HIGH COURT OF MADHYA PRADESH : JABALPUR

COMPANY PETITION NO. 10 / 2015

Jonathan Allen .....Petitioner

Versus

Zoom Developers Private Limited ....Respondent

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice Shantanu Kemkar
Hon'ble Shri Justice J.K. Maheshwari

Whether approved for reporting? : YES

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Shri Vijayesh Atri, Advocate for the petitioner.
Shri Kapil Jain, Advocate for the respondent.

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Reserved On : 21.08.2015

Date of Decision : 24.08.2015

J U D G M E N T

{24/08/ 2015}

Per: A.M. Khanwilkar, Chief Justice:

1. This matter has been placed before the Full Bench in terms of order passed by the learned Company Judge dated

18.09.2013, in Company Petition No.4/2010. The question formulated for consideration reads thus:

> "Whether unpaid wages/salary of workman/employee can be covered within the meaning of debts under Section 433(e) of the Companies Act, 1956 and the view taken by learned Single Judge in the matter of **Pawan Kumar Khullar Vs. Kaushal Leather Board Limited,** reported in **AIR 1996 MP 85** in this regard is correct?"

2. Briefly stated, the Company Petition for winding up of Respondent-Company is filed on the assertion that the respondent-Company had engaged the petitioner to manage the Asset Management Business in Singapore vide letter dated 05.03.2008 and subsequent employment letter dated 18.04.2008. The petitioner was accordingly appointed as the Chief Executive Officer of the respondent-Company and was assured payment of a gross annual salary of S$ 650,000 being S$ 54,166 per month. The petitioner was also offered two years employment, a fixed and guaranteed annual bonus of S$ 450,000. Further, the respondent-Company was fully satisfied by the services rendered by the petitioner after his appointment and was receiving regular monthly salary till 31.03.2009. However, after 31.03.2009 as the respondent-Company failed and neglected to pay monthly salary to the petitioner in spite of several requests

made by the petitioner to the respondent-Company in that behalf until 14.09.2009, which resulted in penury condition for the petitioner. The petitioner, therefore, resigned from service on 14.09.2009 by sending a resignation letter to the respondent-Company and also demanded his rightful dues including the outstanding salary of S$ 297,961.67 for the period between 1.4.2009 to 14.9.2009, the fixed and guaranteed bonus of S$ 131,250 for the period starting from 18.04.2009 till 14.09.2009, aggregating to S$ 879,211.67 which is equivalent to Indian Rs.3,00,69,039 (Rupees Three Crores Sixty Nine Thousand and Thirty Nine Only) at the conversion rate of Indian Rs.34.2 (Rupees Thirty Four and Two Paise) for each Singapore Dollar as on 14.09.2009.

3. According to the petitioner, in spite of repeated oral as well as written reminders, the respondent-Company paid no heed to discharge its debts payable to the petitioner towards outstanding salary and emoluments for the services rendered by him. The petitioner, however, was informed by the respondent-Company that the fund flow situation of the Company was yet to improve. Thus, being unconvinced with the excuse given by the respondent-Company, which was avoiding to discharge its

obligation to pay its debt amount to the petitioner and was unable to pay the same, the petitioner sent a legal notice dated 26.09.2009 to the respondent-Company demanding a sum of S$ 879,211,67, giving the breakup of the amount.

4. According to the petitioner, the respondent-Company vide letter dated 14.12.2009 admitted its liability, by stating, *inter alia*, that the respondent-Company was facing financial crisis and unable to make the payment due to prevailing market situation. By the said communication, the respondent-Company also volunteered to amicably settle the matter with the petitioner. The petitioner vide letter dated 26.12.2009 responded by stating that he had shown enough patience for more than 6 months with a hope of settlement of his dues and for that had even given up his II year guaranteed bonus of S$ 131,250. Nevertheless, the petitioner informed that he was willing to discuss about amicable settlement, without prejudice to his rights and contentions. The respondent-Company, however, by letter dated 31.12.2009 even though admitted its liability to pay salary to the petitioner, raised issue of no business brought by the petitioner, for which, was not entitled to receive any bonus. In the said communication, the respondent-Company, however,

expressed willingness to pay only salary of the petitioner, amounting to S$ 297,961.67, in three to four installments because of the financial crisis faced by the respondent-Company. The petitioner by his letter dated 08.01.2010 reiterated that he was entitled to receive the sum of S$ 747,961.67 after foregoing II year guaranteed bonus of S$ 131,250. Finally, as the petitioner did not receive any favourable response from the respondent-Company nor his outstanding dues were settled, was forced to file Company Petition under Sections 433 and 434 of the Companies Act, 1956 (for brevity "Act"), on 27.01.2010.

5. Besides the Company Petition filed by the petitioner, two more Company Petitions have been filed against the respondent-Company being Company Petition No.3/2010 (filed by The Hongkong and Shanghai Banking Corporation) and Company Petition No.9/2011 (filed by UCO Bank).

6. In the Company Petition filed by the petitioner herein, the respondent-Company *inter alia* raised objection regarding the *locus* of the petitioner to pursue his claim of outstanding salary, wages and emoluments, which became payable to him whilst in service and employment of the

respondent-Company. According to the respondent-Company, dues towards salary, wages and emoluments being remuneration, does not become "debt" within the meaning of Section 433(e) of the Act. The workman or employee of the Company cannot pursue claim in that behalf as Creditor that too by filing a Company Petition under Sections 433 and 434 of the Act. To buttress this submission, reliance was placed on the decision of the Single Judge of our High Court in the case of **Pawan Kumar Khullar Vs. Kaushal Leather Board Limited**[1]**.**

7. The learned Company Judge, however, found force in the submission of the petitioner that the amount payable to the petitioner by the respondent-Company towards his outstanding salary, wages and emoluments was a debt on the Company within the meaning of Section 433(e) of the Act. The learned Company Judge adverted to the dictum of the Supreme Court in the case of **Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth-Tax (Central) Calcutta**[2]**;** and in the case of **Union of India Vs. Tulsiram Patel**[3]. Reference is also made to the decision of the Andhra Pradesh

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1 AIR 1996 MP 85
2 (1966) 59 ITR 767
3 (1985) 3 SCC 398

High Court in the case of **Capt. B.S. Demogray Vs. VIF Airways Ltd.**[4]**, M. Suryanarayana Vs. Stiles India Ltd.**[5]**;** and of Delhi High Court in the case of **Argha Sen & Another Vs. Interra Information Technologies (India) Pvt. Ltd**.[6], to disagree with the opinion of the Coordinate Bench in the case of **Pawan Kumar Khullar** (supra). Accordingly, the learned Company Judge thought it appropriate to refer the question of law as formulated in the order dated 18.09.2013 to Larger Bench for consideration.

8. The counsel for the petitioner has relied on the opinion of the Andhra Pradesh High Court and Delhi High Court in support of his argument that the fact that the amount receivable by the petitioner was towards his unpaid salary, wages and emoluments would not cease to be "debt" in terms of Section 433(e) of the Act nor it is possible to suggest that the claim of such debt by the serving or former employee of the Company is anything short of claim by a Creditor. Further, even though the petitioner has ceased to be in the employment of the respondent-Company, the tag of employee or worker of that Company cannot be attached to him. If so understood, the

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4 (1998) 93 Company Cases 291 (AP)
5 (2003) 116 Company Cases 448 (AP)
6 (2006) 133 Company Cases 49 (Delhi)

opinion of the Coordinate Bench of this Court in **Pawan Kumar Khullar** (supra) will not come in his way in pursuing the claim under Sections 433 and 434 of the Act against the respondent-Company. Counsel for the petitioner has also relied on the extracts from the Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition, Vol.1 (at pages 1129 to 1130) and Vol.2 (at pages 1238 to 1243), for the meaning of terms "Creditor" and "Debt" respectively.

9. *Per contra*, counsel for the respondent submits that the fact that the petitioner ceased to be in employment of the respondent-Company will make no difference to the nature of claim of the petitioner. It would still retain the colour of wages, salary and emoluments payable to an employee whilst he was in service of the respondent-Company. Being remuneration payable to an employee, it cannot be considered as a debt within the meaning of Section 433(e) of the Act, nor the status of the petitioner can be treated as Creditor ascribable to Section 439 read with Section 434(1)(a) of the Act. To buttress this submission, reliance has been placed on the dictum of the Supreme Court in **National Textile Workers' Union and**

Others v. P.R. Ramakrishnan and Others[7]. According to the respondent, the Supreme Court, in no uncertain terms, has noted that workers are not included in the list of specifically enumerated persons in Section 439 of the Act and therefore have no right to prefer a petition for winding up of a Company. Further, the right to apply for winding up of a company being a creature of statute, none other than those on whom the right to present a winding up petition is conferred by the statute can make an application for winding up a company and no such right having been conferred on workers, they cannot prefer a winding up petition against the company. According to the respondent-Company, after this dictum, it is no more *res integra* that employees of the Company are not included within the meaning of the term "Creditor" mentioned in Section 439 of the Act. Thus, the learned Company Judge, following that principle, should have rejected the Company Petition filed by the petitioner. Reliance is also placed on the decision of the learned Company Judge of Bombay High Court in the case of **Mumbai Labour Union v. Indo French Time Industries Ltd.**[8], which, essentially, has answered the controversy before it following the

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7 (1983) 1 SCC 228 (para 7 in particular)
8 (2002) 110 Company Cases 408

dictum in the case of **National Textile Workers' Union** (supra). Learned counsel for the respondent has also invited our attention to Sections 529, 529A and Section 530 of the Act to contend that in view of express provision in the Act giving overriding preferential status to the payment of workman's dues, by necessary implication, it must follow that workers are excluded from pursuing remedy under Sections 433 and 434 of the Act, as also former workman/employee of the Company, for winding up of the Company. It was argued that any other interpretation would result in individual disgruntled workman/employee resorting to remedy under the Companies Act for winding up of the company. Further, that remedy would then be pursued not only by the individual workman/employee, but also by Workmen Trade Unions. The Workmen Trade Unions not only represent the cause of workmen/employees, but also former workmen/employees. For, the claim of workmen/ employees, who are members of the Trade Union, can be espoused only by the concerned Trade Unions. The interpretation given by the petitioner would encourage the Trade Unions to resort to remedy of winding up of the Company, to espouse the cause of its members, instead of pursuing other remedies prescribed by law

for resolving such disputes. It is then submitted that the argument of the petitioner that being former employee of the respondent-Company, the legal position expounded by the Supreme Court will have no application to his claim, is also untenable. Reliance has been placed on the decision of Supreme Court in the case of **IBA Health (India) Private Limited v. Info-Drive Systems SDN. BHD**[9]**,** in particular paragraph 34, which has cautioned the Company Courts to keep in mind Public Policy Considerations while considering the relief of winding up of the Company. It is not only a matter of the interests of Creditors, but also interests of public at large.

10. At the outset, we may clarify that the issue under consideration is limited to the *locus* of the petitioner to institute Company Petition for winding up against the respondent-Company in respect of his claim for unpaid salary, wages and emoluments whilst he was in the employment of respondent-Company. We may not be understood to have expressed any opinion about the merits of that claim, which will have to be considered by the Company Judge after the reference is answered.

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[9] (2010) 10 SCC 553

11. Indisputably, the petitioner was appointed by the respondent-Company vide employment letter dated 18.04.2008 to manage its Asset Management Business in Singapore. The petitioner submitted resignation vide letter dated 14.09.2009 for the stated reasons. According to the petitioner, he has not been paid his monthly salary and other emoluments as per the contract after 01.04.2009 and until the date of his resignation. The respondent-Company has not challenged the fact that the petitioner was employed in the Company between 18.04.2008 to 14.09.2009.

12. In the backdrop of the abovesaid facts, it must follow that the outstanding or unpaid wages/salary of the workman/ employee is a "debt" to be paid by the Company. The expression "debt" has not been defined in the Act. Going by the meaning of term "debts" as understood in common parlance, it is a sum of money due from one person to another. It would not only mean the obligation of the debtor to pay, but also the right of the Creditor to receive and enforce payment. Further, no distinction can be made between remuneration due to be recovered and the sum which is to be recovered as price of goods purchased on credit. The Supreme Court in the case of **Kesoram Industries**

and Cotton Mills Ltd. (supra) after considering several decisions on the point from paragraph 23 onwards, summarized the position in paragraph 33, which is as follows:-

> "**33**. To summarize : A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in *praesenti* or *in futuro; debitum in praesenti, solvendum in futuro.* But a sum payable upon a contingency does not become a debt until the said contingency has happened. ……."

13. The application for winding up of the Company, as predicated by Section 439 of the Act, can be presented by the specified enumerated persons. Clause (b) of Sub-section (1) thereof, mentions of any Creditor or Creditors, including any contingent or prospective creditor or creditors. The ground on which relief of winding up of Company can be pursued by the Creditor is ascribable to Section 433(e) of the Act. It envisages - where the company is unable to pay its debts. Where the company is unable to pay its debts, by a deeming provision inserted in the form of Section 434, it is envisaged that if the company fails to respond to the demand made by way of legal notice exceeding the specified amount, there is legal presumption that the company is unable to pay its debts. Indeed, that legal position is rebuttable. Going by the legislative

Scheme, it is, therefore, amply clear that any creditor can invoke the jurisdiction of Company Court praying for winding up of Company.

14. Therefore, the moot question is : whether the petitioner qualifies the definition of creditor in the context of his claim regarding unpaid wages, salary and emoluments receivable from the respondent-Company where he was employed during the relevant period.

15. The expression "Creditor" is intrinsically linked to the expression "debt"/ "debts". Wherever it is a case of "debts", the person, who is entitled to receive the amount, as belonging to him, is necessarily a creditor. No provision of any statute much less of the Companies Act has been brought to our notice, which expressly or impliedly excludes the dues to be received by the employee – be it, in service or former employee – from the character of a debt to be paid by the Company; and for which reason the person so employed is not a creditor of the Company, within the meaning of Section 439 or any other provision of the Companies Act.

16. We may now deal with the decision of the learned Company Judge of Our High Court in the case of **Pawan**

Kumar Khullar (supra). In that case also, the petitioner had filed Company Petition for winding up of the Company on the assertion of non-payment of his salary. The Company Judge observed that there is difference between debt and salary. Further, the salary is the remuneration paid to a person or employee in lieu of services rendered by him/her whereas debt is not remuneration. Debt is something which is borrowed by a person on settled terms and conditions and settled rate of interest and can be re-settled between the parties.

17. With utmost respect, we disagree with this opinion. It is not possible to countenance that unpaid salary is not a debt, in view of the exposition of Supreme Court in **Kesoram Industries and Cotton Mills Ltd.** (supra) and also the meaning of expression "debt" as understood in common parlance mentioned in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, Vol.2 at page 1238 till 1243. It is noted that debt means any pecuniary liability, whether payable presently or in future, or whether ascertained or to be ascertained. It means any liability which is claimed as due from any person. Indeed, it must be a legally payable amount or dues. In the Earl Jowitt's Dictionary of English Law, it is noted that debt is a sum of

money due from one person to another. A debt exists when a certain sum of money is owing from one person to another. Debt denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment. Referring to the case of DPP v. Turner, (1973)3 ALL ER 124, it is noted that debt normally has one or other of two meanings. It can mean an obligation to pay money or it can mean a sum of money owed. It is unnecessary to multiply the other illustrations, referred to in the said dictionary, except to mention that expression "debt" has to be given widest amplitude to mean any liability which is claimed as due from any person.

18. The Andhra Pradesh High Court has had occasion to consider similar issue in the case of **Capt. B.S. Demogray** (supra). Even in that case the petitioner, who had invoked remedy of Company Petition for winding up of the respondent-Company, was an employee of that Company and had resigned from the post of Trainee/Captain before institution of the petition. In that case, resignation was not accepted by the Company till the filing of the petition. In that sense, it was a case similar to the facts of Pawan Kumar Khullar, as the petitioner was in employment of the Company or worker of the

Company. In the present case, however, it is admitted that the petitioner has already tendered resignation and there is nothing to indicate that resignation was still treated as pending. Be that as it may, the Company Judge of the Andhra Pradesh High Court disagreed with the view taken by the Company Judge of Our High Court in **Pawan Kumar Khullar** (supra). It will be useful to reproduce the relevant part of the said decision, which reads thus:

> "In the case of Kesoram Industries and Cotton Mills Ltd. v. CWT [1966] 59 ITR 767, the apex court, after discussing various decisions, has observed that (pages 780 and 787) :
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> > "a debt means a sum of money which is now payable or will become payable in future by reason of present obligation *debitum in praesenti, solvendum in futuro.*
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> > A debt involves an obligation incurred by the debtor and the liability to pay a sum of money in present or future. The liability must, however, be to pay a sum of money, i.e., to pay an amount which is determined or determinable in the light of factors existing on the date when the nature of the liability is to be ascertained."
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> The claim of short delivery of materials has been held to be debt in the case of *Kudremukh Iron Ore Co. Ltd. v. Kooky Roadways P. Ltd.* [1990] 69 Comp Cas 178 (Kar). The unpaid salary of an employee is liable to be recovered from the employer, because the employer is obliged to a pay it to the employee for the services rendered by it. As noted above, a debt is a sum which is to be

> recovered from a person who is obliged to pay the same and, therefore, no line of demarcation can be drawn between a remuneration due to be recovered and a sum which is to be recovered because a person has to pay for the price goods which has been purchased by him on credit. With respect I am unable to agree with the view taken by the learned single judge of the Madhya Pradesh High Court in the case of *Pawan Kumar Khullar v. Kaushal Leather Board Limited* [1996] 87 Comp Cas 130 : AIR 1996 MP 85. I, therefore, hold that an unpaid salary is also a debt."

19. This decision has been approved by the Division Bench of the Andhra High Court in the case of **M. Suryanarayana** (supra). Even in the case before the Division Bench, the petitioner was an employee of the respondent-Company and had resorted to Company Petition for winding up of the Company in respect of unpaid salary as debt within the meaning of Section 433(e) of the Act. The Division Bench referred to the meaning of word "debt" as given in Black's Law Dictionary, fifth edition, which, *inter alia*, mentions that there must be an existing obligation to pay sum of money now or in future. The Division Bench proceeded to observe thus:

> "17. Before dealing with this specific question, the larger question raised by the learned counsel for the respondent-company that under no circumstance salary due to an employee or officer of the company could be a 'debt' in the context of Section 433(e) of the Act has to be considered for it goes to the root of the matter. This contention, in our

> considered opinion, is required to be noticed only to be rejected. It is trite that an employee or officer of the company, on completion of the wage period or salary period and after serving the company, acquires a right to claim wage/salary, as the case may be, and he assumes the character of a creditor and the company becomes a debtor. It cannot be gainsaid that an employee of the company, after serving a company for a wage period or salary period, say for a month, if he or she acquires a right to claim for payment of salary and if the company does not pay the salary within the stipulated time under the contract or the relevant regulations governing terms and conditions of service, undoubtedly the employee can bring a legal action to enforce his/her right to recover the salary due to him or her against the company. The definition of the word "debt", as understood in the well-known treatises as well as English and Indian courts, to put it pithily, means a sum of money which is presently payable. In other words, there must be debitum in presenti. There are no good reasons to take out 'salary due to an employee' from the company from the meaning of the word "debt" in the context of section 433(e) of the Act…..”

20. After adverting to the decision of Our High Court in the case of **Pawan Kumar Khullar** (supra), the Division Bench of Andhra Pradesh High Court went on to observe as follows:-

> “……..With great respect, we are not in a position to accept the opinion of the learned single Judge of the M.P. High Court recorded in paragraph 4 of the above judgment as correct position in law. A learned single Judge of this Court, Krishna Saran Shrivastva, J., in Capt. B.S. Demogray v. VIF Airways Ltd, [1998] 94 Comp Cas 291 : [1998] 1 An.WR 743, had occasion to consider the question whether the unpaid salary of an employee from the

company could be a "debt". The learned judge, after referring to the judgment of the Madhya Pradesh High Court in *Pawan Kumar Khullar's case* [1996] 87 Comp Cas 130 : AIR 1996 MP 85, has held (page 293 of 94 Comp Cas) :

* …….[10]

We are in respectful agreement with the view taken by the learned single judge of this court in the above judgment. In deciding the question whether arrears of salary could be a "debt", in our considered opinion, section 530(1)(b) of the Act also in a way suggests that arrears of salary payable to an employee of the company can be treated as a debt. Section 530 deals with preferential payments in the matter of clearing the outstanding debts of the company. Section 530(1)(b) reads:

"Section 630. Preferential payment:- (1) In a winding up, subject to the provisions of Section 529A, there shall be paid in priority to all other debts-(a) ….

(b) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in Sub-section (2):"

Section 530(1)(b) speaks of wages in respect of services rendered to the company as a preferential charge. If wages and salary payable to an employee of the company in respect of services rendered to it is made a preferential charge under the Act, there is no good or sound reason to take out the arrears of salary or salary already due to an employee of the company from the definition or meaning to the concept "debt" in the context of Section 433(e) of the Act. Therefore, we hold that in a given case,

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[10] * …… Already reproduced in paragraph 18 above.

> even arrears of salary due to an employee of the company which is sought to be wound up can be a "debt" within the meaning of that term under Section 433(e) of the Act and it cannot be said as a general rule, that under no circumstance, arrears of salary or salary due to an employee of the Company can be a "debt".”

21. Besides the decision of the Division Bench of the Andhra Pradesh High Court, even the Company Judge of Delhi High Court has answered the issue against the Company. The argument canvassed before us that after the decision of the Supreme Court in **National Textile Workers' Union** (supra), in particular observations found in para 7 of the said judgment, the right to apply for winding up of Company being a creature of statute, and no such right having been conferred on the workers, they cannot prefer a winding up petition against a Company, has been examined. The background in which these observations have been made by the Supreme Court has been pithily analyzed by the Company Judge of the Delhi High Court, from pages 59 to 62; and concluded that the said observations are in the context of the argument raised on behalf of the Company in the said proceeding about the *locus* of the workers to intervene. In other words, the Court was dealing with the said argument of the

Company that the workers have no right to be heard in the said proceedings and that extreme argument has been negatived.

22. Suffice it to observe that the Delhi High Court has justly analyzed the observations of the Supreme Court in **National Textile Workers' Union** (supra); and relying on Section 439 of the Act, has noted that when the worker becomes a Creditor, he will have a right to institute petition as a creditor of the Company. In substance, the Court has noted that it is one thing to refuse to entertain the prayer for winding up at the instance of the employee concerned, which is within the discretion of Company Court and can be done in larger interests of the public. But, to say that the worker has no locus to maintain petition for winding up of a company in respect of his claim for unpaid salary/wages is untenable. The latter cannot be countenanced, in the light of the express provision in Section 439 read with Sections 433 and 434 of the Act. Taking any other view, would be re-writing the said provisions to mean that unpaid salary is not a debt within the meaning of Section 433(e) and the employee, who owes unpaid salary from the Company even after ceases to be employee of that Company is not a

Creditor of the Company, in relation to the claim of unpaid salary and wages.

23. Notably, the Delhi High Court was also considering the petitions of two ex-employees and held that Company Petition for winding up filed by them against the Company in relation to unpaid salary/wages for the period when they were working with the respondent-Company, could be maintained by them as Creditors.

24. The decision of the Supreme Court in **IBA Health (India) Private Limited** (supra) pressed into service by the respondent, in our view, deals with completely different proposition. Further, we fail to understand as to how observations made in paragraph 34 of the said decision can support the argument of respondent-Company - that Company Petition by a former employee of the Company for recovery of his dues, is not maintainable.

25. That leaves us with the decision of the Company Judge of the Bombay High Court in the case of **Mumbai Labour Union** (supra). Even this decision has been correctly analyzed by the Company Judge of the Delhi High Court in the case of **Argha Sen** (supra). The apprehension of the

respondent-Company that on the interpretation given by the Division Bench of the Andhra Pradesh High Court and Company Judge of the Delhi High Court, if accepted, may result in encouraging avoidable litigation to be filed by the disgruntled employees and Trade Unions, does not commend to us. The provision, such as, Section 439 read with Sections 433 and 434, providing for remedy to class of persons, cannot be interpreted on such apprehensions.

26. As aforesaid, none of the provisions in the Companies Act persuade us to take the view that the claim of worker or employee regarding his unpaid salary, wages or emoluments cannot be treated as debt or dues payable by the Company. Once that contention fails, it would necessarily follow that the workman is a Creditor of the Company to the extent of his unpaid wages and salary. This view is reinforced from Chapter-V of the Companies Act. For, Section 529, defines the purport of expression “workmen’s dues”. Further, Section 529A provides for Overriding Preferential Payments in respect of workmen’s dues. There is preferential right to receive those dues guaranteed under Section 530 of the Act over other dues. The fact that special preference in payment of workmen’s dues

has been specified in the Act, does not mean that the workmen are excluded from the term "creditors" or that the amount of unpaid salary, wages or emoluments of the workmen is not a debt payable by the Company, as such.

27. Counsel for the respondent-Company invited our attention to Sub-section (5) of Section 530 of the Act including the distinction made between workman and the employee of the Company. The fact that no specific reference is made to the dues of employees in Section 529A unlike workmen's dues, to be paid as overriding preferential payments, does not mean that the amount receivable by the employees, who may not be workmen as such, is not a debt or that they are excluded from the term "creditors" in any manner. The remedy provided under Section 433 and 434 of the Act is to all the creditors, known by whatever description – be it, in respect of goods purchased from them or services rendered by them, as the case may be. It is not possible to exclude one amongst those, considering the sweep of Sections 433 and 434 and in Section 439 of the Act.

28. Reverting to the question referred for being considered by us, we may improvise the same as to whether the unpaid wages/salary of a former workman/employee, as in the

present case, can be the foundation for resorting to remedy of winding up of Company under Sections 433(e) and 434 of the Act. We agree with the opinion of the Division Bench of the Andhra Pradesh High Court in **M. Suryanarayana** (supra) and of the Company Judge of the Delhi High Court in **Argha Sen** (supra).

29. We accordingly, hold that the employee of the Company has locus to file Company Petition in respect of his unpaid wages/salary and emoluments, as having been filed by a creditor of the Company. As a concomitant, the opinion of the learned Company Judge of our High Court in the case of **Pawan Kumar Khullar** (supra), is overturned.

30. While parting, we may clarify that we may not be understood to have expressed any opinion on the merits of the claim of the parties or for that matter on the question relevant for exercise of discretion of the Company Judge to entertain the Company Petition, in any manner. Those issues will have to be decided at the appropriate stage.

31. We further clarify that we may not be understood to have expressed any opinion on whether the Trade Unions have locus to espouse the cause of workmen/employees regarding

unpaid salary/wages against the Company by way of a Company Petition. That question can be decided in appropriate proceedings, as it is not relevant in the present case.

32. **We answer the issue referred to us on the above terms and direct the Registry to forthwith place the matter before the Company Judge (Indore Bench) for further consideration in accordance with law.**

33. We also place on record word of appreciation for the able assistance given by the counsel appearing for both the sides; and, in particular, in the matter of preparation and presentation of compilation of relevant decisions at the commencement of the hearing.

(A.M. Khanwilkar) (Shantanu Kemkar) (J.K.Maheshwari)
Chief Justice Judge Judge

shukla