

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

SECRETARY OF STATE—Appellant

versus

THE PUNJAB INDUSTRIAL
BANK, LTD., LAHORE (IN
LIQUIDATION). } Respondent.

1931

Feb. 23.

Letters Patent Appeal No. 33 of 1930.

*Indian Companies Act, VII of 1913, sections 229, 230—
and Provincial Insolvency Act, V of 1920, section 61—conflict
between—Company—Winding-up—Crown debts—whether take
priority, if not of the kind specified in section 230 (1) (a) of
the Companies Act.*

Held, that section 229 of the Indian Companies Act makes the rules of bankruptcy applicable, as far as may be. Where, however, there is a conflict between the Indian Companies Act and the Insolvency Act, the provisions of the Companies Act must be given effect to.

And, that section 230 of the latter Statute was enacted to deal especially with the same questions as to priority as were dealt with by section 61 of the Provincial Insolvency Act with the object of superseding that section of the Insolvency Act and confining the decision on all such matters to the provisions of section 230 of the Companies Act.

Thus, claims by the Local Government for the expenses of an investigation (under section 138 of the Companies Act) into the affairs of a Company in Liquidation, not being such as are referred to in sub-section (1) (a) of section 230 of the Companies Act, are not entitled to priority.

Motor Emporium Company v. N. H. Moos (1), referred to.

In the matter of the Dehra Dun Mussoorie Electric Tramway Co., Ltd. (2), distinguished.

Appeal under clause 10 of the Letters Patent from the Judgment of Jai Lal J., dated the 12th March 1930.

CARDEN-NOAD, Government Advocate, for Appellant.

MADAN GOPAL, for Respondent.

BROADWAY J.—In 1923, the Local Government, on a report made to it by the Registrar, Joint Stock Companies, under section 137 (5) of the Indian Companies Act, took action under section 138 and appointed one *Sheikh* Din Muhammad to investigate the affairs of the Punjab Industrial Bank. The investigator so appointed made his investigation and furnished a report, whereupon on the 8th of January, 1924, the Local Government, acting under section 141 (3), passed an order directing that the expenses of the investigation amounting to Rs. 1,000 should be paid by the said Bank. The Local Government apparently itself paid this Rs. 1,000 to *Sheikh* Din Muhammad, and when the Bank went into voluntary liquidation on the 2nd of June, 1924, submitted its claim to the voluntary liquidator who registered it as a preferential claim.

Subsequently an order was passed directing the compulsory winding up of this Bank and an official liquidator appointed. The official liquidator refused to recognise the claim of the Local Government in respect of this sum of Rs. 1,000 as a preferential one. The Local Government then moved the District Judge of Lahore against the decision of the official liquidator. The learned District Judge, however, confirmed the action of the liquidator whereupon the Local Government preferred an appeal to this Court which came before Mr. Justice Jai Lal who, after an examination of the matter, dismissed the appeal.

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The Local Government represented by the Secretary of State for India has preferred this appeal under clause 10 of the Letters Patent and two questions have been argued before us. The first question is whether the debt in question was due to the Crown, and the second is whether all matters relating to priority of debts and the winding-up of a company under the Indian Companies Act were governed by section 230 of that Act or section 61 of the Provincial Insolvency Act.

I do not think it necessary to discuss the first question, as in my judgment the appeal must fail on the second point raised. Mr. Noad for the appellant contended that by virtue of section 229 of the Indian Companies Act the bankruptcy rules were made generally applicable to winding up proceedings under the Companies Act, thus attracting the provisions of section 61 of the Provincial Insolvency Act in matters relating to priority of claims. Under this section all debts due to the Crown are to be paid in priority to all other debts, but this priority does not affect the position of the secured creditors. Mr. Noad urged that inasmuch as it was considered advisable to give priority in certain cases, even over secured creditors, section 230 of the Indian Companies Act was enacted in order that certain specified Crown (and other) debts might be given a further preference. This contention is supported by a decision of the Bombay High Court in *Motor Emporium Company v. N. H. Moos* (1), while the conflict between section 61 of the Provincial Insolvency Act and section 230 of the Indian Companies Act was not under consideration in *In the matter of the Dehra Dun*

(1) 1927 A. I. R. (Bom.) 606.

Mussoorie Electric Tramway Co., Ltd. (1), the case relied on by Mr. Madan Gopal for the respondents. Certain English authorities have been referred to at the bar and have been discussed by Mr. Justice Jai Lal in his judgment. The law in England appears to be very clear. The rules of bankruptcy have been made applicable to winding up proceedings under the Companies Act, but inasmuch as the rules of bankruptcy in England and the rules of bankruptcy in India are different, I do not think that it is necessary for me to examine the English authorities cited.

There can be no doubt that the provisions of section 229 of the Indian Companies Act make the rules of bankruptcy applicable as far as may be. Where, however, there is a conflict between the Indian Companies Act and the Insolvency Act, it is clear that the provisions of the Companies Act must be given effect to. An examination of section 230 of the Companies Act and a comparison of its provisions with the provisions of section 61 of the Insolvency Act seems to me to render it very clear that it was the intention of the Legislature to confine the decision of all questions of priority to section 230. The classes of debts dealt with by the two sections are similar, namely, (a) debts due to the Crown and other local authorities, and (b) the salaries and wages of clerks and labourers, etc. In the case of section 61 all debts due to the Crown are given priority. Under section 230 of the Companies Act certain specified debts alone are given this priority and the priority is extended over the claims of certain secured creditors. In my judgment, section 230 of the Companies Act was enacted to deal especially with the same questions as to priority as were

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dealt with by section 61 of the Provincial Insolvency Act with the object of superseding that section of the Insolvency Act and confining the decision on all such matters to the provisions of section 230 of the Companies Act. In my judgment, therefore, the view taken by the learned Judge is correct and I would, therefore, dismiss this appeal without considering whether or not the claim can be regarded as a debt due to the Crown inasmuch as, admittedly, if it were a Crown debt, it does not fall within the purview of section 230 of the Indian Companies Act.

Parties to bear their own costs in this Court.

SHADI LAL C.J.

SHADI LAL C.J.—I concur.

N. F. E.

Appeal dismissed.