

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY APPLICATION NO. 245 of 2012****In****COMPANY PETITION NO. 253 of 2008****In****COMPANY APPLICATION NO. 525 of 2008****With****OFFICIAL LIQUIDATOR REPORT NO. 35 of 2012****In****COMPANY PETITION NO. 253 of 2000****With****COMPANY APPLICATION NO. 208 of 2013****In****COMPANY APPLICATION NO. 286 of 2011****With****COMPANY APPLICATION NO. 209 of 2013****In****COMPANY APPLICATION NO. 399 of 2010****With****COMPANY APPLICATION NO. 210 of 2013****In****COMPANY APPLICATION NO. 295 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.M.THAKER**

01.	Whether Reporters of Local Papers may be allowed to see the judgment?	Yes
02.	To be referred to the Reporter or not?	Yes
03.	Whether their Lordships wish to see the fair copy of the judgment?	No
04.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?	No

05.	Whether it is to be circulated to the civil judge?	No
-----	--	-----------

=====

COMMISSIONER OF INCOME TAX-II....Applicant(s)

Versus

OFFICIAL LIQUIDATOR OF M/S GUJARAT TELEPHONE CABLES LTD &
1....Respondent(s)

=====

Appearance:

MR M.R. BHATT, SENIOR COUSNEL WITH MRS MAUNA M BHATT,
ADVOCATE for the Applicant(s) No. 1

MR SHALIN MEHTA, SENIOR COUNSEL WITH MR HEMANG M SHAH,
ADVOCATE for the Respondent(s) No. 2

MR J.S. YADAV, ADVOCATE for the Respondent(s) No. 1

MR D.S. VASAVADA, ADVOCATE for the Textile Labour Association

=====

CORAM: **HONOURABLE MR.JUSTICE K.M.THAKER**

Date : 30/06/2014

COMMON CAV JUDGMENT

1. Heard Mr.Yadav, learned advocate appeared for the Official Liquidator, Mr.M.R. Bhatt, learned senior counsel for the applicant Income Tax Department (hereinafter referred to as 'the Department' for sake of convenience) and Mr.Vasavada, learned advocate has made submissions on behalf of the Textile Labour Association.

2. In Company Petition No.253/2000, the Official Liquidator of M/s. Gujarat Telephone Cables Ltd. has taken out the captioned report being OLR No.35/2012.

2.1 In the said Company Petition No.253 of 2000, the learned Company Court passed winding up order on 12.3.2008.

2.2 From the details mentioned by the Official Liquidator in the captioned OLR No.35/2012, it has emerged that subsequently somewhere in 2009, the liquidator, pursuant to an order passed by the Hon'ble Company Court, put up for auction – sale some assets of the company in liquidation viz. certain parcels of land.

2.3 It has also emerged that upon completion of process of auction sale, Hon'ble Company Court confirmed the sale vide order dated 30.7.2009 in OLR No.92/2008.

2.4 Subsequently, after seeking permission from the learned Company Court, Official Liquidator published an advertisement somewhere in September 2010 and invited claims from the secured creditors and workmen.

2.5 In response to the said advertisement, some workmen and ARCIL, as assignee of State Bank of India, ICICI Bank Ltd., IDBI Bank Ltd., Bank of India, Indus Ind Bank, IFCI

Ltd., Bank of Baroda, etc., submitted their claims.

2.6 It also appears that after the Official Liquidator received the sale proceeds upon sale of certain parcels of land, the Department approached the liquidator and called upon the liquidator to file income tax return and to pay the tax dues. In this context, the liquidator has averred in OLR No.35/2012 that:

“12. That, the Official Liquidator further submits that Income Tax Department has been issuing various letters, notices, to the Official Liquidator as liquidator of Companies (In Liqn.) invoking various provisions of Income Tax Act. Calling upon the Official Liquidator to file Income Tax Returns and to pay Income Tax on realizations of sale of assets to the company, as well as initiating the proceedings, enforcing the requirement of the filing of Income Tax Returns and Recovery of Income Tax including consequential penal provisions of penalty etc.

13. In this connection, the Official Liquidator most respectfully submits that before passing any orders of disbursement, this Hon'ble Court may be pleased to hear Respondent No.2, i.e. Commissioner of Income Tax, Range-4, Ahmedabad in this matter.”

2.7 In this background, Official Liquidator has filed this report and prayed, *inter alia*, that:

“14(A) This Hon'ble Court may be pleased to permit the Official Liquidator to disburse an amount of Rs.6,52,99,161 or such other amount as may be decided by this Hon'ble Court to Respondent No.1 i.e. ARCIL and worker of the company (In Liqn.) subject to condition that, if any demand raised by Income Tax Department in respect of sale of property of the company as Capital Gain Tax, the same shall be paid by the Respondent No.1 i.e. ARCIL on intimation by the Official Liquidator.”

3. On the other hand, the Department has taken out Judge's Summons which is registered as Company Application

No.245/2012. In the said summons dated 2.7.2012, the Department has prayed, *inter alia*, that:

“(A) That this Hon'ble Court may be pleased to direct the Official Liquidator to file return of income tax under Section 139 of the Income Tax Act, 1961 and as a necessary corollary, to comply with the provisions of Section 140A and other provisions with regard to payment of taxes, interest, penalty, etc.;

(B) That pending hearing and final disposal and compliance by the Official Liquidator with the above referred direction, this Hon'ble Court may be pleased to direct the Official Liquidator not to disburse any amount out of the sale proceeds either to the secured creditors and/or workers;”

4. The learned senior counsel for the Department submitted that in backdrop of similar facts and for almost similar relief, the Department has taken out identical applications which also may be heard and decided together. Therefore, with consent of the official liquidator and learned advocates for the workmen and secured creditors, the said applications are also heard and decided by this common order.

5. During the hearing of the said OLR, the Department filed an affidavit dated 30.3.2012 stating, *inter alia*, that:

“2. I submit that the Official Liquidator has sold the land of the company in liquidation for a sale consideration of Rs. 11.50 crores. I submit that there is no exemption provided under the Income Tax Act in respect of a company in liquidation and the provisions of the Act are equally applicable to the said assessee. I submit that the taxability of capital gains under the Income Tax Act on sale of the said land, is required to be examined upon the Official Liquidator filing return of income and offering capital gain for tax.

3. I submit that the department does not agree to the assertions made in para 7 of the report to the effect that the Income Tax Department's claim is to be considered as time barred or that its due are required to be taken note of only under section 530 of the

Companies Act. I also crave leave to refer to and rely upon provisions of the Income Tax Act.

4. I submit that as per the provisions of section 178 of the I.T. Act, the duties of the Official Liquidator in the matter of payment of income tax dues are well defined. I reiterated and state that there is no exemption to a company in liquidation from the liability to pay taxes of any income that may be earned during the course of liquidation proceedings, by way of interest income or on realization of sale proceeds of assets, etc. I submit that on going through the statement of receipts and payments from part of the Liquidator's Report, it can be seen that there are receipts in the nature of interest, land fees account, land interest account, misc. receipts, sale proceeds, etc. All these receipts are subject to Income-tax in the year of receipt for the relevant assessment years. I submit that a company in liquidation is required to file the return of income regularly as per the provisions of section 139 of the Act, and the aforesaid income is required to be reflected in the return of income. In respect of sale proceeds, the nature of assets sold would decide its treatment under the Income Tax i.e. sale of depreciable assets and non-depreciable assets would have separate treatment and profit/gain, as the case may be, arising on such sale would be required to be disclosed in the income tax return."

5.1 The Department filed another affidavit dated 2.7.2012 and claimed that:

"4. I humbly submit that on realization of the sale proceeds from the sale of the company's assets, capital gains under Chapter-IV-E are to be computed and taxed accordingly. I humbly submit that upon the sale realization being deposited by the Liquidator in any Fixed Deposit and interest being accrued or received thereon, tax is required to be computed as per provisions of Chapter-IV-F. I therefore humbly submit that in the first instance, the Official Liquidator may be directed to file a return of income tax and as a necessary corollary to comply other provisions of the Act, including payment of self-assessment taxes, etc. I humbly submit that until this exercise is completed, the Income Tax Department objects to any appropriation or disbursement of the amounts to the secured creditors and/or the workers. I humbly submit that taxes as aforesaid would be the costs in the winding up and are required to be paid prior to disbursement to secured creditors/workers."

5.2 The contentions raised by the department have been opposed by the Assets Reconstruction Company (India) Ltd. (hereinafter referred to as 'ARCIL') assignee of certain Banks / Financial Institutions, viz. State Bank of India, ICICI

Bank Ltd., IDBI Bank Ltd., Bank of India, Bank of Baroda, Axis Bank, etc. who was filed an affidavit dated 20.4.2012. In response to the said affidavit by ARCIL, the assessing officer of the department filed further affidavit dated 2.7.2012, wherein it is averred, *inter alia*, that:

“2. I submit that subsequent to the order of winding up, the Official Liquidator, after having been so appointed by this Hon'ble Court, has initiated steps for sale of the assets of the company in liquidation and in that process, has realized sale proceeds. As per the averments made in the report, an amount of Rs. 11.50 Crore has been received pursuant to the sale of company's assets.

4. I humbly submit that on realization of the sale proceeds from the sale of the company's assets, capital gains under Chapter-IV-E are to be computed and taxed accordingly. I humbly submit that upon the sale realization being deposited by the Liquidator in any Fixed Deposit and interest being accrued or received thereon, tax is required to be computed as per provisions of Chapter-IV-F. I therefore humbly submit that in the first instance, the Official Liquidator may be direct to file a return of income tax and as a necessary corollary to comply with other provisions of the Act, including payment of self-assessment taxes, etc. I humbly submit that until this exercise is completed, the Income Tax Department objects to any appropriation or disbursement of the amounts to the secured creditors and/or the works. I humbly submit that taxes as aforesaid would be the costs in the winding up and are required to be paid prior to disbursement to secured creditors/workers.”

6. One relevant aspect which has emerged from Department's affidavit and so also from the submissions by learned senior counsel is that in present case the Assessing Officer has not passed any order under section 178(2) for the company in liquidation. It is not even the case of the Department that the Assessing Officer has passed order under section 178(2) and the demand by the Income Tax Department is not made in light of and on the basis of any order under

section 178(2) of the Income Tax Act.

7. Another relevant aspect which also has emerged from the said affidavits, summons and submissions by the learned senior counsel is that the Department has raised the claim in respect of income received after the 'relevant date'.

8. During the hearing of the captioned applications, learned senior counsel for the Department submitted, *inter alia*, that the claim of the Department for tax dues is preferential claim and it ranks higher than any other claim and in view of section 178 of the Income Tax Act, 1961 the Official Liquidator should, before disposing the properties and assets of the company in liquidation and/or before disbursing the sale proceeds amongst the creditors including the workmen of the company in liquidation, set aside the dues of the Department and that the claim of the Department should be paid first before making payment to the creditors including the workmen of the company in liquidation. Learned senior counsel for the Department relied on the decision by Hon'ble Apex Court in the case of *Imperial Chit Funds (P) Ltd. [(1996) 86 Company Cases 555]*. He also submitted that since the official liquidator / the company has not filed returns, the Department has issued

notices under the Income Tax Act asking the liquidator to file the returns. Learned senior counsel for the Department contended that the dues of the Department i.e. the taxes should be classified and considered as costs and charges incurred in the winding up and that, therefore, in view of section 520 of the Companies Act, the dues of the Department qualify for payment out of the assets of the company in priority to other claims. It is also claimed that Official Liquidator is not exempted from obligation to file return and/or payment of self-assessment tax. Learned senior counsel appearing for the Department further submitted that the Official Liquidator appears to have received income which are liable to be classified and treated as (i) capital gain and (ii) interest on fixed deposit which are subject to tax liability which also qualify for preference. He further submitted that the Official Liquidator may be directed to file return of income under the provisions of the Income Tax Act, 1961 as also to pay the taxes and other dues as per the provisions of the Income Tax Act and until the said exercise is completed, the Official Liquidator may be restrained from disbursing any amount to the secured creditors/workers.

9. The claim of the Department is opposed by learned

counsel for Official Liquidator and learned senior counsel for ARCIL. Learned senior counsel for ARCIL submitted that Official Liquidator is obliged to make payment to secured creditors out of the amount received upon sale of the assets of the company in liquidation and that, therefore, the Official Liquidator has taken out report seeking permission for disbursement to secured creditors. He further submitted that such payment is required to be made according to the priority under section 529A read with section 530 of the Companies Act which does not provide for any right of preferential payment in favour of the tax dues over the claim of the secured creditors. Learned counsel for Official Liquidator adopted the said submissions and further contended that the Official Liquidator is under statutory obligation, in view of provisions under Section 529A of the Companies Act, to make payment to the secured creditors and workmen and the tax dues, if any, are not recognized for preferential payment under Section 529A of the Companies Act and that, therefore, the claim of the Department which is put forward by way of affidavit in OLR No.35 of 2012 and also by filing separate applications, is not justified and does not deserve to be granted. The learned counsel for the workmen claimed that any claim in preference over the claim of workmen should not

be entertained.

10. In light of the rival claims and submissions, the issue which arises for consideration is: whether the Department has a preferential right in matter of payment of dues over the right of the secured creditors (including the workmen) from the proceeds received upon sale of assets.

11. At the outset, it is relevant and necessary to note that the Department has taken out the summons to counter the liquidator's request for permission to disburse the sale proceeds amongst the creditors covered under section 529A of the Companies Act. Under the report, the liquidator has proposed to disburse the proceeds received from sale of assets which were loaded with "charge" created by the company in favour of the Banks / Financial Institutions. So as to support its claim the Department has invoked provision under section 178 of Income Tax Act and claimed that its dues should be paid in priority over other dues and for that purpose the liquidator should set aside amount equal to its dues before making payment to any creditor or workmen. The said section 178 reads thus:

The Income Tax Act, 1961

“178. Company in liquidation. – (1) Every person

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

(b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Assessing Officer who is entitled to assess the income of the company.

(2) The Assessing Officer shall, after making such inquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Assessing Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator

(a) shall not, without the leave of the Chief Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer under sub-section (2); and

(b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Chief Commissioner or Commissioner reasonable.

(Other part of the section omitted.)”

12. Plain reading of the said section 178 of the Income Tax Act, 1961, on strength of which the Department has raised the claim and based its contention, brings out that sub-section (1) of the said section postulates that the liquidator should, within 30 days of his appointment inform the concerned Income Tax Officer who is entitled and authorized to assess the income of the company (hereinafter referred to as 'the authorized assessing officer') under the Income Tax Act, that he (i.e. the liquidator) has been appointed as such. In turn, the

concerned officer the Department shall, as contemplated under sub-section (2) of section 178, after calling for necessary information and necessary inquiries, notify to the liquidator, within 3 months, the amount which, in his opinion, would be sufficient to provide for tax which is payable then or likely to become payable thereafter. Sub-section (3) by its Clause (a) provides that without leave of the Chief Commissioner or Commissioner the liquidator shall not part with any assets of the company or the properties in his hands until he has been notified by the Assessing Officer under Sub-section (2) and clause (b) thereof provides that on being so notified the liquidator shall set aside an amount equal to the amount notified and until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hands. Differently put, until the liquidator makes provision for tax liability as assessed by the Assessing Officer the liquidator is prohibited from parting with the assets and properties of the company in his hands.

13. When the claim and submission of the Department and rival submissions are examined in light of the relevant provisions, it emerges that first and major answer or explanation is available in the section itself, i.e. in the proviso

of sub-section (3). As regards the said section 178 what is relevant is that the proviso of sub-section (3) provides, *inter alia*, that nothing in sub-section (3) shall debar the liquidator from parting with such assets or properties of the company for the purpose of payment of the tax payable by the company or for making any payment to the secured creditors whose debts are, under law, entitled to priority of payment over the dues of the Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are, in the opinion of the Chief Commissioner or Commissioner, reasonable. Thus, the bar prescribed under the section is not absolute.

14. The section itself has, by virtue of its proviso, opened a window and provided a passage i.e. an exception. Consequently, the restriction imposed by sub-clauses (a) and (b) of Sub-section (3) will not stand in the way of the liquidator and he can walk through that window in the event he (the liquidator) has to dispose of the assets and properties and make the payments, of course for the purposes specified under the proviso.

14.1 Meaning thereby the said proviso not only carves

out an exception to sub-section (2) as well as to clauses (a) and (b) of sub-section (3) of section 178 but it also confers power on the liquidator to part with the assets or properties, though, of course, for the purpose specified in the proviso.

14.2 It is pertinent that section 530 of Companies Act prescribes order of priority, amongst various categories of creditors and section 529A of Companies Act confers right of priority and preference in matter of payment in favour of secured creditors and workmen. Meaning thereby the said two sections put the dues of secured creditors and workmen within the purview of the expression “... .. *whose debts are entitled under law to priority of payment over debts due to the government....*” used in section 178 of Income Tax Act.

15. The Department claims priority or preference in the matter of payment of tax on the strength of section 178 of the Income Tax Act, however, there is a fundamental flaw in the Department's perception about the said section since the Department perceives the said provision as if it has a deeper as well as wider ambit, which, actually it does not have and it does not embrace or affect, muchless takes away or even

dilutes the right and claims by unsecured creditors.

15.1 Besides this aspect related to the said section 178 of Income Tax Act, there is another feature as well. It is pertinent that the proviso of sub-section (3) also clarifies that the obligation and restriction imposed on the liquidator is in respect of those dues of Government which are “due to the Government on the date of liquidation” and not qua the dues which would be due from and after relevant date.

15.2 There is yet another aspect of section 178 of Income Tax Act.

15.3 The claim of the Department and submissions by the learned senior counsel overlook the object, scope and effect of said section 178. The said section aims at reserving sufficient assets for recovering tax dues and it is enacted for the purpose of ensuring that the Government's existing rights and the tax liability are not defeated by sale of the company's assets, or distribution of divided among the shareholders and/or creditors.

15.4 However, the Department wants to read something

more into said section than what is contemplated. In light of its own perception and understanding about the section, the Department claims that the said section creates preference in favour of tax – dues over all other dues, whereas in effect it does not give any right of priority to the tax – dues over and above the preference granted under the Companies Act, 1956.

16. On examination and analysis of the said section 178 it emerges that throughout the section there is nothing in the said section which, apart from asking the liquidator to set aside assets sufficient to meet possible tax liabilities (or to set aside sufficient amount), commands the liquidator to pay the tax dues in preference over all other dues and it neither creates any special right nor does it confer preferential ranking or higher priority in favour of Government or the Department or tax dues, and it does not place tax dues or the dues of State / Department in a position higher or better than what is conferred by and what is available under Companies Act.

16.1 Actually, the order of priority in matter of payment is prescribed by virtue of section 529A read with section 530 of the Companies Act and not in the Income Tax Act and the obligation which is created under section 178 of the Income

Tax Act, does not override the right of priority and preference created by and under section 529A of the Companies Act.

16.2 On the contrary, the said section 178, by virtue of the proviso of sub-section (3), vocally and apparently acknowledges the priority and preference of the secured creditors and workmen whose debts are entitled to priority as available to them under law (viz. Section 529A of the Companies Act) and it makes the Department's claim subject to that of the secured creditors and workmen under said section 529A .

16.3 When section 178(3) of the Income Tax Act and sections 529, 529A and 530 of the Companies Act are conjointly read, it becomes clear that the order passed under section 178(2) of the Income Tax Act will prevail over the rights of 'creditors' covered within the purview of section 530 of the Companies Act, 1956 and not over the rights of the creditors covered under section 529A of the Act (viz. the secured creditors and the workmen). That is so also for the reason that the operation and effect of said section 530 itself is subject to the superiority of section 529A of the Companies Act.

17. Moreover, in facts of present case there is an additional feature viz. In the cases on hand the Department has not even passed any order under section 178(2). The Department's affidavit does not claim that the competent assessing officer has passed order under section 178(2) of the Income Tax Act. That is not the case or claim even of the Department.

17.1 According to the said provision, the obligation cast on the liquidator under section 178(3) will arise after he is notified by the authorised assessing officer under sub-section (2) of section 178.

17.2 The right to claim payment under the said provision will spring from assessing officer's order under sub-section (2) of section 178 of the Income Tax Act.

17.3 Thus, unless and until the liquidator is notified by order under section 178(2) any occasion to claim and enforce payment/recovery does not arise.

17.4 Hence, at this stage, the claim and demand by the

Department is, even otherwise, not sustainable.

17.5 From the foregoing discussion, it follows that the submission and claim raised by the Department on strength of the said section 178 cannot be entertained and it must fail.

18. So as to support the claim and submissions the learned senior counsel for the Department relied on the decision in case of *Imperial Chit Fund (supra)* so far as the said decision is concerned, it is relevant to mention that in the said case, the issue for consideration did not arise in light of section 529A of the Act. Moreover, as observed in the decision in the case of *Re Ktc Tyres (India) Ltd. vs. Unknown [(2002) 125 Taxman 899]*, the issue under consideration before Hon'ble Apex Court was whether the order passed under section 178 of the Income Tax Act would have preference over right of unsecured creditors. In that context, Hon'ble Apex Court held that the Income Tax Department is to be treated as secured creditor and amongst the unsecured creditors, the claim for tax dues under section 178 will have preference over other claims of unsecured creditors. On reading of the said judgment, it also emerges that priority attached to the order of assessing officer under sub-section (2) of section 178 vis-a-vis

the right of priority and preference conferred on secured creditors (holding charge – in accordance with the sections 124 to 127 of the Companies Act – over the assets of the company in liquidation) and the right of priority conferred in favour of the dues of the workmen under section 529 of the Act, was not an issue before Hon'ble Apex Court. The issue under consideration before Hon'ble Apex Court was right of priority of order under section 178(2) over the creditors covered within purview of section 530(1)(a) of the Companies Act and it was in that context that Hon'ble Apex Court observed that if the assessing officer has passed order under section 178(2), then it will have preference over the creditors covered within purview of section 531A of the Act. The creditors and workmen and their respective rights within purview of section 529A of the Act was not under consideration before Hon'ble Apex Court. At this stage, it would be appropriate to refer to the observations in the said decision in case of *Re KTC Tyres (India) Ltd. [2002 (125) Taxman 899]*, wherein it is observed that:

“What was raised before the Apex Court was whether order passed under section 178 of the Income Tax Act would have preference over rights of unsecured creditors. The Apex Court held that Income Tax Department is to be treated as secured creditor and would get priority in the matter of payment. Imperial Chit Funds (P) Ltd.'s case (supra), is an authority for the proposition that between unsecured creditors the claim of tax due under section 178 of the Income Tax Act would have preference over all other claims of unsecured creditors.

We are of the view, Apex Court in Imperial Chit Funds (P) Ltd.'s case (*supra*) as well as the decision of the Division Bench in Swaraj Motors (P) Ltd.'s case (*supra*) had no occasion to deal with the scope of section 529A of the Companies Act, as amended."

18.1 In the facts of the present case, the said decision in case of *Imperial Chit Funds (supra)* would otherwise also not be applicable and will not help the case of the Department inasmuch as the assessing officer, in present case, has not passed any order under section 178(2).

19. Now I may turn to the other contention of the Department, which is raised on the strength of section 520 and section 476 of the Companies Act.

19.1 In light of the sections 520 and 476, learned senior counsel for the Department would submit that capital gain tax and other tax dues claimed by the Department are costs and charges in the winding up and that, therefore, by virtue of the said provision, they enjoy priority. According to the learned senior counsel for the Department, the liquidator is, consequently, obliged to pay costs and charges incurred in the winding up, in priority to other claims and dues. The said section 520 and section 476 read thus:

"520. Costs of voluntary winding up. – All costs, charges and

expenses properly incurred in the winding up, including the remuneration of the liquidator, shall subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.”

“476. Power to order costs. – The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Court thinks just.”

19.2 At the outset, it is relevant to note and necessary to keep in focus a vital distinction. The said section 476 is part of the family comprising sections 433 to 483. The said family is Chapter II (Part VII) of the Companies Act and contains provisions related to and necessary for and applicable in cases of winding up by the Tribunal (Court).

19.3 On the other hand section 520 belongs to different family which is made-up of section 484 to section 520. The said family is within the territory of Chapter III (Part VII) and the provisions thereunder are related to and deal with the aspects concerning “voluntary winding-up”.

19.4 The said section 520 provides for “costs of 'voluntary' winding up” i.e. for “costs, charges and expenses properly incurred in voluntary winding up”. That is the scope and extent of its applicability.

19.5 Moreover, the said expression and its operation and its effect are qualified or rather restricted by use of words “subject to the rights of secured creditors” and thereby it is made subject to the rights of secured creditors, which are created and conferred by section 529A of said Act.

19.6 Now, so far as the said section 529A of Companies Act is concerned, it falls within the purview of Chapter V (Part VII) which houses the sections 528 to 560 which are applicable to “every mode of winding-up”.

19.7 Thus, said section 529A has universal application in cases of winding up and it is relevant and applicable in all types and modes of winding-up.

19.8 This aspect, in addition to the fact that it is a non-obstante provision and is introduced subsequently (i.e. w.e.f. 24.5.1985) establishes its superiority over other provisions.

19.9 The said section 476 is an enabling provision which enables the Court, or rather lifts all barriers in the way and in the matter of payments to pay the cost and expenses which the liquidator has to incur to take the winding up process to its

conclusion and final destination in accordance with the procedure prescribed under the Act. Like section 520 this section 476 does not contain the expression “in priority to all other claims”.

19.10 So far as section 520 is concerned, as mentioned earlier, it provides for payment of cost and expenses in the process of winding up and before payment of other dues, but subject to rights of secured creditors.

19.11 The rights of secured creditors referred to in section 520 of Companies Act (and also in section 178 of Income Tax Act) are created by virtue of section 529A of the Companies Act.

20. The scheme of the Companies Act and more particularly the provision under sections 529A and 530 of the Companies Act make it clear that the priority under section 520 is subject to the right of preference and priority in the matter of payment of dues created by virtue of section 529A of the Companies Act. The said relevant part of sections 529A and 530 of the Companies Act reads thus:

“529A. Overriding preferential payment. – 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, 5[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 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 1[subject to the limit specified in sub-section (2);

(c) to (g)

(4) Where any payment has been made to any employee of a company,-

(i) on account of wages or salary; or

(ii)

(5) The foregoing debts shall-

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) (9)”

20.1 On conjoint reading of sections 476, 520, 529, 529A and 530 of the Companies Act, it emerges that (a) it is section 530 whereby order of priority in the matter of payment is created which are in substitution of the creditors' remedy

under ordinary law against an insolvent; (b) the priority under the said sections 520 and 476 of the Companies Act are subject to section 529A of the Companies Act; (c) by virtue of the very same provision and also by virtue of the provision under section 529A of the Companies Act, the said latter provision has overriding effect; (d) consequently the special right, priority and preference created by section 529A has overriding effect against all other claims and dues; (e) the order of priority prescribed under section 530 is itself subject to the preference and priority conferred by section 529A in favour of the dues specified under the said section i.e. section 529A of the Companies Act.

20.2 Therefore, any claim on the strength of section 476 and/or section 520 of the Companies Act in disregard to the order of priority mentioned under section 530 and right of preference created by section 529A of the Companies Act, cannot be sustained.

20.3 In view of the fact that section 529A is a non-obstante clause and since the said section 529A is introduced and brought in force subsequently (i.e. From 24.5.1985) it will have overriding effect, and it shall prevail, over other

provisions. Therefore (as observed hereinabove earlier with reference to section 178 of the Income Tax Act) all other rights and claims would be subservient to, and must yield to, the superiority of section 529A and the priority and preference conferred in favour of secured creditors and workmen covered under section 529A of the Companies Act.

20.4 Thus, the claim and contention that the cost, charges and expenses contemplated under section 520 of the Companies Act should be paid in priority over other dues overlooks the above-mentioned aspects. When the submission is considered in light of said aspects, it becomes clear that the submission is not sustainable.

21. The said claim and contention is required to be examined from other perspective also. It is true that according to section 520 of the Companies Act, the costs and charges properly incurred in the process of winding up have to be paid before other dues are paid.

21.1 However, in this context, it is pertinent that the Department has taken out Judge's Summons and has preferred above-mentioned applications at the stage when the Official

Liquidator has sought permission to disburse the sale proceeds received from auction sale of some of the assets of the company in liquidation.

21.2 Moreover, on this count it should also be kept in focus that the obligation imposed on the liquidator by virtue of section 520 and/or section 476 is to pay the “cost, charges and expenses incurred in the process of winding up” out of the 'assets' of the company inasmuch as the said sections 520 and 476 provides that the costs, charges and expenses incurred in the winding up shall be payable “out of the assets”.

21.3 The word "assets" used in and for the said provisions would mean the “assets of the company in liquidation”. This aspect becomes clear from the words “of the company” which follows the words “out of the assets”.

21.4 The said expression 'assets of the company' would, obviously, not include any property or asset of the banks / financial institutions (i.e. of the secured creditors).

21.5 Meaning thereby, it will not include the mortgage rights of the mortgagee bank / financial institutions inasmuch

as 'mortgage right' is “property” and “asset” of secured creditors and not of the company in liquidation.

21.6 The assets and properties which were put up for auction sale were the assets which were put under 'charge' of the mortgagee banks / financial institutions who held first charge over the said assets and that, therefore, when the liquidator offered for sale such property/assets, the said properties were not only loaded with the “charge” created in favour of banks but they also carried with them the “asset” of the banks / financial institutions viz. the “mortgage rights” of said banks / financial institutions.

21.7 Since the banks / financial institutions held charge over the said properties and assets and they also hold charge over various properties, they are “secured creditors” contemplated under sections 520, 529A and 530 of Companies Act as well as under the proviso of sub-section (3) of section 178 of the Income Tax Act.

22. In this context, it is pertinent that the banks / financial institutions declared their consent and agreed for sale of the properties in question while reserving their right as

holder of first charge over the properties in question.

22.1 As mentioned earlier, in response to the advertisement by the liquidator the secured creditors submitted their claim and while submitting their claim they also pressed in service their “charge” and claimed that they hold first charge over the properties in question and that, therefore, their dues must be paid before payment of other dues is allowed.

22.2 The “creditors” covered under section 529A of the Companies Act are, statutorily, entitled for priority and preference in matter of payment of dues. The said provision being late entrant in the Act introduced in 1985 and brought in force w.e.f. 24.5.1985) and being non-obstante provision confers overriding effect over other provisions in the Companies Act and under other laws as well. Thus, in respect of such assets, those creditors whose dues are not secured with aid of ‘duly created charge’, cannot stake their claim for payment (a) in priority over the creditors whose dues are ‘secured’; and (b) until the dues of secured creditors are paid in full. There is no provision under the Companies Act overriding the claims of secured creditors. Even section 530

clarifies that the preference prescribed thereunder is subject to section 529A of Companies Act.

22.3 It is relevant to mention at this stage that the said claim of the banks / financial institutions that they hold “charge” over the properties of the company in liquidation and that their charge is first charge over the property, which was put for sale, is not in dispute.

22.4 Despite this position of law and of facts present case, the Department, by virtue of the summons and the applications, claims payment of tax dues on preferential and priority basis from the proceeds received by the liquidator from the sale of the assets which were mortgaged with the banks / financial institutions and loaded with the “charge” over said assets in favour of the secured creditors.

22.5 In this view of the matter, the Department's claim for priority in payment from out of the assets loaded with the “charge” created by the company in favour of the secured creditors cannot be entertained until the dues of secured creditors are fully paid and the said claim by the Department cannot be allowed to steal march over the preferential right of

secured creditors.

23. From the claim raised by the Department, it appears that the Department conveniently overlooks that against the mortgaged assets and against the mortgage right, no one except the secured creditor / mortgagee, i.e. neither the company, nor its shareholders nor the liquidator nor the State can claim priority or preference over the 'mortgage right' of the secured creditors until the dues of the mortgagee / secured creditors are paid. Moreover, the secured creditors, who are covered under section 529A of the Act are, even otherwise, statutorily, entitled for priority and preference in matter of payment of dues. Therefore, the Department's claim for priority in payment from out of the assets loaded with the "charge" created by the company in favour of the secured creditors cannot be entertained until the dues of secured creditors are fully paid and the said claim by the Department cannot be allowed to steal march over the preferential right of secured creditors. Furthermore, the dues of workmen, which rank *pari passu* with the dues of secured creditors, will, in view of section 529A, get the same treatment as the dues of secured creditors.

23.1 The dues of State do not fall within the category of, and they cannot be categorized as 'secured debt / dues' for the purpose of sections 520, 476, 529, 529A and 530. In this context, profitable reference can be made to the decision by the Federal Court in the case of Governor-General in Council v. Shiromani Sugar Mills Ltd, [1946] 14 ITR 248. While considering the general position of debts due to the Crown and the prerogative rights of the Crown in the liquidation of a company under the Companies Act, 1913, Federal Court observed, *inter alia*:

"We have no hesitation in coming to a conclusion and holding that the Crown is bound by the provisions of the Indian Companies Act, 1913, and is bound, in regard to the provisions relating to the liquidation of companies, 'to a statutory scheme of administration wherein the prerogative right of the Crown to priority no longer exists.' (Lord Wrenbury in Food Controller v. Cork [1923] AC 647 672). The Crown is accordingly not entitled, in our judgment, to any prerogative, priority, or preferential rights or treatment, save those expressly conferred and limited by the Act itself, in particular by Section 230 and Sub-section (2) of Section 232'.

12. Section 530(1)(a) of the Companies Act, 1956, is the provision corresponding to Section 209 of the Companies (Consolidation) Act, 1908, referred to in Food Controller v. Cork [1923] AC 647, which is as follows :

'530(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 Sub-section (8), and having become due and payable within the twelve months next before that date;" (rest of the section omitted).

23.2 In this view of the matter, even if it is assumed, only for the sake of considering and examining the Department's claim raised in light of section 520 and section 476 of the

Companies Act, that the taxes fall in the category of costs and charges contemplated under the said provisions, then also, they, in contradistinction to the secured debt created with aid of 'charge' registered by the secured creditors as contemplated under sections 124, 126 and 127 of the Companies Act, cannot be categorized as secured debt / dues. Consequently by virtue of very same provision and so also by virtue of provision under section 529A of the Companies Act, the Department's claim would be subject to section 529A of the Act. Therefore, 'the costs, charges and expenses properly incurred in winding up' may stand ahead in the order of priority prescribed under section 530 of the Companies Act but the dues covered within purview of section 529A of the Companies Act will have priority and overriding effect. The priority and preference conferred in favour of secured creditors (and the workmen – whose dues rank *pari passu* with that of secured creditors) under section 529A of the Companies Act is a superior right and ranks higher compared to all other priorities and they cannot be made subject to the payment of 'costs and charges' covered within purview of section 520 of the Companies Act.

23.3 From conjoint reading of section 520, section 476,

section 529A and section 530 of the Companies Act, it also becomes clear that the priority of the State is qua the creditors within the purview of section 530 and not qua the secured creditors under section 529A of Companies Act and that, therefore, even if the tax liability and the claim of the Department is, as mentioned earlier, treated as cost, charge and expenses in winding up, then also, the Department's claim will not be payable before the dues of the secured creditors and workmen are paid, but the said claim would qualify for priority and preference qua the creditors under section 530, but after the liability under section 529A is fully discharged. In this context, the Court may hasten to clarify that only those dues of secured creditors and workmen will qualify for such priority and preferential treatment which can be termed as "secured" for the purpose of section 529A read with section 125 of Companies Act.

23.4 Besides this, the Department has failed to point out any provision which, by eclipsing section 529A confers preferential treatment in favour of its claims or which confers right of preference and priority to the claim of the Department, be it income tax, capital gain tax, or even cost, charge and expenses over the right conferred on secured creditors under

section 529A of the Act.

23.5 This is another reason why the contention that in view of sections 520 and 476 of the Companies Act, tax dues must be paid as cost, charges and expenses in winding up and in priority over all claims and dues should fail and cannot be sustained.

23.6 In this view of the matter, the claim of the Department that payment of its dues should be given priority and preference over the dues of secured creditors and workmen militates against the provision under section 529A of the Companies Act and is contrary to the scheme of the Companies Act and cannot be allowed.

24. There is yet another facet of this claim and submission. According to the clause (a) of sub-section (1) of section 530, the preference and priority created in favour of tax dues is available to only those tax dues which became due and payable within twelve months next before the relevant date. Whereas, in present case the capital gain tax and tax on the interest received by the liquidator from Fixed Deposits which is claimed by the Department is in respect of the income

/ gain (if at all there is any gain) etc. are received by the liquidator after the relevant date and therefore it will not stand covered within the purview of section 530(1)(a) of Companies Act.

25. It is trite that if there is no provision which would expressly create and confer priority in matter of payment or if there is no provision in the Act wherefrom such priority can be inferred, then neither any priority or preference can be claimed nor it can be granted and the principles which are ordinarily applicable in matter of insolvency would apply.

25.1 In this context, it is pertinent that so far as the Companies Act is concerned, section 529 provides that in the event of winding up of insolvent company rules of insolvency will apply. The said section 529 reads thus:

“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-

- (a) debts provable;
- (b) the valuation of annuities and future and contingent liabilities; and
- (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: ¹ 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,-

- (a) the liquidator shall be entitled to represent the workmen and enforce such charge;
- (b) any amount realised by the liquidator by way of enforcement of

such charge shall be applied ratably for the discharge of workmen' s dues; and
(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.]”

25.2 However, under the same Act, i.e. under the Companies Act order of priority is created, by virtue of section 530. Now, so far as said section 530 is concerned, even a glance at the said section would mark that the order of priority created by section 530(1) of the Companies Act is “subject to the provision of section 529A” of Companies Act. Thus, under Companies Act, order of priority and above that order and mode of preferential payment is prescribed, therefore in the matter of payment of dues the said procedure shall prevail.

26. The above-discussion leads to the conclusion at this stage, that: (a) when the assets with load of mortgage rights of mortgagee / secured creditors are sold; and (b) when the amounts / proceeds in the hands of liquidator are received from sale of such assets; and (c) when the secured creditors allow such sale of mortgaged assets while reserving their “charge” (i.e. “first charge”) over the assets in question; and (d) when the Official Liquidator has come forward with request for permission to disburse amounts to secured creditors and

workmen covered within purview of section 529A; and (e) when the demand for payment of tax dues viz. capital gain tax, tax on income from Fixed Deposit, etc. is raised in respect of income and/or gain (if any) received after relevant date, the question of restraining the liquidator from discharging the dues of the secured creditors and workmen covered under section 529A of the Act does not arise and such claim and submission cannot be sustained. Therefore, the said submission should fail.

27. At this stage, it is relevant and appropriate to mention that similar contentions and claim came up for consideration before Kerala High Court in the case of *Re KTC Tyres (India) Ltd.* The view in present case is fortified by the decision in case between *Re Ktc Tyres (India) Ltd. vs. Unknown [(2002) 125 Taxman 899]*, wherein the High Court observed and held, as regards the issue under consideration:

“The question posed before the Division Bench in Swaraj Motor (P) Ltd.'s case (supra) is whether Income Tax Department has got any preference or they could be treated just like any other creditor. Liquidator took up the stand that Income Tax Department must prove the claim and get dividend *pari passu* just like any other simple creditor of the company. Division Bench took the view that before assets are distributed among the creditors amount due to Income Tax Department is payable as provided in sections 520 and 476 of the Companies Act. The court held that the liquidator would pay tax demanded for distributing the dividend. We may now examine whether the point raised by the Official Liquidator, is covered by the decision of the Apex Court in Imperial Chit Funds (P) Ltd.'s case (supra). What was raised before the Apex Court was whether order passed under section 178 of the Income Tax Act would have

preference over rights of unsecured creditors. The Apex Court held that Income Tax Department is to be treated as secured creditor and would get priority in the matter of payment. Imperial Chit Funds (P) Ltd.'s case (supra), is an authority for the proposition that between unsecured creditors the claim of tax due under section 178 of the Income Tax Act would have preference over all other claims of unsecured creditors."

The Department contended before the Court that:

"the tax demanded is capital gain tax on the amount incurred for the winding-up of the company as per section 520 of the Act and section 476 and that tax is payable as "cost, charges and expenses incurred in the winding-up." In this connection we may refer to section 520 also."

In that context, the Court observed, *inter alia*, that:

"We are of the view, Apex Court in Imperial Chit Funds (P) Ltd.'s case (supra) as well as the decision of the Division Bench in Swaraj Motors (P) Ltd.'s case (supra) had no occasion to deal with the scope of section 529A of the Companies Act, as amended."

After taking into account the provisions under Section 529A of Companies Act, the Court observed, *inter alia*, that:

"We have to examine the claim of the Income Tax Department vis-a-vis section 529A of the Companies Act. Section 529A was inserted in the Companies Act by Act 35 of 1985. Sections 529A and 530 confer special rights and benefits on the workmen of the undertaking. Workmen get rights *pari passu* with those of the secured creditors on the assets of the company in liquidation. Purpose of the section is to ensure that workmen should not be deprived of their rights in the event of liquidation of the company. Section 529A has employed a non obstante clause which says that "notwithstanding anything contained in any other provision of the Companies Act or any other law for the time being in force". The non obstante clause whittles down the priority of even the crown debts. It is the general concern for the interest of the workmen that is saved by the Apex Court in the decision in [Workmen of Rohtas Industries Ltd. v. Rohtas Industries Ltd.](#) (1987) 62 Comp Case 872 (SC). The Apex Court held that subsistence and living of the workers is of paramount importance and has to rank with highest priority. Their wages and emoluments upto the date of closure of the company will rank in priority over the secured creditors."

Having regard to the submissions by the Department in light of provisions under Section 520 of Companies Act, the Court, after taking into account the provision under Section 520 of the Act, observed, *inter alia*, that:

“Claim of secured creditors has not been overridden by section 520 which is subject to rights of secured creditors. The right of secured creditors are safeguarded by section 529A by employing a non obstante clause. Therefore, the argument advanced by the standing counsel on behalf of the Income Tax Department on the basis of sections 520 and 476 cannot be sustained. The above view is fortified by the decision of the Bombay High Court in Polyolefins Industries Ltd. v. Kosmek Plastics Mfg. Co. Ltd. (1999) 98 Comp Cas 481 (Bom) as well as Syndicate Bank's case (supra) with which we concur. Finally, counsel for the Income Tax Department contended that the amount due to the department by way of capital gain tax is not a debt within the expression "debt" used in section 529A. Section 529A has used the expression "workmen's dues". Further, the expression "debt" is used to mean any pecuniary liability. In CWT v. Ahmed Tea Co. (P) Ltd. (1963) 48 ITR 943 (Assam), the court held any liability to pay income-tax and the assessee has set apart certain amount thought to be necessary for discharging the tax liability, the same has been ascertained it cannot be said that the amount is not a debt. Therefore, the tax liability may also come within the expression "debt" under section 529A. The Apex Court in Imperial Chit Fund's case (supra), or the Division Bench in Swaraj Motors case (supra) had no occasion to examine the scope of section 529A which was introduced by the legislature by employing a non obstante clause which overrides other provisions under the Companies Act as well as under other legislations.”

This Court is in respectful agreement with the above quoted view and the view in this decision is fortified by the said decision.

28. It would be appropriate at this stage to take into account the decision relied on by the learned senior counsel

for the Department. So far as the decisions in the case of S.V. Kondaskar, Official Liquidator & Liquidator of the Colaba Land & Mills Co. Ltd. (In Liquidation) vs. V.M. Deshpande, I.T. Officer, Companies Circle (8), Bombay & Anr. [83 (1972) ITR 685], in the case of I.T. Officer, A-Ward, Nellore Circle, Nellore vs. Official Liquidator [106 (1977) ITR 119], in the case of Beni Felkai Mining Co., In Re. [2 (1934) ITR 309], in the case of Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. vs. Income-Tax Officer [1988 (170) ITR 388] on which the learned senior counsel for the Department relied, are concerned, the issue about claim for priority of tax dues in matter of payment vis-a-vis rights of secured creditors and workmen under section 529A of Companies Act was not under consideration in the cited cases. The said decisions did not examine the claim of the Department in light of and from perspective of section 529A of Companies Act in light of the priority and preference created by virtue of the said provision which came into force with effect from 24.5.1985 and that, therefore, the said decisions do not help the petitioner in justifying the contentions.

29. In light of the above discussion and for the foregoing reasons, the claim of the Income Tax Department,

except so far as the Department's request relates to the liquidator's obligation to inform the Department about liquidator's appointment in each case, cannot be sustained and the claim and submissions of the Department deserve to be rejected and are, accordingly, rejected.

30. Now, so far as the Department's request that the liquidator be directed to inform the Department about the order appointing liquidator in each case and to file returns are concerned, it is relevant to mention that the liquidator, in his report being OLR No.35/2012, has averred in paragraph No.13 that *"before passing any orders of disbursement, this Hon'ble Court may be pleased to hear the respondent No.2 i.e. Commissioner of Income Tax, Range 4, Ahmedabad in this matter"*. The request made by the Department and the submission made by the Official Liquidator are in consonance with the obligation imposed by virtue of section 178 of Income Tax Act and that, therefore, appropriate intimation to the Department in each case when order appointing liquidator is passed and when the process for disposal of assets and/or disbursement of sale consideration received by liquidator begins, ought to be given to the concerned authority / officer of the Department.

31. On this count it is relevant to mention that this Court is given to understand that so as facilitate this process, the Department has nominated one officer as Nodal Officer who may be informed about the appointment of liquidator and/or about the process of sale of properties or about disbursement of sale proceeds. In this view of the matter, it appears appropriate to direct, *inter alia*, that as and when the Court passes an order appointing liquidator in any matter and so also when the process of disbursement in accordance with section 529A commences and at the stage when the process of disbursement under section 530 begins, the Official Liquidator shall give proper intimation to the Nodal Officer. It is clarified that such intimation is not a substitution of the obligation under section 178 of Income Tax Act. It is also clarified that by law the liquidator is obliged to regularly file the returns and that, therefore, the liquidator shall take necessary action in all cases.

32. As a result of the above discussion and this decision, the Official Liquidator may, after seeking appropriate permission and directions, proceed, according to the directions by the Court, to make the payments in accordance with the

provisions contained under section 529A of the Companies Act.

33. With the aforesaid clarification and direction, OLR No.35/2012 is disposed of. Company Application Nos. 245/2012, 210/2013, 209/2013 and 208/2013 stand disposed of.

(K.M.THAKER, J.)

Bharat