(2015) 06 RAJ CK 0002

In the Rajasthan High Court

Case No : Company Appeal No. 2 of 2013

Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO) — APPELLANT

Vs

Lath Steels Pvt. Ltd. — RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:
Companies Act, 1956 — Section 528, 529, 529A, 530
Provincial Insolvency Act, 1920 — Section 61(6)

Citation : (2015) 06 RAJ CK 0002

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Anurag Sharma, A.A.G., for the Appellant; K.J. Mehta and R.K. Meena, Official Liquidators, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Alok Sharma, J.

1. The appellant-RIICO albeit a secured creditor has chosen to stay within winding up of M/s. Lath Steels Pvt. Ltd. (now in liquidation). The winding up order was passed by the Company Court on 17.10.2003 and its assets directed to be handed over to the Official Liquidator (hereinafter "OL"). They were then auctioned by the OL on 26.08.2008 for an amount of Rs. 459.81/- lacs. The Company Court approved/sanctioned the highest bid aforesaid on 07.07.2010. The property in issue has since been conveyed to the buyer.

2. The OL on receipt of the auction amount, invited claims from the secured creditors vide letter dated 22.02.2011. The appellant-RIICO was the only first charge holder and submitted its claim before the O.L. on 08.03.2011 for a sum of Rs. 14,76,38,557/- constituted of (i) Rs. 14,07,04,854/- as term loan outstanding along with contracted interest as on 15.01.2011 (ii) Rs. 34,92,363/- as interest on advance against subsidy as on 28.02.2011 (iii) Rs. 33,18,750/- as State capital investment subsidy as on 28.2.2011 and (iv) Rs. 1,22,590/- as

expenses as on 07.02.2011, aggregating to Rs. 14,76,38,557/-. By the OL''s determination dated 30.11.2012, of which the appellant-RIICO is aggrieved, its claim only to an extent of Rs. 3,84,41,673/- was allowed while that of remainder Rs. 10,91,96,884/- rejected. Hence this appeal.

3. Mr. Anurag Sharma, AAG appearing for the appellant-RIICO has submitted that the rejection of the RIICO''s claim for an amount of Rs. 10,91,96,884/- is unreasoned, perverse as RIICO ought to have been entitled to disbursement of the entire amount of Rs. 459.81/- lacs and accrued interest thereon as it was the only first charge holder. It has been further submitted that the determination dated 30.11.2012 mechanically only records that the said amount was not payable in view of it not being "lodged in accordance with law" and is opaque and unsustainable. It has been submitted that in the circumstances, the OL be directed to pay the entire amount of Rs. 459.81/- lacs received from the sale of the fixed assets of the Company in liquidation along with interest accrued since its receipt to RIICO.

4. Per contra, Mr. K.J. Mehta, appearing for the respondent-O.L. has submitted that the appeal filed by the appellant-RIICO before this Court is without any legal foundation as it does not advert to any provision of law under which the appellant-RIICO was entitled to a sum more than Rs. 3,84,41,673/- as calculated by the OL in accordance with the Rule 154 of the Companies (Court) Rules, 1959 (hereinafter "the Rules of 1959"). Nor in fact does the claim seek to rely upon any other specific provisions of the Companies Act, 1956 (hereinafter "the Act of 1956") and the Rules of 1959 whereunder it can be established that the claim based on contracted interest upto the date of the claim, even subsequent to the winding order can be made or paid. It has been submitted that under Rule 154 of the Rules of 1959, no creditor whether secured or unsecured, can claim that value of its debt be determined beyond the date of the winding up order. M/s. Lath Steels Pvt. Ltd was wound up vide order dated 17.10.2003, passed by this Court. In terms of Rule 154 of the Rules of 1959, RIICO''s claim for its outstanding debt can be valued only upto 17.10.2003 and not thereafter. And it has been so determined as per the calculation sheet filed with the reply to the appeal at Rs. 3,84,41,673/- only under various heads. The value of RIICO''s debt being so determined out of the RIICO''s claim of Rs. 14,76,38,557/-, the remainder claim of Rs. 10,91,96,884/- was rejected.

5. Counsel has further submitted that interest payable subsequent to the winding up order in respect of a value of debt determined under Rules 154 of the Rules of 1959 is only payable under Rule 179 of the Rule of 1959 upto a maximum of 4% per annum only subject to any surplus left with the O.L. after discharging all debts determined under Rule 154 of the Rules of 1959. It has been submitted that out of the amount of Rs. 459.81 lacs received from the sale of the assets of the company in liquidation and interest thereon, aside of the amount of Rs. 3,84,41,673/- payable to RIICO, debts due from the Company in liquidation to the Asstt. Commercial Tax Officer, Ward-I, Bhiwadi (Alwar) has been determined

at Rs. 9,41,854/-, to the SBBJ, Assets Recovery Branch, Jaipur to an extent of Rs. 49,46,380.09/-, to the Executive Engineer (O and M), JVVN Ltd., Bhiwadi (Alwar) at Rs. 30,90,402/-, to the Income Tax Officer, Office of Asstt. Commissioner of Income Tax, Circle-2, Alwar at Rs. 25,51,100/- and to one Singhal Credit Management Ltd., E-127, Industrial Area, Bhiwadi (Alwar) at Rs. 50,30,236/-. It has been submitted that thus the admitted claims against the determination of debt under Rules 154 of the Rules of 1959 aggregates to Rs. 6,46,20,761,09/- as against the total fund available with the OL (auction amount plus interest) as on 19.02.2014 @ Rs. 5,51,09,146/-. It is submitted that in the circumstances, there is no surplus at all available with the OL for RIICO to be entitled to any further interest on the amount of Rs. 3,84,41,673/- determined as payable to RIICO. It has been prayed that in this view of the matter, the appeal is without force and be dismissed.

6. Heard the counsel for the parties and perused the Rules of 1959.

7. Rule 154 deals with value of debts and provides that the value of all debts and claims against the company in liquidation shall, as far as is possible, be estimated according to the value thereof at the date of the order of the winding up of the company. In this case, the company was wound up on 17.10.2003. In terms of Rule 154 the value of the debt of the appellant-RIICO was therefore to be calculated as per the term loan agreement upto the aforesaid date. Rule 179 of the Rules of 1959 deals with payment of subsequent interest in the event of there being a surplus after payment in full of all the claims admitted to proof. It provides that where surplus is available, creditors whose proofs have been admitted shall be paid interest inter alia from the date of the winding up order at a rate not exceeding 4 per cent per annum on the admitted amount of the claim.

8. The priorities for distribution of the money obtained from the sale of the assets of the Company in liquidation have been set out under Sections 528, 529, 529A and 530 of the Act of 1956. It has not been alleged that the Official Liquidator has wrongly prioritized the payment as mandated under the Act of 1956. The issue in the appeal is with regard to the determination of the amount actually payable to the secured creditor (RIICO, the appellant herein) as against the company in winding up. The only provision of law which has been brought to my notice is that the determination of value of all debts by the OL is to be under Rule 154 of the Rules of 1959. This makes it clear that the value of debt is to be determined as on the date of the winding up order. No distinction is made in the manner of determination of value of debt whether secured or unsecured. In the case at hand, the winding up order of the Company in liquidation was passed on 17.10.2003. Quite obviously the value of the debt of RIICO, even as the only secured creditor, was thus to be determined as on 17.10.2003. A bare look at the claim laid by RIICO however indicates that it sought interest on various due amounts upto 28.02.2011. The claim was obviously based upto the date of its making on terms of contract without reference to the date of winding up order. This was misdirected as subsequent to the winding up order, claims of creditors,

secured or unsecured could only be valued under Rule 154 of the Act of 1956 and not de hors it.

9. In this view of the matter, in my considered opinion, the OL has rightly determined RIICO''s claim, limiting it upto 17.10.2003 i.e. the date of passing of the winding up order. Nothing erroneous can be attributed to the said determination by the OL. Vague, generalized grounds agitated by the counsel for the RIICO such as perversity and denial of principles of natural justice are of no avail.

10. It is also not RIICO''s case that even subsequent to the date of winding up order, it would be entitled to interest under Rule 179 of the Rules of 1959 for reason of surplus obtaining with the OL. Payment of interest to a creditor by the Company in liquidation subsequent to the date of winding up order is indeed payable both under Rule 179 of the Rules of 1959 as also under Section 61(6) of the Provincial Insolvency Act, 1920 but only in the event of there being a surplus over the debts determined as payable under Rule 154 of the Rules of 1959. From the facts on record it however appears that in view of debts found payable by the OL of the Company in liquidation to the Asstt. Commercial Tax Officer, Ward-I, Bhiwadi (Alwar), to the SBBJ, Assets Recovery Branch, Jaipur, to the Executive Engineer (O and M), JVVN Ltd., Bhiwadi (Alwar), to the Income Tax Officer, Office of Asstt. Commissioner of Income Tax, Circle-2, Alwar aside of the claim by one Singhal Credit Management Ltd., there is no surplus available with the OL. Rule 179 of the Rules of 1959 cannot attract to the facts of the case and has rightly not been invoked by the appellant-RIICO.

11. However from the facts on record it is evident that the OL had determined the amounts payable to RIICO as of 30.11.2012. Yet oddly the said amount was not disbursed to RIICO thereafter within reasonable time?the list of creditors not having been filed within three months as provided for under Rule 167 of the Rules of 1959. In the circumstances, I would direct that RIICO be paid the bank interest on the amount of Rs. 3,84,41,673/- accrued after 01.04.2013 till the date of payment. Not to so direct would allow accrued interest on Rs. 3,84,41,673/- (found payable to RIICO), subsequent to 01.04.2013 being used for the benefit of others and would be wholly inequitable.

12. The OL is thereafter directed to file settled list of remainder creditors.

13. Consequently, the company appeal is accordingly disposed of.

