(2002) 11 BOM CK 0045

In the Bombay High Court

Case No : Company Petition No. 385 of 2002

Board for Industrial and Financial Reconstruction — APPELLANT

Vs

Swadeshi Mills Co. Ltd. (in Liquidation) — RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Citation : (2002) 112 CompCas 698

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : N.D. Buch, for RMMS, V. Jaganathan, instructed by K. Ashar and Co. for the IDBI, B.K. Bali, instructed by Thakar and Bali, for Bank of Baroda and Geeta Shastri, for State, for the Appellant;

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—Perused the report dated October 23, 2002, submitted by the official liquidator. He wants ratification of his action in appointing 98 guards for 24 hours to safeguard the assets of the company (in liquidation) of M/s. C. D. Security Services Network Ltd. He has sought direction that the secured creditors, i.e., Bank of Baroda and IDBI should deposit the security charges with him.

2. Ms. Buch, learned counsel appearing for the RMMS, the representative union in the textile industry, has handed over the minutes of a meeting held on October 29, 2002, of the High Power Committee. It appears that the committee has decided that 45 security guards would be sufficient to protect the property. The Committee has assessed that 98 security guards were not required. Leaned counsel for the Bank of Baroda submits that his clients will not bear any security expenses. It is reflected that in the meeting held before the official liquidator at the time of taking possession of the property the representative of the IDBI had agreed to bear security charges. Even otherwise the IDBI has first claim over the immovable property and it will be in their interest to protect the property. It would therefore be in the interest of justice to direct the IDBI to bear the

charges of the 45 security guards to be appointed from the watch and ward department of the Swadeshi Mills. Ms. Buch submits that the RMMS shall take the entire responsibility of furnishing the list of the security guards to the IDBI within two weeks from today and the IDBI shall pay the wages of the 45 security guards on and after November 16, 2002. The official liquidator shall not be responsible for the security of the said property. It will be the responsibility of the IDBI to protect the property.

3. The IDBI shall pay bill submitted by M/s. C. D. Security Services Network Ltd. up to November 15, 2002.

4. In the present case one of the secured creditors is seriously opposing to pay for the security guards engaged by the office of the official liquidator on the ground of excessive bill. I have noticed that there are several such secured creditors in other matters who have opposed to foot the bill of the official liquidator for the security guards engaged through the private security guards agencies to protect and safeguard the properties of the companies under liquidation. It is significant to note that one of such secured creditors requested this court to discontinue the protection of the property as the worth of the property was not even Rs. 30 lakhs while the security bill was Rs. 35 lakhs ! There was another very serious complaint that on surprise checking it was found that the security guards were not present on the spot to guard the property and that thefts have taken place. It is a case of "who would watch the watchmen ?"

5. From the reports placed today before me by the learned official liquidator it appears that he is seeking ratification from this court of his appointing private security guards agencies to protect the properties of the companies under liquidation. According to me, he ought to have first taken permission/orders from this court before taking the decision to appoint the security guards. At that time the say of the secured creditors also could have been recorded to obviate their objections, if any. Henceforward he shall ordinarily first take orders from the company court before appointment of security guards and shall not seek ratification of his decisions subsequently.

6. The learned official liquidator perhaps is unaware of the fact that private security guards agencies are statutorily banned under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, which mandates engagement of a security guard through the Security Guards Board established under that Act. I, therefore, direct the official liquidator to send its requisition to the Board for supply of the security guards on terms and conditions statutorily determined, wherever the said law applies. And where the property-site falls outside the scope of the said Act, the official liquidator should ordinarily approach the employment exchanges for supply of watchmen/security guards or security supervisors. However, if the property protected happens to be a mill or a factory or an establishment having its own watch and ward department the official liquidator should first prefer them for the assignment instead of going to open market or to the Board or the Employment Exchange in search of security

guards. The official liquidator should also try to fix the whole responsibility of appointment, supervision and control and payment of wages to the security guards on some secured creditor/s if possible and feasible. The number of security guards should be left to the discretion of the creditors. Even the work of valuation of the property should be given to one of the secured creditors so that the burden on the office of the official liquidator can be reduced.

7. Even while making payment to the worker/s the office of the official liquidator should get him/them identified by the officer of the union of which he/ they/is/ are member/s and should not make him spend heavily for identification by an unknown advocate. As far as possible the identification should be got done by an officer of the employer or the union.

8. I hereby direct the office of the official liquidator to follow these directions strictly. In the case of any difficulty it should get appropriate orders from the company court.

9. The report is disposed of as above.

