus, it is not as if the petitioner can say that the remedy is available under the SURFAESI Act. Equally, the respondent can say that the respondents are empowered to invoke the provisions of the EPF and MP Act for the purpose of declaring the writ petitioner as a "Deemed Defaulter". It is not as if that the provisions are there to recover the amount from the writ petitioner by the respondent. It is not as if the petitioner Bank can retain the entire money and deal with the money as per their own priorities and as per the SURFAESI Act. These mechanisms, which all are provided in order to maintain the Constitutional principles, equalities and other perspectives.

41. Part III of the Constitution can never be compromised by the Constitutional Courts. Equality Clause as well as Protection of life and personal liberty enunciated in Article 21 of the Constitution cannot be diluted under any circumstances. Right to Life includes a decent life as the Constitutional Courts repeatedly declared that life does not mean a mere animal life and it is a decent life, which is to be ensured for the citizen of this great Nation. Protection of life can never be compromised. On account of certain disputes between the Nationalized Bank and the company, the poor labourers, who served for number of years and now on the streets, cannot be left in lurch, but to be protected by the Constitutional Courts.

Thus, the priority in settlement must be to the labourers as the provisions of the EPF and MP Act also contemplates that the respondents are empowered to recover from the persons concerned and settle the dues to the workers without causing any undue delay. The Court cannot shut its eyes in respect of the plight of these poor labourers, who all are left without employment and their dues are not settled for many number of years. Thus, the delay, and inaction in settling the dues to the labourers amount to violation of Article 21 of the Constitution of India and in the event of any further delay, the Courts have to declare that such actions are unconstitutional and in violation of the fundamental rights of the labour Class, who all are suffering on account of the wounding up of the Company.

42. Article 38 of the Constitution also contemplates State to secure a social order for the promotion of welfare of the people. Sub Clause 2 to Article 38 enumerates that "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." Undoubtedly, it is a Directive principle of State Policy. However, the Article 38(2) has to be read harmoniously with Article 14, 21 and the Preamble of the Constitution. In the Preamble of the Constitution, "We, the People of India" have resolved justice, social, economic and equality in Status. Article 14 ensures Equality. Article 21 provides Protection of Life and Article 38(2) enumerates that the State should strive to minimise inequalities in income. Thus, one cannot brush aside the spirit of Article 38(2) by simply stating that it is a Directive principle of State policy and therefore, High Court cannot direct for implementation. However, the Article 38(2) has got certain importance and relevance with reference to Article 14 and Article 21. Thus, these Articles are to be read cogently and accordingly, the 'State' is bound to minimize the inequalities in income and endeavour to eliminate inequalities in Status, facilities and opportunities.

43. Applying the said principles, this Court is of an opinion that the writ petitioner Nationalised Bank is in a safe position. The company in liquidation is not worried about the plight of the labourers. The shareholders and the higher officials of the company, who all are well off and they are leading a safe, secured and luxurious life. However, the poor labourers, who served in the company for many number of years are left on the streets and they are struggling even for livelihood. If the Constitutional Courts are not prepared to protect the plight of these class, then the Constitutional Courts are also failing in its duty to uphold the Constitutional

perspectives, Philosophies and Ethos. Under these circumstances, which Act will prevail, may not be a relevant question as the prevalence of the statute is to be read along with the Constitutional principles, so as to ensure that the weaker section is protected and the people in the safer zone are given an opportunity to enter into the legal battle for the purpose of resolving the issues.

44. In the present case, the question is regarding priority. Thus, the priority must be given to the labourers in respect of their Provident Fund and other dues to be settled for the services rendered by these labourers in the company in liquidation.

45. Under these circumstances, this Court is of the considered opinion that the amount arrived by the Official Liquidator for the settlement of dues to the employees for a sum of Rs. 7,90,60,506/- is to be paid by the Writ Petitioner to the 2nd Respondent/Assistant Provident Fund Commissioner, who in turn is bound to settle the amount to the eligible employees by following the procedures contemplated under the EPF & MP Act as expeditiously as possible, without causing any undue delay.

46. On receipt of the said amount from the Writ Petitioner Bank, the 2nd Respondent has to settle the dues immediately within short span of period and if there are any lapses or negligence in settling the amount, the officials of the 2nd Respondent Organization must be held personally liable, as the delay would cause not only injustice but should be construed as dereliction of duties. In respect of the additional supplementary claim filed by the 2nd Respondent, it is left open to the 2nd Respondent to approach the Liquidator, who in turn is at liberty to adjudicate and take a decision on merits and in accordance with the law.

47. This being the factum adjudicated in the aforementioned paragraphs, this Court has no hesitation in coming to the conclusion that there is no infirmity as such in respect of the order impugned passed by the 2nd respondent in proceedings dated 18.01.2011. Accordingly, the following orders are passed:

(1) The relief as such sought for in the present writ petition by the writ petitioner stands rejected.

(2) The writ petitioner is directed to pay the adjudicated (by the official Liquidator) due amount of Rs.7,90,60,506/- (Rupees Seven Crore Ninety Lakhs Sixty Thousand Five Hundred and Six only) to the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order.

(3) The 2nd respondent, on receipt of the said adjudicated amount from the writ petitioner, is directed to identify the workmen and settle the amount to all the eligible workmen within a period of eight weeks from the date of receipt of the said amount from the writ petitioner and by following the procedures as contemplated under the Act and Rules.

48. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pns/kak
To

- 1.The Employees' Provident Fund Organisation,
Sub-Regional Officer, S.J.Plaza,
Swarnapuri, Salem - 4.
- 2.The Assistant Provident Fund Commissioner,
& Recovery Officer,
The Employees' Provident Fund Organisation,
Sub-Regional Office, P.J.Plaza,
Swarnapuri, Salem - 4.
- 3.The Official Liquidator,
Uma Maheswari Mills Ltd.,
(Company in Liquidation)
1st Line Beach Road, Chennai - 600 001.

W.P.No. 2718 of 2011
and
M.P.No. 1 of 2011

A.SK(11/12/2019)