



**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Reserved on : 19-4-2023**

**Pronounced on: 21-06-2023**

**WPL No. 54 of 2023**

1. Alchemist Asset Reconstruction Company Ltd. Through its authorized signatory Vivek Kumar s/o. Shri U.K. Pandey, Aged About 30 Years Through Its Authorized Signatory, Having Its Registered Office At A-270, 1st And 2nd Floor, Defence Colony, New Delhi - 110024.
2. Vivek Kumar, Son Of Shri Uk Pandey, Aged About 30 Years Working At A-270, 1st And 2nd Floor, Defence Colony, New Delhi - 110024.

**---- Petitioners**

**Versus**

1. The Regional Provident Fund Commissioner -II, Bilaspur, District - Office, Bilaspur, Chhattisgarh - 495001.
2. Employees Provident Fund Organisation, Regional Office, Raipur, Block D, Scheme-32, Indira Gandhi Commercial Complex, Pandri Raipur, Chhattisgarh - 492004.
3. The Regional Provident Fund Commissioner -li And Recovery Officer, Raipur, Regional Office Raipur, Raipur, Block D, Scheme-32, India Gandhi Commercial Complex, Pandri Raipur Chhattisgarh - 492004.

**---- Respondents**

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For Petitioner : Mr. B.P. Sharma, Advocate along with  
Mr. Nitesh Jain, Advocates.

For Respondents : Mr. Sunil Pillai, Advocate.  
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**Hon'ble Shri Justice Narendra Kumar Vyas**

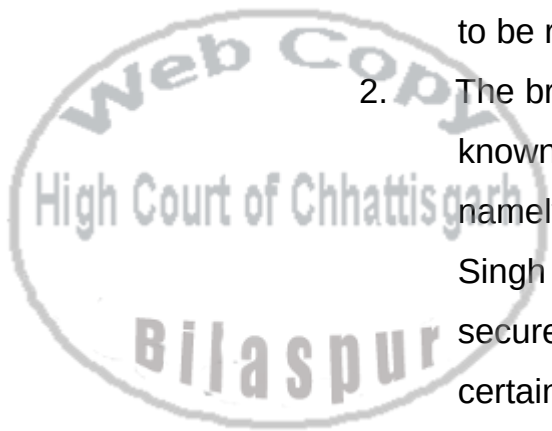
**CAV ORDER**

1. The petitioner No. 1 is a company registered under the provisions of the Companies Act and also registered with Reserve Bank of India as an Asset Reconstruction Company under Section 3 of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short, 'SARFAESI Act, 2002). The petitioner has filed the present Writ Petition under Article 226 of the Constitution of



India challenging the order of attachment dated 20-01-2023, 27-01-2023 and 08-02-2023 issued by the Regional Provident Fund Commissioner-II Bilaspur- respondent No. 1 herein for recovery of dues of M/s. Hitech Equipment and Spares Pvt. Ltd. By the impugned order the recovery of Rs. 42,58,208/- has been ordered which is assessment of dues of the employees towards Employees Provident Fund for the period from August 2007 to March 2012 under Section 7A of the Employees Provident Fund Act (For short, "EPF Act,"). By the order dated 27-01-2023 the respondent has directed for recovery of interest under Section 7Q of EPF Act for the same period amounting to Rs. 1,06,78,755/- and by the order dated 08-02-2023 the interest as well as the damages under Section 14B of the EPF Act for the same period to the tune of Rs. 1,67,08,755/- has been ordered to be recovered.

2. The brief facts as reflected from records are that partnership firm known as Rajesh Engineering and Castings having its partners namely Shri Prakash Chand Rateria and Late Shri Mahabir Singh Rateria had availed loan from UCO Bank which was secured by the Factory Land of the partnership firm along with certain personal properties of Mr. Mahavir Prasad Rateria, Vikram Rateria, Manish Rateria, Prakash Chand Rateria and Aruna Rateria. Since the firm was Rajesh Engineering was unable to pay its debt, proceedings under SARFAESI Act, 2002 was initiated and as per assignment agreement dated 30.03.2017, the petitioner company being asset reconstruction company has cleared the debts by providing financial assistance. It has also been contended that by the impugned order (Annexure P/1) the respondent has issued for recovery of Provident Fund dues of M/s. Hitech Equipment and Spares Pvt. Ltd. wherein it has been mentioned that as per Section 8(b) of the EPF Act, Shri Mahavir Prasad Rateria or Manish Rateria and Vikram Rateria are liable for payment of dues and it has come to notice that ALMCHEMIST ARC is in the process of auctioning their property. It has been contended that the respondent No. 1 is wrongly proceeded against the present petitioner as property





of Mr. Mahavir Prasad Rateria and Vikram Rateria whose properties have been taken under SARFAESI Act, 2002 by the petitioner AARC and their loan has been cleared as per the assignment agreement dated 30.03.2017, therefore, the petitioners being secured creditors have priority over the claim of the respondents for PF dues. As such, the impugned order against the present petitioners is nonest without jurisdiction and would pray for quashing of the impugned order (Annexure P/1).

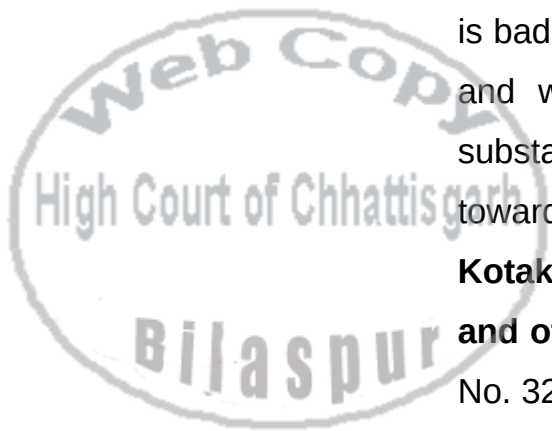
3. Learned counsel for the petitioners would submit that in view of the amendment made in Section 26 E of the SARFAESI Act, 2002, the claim put by the Provident Fund Authority, is not sustainable as priority has to be given to secured creditors and would pray for quashing of the impugned order.
4. The respondents have filed their return denying the allegations made in the Writ Petition and would submit that EPF Act, 1952 has been enacted to provide social security to the employees working in the establishment and would contend that M/s Hitech Cement Pvt. Ltd is an establishment covered under the EPF Act. The complaint was received against them for non-depositing of PF dues, therefore, an enquiry was conducted and under Section 7A of the Act notice was issued. During proceeding the Director of the company namely, Mahavir Rateria appeared before the authority but has not produced any documents, therefore, on the basis of material the assessment order was passed. He would further submit that the prosecution case against the Director Shri, Mahavir Prasad was also filed under Section 14A and 14B of the EPF Act. M/s Hitech Equipment and Spares Pvt. Ltd has not cleared the PF dues and the operation of the establishment was closed, therefore, the respondents have issued recovery proceedings. It is further contended that the present petitioner AARC was initiating proceedings for auction of the property of the employees for recovery defaulted loan account as per the provisions of the SARFAESI Act, 2002 therefore, the attachment order was initiated against them to protect the interest of the workers. It is further submitted that though Section 26 E of the SARFAESI Act, 2002 has been





amended, but even after this, the secured creditor will not get priority in view of Section 11 of the EPF Act and would pray for dismissal of the petition.

5. Learned Counsel for the petitioners would submit that after the judgment of Hon'ble Supreme Court in the case of **Maharashtra State Cooperative Bank Ltd. vs. Assistant Provident Fund Commissioner and another reported in 2009 (10) SCC 123**, Section 26 E of the SARFAESI Act, 2002 has been inserted which provides notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority. Therefore, the attachment notice is bad-in-law and against provisions of the SARFAESI Act, 2002 and would pray for quashing of the impugned notice. To substantiate his submission he has drawn attention of this court towards the judgment of Hon'ble Supreme Court in the matter of **Kotak Mahindra Bank Ltd. Vs Girnar Corrugators Pvt. Ltd and others reported in 2023 (3) SCC 210** and referred to para No. 32 of the judgment. He would further submit that if recovery proceeding is allowed to be continued that will dehors the very object of insertion of new Section 26E of the SARFAESI Act, 2002 and would pray for quashing of the impugned notice. He would further refer to the judgment of Hon'ble Supreme Court in the case of **JAYCEE Housing Pvt. Ltd and others Registrar (General) Orissa High Court Cuttack and others reported in 2023 (2) SCC 549**, in case of **Punjab National Bank vs. Union of India reported in 2022 (7) SCC 260** and would refer to the judgment of Hon'ble High Court in case of **MJ Foods Industries (Pvt) Ltd vs. Regional Provident Fund Commissioner and others reported in 2006 (2) LLN 756**.
6. On the other hand learned counsel for the respondents would submit that though Section 26E of the SARFAESI Act has been inserted but in view of Section 11 of the EPF Act, priority to be given to the EPF dues and even after amendment made in Act





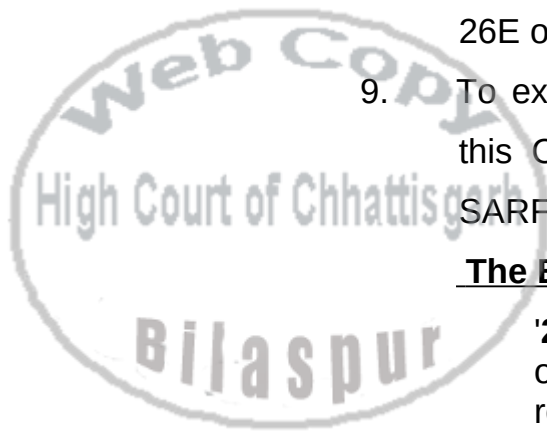
of 2002, the priority of the EPF dues will not be changed and it will have overriding effect as PF contributions are social security to the workers and priority has to be given to the PF dues. To substantiate his submission learned counsel for respondent has drawn his attention of this Court towards the judgment of Hon'ble Supreme Court in the matter of **Employees Provident Fund Commissioner vs. O.L of Esskay Pharmaceutical Ltd reported in 2011 (10) SCC 727, Vimal Kumar Ravji Shah vs. Employees Provident Fund Organization Solapur and others reported in 2009 (5) MHLJ.**

7. I have heard learned counsel for the parties and perused the record.
8. The issue to be determined by this Court is whether PF dues will get priority over the dues of secured creditors in view of Section 26E of the SARFAESI Act, 2002 as amended on 01.09.2016.
9. To examine the issue raised in this petition, it is expedient for this Court to extract the relevant provisions of EPF Act and SARFAESI Act, 2002 which read as under.

**The EPF Act, 1952**

**2. Definitions.** - In this Act, unless the context otherwise requires, - (e) "Employer" means- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause f of sub-section 1 of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

**11. Priority of payment of contributions over other debts.—**1[(1)] 2[Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due—(a) from the employer in relation to 3[an establishment] to which any 4[Scheme or the Insurance Scheme] applies in respect of any contribution payable to the Fund 5[or, as the case may be, the Insurance Fund], damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of







section 15 or any charges payable by him under any other provision of this Act or of any provision of the 4[Scheme or the Insurance Scheme]; or 6[an establishment] to which any 7[Scheme or the Insurance Scheme] applies in respect of any contribution payable to the Fund 8[or, as the case may be, the Insurance Fund], damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provision of this Act or of any provision of the 7[Scheme or the Insurance Scheme]; or"(b) from the employer in relation to an exempted 6[establishment] in report of any contribution to 7[the provident fund or any insurance fund] (in so far it relates to exempted employees), under the rules of 7[the provident fund or any insurance fund], 8[any contribution payable by him towards the 9[Pension] Fund under sub-section (6) of section 17,] damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17, 9[establishment] in report of any contribution to 10[the provident fund or any insurance fund] (in so far it relates to exempted employees), under the rules of 10[the provident fund or any insurance fund], 11[any contribution payable by him towards the 12[Pension] Fund under sub-section (6) of section 17,] damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17," shall, where the liability therefor has accrued before the order of adjudication or winding up is made, be deemed to be included] among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (3 of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (5 of 1920), or under 10[section 530 of the Companies Act, 1956 (1 of 1956)] are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

**SARFAESI Act-**

**Section 26E** - Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority”.

10. Learned Counsel for the petitioners forcefully submits that Section 26E of the SARFAESI Act, 2002 has been inserted by





the Central Government with an object to give priority to secured creditors otherwise, the very object of the Act of 2002 will be frustrated. He would further submit that for recovery of PF dues notice issued by the respondents is against the provisions of the Act and whole action initiated by Respondent Authority is bad-in-law. He has drawn attention of this Court to the judgment of **Kotak Mahindra Bank Ltd. vs. Girnar Corrugators Pvt. Ltd and others reported in 2023 (3) SCC 210** wherein the Hon'ble Supreme Court has held in para 32 which reads as under:

“32. At this stage, the object and purpose of the enactment of SARFAESI Act is required to be considered. SARFAESI Act has been enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for a central debts of security interest created on property rights, and for matters connected therewith or incidental thereto. Therefore, SARFAESI Act has been enacted providing specific mechanism / provision for the financial assets and security interest. It is a special legislation for enforcement of security interest which is created in favour of the secured creditor – financial institution. Therefore, in absence of any specific provision for priority of the dues under MSMED Act, if the submission on behalf of respondent No.1 for the dues under MSMED Act would prevail over the SARFAESI Act, then in that case, not only the object and purpose of special enactment / SARFAESI Act would be frustrated, even the later enactment by way of insertion of Section 26E of the SARFAESI Act would be frustrated. If the submission on behalf of respondent No.1 is accepted, then in that case, Section 26E of the SARFAESI Act would become nugatory and would become otiose and/or redundant. Any other contrary view would be defeating the provision of Section 26E of the SARFAESI Act and also the object and purpose of the SARFAESI Act”.

11. He has also drawn attention of this Court towards the judgment of Hon'ble Supreme Court in the case of **Punjab National Bank vs. Union of India and others reported in 2022 (7) SCC 240** wherein the Hon'ble Supreme Court has held in para 50 and 51 as under:

“50. In view of the above, we are of the firm opinion that the arguments of the learned counsel for the Appellant, on the second issue, hold merit. Evidently,





prior to insertion of Section 11E in the Central Excise Act, 1944 w.e.f. 08.04.2011, there was no provision in the Act of 1944 *inter alia*, providing for First Charge on the property of the Assessee or any person under the Act of 1944. Therefore, in the event like in the present case, where the land, building, plant machinery, etc. have been mortgaged/hypothecated to a secured creditor, having regard to the provisions contained in section 2(zc) to (zf) of SARFAESI Act, 2002, read with provisions contained in Section 13 of the SARFAESI Act, 2002, the Secured Creditor will have a First Charge on the Secured Assets. Moreover, section 35 of the SARFAESI Act, 2002 *inter alia*, provides that the provisions of the SARFAESI Act, shall have overriding effect on all other laws. It is further pertinent to note that even the provisions contained in Section 11E of the Central Excise Act, 1944 are subject to the provisions contained in the SARFAESI Act, 2002.

51. Thus, as has been authoritatively established by the aforementioned cases in general, and Union of India vs SICOM Ltd. (supra) in particular, the provisions contained in the SARFAESI Act, 2002, even after insertion of Section 11E in the Central Excise Act, 1944 w.e.f. 08.04.2011, will have an overriding effect on the provisions of the Act of 1944”.

12. He would further submit that from the above stated legal position, it is evident that the Hon'ble Supreme Court has negated the claim of the Central Excise Department and on the same analogy, the PF dues will not have priority basis for recovery and secure interest of secured creditors would be given priority. Thus, he would pray for quashing of the impugned order.
13. Learned Counsel for the respondents opposing the aforesaid submissions would submit that as per Section 11 of the EPF Act priority of payment of contribution over other dues have to be given. To substantiate his submission learned counsel for the respondent has referred to the judgment of the Hon'ble Supreme Court in the case of **Employees Provident Fund Commissioner vs. O.L of Esskay Pharmaceuticals Ltd reported in 2011 (10) SCC 727** wherein the Hon'ble Supreme







Court has held in paras 48 and 49 which reads as under:

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

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





expression includes various dues including provident fund) as first charge”

14. Learned counsel for the respondent would further submit that in view of definition of employer under the EPF Act, the petitioner is an employer in view of operation of law, as such, attachment order has been rightly been issued to the petitioner. He would draw attention to this Court towards the judgment of Hon'ble High Court of Bombay in the case of Vimal Kumar (supra) wherein, it has been held at para 10 which reads as under:

“10.; Though the issue involved in the said case was whether the directors of the company could be made liable for the offence punishable under Section 405 for Criminal Breach of Trust, while considering the said issue, the Apex Court had an occasion to deal with and consider the relevant provision under Section 2(17) which defines the term "principal employer". It is an admitted position that the definition of "principal employer" as defined under Section 2(17) of the ESI Act is pari-materia with the provisions of Section 2(e) of the Provident Funds Act. In this view of the matter, therefore, in view of the decision of the Apex Court, it is apparent that the word "owner" or "occupier" has to be used disjunctively and in cases where the owner of factory is a company, it is the company which is the principal employer and not a director. Similarly, the learned Judge of this Court in the case of Mansingh L.Bhakta (supra) has also taken a similar view holding that the Managing Director of a company cannot be personally liable towards arrears of provident fund contribution by the company. Similar view has been taken by the learned Single Judge of this Court in the case of Employees State Insurance Corporation & Another vs. G.N. Mathur & Ors. (supra) That be the settled position, it was not open for the respondent No.1 to attach the personal property of the "Managing Director".

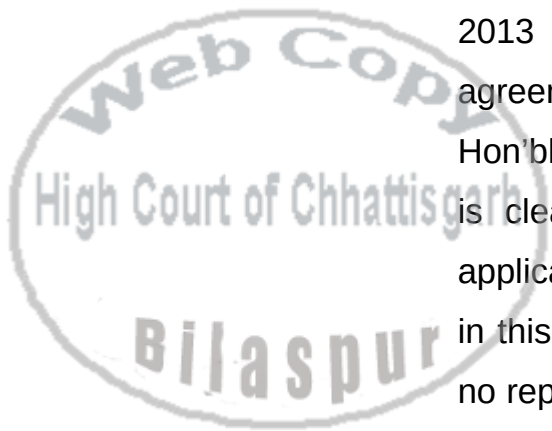
15. From the above stated submissions made by the parties and considering the provisions it is not in dispute that Section 26-E has been inserted in the SARFAESI Act, 2002 on 01-09-2016 which provides that the priority to secured creditors whereas





Section 11 of the EPF Act also provides that priority on payment of contribution over other dues.

16. From the above factual matrix it is not in dispute that the property of the director Mahavir Prasad Rateria, Manish Rateria & Vikram Rateria is to be auctioned by the present petitioners for securing their loan being secured creditors. It is pertinent to mention here that against the property of directors proceeding for recovery of dues under the EPF Act is already pending before initiation of proceeding under SARFAESI Act, 2002. The orders were passed against the Director of the company M/s Hitech Equipment and Spares Pvt. Ltd in the year 2013 itself and as per the assignment agreement between UCO Bank and the present petitioner which was executed on 30-03-2017 it is quite vivid that the said assignment agreement was executed after 2013 itself. Thus, the liability as on the date of assignment agreement was already there. Therefore, the judgment of the Hon'ble Supreme Court in case of Kotak Mahindra Bank (supra) is clearly distinguishable on the facts and law as it is not applicable in the present facts and circumstances of the case as in this case the Hon'ble Supreme Court has held that there is no repugnancy between two enactments viz. SARFAESI Act and MSMED Act. As such, there is no conflict between two schemes, i.e. MSMED Act and SARFAESI Act as far as the specific subject of 'priority' is concerned. Whereas in case of EPF Act there is priority Clause in view of Section 11 of the Act. Similarly, in the judgment of Punjab National Bank vs. Union Bank Of India (supra) Hon'ble Supreme Court has held in para 50 that prior to insertion of Section 11 E in the Central Excise Act 1944 with effect from 08-04-2011 there was no provision in the 1944 Act *inter alia* providing for first charge on the property of the assessee or any person under the 1944 Act. Therefore, SARFAESI Act, 2002 was having overriding effect and the Secured Creditor will have the first charge on the secured assets whereas under the EPF Act the provisions of priority of the claims is very much in existence from inception of the Act.





17. It is pertinent to mention here that Section 35 of the Act, 2002 also provides that the provisions of the SARFAESI Act shall have overriding effect on all other laws, but under the Act of EPF, 1952 also there is a provision of priority of claim prior to insertion of Section 26 E of the Act. The clause contained in the statute "notwithstanding" is always subject matter of interpretation in various judgments. It is well settled position of law that when two or more laws or provisions operate in the same field and each contain a non-obstinate clause stating that its provision will override those of any other provision or law, which causes problems of interpretation arise, in resolving such problem of interpretation, no settled principle can be applied except to refer to the object and purpose of each of two provision containing a non-obstinate clause. Hon'ble the Supreme Court in case of **Shri Swaran Singh & another Vs. Shri Kasturi Lal** reported in (1977) 1 SCC 750 has held at paragraph 20 as under:-

"20. Speaking generally, the object and purpose of a legisla- tion assume greater relevance if the language of the law is obscure and ambiguous. But, it must be stated that we have referred to the object of the provisions newly introduced into the Delhi Rent Act in 1975 nor for seeking light from it for resolving an ambiguity, for there is none, but for a different purpose altogether. When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will over-ride those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. A piquant situation, like the one before us, arose in Shri Ram Narain v. The Simla Banking & Industrial Co. Ltd., (1) the competing statutes being the Banking Companies Act, 1949 as amended by Act 52 of 1953, and the Displaced persons (Debts Adjustment) Act, 1951. Section 45A of the Banking Companies Act, which was introduced by the amending Act of 1953, and s. 3 of the Displaced Persons Act 1951 contained each a non-obstante clause, providing that certain provisions would have effect "not- withstanding anything inconsistent therewith contained in any other law for the time being in force ....." This Court resolved the conflict

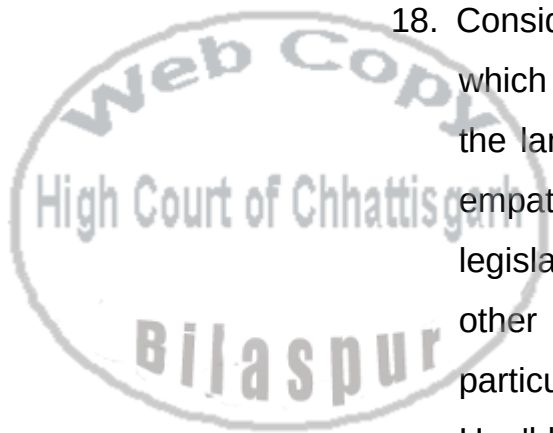




by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing: "It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein. "(p. 615). Asc indicated by us the special and specific purpose which motivated the enactment of s. 14A and Chapter IIIA of the Delhi Rent Act would be wholly frustrated if the provisions of the Slum Clearance Act requiring permission of the competent authority were to prevail over them. Therefore, the newly introduced provisions of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Clearance Act."

18. Considering the provisions of Section 26 of the SARFAESI Act which was brought on statute later point of time on 01.09.2016, the language of Section 11 (2) of EPF Act is found to be more empathetic and same would be indicative of intention of the legislature to the effect that the EPF Act shall prevail over the other statute to secure the outstanding dues of workers. This particular issue has come up for consideration before the Hon'ble High Court of Gujarat in the case of UCO Bank vs Employees Provident Fund decided on 30-09-2022 9 (Special Civil Application No. 754 of 2019) wherein the Hon'ble Single Bench of the High Court of Gujarat examined the amendment made in the Companies Act, 1985 and considering the provisions of Sections of EPF Act has held in paragraph 15,16 (relevant para) and 17 which reads as under:

"15. Therefore, the Division Bench as well as the Apex Court were dealing with the situation where the provisions of the respective State Act or Central Act were in conflict with the provisions of the Section 26E of the SARFAESI Act. However, in the facts of the case, Section 11(2) of the EPF Act provides that if any amount is due from an employer in respect of the PF dues, the due shall be deemed to be the first charge on the assets of the establishment and notwithstanding anything contained in any other law, for the time C/SCA/754/2019 CAV JUDGMENT DATED: 30/09/2022 being in force, be paid in priority







to all other debts meaning thereby that the dues of the PF shall have the first charge on the property and therefore, as observed by the Apex Court in case of Central Bank of India (Supra), the purpose and intend of the legislature is required to be looked into.

The first charge on the property vis-a-vis the PF dues would be created moment there would be a failure on the part of the employer to deposit the PF dues. Therefore, in the facts of the case, the decision relied upon on behalf of the petitioner would not apply so far as the outstanding dues of the PF is concerned as in the facts of the case, there is conflict between two Central Acts namely EPF Act and the SARFAESI Act. In such situation, the Hon'ble Supreme Court has laid down in no uncertain terms that later Act must prevail if there is nothing repugnant in the later Act. The Apex Court in case of C/SCA/754/2019 CAV JUDGMENT DATED: 30/09/2022 Kumaon Motor Owners' Union Limited (Supra) as well as in case of Solidaire India Limited (Supra) has laid down the principle that while resolving conflict, the Court must look into the object behind the two statutes. It is therefore necessary to find out what necessitated the legislature to enact a particular provision, later in point of time, which may be in conflict with the provisions of other Acts. Considering the language of the provision of Section 26E of the SARFAESI Act, which has been brought on statute in the year 2016, the object behind the same appears to be to secure the debts due to any secured creditor in priority over all other debts including the revenues, taxes, cesses and all other rates payable to the Central Government or State Government or local authority subject to provisions of Insolvency & Bankruptcy Code, 2016. Similarly, Section 35 of the SARFAESI Act provides that the C/SCA/754/2019 CAV JUDGMENT DATED: 30/09/2022 provisions of the SAEFAESI Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

16. Considering provisions of section 26E of the SARFAESI Act brought on statute later in point of time, the language of Section 11(2) of EPF Act is found to be more emphatic and the same would be indicative of the intention of the legislature to the effect that the EPF Acts shall prevail over the other statutes to secure the outstanding dues of the workers.....





17. In view of above dictum of law and considering the language of Section 11(2) of the EPF Act and the object behind the same for the benefit of the workers and considering the intention of the legislature, the provisions of Section 11(2) shall prevail over Section 26E of the SARFAESI Act. The action of the respondent no.1 to recover the outstanding dues with interest payable by the respondent no.2 establishment from the petitioner Bank was legal and justified as per provision of section 11(2) of the EPF Act”.

19. From the aforesaid discussion, considering the provisions of EPF Act and SARFAESI Act, 2002 and further considering the law laid down by the Hon'ble Supreme Court in the case of Kotak Mahindra (supra) and Punjab National Bank (supra) and also considering the judgment of Gujarat High Court (supra) and considering the language of Section 11(2) of the EPF Act and object behind the same which is beneficial, benevolent and social security legislature for benefit of the workers, and considering the intention of the legislature, it is held that the provisions of Section 11(2) will prevail over Section 26-E of the SARFAESI Act, therefore, the attachment order issued by the respondent authority does not suffer from perversity or illegality warranting any interference by this Court.
20. Accordingly, the petition being devoid of merit is liable to be and is accordingly dismissed.
21. Pending applications if any, stands disposed of.

Sd/-

**(Narendra Kumar Vyas)**  
Judge

Raju



**Head Note**

“The claim of PF dues will have priority over claim of secured creditors under the SARFAESI Act, 2002.”

“सरफेसी एक्ट 2002 के अनुसार कर्मचारी भविष्य निधि की बकाया राशि अन्य सुरक्षित जमाकर्ताओं के अपेक्षा प्राथमिकता रहेगी। ”

