M/S Anita International vs Tungabadra Sugar Works Maz.Sangh & Ors on 4 July, 2016

Equivalent citations: 2016 (9) SCC 44, AIR 2016 SC (SUPP) 1, (2017) 1 CIVLJ 91, (2017) 4 ALL WC 3535, (2017) 1 BANKCAS 560, (2016) 164 ALLINDCAS 1 (SC), (2016) 133 REVDEC 510, (2016) 118 ALL LR 484, (2016) 8 MAD LJ 39, (2016) 6 SCALE 215, (2016) 3 ICC 798

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Bench: Adarsh Kumar Goel, Jagdish Singh Khehar

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6042-6048 OF 2011

Anita International …. Appellant

versus

Tungabadra Sugar Works Mazdoor Sangh –
and others …. Respondents

with

CIVIL APPEAL NOS. 5501-5502 OF 2016
(Arising out of SLP(C) Nos. 7490-7491 of 2014)

Tungabadra Sugar Works Mazdoor Sangh …. Appellant

versus

Official Liquidator and others …. Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. Leave granted in Special Leave Petition (C) Nos. 7490-7491 of 2014.

2. Two company petitions, i.e., Company Petition Nos. 170 of 1995 and 35 of 1997 were filed by Videocon International Ltd. and Tapti Machines Pvt. Ltd., for winding up of Deve Sugars Ltd. before the High Court of Judicature at Madras. Deve Sugars Ltd. was running a sugar factory in the State of Karnataka. Deve Sugars Ltd. was ordered to be wound up on 16.4.1999. An Official Liquidator was accordingly directed to take possession of the properties of the company - Deve Sugars Ltd.. The

Official Liquidator took possession of the assets of the company situate at Harige (in District Shimoga, in the State of Karnataka), on 28.9.1999.

3. The State Bank of Mysore had also extended some loans to Deve Sugars Ltd.. When Deve Sugars Ltd. defaulted in the repayment of the loans, the State Bank of Mysore filed Original Application Nos. 440 of 1997 and 1300 of 1997, before the Debts Recovery Tribunal, Bangalore, (hereinafter referred to as, the DRT, Bangalore) for the recovery of Rs.22,31,78,558.55. During the course of the instant proceedings, the DRT, Bangalore issued a recovery certificate in the sum of Rs.8.40 crores. It would be relevant to mention, that the State Bank of Mysore also filed Company Application Nos.1251-1253 of 1999, in the pending Company Petition No.170 of 1995, before the High Court at Madras, seeking leave to proceed with the recovery proceedings before the DRT, Bangalore, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as, the RDB Act).

4. The Company Court in the High Court at Madras, while granting leave to the State Bank of Mysore, passed the following order on 10.3.2000 (while disposing of Company Application Nos. 1251-1253 of 1999):

> "This company application praying this Court to grant leave to the applicant Bank to proceed and prosecute further O.A. No.1300 of 1997 filed by them against the respondent Company in the Debt Recovery Tribunal at Bangalore.
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> Company Applications coming on this day before this Court for hearing in the presence of Mr. R. Varichandran advocate for the applicant, herein and the official liquidator, High Court, Madras, the respondent, appearing in person, and upon reading the Judges Summons and affidavit and report of the Official Liquidator filed herein, the Court made the following orders:-
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> Leave is granted subject to the condition that official liquidator is impleaded and no coercive steps are taken against the assets of the company during or after the conclusion of the proceedings before the Tribunal." (emphasis supplied) A perusal of the above order reveals, that leave was granted, subject to the condition that the Official Liquidator, was impleaded before the DRT, Bangalore, and further, that no coercive steps would be taken against the assets of the company – Deve Sugars Ltd., during or after the conclusion of proceedings before the DRT, Bangalore.

5. On 1.8.2001, the workers' union of Deve Sugars Ltd. was granted the responsibility to overlook security arrangements of the establishment of Deve Sugars Ltd..

6. Immediately after the DRT, Bangalore, issued the recovery certificate, the State Bank of Mysore moved DCP No.1912 in Original Application No.440 of 1997, seeking the disposal of the assets of the company in liquidation, at the hands of the Recovery Officer of the DRT, Bangalore (hereinafter referred to as, the Recovery Officer). Simultaneously, the State Bank of Mysore being conscious of the order passed by the High Court at Madras on 10.3.2000, filed Company Application No.1300 of

2003, with a prayer that it be permitted to seek execution of the recovery certificate dated 15.5.2002 (for recovering the amounts due to it, from out of the assets of Deve Sugars Ltd.). It is relevant to mention, that the aforesaid Company Application No.1300 of 2003 was not entertained by the Registry of the High Court at Madras. While declining to entertain Company Application No.1300 of 2003, the Registry of the High Court at Madras, relied upon a judgment rendered by this Court in Civil Appeal No. 2536 of 2000 (reported as Allahabad Bank v. Canara Bank[1]). While not entertaining Company Application No.1300 of 2003, the Registry of the High Court recorded the following endorsement:

> "ORDER As per order in Civil Appeal no.2536/00 as reported in 2000 (3) SCC 205. Leave is not necessary."

7. Consequent upon the return of Company Application No.1300 of 2003, it came to be assumed by the State Bank of Mysore, that leave of the High Court, was not required for the sale of the assets of Deve Sugars Ltd.. Accordingly, the State Bank of Mysore approached the Recovery Officer, for the disposal of the assets of Deve Sugars Ltd., in continuation of the recovery certificate issued by the DRT dated 15.5.2002. On the above prayer of the State Bank of Mysore, the Recovery Officer issued a proclamation of sale in Form-13, by following the procedure prescribed under the RDB Act. The auction of the properties of Deve Sugars Ltd., in the first instance, was fixed for 1.10.2014.

8. At the instant juncture, the workers' union (Tungabadra Sugar Works Mazdoor Sangh), of Deve Sugars Ltd., approached the High Court of Karnataka, by filing Writ Petition No.37991 of 2004. Through the above writ petition, the workers' union assailed the recovery proceedings initiated by the State Bank of Mysore, before the Recovery Officer. The workers' union also sought an interim direction from the High Court of Karnataka, to restrain the continuation of the sale proceedings, at the hands of the Recovery Officer, because their salary and provident fund dues, were still payable by Deve Sugars Ltd.. The aforesaid prayer was made by asserting, that the workers' union had a preferential claim, as against the claim of the State Bank of Mysore, under the provisions of the Companies Act. A learned single Judge of the High Court of Karnataka, while issuing notice, directed that the sale made by the Recovery Officer would be subject to the final outcome of the writ petition. It would also be relevant to reiterate, that the Official Liquidator was authorized by the High Court at Madras, to take over possession of the properties of the company under liquidation. The Official Liquidator had accordingly taken over possession of the said properties on 28.9.1999. While permitting the State Bank of Mysore to pursue the recovery proceedings against Deve Sugars Ltd. before the DRT, the High Court at Madras, had directed that the Official Liquidator be impleaded as a respondent before the DRT. The Official Liquidator, had also raised objections to the purported sale by the Recovery Officer (in continuation of the recovery certificate dated 15.5.2002, issued by the DRT). The Official Liquidator sought deferment of the sale proceedings at the hands of the Recovery Officer, under Section 529A of the Companies Act. It would be relevant to mention, that the objections raised by the workers' union and the Official Liquidator, were overruled by the Recovery Officer.

9. It is also pertinent to mention, that the auction scheduled by the Recovery Officer for 1.10.2004, could not be conducted. Accordingly, a fresh proclamation was issued, for the auction of the

properties of Deve Sugars Ltd., fixing 11.8.2005 as the date for holding the auction. The rival parties were also permitted to bring their buyers, if there was anyone interested. The reserve price was fixed at Rs.10 crores. The auction was actually conducted on 11.8.2005. The highest bid was made by Anita International, the appellant before this Court. The bid of Anita International of Rs.10.25 crores was accepted. The bidder deposited the bid amount, within the stipulated period. No challenge was raised against the auction conducted on 11.8.2005, within the postulated period of 30 days, as is permissible in terms of the Rules framed under the RDB Act. The Recovery Officer ordered the confirmation of the sale of the auctioned property, after the expiry of statutory period, expressed in Rules 60, 61, and 62 of the Second Schedule of the Income Tax Act (as is applicable to proceedings, before Debts Recovery Tribunals), on 12.9.2005.

10. On 20.9.2005, the Recovery Officer appointed a Receiver, to take possession of the property, sold at the auction. The Court Commissioner allegedly took over possession of some of the properties, and handed over the same to the auction purchaser – Anita International. At the instant juncture, the appellant – Anita International, filed Company Application No.1811 of 2005 before the High Court at Madras for removal of the security agency. At the said juncture, Videocon International Ltd. and Tapti Machines Pvt. Ltd. filed Writ Petition No.26564 of 2005 before the High Court of Karnataka. The above writ petition, and Writ Petition No.37991 of 2004 (filed by the workers' union) were heard by a learned single Judge, wherein the auction purchaser – Anita International, raised a preliminary objection. It was submitted, that the petitioners before the High Court had an efficacious alternative remedy, under the RDB Act. It was accordingly prayed, that the petitioners be relegated to their alternative remedy. Company Application No.854 of 2006 was filed before the Company Court in the High Court at Madras, wherein a challenge was raised to the sale of the assets of Deve Sugars Ltd., at the hands of the Recovery Officer. It would be relevant to mention, that the above two writ petitions were disposed of by the High Court of Karnataka, by a common order dated 27.10.2006. The petitioners before the Karnataka High Court were allowed to avail of their alternative remedy before the DRT, Bangalore. The above common order dated 27.10.2006 was challenged, by filing Writ Appeal Nos.2050 and 2051 of 2006. Both the above writ appeals were dismissed on 23.2.2007. Liberty was, however, reserved with appellants, by permitting them to approach the DRT, Bangalore, by filing appeals. As a matter of abundant caution, the appellate Court ordered, that the DRT, Bangalore, would deal with the controversy, uninfluenced by the orders passed by the High Court.

11. In compliance with, and in continuation of the outcome before the High Court of Karnataka, the workers' union preferred AOR No.15 of 2006 and Videocon International Ltd. preferred AOR No.1 of 2007. In the above appeals, a challenge was raised to the order dated 12.9.2005 passed by the Recovery Officer, whereby the sale of the properties of Deve Sugars Ltd. conducted on 11.8.2005, in favour of Anita International was confirmed. Simultaneously, one N. Ponnusamy, an ex-Director of Deve Sugars Ltd., filed Company Application Nos.2740-2742 of 2007 before the Company Court in the High Court at Madras, and sought the setting aside of the auction sale dated 11.8.2005, as well as, the confirmation order dated 12.9.2005, after the payment of the consideration amount. The challenge raised by N. Ponnusamy was primarily on the ground that the reserve price of Rs.10 crore was too low. N. Ponnusamy, also sought transfer of the recovery proceedings, from the DRT, Bangalore, to the High Court at Madras. While entertaining the proceedings initiated by N.

Ponnusamy, the High Court by its order dated 24.10.2007, passed an ex parte interim order of stay. Anita International and State Bank of Mysore, filed detailed objections, to the applications filed by the Official Liquidator, as well as, by the aforementioned N. Ponnusamy. All the applications filed in C.A. No.1811 of 2005 were taken up for consideration, collectively. By a common order dated 3.3.2009, the application filed by the Official Liquidator was dismissed, by holding that the Official Liquidator was a party before the Karnataka High Court (in the proceedings which were disposed of by a common order dated 27.10.2006), and in consonance with the above order, the Official Liquidator was obliged to file an appeal, to challenge the auction sale (dated 11.8.2005), as well as, the order of confirmation (dated 12.9.2005) passed by the Recovery Officer. Likewise, the proceedings initiated by N. Ponnusamy, also did not yield any result. His claim was also rejected on the ground, that he too could have availed of the remedy of filing an appeal, to assail the orders passed by the Recovery Officer. The other applications, which came up for hearing jointly were likewise dismissed, as the said applicants, had already availed of the appellate remedy, before the DRT, Bangalore. As against the above, the application filed by Anita International for possession of the property purchased by way of auction at the hands of the Recovery Officer, was allowed.

12. Dissatisfied with the order passed by the Company Court, the applicants raised a challenge to the order dated 3.3.2009 (passed in C.A. Nos.1811 of 2005, 854 of 2006 and 2740-2742 of 2007 – in Company Petition No.170 of 1995) by filing O.S.A. Nos. 59-63, 76, 77 and 82 of 2009. The impugned order in the present appeals dated 17.9.2009, was passed by a Division Bench of the Company Court in the High Court at Madras. In arriving at its conclusions, the High Court took into consideration inter alia the following factors:

> Firstly, the Official Liquidator had raised objections before the Recovery Officer, in respect of the sale of the properties of Deve Sugars Ltd.. There was nothing to indicate, that the said objections were ever considered by the Recovery Officer. Conversely, the High Court also arrived at the conclusion, that the Official Liquidator who was the custodian of the properties of Deve Sugars Ltd. (consequent upon the Official Liquidator having taken possession of the assets of the company on 28.9.1999), had failed to effectively protect the property of the company.

Secondly, no material had been placed before the High Court to indicate, that the valuation report (dated 24.3.2002) and the inventory (dated 25.11.2004) were prepared after giving notice to the Official Liquidator, who was undoubtedly in exclusive custody of the properties (which were subject matter of auction).

Thirdly, even after the workers' union had raised objections before the Recovery Officer, no material was placed before the High Court, that there was proper application of mind at the hands of the Recovery Officer, leading to the inference, that the objections were rejected in a casual and lackadaisical manner.

Fourthly, the inspection of the properties of the company under winding up, by the intending purchasers (for the auction sale scheduled on 11.8.2005) was permitted only on the day preceding the date of auction (namely, on 10.8.2005), leading to the inference, that the entire process of

auction was a mere formality.

Fifthly, on the advertised date fixed for the auction (on 11.8.2005) the Recovery Officer received only two bids. Despite the above, he closed the bid on 11.8.2005 itself. Insofar as the above two bids are concerned, it was felt, that there was for all intents and purposes only a singular bid. One of the bidders was Anita International – the appellant herein, and the other bid was by Synergy Steel Ltd. – a sister company of the appellant – Anita International. In sum and substance therefore, the Recovery Officer closed the bid, after receiving a singular bid.

Sixthly, after holding the auction on 11.8.2005, the Recovery Officer confirmed the sale in favour of Anita International on 12.9.2005. This could not have been done, in view of the order dated 10.3.2000 passed by the High Court at Madras, wherein it was directed, that no coercive steps would be taken against the assets of the company under liquidation, during or after the conclusion of the proceedings before the DRT, Bangalore. And as such, the State Bank of Mysore could not have proceeded with, the sale of the assets of Deve Sugars Ltd.

13. While dealing with the proposition of law declared by this Court in the Allahabad Bank case1, wherein this Court had unambiguously concluded, that the provisions of the RDB Act required, Debts Recovery Tribunals alone, to decide applications for recovery of debts due to banks and financial institutions. And wherein, it was also held, that the aforesaid responsibility included, the adjudication of the liability of the debtor to banks and financial institutions, as well as, the execution of the recovery certificate by the Recovery Officer. In spite of the above, it was submitted, that the High Court by relying on the judgment in M.V. Janardhan Reddy v. Vijaya Bank[2], and after taking note of the fact, that the State Bank of Mysore had applied to the Company Court of the High Court at Madras, for liberty to recover its dues from Deve Sugars Ltd., by filing Company Application Nos.1251-1253 of 1999 (in pending Company Petition No.170 of 1995), and having obtained an order from the High Court dated 10.3.2000, was bound by the same. The High Court also concluded, that the above order dated 10.3.2000 was binding, on the Recovery Officer of the DRT, Bangalore. The High Court also expressed the view, that the order dated 10.3.2000 had unambiguously directed, that no coercive steps would be taken against the assets of the company under winding up. Accordingly, the High Court held, that the State Bank of Mysore could not take advantage of the sale of the assets of the company, or the confirmation thereof at the hands of the Recovery Officer, as the same were in clear violation, of the order (dated 10.3.2000) of the Company Court in the High Court at Madras. Relying on the decision of this Court in the M.V. Janardhan Reddy case2, the High Court while referring to the findings recorded in paragraph 28 of the above judgment concluded, that since the assets of the company under winding up were under the physical charge of the Official Liquidator, the Official Liquidator ought to have been associated with the auction proceedings, conducted by the Recovery Officer. Since the facts and circumstances of the present case reveal, that the Official Liquidator was not allowed to be associated with the auction proceedings, and even the valuation of the assets, was taken without the knowledge of the Official Liquidator, and further, the objections raised by the Official Liquidator were rejected without due consideration, the Company Court in the High Court at Madras concluded, that the sale of the properties of Deve Sugars Ltd. by the Recovery Officer on 11.8.2005, was liable to be set aside. So also, the confirmation of the sale, by the Recovery Officer on 12.9.2015.

14. Having concluded as above, the High Court vide the impugned order dated 17.9.2009, directed as under:

> "Hence the following judgment is made:
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> (i) The auction sale in question is set aside;
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> (ii) The auction purchaser is entitled to refund of the monies paid by him towards the auction sale which is now set aside;
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> (iii) In the interest of all the creditors and also the workers' union, a fresh sale is ordered to be made by the Recovery Officer after following the procedural formalities and after preparation of a fresh valuation done by the panel of valuers appointed by the Company Court with the association of the Official Liquidator and on acceptance of the same by the Company Court in order to ensure a proper price is fetched for the assets of the company in liquidation."

15. While assailing the impugned order passed by the High Court dated 17.9.2009, it was the vehement contention of learned counsel for the appellant, that the Company Court in the High Court at Madras, had no jurisdiction in respect of the proceedings which fell within the legitimate domain of the RDB Act. To canvass the above proposition, learned counsel placed reliance on a number of judgments of this Court. The submissions advanced in this behalf, are being narrated hereunder:

> (i) Reliance was first placed on the Allahabad Bank case1. It was pointed out, that the above judgment was rendered on 10.4.2000. And in the above view of the matter, the declared position of law was clear and explicit well before the controversy in hand was determined by the High Court at Madras. From the cited judgment, learned counsel for the appellant placed reliance on the following observations:
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> "21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) [formerly under Section 19(7)] to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution.) This is the effect of Sections 17 and 18 of the Act.

22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant Bank is concerned.

(ii) Execution of certificate by Recovery Officer: is his jurisdiction exclusive

23. Even in regard to "execution", the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the banks/financial institutions should go to the civil court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of the RDB Act. .....

xxx xxx xxx The provisions of Section 34(1) clearly state that the RDB Act overrides other laws to the extent of "inconsistency". In our opinion, the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner.

24. There is one more reason as to why it must be held that the jurisdiction of the Recovery Officer is exclusive. The Tiwari Committee which recommended the constitution of a Special Tribunal in 1981 for recovery of debts due to banks and financial institutions stated in its report that the exclusive jurisdiction of the Tribunal must relate not only in regard to the adjudication of the liability but also in regard to the execution proceedings. It stated in Annexure XI of its report that all "execution proceedings" must be taken up only by the Special Tribunal under the Act. In our opinion, in view of the special procedure for recovery prescribed in Chapter V of the Act, and Section 34, execution of the certificate is also within the exclusive jurisdiction of the Recovery Officer.

xxx xxx xxx Question of leave and control by the Company Court:

30. Learned Attorney General has, in this connection, relied upon Damji Valji Shah v. LIC of India (1965) 3 SCR 665 to contend that for initiating and continuing proceedings under the RDB Act, no leave of the Company Court is necessary under Section 446. In that case, a Tribunal was constituted under the Life Insurance Corporation Act, 1956. Question was whether under Section 446 of the Companies Act, 1956, the said proceedings could be stayed and later be transferred to the Company Court and adjudicated in that Court. It was held that the said proceedings could not be transferred. Section 15 of the Life Insurance Corporation Act, 1956 — which we may say, roughly corresponds to Section 17 of the RDB Act — enabled Life Insurance Corporation of India to file a case before a Special Tribunal and recover various amounts from the erstwhile life insurance companies in certain respects. Section 41 of the LIC Act conferred exclusive jurisdiction on the said Tribunal just like Section 18 of the RDB Act, 1993. There the Company was ordered to be wound up by an order of the Company Court passed under Section 446(1) on 9-1-1959. The claim was filed by LIC against the

Company and its Directors before the Tribunal in 1962. The respondents before the Tribunal contended that the claim could not have been filed in the Tribunal without the leave of the Company Court under Section 446(1). This Court rejected the said contention and held that though the purpose of Section 446 was to enable the Company Court to transfer proceedings to itself and to dispose of the suit or proceedings so transferred, unless the Company Court had jurisdiction to decide the questions which were raised before the LIC Tribunal, there was no purpose of requiring leave of the Company Court or permitting transfer. .....

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31. It may also be noticed that in the LIC Act of 1956, there was no provision like Section 34 of the RDB Act giving overriding effect to the provisions of the LIC Act. Still this Court upheld the exclusive jurisdiction of the LIC Tribunal .....

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71. But the point here is that the occasion for such a claim by a secured creditor (here Canara Bank) against realisations by other creditors (like Allahabad Bank) under Section 529-A read with proviso (c) to Section 529(1) can arise before the Tribunal only if Canara Bank has stood outside winding- up and realised amounts and if it shows that out of the amounts privately realised by it, some portion has been rateably taken away by the liquidator under clauses (a) and (b) of the proviso to Section 529(1). It is only then that it can claim that it is to be reimbursed at the same level as a secured creditor with priority over the realisations of other creditors lying in the Tribunal. None of these conditions is satisfied by Canara Bank. Thus, Canara Bank does not belong to the class of secured creditors covered by Section 529-A(1)(b).

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73. If none of the conditions required for applying Section 19(19) and Section 529-A is, therefore, satisfied, then the claim of Canara Bank before the Tribunal can only be on the basis of principles underlying Section 73 CPC. There being no decree in its favour from any court or from any Tribunal, and the other conditions of Section 73 not having been satisfied, no dividend can be claimed out of monies realised at the instance of Allahabad Bank, even if Allahabad Bank is an unsecured creditor.

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76. The next question is whether the amounts realised under the RDB Act at the instance of the appellant can be straight away released in its favour. Now, even if Section 19(19) read with Section 529-A of the Companies Act does not help the respondent Canara Bank, the said provisions can still have an impact on the appellant Allahabad Bank which has no doubt a decree in its favour passed by the Tribunal. Its dues are unsecured. The “workmen’s dues” have priority over all other creditors, secured and unsecured because of Section 529-A(1)(a). There is no material before us to hold that the workmen’s dues of the defendant Company have all been paid. In view of the general principles laid down in National Textile Workers’ Union v. P.R. Ramakrishnan (1983) 1 SCC 228 there is an

obligation resting on this Court to see that no secured or unsecured creditors including banks or financial institutions, are paid before the workmen's dues are paid. We are, therefore, unable to release any amounts in favour of the appellant Bank straight away." (emphasis supplied) Based on the above decision, it was the contention of learned counsel for the appellant, that the Company Court in the High Court at Madras, had neither the jurisdiction to grant liberty to the State Bank of Mysore to recover its dues from Deve Sugars Ltd. by initiating proceedings under the RDB Act, nor the jurisdiction to interfere with the recovery proceedings by directing that no coercive steps would be taken against Deve Sugars Ltd., during or after the conclusion of the proceedings before the DRT, Bangalore. Stated simply, learned counsel for the appellant was emphatic, that the order passed by the Company Court in the High Court at Madras (dated 10.3.2000), was jurisdictionally and legally impermissible, and as such, was liable to be ignored.

(ii) Reliance was also placed on Andhra Bank v. Official Liquidator[3]. The instant judgment was relied upon to support the conclusions drawn by learned counsel, while placing reliance on the Allahabad Bank case1. Learned counsel invited our attention to the position expressed in paragraph 19 of the cited judgment, which is extracted hereunder:

> "19. As regards Point (6), however, this Court at para 76 of the judgment held:
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> "The next question is whether the amounts realised under the RDB Act at the instance of the appellant can be straight away released in its favour. Now, even if Section 19(19) read with Section 529-A of the Companies Act does not help the respondent Canara Bank, the said provisions can still have an impact on the appellant Allahabad Bank which has no doubt a decree in its favour passed by the Tribunal. Its dues are unsecured. The 'workmen's dues' have priority over all other creditors, secured and unsecured because of Section 529-A(1)(a). There is no material before us to hold that the workmen's dues of the defendant Company have all been paid. In view of the general principles laid down in National Textile Workers' Union v. P.R. Ramakrishnan (1983) 1 SCC 228 there is an obligation resting on this Court to see that no secured or unsecured creditors including banks or financial institutions, are paid before the workmen's dues are paid. We are, therefore, unable to release any amounts in favour of the appellant Bank straight away."" (emphasis supplied)
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> (iii) In chronological order, learned counsel next relied upon the judgment in Rajasthan State Financial Corporation v. Official Liquidator[4], and drew the Court's attention to the following:
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> "15. In A.P. State Financial Corpn. v. Official Liquidator (2000) 7 SCC 291 this Court held that the Company Judge, while permitting the financial corporation to stay outside the liquidation proceedings, rightly imposed conditions to ensure that the Corporation would: (i) discharge its liability due to workers under Section 529-A of the Companies Act, (ii) inform the Official Liquidator in advance about the proposed sale of properties of the indebted companies, and (iii) would obtain the Court's permission before finalising the tenders. This Court specifically overruled the view

taken by the High Court that it was not necessary for the financial corporations to seek permission of the Company Court to stay outside the winding-up proceedings. It was held that Sections 529(1) and 529-A of the Companies Act had overriding effect and the 1985 amendment being later in point of time, the non obstante clause therein would prevail over the non obstante clause contained in Section 46-B of the SFC Act.

16. In International Coach Builders Ltd. v. Karnataka State Financial Corpn (2003) 10 SCC 482 this Court considered the correctness of the views expressed by the Karnataka High Court and the Gujarat High Court. This Court held that a right is available to a financial corporation under Section 29 of the SFC Act against a debtor, if a company, only so long as there is no order of winding up. When the debtor is a company in winding up, the rights of financial corporations are affected by the provisions in Sections 529 and 529-A of the Companies Act. It was also held that the proviso to Section 529 of the Companies Act creates a "pari passu" charge in favour of the workmen to the extent of their dues and makes the Liquidator the representative of the workmen to enforce such a charge. The decision of the Bombay High Court in Maharashtra State Financial Corpn. v.

Official Liquidator was approved. The reference to a larger Bench was occasioned by the fact that the decision in Allahabad Bank v. Canara Bank was not adverted to in this decision. This decision recognises that, whether a creditor is standing outside the winding up or not, the distribution of the proceeds has to be in terms of Section 529 of the Companies Act read with Section 529-A of that Act in a case where the debtor is a company-in-liquidation. As far as we can see, there is no conflict on the question of the applicability of Section 529-A read with Section 529 of the Companies Act to cases where the debtor is a company and is in liquidation. The conflict, if any, is in the view that the Debts Recovery Tribunal could sell the properties of the company in terms of the Recovery of Debts Act. This view was taken in Allahabad Bank v. Canara Bank in view of the Recovery of Debts Act being a subsequent legislation and being a special law which would prevail over the general law, the Companies Act. This argument is not available as far as the SFC Act is concerned, since Section 529-A was introduced by Act 35 of 1985 and the overriding provision therein would prevail over the SFC Act of 1951 as amended in 1956 and notwithstanding Section 46-B of the SFC Act. As regards distribution of assets, there is no conflict. It seems to us that whether the assets are realised by a secured creditor even if it be by proceeding under the SFC Act or under the Recovery of Debts Act, the distribution of the assets could only be in terms of Section 529-A of the Act and by recognising the right of the Liquidator to calculate the workmen's dues and collect it for distribution among them pari passu with the secured creditors. The Official Liquidator representing a ranked secured creditor working under the control of the Company Court cannot, therefore, be kept out of the process.

17. Thus, on the authorities what emerges is that once a winding-up proceeding has commenced and the Liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the Recovery of Debts Act or of financial corporations coming under the SFC Act, can only be with the association of the Official Liquidator and under the supervision of the Company Court. The right of a

financial institution or of the Recovery Tribunal or that of a financial corporation or the court which has been approached under Section 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the Company Court the right to ensure that the distribution of the assets in terms of Section 529-A of the Companies Act takes place. In the case on hand, admittedly, the appellants have not set in motion any proceeding under the SFC Act. What we have is only a liquidation proceeding pending and the secured creditors, the financial corporations approaching the Company Court for permission to stand outside the winding up and to sell the properties of the company-in-liquidation. The Company Court has rightly directed that the sale be held in association with the Official Liquidator representing the workmen and that the proceeds will be held by the Official Liquidator until they are distributed in terms of Section 529-A of the Companies Act under its supervision. The directions thus, made, clearly are consistent with the provisions of the relevant Acts and the views expressed by this Court in the decisions referred to above. In this situation, we find no reason to interfere with the decision of the High Court. We clarify that there is no inconsistency between the decisions in Allahabad Bank v. Canara Bank and in International Coach Builders Ltd. v. Karnataka State Financial Corpn. in respect of the applicability of Sections 529 and 529-A of the Companies Act in the matter of distribution among the creditors. The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security. The distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529-A read with Section 529 of the Companies Act. After all, the Liquidator represents the entire body of creditors and also holds a right on behalf of the workers to have a distribution pari passu with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the Company Court. In other words, the distribution of the sale proceeds under the direction of the Company Court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure, in the light of the directions of the Company Court, that a proper price is fetched for the assets of the company-in-liquidation. It was in that context that the rights of the Official Liquidator were discussed in International Coach Builders Ltd. The Debts Recovery Tribunal and the District Court entertaining an application under Section 31 of the SFC Act should issue notice to the Liquidator and hear him before ordering a sale, as the representative of the creditors in general.

18. In the light of the discussion as above, we think it proper to sum up the legal position thus:

> (i) A Debts Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in-

liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(ii) A District Court entertaining an application under Section 31 of the SFC Act will have the power to order sale of the assets of a borrower company-in-liquidation, but only after notice to the Official

Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(iii) If a financial corporation acting under Section 29 of the SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in- liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the Company Court and acting in terms of the directions issued by that court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529-A and Section 529 of the Companies Act.

(iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the creditor concerned is to approach the Company Court for appropriate directions regarding the realisation of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation." (emphasis supplied) Relying on the above judgment, learned counsel for the appellant emphatically pointed out, that the sale of the properties of a company in liquidation, should not be confused with the distribution of the sale proceeds of the company in liquidation amongst its creditors. It was submitted, that there could be no interference with the right of the Recovery Officer, to sell the assets of the company in liquidation, under the provisions of the RDB Act. But, that had nothing to do with the distribution of the proceeds of the sale. The distribution of the sale proceeds ought to be in consonance with the provisions of the Companies Act, wherein the debtor was a company in liquidation.

(iv) Learned counsel then placed reliance on the M.V. Janardhan Reddy case2. He invited the Court's attention to the following:

> "18. So far as the order passed by the learned Company Judge is concerned, it specifically and unequivocally stated that permission of the court should be obtained before sale is confirmed or finalised. That order was passed as early as on 13-8-1999. In an order dated 25-3-2005 also it was expressly mentioned that the sale was subject to confirmation of the court. It was an express condition imposed by the Company Court and as such it was not open to the Recovery Officer to confirm the sale and such order, which was having no authority of law, was rightly set aside by the Company Judge and no grievance could be made.
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> 22. Our attention has been invited by the learned counsel to the relevant orders passed by the Company Court from time to time. So far as the order dated 13-8-1999 is concerned, permission to sell the property was granted on certain terms and conditions. They read as under:
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> (A) The Official Liquidator shall be allowed to have inspection of the properties and assets of the company in liquidation and to take inventory as and when required.

(B) Certified copy of the judgment and decree passed by the Subordinate Judge, Bhongir in OS No. 57 of 1989 dated 24-7-1993 shall be made available to the Official Liquidator without delay.

(C) The certified copy of the order that would be passed by the Debts Recovery Tribunal, Bangalore shall be made available to the Official Liquidator without avoidable delay.

(D) The petitioner Bank shall file the valuer's report in the court before the properties covered under the mortgage deed are put to sale. (E) Permission of this Court shall be obtained before the sale of the properties movable or immovable, is confirmed or finalised. (F) The petitioner Bank shall undertake to deposit and shall deposit the workmen's dues with the Official Liquidator as and when quantified by him as per the provisions of Section 529-A of the Companies Act. (G) Whatever surplus remains after the sale and realisation of the dues of the secured creditors and the workmen, as per law, the balance sale proceeds shall be made available to the Official Liquidator for being dealt with in accordance with the provisions of the Companies Act and the Rules.

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23. An order dated 28-3-2005 in Company Application No. 187 of 2005 was equally clear. It reads as under:

"This is an application filed by the nationalised bank seeking permission of this court to receive the valuation report and also to permit the Bank to effect sale of the properties of the Company under liquidation through the Recovery Officer of the Debts Recovery Tribunal, in terms of the conditions of auction-sale notice dated 2-2-2005.

It is also stated that though sale notice was ordered, no sale was conducted as no permission was obtained from this court. The Official Liquidator also filed a report reporting that there is no objection as to the proposed auction and also the valuation report as filed by the applicant Company.

Under the above circumstances, the applicant Company is permitted to go ahead with the proposed sale of the assets of the Company under liquidation through public auction. But, however, the said sale, if any effected, shall be subject to the confirmation of this court. The applicant is accordingly granted permission to effect the sale, but the sale shall be required to be confirmed by this court.

The application is accordingly disposed of." The above orders leave no room of doubt that the Bank was permitted to go ahead with the proposed sale of the assets of the Company under liquidation by way of auction but such sale was subject to

confirmation by the Company Court. It is, therefore, clear that all parties were aware about the condition as to confirmation of sale by the Company Court. It was, therefore, not open to the Recovery Officer to confirm sale. The order passed and action taken by the Recovery Officer was in clear violation of and inconsistent with the specific condition imposed by the Company Court. In our considered opinion, therefore, the appellant cannot take any advantage of confirmation of sale by the Recovery Officer who did not possess the power to confirm sale.

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27. It is true that when the Company Judge set aside the sale on 17-3-2006, the order was reversed by the Division Bench of the High Court since it was in breach of natural justice. That does not, however, mean that the Company Court could not pass fresh order after affording opportunity of hearing to the parties.

28. In our opinion, the Company Court was right in passing fresh order after hearing the parties. If the Recovery Officer could not have confirmed the sale, obviously all actions taken in pursuance of confirmation of sale, such as, issuance of sale certificate, registration of documents, etc. would be of no consequence. Since the Company was in liquidation and Official Liquidator was in charge of the assets of the Company, he ought to have been associated with the auction proceedings, which was not done. This is also clear from the report submitted by the Official Liquidator and on that ground also, the auction-sale was liable to be set aside." (emphasis supplied)
Based on the conclusions drawn in the above judgment, it was submitted, that there can be no doubt, that in a matter where the Company Court had passed an order restraining the Recovery Officer confirming the sale, the sale made by the Recovery Officer in execution of the recovery certificate could only have been confirmed with the permission of the Court. Here again, learned counsel has drawn a fine distinction. It was asserted, that even in the above judgment, this Court had not disputed nor disturbed the exclusive jurisdiction of the Recovery Officer in executing a recovery certificate.

(v) Last of all learned counsel placed reliance on Official Liquidator, Uttar Pradesh and Uttarakhand v. Allahabad Bank[5], and drew our attention to the following conclusions recorded therein:

"23. From the aforesaid verdict, it is vivid that the larger Bench in Rajasthan State Financial Corpn. case approved the law laid down in Allahabad Bank. In fact, it is noticeable that the larger Bench has observed that in Allahabad Bank case, a view has been taken that the RDB Act being a subsequent legislation and being a special law would prevail over the general law, the 1956 Act, but the said argument is not available as far as the SFC Act is concerned.

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> 24. From the aforesaid authorities, it clearly emerges that the sale has to be conducted by DRT with the association of the Official Liquidator. We may hasten to clarify that as the present controversy only relates to the sale, we are not going to say anything with regard to the distribution.

However, it is noticeable that under Section 19(19) of the RDB Act, the legislature has clearly stated that distribution has to be done in accordance with Section 529-A of the 1956 Act. The purpose of stating so is that it is a complete code in itself and the Tribunal has the exclusive jurisdiction for the purpose of sale of the properties for realisation of the dues of the banks and financial institutions.

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31. The aforesaid analysis makes it luculent that DRT has exclusive jurisdiction to sell the properties in a proceeding instituted by the banks or financial institutions, but at the time of auction and sale, it is required to associate the Official Liquidator. The said principle has also been reiterated in Pravin Gada v. Central Bank of India (2013) 2 SCC 101.

32. Once the Official Liquidator is associated, needless to say, he has a role to see that there is no irregularity in conducting the auction and appropriate price is obtained by holding an auction in a fair, transparent and non-arbitrary manner in consonance with the Rules framed under the RDB Act.

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34. We have referred to the said passage from Delhi High Court Bar Assn. case, for the purpose of highlighting that an appeal lies to DRT challenging the action of the Recovery Officer. In the case at hand, the Official Liquidator was not satisfied with the manner in which the auction was conducted and he thought it apposite to report to the learned Company Judge who set aside the auction. Needless to emphasise, the Official Liquidator has a role under the 1956 Act. He protects the interests of the workmen and the creditors and, hence, his association at the time of auction and sale has been thought appropriate by this Court. To put it differently, he has been conferred locus to put forth his stand in the said matters. Therefore, anyone who is aggrieved by any act done by the Recovery Officer can prefer an appeal. Such a statutory mode is provided under the RDB Act, which is a special enactment. DRT has the powers under the RDB Act to make an enquiry as it deems fit and confirm, modify or set aside the order made by the Recovery Officer in exercise of powers under Sections 25 to 28 (both inclusive) of the RDB Act. Thus, the auction, sale and challenge are completely codified under the RDB Act, regard being had to the special nature of the legislation." (emphasis supplied)

16. In addition to the aforesaid submissions, Mr. S. Ganesh, Senior Advocate also assisted us in the matter. He supported the above contentions, but sought a little intervention by requiring us to also examine the scope of the controversy under consideration, by placing reliance on the judgment of this Court in Sadashiv Prasad Singh v. Harendar Singh[6]. Learned counsel invited our attention to the scope of interference with reference to a public auction, wherein third party rights have

emerged, especially when the third parties are independent of the disputants, and also, with reference to seeking recourse to a statutory remedy available to a party against the impugned order. The conclusions recorded by this Court in the Sadashiv Prasad Singh case6, as were pointedly brought to our notice, are being extracted hereunder:

> "23. At the time of hearing, we were thinking of remanding the matter to the Recovery Officer to investigate into the objection of Harender Singh under Rule 11 of the Second Schedule to the Income Tax Act, 1961. But considering the delay such a remand may cause, we have ourselves examined the objections of Harender Singh and rejected the objections for a variety of reasons:
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> 23.1. Firstly, the contention raised at the hands of the respondents before the High Court, that the facts narrated by Harender Singh [the appellant in Special Leave Petition (C) No. 26550 of 2010] were a total sham, as he was actually the brother of one of the judgment-debtors, namely, Jagmohan Singh. And that Harender Singh had created an unbelievable story with the connivance and help of his brother, so as to save the property in question.

The claim of Harender Singh in his objection petition was based on an unregistered agreement to sell dated 10-1-1991. Not only that such an agreement to sell would not vest any legal right in his favour, it is apparent that it may not have been difficult for him to have had the aforesaid agreement to sell notarised in connivance with his brother, for the purpose sought to be achieved.

23.2. Secondly, it is apparent from the factual position depicted in the foregoing paragraphs that Harender Singh, despite his having filed objections before the Recovery Officer, had abandoned the contest raised by him by not appearing (and by not being represented) before the Recovery Officer after 26-10-2005, whereas, the Recovery Officer had passed the order of sale of the property by way of public auction more than two years thereafter, only on 5-5-2008. Having abandoned his claim before the Recovery Officer, it was not open to him to have reagitated the same by filing a writ petition before the High Court.

23.3. Thirdly, a remedy of appeal was available to Harender Singh in respect of the order of the Recovery Officer assailed by him before the High Court under Section 30, which is being extracted herein to assail the order dated 5-5-2008:

> "30. Appeal against the order of Recovery Officer.—(1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.
>
> (2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)." The High Court ought not to

have interfered with in the matter agitated by Harender Singh in exercise of its writ jurisdiction. In fact, the learned Single Judge rightfully dismissed the writ petition filed by Harender Singh.

23.4. Fourthly, Harender Singh could not be allowed to raise a challenge to the public auction held on 28-8-2008 because he had not raised any objection to the attachment of the property in question or the proclamations and notices issued in newspapers in connection with the auction thereof.

23.5. All these facts cumulatively lead to the conclusion that after 26-10- 2005, Harender Singh had lost all interest in the property in question and had therefore, remained a silent spectator to various orders which came to be passed from time to time. He had, therefore, no equitable right in his favour to assail the auction-purchase made by Sadashiv Prasad Sinha on 28-8- 2008.

23.6. Finally, the public auction under reference was held on 28-8-2008. Thereafter the same was confirmed on 22-9-2008. Possession of the property was handed over to the auction-purchaser Sadashiv Prasad Sinha on 11-3- 2009. The auction-purchaser initiated mutation proceedings in respect of the property in question. Harender Singh did not raise any objections in the said mutation proceedings. The said mutation proceedings were also finalised in favour of Sadashiv Prasad Sinha. Harender Singh approached the High Court through CWJC No. 16485 of 2009 only on 27-11-2009. We are of the view that the challenged raised by Harender Singh ought to have been rejected on the grounds of delay and laches, especially because third-party rights had emerged in the meantime. More so, because the auction-purchaser was a bona fide purchaser for consideration, having purchased the property in furtherance of a duly publicised public auction, interference by the High Court even on the ground of equity was clearly uncalled for.

24. For the reasons recorded hereinabove, we are of the view that the impugned order dated 17-5-2010 passed by the High Court allowing Letters Patent Appeal No. 844 of 2010 deserves to be set aside. The same is accordingly set aside. The right of the appellant Sadashiv Prasad Sinha in Plot No. 2722, Exhibition Road, PS Gandhi Maidan, Patna, measuring 1289 sq ft is hereby confirmed. In the above view of the matter, while the appeal preferred by Sadashiv Prasad Sinha stands allowed, the one filed by Harender Singh is hereby dismissed." (emphasis supplied) Based on the conclusions recorded in the above judgment, it was contended, that the DRT, Bangalore, issued the recovery certificate on 15.5.2002, thereupon the auction sale was conducted on 11.8.2005, and there having been no objection to the same, the auction sale was confirmed by the Recovery Officer on 12.9.2005. It was submitted, that after a lapse of more than a decade after all payments were made (and the sale was confirmed), there was no equitable justification to interfere with the same.

17. Insofar as the submission pertaining to the availability of a statutory remedy against the impugned order is concerned, learned senior counsel referred to the directions issued by the High Court of Karnataka, while disposing of Writ Petition No.26564 of 2005 (GM-DRT) preferred by Videocon International Ltd. and Tapti Machines Pvt. Ltd. and Writ Petition No.37991 of 2004 (GM-DRT) preferred by Tungbhadra Sugar Works Mazdoor Sangh – the workers' union (referred to in the narration of facts hereinabove), and drew our attention to the observations of the High Court in its order dated 27.10.2006, which are being extracted hereunder:

"20. In the circumstances, I am of the view that there is an alternate and efficacious remedy by way of an appeal under the Debts Recovery Act R/w Procedure for recovery of tax. The petitioner shall avail the alternate remedy within a period of six weeks from today. It is needless to say that the matter shall not be precipitated until the appeal filed by the petitioners is disposed of. All the contentions are left upon." (emphasis supplied) Based on the above, it was contended, that it was not open to the appellants to raise a challenge with reference to a third party sale, especially when the same was in the nature of a public auction conducted by a Recovery Officer, while giving effect to an order passed by the Debts Recovery Tribunal, strictly within the jurisdiction of the provisions of the RDB Act. And also, the determination of this Court not to interfere lightly with the rights which came to be vested in such auction purchasers. Insofar as the appellate remedy of the contesting parties is concerned, reliance was placed on Section 30 of the RDB Act, which is extracted hereunder:

"30. Appeal against the order of Recovery Officer.— (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)." Based on the above provision, it was the submission of learned senior counsel, that the wrong, if any, caused to the contesting respondents could have been set right only under Section 18 of the RDB Act.

18. Mr. C.A. Sundaram, Senior Advocate, endeavoured to repudiate the submissions advanced at the hands of learned counsel for the appellants, by advancing three contentions. Firstly, an order passed by a Court with jurisdiction having attained finality, was binding between the concerned parties, and was liable to be complied with under all circumstances. In reference to the instant submission, the assertion of learned counsel was, that the order dated 10.3.2000 passed by the High Court at Madras had been passed by a Court having jurisdiction. The said order had attained finality. And accordingly, there was no justification at the hands of any other party concerned, to wriggle out of the same. Secondly, even if an order is passed by a Court which has no jurisdiction with reference to a controversy, and as such, could be termed as a void order, the order of the Court would continue to remain enforceable in law, till the same is set aside and/or vacated by a subsequent order. Insofar as the instant aspect of the matter is concerned, it was submitted, that the order dated 10.3.2000 having attained finality and having not been varied or vacated, was binding between the parties, and as such, its compliance was mandatory. Thirdly, any sale made within the teeth of an injunction, was liable to be set aside. An injunction order, according to learned senior counsel, as in the instant case (the order dated 10.3.2000), which mandated that no coercive steps would be taken against the assets of Deve Sugars Ltd. "... during or after the conclusion of the proceedings before the Tribunal ...", namely the DRT, Bangalore, was binding. The auction sale conducted on 11.8.2005, and its

subsequent confirmation on 12.9.2015, according to learned senior counsel, were not only beyond the jurisdiction of the Recovery Officer, but also beyond the jurisdiction of the Debts Recovery Tribunal. In the instant view of the matter, it was contended, that the impugned order dated 27.9.2009, passed by the High Court at Madras, ought not to be interfered with.

19. While substantiating the first contention noticed in the foregoing paragraph, it was asserted, that for recovery of a debt due to a bank, it can file a winding up petition before a Company Court under the Companies Act, or alternatively, it can file a recovery petition before the jurisdictional Debts Recovery Tribunal, under the provisions of the RDB Act. Accordingly, it was pointed out, that a recovery suit could be withdrawn to a Company Court, and the recovery of the debt sought by the bank, could be agitated before the Company Court. It was however pointed out, that the inverse was not permissible, inasmuch as, a winding up petition filed before the Company Court under the Companies Act, could not be withdrawn to a Debts Recovery Tribunal, under the provisions of the RDB Act. It was therefore the contention of learned counsel for the respondents, that since the State Bank of Mysore could seek recourse to the DRT, as well as the Company Court, as may be considered suitable or appropriate, the proceedings filed by the State Bank of Mysore, namely, Company Application Nos. 1250-1253 of 1999 in pending Company Petition No.170 of 1995 (and Company Petition No.35 of 1997) had been filed by the State Bank of Mysore, before a Court having jurisdiction. And therefore, a Court having jurisdiction in the matter, at the instance of the State Bank of Mysore, had passed the order dated 10.3.2000. By the order dated 10.3.2000, the Company Court in the High Court at Madras, allowed the prayer made by the State Bank of Mysore, to continue to proceed with the recovery proceedings initiated by it before the DRT, Bangalore. But while granting the above leave imposed two conditions, firstly, the Official Liquidator would be impleaded before the DRT, and secondly, no coercive steps would be taken against the assets of the Company (-Deve Sugars Ltd.) during or after the proceedings before the DRT. The said order was neither varied nor vacated. The same, according to learned counsel, was binding between the parties. And therefore, it was contended, that the same could not have been ignored or overlooked. It was submitted, that even if the above order dated 10.3.2000, was without jurisdiction and/or void, the same would be equally binding, till it was varied or set aside by a Court having competent jurisdiction. Based on the factual position noticed above, it was asserted, that the sale of the properties of Deve Sugars Ltd., was clearly in the teeth of the injunction order passed by the Company Court on 10.3.2000, and as such, was liable to be set aside.

20. In order to repudiate the submissions advanced at the hands of learned counsel for the appellant, based on the judgment rendered by this Court in the Allahabad Bank case1, reliance was placed on Industrial Credit and Investment Corporation of India Ltd. v. Srinivas Agencies[7], and the Court's attention was drawn to the factual and legal position expressed therein:

> "1. The extent of right of secured creditors to realise their debts from the assets of a company which is under winding up or has been wound up, by approaching fora other than the company court, is required to be spelt out in these appeals. We have also been called upon to decide as to when a pending suit or proceeding relating to realization of the debts by such a creditor should be transferred to itself by a company court seized with the winding-up proceeding.

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4. A combined reading of the aforesaid provisions leads to the following results:

(i) A winding-up court has jurisdiction, inter alia, to entertain or dispose of any suit or proceeding by or against the company, even if such suit or proceeding had been instituted before an order for winding up had been made. This apart, the winding-up court has jurisdiction to transfer such a suit or proceeding to itself and dispose of the same. These follow from sub-sections (2) and (3) of Section 446.

(ii) When a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding, even if pending at the date of the winding-up order, can proceed against the company, except by leave of the company court vide sub- section (1) of Section 446.

(iii) Any sale held, even without the leave of the winding-up court pursuant to order of a civil court on it being approached by a secured creditor to realise its debt will not ipso facto be void, in view of the holding in Ranganathan case that Section 537, dealing with voidness of sale, operates when the sale is pursuant to attachment of company court.

This, however, would be the position where a company has not been wound up, but is in the process of being wound up.

5. None of the parties has assailed the aforesaid propositions of law as well. The real bone of contention is as to when (i) leave of the winding-up court should be granted to a secured creditor to proceed with the suit after an order of winding up has been made; and (ii) when should a winding-up court transfer to itself any suit or proceeding by or against the company during the pendency of the winding-up proceeding.

6. The aforesaid questions arise because a secured creditor who has initiated a suit or proceeding in a civil court is interested in realisation of his debt only, whereas the company court looks after the interest of all the creditors; so too, the workmen's dues, which rank pari passu with debts due to secured creditors. This is brought home not only by Section 529-A, which was inserted by the Companies (Amendment) Act, 1985, but also by the proviso to sub-section (1) of Section 529 inserted by the same Amendment Act. The winding-up court does these acts through a liquidator, who has been given wide powers by Section 457 of the Act. As against this, a receiver appointed by a civil court on being approached by secured creditor would basically look after the interest of that creditor, whose interest may in many cases be in conflict with that of the liquidator, as was acknowledged in Karamelli & Barnett Ltd., In re. We feel no difficulty in stating that in case of such conflict, the interest of liquidator has to receive precedence over that of the receiver inasmuch as the former looks after the interest of a large segment of creditors along with that of workmen, whereas the latter confines his concern to the interest of the secured creditor on whose approach the receiver has been appointed. This view cannot also be, and has indeed not been, contested by the learned

counsel appearing for the appellants.

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9. Shri Salve's entire submission had been that a working principle may be got evolved which would, on the one hand, protect the substantive right of a secured creditor, specially in view of large sums of money being advanced of late of such creditors and, on the other hand, not jeopardise the interest of other secured creditors. According to the learned counsel, these twin objects can be achieved if the company court were to grant leave wherever required as a rule, subject to reasonable conditions. This would preserve the integrity of the substantive right of the secured creditor. The terms to be imposed should facilitate, rather than obstruct, the realisation of security. Further, wherever a receiver has been appointed prior to the commencement of the winding-up proceedings, he should be permitted to continue in general run of cases. As to the suits to be filed after the winding-up proceeding has commenced, the learned counsel urged that such a permission should normally be granted by the winding-up court. On this being done, when the question of appointment of receiver would arise, the civil court would do so if a case for same were to be made out after hearing the liquidator, who would be a defendant in the suit. As regards transfer of the pending suit by the company court, the submission was that convenience may not be the guiding factor; the preservation of integrity of the substantive right of the creditor should be the main consideration.

10. To buttress his submission, Shri Salve has referred us to the Recovery of Debts due to Banks and Financial Institutions Act, 1993, which was recently enacted because of the considerable difficulty being experienced by financial institutions in recovering loans and enforcement securities charged with them. Earlier, recovery procedure used to block a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. An urgent need was, therefore, felt for successful implementation of the financial sector reforms, to work out a suitable mechanism through which dues to these institutions could be realised without delay. To achieve this purpose, the aforesaid Act visualises establishment of the Debts Recovery Tribunal(s) by the Central Government, with its own procedure which is speedy in nature. Section 18 of this Act has barred jurisdiction of other courts, except the writ power of the higher courts, in relation to the matters specified in Section 17 — the same being recovery of debts due to such institutions.

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13. We are, therefore, of the view that the approach to be adopted in this regard by the company court does not deserve to be put in a strait-jacket formula. The discretion to be exercised in this regard has to depend on the facts and circumstances of each case. While exercising this power we have no doubt that the company court would also bear in mind the rationale behind the enactment of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, to which reference has been made above. We make the same observation regarding the terms which a company court should like to impose while granting leave. It need not be stated that the terms to be imposed have to be reasonable, which would, of course, vary from case to case. According to us, such an approach, would maintain the integrity of that secured creditor who had approached the civil court or desires to do so, and would take care of the interest of other secured creditors as well which the company

court is duty-bound to do. The company court shall also apprise itself about the fact whether dues of workmen are outstanding; if so, extent of the same. It would be seen whether after the assets of the company are allowed to be used to satisfy the debt of the secured creditor, it would be possible to satisfy the workmen's dues pari passu." (emphasis supplied)

21. On the jurisdictional aspect, learned senior counsel for the respondents placed reliance on clauses (1) and (2) of Section 446 of the Companies Act, 1956. The same are reproduced below:

> "446. Suits stayed on winding up order. – (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the (Tribunal) and subject to such terms as the (Tribunal) may impose.
>
> (2) (Tribunal) shall, notwithstanding anything, contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of –
>
> (a) any suit or proceeding by or against the company;
>
> (b) any claim made by or against the company (including claims by or against any of its branches in India);
>
> (c) any application made under section 391 by or in respect of the company;
>
> (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or rise in course of the winding up of the company, whether such suit or proceeding has been instituted or is instituted or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 ....."

22. With reference to the judgment rendered in the Allahabad Bank case1, it was asserted, that this Court had merely concluded, that it was not necessary for a bank or a financial institution to seek leave of Company Court before initiating proceedings against a debtor under the provisions of the RDB Act. It was therefore pointed out, that there was no dissimilarity of the conclusions drawn by this Court in the Allahabad Bank case1 and the Srinivas Agencies case7.

23. In addition to the above, learned senior counsel for the respondents, placed reliance on Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group[8], and placed reliance on the following conclusions drawn therein:

> "16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K.

> Kunhikannan Nambiar Manjeri Manikoth Naduvil, Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., M. Meenakshi v. Metadin Agarwal and Sneh Gupta v. Devi Sarup, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.
>
> 17. In State of Punjab v. Gurdev Singh this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Elloe RDC, wherein Lord Radcliffe observed: (AC pp. 769-70) "... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead.

Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

18. In Sultan Sadik v. Sanjay Raj Subba AIR 2004 SC 1377, this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity."

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person." (emphasis supplied)

24. In addition to the above, reliance was placed on Order XXI Rule 58 of the Code of Civil Procedure, which is extracted below:

> "58. Adjudication of claims to, or objections to attachment of, property. -
>
> (1) Where any claims preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:
>
> Provided that no such claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge of other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree. (5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive." Based on the above provision, it was submitted, that a declaration of illegality could only be prospective. And therefore, what had to be decided was, whether the sale proceedings conducted on 11.8.2005 and the confirmation thereof on 12.9.2005, were valid? It was submitted, that even if, for arguments sake, the order dated 10.3.2000 passed by the Company Court of the High Court at Madras was now to be set aside, the same would not validate the aforementioned illegality and unauthorized actions of the Recovery Officer, for giving effect to the recovery certificate issued by the DRT. To support the aforementioned proposition, learned senior counsel placed reliance on the Official Liquidator, Uttar Pradesh and Uttarakhand case5, and drew the attention of this Court to the factual position recorded in paragraphs 2 and 3 thereof, which are reproduced hereunder:

"2. Regard being had to the controversy involved which is in the realm of pure question of law, it is not necessary to exposit the facts in detail. Hence, the necessitous facts are adumbrated herein. The respondent, Allahabad Bank, a secured creditor with whom certain properties were mortgaged, filed Original Application No. 153 of 1999 under Section 9 of the RDB Act for recovery of a sum of Rs 39,93,47,701 with interest from the Company, namely, M/s Rajindra Pipes Ltd., which was decreed by the Debts Recovery Tribunal, Jabalpur (DRT) vide its order dated 7-3-2000. The debt recovery certificate being DRC No. 164 of 2000 was issued for recovery of the aforesaid amount which was subsequently transferred to DRT at Allahabad. Be it noted, Company Petition No. 113 of 1997 was filed before the learned Company Judge in the High Court of Judicature at Allahabad who, vide order dated 26-7-2000, had passed an order for winding up of the Company, as a consequence of which the Official Liquidator had taken over the possession of the assets of the Company on 24-7-2002. After receipt of the recovery certificate, the Recovery Officer attached the immovable properties of the wound-up company by order dated 29-8-2002. The movable properties of the company were attached as per order dated 23-12-2003. At this juncture, Allahabad Bank filed an application before the Company Court for impleading it as a necessary party and protect its rights getting it out of the winding-up proceedings. A prayer was made before the Company Court to grant permission to proceed with the sale of the attached properties by the Recovery Officer, Debts Recovery Tribunal (DRT). The learned Company Judge, on 13-2-2004, granted permission for proceeding with the attachment and sale of the assets for recovery of the dues under the RDB Act. It is worth stating here that no condition was imposed.

3. After auction and confirmation of sale by DRT, the auction-purchaser filed an application before the learned Company Judge for issuance of a direction to the Official Liquidator to give physical possession. The Company Court, by order dated 4-4-2007, set aside the sale certificate on the ground that the Official Liquidator was neither heard in the matter nor was he given an opportunity to represent before the Recovery Officer for the purposes of representing the workmen's dues and a portion of the workmen's liability under Section 529-A of the 1956 Act. A direction was issued to the Recovery Officer to proceed to sell the assets only after associating the Official Liquidator and after giving him hearing to represent the claims of the workmen." The aforementioned controversy was adjudicated and disposed of by this Court, after making a reference to the judgment in the Allahabad Bank case1 by concluding as under:

"35. It has been submitted by Mr Banerji, learned Senior Counsel, that if the Company Court as well as DRT can exercise jurisdiction in respect of the same auction or sale after adjudication by DRT, there would be duality of exercise of jurisdiction which the RDB Act does not envisage. By way of an example, the learned Senior Counsel has submitted that there are some categories of persons who can go before DRT challenging the sale and if the Official Liquidator approaches the

Company Court, then such a situation would only bring anarchy in the realm of adjudication. The aforesaid submission of the learned Senior Counsel commends acceptance as the intendment of the legislature is that the dues of the banks and financial institutions are realised in promptitude. It is to be noted that when there is inflation in the economy, the value of the mortgaged property/assets depreciates with the efflux of time. If more time is consumed, it would be really difficult on the part of the banks and financial institutions to realise their dues. Therefore, this Court in Allahabad Bank case has opined that it is DRT which would have the exclusive jurisdiction when a matter is agitated before DRT. The dictum in the said case has been approved by the three-Judge Bench in Rajasthan State Financial Corpn. It is not a situation where the Official Liquidator can have a choice either to approach DRT or the Company Court. The language of the RDB Act, being clear, provides that any person aggrieved can prefer an appeal. The Official Liquidator whose association is mandatorily required can indubitably be regarded as a person aggrieved relating to the action taken by the Recovery Officer which would include the manner in which the auction is conducted or the sale is confirmed. Under these circumstances, the Official Liquidator cannot even take recourse to the doctrine of election. It is difficult to conceive that there are two remedies. It is well settled in law that if there is only one remedy, the doctrine of election does not apply and we are disposed to think that the Official Liquidator has only one remedy i.e. to challenge the order passed by the Recovery Officer before DRT. Be it noted, an order passed under Section 30 of the RDB Act by DRT is appealable. Thus, we are inclined to conclude and hold that the Official Liquidator can only take recourse to the mode of appeal and further appeal under the RDB Act and not approach the Company Court to set aside the auction or confirmation of sale when a sale has been confirmed by the Recovery Officer under the RDB Act.

36. We will be failing in our duty if we do not take notice of the decision in M.V. Janardhan Reddy wherein the sale was set aside by the Company Judge. It may be stated here that the Company Court had imposed a condition that the permission of the Company Court shall be obtained before the sale of the properties, immovable or movable, is confirmed or finalised. On the aforesaid basis, this Court opined that when the bank was permitted to go ahead with the proposed sale of the assets of the company under liquidation by way of auction but such sale was subject to confirmation by the Company Court and all the parties were aware about the condition as to confirmation of sale by the Company Court, it was not open to the Recovery Officer to confirm the sale and, therefore, the sale was set aside by the Company Court, being in violation of the order. Thus, we find that the facts in the said case were absolutely different and further this Court did not deal with the jurisdiction of the Company Court vis-à-vis DRT as the said issue really did not arise. Hence, it is not an authority for the proposition that the Official Liquidator can approach the Company Court to set aside the auction or sale conducted by the Recovery Officer of DRT.

> 37. In view of the aforesaid analysis, we concur with the view expressed by the Division Bench and hold that the Official Liquidator can prefer an appeal before DRT. As he was prosecuting the lis in all genuineness before the Company Court and defending the order before the Division Bench, we grant him four weeks' time to file an appeal after following the due procedure. On such an appeal being preferred, DRT shall deal with the appeal in accordance with law. DRT is directed to decide the appeal within a period of two months after offering an opportunity of hearing to all concerned. Till the appeal is disposed of, the interim order passed by this Court shall remain in force. We hasten to clarify that we have not expressed anything on the merits of the case." (emphasis supplied)

25. Reliance was then placed on Order XXI Rule 54 of the Code of Civil Procedure, which is extracted hereunder:

> "54. Attachment of immovable property.- (1) Where the property is immovable, the attachment shall be made by an Order prohibiting the judgment debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.
>
> (1)A The Order shall also require the judgment debtor to attend court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.
>
> (2) The Order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the Order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court house, and also, where the property is land paying revenue to the government, in the office of the Collector of the District in which the land is situate and, where the property is land situate in village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village." To support the contention advanced at the hands of learned senior counsel representing the respondents, reliance was placed on Jehal Tanti v.

Nageshwar Singh[9]. The following observations recorded therein, are of relevance:

> "10. The nature and effect of an alienation made in violation of an order of injunction was considered in Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. and the following propositions were laid down:
>
> "16. According to this section, if an objection is raised to the jurisdiction of the court at the hearing of an application for grant of, or for vacating, interim relief, the court should determine that issue in the first instance as a preliminary issue before granting or setting aside the relief already granted. An application raising objection to the jurisdiction to the court is directed to be heard with all expedition. Sub- rule

(2), however, says that the command in sub-rule (1) does not preclude the court from granting such interim relief as it may consider necessary pending the decision on the question of jurisdiction. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the jurisdiction is raised, the court does not become helpless forthwith—nor does it become incompetent to grant the interim relief. It can. At the same time, it should also decide the objection to jurisdiction at the earliest possible moment. This is the general principle and this is what Section 9-A reiterates. Take this very case. The plaintiff asked for temporary injunction. An ad interim injunction was granted. Then the defendants came forward objecting to the grant of injunction and also raising an objection to the jurisdiction of the court. The court overruled the objection as to jurisdiction and made the interim injunction absolute. The defendants filed an appeal against the decision on the question of jurisdiction. While that appeal was pending, several other interim orders were passed both by the civil court as well as by the High Court. Ultimately, no doubt, the High Court has found that the civil court had no jurisdiction to entertain the suit but all this took about six years. Can it be said that orders passed by the civil court and the High Court during this period of six years were all non est and that it is open to the defendants to flout them merrily, without fear of any consequence. Admittedly, this could not be done until the High Court's decision on the question of jurisdiction. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force i.e. for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the rule of law and would seriously erode the dignity and the authority of the courts. We must repeat that this is not even a case where a suit was filed in the wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the civil court bona fide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.

28. The correct principle, therefore, is the one recognised and reiterated in Section 9-A – to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no

> jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit....."" (emphasis supplied)

26. It was the emphatic contention of learned counsel for the respondents, that the sole purpose for requiring the Official Liquidator to participate in the proceedings before the DRT, was to keep the interest of the creditors before the Company Court (where winding up proceedings had been initiated by other creditors), secure. The interest of the creditors before the Company Court could be secure, only if the sale of the properties of the company under winding up was made by conforming to the crystalised practices in getting the best price. Referring to the conclusions drawn in the impugned order, it was submitted, that the auction sale conducted by the Recovery Officer was farcical, as it was, with the sole object of extending benefits to the appellant – Anita International. It was therefore asserted, that the Division Bench of the High Court was fully justified in setting aside the order passed by the learned Single Judge.

27. Mr. P. Chidambaram, learned senior counsel in rejoinder and in response to the three contentions advanced at the hands of the respondents, invited this Court's attention to Sections 18, 19 and 34 of the RDB Act. The same are extracted hereunder:

> "18. Bar of Jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.
>
> Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.
>
> 19. Application to the Tribunal. – (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-
>
> (a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or
>
> (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor. (1A) Every bank being, multi-State co-operative bank referred to in sub-

clause (vi) of clause (d) of section 2, may, at its option, opt to initiate proceedings under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) to recover debts, whether due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 from any person instead of making an application under this Chapter.

(1B) In case, a bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (1A) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(3A) If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund of the fees paid by him at such rates as may be prescribed.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, within a period of thirty days from the date of service of summons, present a written statement of this defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, allow not more than two extensions to the defendant to file the written statement.

(5A) After hearing of the application has commenced, it shall be continued from day-to-day until the hearing is concluded:

Provided that the Tribunal may grant adjournments if sufficient cause is shown, but no such adjournment shall be granted more than three times to a party and where there are three or more parties, the total number of such adjournments shall not exceed six:

Provided further that, the Presiding Officer may grant such adjournments on imposing such costs as may be considered necessary.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off. (7) The written statement shall have the same effect as a plaint in a cross-

suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim. (10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where the defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter- claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit. (12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13)(A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him, -

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security. (B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favor or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt. (14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value

thereof. (15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void. (17) In the case of disobedience of an order made by the Tribunal under sub- sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release. (18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order,-

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of 1956) the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realization or actual payment, on the application as it thinks fit to meet the ends of justice. (20A) Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

> Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-

section (2) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

xxx xxx xxx

34. Act to have over-riding effect.—(1) Save as provided under sub-section (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), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).” Based on the aforesaid provisions, it was asserted, that the provisions of the RDB Act envisaged a complete ouster of the Company Court, and that neither the Company Court nor any other Court, could have exercised jurisdiction vested in the RDB Act. It was submitted, that the Official Liquidator has no participatory role under the RDB Act. The Official Liquidator has jurisdictional control, over the assets of a company under winding up, under the Companies Act. In this behalf, learned senior counsel for the appellant, placed reliance on Kiran Singh v. Chaman Paswan[10], and pointed out to the following observations recorded therein:

> “6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to

be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position." (emphasis supplied) Reliance was also placed on Dhurandhar Prasad Singh v. Jai Prakash University[11], and the Court's attention was drawn to the following observations:

"20. de Smith, Woolf and Jowell in their treatise Judicial Review of Administrative Action, 5th Edn., para 5-044, have summarised the concept of void and voidable as follows:

"Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is ultra vires in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is intra vires it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record."

21. Clive Lewis in his work Judicial Remedies in Public Law at p. 131 has explained the expressions "void and voidable" as follows:

"A challenge to the validity of an act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant." Thereupon, reference was made to Jagmittar Sain Bhagat v. Director, Health Services, Haryana[12]. In order to canvass the proposition, that jurisdiction of courts/forums cannot be conferred by consent of parties, or acquiescence or waiver. Reliance in this behalf was placed on the following conclusions drawn by this Court:

"9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an

issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply. (Vide United Commercial Bank Ltd. v. Workmen AIR 1951 SC 230; Nai Bahu v. Lala Ramnarayan AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios (1981) 1 SCC 523; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar (1999) 3 SCC 722.)

10. In Sushil Kumar Mehta v. Gobind Ram Bohra (1990) 1 SCC 193, this Court, after placing reliance on a large number of its earlier judgments particularly in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke (1976) 1 SCC 496; Kiran Singh v. Chaman Paswan AIR 1954 SC 340; and Chandrika Misir v. Bhaiya Lal AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the common law court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner".

11. The law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject-matter. For the reason that it is not an objection as to the place of suing; "it is an objection going to the nullity of the order on the ground of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide Setrucherla Ramabhadraraju v.

Maharaja of Jeypore AIR 1919 PC 150; State of Gujarat v. Rajesh Kumar Chimanlal Barot AIR 1996 SC 2664; Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. AIR 2005 SC 4446; and Carona Ltd. v. Parvathy Swaminathan & Sons AIR 2008 SC 187)." (emphasis supplied)

28. Whilst supplementing the above contentions, Mr. S. Ganesh, learned senior counsel pointed out, that in the present controversy, the State Bank of Mysore had preferred an application before the Company Court under Section 446(1) of the Companies Act. It was asserted, that the order passed by the High Court was an order in personam, and as such, the aforesaid order dated 10.3.2000 could not be considered as binding on the DRT, or for that matter, on the Recovery Officer of the DRT. For the above proposition, learned senior counsel placed reliance on the Andhra Bank case3, and drew the attention of this Court to the following conclusions recorded therein:

"31. Section 446 of the Companies Act indisputably confers a wide power upon the Company Judge, but such a power can be exercised only upon consideration of the

> respective contentions of the parties raised in a suit or a proceeding or any claim made by or against the company. A question of determining the priorities would also fall for consideration if the parties claiming the same are before the court. Section 446 of the Companies Act ipso facto confers no power upon the court to pass interlocutory orders. The question as to whether the courts have inherent power to pass such orders, in our opinion, does not arise for consideration in this proceeding. Assuming such a power exists, it was imperative that the same should have been exercised on consideration of the factors laid down by this Court in Morgan Stanley Mutual Fund v. Kartick Das (1994) 4 SCC 225. An unreasoned order does not subserve the doctrine of fair play. (See Mangalore Ganesh Beedi Works v. CIT (2005) 2 SCC 329).
>
> (emphasis supplied)

29. In order to make the final thrust, learned senior counsel representing the appellant submitted, that an auction sale of the nature, which is subject matter of consideration in the present controversy, was not liable to be set aside, merely on account of some trivial infirmities in the procedure adopted for the sale of the same. It was the submission of learned counsel, that only a material irregularity would persuade a Court to interfere with such sale proceedings conducted in furtherance of statutory power conferred upon such authority. To support the above contention, reliance was placed by learned senior counsel firstly on the following observations in the decision rendered by this Court in Radhy Shyam v. Shyam Behari Singh[13].

"7. There can be no doubt that an application under O. XXI, Rule 90 to set aside an auction-sale concerns the rights of a person declared to be the purchaser. If the application is allowed, the sale is set aside and the purchaser is deprived of his right to have the sale confirmed by the Court under Rule 92. Such a right is a valuable right, in that, upon such confirmation the sale becomes absolute and the rights of ownership in the property so sold become vested in him. A decision in such a proceeding, therefore, must be said to be one determining the right of the auction- purchaser to have the sale confirmed and made absolute and of the judgment- debtor conferred by Rule 90 to have it set aside and a resale ordered. In our view an order in a proceeding under Order XXI, Rule 90, is a 'judgment' inasmuch as such a proceeding raises a controversy between the parties therein affecting their valuable rights and the order allowing the application certainly deprives the purchaser of rights accrued to him as a result of the auction-sale. We, therefore, agree with the High Court that a letters patent appeal lay against the order of the learned single Judge.

8. Rule 90 of O. XXI of the Code, as amended by the Allahabad High Court, inter alia provides that no sale shall be set aside on the ground of irregularity or even fraud unless upon the facts proved the Court is satisfied that the applicant has sustained injury by reason of such irregularity or fraud. Mere proof of a material irregularity such as the one under Rule 69 and inadequacy of price realised in such a sale, in other words injury, is, therefore, not sufficient. What has to be established is that there was not only inadequacy of the price but that that inadequacy was caused by reason of the material irregularity or fraud. A connection has thus to be established between the inadequacy of the price and the material irregularity." (emphasis supplied) Additionally, reliance was placed on

Navalkha and Sons v. Sri Ramanya Das[14]. And the Court's attention was drawn to the following observations:

> "7. In the present case the Division Bench has come to the conclusion that publicity was not as wide as originally proposed by the Commissioners in their affidavit. The publication was made in four dailies namely The Hindu, Indian Express, the Hindustan Times and The Statesman. There was no publication in the Times of India. Further out of the four newspapers in which publication was made only in two there were two insertions and in the remaining two there was only one insertion. This was contrary to what the Commissioners have promised in their affidavit dated July 8, 1964. No doubt, other efforts were made for giving publicity but these efforts were not sufficient to attract more than one offer. When the case came for confirmation on December 24, 1964 there was an application by Babu Khan that the property was of much higher value and that fresh offers must be invited again with wider publicity. There is also the affidavit of the State Government dated August 29, 1963 in which the value of the property was shown as Rs.13,40,000/-. Besides, on that very day, one Gopaldas Darak had come before the Court with a higher offer showing his bona fides and earnestness by depositing more than one lakh of rupees. He came with the complaint that there was not sufficient publicity as to attract people from the north and that as soon as he came to know he gave his offer. In these circumstances the learned Single Judge was right in expressing his reluctance to confirm the offer of Navalkha & Sons. He therefore decided to have an open bid as between the appellant and Darak in the Court itself on that very day. The complaint of Padam Chand Agarwal is that the second step taken by the Single Judge of holding an auction without giving wide publicity was not justified in law. Rule 273 of the Companies (Court) Rules provides that all sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct. It appears that on April 17, 1964 at the instance of the Official Liquidator and at the instance of a contributory the Court had approved of the terms and conditions of sale which provide calling of sealed tenders. On December 24, 1964 the learned Judge realised the inefficacy of this Course and decided to abandon the original procedure and put the properties to auction. But having made up his mind to resort to auction the learned Judge confined the auction to only two persons namely the previous tenderer and the fresh tenderer. The auction in question no doubt was conducted in a public place but it was not a public auction because it was not open to the general public but was confined to two named persons. Secondly it was not held after due publicity. It was held immediately after it was decided upon. It is, therefore, obvious that the sale in question was not a public sale which implies sale after giving notice to the public wherein every member of the public is at liberty to participate. No doubt, the device resorted to considerably raised the previous bid yet it was not an adequate price having regard to the market value of the property to which reference has already been made. The denial of opportunity to purchase the property by persons who would have taken part in the auction bid but for want of notice is a serious matter. In our opinion the learned Judge having decided on December 24, 1964 that the property should be put to

auction should have directed auction by public sale instead of confining it to two persons alone. Since there was want of publicity and there was lack of opportunity to the public to take part in the auction the acceptance of the highest bid by the learned Judge was not a sound exercise of discretion. It is contended on behalf of the appellant that confirmation was discretionary with the Court and the Division Bench ought not to have interfered with the discretion exercised by the Company Judge. It is true that the discretion exercised by the Judge ought not to be interfered with unless the Judge has gone wrong on principle. As already pointed out the learned Company Judge having decided to put the property to auction went wrong in not holding the auction as a public auction after due publicity and this has resulted in prejudice to the Company and the creditors in that the auction did not fetch adequate price. The prejudice was inherent in the method adopted. The petition of Padam Chand Agarwal also suggests that want of publicity had resulted in prejudice. In these circumstances the Company Judge ought not to have confirmed the bid of the appellant in the auction held on December 24, 1964. We are accordingly of opinion that the Division Bench was right in holding that the order of the Company Judge dated February 19, 1965 should be set aside and there should be fresh sale of the property either by calling sealed tenders or by auction in accordance with law. The tender will be called or the auction will take place with the minimum offer or with the starting bid of ten lakh rupees." (emphasis supplied)

30. Based on the legal position declared by this Court in the above judgments, it was asserted, that the validity of the auction sale held on 11.8.2005 and the confirmation thereof on 12.9.2005 was natural and normal in the facts and circumstances of this case. In order to restore the aforestated validity, it was submitted, that the impugned order passed by the High Court deserved to be set aside.

31. We have given our thoughtful consideration to the complicated sequence of facts projected before us, as also, the legal submissions advanced at the hands of learned counsel for the rival parties. We shall now endeavour to record our conclusions, with reference to the issues canvassed.

32. In our considered view, the controversy projected for our consideration falls in a narrow compass. It is apposite, to crystalise the dimensions of the dispute. Deve Sugars Ltd. was ordered to be wound up on 16.4.1999 (in Company Petition No.170 of 1995). The Official Liquidator took possession of the assets of Deve Sugars Ltd. situated at Harige on 28.9.1999. The State Bank of Mysore filed Company Application Nos. 1251-

1253 of 1999, in the then pending Company Petition No.170 of 1995. Through the above applications, the State Bank of Mysore sought leave of the Company Court in the High Court at Madras, to pursue the recovery proceedings before the DRT, Bangalore. On 10.3.2000, the Company Court granted leave "...subject to the condition that... no coercive steps are taken against the assets of the company during or after the conclusion of the proceedings before the Tribunal..."

33. After the DRT, Bangalore issued the recovery certificate dated 15.5.2002, the State Bank of Mysore filed Company Application No. 1300 of 2003, with a prayer that the bank be permitted to seek execution of the recovery certificate. It is not a matter of dispute, that the Company Court in the High Court at Madras, neither heard nor passed any order on the above application. The admitted position is, that the Registry of the High Court, at its own, returned the above Company Application No.1300 of 2003, by recording an endorsement, that leave of the High Court was not necessary. The Recovery Officer thereafter proceeded with the sale of the properties of Deve Sugars Ltd.

34. Tungabadra Sugar Works Mazdoor Sangha, the workers' union of Deve Sugars Ltd., objected to the execution of the recovery certificate by the Recovery Officer. The Official Liquidator, who was ordered to be impleaded in the recovery proceedings initiated by the State Bank of Mysore, vide order dated 10.3.2000 (passed by the Company Court in the High Court at Madras), also filed objections. All the above objections were overruled by the Recovery Officer.

35. The workers' union, then assailed the recovery proceedings, before the High Court of Karnataka, by filing Writ Petition No.37991 of 2004. Videocon International Ltd. and Tapti Machines Pvt. Ltd. also filed Writ Petition No.26564 of 2005, before the High Court of Karnataka. In the above writ petitions, the petitioners assailed the sale proceedings before the Recovery Officer. Based on a preliminary objection raised by the appellant –Anita International, the High Court of Karnataka relegated the petitioners to their remedy under the RDB Act, by a common order dated 27.10.2006. The above order was challenged through Writ Appeal Nos. 2050 and 2051 of 2006 before the High Court of Karnataka. The writ appeals were dismissed on 23.2.2007.

36. The workers' union thereafter preferred AOR No.15 of 2006 and Videocon International Ltd. filed AOR No.1 of 2007. In both the above matters, a challenge was raised to the order passed by the Recovery Officer dated 12.9.2005, whereby the sale of properties of Deve Sugars Ltd. to Anita International, was confirmed.

37. It would be relevant to mention, that as against the reserve price of Rs.10 crores, Anita International – the appellant herein, made a bid of Rs.10.25 crores. The same was accepted by the Recovery Officer on 11.8.2005, and confirmed on 12.9.2005. One N. Ponnusamy filed Company Application Nos. 2740-2742 of 2007, before the Company Court in the High Court at Madras, wherein he assailed the sale and confirmation orders dated 11.8.2005 and 12.9.2005. In the above applications, it was inter alia asserted, that the reserve price of Rs.10 crores was too low. The above company applications were dismissed on 3.3.2009. A challenge raised against the same, was also dismissed by the High Court at Madras.

38. The applications filed by the Official Liquidator and others were considered collectively (with Company Application Nos. 2740-2742 of 2007) and were rejected by a common order dated 3.3.2009, whereby all the applicants were relegated to their remedy of appeal under the RDB Act. A challenge raised to the above order dated 3.3.2009, by way of an intra- court appeal, was allowed by the High Court, on 17.9.2009. It is this order, which is subject matter of challenge before this Court. Stated concisely, the High Court expressed the view, that the proceedings before the Recovery Officer, including the sale of the properties of Deve Sugars Ltd. on 11.8.2005 and the confirmation

thereof on 12.9.2005, had been conducted in disregard of the order of the Company Court in the High Court at Madras, dated 10.3.2000 (in Company Application Nos. 1251-1253 of 1999). The sale and confirmation of the properties of Deve Sugars Ltd. in favour of Anita International were accordingly set aside.

39. The principal debate raised before this Court, revolves around the cause and effect of the order dated 10.3.2000, passed by the Company Court in the High Court at Madras. According to learned counsel for the appellants, the above order dated 10.3.2000 being wholly void and non est could not have any bearing on the proceedings conducted by the Recovery Officer, including the sale of the properties of Deve Sugars Ltd. on 11.8.2005, and also, the confirmation thereof by the Recovery Officer on 12.9.2005. According to the respondents, who support the impugned order dated 17.9.2009, the order dated 10.3.2000 was valid, and had a binding effect. And because, the proceedings conducted by the Recovery Officer were in total disregard of the order dated 10.3.2000, it was submitted, that the impugned order was well founded.

40. In order to support their claim, it was submitted on behalf of the appellants, that jurisdiction in matters of recovery agitated by banks and financial institutions under the RDB Act, has been repeatedly expounded by this Court. The concerned Debts Recovery Tribunals, before whom recovery proceedings are initiated, have exclusive jurisdiction in the matter. It was also pointed out, that this Court has clearly declared, that even the jurisdiction of Recovery Officers, in matters of execution of recovery certificates, was likewise exclusive. It was the pointed contention of learned counsel for the appellants, that in matters wherein banks and financial institutions approach a Debts Recovery Tribunal, which on due consideration issues a recovery certificate, the same can be executed only through a Recovery Officer. It was submitted, that a Company Court has no jurisdiction, in the matter. Learned counsel for the appellants, substantiated the above assertion on the basis of the decisions rendered by this Court in the Allahabad Bank1, the M.V. Janardhan Reddy2, the Andhra Bank3, the Rajasthan State Financial Corporation4, and the Official Liquidator, Uttar Pradesh and Uttarakhand5 cases.

41. According to learned counsel for the appellants, it was apparent, that the action of a Recovery Officer in conducting sale proceedings and ordering the confirmation thereof for executing a recovery certificate fell squarely within his jurisdiction under the RDB Act. And his jurisdiction being exclusive, as declared by this Court could not be interfered with or set aside. It is in the above context, that it was also the pointed assertion of learned counsel representing the appellant, that the order passed by the Company Court in the High Court at Madras dated 10.3.2000 was without jurisdiction. Learned counsel representing the appellant however cautioned this Court, not to confuse the power of the Recovery Officer in executing recovery certificates (through sale of the debtor's properties), with the apportionment of the sale proceeds. It was urged, that the concern of the appellant – Anita International, was limited to the sale of the properties of Deve Sugars Ltd., which it had purchased on 11.8.2005, which was confirmed by the Recovery Officer on 12.9.2005. It was submitted, that the appellant –Anita International has no concern with the distribution of the sale proceeds, and as such, the issue of distribution of the sale proceeds should not fall within the consideration of the present determination.

42. It is not possible for us to accept the contentions advanced on behalf of the appellants. In this behalf, it would be relevant to mention, that in the M.V. Janardhan Reddy case2, the Company Court by an order dated 13.8.1999 required that its permission should be obtained before the Recovery Officer finalized the sale. Thereafter, the Company Court by an order dated 25.3.2005, directed that sale by the Recovery Officer, was subject to confirmation by the Company Court. In the above sequence of facts, this Court clearly held, that the condition imposed by the Company Court could not be violated by the Recovery Officer. It was concluded, that the sale made by the Recovery Officer in violation of the orders passed by the Company Court, was without the authority of law, the same was accordingly set aside. The explanation tendered by learned senior counsel representing the appellants was, that even in the above judgment, this Court had not disturbed the exclusive jurisdiction of a Recovery Officer, in executing the recovery certificate. In our considered view, the above contention is immaterial to the issue under consideration. The issue under consideration is, whether or not, an order passed by the Company Court (in the present case, the order dated 10.3.2000) was binding on the Recovery Officer? And, whether the proceedings conducted by the Recovery Officer, in violation of the above order, were sustainable in law? We have no hesitation in concluding, that in the M.V. Janardhan Reddy case2, an order passed by the Company Court was held to be binding on the Recovery Officer. Based on exactly the same consideration, we are of the view, that the acceptance of the bid of Anita International by the Recovery Officer on 11.8.2005, and the confirmation of the sale in its favour on 12.9.2005, were clearly impermissible, and therefore, deserve to be set aside.

43. In addition to the above, reference may be made to the judgment rendered by this Court in the Official Liquidator, Uttar Pradesh and Uttarakhand case5. In paragraph 36 of the above judgment (extracted in paragraph xxx 24 xxx hereinabove), this Court has taken due notice of the proposition, with reference to a case where an order, had been passed by the Company Court. The proposition dealt with was in a situation where, the Company Court had imposed a condition on the Recovery Officer, that permission of the Company Court would be obtained, before the Recovery Officer conducted the sale and confirmation of the movable or immovable properties, of the debtor. It was held, that the order passed by the Company Court, was binding on the Recovery Officer. In the above judgment it was concluded, that it was not open to the Recovery Officer to confirm the sale of the properties at his own, and such a sale and confirmation of movable or immovable properties made by the Recovery Officer, without the permission of the Company Court, were liable to be set aside. This Court while recording its above conclusion, also expressed, that the above issue had nothing to do with the proposition, whether an Official Liquidator can approach a Company Court, to seek the setting aside of the auction and the sale conduced by the Recovery Officer. It would be relevant to mention, that the judgments relied upon by learned counsel for the appellants, were duly taken into consideration in the Official Liquidator, Uttar Pradesh and Uttarakhand case5. In view of the above, we are of the considered view, that the pointed issue canvassed before us, at the hands of learned counsel for the appellants, stands answered against the appellant in paragraph 36 of the above judgment. We endorse, and are obliged to follow, the view expressed by this Court, as noticed above. Accordingly, we find no merit in the first contention advanced at the hands of learned counsel for the appellants.

44. Despite our above conclusion, it is imperative for us to notice, that for recovery of a debt due to a bank or a financial institution, the concerned bank or financial institution, can legitimately initiate proceedings, by filing a winding up petition before the jurisdictional Company Court, or alternatively, intervene in a pending winding up petition. Since there is no bar restraining a bank or a financial institution from approaching a Company Court, by filing a winding up petition, it is not possible to conclude, that the jurisdictional Company Court, is not possessed with the determinative authority/competence to entertain a claim raised by such bank or financial institution. In view of the above, it is not possible for us to accept, as was suggested on behalf of the appellants, that the order passed by the Company Court in the High Court at Madras dated 10.3.2000, lacked the jurisdictional authority. Since we have concluded that the Company Court which passed the order dated 10.3.2000 did not lack jurisdiction, we hereby hold, that in the facts of this case, the above order dated 10.3.2000 was neither invalid nor void.

45. We are also of the considered view, as held by the Court in the Krishnadevi Malchand Kamathia case8, that it is not open either to parties to a lis or to any third parties, to determine at their own, that an order passed by a Court is valid or void. A party to the lis or a third party, who considers an order passed by a Court as void or non est, must approach a Court of competent jurisdiction, to have the said order set aside, on such grounds as may be available in law. However, till an order passed by a competent Court is set aside, as was also held by this Court in the Official Liquidator, Uttar Pradesh and Uttarakhand5 and the Jehal Tanti9 cases, the same would have the force of law, and any act/action carried out in violation thereof, would be liable to be set aside. We endorse the opinion expressed by this Court in the Jehal Tanti case9. In the above case, an earlier order of a Court was found to be without jurisdiction after six years. In other words, an order passed by a Court having no jurisdiction, had subsisted for six years. This Court held, that the said order could not have been violated while it subsisted. And further, that the violation of the order, before it is set aside, is liable to entail punishment, for its disobedience. For us to conclude otherwise, may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass, that in his wisdom, the judicial order detrimental to his interests, was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted.

46. To be fair to learned counsel for the appellants, it needs to be noticed, that reliance was also placed on behalf of the appellants on the Kiran Singh10, the Sadashiv Prasad Singh6, and the Jagmittar Sain Bhagat12 cases, to contend, that a decree passed by a Court without jurisdiction was a nullity, and that, its invalidity could not be corrected, even by the consent of the concerned parties. We are of the considered view, that the proposition debated and concluded in the judgments relied upon by learned counsel for the appellants (referred to above) are of no relevance, to the conclusions drawn in the foregoing paragraph. In our determination hereinabove, we have not held, that a void order can be legitimized. What we have concluded in the foregoing paragraph is, that while an order passed by a Court subsists, the same is liable to be complied with, till it is set aside.

47. The submission canvassed at the hands of learned counsel for the appellants, that the impugned sale dated 11.8.2005, and its confirmation on 12.9.2005, should not be interfered with on the ground of equity, as the appellant had made the entire payment in 2005, and the Recovery Officer

had ordered confirmation of the sale, as no objection had been raised against the same. We find it difficult to persuade ourselves to accept the above contention. In this behalf, one cannot lose sight of the fact that the Official Liquidator, as well as, the workers' union had raised objections before the Recovery Officer at the very initial stage. Even a former Director of Deve Sugars Ltd. – N. Ponnusamy raised a challenge to the proceedings before the Recovery Officer by asserting, that the reserve price of Rs.10 crores fixed for the property being put to auction, was too low. The fact, that in the process of sale of the properties of Deve Sugars Ltd. only two bids were received, has not been disputed. It is also not disputed, that whilst one of the bidders was the appellant – Anita International, the other bidder was Synergy Steel Ltd. – a sister company of the appellant. In sum and substance therefore, there was only one bidder. For the above reasons, in addition to those recorded by the High Court (noticed in paragraph xxx 12 xxx, hereinabove), it is not possible for us to accept the claim of the appellant on the ground of equity. Reliance placed by learned counsel on the judgments rendered by this Court, in support of the instant contention, is also unacceptable, as the factual position in the judgments relied upon, are inapplicable to the facts and circumstances of this case. In view of the above, we find no merit in the contention advanced.

48. It was also submitted on behalf of the appellants, that the sale conducted by the Recovery Officer on 11.8.2005, and the order of confirmation thereof passed by the Recovery Officer on 12.9.2005, ought to have been assailed only in proceedings under Section 30 of the RDB Act. It was submitted, that since an efficacious alternative remedy was available to the parties, which had approached the Company Court in the High Court at Madras, the interference at the hands of the High Court was neither just nor proper. The instant submission is wholly devoid of substance and deserves to be rejected. We are of the considered view, that there was sufficient justification for the parties to have approached the Company Court in the High Court at Madras, for the reason that they were seeking the enforcement of the order dated 10.3.2000, passed by the Company Court itself. The sale made by the Recovery Officer on 11.8.2005, and its confirmation on 12.9.2005, were in utter violation of the order dated 10.3.2000, and therefore, the concerned parties were justified in approaching the High Court at Madras. In the above view of the matter, we find no merit in the instant contention as well.

49. Last of all, we may advert to the contention, that the order dated 10.3.2000 passed by the Company Court in the High Court at Madras, while disposing of Company Application Nos. 1251-1253 of 1999, filed by the State Bank of Mysore, was not binding on the appellant. Insofar as the instant contention is concerned, it was submitted, that the said order passed by the High Court was an order in personam, and as such, the aforesaid order could not be considered as an order binding on the appellant before this Court. We find no merit in the instant contention, as well. In this behalf, it would be relevant to mention, that in the application filed by the State Bank of Mysore, the prayer made was, that the State Bank of Mysore be permitted, leave to proceed with recovery proceedings before the DRT, Bangalore. By the order dated 10.3.2000, the Company Court in the High Court at Madras, while granting leave, imposed two conditions. Firstly, the Official Liquidator would have to be impleaded by the bank in the recovery proceedings before the DRT, Bangalore. And secondly, no coercive steps would be taken against the assets of the company during or after the conclusion of the proceedings before the Tribunal. It is not possible for us to accept, that the aforesaid order passed by the High Court was an order in personam. We are of the view, that the

above order had a clear and binding effect on the proceedings permitted to be initiated before the DRT, Bangalore, and further, that it was equally binding on the Recovery Officer. And accordingly, in our view, the same would also be binding on those claiming through sale proceedings conducted by the Recovery Officer. In the above view of the matter, there can be no doubt, that the order dated 10.3.2000 was also binding on the appellant before this Court. For the above reasons, we find no merit even in the last contention advanced by learned counsel for the appellants.

50. For all the reasons recorded hereinabove, we find no merit in the instant appeals. The same are accordingly dismissed. While affirming the impugned order passed by the High Court, we confirm the setting aside of the sale made by the Recovery Officer in favour of the appellant – Anita International on 11.8.2005, and the confirmation thereof by the order of the Recovery Officer dated 12.9.2005.

.....J. (Jagdish Singh Khehar) .....J. (Adarsh Kumar Goel)
New Delhi;

July 04, 2016.

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[1] (2000) 4 SCC 406
[2] (2008) 7 SCC 738
[3] (2005) 5 SCC 75
[4] (2005) 8 SCC 190
[5] (2013) 4 SCC 381
[6] (2015) 5 SCC 574
[7] (1996) 4 SCC 165
[8] (2011) 3 SCC 363
[9] (2013) 14 SCC 689
[10] 1955 (1) SCR 117
[11] (2001) 6 SCC 534
[12] (2013) 10 SCC 136
[13] AIR 1971 SC 2337
[14] (1969) 3 SCC 537
