

**IN THE SUPREME COURT OF THE**  
**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an appeal in terms of section 5(2) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, against an order pronounced by the High Court exercising its jurisdiction under section 2 of the said Act.*

SC Appeal No. 210/2016

SC/HCCA/LA No. 48/2016

HC/(CIVIL)/50/2011/CO

*(With SC Appeal No. 209/2016 &*

*SC Appeal No. 208/2016)*

**(IN THE COMMERCIAL HIGH COURT)**

*In the matter of an application for winding up by Court under Part XII of the Companies Act No. 7 of 2007.*

Ran Malu Fashions (Private) Limited,  
No. 3,  
Bullers Lane,  
Colombo 07.

**PETITIONER**

**AND THEN BETWEEN**

Wallabha Jayathissa Liyanage Upali  
Wijayaweera,  
Acting Commissioner General of Labour,  
Department of Labour,  
Narahenpita,  
Colombo 05.

**INTERVINIENT- PETITIONER**

Vs

Ran Malu Fashions (Private) Limited,  
No 3,  
Bullers Lane,  
Colombo 07.

**PETITIONER- RESPONDENT**

**AND NOW BETWEEN**

***(IN THE SUPREME COURT)***

Expolanka Freight (Private) Limited  
No 10,  
Mile Post Avenue,  
Colombo 03.

**CREDITOR -APPELLANT**

Vs

Wallabha Jayathissa Liyanage Upali  
Wijayaweera  
Acting Commissioner General of Labour  
Department of Labour,  
Narahenpita,  
Colombo 05.

**INTERVINIENT PETITIONER**  
**- RESPONDENT**

Ran Malu Fashions (Private) Limited,  
No. 3,  
Bullers Lane,  
Colombo 07.

**PETITIONER- RESPONDENT-**  
**RESPONDENT**

P. E. A. Jayawickrama and G. J. David  
Liquidators of Ran Malu Fashions (Private) Ltd,  
C/O SJMS Associates,  
No. 11 Castle Lane,  
Colombo 04.

**LIQUIDATOR- RESPONDENT**

**Before** : **P. PADMAN SURASENA J**

**ACHALA WENGAPPULI J**

**MAHINDA SAMAYAWARDHENA J**

Counsel : Kaushalya Thilakarathne for the Creditor-Appellant instructed by Malin Rajapakse.

Susantha Balapatabendi PC, ASG with Milinda Pathirana SDSG, Anusha Jayatilaka SSC and Sureka Ahmed SC for the Intervent Petitioner-Respondent.

Nihal Fernando PC with Rohan Dunuwila and Anushka Weerakoon instructed by T. Pussewela for the Liquidator- Respondent.

Ravindranath Dabare instructed by Sanduli Karunaratne for the Intervent Petitioners.

Argued on : 21-10-2021

Decided on : 08-07-2022

**P Padman Surasena J**

The Petitioner-Respondent-Respondent (Ran Malu Fashions (Private) Limited) (hereinafter sometimes referred to as "Ran Malu Fashions"), filed the petition dated 25<sup>th</sup> October 2011 in the Commercial High Court of Western Province, under part XII of the Companies Act No. 7 of 2007 (hereinafter sometimes referred to as the "Companies Act"), praying that the said company Ran Malu Fashions be wound up by Court. The learned Commercial High Court Judge on the application made by Ran Malu Fashions (as per the motions dated 25<sup>th</sup> October 2011 and 27<sup>th</sup> October 2011),<sup>1</sup> had appointed Mr. P. E. A. Jayewickreme and Mr. G. J. David of SJMS Associates (hereinafter sometimes referred to as the "Liquidators"), as provisional liquidators of Ran Malu Fashions. The said appointment of the provisional liquidators has been produced marked **X3**.

Upon the said petition being advertised, a number of creditors of Ran Malu Fashions indicated their intention to appear at the hearing of the winding up Application. The Creditor-Appellant, Expolanka Freight (Private) Limited, (hereinafter sometimes referred to as "Expolanka") is one of the Companies that had given notice of its intention to be heard at the hearing of the winding up application.

Having dealt with various applications made by various parties including Expolanka, the learned Commercial High Court Judge by the order dated 18<sup>th</sup> January 2013 (produced marked **X4**), ordered that Ran Malu Fashions be wound up and confirmed the appointment of the provisional liquidators.

In carrying out the winding up process, the Liquidators filed several reports before the Commercial High Court informing Court about the progress of the winding up. Liquidators published notices calling on the creditors of Ran Malu Fashions to submit their claims upon which Expolanka submitted its claim for Rs. 1,774,333.06. Expolanka claims that

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<sup>1</sup> Vide page 1238 and 1240 of Vol I of the brief.

the Liquidators have accepted its claim as it has not received any notice of rejection of its claim either under section 357(4) of the Companies Act or under Rule 69 and 71 of the Companies winding up Rules 1939. Expolanka also claims that the Liquidators have categorized its claim as a claim by an unsecured creditor of Ran Malu Fashions.

In the course of the winding up process, the Liquidators had filed several reports. They, in their report produced marked **X 5** dated 05<sup>th</sup> June 2014,<sup>2</sup> informed Court, the mode of settlement of Secured Claims, Preferential Claims and Unsecured Claims.

In the aforesaid report (**X 5**), the Liquidators informed Court *inter alia*, that certain claims made by the Commissioner of Labour were paid in full, as they are preferential claims.

However, the Liquidators in the same report, sought permission of Court to categorize the claim for Rs. 428,119,086.50 made by the Commissioner General of Labour on account of compensation for termination of services under the Terminations of Employment of Workmen (Special Provisions) Act No. 45 of 1971 (hereinafter sometimes referred to as TEWA), under "Unsecured Claims". The Liquidators in the same report, also had sought permission of Court to pay only 63.7% of the claim for Rs. 428,119,086.50 forwarded by the Commissioner General of Labour relating to the recovery of compensation payable under TEWA by Ran Malu Fashions, to its employees for the termination of their employments.

Thereafter, the Commissioner of Labour made an application to court by way of a petition dated 10<sup>th</sup> September 2014 marked **X 6**<sup>3</sup> seeking to admit its claim of Rs. 428,119,086.50 under the TEWA, as a Preferential claim under section 365 of the Companies Act.

The other creditors including Expolanka filed objections against the said application made by the Commissioner General of Labour. The said objection dated 12<sup>th</sup> January 2015, has been produced marked **X 7**.<sup>4</sup>

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<sup>2</sup> Vide page 1125 of Vol I of the brief.

<sup>3</sup> Vide page 84 of Vol I of the brief.

<sup>4</sup> Vide page 151 of Vol I of the brief.

The learned Judge of the Commercial High Court, having considered the arguments, pronounced its order dated 25<sup>th</sup> July 2016, rejecting the objections raised by Expolanka and the other creditors, and admitted the claim of the Commissioner General of Labour for the sum of Rs. 428,119,086.50 as a Preferential Claim under section 365 of the Companies Act. The said order of the Commercial High Court, has been produced marked **X 10**.<sup>5</sup>

The learned Judge of the Commercial High Court in his order, has concluded that the claim made by the Commissioner General of Labour for Rs. 428,110,096.50, is a statutory due payable to the employees. He has then proceeded to hold that the claim made by the Commissioner General of Labour, is in fact, a Preferential Claim within the meaning of section 365 read with paragraph (g) of the Ninth Schedule to the Companies Act No. 07 of 2007 ((hereinafter sometimes referred to as the "Ninth Schedule"). Further, the learned High Court Judge has also stated that the claim made by the Commissioner General of Labour is not a Unsecured Claim. It is on that basis that the learned Commercial High Court Judge has stated that the Liquidators have no power to reduce the quantum of compensation decided and claimed by the Commissioner General of Labour and directed the Liquidators to comply with the above conclusion and submit a report to court in respect of the distribution of funds.

Being aggrieved by the aforesaid order, Expolanka preferred the Leave to Appeal Application (SC/HCCA/LA No. 48/2016) pertaining to the instant appeal (SC Appeal No. 210/2016) challenging the order dated 25<sup>th</sup> July 2016 of the Commercial High Court. The Liquidators too preferred the Leave to Appeal Application (SC/HCCA/LA No. 47/2016) pertaining to the appeal (SC Appeal No. 209/2016) challenging the same order (dated 25<sup>th</sup> July 2016) of the Commercial High Court.

This Court, when the said Leave to Appeal Application were supported before it, having heard the submissions of the learned Counsel for relevant parties, by its order dated 28<sup>th</sup>

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<sup>5</sup> Vide page 821 of Vol I of the brief.

October 2016, has granted Leave to Appeal in respect of the following question of law which reads as follows.

*"Whether the claim made by the Commissioner General of Labour under and in terms of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 as amended, can be considered as a preferential claim in terms of Section 365 and the 9<sup>th</sup> Schedule of the Companies Act No. 07 of 2007".*

The learned Counsel appearing in each of these appeals, agreed that the said appeals can be heard together. They also agreed that it would suffice for this Court to pronounce one judgment in respect of all these appeals as it is only a single pure question of law that has to be decided by this Court. i.e., the question of law, this Court has granted Leave to Appeal, in both of those appeals.

As the above question of law involves interpretation of the relevant provisions of law referred to therein, it would be convenient to commence the relevant discourse with the reproduction of those provisions. They are as follows:

Section 365 of the Companies Act No. 07 of 2007.

*365. (1) The liquidator shall pay out of the assets of the company the expenses, fees, and claims set out in the Ninth Schedule to the extent and in the order of priority specified in that Schedule and that Schedule shall apply to the payment of those expenses, fees, and claims according to its tenor.*

*(2) Without limiting paragraph 7(b) of the Ninth Schedule, the terms "assets" in subsection (1) shall not include assets subject to a charge, unless—*

*(a) the charge is surrendered or taken to be surrendered or redeemed under section 358; or*

*(b) the charge was when created, a floating charge in respect of those assets.*

Paragraphs 1 and 2 of the Ninth Schedule to the Companies Act No 07 of 2007.

*PREFERENTIAL CLAIMS*

1. *The liquidator shall first pay, in the order of priority in which they are listed: —*
  - (a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator;*
  - (b) the reasonable costs of a person who applied to the court for an order that the company be put into liquidation, including the reasonable costs of a person appearing on the application whose costs are allowed by the court;*
  - (c) the actual out-of-pocket expenses necessarily incurred by a liquidation committee.*
2. *After paying the claims referred to in paragraph 1, the liquidator shall next pay the following claims :—*
  - (a) all provident fund dues, employees trust fund dues and gratuity payments due to any employee;*
  - (b) income tax charged or chargeable for one complete year prior to the commencement of the liquidation, that year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Inland Revenue Act, No. 10 of 2006;*
  - (c) turnover tax charged or chargeable for one complete year prior to the commencement of the liquidation;*
  - (d) value added tax charged or chargeable for four taxable periods prior to the commencement of the liquidation, such taxable periods to be selected by the Commissioner- General of Inland Revenue in accordance with the provisions of the Value Added Tax Act, No. 14 of 2002;*
  - (e) all rates or taxes (other than income tax) due from the company at the commencement of the liquidation which became due and payable within the period of twelve months prior to that date;*



- (f) all dues to the Government as recurring payments for any services given or rendered periodically;*
- (g) industrial court awards and other statutory dues payable to any employee;*
- (h) subject to paragraph 4, all wages or salary of any employee whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the four months preceding the commencement of the liquidation;*
- (i) holiday pay becoming payable to an employee (or where the employee has died, to any other person in the employee's right), on the termination of the employment before or by reason of the commencement of the liquidation;*
- (j) unless the company has at the commencement of the liquidation, rights capable of being transferred to and vested in an employee under a contract of the kind referred to in section 24 of the Workmen's Compensation Ordinance, all amounts due in respect of any compensation or liability for compensation under that Ordinance, which have accrued before the commencement of the liquidation;*
- (k) subject to paragraph 4, amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee.*

Let me at this stage list out briefly, the main arguments advanced by the rival parties to this case.

The following main arguments have been advanced on behalf of the Liquidators and Expolanka:

- 1) The Companies Act No. 07 of 2007 does not list compensation to be paid under TEWA, as a preferential payment and if the legislature intended such claim to be included as a Preferential Claim, the legislature would have added it expressly in the same way it had added provident fund dues, employees trust fund dues and gratuity payments appearing in item No. 2(a) of the Ninth Schedule.

- 2) When interpreting "other statutory dues" referred to in item No. 2(g) of the Ninth Schedule, Court must adopt the *Ejusdem Generis* principle; as the said item No. 2(g) reads as "*industrial court awards and other statutory dues payable to any employee*", the phrase '*statutory dues payable to any employee*' must be confined to the same class or kind as "*industrial court awards*"; the said item No. 2(g) "*industrial court awards and other statutory dues payable to any employee*" must therefore be interpreted necessarily as "other statutory dues as set out in the Industrial Disputes Act".
- 3) The Ninth schedule refers only to situations where a state/party/employee has already earned the money sought to be recovered from the company being wound up, and not a future unearned unascertained or probable debt.

The following main arguments have been advanced on behalf of the Commissioner General of Labour:

- 1) The Commissioner of Labour exercises a statutory power when making an order under the provisions of section 6A of TEWA; a claim made as per such an order is therefore a statutory claim.
- 2) The words "*other statutory dues*" found in item No. 2(g) in the Ninth Schedule, should be interpreted literally and given its ordinary meaning as it is a general phrase.
- 3) A phrase conjoined by the word "and" must be read separately; the word "*and*" found in item No. 2 (g) in the Ninth Schedule clearly indicates that Industrial Court Awards **and** other statutory dues are two or more separate sets of remedies available to an employee under two or more separate statutes; item No. 2(g) cannot therefore be confined only to the Industrial Disputes Act; the Appellants have intentionally ignored the words "*and other*" when interpreting item No. 2(g).

Having observed the inter-connection of the above arguments, I would not think that they should be dealt with separately in isolation to one another. Thus, to start with, it would be prudent to consider the nature of the claim put forward by the Commissioner General of Labour. The said claim has been made on account of compensation payable for termination of services under section 6A of TEWA which is as follows:

*6A. (1) Where the scheduled employment of any workman is terminated in contravention of the provisions of this Act in consequence of the closure by his employer of any trade, industry or business, the Commissioner may order such employer to pay to such workman on or before specified date any sum of money as compensation as an alternative to the reinstatement of such workman and any gratuity or any other benefit payable to such workman by such employer.*

The word "Statutory" is defined in the Black's Law Dictionary 11<sup>th</sup> Edition, as follows;

- 1. Of, relating to, or involving legislation <statutory interpretation>*
- 2. Legislatively created <the law of patents is purely statutory>*
- 3. Conformable to a statute <a statutory act>*

Therefore, the word "Statutory" denotes something which emanates consequent to a provision in a legislative enactment. The phrase "*statutory dues*" must therefore mean the dues which emanate from the provisions of such legislative enactments.

Section 6A of TEWA which I have reproduced above, clearly shows that it is the statute namely TEWA, which has conferred the power on the Commissioner to order an employer to pay to a workman a sum of money as compensation as an alternative to reinstatement.

One could observe numerous provisions scattered throughout TEWA which confer statutory powers on the Commissioner. For example: section 13 of TEWA, empowers the Commissioner to make directions calling for material from an employer; sections 17 and 17A of TEWA empower the Commissioner, to hold inquiries for the purpose of implementing the substantive provisions of the Act. It is noteworthy that section 17 of TEWA requires the Commissioner to conduct the aforesaid inquiries complying with the

principles of natural justice. The fact that the Commissioner is required by law to comply with the principles of natural justice when conducting such inquiries, is a clear and unambiguous indication that the Commissioner in such instances decides the rights of the parties to such inquiry. No state functionary can decide the rights of parties without any statutory power being conferred upon such functionary. Therefore, this too is a clear indication that in all those instances the Commissioner exercises nothing but statutory powers. Those are all powers conferred on the Commissioner by TEWA.

Thus, when the Commissioner orders an employer to pay to a workman, a sum of money as compensation, there cannot be any doubt that the Commissioner exercises a statutory power vested in him under section 6A of the said Act.

Moreover, the Commissioner calculates the quantum of such sums of money payable as compensation as per the formula set out in the Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka No. 1384/07 dated 15<sup>th</sup> March 2005. This is a Gazette issued by the Commissioner of Labour exercising a statutory power namely section 6D of TEWA. The Commissioner General of Labour has produced the said Gazette marked **A** in the Commercial High Court. This further confirms the proposition that it is a statutory power which the Commissioner exercises when he orders an employer to pay to a workman a sum of money as compensation for termination of services under section 6A of TEWA.

The item No. 2(g) of the Ninth Schedule "*industrial court awards and other statutory dues payable to any employee*" contains two items. The first of those is "*industrial court awards*". The second is "*other statutory dues payable to any employee*". These two phrases are conjoined by the word "*and*". Therefore, they are two distinct items. Remedies available to an employee under Industrial Court Awards is different from a remedy available to an employee under other statutes which are commonly known as 'statutory dues'. The word "*other*" denotes statutes other than that under which an Industrial Court Award is made. If the argument of the Appellants is to be accepted, then that would amount to altering the phrase, "*other statutory dues*" to read as "such other statutory dues". Thus, if the argument of the Appellants is to be accepted, then they have

added the additional word "such" for their own benefit. However, it is the Appellants themselves who advocate the proposition that Court cannot read new words into existing provisions of law.

Maxwell on Interpretation of Statutes -12<sup>th</sup> Edition at page 33 states:

*"It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do." "We are not entitled" said Lord Loreburn L.C., "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself". A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in a consequence to have been unintentional" [emphasis added]*

The maxim *Ejusdem Generis* is applicable in situations where the relevant statutory provision contains an enumeration of specific words. Bindra, 10<sup>th</sup> Edition page 758 states that the presence of following requirements are necessary for the application of that rule when interpreting a provision of law.

- i. The statute contains an enumeration by specific words;*
- ii. The members of the enumeration constitute a class or category;*
- iii. The class is not exhausted by the enumeration;*
- iv. A general term follows the enumeration;*
- v. there is a distinct genus which comprises more than one species;*
- vi. there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires*

One does not find in item No. 2(g) of the Ninth Schedule any such enumeration or listing of things which can satisfy the requirement in (i) above. Since there is no enumeration or listing of things, rest of the above requirements have no application to item No. 2(g)

of the Ninth Schedule. Therefore, in my view, Court cannot apply the maxim *Ejusdem Generis* in the instant situation.

The phrase "statutory dues" is a phrase commonly used in Labour Law. That simply means entitlements a workman would get under statutory provisions. This does not refer to one piece of legislation. One would find entitlements of workmen under numerous statutes.

Thus, on the consideration of the above arguments, I am unable to accept the submission of the Appellants that the "*other statutory dues payable to any employee*" must be limited to dues only under the Industrial Disputes Act.

Another argument advanced by the Appellants is that if the legislature intended to include all and sundry (including TEWA), under the phrase "*other statutory dues*" it need not have specifically listed only certain statutes to the exclusion of the others. It is their argument that the legislature would have merely stated that all statutory dues (for employees) shall be treated as preferential payments and not specifically list only certain statutes in the Ninth Schedule. It is their submission that the legislature has specifically identified and included only certain statutes because it had wanted only those statutes to be given preference in a process of winding up. They submit that Court cannot add another statute into item No. 2(g) of the Ninth Schedule.

The Appellants at no stage challenged the liability of the company under liquidation to pay the amount of the claim put forward by the Commissioner General of Labour. Their only argument is that it should not be considered as a preferential payment in terms of item No. 2(g) of the Ninth Schedule.

During the argument, the Counsel for the liquidators highlighted the development of the Companies Act by comparing the old Companies Act (Act No. 17 of 1982) with the present Act (Act No. 07 of 2007) and submitted that in both Acts, the Legislature has not included and/or expressly excluded any compensation payable under TEWA. It would be relevant at this stage to glance through section 347(1) of the Companies Act No 17 of 1982 which states as follows:

347. (1) *In a winding up there shall be paid in priority to all other debts-*

- (a) income tax charged or chargeable for one complete year prior to the relevant date, such year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Inland Revenue Act, No. 28 of 1979;*
- (b) business turnover tax charged or chargeable for one complete year prior to the relevant date, such year to be selected by the Commissioner-General of Inland Revenue in accordance with the provisions of the Finance Act, No. 11 of 1963;*
- (c) all rates, or taxes (other than income tax) due from the company at the relevant date, and having become due and payable within the twelve months immediately prior to that date;*
- (d) all dues to the Government of Sri Lanka as recurring payments for any services given or rendered periodically;*
- (e) all provident fund dues, gratuity payments, and industrial court awards payable to any employee or workman;*
- (f) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the company during the four months immediately prior to the relevant date and. all wages (whether payable for time of work or for piece work) of any workman or labourer in respect of services so rendered;*
- (g) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding up order or resolutions;*
- (h) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the winding up, under such a contract with insurers as is referred to in section 24 of the*

*Workmen's Compensation Ordinance rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under such Ordinance, being amounts which have accrued before the relevant date.*

The Appellants rely on the fact that the "*employees trust fund dues*" which was not included in the order of priority under the Companies Act No. 17 of 1982 has been specifically included in the Companies Act No. 07 of 2007. It is their submission that if the legislature intended to include compensation payable under TEWA also in the order of priority in the Ninth Schedule of the Companies Act of 2007, it could have done it in the same way it added "*employees trust fund dues*" at the time it passed the new Companies Act in 2007.

Section 347 of the Companies Act No. 17 of 1982 was the then prevailed corresponding provision to the Ninth Schedule to the Companies Act No. 07 of 2007. Thus, it can be seen that although section 347 of the Companies Act No. 17 of 1982 had a place for the "*Industrial court awards*" in its long list, it had not recognized statutory dues (in that form) payable to an employee at any level in the said list. In contradistinction to the above, the present Act (Act No. 07 of 2007) has specifically listed 'statutory dues' in its Ninth Schedule. This development shows that the legislature has deliberately brought in "*statutory dues payable to any employee*" to the list in the Ninth Schedule to the Companies Act No. 07 of 2007. Item No. 2(g) is the level of priority, the legislature has thought fit it should confer on the category "*statutory dues payable to any employee*" in the Ninth Schedule. Had the Parliament intended to restrict "*other statutory dues*" only to dues arising out of the Industrial Disputes Act, the Parliament could have stated so to that effect by adding few more words to that item. However, that was not the case.

As has been adverted to above, according to section 365(1) of Companies Act No. 7 of 2007, it is mandatory for the liquidator to pay out of the assets of the company, the items set out in the Ninth Schedule in the order of priority specified in that Schedule. Thus, the items set out in the Ninth Schedule do not merely form a list of things but predominantly an order of priority. This is re-iterated at the very commencement of the Ninth Schedule



to the Companies Act No. 07 of 2007 by the phrase "*The liquidator shall first pay, in the order of priority in which they are listed*". It is in that backdrop that the legislature has deliberately prioritized "*all provident fund dues, employees trust fund dues and gratuity payments due to any employee*" by placing it as the first item in paragraph (2) of the Ninth Schedule. The legislature has not deliberately accepted that it should recognize the category "*statutory dues payable to any employee*" as an item requires a similar status of priority when paying out of the assets of the company. The paragraph 2(g) is the level/status of priority, the legislature had deliberately conferred on "*statutory dues payable to any employee*" in the Ninth Schedule. The legislature had wanted to give the exact same priority level/status to "*industrial court awards*" as well. In my view, that is the reason why the legislature in its wisdom has worded item No. 2(g) of the Ninth Schedule as "*industrial court awards and other statutory dues payable to any employee*". Therefore, in my view, it is not correct to argue that if the legislature intended to recognize the compensation payable under TEWA as a preferential payment, it should have added it specifically in the same way as employees' provident fund dues, trust fund dues and gratuity payments appearing in 2(a) of the Ninth Schedule. On the other hand, if the legislature had specifically recognized compensation payable under TEWA it would then deliberately give a different level of priority than the priority afforded commonly to all statutory dues. I am of the view that this is the mischief the legislature had wanted to avoid as there is no rational basis to recognize only the compensation payable under TEWA over the various other forms of statutory dues. Therefore, what the legislature had intended to prioritize at the level of paragraph 2(g) of the Ninth Schedule is not merely the compensation payable under TEWA but the category called 'statutory dues payable to any employee'. The argument of the Appellants that allowing TEWA to be read into item No. 2(g) in the Ninth Schedule would open the door for all other statutory dues, cannot succeed as the said term 'statutory dues' has been qualified by the phrase "*payable to any employee*" which automatically restricts the application of the provision.

For those reasons, I am unable to accept the argument of the Counsel for the Liquidators that if the legislature had wanted to give priority to the compensation payable under

TEWA, it should have specifically added it in no uncertain terms as it had done to the provident fund dues, employees trust fund dues and gratuity payments. Thus, when it is not possible to prevent 'the compensation payable under TEWA' falling under the category "*statutory dues payable to any employee*", it is not possible to prevent 'the compensation payable under TEWA' falling under item No. 2(g) of the Ninth Schedule to the Companies Act No. 07 of 2007.

Another argument put forward by the Liquidators and Expolanka is that the Ninth Schedule refers only to situations where a state/party/employee has already earned the money sought to be recovered from the company wound up and not future unearned unascertained or probable liabilities. In other words, their position is that the company wound up, should have already owed such money to state/party/employee as at the date of commencement of the winding up action. They argue that the compensation payable on account of termination of employment would be prospective damages and hence it was not the intention of the legislature to prioritize them over the creditors of the company who had actually lent money to the company. It is on that basis that they argue that item No. 2(g) of the Ninth Schedule should not be interpreted to include any claim under TEWA.

They made the above submission on the basis that the "*holiday pay becoming payable to an employee on the termination of the employment before or by reason of the commencement of the liquidation*" has been given a priority level [i.e., 2(i)] which is lower than that given to the item No. 2(g) in the Ninth Schedule. Thus, it is their submission that if prospective damages are given priority and paid (such as claims under TEWA), then the employees would lose what they had already earned. Therefore, it is their submission that such an interpretation would be prejudicial to the employees who have already worked and earned such money.

I am unable to subscribe to this view. It is not the way to look at the Ninth schedule. It has been the intention of the Parliament to regulate the termination of the services of workmen in certain employments by their employers. This was done by TEWA. In the following passage quoted from the Court of Appeal judgment in the case of Serendib

Coconut Products Ltd. (In Voluntary Liquidation) and others v Commissioner General of Labour and others<sup>6</sup> Justice Sripavan highlighted the importance of the above protection in following terms;

*"The Termination of Employment of Workmen, (Special Provisions) Act is a special legislation which makes special provision in respect of the termination of the services of workmen in certain employments by their employers. By closure the workmen are suddenly thrown out of employment for no fault of theirs and have to face hardships; that is why the legislature gives a discretion to the Commissioner to make an order for compensation."*

In light of the above, it is clear that such employees by the mere fact of working in such employments have earned the protection they have been afforded by the law of the country. In my view, it is unreasonable for the creditors to claim their payments over the payments due to the workmen for the loss of their livelihood. Their livelihood is something protected by law. Creditors engage in a form of business when they lend money. They take a risk when such lending is not secured. Workers are merely engaged in their employment and work for the company. These employments are secured by TEWA if they fall under that Act. Thus, I am of the view that the legislature has rightly intended to recognize such claims as a preferential claim as per item No. 2(g) of the Ninth Schedule. It is not necessary for the legislature to specifically state 'claims under TEWA' because such claims are any way recognized as statutory dues.

Although I observe that there are other several subsidiary arguments considered by the learned Commercial High Court Judge I do not think it necessary for me to re-visit each of those arguments again. This is because most of those arguments are arguments arising out of, or connected with the main arguments I have already dealt with, in this judgment. Suffice it to state here that I do not find that the learned Commercial High Court Judge had erred at any point pertaining to the conclusions relating to those arguments.

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<sup>6</sup> 2004 (2) Sri L. R. 137 at page 138.

For the foregoing reasons, I hold that the order made by the Commissioner of Labour for compensation under section 6A of the Termination of Employment (Special Provisions) Act, is a statutory due within the meaning of item No. 2(g) of the Ninth Schedule to the Companies Act No. 07 of 2007. Therefore, the claim made by the Commissioner General of Labour for Rs. 428,110,096.50 is a preferential claim in terms of section 365 read with paragraph 2(g) of the Ninth Schedule to the Companies Act No 7 of 2007. It is not an unsecured claim as categorized by the Liquidators.

There is yet another Appeal namely, SC Appeal No. 208/2016, the argument of which was also taken up along with the arguments of SC Appeal No. 210/2016 and SC Appeal No. 209/2016. In SC Appeal No. 208/2016 too, this Court, by its order dated 28<sup>th</sup> October 2016, has granted Leave to Appeal in respect of the same question of law. While SC Appeal No. 208/2016 is a different case between different parties except for the Liquidators, the Liquidators in all three appeals are the same. While the question of law in respect of which, this Court has granted Leave to Appeal remains the same, the learned Judge of the Commercial High Court in his order in SC Appeal No. 208/2016 has held that the payments payable under TEWA, cannot be treated as a Preferential Claim specified in item 2(g) to the Ninth schedule to the Companies Act. Thus, the decision of the Commercial High Court pronounced in SC Appeal No. 208/2016 is quite the opposite of what was decided by the learned Judge of the Commercial High Court in SC Appeal No. 210/2016 and SC Appeal No. 209/2016. It was the same set of counsel who represented the parties of that case (i.e. SC Appeal No. 208/2016) also in this court during the argument and they relied on the same arguments which I have already dealt with.

The learned Judge of the Commercial High Court in his order in SC Appeal No. 208/2016 has held that the legislature did not intend to recognize the compensation payable under TEWA as a preferential payment, as it had not added it specifically in the same way as provident fund dues, employees trust fund dues and gratuity payments appearing in 2(a) of the Ninth Schedule. I have already dealt with this argument.

Further, the learned Judge of the Commercial High Court in SC Appeal No. 208/2016 has also held that the phrase "*other statutory dues payable to any employee*" should not be

broadly interpreted as to encompass any other statutory dues payable to an employee. However, the learned Judge of the Commercial High Court is silent in that order as to what other meaning which should be given to the phrase "*other statutory dues payable to any employee*", if it cannot be interpreted according to its usual meaning. Does it mean that the said phrase is redundant? I do not think so. As I have already stated above, it has been inserted as yet another item in the Ninth Schedule. That must be understood in its general sense. In my view, the maxim *Generalia Verba Sunt Generalita Intelligenda* which means 'words are to be understood generally' is applicable to the phrase in section 2(g) "*other statutory dues*". It is a general term which need to be understood generally as it is not qualified by a subsequent word. For those reasons, I hold that the learned Judge of the Commercial High Court in SC Appeal No. 208/2016 has erred in coming to the conclusion that the compensation payable under TEWA, cannot be treated as a Preferential Claim specified in item 2(g) in the Ninth schedule to the Companies Act No. 07 of 2007.

Learned Counsel appearing in each of the above three appeals agreed that all the three appeals should be heard together and that it would suffice for this Court to pronounce one judgment in respect of all three appeals. This is because it is only a single pure question of law that has to be decided by this Court in all these three appeals. That is the question of law, this Court has granted Leave to Appeal, in all three appeals. I answer the aforementioned question of law in respect of which this Court has granted Leave to Appeal, as follows:

The claim made by the Commissioner General of Labour under the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 as amended, must be considered as falling under 'other statutory dues payable to any employee' (a preferential claim) in terms of section 365 and the item No. 2(g) in the Ninth Schedule to the Companies Act No 07 of 2007.

This judgment must apply to SC Appeal No. 210/2016, SC Appeal No. 209/2016 and SC Appeal No. 208/2016 as well.

I set aside the order dated 04<sup>th</sup> July 2016 pronounced by the learned Judge of the Commercial High Court in case No. HC Civil No. 03/2009/CO pertaining to SC Appeal No. 208/2016 (SC/HC/LA No. 39/2016).

I affirm the order dated 25<sup>th</sup> July 2016 pronounced by the learned Judge of the Commercial High Court in case No. HC Civil No. 50/2011/CO pertaining to SC Appeal No. 209/2016 and SC Appeal No. 210/2016.

**JUDGE OF THE SUPREME COURT**

**ACHALA WENGAPPULI J**

I agree,

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA J**

I agree,

**JUDGE OF THE SUPREME COURT**