

(2005) 05 RAJ CK 0052

In the Rajasthan High Court

Case No : Company Application No. 19 of 2005 In Company Petition No. 7 of 1993

S.K. Bhargava

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Companies Act, 1956 — Section 529, 530

Citation : (2006) 2 BC 314 : (2006) 65 SCL 160

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Rajesh Jain, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—Heard learned Counsel for the applicant and perused the entire record of the application.

2. The applicant has not given out the provisions of the Companies Act, 1956 or the Companies (Court) Rules, 1959 as to under which provision he has filed this application.

3. In the application, the applicant has prayed for grant of following relief:

(a) Issue appropriate direction to the first respondent namely the Official Liquidator, attached to this Hon'ble Court, to release the amount identified in the compromise letter between the CH Bank and the certificate debtors, forthwith.

(b) Issue appropriate direction to the second respondent not to issue any warrant of arrest or notices to the certificate debtors on account of the fact that the amount of the certificate debtor No. 1 is available with the official liquidator and that necessary steps be taken to release the same in favour of the CH Bank.

(c) Issue appropriate direction to the third respondent to extend the time and terms stipulated in the compromise till the official liquidator releases the amount

or the Recovery Officer is able to recover the same.

(d) Pass any other order or orders as this Hon"ble Court may deem fit and proper.

(e) Allow costs.

4. The applicant is none other than the Director of M/s. Surya Power Limited (In liquidation). It is not gainsay that because of the misdeeds, inaction, omission and mismanagement etc. of the applicant and its other Directors, the Company has gone in liquidation. It is really shocking and surprising that a person who himself may be responsible for bringing down the Company (in liquidation) to this position, has come up to this court with this application. It is not in the larger interest of the creditors as well as shareholders of the Company (in liquidation) but it appears to have been filed for the benefit of the applicant himself. The applicant has not come up to take first the company out of liquidation; he entered into settlement with the Bank who has already obtained a decree against the Company from the Debt Recovery Tribunal. The Official Liquidator has sold the assets of the Company (in liquidation) and the sale proceeds are lying with him. The applicant is desirous and in fact making an attempt to get the money lying with the Official Liquidator adjusted against the judgment taken by the Debt Recovery Tribunal against the Company (in liquidation). It is not the amount of the Directors. The applicant wants to settle the matter with Bank by paying some money from his own pocket and rest of it from the Company (in liquidation) but that is not permissible.

Otherwise also it is a matter between the Bank and the Official Liquidator and not the applicant. Such a prayer may be available to the applicant on a compromise scheme u/s 391 of the Act, 1956 is brought to the court. That is not the case. The amount of sale proceeds of the assets of the company (in liquidation) is lying with the Official Liquidator, may not be hundred per cent of the Bank. The Official Liquidator has to disburse this amount amongst the claims of the categories as provided under Sections 529 and 530 of the Act, 1956. There may be other secured creditors. The claim may also be of tax liability of the Company (in liquidation).

5. Thus, this application is not only misconceived, misplaced and mala fide but at the instance of the applicant the prayer made therein cannot be granted.

6. As a result of the aforesaid discussion this application fails and the same is dismissed.