(2003) 10 MP CK 0007

In the Madhya Pradesh High Court

Case No : Company Petition No. 2 of 2001

In Re: Maheshwari Proteins Ltd.

Date of Decision : 29-10-2003

Acts Referred:
Companies Act, 1956 — Section 446, 456(2)

Citation : (2004) 4 BC 487 : (2004) 1 CompLJ 479 : (2004) 52 SCL 339

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : Arvind Shukla, Official Liquidator and Party in Person, P.B.S. Nair, V.K. Dube, for the Appellant;

Final Decision : Allowed

Judgement

A.M. Sapre, J.—Heard on I.A. No. 1957 of 2003.

2. This is an application made by the Official Liquidator appointed by this Court by order, dated 30.1.2003 u/s 446 read with Section 456(2) of the Companies Act. By this application, a direction is prayed against Bank of India to pay/release a sum of Rs. 15 lakh in favour of Official Liquidator. It is contended that an amount of Rs. 15 lakh which admittedly belongs to company in liquidation, and is lying in the form of FDR (Annexure A to Application I.A. No. 1957 of 2003) with the Bank of India in the name of the company has come in the custody of Official Liquidator as one of the assets of the company in liquidation by virtue of Section 446 read with Section 456(2) of the Act. It is further contended that since despite request made by Official Liquidator to bank, to remit the said amount together with interest accrued thereon in favour of Official Liquidator, the same has not been done by the bank and, hence, the application to seek the required directions, referred to supra. Since the directions prayed related to bank, the notice of this application was issued to bank. It was served on the bank. Reply is filed by the bank contending inter alia that the said FDR is attached at the instance of ex-workers of the company for realisation of dues payable to them in labour proceedings by the Labour Commissioner. It is also contended that bank being one of the secured creditors has to recover large sum from the company in

liquidation ; and, for that purpose, they (bank) have filed a dispute under the DRT Act.

3. Heard Shri Arvind Shukla, Official Liquidator, Shri P.B.S. Nair, learned counsel for respondent Bank of India and Shri V.K. Dubey, learned counsel for MPFC.

4. Having heard the Official Liquidator in person and learned counsel for respondent, and having examined the issue sought to be Urged in this application in the context of Sections 446 read with Section 456(2) of the Act, in my opinion, the application made by Official Liquidator deserves to be allowed.

5. Indeed, legal position so far as the position of assets of the company in liquidation is fairly clear when one reads Section 446 read with Section 456(2) of the Act. The effect of Section 456(2), ibid., has to be given effect to all assets of the company to enable this Court to distribute amongst those entitled to receive their share while making distribution as per provisions of Companies Act. It is on the basis of these principles that a sum of Rs. 15 lakh has to be made available to Official Liquidator by the bank, so that list of entire assets is properly prepared for its distribution.

6. The powers of this court in winding up proceedings are overriding on all other powers except where they are specifically demarcated for exercise in particular case. Even though the concerned FDR is a subject matter of some attachment proceedings under the labour laws, the fact remains that this court is possessed of enough powers by virtue of Section 446 read with Section 456(2) of the Act to direct the bank to remit/ release the said sum in favour of Official Liquidator. Indeed, such direction will be in conformity with the object of the Companies Act dealing with the case of winding up of company.

7. Accordingly, and in view of aforesaid discussion, the application is allowed. It is directed to Bank of India, Bajajkhana, Ratlam Branch, Ratlam, to remit/release/ pay a sum of Rs. 15 lakh together with entire interest accrued thereon on the FDR Nos. 3549718 and 3549719, as per the agreed rate and banking norms applicable to Official Liquidator within a period of one month.