(2012) 04 KAR CK 0004

In the Karnataka High Court

Case No : Co. Petition No. 178 of 2000 and Co. Application No. 630 of 2010

Official Liquidator of Vajra Cements and Minerals (P.) Ltd. APPELLANT

Vs

Karnataka State Industrial Investment and Development Corpn. Ltd. RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:
Companies Act, 1956 — Section 446, 446, 529 A, 529 A

Citation : (2012) 114 SCL 1

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : K.S. Mahadevan and V. Jayaram, for the Appellant; P.S. Manjunath, for the Respondent

Judgement

1. The instant application is filed by the Official Liquidator on behalf of the Company-in-liquidation u/s 446 of the Companies Act. The prayer in the application is to direct the respondent to furnish details of the interest accrued on the sale proceeds of Rs. 75,00,000/- and to direct the respondent to deposit Rs. 5,00,000/- out of the sale proceeds of Rs. 75,00,000/-. Heard the learned counsel of the parties and perused the application papers.

2. The Company in liquidation was ordered to be wound up on 16-6-2004 in Co. P. No. 178/2000. Prior to the same, the respondent which is one among the secured creditors of the Company-in-liquidation has taken possession of the assets belonging to the Company-in-liquidation and has thereafter sold the same for a sum of Rs. 75,00,000/-. The objection filed by the respondent herein would indicate that the sale proceedings has been conducted after obtaining leave in C.A. No. 37/2004. However, insofar as the instant prayer sought in the application, the respondents have indicated that in addition to the respondents, there are two other secured creditors viz., the Karnataka State Financial Corporation (''the KSFC'' for short) and the Corporation Bank. It is stated that out of the sum of Rs. 75,00,000/- which was realised, the respondent has

appropriated a sum of Rs. 20,00,000/- on 31-3-2004. A sum of Rs. 10,29,000/- has been appropriated by KSFC on 05-8-2004 and further a sum of Rs. 25,04,000/- has been appropriated by the Corporation Bank on 05-6-2004. In addition a sum of Rs. 25,000/- was deposited with the Official Liquidator on 03.07.2004 towards the initial expenses of the liquidation proceedings. Thus the total of Rs. 55,58,000/- has been thus appropriated so far, leaving a balance of Rs. 19,42,000/ -. The respondents state that the said amount has been retained to meet the other liabilities and to take care of the eventualities and statutory liabilities once the company is one way or the other wound up.

3. Therefore, in such circumstance, where the balance amount of Rs. 19,42,000/ - is available with the respondent under the common head which is available to all the secured creditors as well as for meeting the other eventualities, I am of the opinion that the respondent herein should be directed to deposit a sum of Rs. 5,00,000/- from the said amount with the Official Liquidator for taking up further proceedings of liquidation of the Company by inviting claims from all concerned, more particularly the workmen so as to decide the dividend that will have to be ultimately declared keeping in view the provisions contained in section 529A of the Companies Act. Therefore, at this stage, the direction to furnish details of the interest earned is not necessary to be granted in this application. In view of the above, it is made clear that the respondent after paying the sum of Rs. 5,00,000/- to the Official Liquidator will retain the balance amount with them. On receiving the said amount and on the Official Liquidator inviting the claims and in that context, if any claims from the workmen are received, the Official Liquidator in order to decide the dividend on pari passu basis will, at that stage, not only request the respondent herein, but also the KSFC and Corporation Bank to indicate the profit earned from the amount which has been appropriated by them. They shall be bound in law to furnish such details. On deciding the dividend to be declared by the Official Liquidator, if it is found that the amount payable to the workmen could be met from the remaining amount of Rs. 14,42,000/- which is available with the respondent herein, the Official Liquidator shall intimate the same to the respondent who shall out of the said amount deposit the required amount with the Official Liquidator. It is also clarified that while working out the dividend in such manner, if it is found that an amount more than Rs. 14,42,000/- is required, the Official Liquidator would proportionately calculate the amount required to be deposited by the respondent herein as well as KSFC and the Corporation Bank from the appropriated amounts and they shall be bound to deposit the said amount with the Official Liquidator.

Hence, with the above clarification and with a direction to the respondent to deposit the sum of Rs. 5,00,000/- with the Official Liquidator in four weeks from the date of receipt of a copy of this order, the application is allowed in part.

