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

COMPANY APPLICATION No.787 of 2015

in

R.C.C.No.10 of 2003

16.06.2015

Between:

Stressed Assets Stabilisation Fund, Mumbai

…Applicant

And

M/s.Preyanshu Industries Ltd., Hyderabad

…Respondent

Counsel for the applicant: Mr.P.V.Markandeyulu

Counsel for the respondent: Mr. M.Anil Kumar
for Official Liquidator

The Court made the following:

ORDER:

This company application is filed by the sole secured creditor to direct the Official Liquidator to disburse the balance amount to it after retaining certain amount towards liquidation expenses, if any.

I have heard Mr.P.V.Markandeylu, learned counsel for the applicant and Mr.M.Anil Kumar, learned counsel for the Official Liquidator.

It is not in dispute that the applicant is the sole secured creditor. The Official Liquidator has recovered a sum of Rs.1,24,00,000/- through sale of plant and machinery belonging to the respondent company. The Official Liquidator, in his report, stated that he disbursed a sum of Rs.85,65,000/- to the applicant, Rs.1,15,000/- to Canara Bank as interim dividend, and also Rs.1,32,716/- to the applicant towards liquidation expenses in pursuance of order, dated 20.08.2007 in Comp.A.No.1057 of 2007. That this Court, by order, dated 29.03.2010 in Comp.A.No.225 of 2010 permitted the Official Liquidator to invite claims from the creditors and that accordingly, the claims were invited. That in response to the invitation of claims, the Official Liquidator received 12 claims, of which serial No.1 mentioned in the tabular statement contained in para 5 of the report made by the Provident Fund Commissioner is a priority claim, serial Nos.2 and 3 made by IDBI and Canara bank are secured claims, serial Nos.4 and 5 made by Customs & Central Excise and Deputy Commissioner of Income Tax shown are partly preferential/partly unsecured claims and the other seven are unsecured claims. It is further stated that the Official Liquidator duly adjudicated the claims of IDBI and IndusInd Bank Ltd., and issued respective *form* 69s admitting their claims as contemplated under Rule 163 of the Companies (Court) Rules, 1959. That as regards IDBI, as against the claim of Rs.45,85,53,000/-, a sum of Rs.41,60,21,681.80ps is admitted as secured debt and in respect of IndusInd Bank Ltd., as against the claim of Rs.76,90,665/-, a sum of

Rs.12,27,144/- is admitted as unsecured debt. The report further stated that there is no need for adjudication of other claims as they are found unsecured and therefore, he may be permitted to dispense with the adjudication of the claims of the unsecured creditors. It is further stated that as per *form* 8s filed with the Registrar of Companies, Hyderabad, it is found that movable assets charge was created by IDBI as first charge holder and the second charge was created by Canara Bank. That the Official Liquidator has taken possession of only movable assets, which were sold at Rs.1,24,00,000/-, and the entire amount should go to IDBI only as they are first charge holders and Canara Bank is not entitled for any amount and therefore, the Official Liquidator wants to file separate application against Canara Bank to return the amount of Rs.1,15,000/- with interest. It is further stated that as per the notice published by the Official Liquidator, last date for submitting the claims was 04.06.2010 and that no claims from the workmen of the respondent company were received. That the claim of the Provident Fund Commissioner for Rs.16,16,267/-, being the priority claim, is pending for submission of documents/proofs by the Commissioner in support of the claim. That the funds available to the credit of the respondent company as on 10.05.2015 are Rs.55,36,018/- and considering the availability of the said amount, this Court may consider passing of orders after allowing the amount of Rs.16,16,267/- due and payable to the Provident Fund Commissioner besides some more amount to be retained by the Official Liquidator for meeting the liquidation expenses and Central Government fee subject to furnishing an undertaking that in the event it is found at the time of adjudication that excess amount was paid, the applicant will refund the same without raising any demur.

At the hearing, Mr.P.V.Markandeyulu, learned counsel for the applicant, submitted that his client has no object for the Official Liquidator retaining the sum of Rs.16,16,267/- and some more reasonable amount towards liquidation and other expenses.

In the light of the report of the Official Liquidator and the submissions of the learned counsel for the parties, this Company Application is disposed of in the following terms:

(a) Out of Rs.55,36,018/-(Rupees fifty five lakhs thirty six thousand and eighteen only), the Official Liquidator is permitted to retain a sum of Rs.20,00,000/-(Rupees twenty lakhs only) towards dues payable to the Provident Fund Commissioner and meeting the liquidation and other incidental expenses;

(b) The Official Liquidator shall disburse balance amount of Rs.35,36,000/- (Rupees thirty five lakhs and thirty six thousand only) to the applicant subject to its filing an undertaking before him that in the event it is found at the time of adjudication that excess amount was paid, it will refund the same without raising any demur.

(C.V.NAGARJUNA REDDY, J)

16th June, 2015
GHN