

Recovery of Debts and Bankruptcy Act , 1993 (RDB Act), Section 31-B – Rajasthan VAT Act, Section 47

“We are yet considering the effect of the amended provision. The Apex Court has made analysis of a provision of first charge vis a vis secured creditor in the case of *Central Bank of India* (supra). The first charge was given supremacy than rights under mortgagee or to a secured creditor. The distinction between “first charge and secured creditor” is necessary to analyse scope of Section 26E of the Act of 2002 and Section 31B of the Act of 1993. The amended provisions are having overriding effect and give priority to the secured creditors vis a vis State dues. It does not, however, nullify the effect of first charge created on the property under the State Act. If intention of Parliament would have been to nullify the effect of first charge, the language of Section 26E of the Act of 2002 and Section 31B of the Act of 1993 would have been different as indicated by the Apex Court in the case of *Central Bank of India* (supra). It should have been with non-obstante clause and that secured creditors would have priority over the first charge created under a State legislation. The amendment made by Parliament is to give priority to the secured creditors vis a vis State dues without speaking about the first charge.”

G.M.G. Engineers & Contractor Pvt. Ltd., (S.B. Civil Writ Petition No.6872 of 2017, decided on 5.7.2017, Rajasthan),