
(2001) 07 CAL CK 0065

In the Calcutta High Court

Case No : A.C.O. No. 131 of 2000, A.P.O.T. No. 738 of 2000, C.A. No. 100 of 2000 and C.P. No. 603 of 1999

Maxlux Glass Private Limited

APPELLANT

Vs

ICICI Limited Company

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Companies Act, 1956 — Section 162, 433, 434, 434(1), 439

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 2, 25, 3

Citation : (2001) 2 CALLT 539

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Girish Chandra Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.—The brief facts which are necessary for disposal of the instant appeal are that a winding up petition under sections 433, 434 and 439 of the Companies Act, 1956 was filed by ICICI Limited Company (hereinafter referred to as ICICI) for winding up of M/S Maxlux Glass Private Limited (hereinafter referred to as Company). The Company was incorporated under the provisions of the Companies Act, 1956 as a private Company limited by shares. The authorised share capital of the Company is Rs. 100, 100,000.00 divided into 10,000,000 share of Rs. 10/- each. The issued and subscribed capital of the Company is Rs. 70,130,360.00 made up of equity shares of Rs. 10/- each fully paid up. The Company carries on business of manufacturing of different kind of glass article. The Company was indebted to the petitioner in the sum of Rs.4,75,03.044/- as on 15th August, 1999 on account of money lent and advanced by the petitioner and not repaid by the Company. The petitioner claimed interest on and from 16th August, 1999 at the agreed rate. The petitioner granted loan to the Company from time to time for the purpose of meeting the cost of the project of the Company for manufacture of glass shell at

the Ulberia Industrial Growth Centre. District Howrah. West Bengal. On or about 12th May, 1990 the petitioner along with Industrial Development Bank of India (IDBI) and the Industrial finance Corporation of India Limited (IFCI) entered into a participation loan agreement for granting the Company a rupee loan of Rs. 164 lakhs (first loan) being the petitioner's share out of the rupee loans aggregating to Rs. 408 lakhs sanctioned by the petitioner in participation with IDBI and IFCI. The terms and conditions were mentioned in the loan agreement dated 12th December, 1990 as amended from time to time. In pursuance of the terms of the participation agreement the petitioner disbursed the entire loan of Rs. 164 lakhs to the Company. The Company appropriated the same to its benefit. Another loan of sum of Rs. 57 lakhs (second loan) was also granted in pursuance of the aforesaid agreement. The Company in pursuance of the said agreement from time to time created securities in favour of the petitioner by executing deeds of hypothecation thereby hypothecating the moveable properties of the Company. The Company also furnished a personal guarantee of one Anup Kumar Saha as security for due repayment of the aforesaid loan in consideration of the loans granted by the petitioner to the Company. The petitioner found the securities created by the Company has since become inadequate to satisfy the claim of the petitioner. In pursuance of this loan agreement the Company was required to repay the principal amount of the aforesaid two loans in accordance with the schedule set out in each of the said two loan agreements and also to pay interest and other charges. However, inspite of repeated requests and demands made by the petitioner and assurance and undertakings given by the Company, the Company failed and neglected to pay the principle, interest and other charges due in respect of the aforesaid two loan agreements. The petitioner by communication dated 21st November, 1996 recalled the entire principal amount of the aforesaid two loans together with interest and all other charges due in respect thereof and called upon the Company to pay the amount which had become due and payable by the Company, inspite receipt of the aforesaid letter and several other demands the Company failed and neglected to pay the amounts. The petitioner had on their part granted the relief and concession as contained in the letter dated 16th December, 1997 to the Company. However, the Company failed to abide by the terms and conditions to repay as per the schedules to the said two loan agreements. On account of failure of the Company to repay, the concessions which were given to the Company were revoked by the communication dated 3rd August, 1999.

2. In this background the present winding up petition was filed by the petitioner and it was prayed that the Company namely Maxlus Glass Private Limited be wound up under the provisions of the Companies Act, 1956 and the official liquidator be directed to take possession of the assets and properties of the Company. In this winding up petition the Company moved an application (C.A. No. 100 of 2000) before the learned single Judge on 5th May, 2000 and prayed that the winding up petition filed by the petitioner be dismissed on the basis that secured creditors are not entitled to recover its debt other than before the

Tribunal that is Debt Recovery Tribunal created under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Act of 1993) and heavy reliance was placed by the applicant on the recent decision of the apex Court in the case of Allahabad Bank Vs. Canara Bank and Another, and the decision of this Court in the Case of Durgapur Steel Plant Vs. Kisan Jawanjal and Others,

3. The learned single Judge after considering this application held that the winding up petition under the Companies Act is not an application under Recovery of Debts due to Banks and Financial Institution Act, 1993, and therefore the learned single Judge dismissed the application. However, the learned single Judge allowed time to file affidavit in opposition in the winding up petition and the petition for appointment of provisional liquidator. Liberty was also granted to file a reply thereto within two weeks thereafter. Aggrieved against this order passed by the learned single Judge dated 7 the August, 2000 the present appeal has been filed.

4. As against this the learned counsel for the petitioner/respondent has strenuously urged before us that a winding up petition is not in the nature of recovery of debts, it is a petition filed under the provisions of the Companies Act, 1956 for failure of the company to discharge its liabilities and it not in public interest to allow such companies to continue and do their business to the detriment of the public at large. It was also contended that the scope of the winding up petition is entirely different than that of the recovery of debts under the Act of 1993. Therefore, the learned counsel tried to distinguish the decision given in the case of Allahabad. Bank v. Canara Bank (supra) on the legal as well as on the factual aspects to which we shall advert to hereinafter.

5. Before dealing with the issue involved in this matter it will be relevant to quote here the sections of the Companies Act, 1956 which deal with the winding up of a Company. The relevant sections are sections 433 and 434 which read :

"433. A Company may be wound up by the Court,-

- (a) If the company has, by special resolution, resolved that the company be wound up by the Court;
- (b) If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
- (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) If the number of members is reduced, in the case of a public company, below seven, and in the case of a private company below two:
- (e) if the Company is unable to pay its debts;
- (g) if the Court is of opinion that it is just and equitable that the company should be wound up.

434. (1) A Company shall be deemed to be unable to pay its debts-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the Company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) If execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) If it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall taken into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm."

6. In this connection reference may also be made to the Recovery of Debts Due to Banks and Financial Institution Act of 1993. This Act was introduced by the Parliament with a view to expedite the adjudication of recovery of debts due to Banks and Financial Institutions and matters connected therewith or incidental thereto. The statement of objects and reasons of the Act reads as under :

"Statement of Objects and Reasons--Banks and Financial Institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the Banks and Financial Institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorate with the passage of time. The Committee on the Financial System headed by Shri M. Narashimhan has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the Financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the Banks and Financial Institutions could be realised without delay. In 1981 a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by Banks and Financial Institutions and suggested there medical measures including change in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the Banks and Financial Institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the Report of Narashimhan Committee, whereas on 30th September, 1990 more than fifteen lakhs of case filed by the public sector Banks and about 304 cases filed by Financial Institutions were pending in various Courts, recovery of debts

involved more than Rs. 5622 crores of dues of Public Sector Banks and about Rs. 391 crores of dues of the Financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and re-cycling of the funds for the development of the country.

(2) The Bill seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions."

7. Therefore, the object and reasons of the Act is to provide a Special Tribunal for expeditious disposal of the dues of the Banks and Financial institutions. Under this Act of 1993 a Special Tribunal has been constituted known as "Debt Recovery Tribunal".

8. The expression "bank" has been defined in section 2(d) of the Act of 1993 which reads as under:

"(d) "bank" means-- (i) a banking company;

(ii) a corresponding new bank;

(iii) State Bank of India;

(iv) a subsidiary bank; or

(v) a Regional Rural Bank;"

9. The expression "debt" has been defined in section 2(g) of the Act of 1993 which reads as under:

""debt" means any liability (Inclusive of interest) which is alleged as due from any person by a Bank or a financial institution or by a consortium of Banks or Financial Institutions during the course of any business activity undertaken by the Bank or the Financial Institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise and subsisting on, and legally recoverable on, the date of the application;"

10. In the present case we are concerned with Bank only therefore we need not to refer to the other definitions like "Banking Company" or "financial institute". u/s 3 provides for establishment of Tribunal section 4 deals with composition of Tribunal. Section 5 provides for the qualifications for appointment as Presiding Officer. Section 6 provides for terms of office. Section 7 provides for staff of Tribunal. Section 8 provides for establishment of an Appellate Tribunal. Chapter MI of the Act of 1993 deals with jurisdiction, powers and authority of Tribunals. Section 17 lays down that what is the jurisdiction and power of the Tribunal. Section 17 reads as under:

"17. Jurisdiction, powers and authority of Tribunals.--(1) a Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the Banks and Financial Institutions for

recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, power and authority to entertain appeals against any order made, or deemed to have been made by a Tribunal under this Act."

11. Section 18 lays down that there shall be a total bar on other Courts to entertain the jurisdiction except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution in relation to matters specified in section 17.

12. Section 31 deals with the transfer of cases pending before any Court immediately before the date of establishment of a Tribunal under the Act of 1993 and provides that the same shall stand transferred on that to such Tribunals.

13. Section 34 gives an overriding effect to the provisions of the Act of 1993. Section 34 reads as under

"34. Act to have overriding effect. (1) Save as provided under subsection (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948). The State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India, Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) and the Stock Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)."

14. By virtue of section 34 which states that if there is anything inconsistent In any other law for the time being in force or any instrument having effect by virtue of any law other than this act then this Act shall prevail as against other Acts. Therefore, by virtue of the overriding effect of this Act all other Acts stand superseded by this Act if they are inconsistent with this Act.

15. Now in light of both the statutes i.e. u/s 433 and 434 of the Companies Act, 1956 and sections 17, 18 and 34 of the Act of 1993 the question before us is whether the Company Court under the Companies Act, 1956 still has jurisdiction to entertain a petition filed by Banks for winding up of Companies. It is true that a special enactment has been made by the Parliament and a forum has been provided to the Banks and Financial Institutions for adjudication of their debts expeditiously. Therefore normally the Bank and Financial Institutions shall have to seek remedy from the Debt Recovery Tribunals by virtue of section 34 of the 1993 Act which gives overriding effect to this Act as against any other remedy available under the Civil Courts. Therefore, what we have to see is the relief which the Banks and Financial Institutions want to seek under the provisions of sections 433 and 434 of the Companies Act, 1956 can co-exist with the Act of 1993 or not.

16. Section 34 of the Act of 1993 only talks about "inconsistency" of the laws, that means that if any other law which is inconsistent with this Act then in that case this Act will have the overriding effect. But if other enactment which is no inconsistent with the provisions of this Act then this Act will not have overriding effect over other Act.

17. Now adverting to the facts of this case, an application under sections 433 and 434 of the Companies Act, 1956 has been filed by the ICICI for winding up the Company because it is unable to pay its debts. Therefore, the question is whether the winding up petition filed before the Company Court under the provisions of the Companies Act, 1956 is maintainable or not in view of the Act of 1993. In this connection our attention was invited to various decisions of the apex Court as well as of this Court wherein it has been held that a petition filed under sections 433 and 434 of the Companies Act, 1956 for winding up of a company who was unable to pay its debt is not a petition for recovery of debts. In this connection reference may be made to the decision of this Court in the case of Bukhtiarpur Bihar Light Railway Co. Ltd. Vs. Union of India (UOI) and Another, . In this case it was held by the Division Bench of this Court that the machinery for winding up will not be allowed to be utilised merely as a means for reeling debts due from a Company. It was observed.

"A creditor will not ordinarily be heard to urge that a winding up order should be made because the substratum of the Company is gone, not for the reason that he is technically and as a matter of law barred from taking that ground at all, but for the reason that it is not a proper ground for a creditor to urge, except In a very special circumstances.

Whether the substratum of a company is gone and the object with which it was formed, has become impossible of further pursuit, is usually the proper concern of only its share holders and contributories; a creditor cannot properly be allowed to use it as a ground for breaking up the company, unless by the dis-appearance of the substratum, the recovery of his debt has been imperiled.

Further, the reason that the substratum of a company is gone is not one of the specific grounds given in section 162 of the Act for making a winding up order. The disappearance of the substratum is a circumstance, in view of which the Court may, in a given case, consider it just and equitable that a winding up order should be made."

18. The same proposition of law was reiterated in the case of re: Bengal Flying Club reported in 1966(2) Company Law Journal 213. It was held:

"The Court will not allow the winding up proceedings to be explanted as a normal alternative to the ordinary mode of debt realisation. The Company Court will forbear from deciding a dispute which can be more conveniently investigated in a regular action. That should be so, even if the dispute is not in respect of the whole debt, If the grounds on which the liability was disputed are bona fide and substantial."

19. Our attention was also invited to the decision of the apex Court in the case of .Amalgamated Commercial Traders (P) Ltd, v. A.C.K. Krishnaswami & Anr. reported in 1965 (35) Comp Cas 456 wherein it was held by the apex Court that winding up petition is not a legitimate means of seeking to enforce payment of a debt which is bonafide disputed by the company: "Their Lordships observed:

"it is well-settled that a winding up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatised as a scandalous abuses of the process of the Court.

If a debt is bona fide disputed there cannot be "neglect to pay" within the meaning of section 434(1)(a) of the Companies Act, 1956. If there is no neglect, the deeming provision does not come into play, and the ground of winding up, namely, that the company is unable to pay its debts, is not substantiated."

20. In the case of Harinagar Sugar Mills Ltd. Vs. M.W. Pradhan, the question was that whether a Receiver appointed in a suit can file a winding up petition for realisation of debt. In that context it was held by their Lordships that a Civil Court can maintain winding up petition for realisation of debt, though it is not normal alternative to the ordinary procedure for realisation of debts--propriety does not affect power but only its exercise.

21. In this connection our attention was also invited to a decision of the Supreme Court in the case of Pradeshia Industrial and Investment Corporation of U.P. Vs. North India Petrochemical Ltd. and Another, . In this case their Lordships interpreted the provisions of section 433(e) of the Companies Act. It was held:

"An order u/s 433(e) is discretionary. There must be a debt due and the company must be unable to pay the same. A debt under this section must be determined or definite sum of money payable immediately or at a future date. The inability referred to in the expression "unable to pay its dues" in section 433(e) should be taken in the commercial sense. In that, it is unable to meet current demands. It is "plainly and commercially insolvent that is to say, that its assets are such, and its existing liabilities are such, as to make it reasonably certain--as to make the Court feel satisfied--that the existing and probable assets would be insufficient to meet the existing liabilities". The machinery for winding up will not be allowed to be utilised merely as a means for realising debts due from a company."

22. The same view was taken in another decision of the Supreme Court in the case of Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd., . In this case the question was that whether the Arbitrator can order winding up of the company. In that context their Lordships observed that the power to order winding up is only conferred on the Company Court under the provisions of the Companies Act, 1956. In that context their Lordships observed:

"The claim in a petition for winding up is not for money. The petition filed under the Companies Act would be to the effect, in a matter like this, that the company has become commercially insolvent and, therefore, should be wound up."

23. Therefore, it was contended by the learned counsel for the respondent that the power exercised by the Court under sections 433 and 434 of the Companies Act, 1956 for winding up of the company is not merely for recovery of debts, it is more than i.e. it is not in public interest to allow such company to operate in the commercial world as it might lead to cheating the public at large. There, it is submitted by the learned counsel for the respondent that there is an element of public interest involved in the winding up petition and secondly the other creditors of the company of which winding up is being sought can also join in the said winding up proceeding which is not possible in a case where a suit is filed by the Bank or Financial Institution, or Banking company for recovery of debts before a Tribunal constituted under the Act of 1993. Therefore, the purpose of filing a petition for winding up is more than that of recovery of debts but it is for the benefit of the public at large that a company who is unable to pay its creditors should not be allowed to operate in the commercial world to the detriment of the public at large. It was submitted by the learned counsel for the appellant that it is not something which is contrary or inconsistent with the provisions of the Act of 1993. It was submitted that rather it is consistent with the provisions of the Act of 1993 and it is not derogatory. In fact the purpose of both the enactments i.e. the Act of 1993 and the Companies Act is the recovery of debts by the Bank and Financial Institutions but under the Companies Act, In addition to recovery of debts, there is another element i.e. public purpose behind moving such kind of applications that such kind of companies who are unable to pay their creditors should be wound up so that it may not cheat the public at large. In the case of application before the Debt Recovery Tribunal under the Act of 1993 there is only one individual element i.e. recovery of debts, whereas a winding up petition before the Company Court under the Companies Act, 1956 serves a public purpose also, because the public will also know when such petitions are filed and summons are issued and publications are made for winding up then all the creditors whose debts have not been paid by the company can join the cause and the public at large can come to know about the Financial status of such broken company which is unable to pay its debts. Therefore a dual element is involved in an application under sections 433 and 434 of the Companies Act. It is not only recovers the debt but saves the public at large from being cheated or misled by such company. Therefore, in the aforesaid decisions their Lordships have kept in view the element of public interest while observing that such petitioners are not only for recovery of debts or money for which a suit could have been better remedy before the Debt Recovery Tribunal but it also involves publicity to the public about the failure of the company to pay its creditors and such companies should not be allowed to operate in the commercial world. Therefore, the learned counsel strenuously urged before us that the power contained in section 34 read with sections 17 and

18 of the Act of 1993 should not be treated as derogatory to the provisions of the Companies Act, 1956 rather provisions of both the statutes can operate harmoniously. In this connection the learned counsel for the appellant has invited our attention to a recent decision of the apex Court in the case of Allahabad Bank v. Canara Bank (supra). In this case their Lordships have discussed the provisions of the Act of 1993 and that of the Companies Act. Their Lordships after discussing the provisions of sections 17, 18, 19, 25, 2(g), 31 and 34 held that as far as recovery of debts are concerned no Civil Court can operate by virtue of the provisions of section 34 of the Act of 1993. The issue involved in that case was that after having obtained a money decree against an indebted company from the Debt Recovery Tribunal under the provisions of section 19 of the Act of 1993 whether the creditor was required to make an application u/s 446 of the Companies Act, 1956 in order to proceed with the execution. The company in that case had gone into liquidation on the basis of a petition filed by the creditor. In that context it was held by the apex Court that once a creditor had its claim adjudicated before the Debt Recovery Tribunal then there was no need for the creditor to seek the leave of the High Court u/s 446 of the Companies Act, 1956 in order to proceed with the execution before the Debt Recovery Officer in the Debt Recovery Tribunal. In that context their Lordships held that the jurisdiction of the Debt Recovery Officer even in regard to the execution was exclusive and he can proceed to execute the decree as per the certificate issued by the Debt Recovery Tribunal as per the procedure contained in Chapter V and converted by sections 25 and 30 of the Act of 1993. Therefore, It was held that adjudication of the liability and recovery of the amount by the Debt Recovery Officer are within the jurisdiction of the Tribunal and no other Court or authority far less Civil Courts can go into the question relating to the liability and recovery of debts. It was observed that the appellant company is not required to seek the leave of the Company Court to proceed with its claim before the Debt Recovery Tribunal in respect of the execution proceeding. In fact their Lordship did not hold that the secured creditors cannot institute proceedings for winding up of a company under sections 433 and 434 of the Companies Act as that issue was not before the apex Court in that case.

24. The learned counsel for the appellant strenuously urged before us on the basis of this judgment that the Company Court has no jurisdiction to examine the question of debt in the winding up petition filed by the petitioner and the petition should be transferred to the Debt Recovery Tribunal.

25. We have already observed above that the petitions which are filed before the Company Court under sections 433 and 434 of the Companies Act, 1956 are not only for recovery of debts but it also has an element of public purpose. This contention is supported by various decisions of the apex Court and this Court in the decisions referred to above that the petitions which are filed before the Company Court under the provisions of section 433(e) of the Companies Act, 1956 are not only a petition for recovery of debts but they are more than that i.e. such companies who have failed to pay their creditors should not be allowed

to function in this commercial world to the detriment of the poor creditors.

26. If that be the position, then filing of a petition under sections 433 and 434 of the Companies Act, 1956 before the Company Court cannot be said to be inconsistent with the provisions of the Act of 1993. Once it is held that the petition is not only for the recovery of debts but they are more than that as mentioned above then in that case it cannot be said that the jurisdiction of the Company Court is ousted by virtue" of section 34 read with sections 17 and 18 of the Act of 1993. Had it been a case where the petition was filed for recovery of debts only then perhaps the arguments raised by the learned counsel for the appellant would derived support from the decisions given in the case of Allahabad Bank v. Canara Bank (supra), but it has been the consistent view of the apex Court that the petitions filed under sections 433 and 434 of the Companies Act are not petitions for mere recovery of debts then in that case the provisions contained in the Act of 1993 cannot prevent the Banks or Financial Institutions in approaching the Company Court for an order of winding up. If the petition under sections 433 and 434 of the Companies Act had been meant for recovery of debt only then, of course, the provisions contained in the Act of 1993 will prevent the Banks and Financial Institutions from filing petitions under sections 433 and 434 of the Companies Act but if that is not so then it cannot be held that by virtue of Allahabad Bank's case (supra) that it prohibits the Company Court to exercise its discretion under sections 433 and 434 of the Companies Act, 1956.

27. In this connection our attention was also invited to the decision in the case of Ganapati Commerce Ltd. v. Bank of Rajasthan reported in 2000(2) CHN 555 as well as another earlier judgment of this Court by a single Bench in the case of Andhra Steel Corporation Ltd. Vs. Bank of Baroda, . Since we have already referred the Division Bench judgment of this Court as well as of the apex Court which have taken the view that a winding up petition is not only for the purpose of recovery of debts, therefore, we need not to dilate on these decisions of this Court. However, we are in full agreement with the view taken in both decisions.

28. It may also be relevant to mention here that while interpreting the non-obstante clause care should be taken to see that it should be read strictly and should not be read more than what is necessary. A special enactment of rule cannot be held to be overridden by later general enactment or simply because the later opens up with an non obstante clause. There should be a clear Inconsistency between the two before giving an overriding effect to the non obstante clause. Therefore, while interpreting such non obstante clause reference to other enactment has also to be made and effect should only be given if the inconsistency is apparent. In case if they can be harmoniously read then just because the enactment starts with a non obstante clause should not be read to curtail the operation of the earlier enactment.

29. In the present case as we have examined the matter closely with reference to both the Acts and it appears that the provisions of section 433(e) has been

interpreted by their Lordships in a number of decisions that such petitions under sections 433 and 434 of the Companies Act, 1956 are not merely for recovery of debts and it is meant for the benefit of the public at large that such institutions who are unable to pay their debts should not be allowed to function for public purpose then in that case it cannot be read that the petitions filed under sections 433 and 434 are inconsistent with the provisions of the Act of 1993 rather if we closely examine then both the provisions of the Act can co-exist without doing any harm to the provisions of the Act of 1993. Therefore, the decisions heavily relied upon by the learned counsel for the appellant namely Allahabad Bank v. Canara Bank (supra) cannot be interpreted to mean, as laid down by their Lordships of the apex Court, that the petitions filed under sections 433 and 434 of the Companies Act cannot be entertained by virtue of section 34 of the Act of 1993.

30. It may be not out of place to refer to the prayer of the petitioner in the petition filed by the petitioner for winding up of the company under sections 433 and 434 of the Companies Act, 1956 which reads as under:

"(a) The company namely Maxlux Glass Private Limited be wound up by this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) The Official Liquidator attached to this Hon'ble Court be directed to take possession of the assets and properties of the company forthwith;

(c) Cost of and incidental to this application and the claim of the petitioner to come out of the assets of the company:

(d) Such further order or orders and/or direction or directions as to this Hon'ble Court may deem fit and proper."

31. A perusal of the aforesaid prayer clearly shows that there is no prayer for payment of debts. Learned counsel for appellant though argued that there is no prayer for debt but in substance it is for discharge of debt. We are unable to accede to the submission of the learned counsel for the respondent that such petitions are not basically for discharge of debts, debt is only one element but there is also public purpose behind it that such defunct companies should not be allowed to survive in the commercial world to the detriment of public.

As a result of the above discussion, we are of the opinion that the view taken by the learned single Judge is correct and it does not require any interference by this Court, Hence the appeal filed by the appellant is dismissed. No order as to costs.

G.C. Gupta, J.

32. I agree.

33. Appeal dismissed

July 6, 2001

Prayer for stay of operation of this Judgment/Order is considered and refused.

Urgent xerox certified copy of this Judgment/Order to be issued to the parties if applied for.