(2019) 01 CAL CK 0130

In the Calcutta High Court

Case No : Appeal From Order (Apo) No. 395 Of 2018, Pet . In Comp. Appl. (Aco) In Company Petitions (Cp) No. 300 Of 2015, 387 Of 2014

Yasmeen Sengupta APPELLANT

Vs

Indo Wagon Engineering Ltd. & Anr RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:
Companies Act, 1956 — Section 466

Citation : (2019) 01 CAL CK 0130

Hon'ble Judges : Sanjib Banerjee, J;Suvra Ghosh, J

Bench : Division Bench

Advocate : Sakya Sen, Supratim Laha, Balaji Chakraborty, Rupak Ghosh, Chayan Gupta, Niladri Banerjee, Soumyajyoti Nandy, Pooja Chakrabarti, Radhika Misra, Subhadip Biswas

Final Decision : Disposed Off

Judgement

The Court : The appeal arises out of an interim order passed on December 13, 2018 on the appellant's prayer for release of funds for the appellant having engaged security guards to protect the assets at the erstwhile manufacturing facilities of Jessop & Company Ltd. (now in liquidation).

The grievance of the appellant is that despite the appellant having engaged security personnel to protect the assets of the company (in liquidation) since or about 2017, no payments have been made to it and the company Court, by the order impugned, merely required 25% of the amount claimed by the appellant to be deposited by the contributories with the official liquidator, without permitting any part thereof to be appropriated by the appellant. The appellant claims to be out of pocket for a considerable period of time and says that it may not be possible for security guards to be engaged any further or the assets of the company (in liquidation) protected without the personnel being paid.

The order impugned was passed on a petition under Section 466 of the Companies Act, 1956 by the contributories. The petition is yet to be disposed of.

Pursuant to the directions issued by this appellate Court, the secured creditors of the company (in liquidation) have been served. According to the official liquidator, the only two secured creditors of the company (in liquidation) are Edelweiss Asset Reconstruction Co. Ltd. and ASREC (India) Ltd. Both Edelweiss Asset Reconstruction Co. Ltd. and ASREC (India) Ltd. are represented. Both sets of secured creditors seek to stand outside the liquidation and are pursuing their claims before the appropriate Debts Recovery Tribunal.

However, the assets that the secured creditors claim may be the immovable property whereat the company had its manufacturing facilities, inter alia, at Jessore Road and the remnants of the plant and machinery or the scrap material thereat. The official liquidator is required to protect all assets of a company (in liquidation) and, as such, some security personnel may have been necessary to ensure that the land of the company (in liquidation) was not encroached upon and the remnants of its plant and machinery were not pilfered.

It cannot also be lost sight of that an unholy nexus between the office of the official liquidator and the security agencies has probably existed since the office of the official liquidator may have been set up. Oftentimes, erstwhile official liquidators as proprietors of security agencies approach the office of the official liquidator and the official liquidator generously engages personnel from such security agencies. The allegations, each time, by the secured creditors and the contributories of the company (in liquidation) are that despite showing on paper that security personnel were engaged and the official liquidator making payments on such score, there is scarcely any security personnel actually deployed. It may have been such tradition of the official liquidator's office that may have prompted the company Court to not direct any payment to be released to the security agency at the outset without ascertaining the amount that may be justified.

Notwithstanding the two secured creditors of the company (in liquidation) not submitting to the liquidation proceedings, it is apparent that the assets protected by the official liquidator may ultimately be taken up by the secured creditors as part of their security. Thus, the protection of the assets is in the interest of the secured creditors and the secured creditors must bear or, at least, share the expenses therefor.

Accordingly, the official liquidator will convene a meeting, in course of this week, of representatives of the creditors of the company (in liquidation), the contributories thereof, the secured creditors and the security agency for a decision to be taken thereat as to the number of personnel necessary to protect the assets of the company (in liquidation) and the extent to which the bill raised by the appellant herein should be paid. It is made clear that the contributories together with the secured creditors of the company (in liquidation) will jointly have primacy over the decision to be taken and, the official liquidator and the creditors may only participate in the proceedings without having any right to dictate any resolution.

The report of such meeting and the decision arrived at by the secured creditors in conjunction of the contributories of the company (in liquidation) should be placed before the company Court at the time that the contributories' petition under Section 466 of the Act is taken up for consideration so that an appropriate final order can be made on the present appellant's claim on account of security guards.

It is made clear that it will also be open to the secured creditors of the company (in liquidation) to arrange for some other private security personnel, as long as they bear the expenses therefor and such security personnel are answerable to the official liquidator.

Since the amount required to be deposited is well short of the amount claimed by the appellant and the deposit is for 25% of the expenses incurred for deploying 36 security personnel and three armed guards in terms of a previous order of the company Court, 80% of the deposit made may be withdrawn by the appellant from the official liquidator, subject to the final decision on the relevant petition. It is the submission on behalf of the contributories of the company (in liquidation) that the deposit in terms of the order impugned has already been made by the contributories with the official liquidator.

APO No. 395 of 2018 and ACO No. 45 of 2018 are disposed of.

There will be no order as to costs.

