(2006) 07 RAJ CK 0034

In the Rajasthan High Court

In Re: Surya Power Ltd.

Date of Decision : 31-07-2006

Acts Referred:
COMPANIES ACT, 1956 — Section 446

Citation : (2007) 2 RLW 1479

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—Heard rival submissions.

2. This Court vide its order dated August 4, 1995 passed in S.B. Company Petition No. 7/93 passed order of winding up of M/s. Surya Powers Ltd. and the Official Liquidator attached to this Court was appointed to conduct the winding up proceedings. The entire assets of the Company were sold by the RIICO to M/s. Haveli India Limited, against the sale consideration of Rs. 2,10,50,000/- and on receipt of entire sale consideration the possession of the entire unit was given to the representative of Purchaser M/s. Haveli India Limited. The RIICO/RFC adjusted their dues including expenses of Rs. 1,10,60,000/- from the aforesaid sale price and balance Rs. 1,08,90,000/-were deposited with the Official Liquidator on November 20, 1997. The Bank of India New Delhi is also the secured creditor but till the dater of filing of the application the Bank has not filed its claim before the Official Liquidator. It is submitted by the Official Liquidator that the Stores/Stock etc. were report to be in the possession of the Bank. The Bank has obtained a decree Recovery Certificate of Rs. 3,15,44,8344.48 from DRT New Delhi vide order dated May 18, 2001. This Court vide order dated December 17, 1997 passed in application No. 76 of 1997 directed the Official Liquidator to invite claim from all the creditors of the company. In compliance of the order of this Court the Official Liquidator invited claim from the creditors by publication in the New papers Times of India (New Delhi) and Rajasthan Patrika (Hindi) all editions Rajasthan and Banglore edition. The individual notices were also sent to the creditors whose names and addresses were available in the records of the Official Liquidator in form No. 64 under postal certificate. In response to the publication/notices the Official

liquidator received in all 6 claims from the various creditors, but no claim was filed by Bank of India New Delhi. No claim was received from the workmen of the Company but the Ex. Director of the Company stated that Rs. 1,58,133.82 is payable to the workers as wages and Rs. 80,389 as bonus. It is stated by the official liquidator that out of the 6 claims received only claim shown at S1. 01 is pending and same is under correspondence with the claimant and the said claim is under the category of preferential creditors.

3. As per Rules 275 and 276 of the Companies (Court) Rules, 1959 no dividend to the creditors shall be declared by the Official Liquidator without the sanction of the Company Court and notices of declaration of the dividend as per Rule 276 shall be given for declaration with dividend not less than one month prior to date fixed for payment. The Official Liquidator determined the percentage of admitted claims of the secured creditors ICICI Bank, IFCI and 1DBI as set out in para No. 10 of the application. In relation to the respondent Bank it was given out that no claim was submitted by them but they got the decree dated May 18,2001 from the Debt Recovery Tribunal New Delhi (for short ''DRT'') and a Recovery Certificate in the sum of Rs. 3,15,44,833.48 was issued. It was submitted that if this Court considers the claim of the Bank as on the date of winding up order, the amount admissible to the Bank comes to Rs. 3,10,16,171. A prayer is made to the effect that the Official Liquidator be permitted to open Dividend Account of the Company in liquidation with Punjab National Bank, Nehru Place, Jaipur and encash the FDRs. and transfer sum of Rs. 1,80,00,000 into the Dividend account and permit the official liquidator to make the payment of dividend to the secured creditors and workmen through A/c. Payee cheques.

4. The respondent Bank filed reply to the application and raised preliminary objection that the application is barred by the principles of resjudication as the issue involved in the present stood settled vide Company Court order dated April 25, 2003 in Company application No. 124 of 2002 whereby the Bank was granted leave to proceed before the Recovery Officer in the matter against the company and the Official Liquidator was granted liberty to raise all the available objections before the Recovery officer in view of the pronouncement of the Apex Court in Allahabad Bank Vs. Canara Bank and Another, Thus it is not proper on the part of the OL to assert that the claim of the Bank cannot be considered of that the bank cannot be treated as secured creditors for the reason that it has not preferred its claim before the Official Liquidator. It was submitted that the Bank filed a claim application before the DRT. The DRT also issued notice to the OL on June 3, 1996 but he did not appear. The respondent Bank filed application before this Court u/s 446(1) of the Companies Act for grant of leave to continue with the claim application. The Company Court vide its order dated September 4, 1997 granted leave to the respondent Bank. The Official Liquidator had full notice of the claim of the respondent Bank and it was not necessary for them to file its claim before the Officer Liquidator.

5. In B. Shoes Ltd. v. Indian Overeas Bank (Special Leave to Appeal (Civil) No.

3636/2003 order dated November 14, 2003), the Apex Court granted leave and framed following question-

Whether the Debt Recovery Tribunal can direct sale of assets of a company which has been wound up and the Official Liquidator is appointed.

6. Looking to the fact that the issue involved in the instant matter is directly related to the question framed by the Apex Court, I am of the view that no relief can be awarded at this stage to any party.

7. The application stands disposed of. The parties shall however be at liberty to file application seeking modification of this order after the decision in B. Shoes Ltd. v. Indian Overeas Bank (supra).