In Re: Janak Ltd. (In Liquidation)

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Court : Kolkata

Decided On : Dec-03-1976

Reported in : [1978]112ITR320(Cal)

Judge : Salil Kumar Roy Chowdhury, J.

Acts : Income Tax Act, 1922 - Section 46; ;Constitution of India - Article 372(1)

Appeal No. : Matter No. 237 of 1951

Appellant : In Re: Janak Ltd. (In Liquidation)

Advocate for Def. : Surhit Mitra, Adv.

Advocate for Pet/Ap. : Dipankar Gupta, Adv.-General and ;Ajit Sengupta, Adv.

Judgement :

Salil Kumar Roy Chowdhury, J.

1. In this matter before me, the only question for consideration is whether the tax dues of the Government of India claiming arrears of income-tax which has been assessed, demand raised and certificate issued, against the company cannot be disputed any longer in any way whatsoever, would have priority over other ordinary creditors of the company. Previously, the matter came up for direction and as to the assessment by the income-tax department in respect of certain years and payment of their dues out of the fund in the hands of the official

liquidator; being Mr. S. Acharyya. In this particular case, from time to time, I also made certain orders relying on the relevant decision of the Supreme Court as to the authority of the liquidator vis-a-vis the courtto go into the question of assessment of tax liabilities, but now the only point which has been raised and required for consideration and decision by me is whether between the ordinary creditors of the company, the dues of the Union of India in respect of the liabilities of the company should get priority or not.

2. The learned Advocate-General, appearing with Mr. Ajit Sengupta for the income-tax authority submitted, relying on the Supreme Court decision in Builders Supply Corporation v. Union of India : [1965]56ITR91(SC) , that an identical question came up before the Supreme Court and the law on this question has been specifically laid down after considering the common law in England giving priority of Crown debts, the Indian Income-tax Act of 1922, Section 46, and also the relevant Tax Recovery Act and various decisions of the Indian High Courts. The Supreme Court after considering the question has laid down the law that so far as the tax dues of the Government of' India are concerned it will have priority over other ordinary creditors subject to the rights of secured creditors. Here, there is no dispute that there is no secured creditor and as such other creditors are all unsecured creditors of the company in liquidation the list of which is annexed to the petition of the official liquidator filed on the 22nd November, 1976. The observation of Gajendragadkar C.J. in the case of Builders Supply Corporation v. Union of India : [1965]56ITR91(SC) , considering the effect of the decision in the case of Director of Rationing and Distribution v. Corporation of Calcutta : 1960 CriLJ1684 , is in the following terms :

'Therefore, this decision clearly shows that 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).'

3. In view of that, the contention of the counsel appearing for the appellant before the Supreme Court that though the English common law doctrine of priority of Crown debts regarding tax dues might have been recognised by judicial decisions

in India prior to 1950, there is no sanction for its continued operation after the Constitution came into force, which naturally proceeded on the assumption that the judicial recognition of the relevant common law doctrine cannot claim protection of Article 372(1) of the Constitution of India, was negatived and it has been laid down that the common law priority of tax dues of Crown is to continue as a law in force under Article 372(1) of the Constitution of India. Further, the contention of the counsel before the Supreme Court was that by reason of the provision of Section 46 of the Indian Income-tax Act, 1922, and of the relevant provisions of the Recovery Act, the doctrine of priority of Crown debts in respect of tax has become the subject-matter of the legislative provision and, therefore, the said doctrine cannot be enforced. The saidcontention was also negatived by the Supreme Court and it was observed by Gajendragadkar C. J. at page 107 in the following terms:

'In making a provision for the recovery of arrears of tax, it cannot be said that Section 46 deals with or provides for the principle of priority of tax dues at all; and so, it is impossible to accede to the argument that Section 46 in terms displaces the application of the said doctrine in the present proceedings.'

4. And finally, [1965] 56 ITR 108, it was observed by Gajendragadkar C.J. in the terms as follows :

'Broadly stated, the Recovery Act is intended mainly to provide for the procedure to recover public debts. This Act is not directly concerned with the right to recover arrears, or with priority, of tax dues. Arrears of tax fall within the scope of the proceedings contemplated by it, because they attract the provisions of Clause (3) of Schedule I. Even a superficial glance at the fourteen clauses of Schedule I to the Recovery Act would indicate that this Act is concerned with public demands of various kinds, and it would not be reasonable to suggest that any of its provisions are intended to deal directly or even indirectly with the principle of law with which we are concerned. These provisions merely indicate the manner in which and the procedure according to which public debts should be recovered. There is no positive provision in respect of respondent No. 1's claim to recover arrears of tax.'

5. Therefore, the decision of the Supreme Court in : [1965]56ITR91(SC) is the law of the land in which it has been laid down that the arrears of tax dues to the Union of India will have priority over all other ordinary creditors of the debtors, i.e., it will have priority over all other creditors other than secured creditors. In the present application by the official liquidator for payment out of the funds lying in his hands, the official liquidator will first pay the arrears of tax dues of the Union of India, that is, the income-tax department, and, thereafter, if any surplus is left, that will be distributed pari passu amongst the other creditors of the company. Therefore, I am making the following order :

The official liquidator to pay all the tax dues being the balance sum after taking into account the payments made to the income-tax authority under previous orders of this court and the balance dues of the tax authorities is to be paid first and, thereafter, if any surplus remains, that is to be divided or paid by the official liquidator amongst other creditors. There will also be an order in terms of prayers (b), (d), (e), (f), (g) and (h). The official liquidator will retain the costs assessed at 7 GMs. of this application out of the fund in his hands. Payment to the income-tax authority to be made as directed by this order forthwith. The balance of income-tax dues which has become payable by this order is Rs. 77,330.13 and that has to be paid forthwith by the official liquidator.

7. The matter is to be treated as on the day's list.

8. The official liquidator, the income-tax authority and all parties to act on a signed copy of the minutes on the liquidator's solicitor's undertakings to complete and file this order.