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Comp.A.No.46 of 2024

Comp.A.No.46 of 2024
in
C.P.No.186 of 2004

KRISHNAN RAMASAMY, J.

This Application has been filed seeking for removal of the lien/charge and attachment dated 14.06.2005 and 23.11.2007 over the scheduled property.

2. Mr.Yashod Vardhan, learned Senior Counsel appearing for the Applicant submitted that the Company in liquidation viz., M/s.Coromandel Leather (P) Ltd., was wound up pursuant to the order of this Court dated 31.10.2006 passed in C.P.No.186 of 2004. He further submitted that the 3rd respondent registered a statutory charge for non payment of the Commercial Tax dues by the Company in liquidation to the 2nd respondent on 23.11.2007 pursuant to the notice of the 2nd respondent dated 14.06.2005. Thereafter, subsequent to the winding up order, claims were called for and 2nd respondent filed claim petition before the Official Liquidator on 11.07.2008,



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however with a delay of 148 days, which was condoned vide order of this Court dated 25.11.2008 in Comp.A.No.2634 of 2008.

3. He would further contend that though the charge was created in terms of provisions of Section 24 of Tamil Nadu General Sales Tax Act 1929 (in short 'TNGST Act'), they have not chosen to realize the amount. He also pointed out that since the 2nd respondent did not choose to participate outside the process of winding up, they lost the rights either to bring the property for sale based on the creation of the Statutory charge over the property. In such case, since the 2nd respondent filed Claim Petition, the said act of the 2nd respondent would amount to participating in the winding up process and accepting the same. Therefore, the Official Liquidator brought the property for sale by way of public auction. In the terms and conditions mentioned in the Tender Document, it has been categorically stated that '*the Properties are sold free from encumbrances and charges*'. Thereafter, the Official Liquidator has sold the property and executed a Sale Deed dated 08.02.2013 in favour of the Applicant, who was declared as a highest bidder.



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4. He further submitted that after coming to know about statutory charge created by the 3rd respondent based on the notice dated 14.06.2005, issued by the 2nd respondent, the Applicant made a representation on 26.09.2023 before the 1st respondent/Official Liquidator, seeking to remove the charge created by the 3rd respondent. However, the Official Liquidator has not taken any action for removal of charge created by the 3rd respondent. Under these circumstances, the present application came to be filed by the Applicant/purchaser, seeking for the aforesaid relief.

5. Per contra, Mr.Haja Nazirudeen, learned Additional Advocate General appearing for the 2nd respondent would contend that in the present case, the statutory charge was created in terms of Section 24 of the Tamil Nadu Good and Services Tax Act (hereinafter called as “TNGST Act”) and the said charge was also registered on the file of the 3rd respondent and thereafter, they have filed a claim statement before the Official Liquidator, but so far their amount has not been settled.



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6. He further submitted that in Clause 10 of the tender document, it has been specifically stated that 'the Properties are sold free from encumbrances and charges', whereas in the notification published in “Dinamani”, it is stated that properties to be sold are "as is where is basis", which infers that the properties are sold along with encumbrances. Hence, he would contend that since the charge was created, the 2nd respondent is entitled to proceed against the purchaser/applicant.

7. In support of his contentions, he relied upon the following Judgments of the Hon'ble Supreme Court:

(i) ***Union Bank of India Vs. Official Liquidator and others*** reported in (1994) 1 SCC 575;

(ii) ***Smt. Rekha Sahu Vs. UCO Bank and others*** reported in (2013) 101 ALR 291;

Therefore, he would contend that the charge is still persisting and it cannot be removed.



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8. On the other hand, learned Official Liquidator appearing for the 1st respondent would submit that in the present case, the 2nd respondent had not stood outside the winding up proceedings, but filed a claim statement before the Official Liquidator. When such being the case, as per Section 125 of the Companies Act, 1956, (in short 'the Companies Act'), once the charge is created, the same ought to have been registered, but in the present case, the 2nd respondent has not chosen to do so and therefore, any charge said to have created, whether statutory or non statutory charge, it is void against the Official Liquidator and will not bind the Official Liquidator. That is the reason why the sale was made mentioning the condition as '*free from encumbrances and charges*'. Therefore, she would contend that the 2nd respondent will not have any right over the property subsequent to the sale made by the learned Official Liquidator.

9. I have given due consideration to the submissions made by the learned Senior counsel appearing for the applicant, learned Official Liquidator



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appearing for the 1st respondent as well as the learned Additional Advocate

General appearing for the 2nd respondent.

10. In the present case, on 31.10.2006, this Court passed a winding up order against the Company in liquidation in C.P.No.186 of 2004. Thereafter, the learned Official Liquidator had taken over the charge of the Company in liquidation and called for claims.

11. Subsequently, the 2nd respondent filed a claim statement before the learned Official Liquidator and he had also created a statutory charge for the tax dues of the Company in liquidation in terms of the provisions of Section 24 of TNGST Act. The said charge was also registered with the 3rd respondent vide 2nd respondent's notice dated 14.06.2005 and pursuant to the said notice, the 3rd respondent registered the said charge on 23.11.2007.

12. Though the 2nd respondent had created the statutory charge against the tax dues in the properties of Company in liquidation, he had also filed



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their claim before the learned Official Liquidator and participated in the process of winding up of the said Company. Normally, if a party is intend to realise the proceeds by virtue of sale of the charged assets, they should have stood out of the winding up proceedings. However, in the present case, the 2nd respondent has filed the claim before the learned Official Liquidator and participated in the winding up proceedings. Once the 2nd respondent has filed their claims before the learned Official Liquidator, he waived his right to stand outside the winding up proceedings and thereby enabling him to realise the outstanding dues by way of sale of the assets independently.

13. Now the contention of the 2nd respondent was that still the statutory charge created against the properties of the Company in liquidation would persist and hence, the said charge cannot be reboot since their dues were not settled in full.

14. As discussed above, once the 2nd respondent filed the claim statement, he had waived the right to stand outside the winding up



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proceedings so as to enable him to realise the claims by way of chargeable assets i.e., by participating in the winding up proceedings, automatically, he has consented with enabling the learned Official Liquidator to realise the properties and pay the amount, as per priorities, as provided in the Companies Act.

15. Under these circumstances, the learned Official Liquidator brought the properties for sale and the said properties were sold by way of public auction, with the permission of this Court, to the applicant herein. However, since the charge was created and the same was noticed by the applicant recently, the applicant had approached the learned Official Liquidator. But no steps were taken by the learned Official Liquidator and hence, this application has been filed.

16. For the reasons assigned above, it is the duty of the learned Official Liquidator to take appropriate steps to remove the statutory charge created by the 2nd respondent since the assets were sold by the learned Official



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Liquidator, with the permission of this Court, subsequent to the participation of the 2nd respondent in the winding up proceedings.

17. On the aspect of validity of the Statutory charge created by the 2nd respondent, it would be apposite to extract the provisions of Section 24 of the TNGST Act, which reads as follows:

24. Compulsory registration in certain cases.-

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

- (i) persons making any inter-State taxable supply;*
- (ii) casual taxable persons making taxable supply;*
- (iii) persons who are required to pay tax under reverse charge;*
- (iv) persons who are required to pay tax under sub-section (5) of section 9;*
- (v) non-resident taxable persons making taxable supply;*
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this*



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Act;

(vii) *persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;*

(viii) *Input Service Distributor, whether or not separately registered under this Act;*

(ix) *persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52*

(x) *every electronic commerce operator who is required to collect tax at source under Section 52;*

(xi) *every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person; and*

(xii) *such other person or class of persons as may be notified by the Government on the recommendations of the Council.”*

18. A reading of the above makes it clear that the 2nd respondent can create the statutory charge for the dues of the Company in liquidation.



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Accordingly, they had created and the said charge was also registered with the 3rd respondent 23.11.2007.

19. Now let us see the validity of the said statutory charge created when the company went into liquidation.

20. Upto the winding up of the Company, whatever charge, created against the assets of the Company will not be questionable. However, once the winding up order is passed, the validity of the charge created by the 2nd respondent, whether it is statutory charge or otherwise, would be subject to the Section 125 of the Companies Act, which reads as follows:

“125. Certain charges to be void against Liquidator or creditors unless registered .-

(1) Subject to the provisions of this Part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the Liquidator and any creditor of the company, unless the prescribed particulars of



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the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within [thirty] days after the date of its creation:

[Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.]

(2)

(3).....

(4) This section applies to the following charges:-

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge on any immovable property, wherever situate, or any interest therein;

(d) a charge on any book debts of the company;



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(e) a charge, not being a pledge, on any movable property of the company;

(f) a floating charge on the undertaking or any property of the company including stock-in-trade;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a license under a patent, on a trade mark, or on a copyright or a license under a copyright.”

21. A reading of the above makes it clear that if charge was created against the properties of the Company in liquidation, the same has to be registered with the Registrar of Companies under Section 125 of the Companies Act, 1956, otherwise it would be void against the learned Official Liquidator. In the present case, the winding up order against the Company in liquidation was passed on 31.10.2006, whereas, the charge created by the 2nd respondent was registered with the 3rd respondent only on 23.11.2007 and in the meantime, the 2nd respondent had also participated in the winding up process and filed their claim before the learned Official Liquidator. Effectively, the Statutory charge was registered with the Sub-Registrar after



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the winding up order was passed by this Court. Immediately upon the winding up order, the properties were vested with the learned Official Liquidator. Hence, no encumbrances or alienation can take place in the immovable properties without the leave of this Court. In the present case, no leave was obtained to create a Statutory charge against the properties of the Company in liquidation.

22. Once the claim is filed by the 2nd respondent before the learned Official Liquidator, he has to wait for the settlement of said claim by the learned Official Liquidator. Apart from the said right, the 2nd respondent will not have any other right over the properties of the Company in liquidation under the pretext of creation of statutory charge, which was void against the learned Official Liquidator for the reasons discussed above and also for the reasons that the 2nd respondent had participated in the winding up process by filing claim.

23. That apart, though a statutory charge was registered with the 3rd



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respondent, it was not registered with the Registrar of Companies in terms of the provisions of Section 125 of the Companies Act, 1956. Thus, the charge created by the 2nd respondent becomes void against the learned Official Liquidator in terms of Section 125 of the Companies Act, 1956. When such being the case, based on such charge, the charge holder/2nd respondent cannot claim any right over the subject properties and no action can be taken to recover the dues of the 2nd respondent against the subject properties.

24. Further, it is pertinent to state that the winding up order was passed on 31.10.2006, however, the statutory charge was said to have registered only on 23.11.2007 against the Company in liquidation i.e., the charge was registered belatedly after the commencement of winding up order. Even if any charge was created prior to the commencement of winding up proceedings and the same was not registered, the said charge would be void against the learned Official Liquidator in terms of Section 125 of the Companies Act. However, in the present case, it would be worse than that situation since the charge was registered after the winding up order passed by this Court. Hence,



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certainly, the said charge is void against the learned Official Liquidator.

Therefore, based on said charge, no recovery action can be taken against the subject properties.

25. In the present case, as stated above, the 2nd respondent has filed his claim before the learned Official Liquidator. Subsequent to the winding up order, the learned Official Liquidator had taken charge over the assets of the Company in liquidation and sold the same through public auction, which was conducted with the permission of this Court. Therefore, the 2nd respondent cannot raise any issues pertaining to the sale of properties at this stage. Further, the 2nd respondent will not have any attachment over the properties of the Company in liquidation, which was already sold by way of public auction with the permission of this Court. Therefore, the 2nd respondent would be considered as a creditor as per the priorities provided in Section 530 of the Companies Act, 1956, for the Statutory claim.

26. In view of the above, this Court does not find any merits in the



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submissions made by the learned counsel for the 2nd respondent. Hence, this Court is inclined to allow this application.

27. Since the case laws, referred by the learned counsel for the 2nd respondent, will not be useful for the facts and circumstances of the present case, the same may not necessary to be considered by this Court.

28. Accordingly, this application is allowed. This Court directs the learned Official Liquidator to remove the charge created by the 2nd respondent, on 14.06.2005, against the properties of the Company in liquidation and also remove the registration of said charge from the records of the 3rd respondent, dated 23.11.2007, in accordance with law, within a period of two weeks from the date of receipt of copy of this order.

27.06.2024

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in C.P.No.186 of 2004

KRISHNAN RAMASAMY, J.

Today, this matter has been listed under the caption “For Being Mentioned”.

2. When this matter was taken up for hearing on 27.06.2024, this Court allowed this application and directed the learned Official Liquidator to remove the charge created by the 2nd respondent against the properties of Company in liquidation and also to remove the registration of said charge from the records of the 3rd respondent.

3. In the above order, while allowing the application, this Court has held that as per Section 125 of the Companies Act, 1956, if a charge was created against the properties of the Company in liquidation, the said charge will become void against the learned Official Liquidator subsequent to the winding up of the said Company. However, today, it was brought to the

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knowledge of this Court that as per the law laid down by this Court in ***K.Saradambal vs. Jagannathan and Brothers*** reported in ***1971 SCC OnLine Mad 273***, the provisions of Section 125 of the Companies Act, 1956, is only applicable to a Charge created by the Company and not to a Statutory Charge.

4. Therefore, the particular portion of the order dated 27.06.2024 passed by this Court, with regard to the validity of charge created by the 2nd respondent, i.e., paragraph Nos.10 to 26, is hereby recalled and accordingly, the paragraph Nos.10 to 26 of the said order are modified as follows:

“10. In the present case, on 31.10.2006, this Court passed a winding up order against the Company in liquidation in C.P.No.186 of 2004. Thereafter, the learned Official Liquidator had taken over the charge of the Company in liquidation and called for claims.

11. Subsequently, the 2nd respondent filed a claim statement before the learned Official Liquidator and he had also



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created a statutory charge for the tax dues of the Company in liquidation in terms of the provisions of Section 24 of TNGST Act. The said charge was also registered with the 3rd respondent vide 2nd respondent's notice dated 14.06.2005 and pursuant to the said notice, the 3rd respondent registered the said charge on 23.11.2007.

12. Though the 2nd respondent had created the statutory charge against the tax dues in the properties of Company in liquidation, he had also filed their claim before the learned Official Liquidator and participated in the process of winding up of the said Company. Normally, if a party is intend to realise the proceeds by virtue of sale of the charged assets, they would stand outside of the winding up proceedings. However, in the present case, the 2nd respondent has filed the claim before the learned Official Liquidator and participated in the winding up proceedings. Once the 2nd respondent filed their claims before the learned Official Liquidator, his right to stand outside the winding up proceedings stands waived.

13. Now the contention of the 2nd respondent was that still the statutory charge created against the properties of the Company in liquidation would persist and hence, the said



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charge cannot be reboot since their dues were not settled in full.

14. As discussed above, once the 2nd respondent filed the claims before the learned Official Liquidator, he had waived the right to stand outside the winding up proceedings so as to enable him to realise the claims by participating in the winding up proceedings and to realise their claims, as per priorities, as provided in the Companies Act, 1956.

15. Under these circumstances, the learned Official Liquidator brought the properties for sale and the said properties were sold by way of public auction, with the permission of this Court, to the applicant herein. However, since the charge was created and the same was noticed by the applicant recently, the applicant had approached the learned Official Liquidator. But no steps were taken by the learned Official Liquidator and hence, this application has been filed.

16. There is no doubt that it is the duty of the learned Official Liquidator to take appropriate steps to remove the statutory charge created by the 2nd respondent since the assets were sold by the learned Official Liquidator, with the permission of this Court, subsequent to the participation of the



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2nd respondent in the winding up proceedings.

17. On the aspect of validity of the Statutory charge created by the 2nd respondent, it would be apposite to extract the provisions of Section 24 of the TNGST Act, which reads as follows:

24. Compulsory registration in certain cases.-

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) persons who are required to pay tax under sub-section (5) of section 9;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;



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(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52

(x) every electronic commerce operator who is required to collect tax at source under Section 52;

(xi) every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.”

18. A reading of the above makes it clear that the 2nd respondent can create the statutory charge for the dues of the Company in liquidation. Accordingly, they had created and the said charge was also registered with the 3rd respondent 23.11.2007.

19. Now let us see the validity of the said statutory charge created when the company went into liquidation.

20. Upto the winding up of the Company, whatever charge, created against the assets of the Company will not be



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questionable. However, once the winding up order is passed, the validity of the charge created by the 2nd respondent, whether it is statutory charge or otherwise, would be subject to the Section 125 of the Companies Act, which reads as follows:

“125. Certain charges to be void against Liquidator or creditors unless registered .-

(1) Subject to the provisions of this Part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the Liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within [thirty] days after the date of its creation:

[Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.]



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(2)

(3).....

(4) *This section applies to the following charges:-*

(a) *a charge for the purpose of securing any issue of debentures;*

(b) *a charge on uncalled share capital of the company;*

(c) *a charge on any immovable property, wherever situate, or any interest therein;*

(d) *a charge on any book debts of the company;*

(e) *a charge, not being a pledge, on any movable property of the company;*

(f) *a floating charge on the undertaking or any property of the company including stock-in-trade;*

(g) *a charge on calls made but not paid;*

(h) *a charge on a ship or any share in a ship;*

(i) *a charge on goodwill, on a patent or a license under a patent, on a trade mark, or on a copyright or a license under a copyright.”*

21. A reading of the above shows that when a Company created a charge, the said charge is required to be registered in terms of Section 125 of the Companies Act, 1956, otherwise it



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will be void against the learned Official Liquidator in the event of winding up of the Company. It has not stated anything with regard to the creation and registration of the Statutory charge. Therefore, as per the law laid down by this Court in ***K.Saradambal vs. Jagannathan and Brothers*** reported in ***1971 SCC OnLine Mad 273***, which is squarely applicable for the present case, this Court is of the view that the Statutory charge need not to be registered under Section 125 of the Companies Act, 1956. The relevant portion of the said order is extracted hereunder:

“Placing reliance upon this provision, the official liquidator contended that inasmuch as the lien claimed by the applicant-company is not registered, it is of no avail. A careful examination of the foregoing provision would show that it is applicable only to a charge created by the company and not to a charge arising by operation of law. Section 125 of the present Act corresponds to Section 109 of the Companies Act, 1913. Dealing with the question as to whether that section was applicable to a charge arising by operation of law, a Bench of the Oudh High Court in Hukmichand v. Pioneer Mills Ltd., A.I.R. 1927 Oudh 55 held that the said section was applicable only to a charge created by the company by contract and not to a charge arising by operation of law. The same principle applies to Section 125 also. Therefore,



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the fact that the lien claimed by the applicant-company is not registered does not disentitle the applicant-company from working out its rights arising under the lien.”

21(a). A reading of the above paragraph makes it clear that if a Statutory Charge is created, whether it is registered or not, the same will not become void against the learned Official Liquidator in terms of Section 125 of the Companies Act, 1956. When such being the case, the Statutory Charge created by the 2nd respondent would still persists and the same is not void against the learned Official Liquidator. Therefore, the rights of the 2nd respondent, to realise his claim by way of chargeable assets of the Company in Liquidation, cannot be waived based on the above aspect.

21(b) However, as discussed in the order dated 27.06.2024, since the 2nd respondent had filed his claim before the learned Official Liquidator and participated in the winding up process of the Company in liquidation, in this aspect alone, he had waived his rights to realise his claim vide the sale of chargeable assets of the Company in liquidation. Further, by the said participation, he has consented with enabling the



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learned Official Liquidator to realise the properties of the Company in liquidation and pay the due amount to the 2nd respondent, as per the priority, as provided in the Companies Act, 1956. Accordingly, the learned Official Liquidator had sold the subject property to the applicant by way of public auction with the permission of this Court. In such case, it is the duty of the learned Official Liquidator to take appropriate steps to remove the Statutory charge created by the 2nd respondent.

21(c) In view of the above, it is clear that only by filing his claim before the learned Official Liquidator and participating in the winding up process, the 2nd respondent has waived his rights to realise his claim by way of sale of chargeable asset and it has nothing to do with the validity of the charge created by him.

22. Once the claim is filed by the 2nd respondent before the learned Official Liquidator, he has to wait for the settlement of said claim by the learned Official Liquidator. Apart from the said right, the 2nd respondent will not have any other right over the properties of the Company in liquidation under the pretext of creation of statutory charge, since the 2nd respondent had participated in the winding up process by filing their claim.



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23. (deleted)

24. (deleted)

25. In the present case, as stated above, the 2nd respondent has filed his claim before the learned Official Liquidator. Subsequent to the winding up order, the learned Official Liquidator had taken charge over the assets of the Company in liquidation and sold the same through public auction, which was conducted with the permission of this Court. Therefore, the 2nd respondent cannot raise any issues pertaining to the sale of properties at this stage. Further, the 2nd respondent will not have any attachment over the properties of the Company in liquidation, which was already sold by way of public auction with the permission of this Court. Therefore, the 2nd respondent would be considered as a creditor as per the priorities provided in Section 530 of the Companies Act, 1956, for the Statutory claim.

26. In view of the above, this Court does not find any merits in the submissions made by the learned counsel for the 2nd respondent. Hence, this Court is inclined to allow this application.”



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8. With regard to the remaining portion of the order, there is no need for any modification.

9. The Registry is directed to make necessary incorporation in the Order dated 27.06.2024 and issue a fresh order copy.

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