A OFFICIAL LIQUIDATOR

v.

UJJAIN NAGAR PALIKA NIGAM & ORS.

(Civil Appeal No. 8015 of 2010)

B MAY 04, 2023

[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]

Companies (Court) Rules, 1959 – r.338 – Madhya Pradesh Municipal Corporation Act, 1956 – s.185 – Post-liquidation liability, if Official Liquidator (OL) was obliged to discharge – Whether the claims made by the respondent No.1-Nigam towards arrears of property tax and water tax of the company in liquidation, pertaining to the post-liquidation period (from the date of order of winding up and until the date of confirmation of sale of assets to the auction purchaser), if admissible against the appellant-OL – Held: Yes – In the present case, as per the terms and conditions of the sale notice, the sale was on "as is where is whatever there is" basis – A further disclaimer was also stated that the appellant-OL was not providing any guarantee as to the quality, quantity or specification of the assets sold – Such stipulations and disclaimers had definitely put the purchasers to notice to get themselves acquainted with what the property is (the nature and extent); where it is (the locational attributes); and whatever there is (its quantity and condition) – Bidders/purchasers were further warned to satisfy themselves in regard to the aspects of nature, extent, location etc. after physical inspection of the assets and were also informed that they would be deemed to offer with full knowledge as to defects, if any – However, the significant omission in those terms and conditions was to make it obligatory on the bidder/purchaser to make himself aware about encumbrances, liens and claims attached to the assets in question – This omission strikes at the very root of the case of the appellant – Further, in the face of undeniable operation of s.185, M.P. Act, 1956 over the property in question, the bidder/purchaser was entitled to proceed on the assumption that even if there were any arrears of such taxes under the M.P. Act, 1956, the same would not be recoverable from him – Company Court and the High Court rightly held that the liability on account of the property tax and water tax claimed by the respondent No. 1 to the extent rejected by the

appellant-OL was a post-liquidation liability, which the OL was obliged to discharge, in view of the omission in the sale notice and then, in view of the operation of r.338, 1959 Rules – In absence of any statutory provision, the auction purchaser without notice of any charge could not be made liable for the arrears of tax in question during the post-liquidation period – Arrears of property tax and water tax until the date of confirmation of sale would qualify as the expenses for "preserving, realising or getting in" the assets of the company and thus, shall have to be paid in priority by the appellant-OL – View taken by the High Court calls for no interference – Companies Act, 1956 – ss. 529A, 530.

United Bank of India v. Official Liquidator and Ors. **(1994) 1 SCC 575 : [1993] 3 Suppl. SCR 1;** *Haryana Financial Corporation v. Rajesh Gupta* **(2010) 1 SCC 655 : [2009] 16 SCR 456 – distinguished.**

UT Chandigarh Administration and Anr. v. Amerjeet Singh and Ors. **(2009) 4 SCC 660 : [2009] 4 SCR 541;** *Punjab Urban Planning and Development Authority v. Raghu Nath Gupta* **(2012) 8 SCC 197 : [2012] 8 SCR 118 – held inapplicable.**

Ahmedabad Municipal Corporation v. Haji Abdul Gafur Haji Hussenbhai **(1971) 1 SCC 757;** *AI Champdany Ltd. v. Official Liquidator and Anr.* **(2009) 4 SCC 486 : [2009] 2 SCR 705 – relied on.**

Municipal Board, Cawnpore v. Roop Chand Jain and Anr. **AIR 1940 All 456 – referred to.**

Delhi Development Authority v. Kenneth Builders and Developers Pvt. Ltd. and Ors. **(2016) 13 SCC 561: [2016] 3 SCR 1126 – referred to.**

In re Toshoku Finance UK plc : **[2002] 1 WLR 671;** *In re Toshoku Finance UK plc* **– referred to.**

Case Law Reference

[1993] 3 Suppl. SCR 1	**distinguished**	**para 8.3**
[2009] 16 SCR 456	**distinguished**	**para 9**
[2009] 4 SCR 541	**held inapplicable**	**para 9**

[2012] 8 SCR 118	**held inapplicable**	**para 9**
(1971) 1 SCC 757	**relied on**	**para 10**
[2009] 2 SCR 705	**relied on**	**para 12.3**
[2016] 3 SCR 1126	**referred to**	**para 12.5**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8015 of 2010.

From the Judgment and Order dated 05.02.2009 of the High Court of Calcutta in ACO No. 49 of 2008 and APOT No. 248 of 2008.

With

Civil Appeal No. 8016 of 2010.

Mrs. Rupali Samanta Ghosh, Sanjay Kumar Ghosh, Advs. for the Appellant.

Ms. Christi Jain, Puneet Jain, Harshit Khanduja, Yogit Kamat, M. Arora, Ms. Pratibha Jain, Sunil Roy, T. Srinivasa Murthy, P. N. Gupta, Mrs. Bharti Gupta, Advs. for the Respondents.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

1. By way of these appeals, the appellant, being Official Liquidator[1] of the company named IISCO Ujjain Pipe and Foundry Company Limited[2], has questioned the common judgment and order dated 05.02.2009 in APOT No. 248 of 2008 and APOT No. 235 of 2008, whereby the Division Bench of the High Court at Calcutta has dismissed the appeals against the common judgment and order dated 25.04.2007 in C.A. No. 159 of 2006 and C.A. No. 160 of 2006, as passed by the learned Company Judge of the High Court[3] in allowing the company applications preferred by respondent No.1 Ujjain Nagar Palika Nigam[4], claiming property tax and water tax from the appellant in relation to the company in liquidation, from the date of order of winding up and until the date of confirmation of sale of assets to the auction purchaser, who is now represented by respondent No. 3.

[1] 'OL', for short.
[2] Hereinafter also referred to as 'the company in liquidation'.
[3] Hereinafter also referred to as 'the Company Court'.
[4] Hereinafter also referred to as 'the Nigam'.

2. Briefly put, the relevant facts are that the said company, IISCO Ujjain Pipe and Foundry Company Limited, became sick and was referred to the Board for Industrial and Financial Reconstruction[5] under the provisions of Sick Industrial Companies (Special Provisions) Act, 1956. The BIFR recommended its winding up and, accordingly, it was ordered to be wound up by the Company Court in its order dated 10.07.1997. The appellant herein was appointed as the Official Liquidator and was directed to take over possession of the assets of the company in liquidation.

3. Following an order passed by the Company Court on 04.04.2003, the assets of the company in liquidation were put up for sale on "*as is where is whatever there is*" basis by means of sale notice dated 09.05.2003. The said notice provided for inspection of the assets of the company by intending purchasers and mentioned the availability of terms and conditions of sale alongwith particulars about the assets of the company at the office of the appellant. This sale notice reads as under:-

"SALE NOTICE

Pursuant to the order of the Hon'ble High Court, Calcutta dated 4th April, 2003 offers are invited in sealed cover enclosing a Bank Draft or Pay Order in favour of Official Liquidator, High Court, Calcutta for an amount equivalent to 20% of the offered amount as earnest money for sale of the assets of the Company [In Liqn.] like land structure, building, machineries etc., lying at Dewas Road, Ujjain M.P., and lease hold land building quarter at Nana-Kheda, Indore road, Ujjain, M.P. The assets of the company will be sold 'as is where is whatever there is basis'. Balance amount is to be paid within 30 days from the date of sale and the possession is not be made only after full payment of the purchase price.

Sealed offers will be received by the Official Liquidator upon 5 p.m. dated 26th June 2003 and the same will be opened on 27th June 2003 at 2.00 p.m. before the Hon'ble Judge taking Company matters in the High Court at Calcutta for consideration of such sealed offers. No one will be allowed to purchase in favour of nominee or nominees.

Inspection of the assets of the Company [In liqn.] will be allowed to the intending purchasers on 26th May 2003 and

[5] For Short, 'BIFR'.

A 27th May 2003 between 12 noon to 4 p.m. Terms and conditions of sale alongwith the particulars of the assets of the Company [In Liquidation] will be available at the office of the undersigned on and from 22nd May 2003 during office hours at a cost of Rs.50/- per catalogue and also at site during inspection period.

B Dated this 9th day of May, 2003."

3.1. The abovementioned sale notice carried certain terms and conditions appended to it, reinforcing that the sale would be on *"as is where is whatever there is"* basis and stating that the appellant OL would not be providing any guarantee about the quality, quantity or C specification of the assets sold; the tenderers were to satisfy themselves in this regard after physical inspection of the assets of the company; and the purchasers would be deemed to offer with full knowledge as to defects, if any, in the description, quality or quantity of the assets sold. The conditions relevant for the present purpose could be reproduced as follows: -

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"TERMS & CONDITIONS OF THE SALE

1. The SALE will be as per inventory made by the valuer on 'As is where is whatever there is' basis subject to the confirmation by the Hon'ble Court, The Official Liquidator shall not provide E any guarantee and/or warranty as to quality, quantity or specification of the assets sold. The Tenderers/ bidders are to satisfy themselves in this regard after physical inspection of the assets of the company and the purchasers will be deemed to offer with full knowledge as to defects, if any, in the description, quality or quantity of the assets sold. The Official F Liquidator, shall not entertain any complaint in this regard after the sale is over. Any mistake in the notice inviting tender shall not vitiate the sale.

……."

G 3.2. Pursuant to the aforementioned sale notice, the assets were sold to one Nagendra Jain for a sum of Rs. 20.50 crore; and the sale was confirmed by the order of Company Court dated 04.07.2003. Subsequently, the respondent No. 3 was nominated in the place and stead of the said Nagendra Jain as purchaser of the assets and properties of the company in liquidation.

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4. After the sale of assets, the appellant OL invited claims from the creditors of the company in liquidation by way of advertisements.

4.1. In response to such invitation of claims, the respondent No. 1 Nigam filed affidavit of proof of debt with the appellant, claiming towards arrears of property tax a sum of Rs. 2,79,955/- for the year 1996-1997 and another sum of Rs. 4,63,69,137/- for the years 1997-1998 till 2003-2004, for the factory and staff quarters of the company in liquidation at Ujjain. The respondent No. 1 Nigam also filed another affidavit of proof of debts with the appellant to the tune of Rs. 11,14,612/- as arrears of water tax for the period from 01.06.1996 to 31.10.2005.

4.2. In response to the claims so filed by the respondent No. 1 Nigam, the appellant OL issued four notices dated 24.01.2006. By way of two such notices, the appellant admitted the claims to the tune of Rs. 2,79,955/- on account of property tax and Rs. 2,162.20 on account of water tax against the company in liquidation only to the extent of pre-liquidation period i.e., prior to the date of order of winding up by the Company Court (10.07.1997). However, by way of other two notices issued on even date, the appellant rejected the claim of respondent No. 1 to the extent of Rs. 4,63,69,137/- towards property tax and Rs. 11,12,449.80 towards water tax on the ground that such claims arose after the date of order of winding up i.e., 10.07.1997.

5. In challenge to the part rejection of its claim, the respondent No. 1 Nigam preferred two company applications before the Company Court at Calcutta by Judge's Summons under Rule 164 of the Companies (Court) Rules, 1959[6], particularly as regards admissibility of post-liquidation claims.

6. For deciding the applications so preferred by the respondent No.1, the Company Court framed the following question for adjudication:-

> "The question before this Court is whether claims, that might arise against the Official Liquidator representing the company in liquidation, for any period of time, subsequent to the order of winding up, can outright be rejected."

6.1. It was contended on behalf of respondent No. 1 Nigam - applicant before the Company Court - that the OL was liable for both pre-liquidation and post-liquidation rates and taxes; that as per Section

[6] Hereinafter also referred to as 'the Rules of 1959'.

185 of the Madhya Pradesh Municipal Corporation Act, 1956[7] the position of respondent No. 1 was that of a secured creditor; and that in any case, the OL was required to give reasons for rejection of claim which he had not done. A reference was also made to Rule 163 of the Rules of 1959.

6.2. Similarly, it was contended on behalf of respondent No.3 auction purchaser, while placing reliance on the said Section 185 of the M.P. Act of 1956, that he was not liable towards such taxes prior to the date on which he occupied the property; and that the OL was liable to pay all taxes till the execution of deed of conveyance in favour of the purchaser.

6.3. On the other hand, it was contended on of behalf the appellant OL that he was liable to pay only those taxes which accrued till the date of winding up and became payable within one year thereof; that in view of Section 529A of the Companies Act, 1956[8], workmen's dues and the dues of secured creditors to the extent they were secured, were to be paid *pari passu*, and prioritised over all other debts; and that Rule 154 of the Rules of 1959 provided for filing of affidavit of proof of debts as on relevant date and the appellant had allowed taxes due on the relevant date that had been proved.

7. In the common judgment and order dated 25.04.2007, the Company Court, while allowing the applications so filed by the respondent No. 1 Nigam, held that liability of the appellant OL was not restricted to the claims and debts only until the date of order of winding up.

7.1. The Company Court further held that reliance placed by the appellant OL on Section 530 of the Companies Act and Rule 154 of the Rules of 1959 was patently misconceived, while observing that there was no provision in either of them which restricted the claim only until the date of order of winding up. It was also held that Section 530 of the Companies Act would not absolve a company in liquidation of its liability towards revenue and taxes; and that such liabilities in the post-liquidation period were to be treated as a part of the cost of winding up and would be prioritised over all other liabilities. As regards the auction purchaser, the Company Court relied upon a decision of the Bombay High Court holding that the purchaser was liable to pay property tax only from date of purchase. The Company Court observed and held, *inter alia*, as under:-

[7] Hereinafter also referred to as 'the M.P. Act of 1956'.

[8] Hereinafter referred to as 'the Companies Act'.

"The company may be wound up and its business closed down. Yet, the Official Liquidator would be obliged to protect the assets of the company in liquidation, until such time as the assets are sold. For the protection of assets, the Official Liquidator representing the company might have to retain rented premises, obtain supply of electricity, engage security guards and take such other steps involving expenses as the Official Liquidator might deem necessary. Can claims on account of inter alia rent, electricity charges that accrued after the date of winding up, be outright rejected only on the ground that the claims were post liquidation claims even though the company in liquidation might have sufficient funds to satisfy the claims?

An electricity supplier, may, as argued by Mr. Ghosh, have the option of disconnecting supply for non-payment of its dues and appropriating the security deposit of the consumer. The right of disconnection would not, however, make any difference to the maintainability of the claim of the supplier.

It is not in dispute that the Official Liquidator has been making payment of post liquidation electricity charges. The compulsion to make payment cannot, however, make any difference to the legal status of the claim.

If charges on account of supply of electricity after the date of liquidation are payable, so is rent. The liability of a company to pay rent and/or occupation charges and/or rates and taxes does not automatically come to an end with the order of winding up of the company.

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The dispute between the Official Liquidator and the applicant is with regard to the rates and taxes for the period between 10th July, 1997 being the date on which the company was directed to be wound-up and 4th July, 2003 being the date on which the sale in favour of the purchaser was confirmed. In other words, the dispute is with regard to the taxes claimed for a period of approximately six years.

The Official Liquidator has rejected the proof of debt on his interpretation of the various provisions of the Companies Act and

A the Company (Court) Rules framed thereunder and in particular Section 528, 529A and 530 and Rule 154 of the Rules.

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The contention on behalf of the Official Liquidator, that debts and claims and particularly claims on account of municipal tax are payable only till the date of winding up of the company, in view of Section 530 of the Companies Act, 1956, read with Rule 154 of the Companies (Court) Rules 1959, is patently misconceived. There is no provision either in the Companies Act or in the Companies (Court) Rules which restricts claims and debts only till the date of the winding up order.

Pre-liquidation claims, which had arisen before the Official Liquidator took possession of the assets and properties of the company, would necessarily have to be estimated by the Official Liquidator on the basis of available records and the proof adduced by the claimant and/or creditor. Post liquidation debts and claims do not require to be proved.

Section 530 does not absolve a company in liquidation, represented by the Official Liquidator, of its liability towards revenue and taxes. The said Section merely provides for payment of revenues, taxes, cesses and rates which became due and payable within 12 months from the relevant date, being the date of the winding up order in priority to other pre-liquidation debts. Post liquidation liabilities are to be treated as part of the costs of winding up of the company in liquidation and such liabilities get priority over all other liabilities of the company.

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In winding up, liquidators who carry on the company's business continue with rateable occupation of the premises and they are in rateable occupation even if they occupy merely for the purpose of fulfilling the outstanding contracts or preventing damage to the company's property (Halsbury Laws of England, 4th Edn., Vol.39).

It is true that the Official Liquidator did not carry on any business on behalf of the company. The Official Liquidator, however, retained possession for beneficial winding up of the company.

> As rightly argued by Mr. Mukherjee, appointed as amicus curiae by this Court, and by Mr. Banerjee, appearing on behalf of the applicant, the expenses incurred in winding up are payable, not provable. The principle of priority of certain creditors is applicable to liability of the company at the time when the order for winding up of the company was made. Costs and expenses incurred on behalf of the company, in winding up ought to have paid in full."

7.2. The Company Court also took note of the fact that the appellant OL had rejected the claims only on the ground that he was not liable to pay post-liquidation expenses but had neither objected to the determination of annual value nor filed any appeal under Section 184 of the M.P. Act of 1956. The Court observed that unless an objection or appeal was filed and the demand was reduced, the OL would be bound to discharge the tax liability, as per the claim of the Nigam, even for post-liquidation period. Therefore, the Court set aside the rejection notice by the appellant but extended him liberty to file an appeal against the demands, if so chosen, within thirty days and also provided that the appellant would, within eight weeks from the date of receipt of the order in appeal under Section 184 of the M.P. Act of 1956, consider and dispose of the claims of the applicant (respondent No. 1), as determined in appeal and in accordance with law.

8. The appellant challenged the aforesaid judgment and order dated 25.04.2007 of the Company Court by way of appeals before the Division Bench of the High Court but, the appeals came to be dismissed by the impugned judgment and order dated 05.02.2009.

8.1. The appellant OL contended before the Division Bench that he had not carried on any business of the company and consequently, did not in any way earn profit from use of the assets of the company in liquidation; that the provisions of the Companies Act did not envisage payment of post-liquidation taxes on property and water and the assets were only *custodia legis* after the winding up order until the sale; and that the sale was on *"as is where is whatever there is"* basis, which would mean that the assets were not free from encumbrances when sold and thereby, the liability of taxes was shifted to the purchaser.

8.2. The respondent No. 1 Nigam contended that the appellant would be liable to pay taxes to the Nigam out of sale proceeds, and apart from this, reiterated the submissions made before the Company Court.

A Similarly, the auction purchaser, respondent No. 3, submitted that he was neither the owner nor the occupier until 04.07.2003 when the sale was confirmed and, therefore, there would be a shift of the charge to the sale proceeds and not to the purchaser. However, a creditor of the company, respondent No. 2, contended that the claim towards arrears of property and water tax would be directed against the auction purchaser B and not the OL.

8.3. The Division Bench did not accept the submissions of appellant and respondent No. 2 and held that respondent No. 3 - the auction purchaser – was not liable to pay the said charges accrued post-liquidation because, from the terms and conditions of sale, it could not be discerned C that the purchaser was put to notice about any liability towards arrears due to the Nigam. The Division Bench held that in absence of clear provision in the sale notice that intending purchaser had to satisfy himself as regards assets of company in liquidation in all respects including encumbrances, the appellant was obliged to discharge the post-liquidation D liability towards property and water taxes; and that it would not be reasonable to fasten liability on a purchaser without informing him about the encumbrances prior to the sale. The Division Bench also distinguished the decision of this Court in the case of ***United Bank of India v. Official Liquidator and Ors.*****: 79 Company Cases 262 [= (1994) 1 SCC 575]** while taking note of the peculiar factual matrix and specific terms E and conditions of sale in that case. After making a comparison between the terms and conditions of sale in the present case and those of sale in the aforesaid case, it was observed that sale notice in the present case was not couched in similar and comprehensive language and there was no occasion for respondent No. 3 to make himself aware about the F encumbrances, if any, in respect of assets of the company in liquidation, which he intended to purchase.

8.4. As regards the applicability of Section 530 of the Companies Act, the Division Bench observed that the said provision had nothing to do with payment of taxes which might have mounted between the date G of the order of winding up and the date of the sale of its assets. Similarly, Rule 154 of the Rules of 1959, providing for the manner of estimation of value of debts and claims on the date of the order of winding up of the company was held to be of no application.

8.5. The Division Bench of the High Court observed and held as H under:-

"There is no express provision in the sale notice that the liability to bear charges on account of water and property taxes must be borne by the purchaser. We are unable to comprehend that the expression *"as is where is whatever there is basis"* comprises within its ambit the liability to clear statutory charges as might have accrued and are in arrears. The terms and conditions of the sale do specify that the Official Liquidator shall not provide any guarantee and/or warranty as to quality, quantity or specification of the assets sold and the intending purchaser is required to satisfy himself in this regard after physical inspection of the assets of the company in liquidation and no complaint as to defects, if any, in the description, quality or quantity of the assets sold would be entertained after the sale is over and that any mistake in the notice inviting tender shall not vitiate the sale. These, per se, in our opinion, would not tantamount to a representation being made to an intending purchaser that while bidding for the assets put up for sale he is also to bear the expenses towards arrear dues of the Nigam. Guarantee and/or warranty as to quality, quantity or specification of the assets sold cannot be equated with the liability attached to the same. The terms and conditions of the tender only protect the Official Liquidator to the extent of quality, quantity and specification and would not extend to claiming of immunity to clear taxes claimed by the Nigam.

The Official Liquidator has laid much stress on Section 530 of the Companies Act and Rule 154 of the Companies (Court) Rules. We have failed to find the materiality of the said provisions for a decision on the present dispute. Section 530 provides for preferential payments. According to clause (a) of sub-section (1) of Section 530 read with clause (c) of sub-section (8) thereof, all revenues, taxes etc. due from the company in liquidation to a local authority on the date of the winding up order and having become due and payable during the preceding 12 months thereof would be entitled to priority over all other dues. Section 530 has nothing to do with payment of taxes which might have mounted between the date of winding up and sale of its assets by the purchaser. Rule 154 also cannot have any manner of application since it provides the manner of estimation of value of debts and claims on the date of the order of winding up of the company.

A It would be, in our opinion, thoroughly unreasonable to foist the liability on a purchaser without first letting him know prior to the sale about such liability. Enquiries at site must have been made by the ultimate purchaser before he offered his bid. The purchaser could have been informed there of the encumbrances. He could have also been told about it prior to his depositing the balance sale B consideration. The proceedings before the Company Court were decided without giving any opportunity to the Official Liquidator to file counter affidavits to the applications filed by the Nigam, as it appears from the stay petitions. We, however, find no averment in the stay petitions to the effect that after the respondent no.3 C had expressed interest to purchase the assets of the company in liquidation, the Official Liquidator had made him aware that purchase of such assets would carry with it the liability to pay arrear taxes recoverable by the Nigam. In the absence of such an averment, we find it difficult to hold that the respondent no.3 ought to bear the liability instead of the Official Liquidator. D

At this stage, it would be worthwhile to consider the decision of the Apex Court in United Bank of India (supra) cited by Mr. Ghosh. The Official Liquidator, in that case, had sold the assets of the company in liquidation on the basis of Terms and Conditions of Sale to Triputi Jute Industries. Clause (2) of such terms and E conditions was as follows:

> *"2. The sale will be as per inventory list on 'as is where is basis' and subject to the confirmation of the Hon'ble Supreme Court of India. The Official Liquidator shall not provide any guarantee and/or warranty in respect of the* F *immovable properties and as to the quality, quantity or specification of the movable assets. The intending purchaser must satisfy themselves in all respect as regards the movable and immovable assets, as to their title, encumbrances, area, boundary, description, quality,* G *quantity, and volume etc. and the purchaser will be deemed to offer with full knowledge as to the description, area etc. of the properties and defects thereof, if any. The purchaser shall not be entitled to claim any compensation or deduction in price on any account whatsoever and shall be deemed to have purchased the property subject to all* H

encumbrances, liens and claims including those under the existing legislation affecting labour, staff etc. The Official Liquidator shall not entertain any complaint in this regard after the sale is over. Any mistake in the notice inviting tender shall not vitiate the sale."

It was on consideration of the express provisions of clause (2) of the Terms and Conditions of Sale that the Apex Court proceeded to hold as under:

"When the Official Liquidator sells the property and assets of a company in liquidation under the orders of the Court he cannot and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in title or description of the property. The case of the Official Liquidator selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself. There is, therefore, no merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the sum of Rs 1 crore 98 lakhs".

It is understandable that once an intending purchaser is warned to satisfy himself in all respects as regards the immovable assets as in the said case, it is for his own benefit that he satisfies himself in all respects including encumbrances of the immovable property that he proposes to purchase. It is also quite understandable that after having purchased the property on such terms any objection that he was not aware of the encumbrances may not be entertained.

However, it passes the comprehension of this Court as to why the sale notice in the present case was not couched in similar and

A comprehensive language as the one which fell for consideration before the Apex Court. There being no occasion for the respondent no.3 to make himself aware regarding the encumbrances, if any, in respect of assets of the company in liquidation which he proposed to purchase, it is too late in the day for the Official Liquidator to contend that he ought to have participated in the bid upon being fully satisfied and not having raised any objection at the relevant time it is he only who is liable to bear the property and other taxes.

We are of the view that the liability on account of property and water taxes claimed by the Nigam, to the extent rejected by the Official Liquidator is a post-liquidation liability which the Official Liquidator is obliged to discharge in the absence of a clear provision in the sale notice that the intending purchaser must satisfy himself as regards the assets of the company in liquidation in all respects including encumbrances.

In the fitness of things, we deem it necessary to direct the Official Liquidator to issue future notices of sale of assets of companies in liquidation in similar and comprehensive language as the one quoted supra from the Apex Court decision to avoid complications."

9. Aggrieved by the common judgment and order dated 05.02.2009 so passed by the Division Bench of the High Court, the appellant OL has preferred these appeals.

9.1. Learned Counsel for the appellant has submitted that in true operation of the applicable provisions of law, the appellant cannot be made liable for the post-liquidation claims filed by respondent No. 1 while disregarding the interest and entitlement of pre-liquidation creditors. It has been argued that the appellant has admitted the pre-liquidation claims and has rightly rejected the post-liquidation claims as per Section 530 of the Companies Act, since the workers/employees were discharged from service. Learned Counsel for the appellant would submit that the assets and properties of the company in liquidation are deemed to be in the custody of the Court and the appellant has not carried on any business nor utilised water after liquidation of company for gaining profit.

9.2. It has been strenuously argued by the learned counsel that the High Court was not justified in treating post-liquidation liabilities as a

part of the cost of winding up and thereby, giving such liabilities a priority over all other liabilities of the company in liquidation, which is not permissible under Sections 529A, 530 and other provisions of the Companies Act. This would also be prejudicial to pre-liquidation creditors, being the workers, statutory creditors and general body of creditors.

9.3. It has also been argued that the respondent No. 1 had never taken the necessary legal steps for realisation of its dues as claimed in its affidavit of proof of debt and the High Court did not even consider such affidavit before fastening the liability of post-liquidation claim on the appellant.

9.4. Learned Counsel has also submitted that the benefit given to respondent No. 3 by the High Court should not have been given in view of the terms and conditions of sale of the assets of the company in liquidation. Learned Counsel has vehemently submitted that the tenderers/ bidders had to satisfy themselves about all the relevant aspects concerning the assets, when being sold on "*as is where is whatever there is"* basis; and therefore, the purchaser would be deemed to have full knowledge of the defects, encumbrances, and statutory dues before purchasing the assets and properties of the company in liquidation. Learned counsel would emphasise that when the terms and conditions of the sale clearly mentioned that sale of assets would be on *"as is where is whatever there is"* basis, after having purchased the property on such terms, the purchaser is not entitled to make any claim as regards diminution in the price on the ground of defect in title or description of the property. It has further been submitted that the case of OL selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself. Reliance has been placed on decisions of this Court in ***United Bank of India*** (supra), ***Haryana Financial Corporation v. Rajesh Gupta:*** **(2010) 1 SCC 655;** ***UT Chandigarh Administration and Anr. v. Amerjeet Singh and Ors.:*** **(2009) 4 SCC 660**; and ***Punjab Urban Planning and Development Authority v. Raghu Nath Gupta:*** **(2012) 8 SCC 197.**

10. The submissions made on behalf of the appellant have been essentially supported on behalf of respondent No. 2, Steel Authority of India Limited, one of the creditors of the company in liquidation, who has lodged the claim alongwith its subsidiary IISCO Ltd. It has been contended on behalf of respondent No. 2 that the findings of the High

A Court are not in accord with the law on the point pertaining to ouster clauses in the sale notice clearly stating that the sale of assets of the company in liquidation was on *"as is where is whatever there is"* basis. It has been argued that the auction purchaser takes the property subject to all defects of title and the doctrine of *caveat emptor* directly applies to such purchaser. A decision of this Court in the case of ***Ahmedabad Municipal Corporation v. Haji Abdul Gafur Haji Hussenbhai:*** **(1971) 1 SCC 757** has been relied upon.

11. *Per Contra,* learned counsel for respondent No. 1 has submitted that the appellant OL, as a custodian of the property, is liable to pay the post-liquidation claim too as raised by Nigam.

11.1. Learned Counsel has submitted that the claims raised by respondent No.1 constitute "liquidation expenses", being the expenses that had to be paid by the appellant OL to maintain the property while being in his custody; and, therefore, the obligation is to be met out of the value realised from the sale of assets of the company. In this regard, learned counsel for the respondent No. 1 has submitted that in terms of Rule 338 of the Rules of 1959, the expenses incurred by the OL for "preserving, realising or getting in" the assets of the company are required to be paid in priority and the said Rule provides for the order of preference thereafter in relation to other costs and expenses payable out of the assets of the company.

11.2. Learned Counsel has also submitted that preferential payments prescribed in Section 530 of the Companies Act are for payment of specified claims thereunder and that too after payment of costs and expenses of winding up that are properly incurred by the appellant and which are paid in priority. Moreover, the said Section 530 relates to claims for pre-liquidation period for which, there is a need for prescribing priority but, the said provision has no application for the expenses incurred by OL during post-liquidation period, which are required to be paid in priority. In regard to the liability and priority concerning post-liquidation expenses, reliance has been placed on a few English decisions, including that ***In re Toshoku Finance UK plc:*** **[2002] 1 WLR 671.**

11.3. Learned Counsel for respondent No. 1 has placed strong reliance on Section 185 of the M.P. Act of 1956 to submit that the provision creates an obligation to pay municipal taxes as a first charge on the land and building as also the movable properties and the proviso

expressly provides that arrears of tax are not recoverable from any occupier who is not the owner, if the arrears are of the period when such occupier was not in occupation. Therefore, in view of the proviso, arrears of tax for the period prior to confirmation of auction sale, cannot be recovered from the auction purchaser and have to be paid by the OL.

11.4. It has also been submitted that in terms of Section 520 of the Companies Act, the municipal taxes as sought to be claimed by respondent No.1 would be costs of winding up; and the appellant being in possession of the assets, is obliged to pay the municipal taxes, which ought to have been paid to protect and preserve the property.

12. Learned counsel for respondent No. 3 – the auction purchaser - has duly supported the orders impugned with the submissions that the tax dues in the present case were "post-liquidation dues" amounting to "costs of liquidation" and were to be borne by the OL alone; and could not have been foisted on the auction purchaser.

12.1. It has been submitted on behalf of respondent No. 3 that auction purchaser is liable towards property tax and water tax with effect from the date of confirmation of sale in his favour i.e., from 04.07.2003 and he has discharged all such claims but then, there is no liability on him towards taxes prior to the date of confirmation of sale when property of the company was *custodia legis* and was in the hands of OL.

12.2. Furthermore, learned counsel has submitted that the Companies Act and the Rules of 1959 do not impose any obligation on purchaser to pay dues that relate to period between the date of order of winding up and date of sale confirmation. The claims in the present case are post-liquidation charges or costs and are, therefore, expenses of winding up, liable to be borne out of proceeds of liquidation, if any; and to the extent that they remain unpaid after exhausting the proceeds of liquidation, are to abate. In this regard, reliance has been placed on the said decision, ***In re Toshoku Finance UK plc***.

12.3. Learned Counsel has referred to Section 100 of Transfer of Property Act, 1882[9] as also to the decisions of this Court in ***Ahmedabad Municipal Corporation*** (supra) and ***AI Champdany Ltd. v. Official Liquidator and Anr.*****: (2009) 4 SCC 486** to submit that auction purchaser without notice and in absence of any provision in terms of sale or any statutory provision could not be made liable for such arrears of tax; and

[9] Hereinafter also referred to as 'the Act of 1882'.

A that no charge could be enforced against any property in hands of transferee for consideration and without notice of the charge; and that for its enforceability, a provision of law must expressly provide for enforcement of a charge against the property in the hands of the transferee for value without notice to the charge and not merely create a charge. Learned counsel would submit that the dues in relation to
B municipal taxes in terms of the said M.P. Act of 1956 do not create any encumbrance or charge on the property such as to run with property for all times and under all circumstances as held in ***AI Champdany Ltd.*** (supra). Moreover, it cannot be said to constitute any encumbrance which diminishes the value of the property.

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12.4. It has been submitted that there is no obligation that has been created or could be assumed on account of the terms and conditions of the sale carried out by the appellant, particularly when there was no express provision in the sale notice that the liability of charges on account of property tax and water tax were to be borne by the purchaser. In
D regard to the submissions of the appellant that the auction purchaser had purchased the property with "*as is where is and whatever there is"* stipulation, learned counsel has strenuously argued that such a stipulation pertains to the physical properties of an asset and could not be construed as indicative of constructive notice of charge or encumbrance. Reliance
E is placed on ***Ahmedabad Municipal Corporation*** (supra), which has, in turn, approved the reasoning of the Full Bench of High Court of Allahabad in the case of ***Municipal Board, Cawnpore v. Roop Chand Jain and Anr.:*** **AIR 1940 All 456**.

12.5. It has been contented that by virtue of Section 185 of the M.P. Act of 1956, arrears could only be claimed from a person who was
F an occupier at relevant time and from no one else and, therefore, the question of auction purchaser making any inquiries or foisting upon him any constructive knowledge does not arise; rather, proviso to Section 185 frees an auction purchaser from even making inquiries about such tax arrears. In this regard, further reliance has been placed on the decision
G in ***Delhi Development Authority v. Kenneth Builders and Developers Pvt. Ltd. and Ors.:*** **(2016) 13 SCC 561.**

12.6. Lastly, learned counsel has placed reliance on correspondence between respondent No. 3 and the appellant to suggest the sufficiency of funds available with the appellant to discharge the

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claims of respondent No.1 before disbursing any left-over amount to the shareholders. A

13. We have heard learned counsel for the parties at length and have perused the material placed on record.

14. For what has been noticed hereinabove, the dispute between appellant OL and respondent No. 1 Nigam, put in a nutshell, is with regard to the rates and taxes for the period between 10.07.1997 (being the date on which the company was ordered to be wound up) and 04.07.2003 (being the date on which the sale in favour of the purchaser was confirmed). As noticed, part rejection of the claim of respondent No. 1 Nigam by the appellant OL, in relation to the period aforesaid between 10.07.1997 to 04.07.2003 was not approved by the Company Court while observing that post-liquidation liabilities were to be treated as part of the costs of winding up of the company in liquidation and such liability would get priority over all other liabilities of the company. The Company Court observed and reiterated that the principle of priority of certain creditors would be applicable to the liability of the company at the time of passing of the order of winding up but, costs and expenses incurred on behalf of the company in winding up were to be paid in full; and the liability of the company to pay rates and taxes would not automatically come to an end with the order of winding up. The Company Court yet left it open for the appellant OL to file an appeal under the provisions of the M.P. Act of 1956 while observing that unless such appeal was filed and demand was reduced, the appellant OL was bound to discharge the tax liability as per the claim of the Nigam even for the post-liquidation period. The contention of appellant before the Division Bench in challenge to the order so passed by the Company Court had essentially been with reference to the terms and conditions of sale and reliance upon the decision in ***United Bank of India*** (supra). The Division Bench compared the terms and conditions of sale in the cited decision and the terms and conditions of sale in the present case and observed that the sale notice in the present case was not couched in similar and comprehensive language so as to oblige the respondent No. 3 to make himself aware about encumbrances, if any, in respect of the assets of the company in liquidation. The Division Bench further observed that Section 530 of the Companies Act had no application in relation to the taxes which might have mounted between the date of the order of winding up and the date of sale of assets. Similarly, the Division Bench indicated B C D E F G H

A inapplicability of Rule 154 of the Rules of 1959, providing for the manner of estimation of claims on the date of the order of winding up. The Division Bench summarised its conclusion that the claim in question was that of a post-liquidation liability which the OL was obliged to discharge in absence of a clear provision in the sale notice obliging the intended purchaser to satisfy himself as regards the assets of the company in liquidation in all respects, including encumbrances. More or less the same submissions have been made by the respective parties in this appeal but, with a little elaboration on their respective stands. While leaving the irrelevant aspects aside, the neat question is as to whether the claims so made by the respondent No. 1 Nigam towards property tax and water tax pertaining to the post-liquidation period, from the date of order of winding up and until the date of confirmation of sale of assets to the auction purchaser, are admissible against the appellant OL.

15. For dealing with the question at hand, we may usefully take note of the statutory provisions relevant to the present case.

15.1. Section 529A and the relevant parts of Section 530 of the Companies Act, 1956 read as under: -

"**529A. Overriding preferential payment.** - Notwithstanding anything contained in any other provisions of this Act or any other law for the time being in force, in the winding up of a company-

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 *pari passu* with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

530. Preferential payments. - (1) In a winding up subject to the provisions of section 529A, there shall be paid in priority to all other debts-

(a) all revenues taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8),

and having become due and payable within the twelve months next before that date;

*** *** ***

(8) For the purpose of this section -

(a) .....

(b) ....

(bb) ....

(c) the expression "the relevant date" means-

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

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15.2. Rules 154,163 and 338 of the Companies (Court) Rules, 1959 are as under: -

"**R.154. Value of debts** - The value of all debts and claims against the company shall, as far as is possible, be estimated according to the value thereof at the date of the order of the winding-up of the company or where before the presentation of the petition for winding up, a resolution has been passed by the company for voluntary winding-up, at the date of the passing of such resolution.

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R.163. Acceptance or rejection of proof to be communicated – After such investigation as he may think necessary, the liquidator shall in writing admit or reject the proof in whole or in part. Every decision of the Liquidator accepting or rejecting a proof, either wholly or in part, shall be communicated to the creditor concerned by post under certificate of posting where the proof is admitted and by registered post for acknowledgement where the proof is

rejected wholly or in part, provided that it shall not be necessary to give notice of the admission of a claim to a creditor who has appeared before the Liquidator and the acceptance of whose claim had been communicated to him or his agent in writing at the time of acceptance. Where the Liquidator rejects a proof, wholly or in part, he shall state the grounds of the rejection to the creditor in Form No.69, Notice of admission of proof shall be in Form No.70.

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R.338. Cost and expenses payable out of the assets in a winding-up by the Court.-

(1) The assets of a company in a winding-up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets including, where the company has previously commenced to be wound-up voluntarily, such remuneration, cost and expenses as the Court may allow to the liquidator in such voluntary winding-up, shall, subject to any order of the Court and to the rights of secured creditors if any, be liable to the following payments which shall be made in the following order of priority, namely :-

First.-the taxed costs of the petition including the taxed costs of any person appearing on the petition, whose costs are allowed by the Court.

Next.-the costs and expenses of any person who makes, or concurs in making, the Company's statement of affairs ;

Next.-the necessary disbursements of the Official Liquidator other than expenses properly incurred in preserving, realising or getting in the properties of the company ;

Next.-the cost of any person properly employed by the Official Liquidators ;

Next.-the fees to be credited to Government under section 451 (2) ;

Next.-the actual out of pocket expenses necessarily incurred by the members of the Committee of Inspection, and sanctioned by the Court.

(2) Save as otherwise ordered by the Court no payments in respect of bills of advocates, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the taxing officer of the Court. The taxing officer shall before passing the Bills or charges of an advocate, satisfy himself that the appointment of an advocate to assist the liquidator in the performance of his duties has been duly sanctioned.

(3) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against the company which is being wound-up by the Court, are ordered by the Court in which such proceedings are pending, to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable."

15.3. Section 185 of the Madhya Pradesh Municipal Corporation Act, 1956, which is relied upon by the contesting respondents, reads as under: -

"**185. Liability of buildings, lands, etc., for taxes. -**

All sums due from any person in respect of taxes on any land or building shall, subject to prior payment of any land revenue in respect of it due to the government, be a first charge upon the said land or building and upon any movable property found within or upon such land or building and belonging to the said person.

Provided that no arrears of any such tax shall be recoverable from any occupier who is not the owner, if such arrears are for a period during which the occupier was not in occupation."

16. One of the principal points arising for determination in this matter is the impact and effect of sale of assets of the company in liquidation to the respondent No. 3, particularly when the property was sold on "*as is where is whatever there is*" basis. Learned counsel for the appellant has referred to and relied upon a few decisions of this Court in support of his contention that looking to the terms and conditions of sale, the purchaser would be deemed to have full knowledge of defects, encumbrances and statutory dues and would remain liable towards such dues, particularly when the sale in the present case had been by the appellant OL under the orders of the Court. *Per contra*, learned counsel for the contesting respondents have referred to a couple of decisions to assert that no charge would be enforceable against the property at the

A hands of transferee for consideration without notice of charges and, for the municipal taxes not creating an encumbrance or charge as such on the property in question. We may closely examine the cited decisions to take note of the *ratio decidendi* and principles available therein.

17. The sheet anchor of the submissions on behalf of the appellant B OL is the decision of this Court in the case of ***United Bank of India*** (supra) that has been cited for the proposition that in the sale of property and assets of company in liquidation, the Official Liquidator does not hold any guarantee or warranty in respect thereof; and the intending purchaser has to satisfy himself in all respects, particularly as regards encumbrances. Therein this Court, *inter alia,* observed as under: -

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> **"14.** When the Official Liquidator sells the property and assets of a company in liquidation under the orders of the Court he cannot and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser D to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in title or description of the property. The case of the Official Liquidator E selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself. There is, therefore, no merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the sum of Rs 1 crore 98 lakhs."

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17.1. At the first blush, the said decision might appear to be standing somewhere near to the facts of the present case, for that had also been a case of sale of the assets by an OL with a somewhat similar stipulation that the sale was on "*as is where is"* basis. However, as rightly pointed out by the Division Bench of the High Court, there had G been a marked difference in the terms and conditions of sale in the case of ***United Bank of India*** (supra) and those of the present case.

17.2. As noticed and extracted in the impugned judgment of the Division Bench of the High Court, in the case of ***United Bank of India*** (supra), the sale notice, *inter alia*, carried a significant stipulation whereby H the purchaser was put to notice to satisfy himself "*in all respects as*

regards movable and immovable assets as to their title, encumbrances, area, boundary, description, quality, quantity, and volume etc." Therein, it was also stated that "*the purchaser shall not be entitled to any compensation or deduction in price on any account whatsoever and shall be deemed to have purchased property subject to all encumbrances, liens and claims including those under the existing legislation affecting labour, staff etc.*" Such stipulations left nothing to chance and nothing of any ambiguity where the purchaser was required to satisfy himself not only about the physical attributes of the assets but also about all encumbrances, liens and claims. Unfortunately, the terms and conditions of the sale in the present case fell too short of such material stipulations.

17.3. We have reproduced hereinbefore the contents of the sale notice dated 09.05.2003 in the present case and the relevant terms and conditions of sale of the assets of the company in liquidation. It is evident that expansive technical expressions were used in the present case by the appellant OL in the terms and conditions of the sale that the same would be on "*as is where is whatever there is"* basis and then, further disclaimer was stated that the appellant OL was not providing any guarantee as to the quality, quantity or specification of the assets sold. Such stipulations and disclaimers were definitely putting the purchasers to notice to get themselves acquainted with what the property is (the nature and extent); where the property is (the locational attributes); and whatever there is (quantity and condition of the property). The bidders/ purchasers were further warned to satisfy themselves in regard to the aspects of nature, extent, location, quantity, and quality after physical inspection of the assets and were also informed that they would be deemed to offer with full knowledge as to defects, if any, in the description, quality or quantity of the assets sold. All such stipulations were essentially pertaining to the physical properties/attributes of the assets in question but, the significant omission in those terms and conditions had been to make it obligatory on the bidder/purchaser to make himself aware about encumbrances, liens and claims attached to the assets in question. This omission strikes at the very root of the case of the appellant.

17.4. The Division Bench of the High Court has rightly said that if the intending purchaser was required to satisfy himself in all respects including encumbrances, he might not be heard in any objection about want of knowledge of encumbrances but, if he was not so warned, such

A an obligation on him to make himself aware about encumbrances cannot be foisted by any deeming fiction.

18. The decision of this Court in ***Haryana Financial Corporation*** (supra) has also been cited to submit that OL does not hold any guarantee or warranty in respect of property sold. In the said case, the appellant B Financial Corporation had issued an advertisement for sale of various units and the respondent had been one of the bidders who offered a sum of Rs. 50 lakh, and deposited Rs. 2.5 lakh by way of earnest money. There was some dispute related to presence of *rasta* at the land. Not being satisfied with response of appellant, respondent did not submit further money. Appellant invited fresh tenders and forfeited the money C deposited by respondent. In the writ petition preferred by respondent, the Division Bench of High Court quashed forfeiture and ordered for refund along with 12% interest and Rs. 5,000 costs. In appeal before this Court, one of the submissions on behalf of the appellant Financial Corporation had been with reference to the aforesaid decision in ***United*** D ***Bank of India*** (supra). While distinguishing the said decision, this Court observed that Official Liquidator would proceed on the basis of the records of the company in liquidation and, therefore, it was for the intending purchaser to satisfy himself in all respects as to the title, encumbrances etc. of the immovable property that he intended to purchase; and that purchaser cannot after having purchased the property on such terms, E claim diminution in the price on the ground of defect in the title or description of the property. The Court further observed that the appellant Financial Corporation was exercising the rights of an owner in selling the property and was not selling the property as an Official Liquidator; and the principles applicable to an Official Liquidator selling property F under the orders of Court would not be applicable to an individual selling immovable property belonging to himself. Moreover, the Court observed that respondent therein made all necessary inquiries and it was the Corporation who failed to give fair description of property offered for sale. The Court, *inter alia,* observed as under: -

G **"23.** In our opinion, the appellants cannot be given the benefit of Clause 5 of the advertisement. The appellant Corporation cannot be permitted to take advantage of its own wrong. Clause 5 undoubtedly permits the forfeiture of the earnest money deposited. But this can only be if the auction-purchaser fails to comply with the conditions of sale. In our opinion, the respondent has not failed

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to comply with the conditions of sale. Rather, it is the appellant Corporation which has acted unfairly, and is trying to take advantage of its own wrong."

"24. In view of the aforesaid, we are of the considered opinion that the appellant Corporation cannot be permitted to rely upon Section 55 of the Transfer of Property Act, 1882. The appellant Corporation failed to disclose to the respondent the material defect about the non-existence of the independent 3 "karams" passage to the property. Therefore, the appellant Corporation clearly acted in breach of Sections 55(1)(*a*) and (*b*) of the Transfer of Property Act, 1882.

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"**27.** We are also of the considered opinion that the reliance placed on the judgment of this Court by the counsel for the appellants in *United Bank of India* v. *Official Liquidator* [(1994) 1 SCC 575] is wholly misconceived. The aforesaid judgment relates to sale of the property and assets of a company in liquidation by the Official Liquidator under the orders of the court. Therefore it is observed that the Official Liquidator cannot and does not hold any guarantee or warranty in respect of the property sold. That is because the Official Liquidator proceeds on the basis of what the records of the company in liquidation show. Therefore it is for the intending purchaser to satisfy himself in all respects as to the title and encumbrances and so forth of the immovable property that he proposes to purchase. In those circumstances it is held that the purchaser cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in the title or description of the property.

28. The judgment clearly goes on to further hold as follows: (*Official Liquidator case* [(1994) 1 SCC 575] , SCC p. 584, para 14)

"*14*. … The case of the Official Liquidator selling the property of a company in liquidation under the orders of the court is altogether different from the case of an individual selling immovable property belonging to himself."

The aforesaid observation would be clearly applicable to the Corporation as it is exercising the rights of an owner in selling the

property. The appellant Corporation is not selling the property as an Official Liquidator."

18.1. Evidently, ***Haryana Financial Corporation*** (supra) had been a case of sale by the Corporation, which was distinguished from sale by an OL. Therein, while pointing out inapplicability of the decision in ***United Bank of India*** (supra), this Court observed that OL would not be holding out any guarantee or warranty in respect of the property sold because he would be proceeding on the basis of records of the company in liquidation and, therefore, it was for the intending purchaser to satisfy himself in all respects as to the title, encumbrances etc. of the immovable property sought to be purchased; and such a purchaser could not, after having purchased the property on such terms, claim diminution in the price on the ground of defect in the title or description of the property. The said decision cannot be read as an authority for any generalised proposition as if the Official Liquidator, while conducting sale of the assets of the company in liquidation, is absolved of the duty to state basic stipulations in the sale notice.

19. In ***UT Chandigarh Administration*** (supra), this Court dealt with the consumer complaints of respondents filed to contend that the appellant was not legally entitled to claim balance of premium or annual rent, for having failed to provide basic amenities at the residential and commercial sites auctioned by way of advertisement. This Court allowed the appeals as the purchaser was not a consumer with reference to public auction of existing sites. Notwithstanding this, it was observed, in regard to auction as per "as is where is basis" thus: -

"**19…..** In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on "as-is-where-is basis". With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price. When the sites auctioned are existing sites, without any assurance/ representation relating to amenities, there is no question of deficiency of service or denial of service. Where the bidder has a choice and option in regard to the site and price and when there is

no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise even by applying the tests laid down in *LDA* [(1994) 1 SCC 243] or *Balbir Singh* [(2004) 5 SCC 65].

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/ premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided."

19.1. The aforesaid case of ***UT Chandigarh Administration***, relating to the complaints of want of basic amenities in the property sold in auction on "*as is where is"* basis has no relevance whatsoever to the facts of the present case.

20. In the case of ***Punjab Urban Planning and Development Authority*** (supra), the bone of contention was the levy of interest, penal interest, and penalty on account of delayed payment of instalments after accepting allotment of commercial plots by way of auction. The Court held that purchasers would be liable to pay such interest having accepted the commercial plots subject to the conditions of the auction notice and allotment letter while observing, *inter alia,* as under: -

"17….. We may reiterate that after having accepted the offer of the commercial plots in a public auction with a superimposed condition i.e. on "as-is-where-is" basis and after having accepted the terms and conditions of the allotment letter, including instalment facility for payment, the respondents cannot say that they are not bound by the terms and conditions of the auction notice, as well as that of the allotment letter. On facts also, we have found that there was no inordinate delay on the part of PUDA in providing those facilities.**"**

20.1. Again, the aforesaid case of ***Punjab Urban Planning and Development Authority*** wherein, the bone of contention was levy of penal interest and penalty on account of delayed payment of instalments, has no relevance whatsoever to the facts of the present case.

21. The decision of this Court in ***Ahmedabad Municipal Corporation*** (supra) has been relied upon by the contesting respondents as also by the supporting respondent. Therein, after insolvency proceedings commenced in 1949, the property in question was auctioned and purchased by the respondent-purchaser in 1954. It was attached by the Municipal Corporation owing to the fact that the municipal taxes in arrear for 1949-50 to 1953-1955 had not been paid, leading the respondent-purchaser to file a suit for declaration. The Division Bench of Gujarat High Court held that the respondent was the owner of the property and that the charge for arrears was not enforceable, which was challenged by the Corporation before this Court. With reference to Section 100 of the Act of 1882, it was held that no charge would be enforceable against any property in the hands of transferee for consideration without notice of charge, apart from where otherwise provided for by law. The Court, *inter alia,* made the following observations: -

> "4. This section in unambiguous language lays down that no charge is enforceable against any property in the hands of a transferee for consideration without notice of the charge except where it is otherwise expressly provided by any law for the time being in force. The saving provision of law must expressly provide for enforcement of a charge against the property in the hands of a transferee for value without notice of the charge and not merely create a charge. …..
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> *** *** ***
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> 11. Now the circumstances which by a deeming fiction impute notice to a party are based, on his wilful abstention to enquire or search which a person ought to make or, on his gross negligence. This presumption of notice is commonly known as constructive notice. Though originating in equity this presumption of notice is now a part of our statute and we have to interpret it as such. Wilful abstention suggests conscious or deliberate abstention and gross negligence is indicative of a higher degree of neglect. Negligence is ordinarily understood as an omission to take such reasonable care as under the circumstances is the duty of a person

of ordinary prudence to take. In other words it is an omission to do something which a reasonable man guided by considerations which normally regulate the conduct of human affairs would do or doing something which normally a prudent and reasonable man would not do. The question of wilful abstention or gross negligence and, therefore, of constructive notice considered from this point of view is generally a question of fact or at best mixed question of fact and law depending primarily on the facts and circumstances of each case and except for cases directly falling within the three explanations, no inflexible rule can be laid down to serve as a straight-jacket covering all possible contingencies. The question one has to answer in circumstances like the present is not whether the purchaser had the means of obtaining and might with prudent caution have obtained knowledge of the charge but whether in not doing so he acted with wilful abstention or gross negligence. Being a question depending on the behaviour of a reasonably prudent man, the Courts have to consider it in the background of Indian conditions. Courts in India should, therefore, be careful and cautious in seeking assistance from English precedents which should not be blindly or too readily followed."

21.1. In the aforesaid case of ***Ahmedabad Municipal Corporation,*** while commencing the discussion, this Court also observed, as underscored on behalf of respondent No. 2, that '*the purchaser at auction sale takes the property subject to all the defects of title and the doctrine of caveat emptor (let the purchaser be aware) applies to such purchaser'* but thereafter, the Court observed that the case of the judgment-debtor having no saleable interest at all in the property sold such as contemplated by the Order XXI Rule 91 of the Code of Civil Procedure was, however, different and not covered by this doctrine. Such observations do not lend support to the case of the appellant so as to shift the entire burden on the auction purchaser despite significant omission in the terms and conditions of sale.

22. In ***AI Champdany Ltd.*** (supra), the appellant had purchased the assets of the company under liquidation and was subsequently served with notice by municipality for payment of arrears of property tax. Upon taking out a chamber summons with the prayer that appellant would only be liable for property tax after date of confirmation of sale, the application was dismissed on the ground that it was incumbent on the

A purchaser to make enquiries regarding the liabilities attached to the assets before making an offer. The intra-court appeal was dismissed by the Division Bench. In the appeal before this Court, it was held that dues in relation to municipal tax in terms of the relevant provisions of the Companies Act did not create an encumbrance or charge on the property and was considered to be a personal liability. This Court, *inter alia,* observed and held as under: -

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> "10. Dues in relation to the municipal tax in terms of the provisions of the said Act do not create any encumbrance on the property. It does not create any charge. It is considered to be a personal liability. On the aforementioned premise, we have to construe the terms and conditions of the sale…
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> 12. The terms and conditions of the sale must be read as a whole. It must be given a purposive meaning. The word "encumbrance" in relation to the word "immovable property" carries a distinct meaning. It ordinarily cannot be assigned a general and/or dictionary meaning.
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> 15. The respondent municipality was an unsecured creditor. In that capacity it cannot stand on a higher footing than an ordinary unsecured creditor who is required to stand in queue with all others similarly situated for the purpose of realisation of their dues from the sale proceeds.
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> 16. The Companies Act or any other law does not impose any additional obligation upon the purchaser to make an enquiry with regard to the liabilities of the companies other than those which would impede their value.
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> 18. We may notice that Section 141 of the Bombay Provincial Municipal Corporations Act provides the property taxes to be a first charge on the premise for which they are assessed. It is in that view of the matter, Section 100 of the Transfer of Property Act was found to be capable of being invoked therein, which reads as under:

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"100. *Charges*.—Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

There cannot, thus, be any doubt or dispute that a provision of law must expressly provide for an enforcement of a charge against the property in the hands of the transferee for value without notice to the charge and not merely create a charge."

23. The aforesaid decisions in the cases of ***Ahmedabad Municipal Corporation*** and ***AI Champdany Ltd.*** had been concerning the issue relating to liability of auction purchaser of property in Court sale towards arrears of municipal taxes due on the date of sale, which are of statutory charge on the property sold and of which, the purchaser had no notice. On interpretation and application of second part of Section 100 of the Act of 1882, this Court held that the auction purchaser without notice, in the absence of stipulation in the terms of sale or any statutory provision, could not be made liable for such dues. In the fact situation of the present case, the principles aforesaid operate heavily against the case of the appellant.

24. It has rightly been argued on behalf of the contesting respondents, with reference to Section 100 of the Act of 1882 and the decision of this Court in ***AI Champdany Ltd.*** (supra), that in absence of any statutory provision, the auction purchaser without notice of any charge could not be made liable for the arrears of tax in question during the post-liquidation period. The provisions of the M.P. Act of 1956 were not creating any such encumbrance or charge on the property which would attach to the property for all times and under all circumstances nor they could be said to constitute any encumbrances which diminish the value

of the property. In contrast, they would only qualify as expenses for "*preserving, realising or getting in*" the assets of the company and thus, shall have to be paid in priority and before any other payment in the course of distribution of the assets of the company or value thereof.

25. There remains another significant factor in the present case that the property in question was indisputably governed by Section 185 of the M.P. Act of 1956, which clearly provides that all sums due from any person in respect of taxes on any land or building shall be of first charge upon the said land or building and upon any movable property found within or upon such land or building. The proviso thereto further makes it clear that no arrears of any such tax would be recoverable from any occupier who is not the owner, if such arrears were for a period during which the occupier was not in occupation. In the face of undeniable operation of the said Section 185 of the M.P. Act of 1956 over the property in question, we are clearly of the view that the bidder/purchaser was entitled to proceed on the assumption that even if there were any arrears of such taxes under the M.P. Act of 1956, the same would not be recoverable from him. Though, as aforesaid, the cryptic terms and conditions of sale in the present case, wanting in material stipulations, never obliged a purchaser to carry out a search as regards encumbrances but, even if such a requirement is taken into consideration on general principles of *caveat emptor*, the other assumptions available with reference to the said Section 185 of the M.P. Act of 1956 cannot be ignored.

26. The submissions made on behalf of the appellant about the likely prejudice to the other pre-liquidation creditors if such post-liquidation liabilities are given preference over other liabilities; and reference to Section 529A and 530 of the Companies Act do not carry any relevance and do not make out any case for interference. The provisions contained in Sections 529A and 530 essentially relate to overriding preferential payments as also preferential payments in relation to the classes of dues/debts specified therein. However, the question of payment of the same would arise after payment of costs and expenses of winding up that are properly incurred by the appellant OL and are to be paid in priority. As aforesaid, the taxes payable to the respondent No. 1 Nigam during the period in question would directly amount to the costs and expenses of liquidation.

27. This being the position, in our view, the Company Court and then the Division Bench of the High Court have rightly underscored the faults on the part of the appellant OL and have rightly held that the liability on account of the property tax and water tax claimed by the respondent No. 1 to the extent rejected by the appellant OL has been a post-liquidation liability, which the OL was obliged to discharge, in view of omission in the sale notice and then, in view of the operation of Rule 338 of the Rules of 1959.

28. Put in different words, as regards the operation of the said Rule 338 of the Rules of 1959, we are inclined to accept the reasoning of the High Court that on the facts and in the circumstances of the present case, arrears of property tax and water tax until the date of confirmation of sale, i.e., 04.07.2003, would qualify as the expenses for "*preserving, realising or getting in*" the assets of the company and thus, shall have to be paid in priority by the appellant OL.

29. For what has been discussed hereinabove, we do not find it necessary to dilate upon the other decisions cited by learned counsel for the parties. As aforesaid, the ambiguity as also omissions in the terms and conditions of the sale notice in the present case obviously lead to the position that the view taken by the High Court calls for no interference.

30. Accordingly, and in view of the above, these appeals fail and are, therefore, dismissed. No Costs.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeals dismissed.