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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION NO.549 OF 2015
IN
COMPANY PETITION NO. 480 OF 1988**

SICOM Ltd.	...Applicant
In the matter between	
M/s Sterling Trade	...Petitioner
VS	
Official Liquidator and Ors.	...Respondent.

.....
Mr Vishal Kanade i/b Satish Raut for the Applicant.
Mr Zal Andhyarujina i/b Monish Vig for the Petitioner.
Mr Naushad Engineer for Official Liquidator.
Ms Prathibha Ramaswamy Asstt O.L. Present
Ms Vaishali Bhilare for Respondent No.3.
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CORAM : S.C. GUPTA, J.

JUNE 30, 2015

P.C. :

This application is for setting aside the adjudication of the Applicant's claim by the Official Liquidator. The Applicant had originally filed a proof of debt for a sum of Rs.45,25,598/- comprising of principal amount of Rs.22,76,366/- and interest dues of Rs.22,49,232/- up to 3 October 1991 (i.e. the date of winding up order). This claim has been adjudicated by the Official Liquidator and found to be in order. The Applicant now seeks to set aside this adjudication on the ground that subsequent to this adjudication, there is a decree obtained by the Applicant in a suit (Summary Suit No.3646 of 1987) against the guarantors of the company in liquidation in respect of the same claim, for sum of Rs.28,02,378/- towards principal amount and interest @ 18 % p.a. with half yearly rests. It is submitted that the decretal amount as on the date of the application works out to Rs.21,27,82,666/- and that the Official Liquidator should be directed to release the payment on pro-rata basis in favour of the Applicant based on the claim of Rs.21,27,82,666/-. Secondly, the Applicant also seeks

declaration in respect of its claim of Rs.23,88,857/- towards safeguarding of the assets of the Company in liquidation together with interest as on 1 March 2011, which amounts to Rs.1,10,32,733/-.

2 On the first issue, namely, the entitlement of the Applicant to recover any sum against the company in liquidation on the basis of a decree obtained against the guarantors of the company, it is quite clear that, in the first place, the decree is merely against the guarantors of the company in liquidation and does not give rise to any decretal debt, against the company in liquidation. Secondly, and even otherwise, insofar as the proofs of debt under Rule 163 of the Company (Court) Rules, 1959 are concerned, the Official Liquidator has to act strictly in accordance with the provisions of the Companies Act and the Rules, for adjudication of debts. Under these provisions, interest is payable to creditors only if the company is left with a surplus fund after disbursement of the debts of the secured creditors and workers on pari passu basis under the provisions of Section 529 and 529A of the Act and also after distribution of preferential dues under Section 530 of the Act. Until the distribution of dues thus has been accomplished and it is ascertained that there are surplus funds after such distribution, there is no question of awarding any interest on the dues of any creditor. There is no case here of any such surplus funds as of date. The original adjudication by the Official Liquidator of the proof of debt submitted on 24 April 2008 by the Applicant, thus, need not be disturbed.

3 As far as the other prayer, namely, the claim made in prayer clause (b) of the Application for safeguarding of the assets, is concerned, the Applicant will have to lodge its proof of debt for this claim with the Official Liquidator and the Latter will have to adjudicate the same and make a report, accordingly to this Court.

4 Accordingly, the Company Application is disposed of by passing the following order:

- (a) Prayer clauses (b) and (c) of the Company Application are rejected;

- (b) As far as prayer clause (d) is concerned, the Applicant is directed to submit its proof of debt with respect to the claim forming subject matter of it, to the Official Liquidator within a period of two weeks from today;
- (c) The Official Liquidator shall adjudicate this claim within a period of three weeks thereafter;
- (d) After adjudicating the claim, the Official Liquidator shall submit its final report concerning the adjudication of the claims received by it, so far, to enable this Court to ascertain the distribution of dues in accordance with the provisions of Law;
- (e) The Applicant will be at liberty to apply for payment of further dues comprising of interest, in the event this Court finds that there are surplus funds available with the Official Liquidator after payment of the dues of the secured creditors, workers and others in accordance with law.
- (f) The Official Liquidator shall also consider the cause shown by the Applicant in response to the show cause notice dated 26 May 2015 in its report to be prepared in pursuance of this order;
- (g) There shall be no order as to costs.

(S.C.GUPTE J.)