
(1999) 05 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 88 of 1999 in C.P. No. 95 of 1996

Darshan Forgings (P) Ltd. (In Liquidation)

APPELLANT

Vs

Punjab Financial Corporation

RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

COMPANIES ACT, 1956 — Section 529

Citation : (2000) 1 CompLJ 53

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Rajesh Garg, for the Appellant; Ms. Sangeeta Dhanda, for the Respondent

Judgement

Swatanter Kumar, J.—This is a petition u/s 529 of the Companies Act (hereinafter referred to as the Act) read with rules 292 and 308 of the Companies (Court) Rules, 1989.

2. Darshan Forgings (P) Ltd. has been ordered to be wound up by the order of the Company Court, dated 6.1.1998 passed in CP 95 of 1996. Official liquidator attached to this court was appointed as liquidator of that company to take over charge of the assets and books of the company. The official liquidator stated that he had taken over possession on 9.5.1998. According to the official liquidator, though statement of affairs and balance sheet of the company have not been made available to him it appears from the available records that the respondents had sanctioned a liability to the tune of Rs. 27 lakhs to the company liquidation in the year 1993 and the factory and other premises belonging to the respondent company were mortgaged to the respondents, Punjab Financial Corporation. No funds are available with the official liquidator to meet the expenses which are being incurred by him to protect the properties and assets of the company. Therefore, the official liquidator claims that respondents be directed to pay a sum of Rs. 6,492 per month with effect from 9.5.1998 on account of security services and they be directed to make payment every month.

3. Upon service, though no reply was filed, it was stated on behalf of the respondents that they would be willing to take over the assets mortgaged to them and would not prefer to pay the charges for engagement of security services.

4. This argument is misconceived. The official liquidator is not only concerned with the secured creditors, but is also concerned with all the creditors on the one hand and all assets, properties, books and affairs of the company in liquidation, on the other. The assets may or may not be mortgaged to protect the interests of the secured creditors, but they still would be under the control and charge of the official liquidator. He has to protect the interests in relation to all such properties. A secured creditor cannot pre-determine its rights and claim any advantage over the properties of the company without having such rights and Liabilities of the company in liquidation determined through the process of law.

5. For the reasons aforesaid, respondents Punjab Financial Corporation, is directed to make the payment of Rs. 6,492 with effect from 9.5.1998 to the official liquidator, and it shall continue to make the said payment every month. Arrears shall be cleared within one month from today. Liberty is granted to the respondent company to approach the Official Liquidator, if they find that the security guard engaged are excessive or the salaries are excessive if such a request is made to the official liquidator, the official liquidator would look into the matter in presence of the representation of the respondent company.

6. The company petition is accordingly disposed of without any orders as to costs.