(2012) 01 DEL CK 0298

In the Delhi High Court

Case No : Company App. No. 1575 of 2009 in Company Petition No. 75 of 2002

Lord Krishna Bank Ltd. APPELLANT

Vs

Koshika Telecom Ltd. RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0298

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Tarun Kashyap, for the Appellant; Maninder Singh with Mr. P.S. Bindra, Advocate for IFCI, Mr. Rajiv Bahl, Advocate for O.L., for the Respondent

Judgement

P.K Bhasin, J.—This application has been filed by M/s Zullu Security (India) Pvt. Ltd. (hereinafter to be referred as ''the applicant Company'') for issuance of a direction to IFCI, a secured creditor of the Company under liquidation, namely, M/s Koshika Telecom Ltd., for paying to it Rs. 37,84,823/-.

2. The applicant Company is a security provider and is on the panel of security providers maintained by the official liquidator attached to this Court for providing security services to protect the assets of those Companies in respect of which provisional liquidator is appointed by this Court in winding up petitions and their assets are taken over by the official liquidator. this Court in the present case had passed an order for the appointment of a provisional liquidator in respect of M/s. Koshika Telecom Ltd. Thereafter, the official liquidator took over some assets of the said Company and in order to protect the same IFCI, a secured creditor of this Company under liquidation, took over the responsibility of the safety of those assets as it was vitally interested in their protection to protect its own interest as a secured creditor of the Company under liquidation. The applicant Company was then entrusted the job of providing security services and it is undisputed that IFCI had entered into a contract with the applicant Company and had agreed to make the payment of the security charges to the applicant Company directly and thereafter it had been paying also the security charges to

the applicant.

3. The applicant Company in this application has claimed that a sum of Rs. 37,84,823/- is to be paid to it by the IFCI on account of security charges upto August,2009.

4. IFCI filed a reply to this application and opposed the same on the grounds that payment of security charges to the applicant Company was stopped as it had started raising inflated bills and also that the applicant being in the position of an unsecured creditor should lodge its claim with the official liquidator. It was also pleaded that even otherwise this application is liable to be rejected since after the filing of the application a number of meetings were held between the officials of IFCI, the official liquidator as well as the applicant Company and finally it was decided that IFCI shall pay a sum of Rs. 14,38,442.00/- to the applicant Company as a full and final payment of security charges for the period ending till July, 2010. Accordingly, IFCI vide its letter dated 17-07-2010 sent a cheque to the applicant Company for the aforesaid amount in full and final settlement of its claim against IFCI. That cheque was encashed by the applicant Company without any protest and having encashed the said cheque without any demur or protest it was estopped from claiming any further amount from IFCI.

5. In reply to the plea of IFCI regarding the unconditional acceptance and encashment of the cheque for Rs. 14,38,442/- by the applicant Company claimed that there was never any settlement between the parties for acceptance of less amount by the applicant.

6. Learned senior counsel for the IFCI, Shri Maninder Singh had cited one judgment of Supreme Court in the case of Bhagwati Prasad Pawan Kumar Vs. Union of India (UOI), in support of his main submission that the applicant Company having encashed the cheque for a lesser amount sent to it by IFCI during the pendency of this application without any protest this application had become infructuous and should be disposed of summarily without going into any other aspect as the applicant Company is estopped from proceeding further with its application for getting more amount.

7. However, in my view this application cannot be disposed of summarily as having become infructuous, as was contended by the learned senior counsel for IFCI. The judgment cited by the learned senior counsel prima facie does not appear to be applicable to the facts of the present case since in that case less amount was tendered to the claimant by the debtor before the initiation of legal proceedings and the claimant had accepted that payment from its debtor without protest while in the present case the applicant had already moved this application for recovery of its dues. In any event, I am of the view that all the objections raised by the IFC need to be dealt with together and not in piece meal.

So, this application shall be taken up on 2nd February, 2012 for hearing on all the points taken by IFCI in its reply.

