

(1962) 03 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 39 of 1961

The State

APPELLANT

Vs

Pure Milk Supply Co. Ltd.

RESPONDENT

Date of Decision : 09-03-1962

Acts Referred:

Companies Act, 1913 — Section 109, 230, 232(2)
Companies Act, 1956 — Section 125, 529, 530
Provincial Insolvency Act, 1920 — Section 28(6)
Punjab State Aid to Industries Act, 1935 — Section 23, 24, 35

Citation : AIR 1962 P&H 519 : (1963) 33 CompCas 116

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Judgement

(1) This is an application on behalf of the Punjab State u/s 530 of the Companies Act 1956 praying for permission to be granted by this Court for recovering the amount due to the State from the respondent-company (in liquidation) as arrears of land revenue in priority to the other debts of the company and without waiting to receive payment in winding up proceedings.

(2) The State Government had advanced a loan of Rs. 5,000/- to the Company in March 1955 under the state Aid to Industries Act (5 of 1935). The loan was advanced in order to enable the Company to manufacture butter and cream and the advance was against the security of the Company's assets including booklets, stock, stores, machinery equipment etc. The advance was evidenced by a deed of mortgage, certified copy of which has been placed on the record as Exhibit P.W. 1/1. It is stated that nothing at all has been refunded to the Government. As required by sections 23 and 24 of the State Aid to Industries Act 1935, a notice was sent to the Company and it was followed by a declaration duly published in the official gazette. Nothing has been paid by the Company. On the above allegations the State wants that in pursuance of the provisions of section 35 of the Act it may be allowed to recover the amount due to it as arrears of land revenue. Section 35 runs as under:

"Notwithstanding anything contained in sections 23, 24 and 25, any amount payable to the State Government under this Act or by virtue of a contract entered into under this Act including interest and costs, if any, may with the previous sanction of the State Government, be recoverable as arrears of land revenue".

(3) Mr. K. S. Kwatra, learned counsel for the State has drawn my attention to section 529 of the Companies Act 1956 which is to the effect that in the winding up of the insolvency of the Company, the same rule shall prevail and be observed with regard inter alia to 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 state of persons adjudged insolvents. He has also drawn my attention to section 28, sub-section (6) of the Provincial Insolvency Act which provides:

"Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security, in the same manner as he would have been entitled to realise or deal with it if this section had not been passed."

The argument which he rests on this provisions is that the rights of a secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if section 28 had not been passed, remains unaffected by the order of adjudication or by insolvency proceedings. He has also drawn my attention to a similar statement of Indian Law, as noticed in Palmer's Company Precedents, part 11 page 316. It is stated there that a secured creditor is prima facie entitled to proceed, his security not being part of the estate and effects of the company, and this being so, it would not be proper for the court to refuse liberty to proceed, and so compel the secured creditor to allow the assets to be realised in the winding up, and thus to forgo his just rights. Finally Mr. Kwatra drew my attention to my decision in Excise and Taxation Officer Vs. Gauri Mal Butail Trust, Therein I had held that after the enforcement of the Constitution, the situation has not undergone any change as to the priority enjoyed by the State for the debts due to it. The Common Law doctrine, that if the debts due to the Crown are of equal degree to the debts due to a private citizen then the Crown are of equal degree to the debts due to a private citizen then the Crown must have priority against the private citizen, is also the law of this country. That was a case in which the Excise and Taxation Officer had made an application praying that the property taxed may be ordered to be paid out of the amount lying with this Court. This application was allowed.

(4) This application has been opposed by Mr. Anand Mohan Suri who appeared on behalf of the Company. He has relied upon section 530 of the Companies Act 1956 which is a provision determining the priority of debts, inter alia the section requires that there shall be paid in priority to all other debts-

(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority etc.

There is also reference to other debts but to which no reference is necessary. Mr. Suri lays emphasis on the fact that section 530 relates, specifically to certain revenue taxes etc. to which priority has been given but omits other debts to the State Government. The Scheme of the State Government for the refund of loan which has been advanced to the Company in this case is not a debt which is given priority u/s 530.

The contention of the learned counsel is that if such a scheme has been excluded from the list of debts payable in priority, it should be treated like any other debt of the Company regardless of the fact that the State happens to be a creditor in a particular case. He has drawn my attention to a decision of Federal Court in *Governor-General in AIR 1946 16 (Federal Court)*. Spens C. J. observed that the Crown was bound by the provisions of the Companies Act, and was bound, in regard to the provisions relating to the liquidation of companies, to a statutory scheme of administration wherein the prerogative right of the Crown to priority no longer existed. It was stated that the Crown was not entitled to any prerogative, priority, or preferential rights of treatment in payment of its claim save those expressly conferred and limited by the Act itself, in particular by section 230 or sub-section (2) of section 232. Section 530 of the present Act corresponds to section 230 of the Indian Companies Act 1913. The decision of the Federal Court is a direct authority and I am bound by it.

(5) Mr. Suri also states that though the Company had secured its debt by mortgaging its property with the Government but the Government cannot take advantage of it now as the secured debt was not got registered u/s 109 of the Indian Companies Act, 1913. Section 109 of the Indian Companies Act, 1913. Section 109 requires that every mortgage or charge created after the commencement of the Act by a Company 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 mortgage or charge, together with the instrument, if any, by which the mortgage or charge is created or evidenced, are filed with the Register for registration in the manner required by this Act within the prescribed period. This admittedly has not been done. That being so, such advantage which the Punjab State would have got by being a secured creditor to the Company was lost on account of omission to get the mortgage registered under the Indian Companies Act, 1913.

Section 109 of the former Act corresponds to section 125 of the present Act, 1956. u/s 116 of the Indian Companies Act, 1913, it is the duty of the Company to file with the Register for registration the prescribed particulars of every mortgage. No doubt this was a duty cast upon the Company till the Company had not discharged it, but it was equally open to the Punjab State as a mortgagee to make an application u/s 116(1) which the Punjab State also omitted to do. Assuming that the failure, on the part of the Company to discharge legal obligation imposed under S. 116(1) was blameworthy, its

consequence cannot be visited by giving any effect to the provisions of section 109. In the circumstances the Punjab State cannot claim any benefit which would have accrued to it had the mortgage been registered with the Registrar u/s 109 of the Indian Companies Act, 1913.

(6) In this view of the matter the application of the State cannot succeed and is, therefore, dismissed. The parties are, however, left to bear their own costs.

(7) Petition dismissed.