

**CA No. 49 of 2025
C/W CA NO.86 of 2025
CA No. 89 of 2025**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE DAY OF , 2026

R

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

COMPANY APPLICATION NO. 49 OF 2025

C/W

COMPANY APPLICATION NO. 86 OF 2025

COMPANY APPLICATION NO. 89 OF 2025

IN

COMPANY PETITION NO.160/2005

IN CA NO. 49/2025

BETWEEN:

OMKARA ASSETS RECONSTRUCTION
PRIVATE LIMITED
(A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956)
REGISTERED AS A SECURITIZATION AND ASSETS
RECONSTRUCTION COMPANY,
PURSUANT TO SECTION 3 OF SARFAESI ACT,
KOHINOOR SQUARE, 47TH FLOOR,
N.C. KELKAR MARG, R. G. GADKARI CHOWK,
DADAR (WEST), MUMBAI-400 028,
REP. BY RITESH SAWANT, CHIEF MANAGER.

...APPLICANT

(BY SRI. K G RAGHAVAN, SENIOR COUNSEL FOR
SRI. VIGNESH SHETTY, ADVOCATE)



**CA No. 49 of 2025
C/W CA NO.86 of 2025
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AND:

1. THE OFFICIAL LIQUIDATOR OF
M/S. BPL ENGINEERING LIMITED
(IN LIQUIDATION) ATTACHED TO
HIGH COURT OF KARNATAKA,
"CORPORATE BHAVAN", NO.26-27,
12TH FLOOR, RAHEJA TOWERS,
M.G. ROAD, BENGALURU-560 001.
2. THE DEPUTY COMMERCIAL TAX OFFICER,
PATAN CHERU SANGAREDDY CIRCLE,
NIZAMABAD DIVISION, MEDAK DISTRICT,
TELANGANA-502319.
(AS DIRECTED BY HON'BLE COURT
THE RESPONDENT HAS BEEN IMPEADED
DATED 26.06.2025)

...RESPONDENTS

(BY SRI. SHRISHAIL RAGHAVAN FOR OL - R1,
SRI. MANU PRABHAKAR KULKARNI, ADVOCATE FOR R2)

THIS COMPANY APPLICATION IS FILED UNDER SECTION
151 OF CIVIL PROCEDURE CODE READ WITH RULE 6 AND 9 OF
THE COMPANY (COURT) RULES, 1959, PRAYING THIS HON'BLE
COURT TO, RECALL THE NOTICE OF ATTACHMENT DATED
25.10.2007 AND 24.11.2011 ISSUED BY COMMERCIAL TAX
DEPT., (ANNEXURE A), IN THE INTEREST OF JUSTICE.

IN CA NO. 86/2025:

BETWEEN

COMMERCIAL TAX DEPARTMENT
GOVERNMENT OF TELANGANA,
HYDERGUDA - ASHOK NAGAR CIRCLE, ABIDS DIVISION
D.NO:5-4-435, 2ND FLOOR,
OLD KAKTIYA BUILDING, NAMPALLY STATION ROAD,
NAMPALLY, HYD - 500001, REPRESENTED BY ITS
COMMERCIAL TAX OFFICER AND
ASSISTANT COMMISSIONER (ST)

...APPLICANT

(BY SRI. MANU PRABHAKAR KULKARNI, ADVOCATE)

AND

1. OFFICIAL LIQUIDATOR OF
BPL ENGINEERING LTD.
ATTACHED TO HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN", NO.26-27, 12TH FLOOR,
RAHEJA TOWERS, M.G.ROAD,
BENGALURU - 560 001.

2. OMKAR ASSETS CONSTRUCTION
PRIVATE LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956,
HAVING REGISTERED OFFICE AT:
NO.9, M.P.NAGAR FIRST STREET,
KONGU NAGAR EXTENSION, TIRUPUR,
TAMIL NADU, INDIA-641 607.

ALSO HAVING ADDRESS AT:
KOHINOOR SQUARE, 47TH FLOOR,
N.C.KELKAR MARG, R.G.GADKARI CHOWK,
DADAR (WEST), MUMBAI - 400028
REPRESENTED BY RITESH SAWANT, CHIEF MANAGER.

(AMENDED AS PER ORDER DATED 20.02.2026 IN
CA.NO.5/2026)

3. KOTAK MAHINDRA BANK LTD
ASSETS RECONSTRUCTION DIVISION
5TH FLOOR, SAMSON TOWER
NO.402-L, PANTHEON ROAD
EGMORE, CHENNAI 600008
REPRESENTED BY ITS EXECUTIVE VICE PRESIDENT
SRI PARAG DHOLAKIA.

4. HDFC BANK LTD
DEPARTMENT FOR SPECIAL OPERATIONS
2ND FLOOR, ESEL CHAMBERS 7 & 7/1,
LALBAGH ROAD, RICHMOND CIRCLE,
BENGALURU - 560027.
REPRESENTED BY ITS SENIOR MANAGER
SRI FRANCY RAJU.

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5. ASSET RECONSTRUCTION COMPANY
(INDIA) LTD., (ARCIIL)
THE RUBY, 10TH FLOOR,
29, SENAPATHI BAPAT MARG, DADAR (WEST)
MUMBAI 400028
REP. BY ITS CHIEF MANAGER
SRI. ASHISH SHAHI.

6. JAMMU AND KASHMIR BANK
ZONAL OFFICE (SOUTH)
UNION STREET OFF INFANTRY ROAD
BENGALURU - 560001
REPRESENTED BY ITS CHIEF MANAGER
MR. FARID AHMED KHAN.

7. SICOM LIMITED
SOLITAIRE CORPORATION PARK
BUILDING NO.4, 6TH FLOOR
GURU HARGOVINDJI ROAD
(ANDHERI GHATKOPAL LINK ROAD)
CHAKALA , ANDHERI (EAST)
MUMBAI, MAHARASHTRA 400093
REPRESENTED BY ITS ASST. MANGER
SRI PRAMOD CHAUHAN.

8. KSIIDC LIMITED
KARNATAKA STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
NO 49, KHANIJA BHAVAN
4TH FLOOR, EAST WING
RACE COURSE ROAD,
BENGALURU 560001
REP. BY ITS GENERAL MANAGER
SRI. ESWARA.

9. BANK OF BAHRAIN AND KUWAIT
JOLLY MAKER CHAMBERS II
GROUND FLOOR, 225 MARIMAN POINT
MUMBAI 400021,
REPRESENTED BY ITS LEGAL MANAGER
SRI. NEMISH KUMAR.

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10. CANARA BANK ARM I BRANCH
ASSET RECONSTRUCTION DIVISION
2ND FLOOR, CIRCLE OFFICE,
SPENCER TOWERS, NO.86, M.G.ROAD
BENGALURU - 560001,
REP. BY ITS CHIEF MANAGER
SRI. PRASHANT PANDEY.

11. STATE BANK OF INDIA
ASSET RECOVERY MANAGEMENT BRANCH
MYSORE BANK BUILDING, BKG COMPLEX
A BLOCK, 2ND FLOOR, AVENUE ROAD,
BENGALURU - 560009
REPRESENTED BY ITS CHIEF MANAGER
SRI. VENKATARAMAN DAS G.

12. CENTRAL BANK OF INDIA
MERCHANT BANKING DIVISION
DEBENTURE TRUSTEE SECTION
4TH FLOOR, CEBTRAK BANK BUILDING
M.G. ROAD, FORT, MUMBAI 400028,
REPRESENTED BY ITS AUTHORIZED OFFICER
MR. A. KESHAV BANGERA.

13. IFCI LIMITED,
IFCI BHAVAN, 4TH FLOOR,
2, CUBBONPET MAIN ROAD,
N R SQUARE, BENGALURU 560002,
REPRESENTED BY ITS ASST. GENERAL MANAGER,
SRI. P. SIVAKUMAR.

14. ICICI BANK,
ICICI BANK TOWERS,
BANDRA KURLA COMPLEX,
BANDRA EAST, MUMBAI 400051,
REP. BY ITS LEGAL MANAGER.

...RESPONDENTS

(BY SRI. SHRISHAIL NAVALGUND, FOR OL - R1,
SRI. K.G. RAGHAVAN, SENIOR COUNSEL FOR
SRI. VIGNESH S.SHETTY, ADV. FOR R2)

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THIS COMPANY APPLICATION IS FILED UNDER SECTION 151 OF CODE OF CIVIL PROCEDURE, 1908 READ WITH RULES 6 AND 9 OF THE COMPANIES (COURT) RULES, 1959 PRAYING THIS HON'BLE COURT TO RECALL THE COMMON ORDER DATED 12.09.2024 PASSED BY THIS HON'BLE COURT IN COMPANY APPLICATION NOS.33, 34 AND 240 OF 2024 IN COMPANY PETITION NO.160 OF 2005; AND ETC.

IN CA NO. 89/2025

BETWEEN:

COMMERCIAL TAX DEPARTMENT,
GOVERNMENT OF TELANGANA,
HYDERGUDA - ASHOK NAGAR CIRCLE,
ABIDS DIVISION D.NO.5-4-435,
2ND FLOOR, OLD KAKTIYA BUILDING,
NAMPALLY STATION ROAD,
NAMPALLY, HYD- 500001
REPRESENTED BY ITS COMMERCIAL TAX OFFICER
AND ASSISTANT COMMISSIONER (ST)

...APPLICANT

(BY SRI. MANU PRABHAKAR KULKARNI, ADVOCATE)

AND:

1. OFFICIAL LIQUIDATOR OF BPL ENGINEERING LTD.
ATTACHED TO HIGH COURT OF KARNATAKA,
"CORPORATE BHAVAN", NO.26-27, 12TH FLOOR,
RAHEJA TOWERS, M.G. ROAD, BENGALURU- 560 001.
2. OMKARA ASSETS CONSTRUCTION PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING REGISTERED ADDRESS AT:
NO.9, M.P. NAGAR FIRST STREET, KONGU NAGAR
EXTENSION,
TIRUPUR, TAMIL NADU, INDIA - 641 607

ALSO HAVING ADDRESS AT:
KOHINOOR SQUARE, 47TH FLOOR,

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CA No. 89 of 2025

N.C.KELKAR MARG, R.G.GADKARI CHOWK,
DADAR (WEST), MUMBAI- 400028
REPRESENTED BY RITESH SAWANT, CHIEF MANAGER.

...RESPONDENTS

(BY SRI. SHRISHAIL NAVALGUND, FOR OL- R1
SRI. K.G. RAGHAVAN, SENIOR COUNSEL FOR
SRI. VIGNESH S.SHETTY FOR R2)

THIS COMPANY APPLICATION IS FILED UNDER SECTIONS 446(2)(D), 529 AND 529-A OF THE COMPANIES ACT, 1956 READ WITH RULE 9 OF THE COMPANIES (COURT) RULES, 1959, PRAYING THIS HONBLE COURT TO I) PERMIT THE APPLICANT TO SELL THE PROPERTY AT PLOT NO.1 TO 8, INDUSTRIAL DEVELOPMENT AREA OF PASAMILARAM VILLAGE, PATANCHERY MANDAL, MEDAK DISTRICT TO RECOVER THE DEBTS OWED TO THE APPLICANT UNDER THE ANDHRA PRADESH GENERAL SALES TAX ACT, 1957, CENTRAL SALES TAX ACT, 1956 AND ANDHRA PRADESH VALUE ADDED TAX ACT, 2005 AND ETC.

THESE APPLICATIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12TH JUNE, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV JUDGMENT

These three Company Applications are heard together as the order in one will have a bearing on the other two.

2. C.A. No.49/2025 is filed by Omkara Assets Reconstruction Private Limited ("Omkara Assets"). The said application is filed to recall the attachment notices dated 25.10.2007 and 24.11.2011 issued by the Commercial Tax Department of Andhra Pradesh, now the State of Telangana ("CTD"). The CTD is arrayed as respondent No.2 in C.A. No.49/2025.

3. C.A. No.86/2025 is filed by the CTD seeking recall of the order dated 12.09.2024 passed by this Court in C.A. Nos.33/2024, 34/2024 and 240/2024 in C.O.P. No.160/2005 permitting Omkara Assets to sell the property outside the winding-up proceedings.

4. C.A. No.89/2025 is filed by the CTD seeking leave of the Court to sell the property comprising Plots No.1 to 8 situated in the Industrial Development Area, Pashamylaram Village, Patancheru Mandal, Sangareddy District (as per the latest valuation report), formerly Medak District (as described

in the Company Applications), Telangana, for recovery of the dues payable to the CTD under Andhra Pradesh General Sales Tax Act, 1957 ("APGST Act"), the Central Sales Tax Act, 1956 ("CST Act"), and the Andhra Pradesh Value Added Tax Act, 2005 ("APVAT Act").

5. The relevant facts are as follows:

5.1. M/s BPL Engineering Limited ("BPL") mortgaged the immovable property in question as security for the loans availed on 01.12.1997 and 22.06.1998 in favour of an IDBI Bank-led consortium. The total extent of the land covered under the mortgage is 42.99 acres situated at Pashamylaram Village, Patancheru Mandal, Sangareddy District (as per the latest valuation report), formerly Medak District (as described in the Company Applications). The security interest was created over the aforesaid property under two registered documents dated 01.12.1997 and 22.06.1998.

5.2. BPL defaulted in repayment of the loan. On 30.12.2001, the loan account was classified as a Non-Performing Asset ("NPA") by the secured creditor, IDBI. Subsequently, on 30.09.2004, IDBI assigned the debt to the

Stressed Assets Stabilisation Fund ("SASF"). On 20.11.2008, SASF issued a demand notice to BPL for recovery of the outstanding dues.

5.3. In the meantime, on 25.10.2007, the CTD issued an attachment order for recovery of tax arrears amounting to Rs.1.81 crores.

5.4. On 18.04.2011, SASF, in exercise of its powers under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), took physical possession of the secured property.

5.5. On 24.11.2011, the CTD issued another attachment order for recovery of commercial tax arrears amounting to Rs.72.21 crores.

5.6. Admittedly, the said tax dues payable to the CTD were not discharged by BPL. Thereafter, the CTD issued a sale notice dated 16.02.2012 proposing to auction the property of BPL for recovery of the tax arrears and asserted a Statutory first charge under the relevant enactments.

5.7. SASF challenged the aforesaid sale notice by filing a writ petition before the High Court of Andhra Pradesh. The High Court of Andhra Pradesh granted an interim stay in favour of SASF. During the pendency of the said writ petition, this Court, by order dated 19.11.2012 passed in C.O.P. No.160/2005, ordered the winding up of BPL.

5.8. On 05.05.2021 the security interest was registered under Chapter IVA of the SARFAESI Act, by SASF.

5.9. In view of the winding-up order dated 19.11.2012 passed by this Court, the High Court of Andhra Pradesh, by order dated 23.09.2023, disposed of the writ petition filed by SASF as having become infructuous, while reserving liberty to SASF to approach the Official Liquidator appointed by this Court and seek such relief as may be available in law.

5.10. On 31.08.2024, SASF assigned its rights to recover the loan dues from BPL to the present applicant, Omkara Assets. Thereafter, by order dated 12.12.2024 passed in C.A. No.33/2024, Omkara Assets was substituted in place of SASF.

6. By order dated 12.09.2024, Omkara Assets was permitted to sell the property outside the liquidation

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proceedings. Omkara Assets claims that several attempts to auction the property failed because the attachment orders issued by the CTD continued to be reflected in the revenue and property records.

7. In the above background, Omkara Assets filed C.A. No.49/2025 seeking recall of the attachment orders dated 25.10.2007 and 24.11.2011 issued by the CTD, principally contending that the secured creditor has priority over all other claimants under the provisions of the SARFAESI Act, particularly in view of the insertion of Section 26E therein.

8. The CTD has filed C.A. No.86/2025 seeking recall of the order dated 12.09.2024 whereby Omkara Assets was permitted to sell the property outside the liquidation proceedings. The CTD contends that it has a Statutory first charge over the property and that, such charge takes precedence over the claim of the applicant in C.A. No.49/2025.

9. In addition, as already noticed, the CTD has filed C.A. No.89/2025 seeking leave of this Court to sell the aforesaid property for recovery of the outstanding tax arrears.

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10. Learned Senior Counsel appearing for Omkara Assets submitted that, Section 26E of the SARFAESI Act, introduced by the Amendment Act of 2016 and brought into force in 2020, has retroactive application and, therefore, applies to all transactions that have not attained finality and are still pending adjudication. Elaborating the submission, it was contended that even if the provision is prospective in operation, it may nevertheless operate retroactively so as to govern all pending proceedings in which the competing claims have not yet been finally adjudicated.

11. In support of the said contention, the learned Senior Counsel placed reliance on the judgment of the Apex Court in ***Vineeta Sharma v. Rakesh Sharma and Others***¹.

12. In addition, it is urged that the law was amended to fill the gap in the SARFAESI Act, which, though enacted to ensure speedy recovery of dues payable to financial institutions, did not provide for a statutory first charge in favour of secured creditors.

¹ (2020) 9 SCC 1

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13. Referring to the judgment of the Hon'ble Apex Court in ***Punjab National Bank v. Union of India and others***², the learned Senior Counsel submitted that the Apex Court has held that a secured creditor has priority over unsecured Crown debts. It is urged that the tax dues claimed by the CTD are not secured debts and, therefore, the CTD cannot assert a first charge in derogation of the rights of Omkara Assets, which has stepped into the shoes of the secured creditor.

14. Attention of the Court is also invited to the judgment of the Co-ordinate Bench in ***Canara Bank v. State of Karnataka and Others***³ to contend that the charge in favour of a secured creditor under the SARFAESI Act would prevail over the claim under the Goods and Services Tax Act, 2017 ("GST Act"). Applying the same principle, it is urged that the claim of the CTD of a Statutory first charge over the secured asset is liable to be rejected.

15. The learned Senior Counsel further submitted that, the security interest in favour of IDBI was created on

² (2022) 7 SCC 260

³ W.P No. 103730/2025 decided on 23.09.2025

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01.12.1997 and 22.06.1998. The CTD issued the first attachment order on 25.10.2007 for recovery of tax dues amounting to Rs.1.81 crore and the second attachment order on 24.11.2011 for recovery of Rs.72.21 crores, both orders long after the creation of the security interest in favour of the lending bank. It is, therefore, contended that the applicant, having acquired the rights of the lending bank, is entitled to enforce the security interest, which had come into existence much prior to the attachment orders.

16. Learned Senior Counsel also relied on the Full Bench judgement of the Bombay High Court in ***Jalgaon Janata Sahakari Bank Ltd. and another v. Joint Commissioner of Sales Tax and another and connected matters***⁴ to contend that, if the rights of the first charge holder are not crystallised then the registration under Central Registry of Securitisation Asset Reconstruction and Security Interest of India ("CERSAI") effected on 05.05.2021 by the applicant Omkara Assets would confer priority payment rights overriding the Statutory first charge.

⁴ 2022 SCC OnLine Bom 1767

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17. Learned counsel for the respondent-State submitted that, Section 26E of the SARFAESI Act employs the expressions "after the registration of security interest" and "shall be paid in priority over all other debts", but does not create or recognise a Statutory first charge over the property. Since Section 26E of the SARFAESI Act does not override an existing Statutory first charge over the property, the Statutory first charge available in favour of the respondent-State remains unaffected. In support of the said submission, reliance was placed on the judgment of the Apex Court in **Jalgaon District Central Co-operative Bank Ltd. v. State of Maharashtra and Others**⁵.

18. Learned counsel for the respondent-State further urged that the Hon'ble Apex Court in **Punjab and Sind Bank v. State of Punjab**⁶ has held that Section 26E of the SARFAESI Act, introduced by Act No.44 of 2016, operates prospectively. It is submitted that, in view of the said judgement, there is no scope to contend that the provision has retroactive application. Reliance was also placed on the judgment of the Full Bench of

⁵ 2025 SCC OnLine SC 2513.

⁶ 2023 SCC OnLine SC 1894

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the Bombay High Court in ***Jalgaon Janata Sahakari Bank Ltd. (supra)***, to contend that Section 26E of the SARFAESI Act operates prospectively. It is also pointed out that the said view has been affirmed by the Apex Court in ***Punjab and Sind Bank (supra)***.

19. Elaborating the submissions, learned counsel urged that the concepts of prospective, retrospective and retroactive operation of a statute are distinct and mutually exclusive. As a consequence, once the Act or provision is declared as prospective, it cannot be declared as retroactive.

20. It was further submitted that the Co-ordinate Bench in ***Canara Bank (supra)***, was concerned with the interplay between the SARFAESI Act and the GST Act and was not dealing with competing claims arising under the SARFAESI Act on one hand and the APVAT Act, the APGST Act and the CST Act on the other, as in the present case and the binding decision of the Apex Court in ***Punjab and Sind Bank (supra)***, was not brought to the notice.

21. Referring to Article 254 of the Constitution of India, learned counsel further submitted that there is no repugnancy

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between the State enactments conferring a Statutory first charge in favour of the State and the provisions of the SARFAESI Act. It was further contended that, even assuming there is any repugnancy, the relevant State enactments have received the assent of the President and, therefore, the statutory first charge created thereunder in respect of the tax dues would prevail over all other claims, including those arising under the SARFAESI Act.

22. Urging that the right is vested in the State to enforce the statutory charge, it is submitted that the dues payable to the State are arrears of tax and that neither the liability nor the statutory first charge arises by virtue of the attachment orders issued in the years 2007 and 2011. According to the learned counsel, the liability arises, and the Statutory first charge comes into existence, the moment the tax liability is incurred. The tax liability in the present case arose as early as 1995. Consequently, the Statutory first charge in favour of the respondent-State came into existence much prior to the security interest created in favour of the lending bank in the years 1997 and 1998.

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23. Assuming that Section 26E of the SARFAESI Act has retroactive application, the rights of the CTD remain unaffected, as it had already crystallised by operation of the statute immediately upon the determination of the tax liability. According to the learned counsel, the pendency of litigation is not the criterion for determining whether rights have been crystallised.

24. In reply, the learned Senior Counsel appearing for Omkara Assets submitted that the Hon'ble Apex Court in ***Punjab and Sind Bank (supra)***, considered only the question whether Section 26E of the SARFAESI Act, operates prospectively or retrospectively. It was contended that, although the Apex Court held the provision to be prospective, it did not examine whether the provision also has retroactive application. It was therefore submitted that, this Court is not precluded from considering the question whether Section 26E of the SARFAESI Act has retroactive application.

25. The Court has considered the rival submissions advanced at the Bar, perused the material placed on record,

and examined the judgments relied upon by the learned counsel.

26. The following questions arise for consideration:

- (a) Whether the priority payment conferred under Section 26E of the SARFAESI Act prevails over the statutory first charge created in favour of the respondent-State under Andhra Pradesh General Sales Tax Act, 1957, the Central Sales Tax Act, 1956, and the Andhra Pradesh Value Added Tax Act, 2005, where the attachment orders for recovery of tax dues were issued prior to the registration of the security interest with CERSAI, but subsequent to the creation of the security interest under the registered mortgages?**
- (b) Whether a statutory provision introduced by way of amendment, though held to operate prospectively, can also have retroactive application? If so, whether the CERSAI registration entered on 05.05.2021 in respect of the mortgages created on 01.12.1997 and 22.06.1998 can affect the attachment orders issued in the years 2007 and 2011 pursuant to the Statutory first charge?**

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(c) Whether the statutory first charge is available in respect of the Tax dues under the Central Sales Tax Act, 1956? ("CST Act").

27. The relevant dates and events are extracted below for ready reference:

Sl. No.	Date	Event
1	01.12.1997 and 22.06.1998	BPL mortgaged its immovable property as security for the loan.
2	30.12.2001	The loan account was classified as a Non-Performing Asset.
3	30.09.2004	IDBI Bank assigned its debt to SASF.
4	25.10.2007	The CTD issued an attachment order for recovery of Rs.1.81 crores towards tax arrears.
5	18.04.2011	SASF, as assignee of the lending bank, took physical possession of the property under Section 13(4) of the SARFAESI

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		Act.
6	24.11.2011	The CTD issued another attachment order for recovery of Rs.72.21 crores towards commercial tax arrears.
7	19.11.2012	This Court passed an order winding up BPL in C.O.P. No.160/2005.
8	05.05.2021	The security interest was registered with CERSAI under Chapter IVA of the SARFAESI Act.
9	31.08.2024	SASF assigned its rights to recover the loan from BPL to Omkara Assets.
10	12.09.2024	C.A Nos 33/2024, 34/2024, 240/2024 are disposed of based on a joint memo agreeing to sell the property of the debtor to recover the dues. CTD is not a party to the proceedings.
11	20.02.2026	In C.A No. 6/2026 the Court has recorded the statement made by the counsel for Omkara Assets that, Omkara

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		Assets has taken recovery rights of 13 lending banks.
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28. Admittedly, neither the tax dues nor the loan dues have been recovered.

29. From the materials on record, the following facts emerge as undisputed:

- (i) The tax liability of BPL in favour of the respondent-State arose during the years 1995 and 1996 and, under the prevailing scheme, payment of the tax was deferred.
- (ii) The security interest in favour of the lending bank was created in the years 1997 and 1998.
- (iii) The loan account was declared as an NPA in the year 2001, and proceedings under the SARFAESI Act were initiated in the year 2008.
- (iv) IDBI assigned the secured debt to SASF in the year 2004.
- (v) The respondent-State issued the first attachment order in the year 2007 and the second attachment order in the year 2011.

(vi) On 31.08.2024, Omkara Assets acquired the secured debt from SASF.

Discussion on Question (a)

30. The Apex Court in ***Jalgaon District Central Co-operative Bank Ltd.*** (*supra*), (distinct from the judgment of the Full Bench of the Bombay High Court in *Jalgaon Janata Sahakari Bank Ltd.*), considered the question whether the ***priority payment*** conferred under Section 26E of the SARFAESI Act prevails over the ***statutory first charge*** created under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("the EPF Act").

31. Answering the said question in paragraphs 25 to 27, the Hon'ble Apex Court held as follows:

25. Hence, when there are two enactments conferring priority in satisfaction of a debt coming under the respective enactments, by virtue of a non-obstante clause overriding the provisions of any law in force at that time, the time in which the statute was enacted or the provision was incorporated, assumes significance and the provision latter in time would prevail. However, if there is a first charge statutorily created, validly, de hors the non obstante clause conferring priority over other debts, the statutory

charge would prevail. With these principles in mind, when we look at the provisions under the SARFAESI Act and the EPF&MP Act, the former with the incorporation of Section 26-E, we are of the opinion that there has to be found a first charge to the EPF&MP Act dues, under Section 11(2) of that Act.

26. We extract Section 11(2) of the EPF Act and Section 26-E of the SARFAESI Act hereunder.

"Sec. 11(2): Without prejudice to the provisions of sub-section (1), if any amount is due from an employer, whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.

Sec. 26-E: Priority to secured creditors—
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."

27. Undisputedly, SARFAESI Act is the latter act and if the question was solely of the non-obstante clause giving it overriding effect from any law for the time being in force, the SARFAESI Act would prevail. However, in the EPF&MP Act, Section 11(2) creates a statutory first charge on the assets of the

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establishment for any amount due from an employer, be it the employers' or employees' contribution, which would include any interest or damages also as has been held in Maharashtra State Co-operative Bank Limited. In that circumstance, the effect of the non obstante clause giving precedence over any other law for the time being in force pales into insignificance, as held in Central Bank of India. There being a clear first charge created under the EPF&MP Act, it overrides the priority under Section 35 and Section 13 as also that conferred under Section 26-E since a priority cannot be equated with a first charge and cannot be given prevalence over the first charge statutorily created.

(Emphasis supplied)

32. On a careful perusal of the judgment, two distinct principles emerge:

- (a) Where there are two enactments containing non obstante clauses which are in conflict with each other, the later enactment ordinarily prevails.
- (b) However, where the competing enactments deal with priority in the satisfaction of debts, the above principle does not automatically apply. The Court must first ascertain *whether a statutory first charge has been validly created*

*dehors the non obstante clause. If such a statutory first charge, dehors non obstante clause exists, it will prevail. In other words, a non obstante clause conferring **priority** in recovery must yield to a **statutory provision independently creating a first charge.***

33. To ascertain as to whether the statutory charge is created independent of non obstante clause, the Court now has to consider Sections 16(4) and 16C of Andhra Pradesh General Sales Tax Act, 1957. The said provisions read as follows:

"16. Payment of tax and other dues payable under the Act.

(1) xxxxx

*(4) If the tax assessed or penalty levied or interest payable under this Act or any instalment thereof, and the fees payable towards licence or registration, are not paid by a dealer within the time specified thereof, the whole of the amount then remaining unpaid may be recovered from him **as if it were an arrear of land revenue.***

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16C. Liability under this Act to be the first charge.

*-Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, Government loan extended to the dealer due to treating deferred tax as deemed to have been paid, penalty, interest and any other sum if any, payable by a dealer or any other person under this Act, **shall be the first charge on the property of dealer, or such person.**"*

(emphasis supplied)

34. Section 16C of the APGST Act, was introduced with effect from 06.04.1999 by way of amendment. Thus the said provision creates the first charge, over the tax dues.

35. Section 16(4) of the APGST Act creates **a first charge** over the tax dues, as it provides for recovery of tax dues as if they were arrears of land revenue. The reason is under the Andhra Pradesh Revenue Recovery Act, 1864 or the applicable Land Revenue Act, arrears of land revenue constitute a first charge over the property of the defaulter.

36. Thus, what emerges is Section 16C of the APGST Act does not, in substance, create a first charge over the

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property of a dealer in arrears of tax for the first time. It merely declares that such first charge shall operate notwithstanding anything contained in any other law for the time being in force, thereby facilitating the enforcement of the first charge recognised under Section 16(4) of the APGST Act.

37. This being the position, if the two principles laid down by the Apex Court in ***Jalgaon District Central Co-operative Bank Ltd. (supra)***, are applied, the non obstante clause contained in Section 26E of the SARFAESI Act does not override the Statutory first charge created under the State enactments, notwithstanding that the SARFAESI Act is the later enactment. The reason is that Section 26E of SARFAESI Act does not create a statutory first charge; it merely confers priority in payment.

38. It is true that the Full Bench of the Bombay High Court in ***Jalgaon Janata Sahakari Bank Ltd.(supra)***, held that such priority will prevail over a statutory first charge if certain conditions are satisfied, in view of the subsequent declaration of law by the Apex Court in ***Jalgaon District Central Co-operative Bank Ltd. (supra)***. This Court is bound

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to follow the view that, the priority conferred under Section 26E of the SARFAESI Act, cannot override a Statutory first charge validly created *dehors* the non obstante clause.

39. In ***Jalgaon District Central Co-operative Bank Ltd.*** (*supra*), the Apex Court considered the interplay between Section 26E of the SARFAESI Act and the statutory first charge created under the EPF Act, 1952 but not the statutory first charge under the Taxation law applicable to Andhra Pradesh. Because of that, one may urge that the ratio applies to a statutory first charge in a beneficial legislation and may not be applicable to the present case, where the respondent-State relies upon fiscal enactments. It may also be argued that Section 11(2) of the EPF Act, 1952 expressly creates both a statutory first charge and priority in payment, whereas the State enactments relied upon by the CTD create only a statutory first charge.

40. The aforementioned contentions are not tenable. The Apex Court in ***Jalgaon District Central Co-operative Bank Ltd.*** has taken the said view not because the EPF Act, 1952 is benevolent legislation, and assuming it to be so, that

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may be one of the reasons. The primary reason for interpretation is found in paragraphs No. 25 to 27 of the said judgment extracted above.

41. One may also contend that in ***Punjab and Sind Bank*** (*supra*), the Apex Court referred to Full Bench judgment in ***Jalgaon Janata Sahakari Bank Ltd.*** (*supra*) and held that Section 26E is prospective, and as a corollary the view of the Full Bench of the Bombay High Court which held that priority payment conferred under Section 26E of the SARFAESI Act overrides statutory first charge stands affirmed.

42. In ***Punjab and Sind Bank*** (*supra*), the Apex Court did not deal with the question whether the priority conferred in Section 26E of the SARFAESI Act supersedes statutory first charge. Though, a reference is made to the Full Bench judgment of the Bombay High Court, to hold that Section 26E of the SARFAESI Act is prospective, one cannot conclude that the Apex Court has endorsed the view of the Bombay High Court on priority payment under Section 26E. Said question was not raised before the Apex Court in ***Punjab & Sind Bank*** (*supra*).

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43. In ***Punjab and Sind Bank*** (*supra*), the secured creditor had issued a notice under Section 13(2) of the SARFAESI Act on 06.09.2013. The State, on the other hand, claimed a statutory first charge under the provisions of the Punjab Value Added Tax Act, 2005 ("PBVAT Act"), and initiated recovery proceedings in the year 2014. Both proceedings commenced prior to the insertion of Section 26E into the SARFAESI Act by the Amendment Act of 2016, which was brought into force on 20.01.2020. While deciding the case, the Hon'ble Apex Court took note of the subsequent amendment introducing Section 26E and held that the statutory first charge created under the State enactment would prevail over the claim of the secured creditor, since Section 26E operates prospectively. The Apex Court further held that Section 35 of the SARFAESI Act, as it stood prior to the amendment, did not eclipse the statutory first charge created under the State enactment and that there was no inconsistency between the provisions of the PBVAT Act and the SARFAESI Act with regard to the creation and enforcement of the statutory first charge.

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44. The Apex Court further observed that, prior to the 2016 amendment; the SARFAESI Act did not confer any statutory priority upon a secured creditor, whereas Section 35 of the PBVAT Act expressly created a statutory first charge over the assets of the tax defaulter.

45. In ***Punjab and Sind Bank (supra)***, the Hon'ble Apex Court also referred to its earlier decision in ***Central Bank of India v. State of Kerala and others***⁷ and reiterated that, prior to the 2016 amendment, neither the SARFAESI Act nor the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 created a statutory first charge in favour of secured creditors so as to override the statutory first charge created under the State enactments.

46. Thus, it is evident that on different grounds discussed afore-paragraphs No.43 to 45, the Apex Court in ***Punjab & Sind Bank (supra)***, has held that Section 26E is prospective. Thus, the said judgment by Apex Court is not an authority on the question whether the priority in payment under Section 26E of the SARFAESI Act, prevails over statutory

⁷ 2009 (4) SCC 94

first charge. Said judgment holds that Section 26E is prospective in operation. It is settled principle that the ratio is what the Court decides but not everything that logically flows from it.

47. At this juncture it also necessary to refer to Section 26C to Section 26 E in Chapter IVA of the SARFAESI Act which read as under

“CHAPTER IV A

*REGISTRATION BY SECURED CREDITORS AND OTHER
CREDITORS*

XXXX

26C. Effect of the registration of transactions, etc.—*(1) Without prejudice to the provisions contained in any other law, for the time being in force, any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction of such security interest or attachment order, as the case may be.*

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(2) Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or licence of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that *nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.*

26D. Right of enforcement of securities.—*Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.*

26E. Priority to secured creditors.—*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.

Explanation.—*For the purposes of this section, it is hereby clarified that, on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”*

48. Section 26B of the SARFAESI Act, deals with the registration of transactions creating, modifying or satisfying security interests and with the registration of attachment orders.

49. Section 26C(1) of the SARFAESI Act, declares that registrations made under Section 26B shall constitute public notice from the date and time of such registration.

50. Section 26C(2) the SARFAESI Act, provides that any transfer of property by way of sale, lease, assignment or licence, and any attachment effected subsequent to the registration under Section 26B, shall be subject to the claim of

the secured creditor or other creditor holding an attachment order who has registered the same with the Central Registry.

51. Section 26D of the SARFAESI Act, disentitles a secured creditor from enforcing its rights under Chapter III of the SARFAESI Act unless the security interest has been registered with the Central Registry (CERSAI). In other words, registration with the Central Registry (CERSAI) is mandatory for a secured creditor, as defined under Section 2(1)(zd), to invoke the remedies under the SARFAESI Act.

52. Section 26E of the SARFAESI Act recognises the priority of payment in favour of a secured creditor in respect of dues secured by a security interest that has been duly registered with the Central Registry.

53. A plain reading of Section 26E suggests that once the secured creditor has registered its security interest with the Central Registry, the debts due to such secured creditor are to be paid in priority over all other debts, including:

- (i) debts owed to the Central Government;
- (ii) debts owed to the State Government;

(iii) debts owed to local authorities; and

(iv) all other unsecured debts.

54. Section 26C(2) of the SARFAESI Act, contains the following expression;

*"where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration under the provisions of Chapter IV and this Chapter, the claim of such secured creditor or other creditor holding attachment order **shall have priority over any subsequent security interest created upon such property...**"*

(emphasis supplied)

55. *If the language employed in Section 26C(2) discussed above is kept in view, while interpreting Section 26E which merely recognises priority and not a statutory first charge over the assets, and if both provisions are read harmoniously, it appears that Section 26E operates to confer priority and recognises a superior right only in respect of debts, including Government dues, arising after registration under Chapter IVA of the Act. Therefore, even assuming that priority under Section 26E overrides a statutory first charge, such*

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contention could arise only in respect of statutory dues that arise after registration under Chapter IVA of the SARFAESI Act. The judgment in **Jalgaon District Central Co-operative Bank Ltd** (*supra*), delivered on 20.11.2025 has expressly decided the question as to whether the priority payment under Section 26E of the SARFAESI Act, overrides statutory first charge. The Court answered the question in the *negative*.

56. What emerges from above two decisions in **Jalgaon District Central Co-operative Bank Ltd, and Punjab and Sind Bank** (*supra*) are;

(a) the priority for recovery of dues under Section 26E of the SARFAESI Act does not override the *statutory first charge* if such statutory first charge is created *dehors non obstante* clause. (**Jalgaon District Central Co-operative Bank Ltd**) (*supra*).

(b) Section 26E of the SARFAESI Act, is prospective in operation (**Punjab and Sind Bank**) (*supra*).

In either case, the applicant Omkara Assets does not acquire priority.

57. However, the learned Senior Counsel would urge that even if the statute or provision is prospective, it can also be retroactive and would refer to the judgment of the Full Bench of the Bombay High Court in ***Jalgaon Janata Sahakari Bank Ltd (supra)***, and the judgment of the Apex Court in ***Vineeta Sharma*** and also the judgment in ***Securities and Exchange Board of India vs. Rajkumar Nagpal and others***⁸. Hence the *question (b)* is framed as above.

58. On behalf of Omkara Assets, reliance is also placed on the judgement in ***Assets Care and Reconstruction Enterprise Limited Vs Karnataka Real Estate and others***⁹ in addition to ***Canara Bank (supra)***. The above said judgements are of no assistance to applicant Omkara Assets in view of the law in ***Jalgaon District Central Co-operative Bank Ltd (supra)***.

Discussion on question (b)

59. In view of the finding of the Apex Court in ***Jalgaon District Central Co-operative Bank Ltd (supra)***,

⁸ (2023) 8 SCC 274

⁹ W.P No. 7844/2024 decided on 25.06.2024

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the question whether the Section 26E of the SARFAESI Act, is prospective or retrospective in operation does not survive at all insofar as the claim for priority payment over statutory first charge. The said question may arise in case of conflicting claims among secured creditors or holders of attachment orders. However, the question raised is of seminal importance and as arguments, have been addressed extensively, the Court would endeavour to answer the question.

60. More important, the “prospective”, “retrospective” or “retroactive” applications of a provision of a law or more particularly, the applications of said doctrines on the amended provision of law give rise to many disputes. Hence, it would be appropriate to endeavour to answer the question.

61. The Full Bench of the Bombay High Court in ***Jalgaon Janata Sahakari Bank Ltd. (supra)***, exhaustively examined the operation of Chapter IVA of the SARFAESI Act. One of the questions framed for consideration therein, namely Question (c), reads as under:

"44. xxxx

(c).Are the provisions, inter alia, according 'priority' in payment of dues to a secured creditor for enforcing its security interest under the provisions of the SARFAESI Act prospective?

xxx"

62. The Full Bench of the Bombay High Court has held that Section 26E operates prospectively.

63. Before answering the question, whether a provision which is declared as prospective can be declared as retroactive or also to be retroactive, in addition to being prospective, it is necessary to examine the concepts of prospective, retrospective and retroactive operation of statutes.

64. At this juncture it is necessary to refer to some of the observations of the Apex Court on such doctrines. In ***Securities and Exchange Board of India***(*supra*), in paragraphs No. 101 and 102 has held as under:

*"101. The terms "retrospective" and "retroactive" are often used interchangeably. However, their meanings are distinct. This Court succinctly appreciated the difference between these concepts in *State Bank's Staff Union (Madras Circle) v. Union of India*,*

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102. *Many decisions of this Court define "retroactivity" to mean laws which destroy or impair vested rights. In real terms, this is the definition of "retrospectivity" or "true retroactivity". "Quasi-retroactivity" or simply "retroactivity" on the other hand is a law which is applicable to an act or transaction that is still underway. Such an act or transaction has not been completed and is in the process of completion. Retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law. Merely because a law operates on certain circumstances which are antecedent to its passing does not mean that it is retrospective.*

(Emphasis supplied)

65. In paragraph No.61 in ***Vineeta Sharma (supra)***, the Apex Court described the nature of prospective, retrospective, and retroactive laws as under:

"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. xxxx"

66. Paragraphs No. 20 and 21 in **State Bank's Staff Union (Madras Circle) v. Union of India and others**¹⁰ read as under:

"20. *Judicial Dictionary (13th Edn.)* by K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. *Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25*, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

21. In *Advanced Law Lexicon* by P. Ramanath Aiyar (3rd Edn., 2005) the expressions "retroactive" and "retrospective" have been defined as follows at p. 4124, Vol. 4:

"Retroactive.—Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past.

— Also termed retrospective. (*Black's Law Dictionary, 7th Edn., 1999*)

"Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity",

¹⁰ (2005) 7 SCC 584

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consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion.... The foundation of these concepts is the distinction between completed and pending transactions...'
T.C. Hartley, *Foundations of European Community Law*, p. 129 (1981).

*Retrospective.—Looking back; contemplating what is past.
Having operation from a past time.*

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. *In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing."* (Vol. 44, *Halsbury's Laws of England*, 4th Edn., p. 570, para 921.)

(Emphasis supplied)

67. These expressions are not defined in any enactment. They are judicial constructs evolved while interpreting statutes, particularly amending enactments. Over a period of time, certain broad principles have emerged

governing their application, which may be summarised as follows:

(a) A statute operates retrospectively when it creates, alters or extinguishes rights or liabilities in respect of acts, transactions or events that occurred before its commencement, thereby affecting accrued or vested rights.

(b) A statute operates prospectively when it governs rights, liabilities and consequences arising from acts, transactions or events occurring after its commencement, without disturbing accrued or vested rights.

(c) Retroactive operation occupies an intermediate position. A statute may be regarded as retroactive where it applies to existing or pending situations by taking into account antecedent facts or events, without disturbing rights that have already vested or finally accrued.

(d) As a general rule, substantive provisions are presumed to operate prospectively unless a contrary legislative intention is evident, whereas procedural provisions ordinarily apply to pending proceedings.

(e) Declaratory or clarificatory amendments are generally regarded as retrospective.

(f) The above principles are not absolute. Whether a provision operates prospectively, retrospectively or retroactively depends upon the language employed, the legislative intent and the object sought to be achieved.

(g) Judicial decisions have also recognised sub-categories such as true retroactivity and quasi-retroactivity.

(h) Even where a statute expressly declares its operation to be prospective or retrospective, the Court may examine its true legal effect in the context of the legislative scheme. However, departure from the expressed legislative intent can be justified only in exceptional circumstances.

68. The Full Bench of the Bombay High Court in ***Jalgaon Janata Sahakari Bank Ltd.*** (*supra*) has held that a CERSAI registration effected before or after 20.01.2020 would confer priority in payment, including over a statutory first charge, provided that the statutory first charge had not crystallised into a vested right by the initiation of recovery proceedings in accordance with law. Thus, although the Full Bench held Chapter IVA to be prospective, it nevertheless took into account transactions and events that had occurred prior to

its introduction. In a way, the statutory first charge created by operation of law, and not crystallised into a vested right (for want of further steps to enforce statutory charge) yielding to CERSAI registration exhibits a degree of retroactive operation.

69. The Full Bench further held that where the rights of the holder of a statutory first charge had crystallised before the CERSAI registration, the statutory first charge would not be diluted by such registration. In that situation, the CERSAI registration obtained by the secured creditor would not confer priority over the statutory first charge. In such a scenario the CERSAI registration will confer priority only over subsequent charges, transfers and attachment orders but not statutory first charge in view of the law in ***Jalgaon District Central Co-operative Bank Ltd (supra)***. Then the application of the provisions will be prospective.

70. If the broad principles governing prospective, retrospective and retroactive applications are kept in mind, and also considering the actual application of the said principles as applied by the Full Bench of the Bombay High Court *supra*, it is possible to take a view that doctrines "prospective",

“retrospective”, “retroactive”, quasi retroactive”, “true retroactive” which are essentially judicial constructs cannot be applied like inflexible formula.

71. In a given legislative context, it is entirely possible that a statute may operate prospectively without taking into account any event or transaction that occurred before its commencement.

72. Likewise, a statute may be prospective in operation, yet, for achieving its legislative object, it may legitimately take into account acts and events that occurred before its commencement. In such a situation, whether the statute is described as prospective, retroactive, truly prospective or quasi-retroactive may not assume significance, since these expressions are only broad indicators and not sure-fire formulas for determining the application of the law.

73. In some cases such labelling may give a complete picture as to how the law operates eliminating any doubt as to the applicability of other doctrines. In some other case such labelling may not give a clear picture. These concepts provide broad guidance as to the manner in which an amended

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provision may operate, but they may or may not invariably fit every legislative situation into a single doctrine. If a Court, while declaring the operation of a statute, expressly or by necessary implication excludes the application of the other doctrines, the matter stands concluded accordingly. However, where the Court has not expressly or impliedly considered the applicability of the remaining doctrines, it may still be open to a subsequent Court to examine whether the provision admits of such application. The actual application of these doctrines depends upon the language of the statute, the legislative intent and the factual context in which the issue arises.

Discussion on question (c)

Whether the statutory first charge is available in respect of the dues recoverable under the Central Sales Tax Act, 1956?" ("CST Act").

74. This question assumes significance because, unlike the APGST Act and the APVAT Act, the CST Act does not expressly create a statutory first charge in respect of the dues payable thereunder. However, the CST Act provides a

mechanism for recovery of such dues through the authorities functioning under the State enactments.

75. The dues sought to be recovered by the CTD arise under three enactments, namely, the APGST Act, the APVAT Act and the CST Act. Of these, the CST Act does not expressly provide for a statutory first charge in favour of the Central Government. The APGST Act and the APVAT Act, however, specifically create a statutory first charge in respect of the dues recoverable thereunder. There is no dispute that both the State enactments confer such a statutory first charge.

76. Section 9 of the CST Act prescribes the mechanism for levy, collection and recovery of tax under the Act. Section 9(2), in particular, authorises the authorities empowered under the general sales tax law of the appropriate State to assess, reassess, collect and enforce payment of tax, interest and penalty payable under the CST Act, as if such amounts were payable under the State sales tax law. It further authorises those authorities to exercise all the powers available to them under the corresponding State enactment.

77. The language employed in Section 9 of the CST Act does not expressly provide for the creation of a statutory first charge. Nevertheless, the scheme of the provision leaves little room for doubt that the State authorities, who are empowered to recover dues under the CST Act, are entitled to exercise all the powers available to them under the State sales tax laws, including the power to enforce the statutory first charge created by those enactments.

78. This interpretation flows from the expressions:

"collect and enforce payment of tax ... as if the tax, interest or penalty payable under this Act is a tax, interest or penalty payable under the general sales tax law of the State";

And

"they may exercise all or any of the powers they have under the general sales tax law of the State."

79. These expressions clearly indicate that the provisions of the State enactments, including the statutory incidents attached to recovery proceedings, stand incorporated

into the CST Act for the purpose of recovery of dues, unless expressly excluded by the CST Act.

80. Since Section 9(2) incorporates, by reference, the recovery machinery contained in the State enactments, and there is no provision in the CST Act excluding the operation of the statutory first charge available under the State laws, the powers available under the State enactments must necessarily be read into the CST Act for the limited purpose of recovery.

81. Accordingly, this Court is of the considered view that the statutory first charge available under the State enactments is equally available for recovery of the dues payable under the CST Act.

82. Before concluding, this Court considers it appropriate to make certain observations regarding statutory provisions introduced by way of amendment.

83. Whenever a statute is amended, disputes frequently arise regarding the manner in which the amendment applies to conclude transactions which are subject matter of pending proceedings, concluded transactions which become subject

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matter of *lis* in proceedings initiated after the law coming in to force. Quite often, different High Courts have taken divergent views on whether a particular amendment operates prospectively, retrospectively or retroactively. As noticed earlier, Chapter IVA of the SARFAESI Act has itself given rise to divergent judicial opinions on its operation.

84. There are also instances where even the Hon'ble Apex Court has, in different contexts, examined whether a particular amendment operates prospectively or retrospectively. *The amendment to Section 6 of the Hindu Succession Act, 1956, by Act 39 of 2005, is one such illustration.* Suffice it to say such examples are galore.

85. Experience also shows that the characterisation of an amendment as prospective or retrospective frequently depends upon the manner in which the amendment is introduced. An amendment effected by substitution is often regarded as retrospective, though that is not an inflexible rule. Likewise, amendments introduced by using expressions "inserted" or "amended" are construed differently. These

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principles are only general guides and cannot be applied like a statute in every case.

86. Chapter IVA of the SARFAESI Act, has evoked the considerable debate on its application and interpretation. This is evident from the fact that there were a number of divergent views expressed by various courts and various benches. Whether a Statute or a provision of law or amended provision of law, has prospective or retrospective or any other kind of application, should not be a subject matter of debate.

87. It would always be desirable for the Legislature, while introducing an amendment, to indicate in clear terms whether the law or the amended provision is prospective, retrospective, retroactive and more important, with additional prescription as to how the amended provision is intended to apply to transactions and events that occurred prior to the amendment, to pending proceedings, and to future transactions. Such legislative clarity, though it may not altogether eliminate interpretative disputes, may substantially reduce conflicting judicial opinions.

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88. The importance of illustrations found in several enactments, such as the Indian Penal Code, 1860, the Indian Contract Act, 1872, the Transfer of Property Act, 1882 the Specific Relief Act, 1963 the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Sakshya Adhinyam, 2023 and the like, in capturing the true import of a provision is well known. However, perhaps unknowingly or unintentionally such a worthy practice is forgotten. It is high time it should be revived. Wherever needed and appropriate, the incorporation of illustrations while enacting or amending a legislation may greatly assist all stakeholders in the justice delivery system. After all the law is meant for the common man and should be drafted in the simplest possible way. It should never be a puzzle.

89. These observations should not be understood as an attempt by this Court either to legislate or to issue directions regarding legislative policy. This Court is conscious that such power does not vest in it. The Court is also conscious that legislation is a task by itself. The endeavour is only to draw attention on the issue which may result in different legislative

practices which, if adopted, may reduce uncertainty and avoid unnecessary litigation.

90. **CONCLUSIONS.**

- (a) *The statutory first charge under **Andhra Pradesh General Sales Tax Act, 1957, The Central Sales Tax Act, 1956 and The Andhra Pradesh Value Added Tax Act, 2005** created dehors the non obstante clause, is not affected by reason of registration of security interest/attachment order under the SARFAESI Act.*
- (b) *The declaration of a law, or a provision of a law, as "prospective" by itself in all circumstances cannot be said to have ruled out "retroactive" application of such law. The provision of law, which is declared as "prospective" by the Apex Court, excluding the "retrospective" and "retroactive" or any other kind of application, cannot be examined by the High Court to consider if such law has a retroactive application. However, if a law declared as "prospective", without dealing with the question on its "retroactive"*

application, then the Court can examine if such law has "retroactive" application.

- (c) *The statutory first charge applicable under the State enactments namely **Andhra Pradesh General Sales Tax Act, 1957, and The Andhra Pradesh Value Added Tax Act, 2005** also applies to recover the dues payable under The Central Sales Tax Act, 1956.*

91. In view of the foregoing discussion, C.A. No.49/2025 filed by Omkara Assets Reconstruction Private Limited to recall the attachment orders dated 25.10.2007 and 24.11.2011 passed by CTD is liable to be dismissed.

92. C.A. No.86/2025 filed by CTD to recall the order dated 12.09.2024 in C.A. Nos.33/2024, 34/2024 and 240/2024 is allowed as the said order is passed without hearing the Commercial Tax Department which has a claim over the property in question.

93. C.A. No.89/2025 is filed by the Commercial Tax Department seeking permission to sell the property of M/s BPL to recover the dues. Same has to be allowed in part. Sale of the

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property by CTD is permitted. The amount shall be deposited before the Official Liquidator attached to the High Court till further adjudication on other applications claiming right of recovery filed by Official Liquidator.

94. Accordingly, the following order is passed:

ORDER

- (i) C.A. No.49/2025 is ***dismissed***.
- (ii) C.A. No.86/2025 is ***allowed***. The order dated 12.09.2024 passed in C.A. Nos.33/2024, 34/2024 and 240/2024 is recalled.
- (iii) C.A. No.89/2025 is ***allowed***.
- (iv) The Commercial Tax Department is permitted to proceed with the sale of the property in accordance with law for recovery of the tax dues payable under the APGST Act, the APVAT Act and the CST Act.
- (v) On such sale of the property, the amount realised shall be deposited in the account maintained by Official Liquidator attached to this Court. Later, same shall be kept in fixed deposit in a nationalized bank for one year with auto-renewal mandate till the

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adjudication of the claims made by the
Official Liquidator.

(vi) No order as to costs.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

BRN/CHS