THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY APPEAL No.9 of 2015

06.10.2015

Between:

Tata Capital Ltd., Mumbai

…Appellant

And

M/s.Turbo Bharath Ltd.,(in liqn.)

…Respondent

Counsel for the appellant: Sri S.Sriram Reddy

Counsel for the Official Liquidator of the respondent: Sri M.Anil Kumar

The Court made the following:

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JUDGMENT:

This company appeal is filed by the appellant, who is the sole secured creditor, feeling aggrieved by *form* - 69 issued by the Official Liquidator partly rejecting its claim.

In pursuance of the order, dated 30.08.2010, in Company Petition No.151 of 2009, passed by this Court ordering winding up of the respondent, the Official Liquidator attached to this Court was appointed as its liquidator. In response to the notice inviting the claims issued by the Official Liquidator, the appellant filed its claim on 24.03.2015 in *form* – 66 claiming a sum of Rs.25,49,62,494/- as on 20.03.2015. As the claim was beyond the limitation, this Court condoned the delay by order, dated 31.03.2015, in Company Application No.505 of 2015.

The appellant has filed a certified copy of the award, dated 31.07.2009, passed by the Arbitrator for Rs.9,94,47,759/- payable as on 20.02.2009 with further interest at 21.5% per annum till the date of payment. The Assistant Official Liquidator in his order in *form* – 69 passed on 08.06.2015 admitted the amount of Rs.9,94,47,759/- awarded by the Arbitrator and also allowed interest thereon at the rate of 21.5% per annum on the said amount from 21.02.2009 only till the date of winding up order, dated 30.08.2010, while rejecting the balance claim of Rs.12,29,75,483/-.

At the hearing, it has come out that the appellant is the sole secured creditor and that no surplus amount is available with the Official Liquidator beyond the claim of the appellant allowed by him. However, the learned counsel for the Official Liquidator submitted that there is one more secured asset, which is liable to be sold and that as and when the said property is sold, the sale proceeds thereof will be paid to the appellant only.

It is the settled proposition of law that where there is more than one secured creditor including the workmen, whose claims have to be treated in *pari passu* with the secured creditors, and the available amount is not sufficient to satisfy the secured debt, the ratio shall be fixed as on the date of winding up order and not on the date of sale as held by the Apex Court in **Bank of Maharashtra vs. Pandurang Keshav Gorwardkar**.

In the instant case, the aforesaid decision has no application because concededly, the entire amount realized on the sale of the assets of the company in liquidation is payable to the appellant. When there is no dispute about the fact that the appellant is entitled to recover till the last rupee realized from out of the sale of the assets of the company in liquidation, the Official Liquidator has committed a serious illegality in rejecting its balance claim. In the absence of any other secured creditor, the Official Liquidator has no option other than accepting the claim of the appellant in *toto* subject to proof and paying the entire amount realized to it.

In the above view of the matter, the order of the Assistant Official Liquidator, dated 08.06.2015, to the extent of rejecting the balance claim of Rs.12,29,75,483/- claimed towards term loan cannot be sustained and the same is accordingly set aside. The respondent is directed to take necessary steps to sell the balance secured asset, entertain a fresh claim that may be made by the appellant after such sale and adjudicate the same in the light of the above observations.

Accordingly, the Company Appeal is allowed to the extent indicated above.

(C.V.NAGARJUNA REDDY, J)

06th October, 2015

GHN