

(2009) 01 P&H CK 0134
In the Punjab And Haryana At Chandigarh

IFCI Ltd.

APPELLANT

Vs

Punjab Wireless System Ltd.

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Citation : (2009) 151 CompCas 523 : (2009) 4 CompLJ 167 : (2009) 154 PLR 569 : (2009) 92 SCL 96

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.

C.A. No. 907 of 2008.

Application allowed.

Exemption from filing certificate copies of Annexures A-1 and A-2 and permission to place on record true copies of the same is granted. C.A. No. 908 of 2008

1. The application has been presented at the instance of one of the secured creditors who has obtained a Recovery Certificate from the Debts Recovery Tribunal for recovery of Rs. 2,745 lacs as on 29.9.2000 by the decision of learned Tribunal dated 31.08.2001.

2. The cause of concern of the secured creditor for its inability to recover an amount, which is legitimately due by the failure of Official Liquidator to adjudicate the claims of all secured creditors including the workmen and distribute the sale proceeds, is required to be done. On an earlier occasion when the application has been moved before this Court, an order was passed on 23.11.2006 directing the Official Liquidator to apportion the sale proceeds of the assets of the company-in-liquidation after settling the claims of the creditors at an early date, preferably within a period of six months. The six months came and went passed and the sales proceeds in the hands of the Official Liquidator were not disposed of. Again there was an application filed, C.A. No. 607 of 2007, in

which similar claim was made and Official Liquidator took up an objection that there was no provision for making interim disbursements. An elaborate order was passed on 28.7.2008 rejecting the contention of the Official Liquidator that the Court could not make any interim disbursement within the reasonable limit and noting that direction for interim disbursement would always be subject to final adjudication of claims and court passed an order entitling the O.L. to consider the issue of interim disbursement. The amount had not been disposed of even subsequent to the order passed by this Court on 28.7.2008 and finding that there was undue delay in the conduct of O.L. in adjudicating the claims of the workmen, the secured creditor has again moved this application.

3. The workmen have filed C.A. No. 49 of 2009 seeking for impleadment of the Chartered Accountant who had been appointed by the O.L. for adjudicating the claims and C.A. No. 50 of 2009 for impleading the Employees Union, as parties. The response of the applicant to these applications were that a Chartered Accountant appointed through O.L. to consider the claims of various persons was merely to be ministerial act and there was no requirement for his impleadment. Similarly as regards the plea for impleadment of the workmen since their claims were being adjudicated before Official Liquidator, there was no necessity to implead the Employees Union in the application for interim disbursement. Although the Employees Union had not been impleaded since they were already parties before the Official Liquidator. I had permitted the counsel appearing for the employees also to make their submissions.

4. Applicant has objectors to the claim for interim disbursement or the Official Liquidator who had sounded in unison that so long as the claim of the workers have not been settled and the Chartered Accountant has not finalized the report, it shall not be fair to accommodate the claims of the applicant only. The learned Counsel appearing for the employees points out that the claims of workmen shall rank *pari passu* with the secured creditors and refers to a decision in *International Coach Builders Ltd. Vs. Karnataka State Financial Corpn.*, states that the term "*pari passu*" would mean: "equal steps, equally, without preference" if the claims of the workmen have not accommodated, there is no scope for only entertaining the claims of the applicant.

5. The Official Liquidator also objects to any interim payment especially when the Court has already granted six months more time to the Chartered Accountant to give his report by its order dated 16.01.2009 and any interim payment only to one secured creditor would give a privilege to one person to utilize a portion of the amount due to it prematurely while other persons similarly entitled are not being paid any amount. If any amount shall be paid to one of the secured creditors at the time when a final reckoning is made for distribution of the assets to all the secured creditors who rank *pari passu*, the person that obtains some amount through interim disbursements shall be liable to pay interest from the date when the amount is disbursed till the date of the final adjudication of all claims of order persons. The learned Counsel appearing for the O.L. contended that the

amount realized through the sale proceeds are right now earning interest and the premature disbursement of even a portion of the amount would deplete in sum interest accruals at least for a portion of the amount and to that extent the other persons like the workers who rank in their claims at par shall be deprived of that benefit.

6. I see the weight of objections raised on behalf of the workmen and the counsel for the Official Liquidator. The power of the O.L. to make interim disbursements itself cannot be a matter of serious doubt. If all relevant materials are available and a substantial body of creditors are identified, it shall always be possible to make interim disbursements, which would be subject to the final outcome of the adjudication after entertaining claims from all quarters. The gravity of the problem is seriously experienced only by the fact that the sale processes have taken place even in the year 2006 and the first direction of the Court for disbursement was made as early as on 23.11.2006, when it was expected that the claims would be disposed of, in six months from 23.11.2006. The applicant has a particular reason to nudge for its claims only because even after securing an award before the Debts Recovery Tribunal, amounts are not still being disbursed. The difficulty experienced by the O.L. in identifying all the creditors seems to be real because the company itself had its operations not merely in Haryana but also in the adjoining State of Rajasthan where it had another factory. Normally I would have directed that no interim disbursement could be made without definite data on the respective claims of the secured creditors and the workman. Since the adjudication regarding the entitlement of the workmen have not been finalized owing to the inability of the O.L. to receive all the claims and due to his experience of receiving more claims from several persons with applications to condone the delay, it will be inappropriate to keep it in a state of limbo endlessly and it will mean flouting of earlier direction of this Court where it had specifically laid down that there was justification for interim payment in favour of the applicant.

7. To set the scales even, I find that pending adjudication of all claims, the applicant would be disbursed a portion of the amount and having regard to the Award already passed by the Debts Recovery Tribunal, I direct that 25% of the claim less expenses incurred for the conduct of sale could be disbursed in favour of the applicant-company. This is wholly provisional and the amount could be disbursed on securing an undertaking that if there is any amount paid in excess than what the company financed, it shall reimburse the same. There shall be also a further liability on the Company to pay interest @ 9% from the date of disbursement till the date when accounts are drawn finally after considering all the claims and when the money is distributed to the workmen also. The direction for payment of interest by the Company that obtains a premature withdrawal was approved by a decision of a Division of the Madras High Court in *ICICI Bank Ltd. v. Official Liquidator* High Court, Madras and Ors. (2008) 142 Comp. Cas. 1 (Mad). This direction is only to assuage the claims of the workmen whose list has not been finalized and whose claims have not been fully addressed although they

are equally entitled. Even at the time of disbursal, if the O.L. has obtained a sizable number of claims from workmen, it shall be open to the O.L. to determine a portion of the amount that would bear the same proportion which the applicant-Company is being paid out of its total entitlement with similar restriction regarding the understanding and payment of interest as issued to the applicant-Company.

8. The above application is disposed of in the above terms. The applications for impleadment in C.A. Nos. 49 and SO are disposed of as unnecessary.