

(1962) 04 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 52 of 1961

Union of India

APPELLANT

Vs

J. Ray and Sons Ltd.

RESPONDENT

Date of Decision : 26-04-1962

Acts Referred:

Companies Act, 1956 — Section 446, 528, 530
Constitution of India, 1950 — Article 372

Citation : AIR 1962 P&H 520

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Judgement

(1) This is a petition u/s 446 read with Section 528 of the Companies Act, 1956, on behalf of the Union of India and against M/s. J. Ray and Sons Ltd., the Mall, Simla (in liquidation) through the official liquidator. The claim of the petitioner is that a printing press known as Army Press at Simla was evacuee property and was allotted to the company on 23rd June 1949. Later on the machinery constituting the printing press was sold to the company for a sum of Rs. 43,663-8-0. The vendee was given credit for the lease money towards the sale price. It has claimed that a sum of Rs. 14,761-10-3 still remains outstanding.

(2) The Union of India has further claimed that a sum of Rs. 5,040-2-0 was due as rent till March, 1956, of the premises known as May Villa, Simla.

(3) The third claim of the petitioner is that a sum of Rs. 6,662-7-0 was due as rent till 28th February, 1955; for the premises known as Bank Building, Simla, from the company. It was prayed that the recoveries of these amounts, which are due to the Government of India, be ordered as arrears of land revenue and be treated as a preferential claim.

(4) In the written statement filed by the official liquidator, the preferential claim of the petitioner is not being admitted. So far as the actual payment to the Union of India is concerned, it is conceded that a sum of Rs. 1476-10-3 on account of the balance of the price of the Machinery is outstanding. Regarding the second

sum of Rs. 5,040-2-0 which was being claimed as rent till March, 1956, of the premises known as May Villa, Simla, the company's stand is that a sum of Rs. 2,042-62 was due to the Custodian, Evacuee Property, on account of the rent of the premises. There is no longer any dispute as to this petitioner, admits the correctness of this contention of the company. Now, there is no longer any dispute as to the liability of the company with respect to the two items of Rs. 14,761-10-3 and Rs. 2,042-62, the total of these two items comes to Rs. 16,804-2/ which are admittedly due to the petitioner.

(5) Regarding the third item of Rs. 6,662-7-0, the company has denied that this sum is outstanding, the company's contention is that according to the ledger maintained by the Company, nothing is due to the Union of India against this item. Evidence has been led in this case by the parties and now it is conceded on behalf of the petitioner that through error the amount of Rs. 6,662-7-0 had been claimed and it is now being admitted that this payment has actually been received from the company. The Union of India, in view of the above facts, does not press its claim with regard to the item of Rs. 666-27-0 as it has already been received.

(6) The only dispute which remains to be decided is whether the claim of Rs. 16,804-27 which is admittedly due to the Union of India is to be treated as a preferential claim. On behalf of Union of India reliance has been placed upon a case decided by me in *Excise and, Taxation Officer v. Gauri Mal Butail Trust* AIR 1961 Punj 292. In that case, property tax under the Punjab Urban Immovable Property Tax Act, 1940, had been imposed. The question arose as to the recovery of this tax being deemed as a preferential claim. Relying upon *Union of India (UOI) Vs. Amar Nath and Others*, , *Bank of India v. John Bowman (S)* AIR 1955. Bom 505, *Builders Supply Corporation Vs. Union of India (UOI) and Others*, I expressed the view that 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 must have priority against the private citizen. I was of the view that this was the law of this country and had been preserved by Art. 372 of the Constitution.

(7) Mr. Hem Raj Mahajan, learned counsel for the official liquidator, has based his contention on the language of Section 530 of the Companies Act, 1956, and has relied upon there reported decisions in *The State Vs. Pure Milk Supply Co. Ltd.*, AIR 1946 16 (Federal Court) and *Secy. of State v. Punjab Industrial Bank Ltd.* AIR 1931 Lah 351. Section 530 of the Companies Act, 1956, corresponds to section 230 of the earlier Act of 1913. Relevant portion of Section 530 reads-

"530. Preferential Payments-

(1) In a winding up, 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 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;

xxx xxx"

In 64 Pun LR 475: (AIR 1962 Punj 519), a similar question arose. In that case, the State Government had advanced a loan to the company. The question was whether this debt could be given priority u/s 530 of the Companies Act, 1956. Relying upon AIR 1946 16 (Federal Court) I expressed the view that such a loan could not be given priority u/s 530. I also maintained that the decision, in ILR (1960) Punj 809: (AIR 1961 Punj 292), was distinguishable as that was a case of tax where as the case against the Pure Milk Supply Company Ltd. was of loan advanced by the State.

It may be said that the State has certain prerogatives, but it is also open to the State to give up any one of such prerogatives. The State is equality bound by the provisions of the Companies Act as any other citizen. The State, when enacting such a provision and confining its preferential claim to "all revenues, taxes cesses and rates due from the company to the Central or a State Government....." is deemed to renounce its priority with regard to other claims which may be in the nature of loans etc. It is a sound argument that when preferential claims are specified, there is no longer any priority attached to the unspecified claims of the Government. I am inclined to the view, in these circumstances, that priority is not available to the Union of India with respect to its claims detailed above in this case.

(8) The result of the above discussion is that the Union of India is entitled to receive a sum of Rs. 16,804-27 from the company as an ordinary creditor.

(9) Order accordingly.