(2010) 08 KAR CK 0040

In the Karnataka High Court

Case No : C.A. No. 338 of 2010

State Bank of India APPELLANT

Vs

Official Liquidator, H.K. Datarex (P.) Ltd. (In Liquidation) RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Companies Act, 1956 — Section 44 (2), 446, 529 A, 537

Citation : (2010) 103 SCL 339

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : U. Abdul Khader, for the Appellant; K.S. Mahadevan and V. Jayaram, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—1. In this application the applicant has prayed for setting aside the order dated 25-8-2010 passed by the Official Liquidator as per Annexure-F.

2. The applicant is a secured creditor of the company-in-liquidation. The applicant initiated proceedings in O.A. No. 911/1996 against the Respondent company before the Debts Recovery Tribunal (for short "Tribunal") for recovery of a sum of Rs. 60,81,469.04. The Tribunal vide order dated 10-12-1997 allowed O.A. No. 911/1996. When the matter stood at that stage, this Court vide order dated 29-10-1998 ordered to wind up the Respondent company. On the winding up order, the Official Liquidator of this Court had taken over the assets and liabilities of the company in liquidation.

3. After the winding up order, the Tribunal issued a recovery certificate on 28-2-2003 as per Annexure-B in favour of the applicant for a sum of Rs. 78,97,599.04. On the basis of the recovery certificate the applicant filed a claim petition before the Official Liquidator for a sum of Rs. 7,88,53,859 as per Annexure-F dated 28-5-2010. The Official Liquidator directed to pay only a sum

of Rs. 90,88,675.44 and rejected the claim of the applicant to an extent of Rs. 6,96,61,683.56. The applicant being aggrieved by the impugned order is before this Court in this application.

4. Heard arguments on both the side and perused the entire application papers.

5. It is the contention of the learned Counsel for the Respondent-Official Liquidator that up to the date of order of winding up the applicant is entitled for interest on the principal amount as per the contractual rate. Subsequent to the order of winding up the payment of interest to the applicant is governed by Rule 179 of the Company (Court) Rules, 1959 and the same reads as under:

179. Payment of subsequent interest- In the event of there being a surplus after payment in full of all the claims admitted to proof, creditors whose proofs have been admitted shall be paid interest from the date of the winding up order or of the resolution as the case may be up to the date of the declaration of the final dividend, at a rate not exceeding 4 per cent per annum, on the admitted amount of the claim, after adjusting against the said amount the dividends declared as on the date of the declaration of each dividend.

6. A reading of Rule 179 manifestly makes it clear that the claim for interest will be considered only if a company is left with surplus after distribution of the dues of the secured creditors and the workers as specified in Section 529A of the Companies Act. In the instant case, the Respondent-Official Liquidator passed the impugned order denying the claim of the applicant without complying the mandatory requirement u/s 529A of the Companies Act. On this ground the impugned order is liable to be quashed.

7. The Supreme Court in Allahabad Bank Vs. Canara Bank and Another, held as under:

25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act. Point 1 is decided accordingly.

50. For the aforesaid reasons, we hold that at the stage of adjudication u/s 17 and execution of the certificate u/s 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction in the Tribunal and the Recovery Officer in respect of debts payable to Banks and Financial Institutions and there can be no interference by the Company Court u/s 442 read with Section 537 or u/s 446 of the Companies Act, 1956. In respect of the monies realised under the RDB Act, the question of priorities among the Banks and Financial Institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19(19), read with Section 529A of the Companies Act and in no other manner. The provisions of the RDB Act, 1993 are to the above

extent inconsistent with the provisions of the Companies Act, 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding up petition against the debtor-company and also after a winding up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the Appellant and against the Respondents.

8. Keeping the law declared by the Supreme Court in Allahabad Bank''s case, it is necessary to examine the fact situation in the present case. It is not in dispute that the applicant obtained decree in O.A. No. 911/1996 on 10-12-1997 i.e. prior to the order of winding up. The subsequent issuance of recovery certificate on 28-2-2003 is only a consequential to the decree in O.A. No. 911/1996. After the winding up order on 29-10-1998 the Official Liquidator sold the assets of the company in liquidation and realised a sum of Rs. 4 crores. On realisation of the amount by the Official Liquidator it is necessary to pay the amounts by complying Section 529A of the Companies Act. Section 19(19) of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 also specifies that the sale proceeds of the assets of the company-in-liquidation to be distributed among its secured creditors in accordance with Section 529A of the Companies Act. Therefore, there is no inconsistency in the Companies Act and the Debt Recovery Tribunal Act insofar as it relates to distribution of sale realisation by the Official Liquidator in accordance with Section 529A of the Act. In the instant case, the Respondent without complying the mandatory requirement u/s 529A passed the impugned order denying the claim of the applicant-Bank. On this ground also the impugned order is liable to be quashed.

9. The judgments relied on by the learned Counsel for the Official Liquidator are not applicable to the facts and circumstances of this case and in no way they assist the case of Respondent.

For the reasons stated above, the following order:

(i) The application is hereby allowed.

(ii) The impugned order dated 28-5-2010 as per Annexure-F is hereby set-aside.

(iii) The matter is remanded to the Respondent for reconsideration of the applicant''s claim in the light of the observation made above.

(iv) Ordered accordingly.

