(2012) 04 KAR CK 0193

In the Karnataka High Court

Case No : Company Application No. 24 of 2012 in Company Petition No. 45 of 1994

The Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Bhavishayanidhi Bhavan, 109128, 2nd Stage, Gayathripuram Mysore - 570019 — APPELLANT

Vs

M/s Ramgopal Paper Mills Limited — RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:
Companies Act, 1956 — Section 529 (A)

Citation : (2012) 5 KarLJ 187

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

Bench : Single Bench

Advocate : Rajesh Shettigar, for Sri Harikrishna S. Holla, for the Appellant; K.S. Mahadevan and V. Jayaram for OL, for the Respondent

Judgement

A.S. Bopanna

1. Though the registry has raised certain objections, which were necessary to be complied by the learned counsel for applicant, considering the nature of disposal of the application, the application is taken up for consideration and disposed of by this order. The applicant herein, the Regional Provident Fund Commissioner is before this court seeking for a direction to the Official liquidator to disburse the sum of Rs. 3,83,595/-, which according to the applicant is due on account of the unpaid provident fund due by the company in liquidation.

2. In so far as the right to receive the said amount, the Hon''ble Supreme Court in the case of Maharashtra State Co-operative Bank Ltd. Vs. The Assistant Provident Fund Commissioner, has considered this aspect of the matter and has held that the provident fund due would have preference over other payments, which is contemplated u/s 529(A) of the Companies Act In that view of the matter, the claim made by the applicant herein would be sustainable. However, the question for consideration is as to the time and manner in which the amount

should be made.

3. At this juncture, it is brought to the notice of this Court by the Official Liquidator that in so far as the instant case is concerned, the Official liquidator has not yet realized any funds and therefore the payment would not arise at this stage. Therefore, keeping this aspect in view all that is to be clarified in the instant application is that as and when the funds are realised by the Official Liquidator, the Official Liquidator will look into the claim putforth by the applicant herein and on adjudicating the same, the payment to be made to the applicant would precede all other payments. In that regard, it is made dear that it would not be applicable to the dividends which have already been declared, but to the dividends to be declared in future therefore, a direction is issued to the Official Liquidator to consider the case of the applicant as and when the funds are realized by the Official Liquidator and make preferential payments to the applicant to the extent of amount adjudicated by the Official Liquidator as due to the Provident Fund Department. With the above direction, the application stand disposed of.