THE OFFICIAL LIQUIDATOR, U.P. AND UTTARAKHAND A

v.

ALLAHABAD BANK AND ORS.

(Civil Appeal No. 2511 of 2013)

MARCH 12, 2013. B

[H.L. DATTU AND DIPAK MISRA, JJ.]

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 – s.30 – Auction/sale by Recovery Officer under 1993 Act – In a winding-up proceedings, appointment of Official Liquidator by Company Court – Official Liquidator's challenge to the auction/sale before Company Court – Jurisdiction of Company Court to entertain the challenge – Held: 1993 Act is a complete code in itself and the tribunal (DRT) has exclusive jurisdiction for the purpose of sale of the properties for realization of the dues to the Banks and financial institutions – But at the time of auction/sale, it is required to associate the Official Liquidator – 1993 Act clearly provides that any person aggrieved by the act of Recovery Officer can prefer an appeal – The Official Liquidator whose association is mandatorily required can be regarded as person aggrieved by the action taken by Recovery Officer – In view of the fact that 1993 is a special legislation, appeal thereunder is the only remedy, and Company Court has no jurisdiction in such matter – Doctrine of Election is also not applicable in this case – Thus Official Liquidator can take recourse only to the mode of appeal under 1993 Act and cannot approach the Company Court – Companies Act, 1956 – Jurisdiction – Doctrine – Doctrine of Election. C D E F G

High Court – Jurisdiction of – Under Companies Act – Nature of – Held: Jurisdiction of High Court under Companies Act is ordinary in nature and not extraordinary or inherent.

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A **The question for consideration in the present appeal was whether the Company Judge under the Companies Act, 1956 has jurisdiction at the instance of the Official Liquidator to set aside the auction or sale held by the Recovery Officer under the Recovery of Debts due to**
B **Banks and Financial Institutions Act, 1993 or whether the Official Liquidator was required to follow the route as engrafted under the 1993 Act by filing an appeal assailing the auction and the resultant confirmation of sale.**

Disposing of the appeal, the Court
C

HELD: 1. The Recovery of Debts due to Banks and Financial Institutions Act, 1993 is a comprehensive Code dealing with all the facets pertaining to adjudication, appeal and realization of the dues payable to the banks
D **and financial institutions and the tribunal (DRT) has the exclusive jurisdiction for the purpose of sale of the properties for realization of the dues of the banks and financial institutions. [Paras 11 and 19] [218-A-B; 223-F]**

E *Damji Valji Shah v. LIC of India* **AIR 1966 SC 135: 1965 SCR 665 – relied on.**

Andhra Bank v. Official Liquidator and Anr. **(2005) 5 SCC 75: 2005(2) SCR 776;** *Jitendra Nath Singh v. Official Liquidator and Ors.* **(2013) 1 SCC 462;** *International Coach*
F *Builders Ltd. v. Karnataka State Financial Corpn.* **(2003) 10 SCC 482: 2003 (2) SCR 631;** *A.P. State Financial Corpn. v. Official Liquidator* **(2000) 7 SCC 291: 2000 (2) Suppl. SCR 288 – referred to.**

G **2. While exercising jurisdiction under the Companies Act, the High Court exercises ordinary jurisdiction and not any extraordinary or inherent jurisdiction and that is why, the legislature has appropriately postulated that the jurisdiction of the High Court under Articles 226 and 227**
H **of the Constitution would not be affected. Thus, the DRT**

has exclusive jurisdiction to sell the properties in a proceeding instituted by the banks or financial institutions, but at the time of auction and sale, it is required to associate the Official Liquidator. Once the Official Liquidator is associated, he has a role to see that there is no irregularity in conducting the auction and appropriate price is obtained by holding an auction in a fair, transparent and non-arbitrary manner in consonance with the Rules framed under the 1993 Act. [Paras 22 - 24] [225-B-F]

Jyoti Bhushan Gupta and Ors. v. The Banaras Bank Ltd. **AIR 1962 SC 403: 1962 Suppl. SCR 73;** *Pravin Gada and Anr. v. CentralBank of India and Ors.* **(2013) 2 SCC 101 – relied on.**

3. An appeal lies to the DRT challenging the action of the Recovery Officer. In the instant case, the Official Liquidator was not satisfied with the manner in which the auction was conducted and he thought it apposite to report to the Company Judge who set aside the auction. The Official Liquidator has been conferred locus to put forth his stand in the said matters. Therefore, anyone who is aggrieved by any act done by the Recovery Officer can prefer an appeal. Such a statutory mode is provided under the 1993 Act, which is a special enactment. The DRT has the powers under the 1993 Act to make an enquiry as it deems fit and confirm, modify or set aside the order made by the Recovery Officer in exercise of powers u/ss. 25 to 28 (both inclusive) of the 1993 Act. Thus, the auction, sale and challenge are completely codified under the 1993 Act, regard being had to the special nature of the legislation. [Para 26] [226-D-E, F-H; 227-A]

Union of India and Anr. v. Delhi High Court Bar Association and Ors. **(2002) 4 SCC 275: 2002 (2) SCR 450 – relied on.**

A **4. The intendment of the legislature while enacting 1993 Act, is that the dues of the banks and financial institutions are realized in promptitude. It is not a situation where the Official Liquidator can have a choice either to approach the DRT or the Company Court. The language** B **of the 1993 Act, being clear, provides that any person aggrieved can prefer an appeal. The Official Liquidator whose association is mandatorily required can indubitably be regarded as a person aggrieved relating to the action taken by the Recovery Officer which would** C **include the manner in which the auction is conducted or the sale is confirmed. Under these circumstances, the Official Liquidator cannot even take recourse to the doctrine of election. It is difficult to conceive that there are two remedies. If there is only one remedy, the doctrine** D **of election does not apply. An order passed under Section 30 of the 1993 Act by the DRT is appealable. Thus, the Official Liquidator can only take recourse to the mode of appeal and further appeal under the 1993 Act and not approach the Company Court to set aside the auction or confirmation of sale when a sale has been confirmed** E **by the Recovery Officer under the 1993 Act. [Para 27] [227-D, F-H; 228-A-C]**

Rajasthan State Financial Corpn. and Anr. v. Official Liquidator and Anr. **(2005) 8 SCC 190: 2005 (3) Suppl.** F **SCR 1073;** *Allahabad Bank v. Canara Bank and Anr.* **(2000) 4 SCC 406: 2000 (2) SCR 1102 – relied on.**

M.V. Janardhan Reddy v. Vijaya Bank and Ors. **(2008) 7 SCC 738: 2008 (7) SCR 520 – distinguished.**

G **Case Law Reference:**

2000 (2) SCR 1102	**relied on**	**Para 6**
2005 (3) Suppl. SCR 1073	**relied on**	**Para 6**
H **2008 (7) SCR 52**	**distinguished**	**Para 6**

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1965 SCR 665	**relied on**	**Para 14**	
2005 (2) SCR 776	**referred to**	**Para 15**	
(2013) 1 SCC 462	**referred to**	**Para 15**	
2003 (2) SCR 631	**referred to**	**Para 16**	B
2000 (2) Suppl. SCR 288	**referred to**	**Para 16**	
1962 Suppl. SCR 73	**relied on**	**Para 21**	
(2013) 2 SCC 101	**relied on**	**Para 23**	
2002 (2) SCR 450	**relied on**	**Para 25**	C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2511 of 2013.

From the Judgment & Order dated 11.11.2010 of the High Court of Judicature at Allahabad in Special Appeal No. 1815 of 2009. D

Ravindra Kumar for the Appellant.

Debal Banerji, C. Mukund, Ashok Jain, Pankaj Jain, Bijoy Kumar Jain, Vivek Chaudhary, Pankaj Bhatia (for Dr. Kailash Chand) for the Respondents. E

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted. F

2. The spinal issue that has spiralled to this Court is whether the Company Judge under the Companies Act, 1956 (for short "the 1956 Act") has jurisdiction at the instance of the Official Liquidator to set aside the auction or sale held by the Recovery Officer under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for brevity "the RDB Act") or whether the Official Liquidator is required to follow the route as engrafted under the RDB Act by filing an appeal assailing the auction and the resultant confirmation of sale. G H

A 3. Regard being had to the controversy involved which is in the realm of pure question of law, it is not necessary to exposit the facts in detail. Hence, the necessitous facts are adumbrated herein. The respondent, Allahabad Bank, a secured creditor with whom certain properties were mortgaged, B filed Original Application No. 153 of 1999 under Section 9 of the RDB Act for recovery of a sum of Rs.39,93,47,701/- with interest from the company, namely, M/s. Rajindra Pipes Limited, which was decreed by the Debt Recovery Tribunal, Jabalpur (DRT) vide its order dated 7.3.2000. The Debt Recovery C Certificate being DRC No. 164 of 2000 was issued for recovery of the aforesaid amount which was subsequently transferred to the DRT at Allahabad. Be it noted, Company Petition No. 113 of 1997 was filed before the learned Company Judge in the High Court of Judicature at Allahabad who, vide order dated 26.7.2000, had passed an order for winding up of D the company, as a consequence of which the Official Liquidator had taken over the possession of the assets of the company on 24.7.2002. After receipt of the Recovery Certificate, the Recovery Officer attached the immoveable properties of the wound-up company by order dated 29.8.2002. The moveable E properties of the company were attached as per order dated 23.12.2003. At this juncture, the Allahabad Bank filed an application before the Company Court for impleading it as a necessary party and protect its rights getting it out of the winding up proceedings. A prayer was made before the Company F Court to grant permission to proceed with the sale of the attached properties by the Recovery Officer, Debt Recovery Tribunal (DRT). The learned Company Judge, on 13.2.2004, granted permission for proceeding with the attachment and sale of the assets for recovery of the dues under the RDB Act. It is G worth stating here that no condition was imposed.

4. After auction and confirmation of sale by the DRT, the auction-purchaser filed an application before the learned Company Judge for issuance of a direction to the Official H Liquidator to give physical possession. The Company Court,

by order dated 4.4.2007, set aside the sale certificate on the ground that the Official Liquidator was neither heard in the matter nor was he given an opportunity to represent before the Recovery Officer for the purposes of representing the workmen's dues and a portion of the workmen's liability under Section 529-A of the 1956 Act. A direction was issued to the Recovery Officer to proceed to sell the assets only after associating the Official Liquidator and after giving him hearing to represent the claims of the workmen.

5. As the facts get further unfolded, after associating the Official Liquidator, the auction was held and the Recovery Officer proceeded with the confirmation of sale. At that stage, the Official Liquidator filed his objections pertaining to fixation of the reserve price, the non-inclusion of certain assets and the manner in which the auction was conducted. The Recovery Officer, after hearing the Bank and the Official Liquidator, confirmed the sale and a date was fixed for handing over the possession to the auction-purchaser, but the same could not be done as the Official Liquidator chose not to remain present. Thereafter, the auction-purchaser filed an application before the learned Company Judge for issue of a direction to the Official Liquidator to hand over the possession of the properties in respect of which the sale had been confirmed by the Recovery Officer of DRT. Similar prayer was also made by the Allahabad Bank by filing another application. As is evincible from the factual narration, the Official Liquidator filed his report and the Company Court, on consideration of both the applications and the report of the Official Liquidator, by order dated 24.10.2009, set aside the auction and confirmation of sale dated 27.2.2009 on the foundation that the auction had not been properly held and directed the properties mortgaged with the Allahabad Bank to be auctioned after proper identification of the properties and obtaining of a fair valuation report from a Government approved valuer.

6. Being dissatisfied with the aforesaid order, the Allahabad Bank preferred Special Appeal No. 1815 of 2009

A before the Division Bench. Apart from raising various contentions justifying the sale, a stand was put forth that the Company Court had no jurisdiction to set aside the sale held by the Recovery Officer under the RDB Act. The said submission of the Bank was resisted principally on the ground B that it is the duty of the Official Liquidator and the Company Court to watch the best interest of the company and in exercise of such power of supervision, if there is any irregularity in conducting the auction for obtaining adequate price, the same is liable to be lancinated by the Company Court. The Division C Bench referred to the earlier orders passed by the Company Court, the provisions of the RDB Act, grant of permission by the Company Court to the Allahabad Bank to remain outside the winding up proceeding to realize the debt of the appellant by associating itself in the recovery proceeding in accordance D with the RDB Act, the direction issued to the Official Liquidator to give access to the Recovery Officer to proceed with the recovery of legal and valid dues of the Bank and the non-imposition of any condition that the sale required prior approval of the learned Company Judge and, heavily relying on the decisions rendered in *Allahabad Bank v. Canara Bank and* E *Another*[1] and *Rajasthan State Financial Corpn. and Another v. Official Liquidator and Another*[2] and distinguishing the decision in *M.V. Janardhan Reddy v. Vijaya Bank and Others*,[3] came to hold that when an auction is conducted and there is confirmation of sale by the Recovery officer of the F tribunal under the RDB Act, it is open to the Official Liquidator to file an appeal and raise his grievances before the Tribunal in accordance with the provisions of the RDB Act and the Company Court has no jurisdiction to set aside the sale. Being of this view, the Division Bench declined to express any opinion G on the merits of the case and opined that it is open to the Official Liquidator to take up all the grounds available to him in appeal. As a consequence of the aforesaid conclusion, the

1. (2000) 4 SCC 406.
2. (2005) 8 SCC 190.
H 3. (2008) 7 SCC 738.

order passed by the Company Judge nullifying the confirmation of sale and directing fresh auction was set aside. The defensibility of the said order is called in question by the Official Liquidator before this Court. A

7. We have heard Mr. Ravindra Kumar, learned counsel for the appellant, Mr. Debal Banerji, learned senior counsel for the respondent-Allahabad Bank, and Mr. Vivek Chaudhary, learned counsel for the respondent No. 2. B

8. At the very inception, it is condign to state that there is no dispute over the facts as narrated hereinabove, for the only cavil relates to the issue of jurisdiction. It is to be noted that the irregularity in the conduct of the auction or the manner in which the sale had been confirmed has not been addressed to by the Division Bench as it has restricted its delineation to the jurisdictional spectrum. Therefore, we shall only restrict our address as to which is the appropriate forum for the Official Liquidator to agitate the grievance. C D

9. It is apt to note that the RDB Act has been enacted in the backdrop that the banks and financial institutions had been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them and the procedure for recovery of debts due to the banks and financial institutions which were being followed had resulted in a significant portion of the funds being blocked. The Statement of Objects and Reasons of the RDB Act clearly emphasise the considerable difficulties faced by the banks and financial institutions in recovering loans and enforcement of securities charged with them. Emphasis has been laid on blocking of funds in unproductive assets, the value of which deteriorates with the passage of time. Reference has been made to the "Tiwari Committee Report" which had suggested for setting up of special tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. E F G

10. The purpose of the RDB Act, as is evincible, is to H

A provide for establishment of tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. Section 17 of the RDB Act deals with jurisdiction, powers and authority of the tribunals. It confers
B jurisdiction on the tribunal to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. It also states about the powers of the Appellate Tribunal. Section 18 creates a bar of jurisdiction stating that no court or other authority shall have,
C or be entitled to exercise any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) relating to the matters specified in Section 17. Section 19 provides how an application of the tribunal is to be presented.
D The said provision deals, comprehensively, with all the aspects. Section 19(18) confers immense powers on the tribunal to pass appropriate orders to do certain acts, namely, appoint a Receiver of any property, remove any person from the possession, confer upon Receiver all such powers and appoint a Commissioner, etc. Sub-section (19) of the said Section
E provides that where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of 1956), the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of Section 529A of the
F Companies Act, 1956 and to pay the surplus, if any, to the company. Section 20 provides an appeal to the Appellate Tribunal; Section 21 provides for deposit of the amount of debt due on filing appeal; and Section 22 deals with the procedure and powers of the Tribunal and the Appellate Tribunal. Chapter
G V of the RDB Act deals with recovery of debts determined by the tribunal. Section 25 provides for the modes of recovery of debts; Section 26 stipulates about the validity of certificate and amendment thereof; Section 27 deals with the power of stay of proceeding under certificate and amendment or withdrawal
H thereof; and Section 28 deals with the other methods of

recovery. It is worthy to note that Section 29 states that the provisions of the Second and Third Schedule of the Income-Tax Act, 1961 and the Income-Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, be applicable with necessary modifications as if the said provisions and the rules referred to the amount of debt due under the RDB Act instead of the Income-Tax Act. The defendant has been equated with an assessee. Section 30 provides that any person aggrieved by an order of the Recovery Officer made under the RDB Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. It confers powers on the tribunal to make such inquiry as it deems fit and confirm, modify or set aside the order made by the Recovery Officer in exercise of its powers under Sections 25 to 28 (both inclusive).

11. Section 34 lays down that the RDB Act would have overriding effect. Section 34, being pertinent, is set out hereinbelow: -

> "**34. Act to have over-riding effect.** – (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
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> (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

We have referred to the Objects and Reasons and the

relevant provisions of the RDB Act to highlight that it is a comprehensive Code dealing with all the facets pertaining to adjudication, appeal and realization of the dues payable to the banks and financial institutions.

12. Presently, we shall advert to the analysis made in *Allahabad Bank's case.* In the said case, this Court was concerned with the issue relating to the impact of the provisions of the RDB Act on the provisions of the 1956 Act. Allahabad Bank had come to this Court against an order passed by the learned Company Judge under Sections 442 and 537 of the 1956 Act whereby the Company Court, in winding up petition, had stayed the sale proceedings taken out by the Allahabad Bank before the Recovery Officer under the RDB Act. The stand of the Allahabad Bank was that the tribunal under the RDB Act could itself deal with the question of appropriation of sale proceeds in respect of the sale of the company's properties held at the instance of the Bank and the priorities. After stating the facts, the Court posed the questions that required to be adverted to: -

> "Questions have been raised by the respondent as to whether the Tribunal can entertain proceedings for recovery, execution proceedings, and also for distribution of monies realized by sales of properties of a company against which winding-up proceedings are pending, whether leave is necessary and as to which court is to distribute the sale proceeds and according to what priorities among various creditors."

13. The two-Judge Bench, after referring to the dictionary provisions, especially the "debt" as defined in Section 2(g), Sections 17, 18 and 19(22) and Section 31 of the RDB Act, came to hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the Allahabad Bank was concerned. Dealing with the facet of the execution of the certificate by the Recovery Officer, the Division Bench referred

to Section 34 of the RDB Act and opined thus: -

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

14. While dealing with the issue whether the RDB Act overrides the provisions of Sections 442, 446 and 537 of the 1956 Act, after analyzing the said provisions and delving into the concept of leave and control by the Company Court, the learned Judges relied on the pronouncement in *Damji Valji Shah v. LIC of India*[4] and came to hold that there is no need for the appellant bank to seek leave of the Company Court to proceed with the claim before the DRT or in respect of the execution proceedings before the Recovery Officer. It was also categorically held that the said litigation cannot be transferred to the Company Court. In the ultimate eventuate, the bench ruled that in view of Section 34 of the RDB Act, the tribunal has exclusive jurisdiction and, hence, the Company Court cannot use its powers under Section 442 of the 1956 Act against the tribunal/Recovery Officer and, therefore, Sections 442, 446 and 537 of the 1956 Act could not be applied against the tribunal. Be it noted, emphasis was laid on speedy and summary

4. AIR 1966 SC 135.

A remedy for recovery of the amount which was due to the banks and financial institutions and the concept of special procedure as recommended by the Tiwari Committee Report of 1981 was stressed upon. It was concluded that the special provisions made under the RDB Act have to be applied. The Court B addressed itself to the special and general law and ruled that in view of Section 34 of the RDB Act, it overrides the Companies Act to the extent there is any thing inconsistent between the Acts. In the ultimate analysis, the learned Judges stated thus: -

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> "For the aforesaid reasons, we hold that the at the stage of *adjudication* under Section 17 and *execution* of the certificate under Section 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on the Tribunal and the Recovery Officer in respect of debts payable to banks D and financial institutions and there can be no interference by the Company Court under Section 442 read with Section 537 or under Section 446 of the Companies Act, 1956. In respect of the monies realized under the RDB Act, the question of *priorities* among the banks and financial E institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19(19) read with Section 529-A of the Companies Act and in no other manner. The provisions of the RDB Act, 1993 are to the above extent inconsistent with the provisions of F the Companies Act, 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding-up petition against the debtor Company and also after a winding-up order is passed. No leave of the Company Court is necessary for G initiating or continuing the proceedings under the RDB Act, 1993."
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> [Emphasis added]

15. While dealing with the claim of the workmen, the Bench H proceeded to state that the "workmen's dues" have priority over

all other creditors, secured and unsecured, because of Section 529-A(1)(a) of the 1956 Act. Be it noted, this has been so stated in paragraph 76 of the decision in *Allahabad Bank's case*. The correctness of this statement was doubted and the matter was referred to the larger Bench. A three-Judge Bench in *Andhra Bank v. Official Liquidator and Another*[5] opined that it was only a stray observation as such a question did not arise in the said case as Allahabad Bank was undisputably an unsecured creditor and, accordingly, the larger Bench opined that the finding of this Court in *Allahabad Bank's case* to the aforesaid extent did not lay down the correct law. The said exposition of law has further been reiterated in *Jitendra Nath Singh v. Official Liquidator and Others*[6]. We have referred to the aforesaid decisions only to highlight that this part of the judgment in *Allahabad Bank's case* has been overruled.

16. In *International Coach Builders Ltd. v. Karnataka State Financial Corpn.*,[7] the question arose whether there was any conflict between the State Financial Corporation Act, 1951 and the Companies Act, 1956 and, in that context, the learned Judges relied on the decision in *A.P. State Financial Corpn. v. Official Liquidator*[8] and came to hold that there is no conflict between the provisions of the SFC Act and the 1956 Act and even the rights under Section 29 of the SFC Act are not intended to operate in the situation of winding-up of a company. It is further opined that even assuming that there is a conflict, the amendments made in Sections 529 and 529-A of the 1956 Act would override and control the rights under Section 29 of the SFC Act. The Division Bench proceeded to state that though the 1956 Act may be general law, yet the provisions introduced therein in 1985 were intended to confer special rights on the workers and *pro tanto* must be treated as special law made by the Parliament and, hence, the said provisions would

5. (2005) 5 SCC 75.
6. (2013) 1 SCC 462.
7. (2003) 10 SCC 482.
8. (2000) 7 SCC 291.

override the provisions contained in Section 29 of the SFC Act, 1951.

17. In *Rajasthan State Financial Corporation and another* (supra), when the appeal came up for hearing before the two learned Judges, a submission was put forth that there was a conflict between the decisions in *Allahabad Bank* (supra) and *International Coach Builders Ltd.* (supra) and, taking note of the importance of the question of law involved, the matter was referred to a larger Bench. The three-Judge Bench analysed the ratio laid down in *Allahabad Bank's case and International Coach Builders Ltd.* (supra) and, after referring to various authorities, held that once a winding-up proceeding has commenced and the Liquidator is put in charge of the assets of the company being wound up, the distribution of the proceeds of the sale of the assets held at the instance of the financial institutions coming under the RDB Act or of financial corporations coming under the SFC Act can only be with the association of the Official Liquidator and under the supervision of the Company Court. The right of a financial institution or of the Recovery Tribunal or that of a financial corporation or the court which has been approached under Section 31 of the SFC Act to sell the assets may not be taken away, but the same stands restricted by the requirement of the Official Liquidator being associated with it, giving the Company Court the right to ensure that the distribution of the assets in terms of Section 529-A of the Companies Act takes place. Thereafter, the bench summed up the legal position. The pertinent part of the said summation is reproduced below: -

> (i) A Debt Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a company-in-liquidation, though its Recovery officer but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

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(iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the creditor concerned is to approach the Company Court for appropriate directions regarding the realization of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the company-in-liquidation."

18. From the aforesaid verdict, it is vivid that the larger Bench approved the law laid down in *Allahabad Bank* (supra). In fact, it is noticeable that the larger Bench has observed that in *Allahabad Bank's case,* a view has been taken that the RDB Act being a subsequent legislation and being a special law would prevail over the general law, the 1956 Act, but the said argument is not available as far as the SFC Act is concerned.

19. From the aforesaid authorities, it clearly emerges that the sale has to be conducted by the DRT with the association of the Official Liquidator. We may hasten to clarify that as the present controversy only relates to the sale, we are not going to say anything with regard to the distribution. However, it is noticeable that under Section 19(19) of the RDB Act, the legislature has clearly stated that distribution has to be done in accordance with Section 529-A of the 1956 Act. The purpose of stating so is that it is a complete code in itself and the tribunal has the exclusive jurisdiction for the purpose of sale of the properties for realization of the dues of the banks and financial institutions.

20. Mr. Revindra Kumar, learned counsel for the appellant, would contend that he, being an Official Liquidator, is liable to report to the Company Court and, therefore, the Company Court has jurisdiction to accept or reject the report and, hence it has jurisdiction to set aside the sale held by the Recovery Officer under the RDB Act. The learned counsel would submit

A with emphasis that the role of a Company Court cannot be marginalized as it has the control over the assets of the company. Per contra, Mr. Debal Banerji, learned senior counsel for the Allahabad Bank, would submit that the jurisdiction of the Company Court cannot be equated with the jurisdiction B exercised by the High Court under Articles 226 and 227 of the Constitution of India.

21. To appreciate the aforesaid submission, we may fruitfully refer to the dictum in *Jyoti Bhushan Gupta and Others v. The Banaras Bank Ltd.*,[9] wherein the learned Judges, while C stating about the jurisdiction of the Company Court, have opined that the jurisdiction is ordinary; it does not depend on any extraordinary action on the part of the High Court. The jurisdiction is also original in character because the petition for exercise of the jurisdiction is entertainable by the High Court D as a court of first instance and not in exercise of its appellate jurisdiction. As the High Court adjudicates upon the liability of the debtor to pay the debts due by him to the Company, the jurisdiction is, therefore, civil. It has been further observed that normally a creditor has to file a suit to enforce liability for E payment of a debt due to him from his debtor. The Legislature has, by Section 187 of the 1956 Act, empowered the High Court in a summary proceeding to determine the liability and to pass an order for payment, but on that account, the real character of the jurisdiction exercised by the High Court is not F altered. After further analyzing, the four-Judge Bench proceeded to state thus: -

> "The jurisdiction to deal with the claims of companies ordered to be wound up is conferred by the Indian G Companies Act and to that extent the letters Patent are modified. There is, however, no difference in the character of the original civil jurisdiction which is conferred upon the High Court by Letters Patent and the jurisdiction conferred by special Acts. When in exercise of its authority conferred

H 9. AIR 1962 SC 403.

by a special statute the High Court in an application presented to it as a court of first instance declares liability to pay a debt, the jurisdiction exercised is original and civil and if the exercise of that jurisdiction does not depend upon any preliminary step invoking exercise of discretion of the High Court, the jurisdiction is ordinary."

22. The aforesaid enunciation makes it clear as crystal that while exercising jurisdiction under the 1956 Act, the High Court is exercising ordinary jurisdiction and not any extraordinary or inherent jurisdiction and that is why, the legislature has appropriately postulated that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution would not be affected.

23. The aforesaid analysis makes it luculent that the DRT has exclusive jurisdiction to sell the properties in a proceeding instituted by the banks or financial institutions, but at the time of auction and sale, it is required to associate the Official Liquidator. The said principle has also been reiterated in *Pravin Gada and Another v. Central Bank of India and Others.*[10]

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

25. At this juncture, we may refer with profit to what a three-Judge Bench, while dealing with the constitutional validity of the RDB Act, in *Union of India and Another v. Delhi High Court Bar Association and Others,*[11] had the occasion to observe:-

"By virtue of Section 29 of the Act, the provisions of the Second and Third Schedules to the Income Tax Act, 1961

10. (2013) 2 SCC 101.

11. (2002) 4 SCC 275.

A and the Income Tax (Certificate Proceedings) Rules, 1962, have become applicable for the realization of the dues by the Recovery Officer. Detailed procedure for recovery is contained in these Schedules to the Income Tax Act, including provisions relating to arrest and detention of the B defaulter. It cannot, therefore, be said that the Recovery Officer would act in an arbitrary manner. Furthermore, Section 30, after amendment by the Amendment Act, 2000, gives a right to any person aggrieved by an order of the Recovery Officer, to prefer an appeal to the Tribunal. C Thus now an appellate forum has been provided against any orders of the Recovery Officer which may not be in accordance with the law. There is, therefore, sufficient safeguard which has been provided in the event of the Recovery Officer acting in an arbitrary or an unreasonable manner."

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

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codified under the RDB Act, regard being had to the special nature of the legislation. A

27. It has been submitted by Mr. Banerji, learned senior counsel, that if the Company Court as well as the DRT can exercise jurisdiction in respect of the same auction or sale after adjudication by the DRT, there would be duality of exercise of jurisdiction which the RDB Act does not envisage. By way of an example, the learned senior counsel has submitted that there are some categories of persons who can go before the DRT challenging the sale and if the Official Liquidator approaches the Company Court, then such a situation would only bring anarchy in the realm of adjudication. The aforesaid submission of the learned senior counsel commends acceptance as the intendment of the legislature is that the dues of the banks and financial institutions are realized in promptitude. It is to be noted that when there is inflation in the economy, the value of the mortgaged property/assets depreciates with the efflux of time. If more time is consumed, it would be really difficult on the part of the banks and financial institutions to realize their dues. Therefore, this Court in *Allahabad Bank's case* has opined that it is the DRT which would have the exclusive jurisdiction when a matter is agitated before the DRT. The dictum in the said case has been approved by the three-Judge Bench in *Rajasthan State Financial Corporation and Another* (supra). It is not a situation where the Official Liquidator can have a choice either to approach the DRT or the Company Court. The language of the RDB Act, being clear, provides that any person aggrieved can prefer an appeal. The Official Liquidator whose association is mandatorily required can indubitably be regarded as a person aggrieved relating to the action taken by the Recovery Officer which would include the manner in which the auction is conducted or the sale is confirmed. Under these circumstances, the Official Liquidator cannot even take recourse to the doctrine of election. It is difficult to conceive that there are two remedies. It is well settled in law that if there is only one remedy, the B C D E F G H

A doctrine of election does not apply and we are disposed to think that the Official Liquidator has only one remedy, i.e., to challenge the order passed by the Recovery Officer before the DRT. Be it noted, an order passed under Section 30 of the RDB Act by the DRT is appealable. Thus, we are inclined to
B conclude and hold that the Official Liquidator can only take recourse to the mode of appeal and further appeal under the RDB Act and not approach the Company Court to set aside the auction or confirmation of sale when a sale has been confirmed by the Recovery Officer under the RDB Act.

C 28. We will be failing in our duty if we do not take notice of the decision in *M.V. Janardhan Reddy* (supra) wherein the sale was aside by the Company Judge. It may be stated here that the Company Court had imposed a condition that the permission of the Company Court shall be obtained before the
D sale of the properties, immoveable or moveable, is confirmed or finalized. On the aforesaid basis, this Court opined that when the bank was permitted to go ahead with the proposed sale of the assets of the company under liquidation by way of auction but such sale was subject to confirmation by the Company Court
E and all the parties were aware about the condition as to confirmation of sale by the Company Court, it was not open to the Recovery Officer to confirm the sale and, therefore, the sale was set aside by the Company Court, being in violation of the order. Thus, we find that the facts in the said case were
F absolutely different and further this Court did not deal with the jurisdiction of the Company Court vis-à-vis DRT as the said issue really did not arise. Hence, it is not an authority for the proposition that the Official Liquidator can approach the Company Court to set aside the auction or sale conducted by
G the Recovery Officer of the DRT.

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

30. Consequently, the appeal is disposed of in the above terms leaving the parties to bear their respective costs.

K.K.T. Appeal disposed of.