SUPREME COURT OF INDIA

E.P.F.Commissioner

Vs.

O.L.of Esskay Pharmaceuticals

C.A.No. 9630 of 2011

(G.S.Singhvi and H.L.Dattu,JJ.,)

08.11.2011

JUDGMENT

G.S.Singhvi,J.,

SLP(Civil)No.7642 of 2011

1. Delay condoned.

2. Leave granted.

3. The question which arises for consideration in these appeals is whether priority given to the dues payable by an employer under Section 11 of the Employees' Provident Funds andMiscellaneous Provisions Act, 1952 (for short, `the EPF Act') is subject to Section 529A of the Companies Act, 1956 (for short, `the Companies Act') in terms of which the workmen's dues and debts due to secured creditors are required to be paid in priority to all other debts.

4. For the sake of convenience, we have culled out the facts from the record of the appeal arising out of SLP(C) No. 7642/2011.

5. Messrs Esskay Pharmaceuticals Limited is a company registered under the Companies Act. It falls within the definition of `employer' under Section 2(e) of the EPF Act. On account of the company's failure to pay the dues under the EPF Act for the periods from March 1998 to May 1999 and June 1999 to August 2001, the competent authority passed two orders under Section 7Aof the EPF Act and held that it was liable to pay Rs.14,96,751/-. The company appears to have paid a sum of Rs.4,02,126/- but did not pay the remaining amount despite the issue of demand notices dated 12.4.2001 and 19.4.2001 by the competent authority. The orders passed underSection 8F of the EPF Act, which were communicated to the bankers of the company also did not yield the desired result. The competent authority then issued warrant for attachment of the company's property. This was followed by sale notice dated 20.9.2001.

6. Although, it is not clear from the record as to what happened to the sale notice, but this much is evident that after 2 years and about 4 months, the Enforcement Officer informed the appellant that the Gujarat High Court has passed order dated 11.3.2004 for winding up of the company and appointed Official Liquidator to look after its properties and clear the debts. The appellant then approached the Official Liquidator for payment of the amount determined under Section 7A of the EPF Act, but the latter did not give any response.

7. Company Application No. 356/2007 filed by the appellant for issue of a direction to the Official Liquidator to pay the amount payable by the employer under the EPF Act was dismissed by the learned Company Judge by relying upon the order passed by the Division Bench of the High Court in Company Application No. 216 of 1997 in Company Petition No.205 of 1996 and order dated 31.8.2005 passed in Company Application No.195 of 2005 - Regional Provident Commissioner-I v. M.A. Kuvadia, O.L. and others.

8. The appellant challenged the order of the learned Company Judge by filing an appeal but could not convince the Division Bench of the High Court to entertain his plea that the amount due from the employer is first charge on the assets of the company and is payable in priority to all other dues. The Division Bench relied upon the judgment of the co-ordinate Bench and held that the learned Company Judge did not commit any error by dismissing the application filed by the appellant.

9. Since the impugned judgment and the order passed by the learned Company Judge are entirely based on the order passed by another Division Bench in Company Application No. 216/1997 in Company Petition No. 205/1996, it will be appropriate to notice the ratio of that order. The same is as under:

> "Section-530, Sub-section (1), clearly observes that in a winding up matter, subject to the provisions of Section-529(A), there shall be paid in priority to all other debts, dues of the Government, which are in the form of revenues, tax, etc. When Section-530 is made subordinate to Section-529(A), then, a Court is obliged to look into the material provisions as contained under Section-529(A). Section-529(A) clearly provides that notwithstanding anything contained in any other provision of the Companies Act or any other law for the time being in force, in the winding up of a company, workmen's dues and debts due to the secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of Section-529 pari passu with such dues, shall be paid in priority to all other debts. Section-529(A) has been introduced in the year 1985. It starts with a non-obstante clause. It clearly provides that "notwithstanding anything contained in any other provision of the Act or any other law for the time being in force". A true understanding of Section-529(A) would make clear that the provisions of Section-529(A) shall override the provisions contained in Section-530. Not only this, the provisions contained in Section-529(A) shall override the provisions contained in the ESI Act because the ESI Act is an Act of 1948, while the amendment in the Companies Act has been made in the year 1985 and with the fullest knowledge that it was to override the provisions contained in Section-530. If Section-

94 of the ESI Act and Section-530 of the Companies Act are made subordinate to Section-529(A), then, Section-529(A) shall march over the rights of others to which the others are entitled either under the special laws or under Section-530 of the Companies Act. A combined/conjoint reading of Section- 529(A) of the Companies Act would make clear that in a matter of winding up, the workmen's dues and the debts due to the secured creditors to the extent such debts rank under clause (c) of the proviso to Sub-section (l) of Section-529(A) pari passu with such dues, shall be paid in priority to all other debts. If such dues and debts are paid in full and even thereafter, some money is left with the Official Liquidator for its distribution, then, such money can be distributed under Section-530 of the Companies Act. When such a situation crops up, the State Government or the Central Government of the Local Authority may file their claim before the learned Company Judge and at that point of time, they may say that in view of their preferential right, either under the Local Act or under Section-530 of the Companies Act, they be paid."

10. The factual matrix of the other appeals is more or less similar. In all the cases, applications filed by the appellant for payment of the amount due from the employer were dismissed by the learned Company Judge and the appeals were dismissed by the Division Bench of the High Court.

11. Ms. Aparna Bhat, learned counsel for the appellant relied upon the judgment in Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner (2009) 10 SCC 123 and argued that the impugned judgment and the order of the learned Company Judge are liable to be set aside because the High Court's interpretation of Section 11 of the EPF Act is contrary to the law laid down by this Court. She submitted that even though Section 529A of the Companies Act also contains a non obstante clause, the provisions contained therein cannot override Section 11(2) of the EPF Act in terms of which the amount due from an employer in respect of the employees contribution is treated as first charge on the assets of the company and is payable in priority to all other debts. Ms. Bhat further argued that the EPF Act is a special legislation for institution of various types of funds and the schemes and in view of the non obstante clause contained in Section 11(2), priority given to the dues payable by an employer will prevail over the priority given under Section 529A of the Companies Act to the workmen's dues and debts due to secured creditors.

12. Shri Gaurav Agrawal, learned counsel for respondent No.1 supported the impugned judgment and argued that the statutory priority given to the dues of the employees under Section 11(2) of the EPF Act cannot override the priority given to the dues of workers and secured creditors underSection 529A(1) of the Companies Act because Parliament had inserted that section in theCompanies Act with effect from 24.5.1995 knowing fully well priority given to the dues of the employees under the EPF Act. He further argued that the non obstante clause contained in the subsequent legislation, i.e. Section 529A (1) of the Companies Act would prevail over similar clause contained in the earlier legislation, i.e. Section 11(2) of the EPF Act. In support of this argument, Shri Agrawal relied upon the judgment of this Court in *Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of Maharashtra Ltd*[1].

13. We have considered the respective arguments. For deciding the question arising in these appeals, it will be useful to notice the relevant statutory provisions. The EPF Act

14. Section 11 (unamended) of the EPF Act was as under:

> "11. Priority of payment of contributions over other debts.- Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due -
>
> (a) from the employer in relation to an establishment to which any Scheme applies in respect of any contribution payable to the Fund, damages recoverable under Section 14-B, accumulations required to be transferred under sub-section (2) of Section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme; or
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> (b) from the employer in relation to an exempted establishment in respect of any contribution to the provident fund (in so far as it relates to exempted employees), under the rules of the provident fund (any contribution payable by him towards the Family Pension Fund under sub-section (6) of Section 17), damages recoverable underSection 13-B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17, shall where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included, among the debts which under Section 49 of the Presidency- towns Insolvency Act, 1909, or under Section 61 of the Provincial Insolvency Act, 1920 or under Section 230 of the Indian Companies Act, 1913, are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be."

15. The EPF Act was amended by Act Nos. 40 of 1973, 19 of 1976 and 33 of 1988. By Act No. 40 of 1973, Section 11 was renumbered as Section 11(1) and a new sub-section was added as Section 11(2) and it was declared that any amount due from an employer in respect of the employees' contribution shall be deemed to be the first charge on the assets of the establishment and shall be paid in priority to all other debts. The scope of Section 11(2) was enlarged by Act No. 33 of 1988 by including the employer's contribution.

16. The background in which Amendment Act No.33 of 1988 was passed is discernible from the Statement of Objects and Reasons appended to the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 1988, the relevant portions of which are extracted below:

> "The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the institution of Compulsory Provident Fund; Family Pension Fund and Deposit Linked Insurance Fund, for the benefit of the employees in factories and other establishments. The Act is at present applicable to 173 industries and classes of

establishments employing twenty or more persons. As on 31-3-1987, about 1.66 1akh establishments with about 1.38 crore subscribers were covered under the Act.

2. The Act was last amended in 1976. The Government had set up a high level Committee in April, 1980 to review the working of the Employees' Provident Funds Organisation and to suggest improvements. The Committee had made a number of recommendations involving amendment of the Act. The Central Board of Trustees, Employees' Provident Fund had also, from time to time, made certain recommendations for amendment of the Act. The Standing Labour Committee had at its meeting held in September, 1986 considered inter alia the question of enhancement of the rate of provident fund contribution and recommended suitable enhancement.

3. Based on the above recommendations, it is proposed to carry on certain amendments in the Act. Some of the more important amendments are:--

(i) to (v) xxxx xxxx xxxx

(vi) a provision is being made for treating the entire amount of arrears of provident fund dues as first charge on the assets of an establishment in the event of its liquidation;

xxxx xxxx xxxx"

17. Section 11, as it stands after the amendment of 1988, reads as under:

"11. Priority of payment of contributions over other debts.- (1) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due -(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or (b) from the employer in relation to an exempted establishment in respect of any contribution to the provident fund or any insurance fund (in so far it relates to exempted employees), under the rules of the provident fund or any insurance fund, any contribution payable by him towards the Pension Fund under sub-section (6) ofsection 17, damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act, or under any of the conditions specified under section 17, shall, where the liability therefore has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under section 49 of the Presidency Towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under section 530 of the Companies Act, 1956 (1 of 1956), are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case

may be. Explanation. - In this sub-section and in section 17, "insurance fund" means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf. (2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

18. An analysis of Section 11 of the EPF Act shows that it gives statutory priority to the amount payable to the employees over other debts. Section 11(1) relates to an employer who is adjudged insolvent or being a company against whom an order of winding up is made. It lays down that the amount due from the employer in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under Section 14B, accumulations required to be transferred under Section 15(2) or any charges payable by him under any other provision of the Act or the Scheme or the Insurance Scheme shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be. Section 11(2) contains a non obstante clause and lays down that if any amount is due from an employer whether in respect of the employee's contribution deducted from the wages of the employees or the employer's contribution, the same shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts. To put it differently, sub-section (2) of Section 11 not only declares that the amount due from an employer towards contribution payable under the EPF Act shall be treated as the first charge on the assets of the establishment, but also lays down that notwithstanding anything contained in any other law, such dues shall be paid in priority to all other debts.

The Companies Act

19. Part VII of the Companies Act, which consists of 5 Chapters contains provisions relating to winding up of a company. The provisions contained in Chapter V (Sections 528 to 560), which deal with proof and ranking of claims are applicable to every mode of winding up. Section 528lays down that in every winding up, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company. This is subject to the rider that in the case of insolvent companies, law of insolvency will be applicable in accordance with the provisions of theCompanies Act. Section 529 deals with application of insolvency rules in winding up of insolvent companies. Section 530, as it existed prior to the amendment of the Companies Act by Act No.35 of 1985, gave priority to revenue of the State and local authorities and various amounts payable to employees including the dues payable from a provident fund, a pension fund, a gratuity fund or any other fund maintained by the company for the welfare of the employees. By the Companies (Amendment) Act

No.35 of 1985, proviso was added to Section 529(1). By the same amendment,Sections 529(3) and 529A were inserted in the Companies Act. Simultaneously, the expression "subject to the provisions of Section 529A" was inserted in Section 530(1). Paragraph 2 of the Statement of Objects and Reasons contained in the Companies (Amendment) Bill, 1985 reads as under:

> "2. Another announcement made by the Finance Minister in his Budget speech relates to the decision of the Government to introduce necessary legislation so that legitimate dues of workers rank pari passu with secured creditors in the event of closure of the company and above even the dues to Government. The resources of companies constitute a major segment of the material resources of the community and common good demands that the ownership and control of the resources of every company are so distributed that in the unfortunate event of its liquidation, workers, whose labour and effort constitute an invisible but easily perceivable part of the capital of the company are not deprived of their legitimate right to participate in the produce of their labour and effort. It is accordingly proposed to amend Sections 529 and 530 of the Companies Act and also to incorporate a new section in the Act, namely, Section 529-A (vide clauses 4, 5 and 6 of the Bill)."

20. Sections 529(1) and (3) and 529A and the relevant parts of Section 530, as they stand after the 1985 amendments read as under:

> "529. Application of insolvency rules in winding up of insolvent companies. - (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—
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> (a) debts provable;
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> (b) the valuation of annuities and future and contingent liabilities; and
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> (c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:
> Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security,--
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> (a) the liquidator shall be entitled to represent the workmen and enforce such charge;
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> (b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and
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> (c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's

portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.

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

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

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

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

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

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

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

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

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub- section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions. 530. Preferential payments.- (1) In a winding up subject to the provisions of section 529A, there shall be paid in priority to all other debts-

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

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

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; (2) The sum to which priority is to be given under clause (b) of sub-section (1), shall not, in the case of any one claimant, exceed such sum as may be notified by the Central Government in the Official Gazette."

21. By inserting proviso in Section 529(1), Parliament ensured protection of the interest of the workmen in winding up proceedings. The object of this amendment is to place the legitimate dues of workers at par with those of secured creditors. This is also a legislative recognition of the fact that the workmen contribute to the growth of the capital and industry and in the event of winding up of the company, they are entitled to get their legitimate share in the assets of the company by being treated at par with other secured creditors. With the insertion of Section 529(3)(a), the definition of the term `workmen' contained in the Industrial Disputes Act, 1947 has been incorporated in the Companies Act for the purposes of Sections 529, 529A and 530. The expression "workmen's dues" has been defined in Section 529(3)(b) to mean all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under the Industrial Disputes Act, 1947, all accrued holiday remuneration payable to any workman, or in the case of his death to any other person in his right upon the termination of his employment before the passing of winding up order and all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, which is maintained by the company. The definition also takes within its fold funds capable of being transferred to and vested in the workman under a contract with insurers under Section 14 of the Workmen's Compensation Act as also the amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act in respect of the death or disablement of any workman of the company. By virtue of the non obstante clause contained in sub-section (1) of Section 529A, statutory priority has been given to the workmen's dues and debts due to secured creditors over all other dues.

22. The EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society, i.e. the workers employed in factories and other establishments, who have made significant contribution in economic growth of the country. The workers and

other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the Directive Principles of State Policy contained in Articles 38 and 43 of the Constitution. In *Organo Chemical Industries v. Union of India*[2] this Court negatived challenge to the constitutionality of Section 14-B of the EPF Act. In the main judgment delivered by him, A.P. Sen, J. referred to the Statement of Objects and Reasons contained in the Bill presented before Parliament, which led to the enactment of Amendment Act No. 40/1973 and observed:

> "Each word, phrase or sentence is to be considered in the light of general purpose of the Act itself. A bare mechanical interpretation of the words "devoid of-concept or purpose" will reduce must of legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole."

In his concurring judgment, Krishna Iyer, J. observed:

> "The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of benefits is filled by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes the Fund gets dry and the retirees are denied the meagre support when they most need it. This prospect of destitution demoralises the working class and frustrates the hopes of the community itself. The whole project gets stultified if employers thwart contributory responsibility and this wider fall-out must colour the concept of `damages' when the court seeks to define its content in the special setting of the Act. For, judicial interpretation must further the purpose of a statute. In a different context and considering a fundamental treaty, the European Court of Human Rights, in the Sunday Times Case, observed: The Court must interpret them in a way that reconciles them as far as possible and is most appropriate in order to realise the aim and achieve the object of the treaty. A policy-oriented interpretation, when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to `damages' a larger, fulfilling meaning."

23. Section 11(2) of the EPF Act was interpreted by the Division Bench of the Kerala High Court in Recovery Officer and *Asstt. Provident Fund Commissioner v. Kerala Financial Corporation*[3], Speaking for the Bench, B.N. Srikrishna, J. (as he then was) observed:

> "The F.P.F. and M.P. Act, 1952 is an Act to provide for the institution of Provident Fund, Pension Fund, Deposit Linked Insurance Fund etc. in factories and other establishments, to carry forward the Constitutional mandate of rendering social justice to the working class. It is intended to give social security to industrial workers at the

end of their careers. The E.P.F. and M.P. Act requires every employer to deduct certain prescribed amounts from the wages payable to employees along with prescribed contribution by the employer and deposit such contributions in the Provident Fund. The Provident |is administered by the Central and Regional Provident Fund Commissioners, who are statutory authorities. What is of importance to us is that section 11 of E.P.F. and M.P. Act, declares the priority of payment of contributions under the Act over other debts. Sub-section (1) of section 11 of E.P.F. and M.P. Act deals with the question of priority where an employer is adjudicated insolvent or being a company subjected to an order of winding up. Sub-section (2) of section 11 deals with other types of priorities and reads as under:

"11(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer, whether in respect of the employee's contribution deducted from the wages of the employee or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law, for the time being in force, be paid in priority to all other debts."

Sub-section (2) of section 11 of the E.P.F. and M.P. Act has two facets. First, it declares that the amount due from the employer towards contribution under the E.P.F. andM.P. Act shall be deemed to be a first charge on the assets of the establishment. Second, it also declares that notwithstanding anything contained in any other law for the time being in force, such debt shall be paid in priority to all other debts. Both these provisions bring out the intention of Parliament to ensure the social benefit as contained in the legislation. There are other provisions in the Act rendering the amounts of Provident Fund payable immune from attachment of Civil Court's decree, which also indicate such intention of Parliament."

24. The ratio of the afore-mentioned judgment has been noticed in *Central Bank of India v. State of Kerala*[4] and *Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner*[5]

25. The nature of priority given to the taxes payable to the State over other debts was considered by the Constitution Bench in *Builders Supply Corporation v. Union of India*[6] After noticing the judgments of the Bombay and Madras High Courts, the Constitution Bench held:

"(i) The common law doctrine of the priority of Crown debts had a wide sweep but the question in the present appeal was the narrow one whether the Union of India was entitled to claim that the recovery of the amount of tax due to it from a citizen must take precedence and priority over unsecured debts due from the said citizen to his other private creditors. The weight of authority in India was strongly in support of the priority of tax dues.

(ii) The common law doctrine on which the Union of India based its claim in the present proceedings had been applied and upheld in that part of India which was

known as `British India' prior to the Constitution. The rules of common law relating to substantive rights which had been adopted by this country and enforced by judicial decisions, amount to `law in force' in the territory of India at the relevant time within the meaning of Article 372(1). In that view of the matter, the contention of the appellant that after the Constitution was adopted the position of the Union of India in regard to its claim for priority in the present proceedings had been alerted could not be upheld.

(iii) The basic justification for the claim for priority of government debts rests on the well-recognised principle that the State is entitled to raise money by taxation, otherwise it will not be able to function as a sovereign Government at all. This consideration emphasises the necessity and wisdom of conceding to the State the right to claim priority in respect of its tax dues."

(emphasis supplied)

26. The ratio of the judgment in Builders Supply Corporation v. Union of India (supra) was applied to the cases in which statutory first charge was created in favour of the State in the matter of recovery of tax, penalty, interest etc.. - *State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation*[7] *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co*[8]*. and State of M.P. v. State Bank of Indore*[9] *I*n the last mentioned judgment, i.e. State of M.P. v. State Bank of Indore (supra), this Court considered the question whether statutory first charge created under Section 33-C of the M.P. General Sales Tax Act, 1958 would prevail over the bank's charge and held:

"Section 33-C creates a statutory first charge that prevails over any charge that may be in existence. Therefore, the charge thereby created in favour of the State in respect of the sales tax dues of the second respondent prevailed over the charge created in favour of the Bank in respect of the loan taken by the second respondent. There is no question of retrospectivity here, as, on the date when it was introduced, Section 33-Coperated in respect of all charges that were then in force and gave sales tax dues precedence over them."

(emphasis supplied)

27. At this juncture, it will be apposite to mention that the nature of statutory first charge and the rule of priority of the State's dues were considered in *Builders Supply Corporation v. Union of India (supra), State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation (supra), Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. (supra) and State of M.P. v. State Bank of Indore (supra)* in the context of contra claim made by unsecured creditors. The question whether first charge created by taxing statutes enacted by State legislatures will prevail over the debts due to secured creditors was considered by a three Judge Bench in Central Bank of India v. State of Kerala (supra) and answered in affirmative. In that case, this Court was called upon to consider whether the first charge created on

the property of the dealer by the legislations enacted by State legislatures for levy and collection of sales tax would prevail over the debts due to banks, financial institutions and other secured creditors, which could be recovered under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and/or the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Court referred to the relevant provisions contained in the DRT Act, the Securitisation Act and Sales Tax legislations of different States as also Section 14A of the Workmen's Compensation Act, 1923, Section 11 of the EPF Act, Section 74 of the Estate Duty Act, 1953, Section 25 of the Mines and Minerals (Regulation and Development) Act, 1957, Section 30 of the Gift Tax Act, 1958, Section 529A of the Companies Act, 1956, Section 46B of the State Financial Corporations Act, 1951 and observed:

> "Under Section 13(1) of the Securitisation Act, limited primacy has been given to the right of a secured creditor to enforce security interest vis-`-vis Section 69 or Section 69-A of the Transfer of Property Act. In terms of that sub-section, a secured creditor can enforce security interest without intervention of the court or tribunal and if the borrower has created any mortgage of the secured asset, the mortgagee or any person acting on his behalf cannot sell the mortgaged property or appoint a Receiver of the income of the mortgaged property or any part thereof in a manner which may defeat the right of the secured creditor to enforce security interest. This provision was enacted in the backdrop of Chapter VIII of the Narasimham Committee's Second Report in which specific reference was made to the provisions relating to mortgages under the Transfer of Property Act.
>
> In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the non obstante clause in Section 13 and gave primacy to the right of secured creditor vis-`-vis other mortgagees who could exercise rights under Sections 69 or 69-A of the Transfer of Property Act. However, this primacy has not been extended to other provisions like Section 38-C of the Bombay Act and Section 26-B of the Kerala Act by which first charge has been created in favour of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc. Sub-section (7) of Section 13 which envisages application of the money received by the secured creditor by adopting any of the measures specified under sub-section (4) merely regulates distribution of money received by the secured creditor. It does not create first charge in favour of the secured creditor. By enacting various provisos to sub-section (9) of Section 13, the legislature has ensured that priority given to the claim of workers of a company in liquidation under Section 529-A of the Companies Act, 1956 vis-`-vis the secured creditors like banks is duly respected. This is the reason why first of the five unnumbered provisos to Section 13(9) lays down that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of Section 529-A of the Companies Act, 1956. This and other provisos do not create first charge in favour of the worker of a company in liquidation for the first time but merely recognise the existing priority of their claim under the Companies Act. It is interesting to note that the provisos to sub- section (9)

of Section 13 do not deal with the companies which fall in the category of borrower but which are not in liquidation or are not being wound up. It is thus clear that provisos referred to above are only part of the distribution mechanism evolved by the legislature and are intended to protect and preserve the right of the workers of a company in liquidation whose assets are subjected to the provisions of the Securitisation Act and are disposed of by the secured creditor in accordance with Section 13 thereof."

(emphasis supplied)

28. The Court then referred to the earlier judgments in Builders Supply Corporation v. Union of India (supra), State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation (supra), Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. (supra), State of M.P. v. State Bank of Indore (supra), *Allahabad Bank v. Canara Bank*[10] the judgment of the Division Bench of the Kerala High Court in Recovery Officer and Asstt. Provident Fund Commissioner v. Kerala Financial Corporation (supra) and observed:

"While enacting the DRT Act and the Securitisation Act, Parliament was aware of the law laid down by this Court wherein priority of the State dues was recognised. If Parliament intended to create first charge in favour of banks, financial institutions or other secured creditors on the property of the borrower, then it would have incorporated a provision like Section 529-A of the Companies Act or Section 11(2) of the EPF Act and ensured that notwithstanding series of judicial pronouncements, dues of banks, financial institutions and other secured creditors should have priority over the State's statutory first charge in the matter of recovery of the dues of sales tax, etc. However, the fact of the matter is that no such provision has been incorporated in either of these enactments despite conferment of extraordinary power upon the secured creditors to take possession and dispose of the secured assets without the intervention of the court or Tribunal. The reason for this comission appears to be that the new legal regime envisages transfer of secured assets to private companies. The definition of "secured creditor" includes securitisation/ reconstruction company and any other trustee holding securities on behalf of bank/financial institution. The definition of "securitisation company" and "reconstruction company" in Sections 2(1)(za) and (v) shows that these companies may be private companies registered under the Companies Act, 1956 and having a certificate of registration from Reserve Bank under Section 3 of the Securitisation Act. Evidently, Parliament did not intend to give priority to the dues of private creditors over sovereign debt of the State. If the provisions of the DRT Act and the Securitisation Act are interpreted keeping in view the background and context in which these legislations were enacted and the purpose sought to be achieved by their enactment, it becomes clear that the two legislations, are intended to create a new dispensation for expeditious recovery of dues of banks, financial institutions and secured creditors and adjudication of the grievance made by any aggrieved person qua the procedure adopted by the banks, financial institutions and other secured creditors, but the provisions contained therein cannot be read as creating first charge in favour of banks, etc. If Parliament intended to give priority to

the dues of banks, financial institutions and other secured creditors over the first charge created under State legislations then provisions similar to those contained inSection 14-A of the Workmen's Compensation Act, 1923, Section 11(2) of the EPF Act, Section 74(1) of the Estate Duty Act, 1953, Section 25(2) of the Mines and Minerals (Regulation andDevelopment) Act, 1957, Section 30 of the Gift Tax Act, and Section 529-A of the Companies Act, 1956 would have been incorporated in the DRT Act and the Securitisation Act. Undisputedly, the two enactments do not contain provision similar to the Workmen'sCompensation Act, etc. In the absence of any specific provision to that effect, it is not possible to read any conflict or inconsistency or overlapping between the provisions of the DRT Act and the Securitisation Act on the one hand and Section 38-C of the Bombay Act and Section 26-B of the Kerala Act on the other and the non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act cannot be invoked for declaring that the first charge created under the State legislation will not operate qua or affect the proceedings initiated by banks, financial institutions and other secured creditors for recovery of their dues or enforcement of security interest, as the case may be. The Court could have given effect to the non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act vis-`-vis Section 38-C of the Bombay Act and Section 26-B of the Kerala Act and similar other State legislations only if there was a specific provision in the two enactments creating first charge in favour of the banks, financial institutions and other secured creditors but as Parliament has not made any such provision in either of the enactments, the first charge created by the State legislations on the property of the dealer or any other person, liable to pay sales tax, etc., cannot be destroyed by implication or inference, notwithstanding the fact that banks, etc. fall in the category of secured creditors."

(emphasis supplied)

29. In Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner(supra), the Court was called upon to consider whether dues payable by the employer underSection 11 of the EPF Act will have priority over debts due to the bank. The facts of that case were that Kannad Sahakari Sakhar Karkhana Ltd. and Gangapur Sahakari Sakhar Karkhana Ltd. had pledged sugar bags in favour of the appellant bank as security for repayment of the loan and interest. The respondent initiated proceedings for recovery of the dues payable under the EPF Act. The appellant bank questioned the legality of the orders passed under the EPF Act on the ground that being a secured creditor, the amount due to it was payable on priority vis-`-vis other dues including the dues payable by the employer under the EPF Act. The High Court negatived the challenge. The Court referred to the relevant provisions of the EPF Act including Section 11, the judgments noticed hereinabove as also the judgments in *UCO Bank v. Official Liquidator, High Court of Bombay*[11], *A.P. State Financial Corporation v. Official Liquidator*[12]*Textile Labour Association v. Official Liquidator*[13] and held:

"The priority given to the dues of provident fund, etc. in Section 11 is not hedged with any limitation or condition. Rather, a bare reading of the section makes it clear

that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression "all other debts" in both the sub-sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by sub- section (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types of debts."

(emphasis supplied)

30. The ratio for the last mentioned judgment is that by virtue of the non obstante clause contained in Section 11(2) of the EPF Act, any amount due from an employer shall be deemed to be first charge on the assets of the establishment and is payable in priority to all other debts including the debts due to a bank, which falls in the category of secured creditor.

31. We may now notice some judgments which have bearing on the interpretation of Sections 529or 529A of the Companies Act. The scope of proviso to sub-section (1) of Section 529 (as inserted by Amendment Act No.35 of 1985) was examined in UCO Bank v. Official Liquidator, High Court, Bombay (1994) 5 SCC 1. The facts of that case were that in Company Petition No.27 of 1971, the learned Company Judge of the Bombay High Court made an order dated 15.11.1972 for winding up of M/s. Glass Carboys and Pressedwares Limited. The Official Liquidator took possession of the assets of the company. Appellant - UCO Bank, which was a secured creditor of the company obtained a decree on 22.4.1976 for recovery of its debt. Thereafter, the High Court's Commissioner for taking accounts was directed to sell certain movables of the company. In the meantime, the Companies Act was amended by Act No.35 of 1985 and Sections 529 and 530 were amended and Section 529A was inserted. It was argued on behalf of the appellant that the amendment was not applicable to its case because the decree had been passed before the amendment and being a secured creditor, it was entitled to realize its debt in priority to other dues. The learned Company Judge accepted the argument but he was overruled by the Division Bench. While dealing with the argument, which found favour with the learned Company Judge, this Court referred to the Statement of Objects and Reasons contained in the Bill and observed:

"The proviso to sub-section (1) of Section 529 inserted by the Amending Act clearly provides that "the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen". The effect of the proviso is to create, by statute, a charge pari passu in favour of the workmen on every security available to

the secured creditors of the employer company for recovery of their debts at the time when the amendment came into force. This expression is wide enough to apply to the security of every secured creditor which remained unrealised on the date of the amendment. The clear object of the amendment is that the legitimate dues of workers must rank pari passu with those of secured creditors and above even the dues of the Government. This literal construction of the proviso is in consonance with, and promotes, the avowed object of the amendment made. On the contrary, the construction of the proviso suggested by the learned counsel for the appellant, apart from being in conflict with the plain language of the proviso also defeats the object of the legislation. A debt due to a secured creditor, when recovered by realisation of the security after commencement of the winding up proceedings, results in depletion of the assets in the hands of the Official Liquidator. This provision is intended to protect the interests of the workmen in proceedings for winding up. In view of the nature of workmen's dues being similar to those of secured creditors, the purpose of this provision is to place the workmen on a par with the secured creditors and create a statutory charge in their favour on all available securities forming part of the assets of the company in liquidation so that the workmen also share the securities pari passu with the secured creditors. The workmen contribute to the growth of the capital and must get their legitimate share in the assets of the company when the situation arises for its closure and distribution of its assets first among the secured creditors due to winding up of the company. The aforesaid amendment made in the Act is a statutory recognition of this principle equating the legitimate dues of the workmen with the debts of the secured creditors of the company. To achieve this purpose, it is necessary that the amended provision must apply to all available securities which form part of the assets of the company in liquidation on the date of the amendment. The conclusion reached by the Division Bench of the High Court is supported by this reason."

(emphasis supplied)

32. In Allahabad Bank v. Canara Bank (supra), a two-Judge Bench was called upon to consider the question whether an application can be filed under the Companies Act, 1956 during the pendency of proceedings under the DRT Act. The facts of that case show that Allahabad Bank filed an OA before the Delhi Bench of the DRT underSection 19. The same was decreed on 13.1.1998. The debtor company filed an appeal before DRAT, Allahabad.
Canara Bank also filed application under Section 19 before DRT, Delhi. During the pendency of its application, Canara Bank filed an interlocutory application before the Recovery Officer for impleadment in the proceedings arising out of the OA filed by Allahabad Bank. That application was dismissed on 28.9.1998. In the auction conducted by the Recovery Officer, the property of the debtor company was auctioned and the sale was confirmed. Thereupon, Canara Bank filed applications under Section 22 of the DRT Act. During the pendency of applications, Canara Bank filed company application in Company Petition No. 141 of 1995 filed by Ranbaxy Ltd. against M.S. Shoes Company under Sections 442 and 537 of the Companies Act for stay of the proceedings of Recovery Case No. 9 of 1998 instituted by Allahabad Bank. By an order dated 9.3.1999, the learned Company Judge

stayed further sale of the assets of the company. The Allahabad Bank challenged the order of the learned Company Judge and pleaded that in view of the amendment made in Section 19(19) of the DRT Act, Section 529A is attracted for a limited purpose, i.e. recovery of the dues of workmen. While dealing with this plea, the Court observed as under:

> "The respondent's contention that Section 19(19) gives priority to all `secured creditors' to share in the sale proceeds before the Tribuna1/ Recovery Officer cannot, in our opinion, be accepted. The said words are qualified by the words `in accordance with the provision of Section 529-A'. Hence, it is necessary to identify the above limited class of secured creditors who have priority over all others in accordance with Section 529-A. Secured creditors fall under two categories. Those who desire to go before the Company Court and those who like to stand outside the winding up. The first category of secured creditors mentioned above are those who go before the Company Court for dividend by relinquishing their security in accordance with the insolvency rules mentioned in Section 529. The insolvency rules are those contained in Sections 45 to 50 of the Provincial Insolvency Act. Section 47(2) of that Act states that a secured creditor who wishes to come before the Official Liquidator has to prove his debt and he can prove his debt only if he relinquishes his security for the benefit of the general body of creditors. In that event, he will rank with the unsecured creditors and has to take his dividend as provided in Section 529(2). Till today, Canara Bank has not made it clear whether it wants to come under this category. The second class of secured creditors referred to above are those who come under Section 529-A(1)(b) read with proviso (c) to Section 529(1). These are those who opt to stand outside the winding up to realise their security. Inasmuch as Section 19(19) permits distribution to secured creditors only in accordance with Section 529-A, the said category is the one consisting of creditors who stand outside the winding up. These secured creditors in certain circumstances can come before the Company Court (here, the Tribunal) and claim priority over all other creditors for release of amounts out of the other monies lying in the Company Court (here, the Tribunal). This limited priority is declared in Section 529-A(1) but it is restricted only to the extent specified in clause (b) of Section 529-A(1). The said provision refers to clause (c) of the proviso to Section 529(1) and it is necessary to understand the scope of the said provision."

33. The judgment in Allabahad Bank v. Canara Bank (supra) was distinguished by a two-Judge Bench judgment in *ICICI Bank Ltd. v. SIDCO Leathers Ltd*[14]. In that case, the appellant and Punjab National Bank had advanced loans to respondent No. 1 for setting up a plant for manufacture of leather boards and for providing working capital funds respectively. Respondent No.1 created first charge in favour of the appellant along with other financial institutions, i.e. IFCI and IDBI by way of equitable mortgage by deposit of title deeds of its immovable property. A second charge was created in favour of Punjab National Bank by way of constructive delivery of title deeds, clearly indicating therein that the charge in favour of the latter was subject to and subservient to charges in favour of IFCI, IDBI and ICICI. On an application filed by respondent No.1, the Allahabad High Court passed winding up order and appointed Official Liquidator. Thereafter, the appellant filed a suit for recovery of the

amount credited to respondent. In due course, the suit was transferred to Debts Recovery Tribunal, Bombay. During the pendency of the proceedings before the Tribunal, the Official Liquidator was granted permission to continue the proceedings of the suit. Civil Judge, Fatehpur before whom the suit was pending, ordered sale of the assets of the company. At that stage, the appellants, IFCI and IDBI jointly filed an application before the Company Judge for considering their claim on pro rata basis and also for exclusion of the claim of the Punjab National Bank. The learned Company Judge accepted the first prayer of the appellant but rejected the second one by relying upon the judgment in Allahabad Bank v. Canara Bank (supra). The intra Court appeal was dismissed by the Division Bench by relying upon Section 529A of the Companies Act. On further appeal, this Court distinguished the judgment in Allahabad Bank v. Canara Bank by relying upon an earlier judgment in *Rajasthan State Financial Corporation v. Official Liquidator*[15] and observed:

> "In fact in Allahabad Bank it was categorically held that the adjudication officer would have such powers to distribute the sale proceeds to the banks and financial institutions, being secured creditors, in accordance with inter se agreement/arrangement between them and to the other persons entitled thereto in accordance with the priority in law. Section 529-A of the Companies Act no doubt contains a non obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted. In terms of Section 529 of the Companies Act, as it stood prior to its amendment, the dues of the workmen were not treated pari passu with the secured creditors as a result whereof innumerable instances came to the notice of the Court that the workers may not get anything after discharging the debts of the secured creditors. It is only with a view to bring the workmen's dues pari passu with the secured creditors, that Section 529-A was enacted. The non obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. Only because the dues of the workmen and the debts due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to be given a total go-by.A non obstante clause must be given effect to, to the extent Parliament intended and not beyond the same. Section 529-A of the Companies Act does not ex facie contain a provision (on the aspect of priority) amongst the secured creditors and, hence, it would not be proper to read there into things, which Parliament did not comprehend."

34. In A.P. State Financial Corporation v. Official Liquidator (supra), the Court rejected the argument that the proceedings initiated by the Financial Corporation under Section 29 of the State Financial Corporations Act, 1951 will not be affected by the non obstante clause contained inSection 529A of the Companies Act and observed:

> "The Act of 1951 is a special Act for grant of financial assistance to industrial concerns with a view to boost up industrialisation and also recovery of such financial assistance if it becomes bad and similarly the Companies Act deals with companies including winding up of such companies. The proviso to sub-section (1) of Section

529 andSection 529-A being a subsequent enactment, the non obstante clause in Section 529-A prevails over Section 29 of the Act of 1951 in view of the settled position of law. We are, therefore, of the opinion that the above proviso to sub-section (1) of Section 529and Section 529-A will control Section 29 of the Act of 1951. In other words the statutory right to sell the property under Section 29 of the Act of 1951 has to be exercised with the rights of pari passu charge to the workmen created by the proviso toSection 529 of the Companies Act. Under the proviso to sub- section (1) of Section 529, the liquidator shall be entitled to represent the workmen and force (sic enforce) the above pari passu charge. Therefore, the Company Court was fully justified in imposing the above conditions to enable the Official Liquidator to discharge his function properly under the supervision of the Company Court as the new Section 529-A of the Companies Act confers upon a Company Court the duty to ensure that the workmen's dues are paid in priority to all other debts in accordance with the provisions of the above section. The legislature has amended the Companies Act in 1985 with a social purpose viz. to protect dues of the workmen. If conditions are not imposed to protect the right of the workmen there is every possibility that the secured creditor may frustrate the above pari passu right of the workmen."

(emphasis supplied)

35. We have referred to these judgments only for the purpose of showing that the object of the amendments made in the Companies Act by Act No. 35 of 1985 was to ensure that the legitimate dues of workers should rank pari passu with those of secured creditors. In other words, these amendments are intended to protect the interest of the workmen in winding up proceedings by placing them at par with secured creditors and a statutory charge is created qua their dues on all available securities forming part of the assets of the company in liquidation. However, the propositions laid down in these judgments are of little assistance in deciding the question raised in these appeals because in none of the cases the Court considered the so called conflict in the non obstante clauses contained in Section 11(2) of the EPF Act and Section 529A of the Companies Act.

36. The argument of Shri Gaurav Agrawal that the non obstante clause contained in the subsequent legislation, i.e. Section 529A(1) of the Companies Act should prevail over similar clause contained in an earlier legislation, i.e. Section 11(2) of the EPF Act sounds attractive, but if the two provisions are read in the light of the objects sought to be achieved by the legislature by enacting the same, it is not possible to agree with the learned counsel. As noted earlier, the object of the amendment made in the EPF Act by Act No.40 of 1973 was to treat the dues payable by the employer as first charge on the assets of the establishment and to ensure that the same are recovered in priority to other debts. As against this, the amendments made in the Companies Actin 1985 are intended to create a charge pari passu in favour of the workmen on every security available to the secured creditors of the company for recovery of their debts. There is nothing in the language of Section 529A which may give an indication that legislature wanted to create first charge in respect of the workmen's dues, as defined in Sections 529(3)(b) and 529A and debts due to the secured creditors.

37. It is a well recognized rule of interpretation that every part of the statute must be interpreted keeping in view the context in which it appears and the purpose of legislation. In *RBI v. Peerless General Finance and Investment Co. Ltd.*[16] Chinnappa Reddy, J. highlighted the importance of the rule of contextual interpretation in the following words :

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute- maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

38. Another rule of interpretation of Statutes is that if two special enactments contain provisions which give overriding effect to the provisions contained therein, then the Court is required to consider the purpose and the policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions.

39. In *Shri Ram Narain v. Simla Banking and Industrial Co. Ltd*[17]. this Court was considering the provisions contained in the Banking Companies Act, 1949 and the Displaced Persons (Debts Adjustment) Act, 1951. Both the enactments contained provisions giving overriding effect to the provisions of the enactment over any other law. After noticing the relevant provisions, the Court observed:

> "Each enactment being a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case." "It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein."

40. In *Kumaon Motor Owners' Union Ltd. v. State of Uttar Pradesh*[18] there was conflict between the provisions contained in Rule 131(2) (g) and (i) of the Defence of India Rules, 1962 and Chapter IV-A of the Motor Vehicles Act, 1939.Section 68-B gave overriding effect to the provisions of Chapter IV-A of the Motor Vehicles Act whereas Section 43 of the Defence of India Act, 1962, gave overriding effect to the provisions contained in the Defence of India Rules. This Court held that the Defence of India Act was later than the Motor Vehicles Act and, therefore, if there was anything repugnant, the provisions of the later Act

should prevail. This Court also looked into object behind the two statutes, namely, Defence of India Act and Motor Vehicles Act and on that basis also it was held that the provisions contained in the Defence of India Rules would have an overriding effect over the provisions of theMotor Vehicles Act.

41. In *Ashok Marketing Limited v. Punjab National Bank*[19] the Constitution Bench considered some of the precedents on the interpretation of statutes and observed :

> "The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein."
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> (emphasis supplied)

42. It is also important to bear in mind that even before the insertion of proviso to Sections 529(1), 529(3) and Section 529A and amendment of Section 530(1), all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund established for welfare of the employees were payable in priority to all other debts in a winding up proceedings [Section 530(1)(f)]. Even the wages, salary and other dues payable to the workers and employees were payable in priority to all other debts. What Parliament has done by these amendments is to define the term "workmen's dues" and to place them at par with debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to Section 529(1). However, these amendments, though subsequent in point of time, cannot be interpreted in a manner which would result in diluting the mandate of Section 11 of the EPF Act, sub-section (2) whereof declares that the amount due from an employer shall be the first charge on the assets of the establishment and shall be paid in priority to all other debts. The words "all other debts" used in Section 11(2) would necessarily include the debts due to secured creditors like banks, financial institutions etc. The mere ranking of the dues of workers at par with debts due to secured creditors cannot lead to an inference that Parliament intended to create first charge in favour of the secured creditors and give priority to the debts due to secured creditors over the amount due from the employer under the EPF Act.

43. At the cost of repetition, we would emphasize that in terms of Section 530(1), all revenues, taxes, cesses and rates due from the company to the Central or State Government or to a local authority, all wages or salary or any employee, in respect of the services rendered to the company and due for a period not exceeding 4 months all accrued holiday remuneration etc. and all sums due to any employee from provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company are payable in priority to all other debts. This provision existed when Section 11(2) was inserted in the EPF Act by Act No. 40 of 1973 and any amount due from an employer in respect of the employees' contribution was declared first charge on the assets of the establishment and became payable in priority to all other debts. However, while inserting Section 529A in the Companies Act by Act No.35 of 1985 Parliament, in its wisdom, did not

declare the workmen's dues (this expression includes various dues including provident fund) as first charge. The effect of the amendment made in the Companies Act in 1985 is only to expand the scope of the dues of workmen and place them at par with the debts due to secured creditors and there is no reason to interpret this amendment as giving priority to the debts due to secured creditor over the dues of provident fund payable by an employer. Of course, after the amount due from an employer under the EPF Act is paid, the other dues of the workers will be treated at par with the debts due to secured creditors and payment thereof will be regulated by the provisions contained in Section 529(1) read with Section 529(3), 529A and 530of the Companies Act.

44. In view of what we have observed above on the interpretation of Section 11 of the EPF Act andSections 529, 529A and 530 of the Companies Act, the judgment of the Division Bench of the Gujarat High Court, which turned on the interpretation of Section 94 of the Employees' State Insurance Act and Sections 529A and 530 of the Companies Act and on which reliance has been placed by the learned Company Judge and the Division Bench of the High Court while dismissing the applications filed by the appellant, cannot be treated as laying down the correct law.

45. In the result, the appeals are allowed. The impugned judgment as also the order of the learned Company Judge are set aside and the applications filed by the appellant are allowed in terms of the prayer made. The Official Liquidator appointed by the High Court shall deposit the dues of provident fund payable by the employer within a period of 3 months. The parties are left to bear their own costs.

Judgment Referred.

[1]*(1993) 2 SCC 0144*
[2]*(1979) 4 SCC 0573*
[3]*ILR (2002) 3 Ker. 0004*
[4]*(2009) 4 SCC 0094*
[5]*(2009) 10 SCC 0123*
[6]*(1965) 2 SCR 0289*
[7]*(1995) 2 SCC 0019*
[8]*(2000) 5 SCC 0694*
[9]*(2002) 10 SCC 0441*
[10]*(2000) 4 SCC 0406*
[11]*(1994) 5 SCC 0001*
[12]*(2000) 7 SCC 0291*
[13]*(2004) 9 SCC 0741*
[14]*(2006) 10 SCC 0452*
[15]*(2005) 8 SCC 0190*
[16]*(1987) 1 SCC 0424*
[17]*(1956) SCR 0603*
[18]*(1966) 2 SCR 0121*
[19]*(1990) 4 SCC 0406*