IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINDARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 204 OF 2014

IN

COMPANY PETITION No. 1044 OF 1997

Regional Provident Fund Commissioner … Applicant

IN THE MATTER BETWEEN :

M/s. Paper Chase International ... Petitioner

Versus

The Official Liquidator of

M/s. B. K. Paper Mills Limited (In Liquidation) ... Respondent

Mr. Suresh Kumar for the Applicant.
Mr. N. Engineer for the OL.
Ms. Yogini Chauhan, Assistant OL, present.

CORAM : S.J. KATHAWALLA, J.
DATED : 10TH MARCH, 2015

P.C.

1. The present Company Application seeks to challenge the adjudication order dated 8 January 2014 by which the official liquidator had allowed only the principal claim of Rs. 69,515 and rejected the claim for interest post the date of winding up. It is further prayed that the entire claim of Rs.1,11,910 should be granted in favour of the applicant.

2. The facts necessary for determining the controversy in issue are as follows :

2.1. By an order dated 17.8.2006, the Respondent Company was ordered and directed to be wound up and the Official Liquidator attached to this Court had been appointed as the Official Liquidator with usual powers under the provisions of Companies Act, 1956.

2.2. The applicant had filed an affidavit of proof of debt dated 15th of May 2013 claiming a sum of Rs. 1,11,910 being the provident fund and allied dues.

2.3. On 8 January 2014 the official liquidator adjudicated the said claim and issued its notice of admission of proof in which a sum of Rs. 69,515 was allowed as against the total claim of Rs.1,11,910. The balance amount of Rs. 42,395 being interest post the date of winding up was disallowed.

2.4. The applicants have challenged the said order and sought to contend that the entire amount ought to have been awarded by the official liquidator.

3. The Learned counsel appearing on behalf of the Applicant contended that in view of Section 11 of the Provident Fund Act, the provident fund contributions have priority over all other payments. The learned counsel appearing on behalf of the Applicant further contended that even the interest that is payable post the winding up of the company ought to have been allowed by the official liquidator as it is a preferential

payment under section 7Q read with section 11(2).of the Provident Fund Act, 1952.

4. The learned counsel appearing on behalf of the Official Liquidator disputes the stand taken by the Applicant. The learned counsel appearing on behalf of the Official Liquidator contends that when it comes to the acceptance or rejection of the proof of debts under rule 163 of the Company Court Rules, the Official Liquidator will have to act strictly in accordance with the provisions of the said Company Court Rules and the Official Liquidator cannot grant claims which are contrary to the rules. The learned counsel contends that under rule 156 and 179 of the Company Court Rules, interest can only be granted post the winding up order if there is surplus available. At the present moment there is no surplus available. The Learned counsel also placed reliance on the judgment of this Court in the case of ***IDBI Ltd vs Official Liquidator*** reported in ***2011 5 MhLJ 631***. The said the judgment deals with a case as to whether the secured creditors having obtained certificates under section 19(22) of the RDB Act, are entitled to enforce their full claim under the certificates in the proceedings lodged under rule 163 of the said Company Court Rules before the Official Liquidator. This Court has held that : ***"But when it comes to the acceptance or rejection of the proof of debts under Rule 163 of the said Rules, The Official Liquidator***

will have to act strictly in accordance with the provisions of the said Act and the Rules and he can neither act in deviation of it, nor can grant the claims, which are not permissible under the said Rules. The 1st charge holders/secured creditors are, therefore, not entitled to enforce their full claim under the certificate, in the proceedings lodged under rule 163 of the said rules Before the Official Liquidator."

5. The aforesaid judgment makes it very clear that when the official liquidator is required to adjudicate upon a claim made before it, it must do so strictly in accordance with the Company Court Rules.

6. In the facts of the present case the claim for interest post the date of winding up was not allowed as there was no surplus available in the funds of the liquidator to allow interest post the date of winding up being granted. The liquidator has adjudicated the claims in accordance with rules 156 and 179 of the Company Court Rules. No-fault can be found with the Official liquidator in not granting interest post the date of winding up.

7. The learned counsel for the liquidator has also correctly pointed out that in the facts of the present case it is only the auction process that has been stayed and the company is still in winding up and therefore interest cannot be granted post the date of winding up unless there is a surplus that is available after all the claims of the company's creditors and

contributories have been paid.

In that view of the matter, there is no merit in the present company application and the present company application stands rejected.

(S.J. KATHAWALLA, J.)