(2011) 02 RAJ CK 0096

In the Rajasthan High Court

Case No : Company Appeal No. 3 of 2009 in Company Petition No. 38 of 2000

Recovery Officer, Employees Provident Fund Organisation — APPELLANT

Vs

Official Liquidator of Basera Cement Ltd. (in Liquidation) — RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Companies Act, 1956 — Section 11(2), 529A, 530
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11, 11(2), 14B, 7A, 8

Citation : (2011) 164 CompCas 145

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant company appeal has been filed under rule 164 of the Companies (Court) Rules, 1959 ("the Companies Rules") assailing the order dated May 12, 2009 (annexure 4) whereby the respondent (official liquidator) held their part claim inadmissible.

2. Before examining the controversy raised herein, it will be relevant to observe that as regards the employer''s contribution, preferential claim u/s 530 of the Companies Act, 1956 ("the Companies Act") to the extent of Rs. 48,091 has been admitted; however, claim regarding damages determined u/s 14B for a sum of Rs. 18,395 was not admitted on the ground that the claim after passing of the winding up order is not admissible under the Companies Act.

3. The brief resume of facts necessary for adjudication of the dispute are that M/s. Basera Cement Ltd. ("the company") was ordered to be wound up vide order dated February 8, 2002, in Company Petition No. 38 of 2000 and the official liquidator attached to this court was appointed as provisional liquidator of the company to conduct proceedings of winding up with effect from the date of order (February 8, 2002) pursuant to which, the respondent (official liquidator) took possession of the assets of the company.

4. Advertisement was published on July 10, 2007, inviting claims from creditors/ workmen of the company on or before August 10, 2007, pursuant to which, the present appellant also filed claim on August 20, 2007, regarding the employer''s contribution towards employees provident fund for the period (October, 1995 to March, 1998) dues for a sum of Rs. 48,091 besides damages claimed for the period from October, 1990 to February, 1996 amounting to Rs. 18,395. It has been informed by the respondent (official liquidator) that while the claims were invited, none of the workmen of the company in liquidation has submitted any claim; and it was either the secured creditors or the appellant-authority having submitted claims which were adjudicated by the respondent (official liquidator) u/ s 529A/530 of the Companies Act.

5. However, the employer''s contribution was determined by the competent authority u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 ("the EPF Act") vide order dated July 2, 1999 and regarding damages determined u/s 14B vide order dated October 11, 2001, while recovery certificate was issued u/s 8B of the EPF Act on April 24, 2002, after passing of the winding up order dated February 8, 2002.

6. It appears from the record that since the claim filed by the appellant-authority was time barred; as such the application was filed under rule 177 of the Companies (Court) Rules, 1959 and after the delay was condoned vide order dated February 27, 2009, in Company Application No. 9 of 2009, the claim was submitted by the appellant and was examined by the respondent (official liquidator). However, after taking note of the material placed on record, the dues towards the employer''s contribution of the period which were prior to passing of the winding up order were admitted being preferential claim u/s 530 of the Companies Act vide order dated May 12, 2009 (annexure 3) but at the same time, damages claimed by the appellant-authority vide order dated May 12, 2009 (annexure 4) were held inadmissible being claimed after passing of the winding up order; which has been assailed herein.

7. Main thrust of counsel for the appellant is that u/s 11 of the EPF Act, payment towards contribution which includes damages being recoverable u/s 14B are claims to be recovered on priority basis; and once the claim raised for damages prior to the passing of the winding up order was determined by the authority under the EPF Act vide order dated October 11, 2001, the claim for damages declined by the respondent (official liquidator) was also required to be recovered as preferential claim on priority basis as provided u/s 11(2) of the EPF Act; as such rejection of claim of the appellant-authority regarding damages impugned on the premise of recovery certificate being issued on April 24, 2002 (annexure 6) after passing of the winding up order dated February 8, 2002, is nothing but a consequential effect of the recovery to be made as determined u/s 14B of the EPF Act and the date of issuance of recovery certificate is of no significance to disallow preferential claim and in such circumstances, according to counsel, claim of damages having been declined by the respondent (official liquidator) vide

order dated May 12, 2009 (annexure 4) is contrary to the provisions of the EPF Act and deserves to be set aside.

8. Counsel further submits that even under the Companies Act, workmen''s dues are having overriding preferential claim u/s 529A and the damages are also dues relating to the workmen; as such are required to be recovered u/s 11(2) having overriding effect amongst preferential claim; in such circumstances, rejection of their claim for damages is not legally sustainable.

9. Per contra, counsel for the respondent (official liquidator) submits that the EPF Act is a special Act of having introduced scheme of provident funds for the welfare of workers determined u/s 7A; at the same time if an employer makes default in payment of contribution, damages can also be imposed after affording opportunity of hearing u/s 14B of the EPF Act and as regards the employer''s contribution, these dues are to be paid to the workmen concerned u/s 530 of the Companies Act, being preferential claim; as such was accepted by the respondent (official liquidator); while as regards damages, apart from the fact that recovery certificate u/s 8B of the EPF Act was issued after passing of the winding up order, it will not be a preferential claim in terms of section 530 of the Companies Act and looking to the funds being available through recovery upon sale proceeds of the company in liquidation, besides the workmen''s dues claimed by the secured creditors and admitted for being paid, the official liquidator would not able to meet out claims of workmen''s dues and secured creditors in full; in such circumstances, the damages claimed by the appellant-authority in the facts of the instant case, was not admissible and no error has been committed by the respondent (official liquidator) while rejecting the claim of damages determined u/s 14B of the EPF Act, impugned herein.

10. This court has considered the rival contentions made at the Bar and with their assistance, examined the material on record. The facts are not in dispute that the winding up order was passed by this court on February 8, 2002 and the employer''s contribution for the period from October, 1995 to February, 1996, was determined by the authority under the EPF Act vide order dated July 2, 1999, while contrarily, damages for the period from October, 1990 to February, 1996, were later on determined u/s 14B of the EPF Act vide order dated October 11, 2001 (annexure 5) but recovery certificate was issued u/s 8B of the EPF Act vide order dated April 24, 2002 (annexure 6), which was passed after passing of the winding up order dated February 8, 2002.

11. As regards the claim of the employer''s contribution besides it being related to the period prior to the passing of winding up order, it was otherwise being preferential claim and admissible u/s 530 of the Companies Act; as such was admitted by the respondent (official liquidator) vide order dated May 12, 2009 (annexure 3). However, the grievance raised herein is only in regard to the damages declined vide order dated May 12, 2009 (annexure 4).

12. Apart from determination made in regard to the employer''s contribution,

even for damages, the authority competent has to adjudicate and pass appropriate orders u/s 14B of the EPF Act; but even after the order being passed, no recovery could be made unless a recovery certificate of arrears computed u/s 8, is issued by the authorised officer u/s 8B of the EPF Act.

13. It is true that where the claim is in regard to the employer''s contribution or damages, being determined by the authorised officer are preferential claims and are recoverable from the assets of the company.

14. As regards claim of damages impugned herein, no recovery could be made in the absence of a recovery certificate being issued u/s 8B of the EPF Act which admittedly was issued on April 24, 2002, much after passing of the winding up order dated February 8, 2002. Thus viewed, the respondent (official liquidator) has not committed any error in rejecting the claim regarding damages vide order dated May 12, 2009, which may call for interference.

15. Consequently, the company application being bereft of merit fails and is hereby dismissed. No order as to costs.