Comp.A.No.680 of 2015
in
C.P.No.17 of 2004

PUSHPA SATHYANARAYANA, J.

This application is filed seeking to set aside the rejection of proof dated 26.02.2015 to the extent of Rs.45,22,38,331/- as the same represents debentures issued by the company in liquidation in series – B, D, E & G and towards balance term loan claim and consequently, direct the respondent to consider the rejected claim on merits and pass fresh adjudication order related to the debenture claim already made by the applicant and also the remaining claim of the term loan.

2. Heard the learned counsel for the applicant and the learned official liquidator.

3. The applicant is the Life Insurance Corporation of India, Mumbai. The applicant had subscribed to four series of Non-convertible Debentures (NCDs) as mentioned in para-2 of the affidavit. M/s.SIV Industries Limited was wound up by order dated 25.08.2004 of this Court. ICICI Bank Limited was appointed as Debenture Trustee. The company had also created first charge on its immovable properties in

favour of the debenture holders in pari passu with various other lenders.

4. The Company in liquidation also had committed various defaults in repayment of the term loan and also redemption of the debenture series. Hence, the BIFR had recommended for winding up of the company. Accordingly, winding up was ordered on 25.08.2004. Though the debenture trustee was appointed and the trust deed has been executed, the applicant had independently filed its claim before the Official Liquidator on 23.07.2009 claiming a total sum of Rs.71,42,44,000/- both term loan as well as debentures and in respect of term loan, the amount claimed was Rs.3209.51 lacs and balance of Rs.3932.93 lacs was towards claim of debentures (B,D,G and E series). After getting the delay condoned by this Court, the applicant submitted claim with all the required details sought for by the respondent. The debenture trustee also had submitted a claim on behalf of the NCD holders on 25.09.2014, which is subsequent to the claim made by the applicant and in the claim, the trustee has categorically stated that the claim has been preferred by the trustee only in respect of institutional debenture holders mentioned in the affidavit filed in support of the claim

and the applicant has not been included in the said claim.

5. The official liquidator had issued a notice of admission / rejection of proof dated 26.02.2015, wherein the official liquidator / respondent admitted the claim of the applicant to the extent of Rs.26,20,05,119/- as secured claim towards the term loan extended by the applicant to the company in liquidation and rejected a sum of Rs.5,89,45,881/- towards term loan without any reasons. Further in respect of claim made for the debenture series – B, D, E & G to the extent of Rs.39,32,93,000/- was rejected on the ground that the same claim has already been made by the debenture trustee. The learned counsel appearing for the applicant contended that in respect of series B, D and E debentures, the debenture trustee has not made any claim on behalf of the applicant. In respect of G series NCD, the applicant had made its claim in the year 2009. Once again, the IDBI Trusteeship had made its claim for the G-series on 29.9.2011. Hence challenged the order of admission/rejection of proof before this Court.

6. The official liquidator also has filed his report in this

regard contending that already the debenture trustees had made a claim, viz., M/s. ICICI Bank Ltd., Mumbai, had made claim in respect of B, D and E series and M/s. IDBI Trusteeship Services Ltd., Mumbai, had made claim in respect of G series. However, that is disputed by the applicant.

7. Be that as it may, the order passed by the official liquidator on 26.02.2015 is set aside only in respect of disallowed portion, as the order is bereft of any details and the matter is remitted back to the official liquidator to consider afresh. The official liquidator is directed to take up the claim of the applicant afresh and adjudicate the same. If the claims filed by the debenture trustees, viz., ICICI Bank Limited and IDBI Bank Limited had covered the claim of the applicant, the official liquidator is directed to ensure that the claims do not overlap. Hence, the official liquidator is directed to consider the claim of the debenture trustees as well as the applicant simultaneously to avoid any overlapping of the claim by the applicant. The applicant is directed to produce before the official liquidator all documents in respect of his claim in original or otherwise and the official liquidator is directed to give personal hearing for the applicant before adjudicating

the claim. The official liquidator is directed to adjudicate the claim within a period of eight weeks from the date of submission of the documents.

8. With the above directions, this Company Application is ordered.

mra 07.08.2015

PUSHPA SATHYANARAYANA, J.

mra

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07.08.2015