

(2007) 08 CAL CK 0071

In the Calcutta High Court

Case No : C.A. No. 180 of 2007 and C.P. No. 215 of 1991

M/s. B.M.G. Pharmaceuticals (P) Ltd. (In Liquidation) And
The Regional Provident Fund Commissioner

APPELLANT

Vs

The Official Liquidator, High Court, Calcutta

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Companies Act, 1956 — Section 235, 237, 529, 529(1), 529(3)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11,
11(1), 11(2)
Income Tax Act, 1961 — Section 220, 220(2), 220(3)
Industrial Disputes Act, 1947 — Section 2(f), 2(s)
Presidency Towns Insolvency Act, 1909 — Section 49
Provincial Insolvency Act, 1920 — Section 61
Workmens Compensation Act, 1923 — Section 14

Citation : (2008) 116 FLR 751

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : S.C. Prasad for Regional Provident Fund Commissioner, for the Appellant; S.N. Mukherjee and Mr. R. Chowdhury for Official Liquidator, for the Respondent

Judgement

Sanjib Banerjee, J.—A point of principle arises, though the sum involved in this case is the princely amount of Rs. 1323.80. The point has arisen in a number of matters. The Regional Provident Fund Commissioner seeks an adjudication whether provident fund dues of all employees of a company in liquidation should stand on the same footing as workmen's dues.

2. Sections 529, 529A and 530 need first to be seen to appreciate the issue involved:

529. Application of insolvency rules in winding up of insolvent companies. - (1)
In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to -

- (a) debts provable;
- (b) the valuation of annuities and future and contingent liabilities; and
- (c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the Estates of persons adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts opts to realise his security, -

- (a) the liquidator shall be entitled to represent the workmen and enforce such charge;
- (b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rate-ably for the discharge of workmen's dues; and
- (c) so much of the debts due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

Provided that if a secured creditor instead of relinquishing his security and proving for his debts proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator (including - a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.

Explanation. - For the purposes of this proviso, the portion of the expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(3) For the purposes of this section, section 529A and section 530. -

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947);

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:-

(i) all wages or salary including wages payable for time or piece work and salary

earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(iii) unless the company is being wound-up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of -

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors.

529A. Overriding preferential payments. - (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company, -

(a) Workmen's dues; and

(b) Debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues.

Shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

530. Preferential payments. - (1) In a winding up, subject to the provisions of section 529A, there shall be paid in priority to all other debts -

(a) all revenues, taxes, cases and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the

twelve months next before that date;

(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (2);

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(d) unless the company is being wound-up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force;

(e) unless the company is being wound-up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;

(f) all sums due to any employer from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of section 235 or 237, in so far as they are payable by the company.

(2) The sum to which priority is to be given under clause (b) of sub section (1), shall not, in the case of any one claimant, exceed such sum as may be notified by the Central Government in the Official Gazette.

(3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of clause(e) of sub-section (1), be taken to be the amount of lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made to any employee of a company, -

(i) on account of wages or salary; or

(ii) to him, or in the case of his death, to any other person in his right, on

account of accrued holiday remuneration, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

The foregoing debts shall -

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distaining or having distained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section -

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

(bb) the expression "employee" does not include a workman, and

(c) the expression "the relevant date" means -

(i) in the case of a company ordered to be wound-up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound-up voluntarily before that date; and

(iii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (7 of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force.

3. The proviso to section 529(1) of the Act, the definitions of "workmen" and "workmen's dues" in clauses (a) and (b) of section 529(3), sub-clause (4) of section 529(3)(b) and what amounts to the workmen's portion u/s 529(3)(c) of the Act are relevant. On a combined reading of such provisions, it would appear that provident fund dues of workmen of a company in liquidation are part of workmen's dues and would, thus, stand at par with the dues of the secured creditors of a company in liquidation so far as the security covers such dues.

4. Some of the provisions found in the Industrial Disputes Act, 1947 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 have also to be taken into consideration. section 2(s) of the Industrial Disputes Act, 1947 defines workman thus:

2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature.

5. Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was introduced by way of an amendment in 1973 and section 11 was renumbered as sub-section (1) of amended section 11. Post-amendment, section 11 reads as follows:

11. Priority of payment of contributions over other debts. (1) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due -

(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable u/s 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) from the employer in relation to an exempted establishment in respect of any contribution to the provident fund or any insurance fund (in so far as it relates to exempted employees), under the rules of the provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under sub-section (6) of section 17, damages recoverable u/s 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified u/s 17, shall, where the liability therefore has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which u/s 49 of the Presidency-towns Insolvency Act, 1909 (3 of 1909), or u/s 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or u/s 530 of the Companies Act, 1956 (1 of 1956) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

Explanation. - In this sub-section and in section 17, "insurance fund" means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf.

(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, 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 in force, be paid in priority to all other debts.

6. The manner in which priorities have to be decided by the official liquidator before disbursement of payment to the creditors of the company is found in sections 529, 529A and 530 of the Companies Act, 1956. Section 529A was introduced in 1985.

7. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes no distinction between employees and workmen and all classes of employees are covered by the common definition of "employee" in section 2(f) thereof:

2(f). "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person, -

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;

8. Section 530(1)(f) of the Companies Act refers to sums being due to an employee, inter alia, from a provident fund. Section 530(8)(b) provides that the expression "employee" in such section does not include a workman. The opening words of section 530 make the entirety of the provisions that follow subservient to section 529A. Workmen's dues are covered by section 529A and by virtue of the definition of "workmen's dues" contained in section 529(3)(b), the provident fund dues of a workman are included in the expression "workmen's dues" appearing in section 529A(1)(a). Section 529(3)(b)(iv) and section 530(1)(f) are similarly worded except that the former covers provident fund and related dues of workmen and the latter covers provident fund and like dues of all employees not being workmen. Upon section 529A being introduced, all of the workmen's dues, including on account of provident fund, are to rank *pari passu* with those of a secured creditor to the extent the dues of such secured creditor are covered by any security. Other employees' dues, including on account of provident fund and like matters, are ranked below the secured creditors' and workmen's dues.

9. It is urged on behalf of the provident fund authorities that the Employees' Provident Funds and Miscellaneous Provisions Act is a beneficial legislation and makes no distinction between workmen and other employees. It is urged that contributions on account of provident fund are made up of the employee's share and the employer's share and they form part of the monthly package of the employee. It is suggested that by virtue of section 11 of the 1952 Act, particularly sub-section (2) thereof, all of the claim on account of provident fund dues where liability had accrued before the order of winding up is made, had to be provided for before disbursement to any other creditor of a company in liquidation could be made. It would appear upon reading section 11(2) of the 1952 Act in isolation, that such a view as suggested by the provident fund authorities would be plausible. But counsel for the official liquidator cautions that sub-section (2) of section 11 cannot either derogate from provisions contained in section 11(1) nor can be read to be in conflict or at variance with the earlier sub-

section.

10. Counsel for the official liquidator suggests that even without the words of reservation at the beginning of sub-section (2), it would be unwise to infer that the provisions of the only other sub-section in a particular section would be in derogation of the earlier. And here, by reason of the opening words in sub-section (2), it is submitted that the second sub-section has to yield to the first and will operate where the first would not. A Judgment reported at *The Income Tax Officer, "A" Ward, Indore Vs. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd., Birlagram, Nagda*, 43 (The Income Tax Officer, "A" Ward, Indore v. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. Birlagram, Nagda) is cited for the proposition that the expression "without prejudice to the provisions contained in sub-section..." would require that nothing in the provision containing such words can either be inconsistent with or prejudicial to what is provided for in the provision referred to. It has been held by the Supreme Court that even if the provision containing such words may be independent, the power thereunder has to be exercised subject to the terms and conditions mentioned in the referred provision.

11. The Supreme Court dealt with section 220(2) and section 220(3) of the Income Tax Act, 1961. Sub-section (3) contained similar opening words as in section 11(2) of the 1952 Act. Sub-section (2) of section 220 of the Income Tax Act, as it originally stood, made an assessee liable to pay simple interest at four per cent per annum and, sub-section (3) permitted an income tax officer to extend the time for payment or allow payment by instalments subject to such conditions as he may impose. In order to obtain favorable instalments, the assessee offered to pay, interest at the rate of percent per annum, which was more than the rate fixed u/s 220(2), and the income tax officer relaxed the period for payment upon such offer. During the period that the Revenue's claim had not been completely discharged by the assessee, the rate of interest in section 220(2) of the Income Tax Act was raised by an amendment to six percent per annum. The question before the Supreme Court was whether upon the income tax officer's order having been passed at a time when the rate of interest in sub-section (2) was lower than the rate offered to be paid by the assessee, there was good ground for it not to be revisited upon the increased rate of interest following the amendment. The High Court had found in favour of the assessee.

12. The Supreme Court held that the power under sub-section (3) had always to be exercised with reference to sub-section (2) and subject to it. It was found that the assessee was liable to pay a higher rate of interest despite the amendment having been effected after the income tax officer's order was passed. In such context the Supreme Court reasoned as follows:

5. It was suggested before the High Court that the order of the income tax Officer amounted to an irrevocable agreement which could not be varied merely because the rate of interest contained in sub-section (2) of section 220 of the Act

was enhanced. Mr. S.C. Choudhury, learned counsel for the respondent, however, has fairly conceded that there was no question of an agreement or settlement because section 220(3) does not empower the income tax Officer to enter into agreement or settlement in order to bind the Revenue. We find ourselves in complete agreement with this view. Section 220(3) merely empowers the income tax Officer to extend the time for payment or allow payment by instalments if such conditions as he may impose. In the instant case the income tax Officer merely exercised his power under sub-section (3) of section 220 by imposing the condition that the assessee shall be allowed to pay the arrears by instalments if he paid interest at the rate of 5 per cent per annum offered by him. What is important, however, is that sub section (3) is not independent of sub-section (2) but is inter connected with it. The words "without prejudice to the provisions contained in sub-section (2)" clearly show that any order passed by the income tax Officer under sub-section (3) must neither be inconsistent with nor prejudicial to the provisions contained in sub-section (2). In other words, the position is that although sub-section (3) is an independent provision the power under this sub-section has to be exercised subject to the terms and conditions mentioned in sub-section (2) so far as they apply to the facts mentioned in sub section (3). Thus if sub-section (2) of section 220 provided that the rate of interest chargeable would be four percent per annum any order passed "under sub-section (3) could not vary that rate, and if it did, then the order to that extent would stand superseded. The argument of the assessee is that sub-sections (2) and (3) of section 220 were independent provisions which operated in fields of their own. We are, however, unable to accept this somewhat broad proposition of law. Sub-sections (2) and (3) form part of the same section, namely section 220, and are therefore closely allied to each other. It is no doubt true that the two sub-sections deal with separate issues but the non obstante clause of sub-section (3) clearly restricts the order passed under sub-section (3) to the conditions mentioned in sub-section (2) of section 220 of the Act.

13. It is of some interest that the Supreme Court referred to the relevant words in section 220(3) as a non-obstante clause. Though a non-obstante clause is ordinarily understood to be one found in the dominant provision, the Supreme Court read the opening words of section 220(3) of the Income Tax Act as a non-obstante clause, implying clearly that the opening words of sub-section (3) made that sub-section subservient to the dominant provision of sub-section (2). A non-obstante clause generally indicates the extent of its dominance. There may be non-obstante clauses in different provisions which are in apparent conflict. In such case rules of statutory interpretation tell us in what situations, one would prevail over the other. Ordinarily, the non-obstante clause found in a particular provision of a special statute would hold sway over a non-obstante clause contained in a provision found in a general statute. It is equally possible that a non obstante clause in a special statute falls foul of a non-obstante clause in another special statute. By and large, the dates of the two apparently conflicting provisions are looked into to ascertain which should yield to the other. But that is

not a conclusive test. The purpose of one set of rules found in a special statute has then to be tested against the purpose of another set of rules found in the other special statute.

14. The discussion is necessary not in the context of the opening words of section 11(2) of the 1952 Act, but on the influence that the non-obstante clause found later in the provision, wields. If section 11(2) did not have the opening words noticed above and only contained the non-obstante clause that it does, it could be argued that the provisions in the Companies Act would always yield to it. That is because section 11(2) is contained in a special statute governing provident fund dues and the Companies Act is, in comparison, a more general statute. But section 11(2) of the 1952 Act makes it subservient to section 11(1) thereof. Section 11(1) recognises the provisions of section 530 of the Companies Act. Section 530 of the Companies Act is subservient to section 529A of the same Act. So traced, the influence of the non obstante clause found in section 11(2) of the 1952 Act, becomes irrelevant in the operation of section 529A of the Companies Act and its dominance over section 530 thereof.

15. For the part that is material to the question at hand, section 11(1) of the 1952 Act can be read as follows:

11. Priority of payment of contributions over other debts. - (1) Where any employer, ... being a company, an order for winding up is made, the amount due (on account of provident fund contribution) ... shall, where the liability therefore has accrued before the order of ... winding up is made, be deemed to be included among the debts which ... u/s 530 of the Companies Act, 1956 (1 of 1956) are to be paid in priority to all other debts in the distribution of ... the assets of the company being wound up.

16. Section 11, as it stood prior to the Act 40 of 1973 introducing sub-section (2) thereto and renumbering the existing section as sub-section (1), placed provident fund dues of employees as covered by the section as a debt of a company that had to be paid in priority to other debts of a company in liquidation, but subject to the rank assigned to such debt in section 530.

17. Section 529A carried out special provisions for workmen. Section 529A made two classes out of the entire body of employees of a company in liquidation: its workmen and the remaining set of employees. All sums due to workmen of a company in liquidation were upgraded to sit alongside secured creditors' dues in so far as they are covered by the securities, in the list of priorities. Clause (bb) of sub-section (8) of section 530 was introduced by the same amending Act of 1985 (35 of 1985) by which section 529A found place in the Companies Act. The net effect of section 11(1) of the 1952 Act, the influence of section 11(2) of the 1952 Act being subservient to section 11(1) and the amendment to the Companies Act in 1985, is that provident fund dues of workmen are ahead in the list of priorities than provident fund dues of other employees of a company in liquidation.

18. On behalf of the official liquidator a Judgment of a single Judge of the Kerala

High Court reported at 2001(2) LLJ 89 (Joseph v. Official Liquidator) has been relied upon for the proposition that section 11 of the 1952 Act does not override the provisions of section 529A of the Companies Act. The question that arose in that case is whether, by virtue of section 11(2) of the 1952 Act, the provident fund dues of workmen ranked higher in priority than the debts of the secured creditors of a company in liquidation to the extent such debts were covered by the securities. The question was answered in paragraphs 4 and 5 of the Kerala Judgment as follows:

4. The present provisions of section 11 of Employees' Provident Fund Act was enacted on November 1, 1973. Section 529 of the Companies Act was enacted only in 1985. Section 529-A(1) specifically states that "Notwithstanding anything contained in any other provision of this Act or any other law for the time being....". Therefore, I am of the opinion that the applicant's claim will come only u/s 529A and section 11 of the Employees' Provident Funds Act will not override the provisions of section 529A. The Official Liquidator had already included the worker's claim for provident fund also u/s 529A along with secured creditors and it cannot be contended that only after clearing all provident fund dues secured creditors claim can be considered.

5. The learned counsel cited the decision in A.P. State Financial Corporation Vs. Official Liquidator, wherein it was clearly held that provisions u/s 529A will protect the interest of workmen and it will override the other status. Therefore, it can be seen that provident fund dues will come u/s 529A. Merely because there is an amendment including certain payments also in section 11 of EPF Act the overriding effect of section 529A will not be curtailed. Hence, the contention that over and above section 529A provident fund claim should be given prior charge than secured creditors cannot be considered and it can be considered only in pari passu along with claim of secured creditors u/s 529A.

19. Provident fund dues of workmen, thus, rank alongside the debts of the secured creditors of a company in liquidation to the extent that the same are covered by the securities. Provident fund dues of other employees stand below the workmen's dues on account of provident fund and the secured creditors' dues on a construction of section 529A and section 530 of the Companies Act. In the instant case, the provident fund commissioner has an equal claim, along with the secured creditors of the company in liquidation in so far as such debts are covered by the securities, for the sum of Rs. 1323.80. The quantum of the secured creditors' dues and the provident fund dues of the workmen have to be ascertained and the sum of Rs. 1323.80 has to be paid out by the official liquidator to the secured creditors and the provident fund authorities on a pro rata basis. Since, it appears that the claim of the provident fund authorities on account of workmen's provident fund is an excess of the sum available, without taking into account the secured creditors' debts, the sums due on account of other employees provident fund cannot be met out of the money available for disbursement.

20. The application is disposed of on the above basis without any order as to costs.

Urgent Photostat certified copies of this Judgment, if applied for, be issued to the parties upon compliance with requisite formalities.

Application disposed of.