IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: May 14, 2015

Rajinder Kumar

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms.Abha Rathore, Advocate,
for the petitioners in all the cases.

Mr.Rajinder Kumar petitioner in person.

Mr.Ashwani Talwar, Advocate &
Mr.Adarsh Jain, Advocate,
for respondent No.2 in all the cases.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of Civil Writ Petition Nos.18406 of 2011 (Rajinder Kumar Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16632 of 2012 (Balwant Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16633 of 2012 (Satbir Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16634 of 2012 (Ram Krishan Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16635 of 2012 (Bhim Sain Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16636 of 2012 (Vinod Kumar Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16637 of 2012 (Inder Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16638 of 2012 (Sukhbir Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16639 of 2012 (Hawa Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16640 of 2012 (Ram Sarup Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16641 of 2012 (Kishan Chand Sharma Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16642 of 2012 (Dilawar Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16643 of 2012 (Madan Lal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16644 of 2012 (Duli Chand Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16645 of 2012 (Raghbir Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16646 of 2012 (Pahal Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16647 of 2012 (Shobhan Shah Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16648 of 2012 (Rajbir Singh Malik Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16649 of 2012 (Zile Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16650 of 2012 (Anand Kumar Tyagi Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16651 of 2012 (Charan Singh Vs. The Presiding Officer, Industrial

Tribunal-cum-Labour Court, Panipat & another), 16652 of 2012 (Rajinder Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16666 of 2012 (Ranbir Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16681 of 2012 (Ram Kumar Saini Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16689 of 2012 (Virender Kumar Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16706 of 2012 (Hawa Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16715 of 2012 (Ranjit Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16732 of 2012 (Surinder Pal Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16761 of 2012 (Nafe Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 16787 of 2012 (Amar Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 17003 of 2012 (Samey Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 17079 of 2012 (Manglu Ram Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18557 of 2012 (Baru Mal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18576 of 2012 (Ram Chander Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18577 of 2012 (Madho Ram Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18580 of 2012 (Jagdish Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18581 of 2012 (Vasu Dev Vs. The

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18582 of 2012 (Om Parkash Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18592 of 2012 (Raj Kumar Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18593 of 2012 (Ishwar Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18594 of 2012 (Manohar Lal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18595 of 2012 (Jagdish Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18596 of 2012 (Baljeet Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18597 of 2012 (Jaswant Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18598 of 2012 (Kanshi Nath Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18599 of 2012 (Awadh Kishore Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18600 of 2012 (Jaypal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18606 of 2012 (Ishwar Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18607 of 2012 (Suraj Bhan Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18609 of 2012 (S.P.Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18611 of 2012 (Ram Chander Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18613 of 2012 (Gordhan Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18614 of 2012

(Rudhar Parsad Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18615 of 2012 (Ram Pal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18617 of 2012 (Om Parkash Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18632 of 2012 (Krishan Lal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18634 of 2012 (Shiv Gopal Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18832 of 2012 (Jai Singh Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another), 18915 of 2012 (Pawan Kumar Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & another) as common question of law and facts involved in all the cases is the same. The facts are being taken from CWP No.18406 of 2011.

Civil Writ Petition No.18406 of 2011 has been filed on behalf of the workman against the award dated 1.6.2010 (Annexure P-5), whereby the reference has been decided against the workman.

This case has a chequered history. The respondent No.2-Company was wound up and the Liquidator attached to the concerned Court had taken over the assets of the Company. However, during the interregnum, certain applications were decided resulting into the passing of order dated 13.9.2012 by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.27304 of 2012, whereby the Hon'ble Supreme Court, after noticing the entire facts, passed the following order:-

> *"5. The Directors of the Company shall deposit with the concerned Registrar of this Court, a sum of `One Crore, within*

> *a week from date, which amount shall be utilised by the Official Liquidator, in paying the dues of the workmen on a pro-rata basis.*
>
> *6. As far as dues of the IFCI are concerned, the parties are directed to prepare a chart of the claims and dues of IFCI, which is to be placed before the Court on the next date (4th October, 2012."*

Through Civil Misc.Appliation No.6365 of 2015, permission has been sought on behalf of respondent No.2 for placing on record the order dated 9.2.2005 passed by the High Court of Delhi at New Delhi in CP No.55 of 2000 in the matter of M/s Bharat Steel Tubes Ltd., wherein the following directions were issued:-

> *"1. The company has been able to settle the dispute with Punjab National Bank (PNB) and one time settlement has been arrived at with the said Bank. A sum of Rs.8.75 crores have already been paid to the PNB and further amounts are being paid as per the terms of settlement between ex-Directors and the Bank.*
>
> *It may be noted that learned counsel for these workmen had accepted the said proposal which is reflected in the order dated 7.12.2004. However, thereafter CA.117/2005 is filed on behalf of these workers wherein they are claiming some more amount and this prayer is based on the averment that some other workers are paid higher amount. This aspect shall be dealt with in the aforesaid application of these workers. What is emphasized here is that ex-Management has offered to make the payment to these workers also and it shows bonafides of the ex- management to settle the claim of the remaining workers. Mr.D.K.Malhotra, learned counsel appearing for the ex-Management further states that ex-Management shall start making payment to these workers as well in accordance with*

proposal recorded in the order dated 7.12.2004 which would be without prejudice to the right and contentions of the parties and subject to the outcome of C.A.117/2005. The workers on getting the payment shall surrender the company accommodation being occupied by them at present.

2. The applicants have also settled the disputes with EXIM Bank as per which total payment of Rs.130 lacs is to be paid, out of Rs.65 lacs has already been paid and balance payment is to be made in installments which are fall due in future.

3. Dispute with ICICI also stands settled and entire payment of Rs.3.97 lacs stands paid to them.

4. Payment of Rs.10.40 lacs of Punjab National Bank in debentures account is paid in full settling that account.

5. The company had pay IDBI in two accounts, namely, loan account and debenture account. Loan account is settled with the IDBI and payment of Rs.55.91 lacs is to be made out of which Rs.16 lacs has already been paid and further amount is to be paid in installments as per agreement between the parties. Debenture account is also settled at Rs.3.97 lacs out of which Rs.1.19 lacs has already been made and further payment is to be made in future as per the installments agreed between the parties.

6. Government dues, namely, dues of Directorate of Industries, Haryana in the sum of Rs.14.8 lacs have been paid in full thereby extinguishing entire liability on this account. Likewise enhanced amount compensation of Rs.6.30 lacs is also given to Government of Haryana and no further claim remains on this account.

7. The ex-Management has also settled disputes with 490 workers and their claims have been paid in full.

8. With remaining workers, 225 approximately in number, the ex-Management has agreed to settle on the same terms and statement in this behalf was made on 6.12.2004.

It is stated by learned counsel for the applicant that there are no other secured creditors.

The narration of these facts demonstrates that the applicant have settled with all the secured creditors/financial institutions and the substantial payments have also been made to them pursuant to the settlement arrived at between the applicants and the said financial institutions. Government dues have been paid in full. The claims of the workers have also been settled substantially.

The company is having its factory at Ganaur, Haryana which was manufacturing Steel Pipes. On passing of winding up orders and appointment of the Liquidators, the liquidator has taken possession of the said premises. The company was employing about 700-800 workers/employees. The applicants, therefore, want to resume the production and at the same time they also want to file appropriate scheme for revisal of the company.

In view of the aforesaid steps taken by the ex-management whereby most of the claims are settled, it would be fair to give one chance to the applicants to revive the company and this would be possible only if the production in the factory unit is allowed to resume. At the same time while giving this opportunity to the ex-Management, conditions can be imposed to ensure that the unit functions properly and the assets of the company are duly protected. With this objective in mind, following directions are given:

A. Winding up proceedings are hereby stayed. However, the Official Liquidator shall continue to be liquidator and shall oversee the functioning of the unit.

B. The official liquidator shall de-seal the factory premises and given possession thereof to the applicants within two weeks. The applicants shall file the returns of production, sale, receipts and expenditure etc. every two months.

C. Before giving possession, inventory of all assets including plant and machinery etc. shall be made by the Official Liquidator.

D. Mr.Sumant Batra, Advocate is appointed as the Administrator. He shall be paid a sum of Rs.25,000/- per month as fee. He shall be invited in all the meetings of the Board of Directors. He shall also be consulted whenever important policy decision is to be taken. The administrator shall submit monthly reports about the functioning of the company.

E. The expenditure incurred by the Official Liquidator upto now towards security and other administrative expenses etc. shall be informed to the applicants within two weeks and these expenses shall be reimbursed by the applicants to the official liquidator within two weeks thereafter.

The detailed Scheme of Revival under Section 391 shall be filed, as stated by learned counsel for the applicants, within two months from the date of possession of the unit is given to them.

These applications are accordingly disposed of in the aforesaid terms.

CA. 789/2004.

In view of aforesaid order passed in Cas.199, 1050 and 1163 of 2004, prayer made in this application has become infructuous. It is disposed of as such.

CA.117/2005. CA.173/2004 and CA.343/2003

These applications are filed by the workers.

List for arguments on 19th April, 2005."

On going through the order, it is observed that Ex-Management has agreed to settle the claims of 225 workers, including the petitioner also.

This Court, while hearing the respective arguments of the learned counsel appearing on behalf of both the sides, on 25.3.2015 passed the following order:-

> *After hearing the matter at some length, it has transpired that Hon'ble Supreme Court had passed an order, whereby a sum of `1 crore' has been deposited with Official Liquidator and which was ordered to be disbursed by the workman on pro-rata basis. Thus, in essence, the management is not denying the outstanding dues. The only question which has to be determined by the Official Liquidator is the quantum of compensation.*
>
> *This Court after hearing arguments raised query to the learned counsel for the parties that in case appropriate direction is issued to the parties to approach the Official Liquidator for appropriation of their claim in accordance with Companies Act de hors of the fact that there is a award which will not come in the way of the workman.*
>
> *Ms. Abha Rathore, learned counsel for the petitioner seeks short adjournment to obtain instructions in this regard.*
>
> *In the interest of justice, hearing of the writ petition is deferred to 09.04.2015.*
>
> *A photocopy of this order be placed on the files of other connected matters."*

The parties to the lis are not averse to the proposal noted in the order dated 25.3.2015. Since as per the order of the Hon'ble Supreme Court, substantial amount has been deposited with the Registrar of the High Court of Delhi, whereby the Official Liquidator has been directed to settle the claims of the workmen and even Section 529A of the Companies Act, 1956 provides, that notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company, the workmen's dues and debts due to secured creditors shall be *pari passu* with the dues and shall be paid in priority to all other debts. For the sake of brevity, Section 529A of the Company Act is extracted herein below:-

> *"529A. **Overriding preferential payment.-** Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company-*
>
> *(a) workmen's dues; and*
>
> *(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues,*
>
> *shall be paid in priority to all other debts.*
>
> *(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."*

The Management had already filed Company Application No.117 of 2005 before the Company Judge at High Court of Delhi and in view of the directions passed by the Hon'ble Supreme Court (supra), the application filed on behalf of Bharat Steel Tubes Karmchari Union has been rendered infructuous and the Official Liquidator had been directed to disburse the amount. The order dated 16.11.2012 (Annexure R-8) reads thus:-

> *" None for the applicant.*
>
> *These are the applications filed by the General Secretary of the Bharat Steel Tube Karmchari Union seeking payment of their dues.*
>
> *In view of the directions passed by the Supreme Court, these applications have now become infructuous; the Official*

Liquidator shall disburse the amounts in view of the aforenoted directions of the Supreme Court.

Applications are disposed of.

Co. Appl. 296/2006

This is an application filed by the Official Liquidator seeking certain directions which application is not being pressed by the Official Liquidator and is disposed of accordingly.

Co. Appl. 852/2006

None for the applicant.

This is an application filed by Onkar Singh Kanwar seeking permission of the Court to file a suit for recovery against the respondent-Company for certain claims. The respondent-Company i.e. M/s Bharat Steel Tubes has been wound up by this Court; applicant is permitted to file his claim before the Official Liquidator as and when the claims are invited.

This application is disposed of in the above terms.

Co. Appl. 937/2006

None for the applicant.

This is an application filed by Allahabad Bank for recovery of mesne profits and damages from the respondent Company. The respondent-Company i.e. M/s Bharat Steel Tubes has been wound up by this Court; applicant is permitted to file his claim before the Official Liquidator as and when the claims are invited.

This application is disposed of in the above terms.

Co. Appl. 1346/2006

None for the applicant.

This is an application filed by Onkar Singh Kanwar seeking a prayer that the compromise/arrangement proposed by the propounder-Satinder Pal Singh and Gurmeet Kaur be rejected. This prayer has already been allowed and the winding up *order has been passed against the Company.*

This application has even otherwise become infructuous; it is disposed of accordingly.

C.Appl.117/2010

This is an application filed by IFCI seeking certain directions against the ex-directors of the Company which application is not know being pressed; it is disposed of accordingly.

Co.Appl.2004/2010 and 2041/2010.

None for the applicant.

These are the applications filed by Onkar Singh Kanwar seeking a direction against the IFCI and the Official Liquidator for the sale of the assets of the Company under the SARFAESI Act. Learned counsel for the IFCI points out that in view of the judgment of the Division Bench dated 17.09.2012 in Co.APP No.58/2012 titled as Kotak Mahindra Bank Ltd.Vs. Megnostar Telecommunications Pvt.Ltd., the secured creditor is permitted to stand outside the winding up proceedings; he can effect the sale of the secured assets of the Company under the provisions of the SARFAESI Act without the association of the Official Liquidator.

These applications have been otherwise become infructuous; they are disposed of accordingly.

Report No.695/2012

Report of the Official Liquidator dated 09.11.2012 is taken on record. The Official Liquidator is permitted to invite claims from the workers and the secured creditors and for the said purpose publication is permitted to be effected in `Indian Express' (English Edition) and `Dainik Jagran' (Hindi Edition). The Official Liquidator shall also take steps for the publication of the citations of the winding up proceedings in terms of the directions of this Court dated 08.08.2012 as admittedly, the winding up proceedings have not been stayed *by the Supreme Court only status quo qua the properties of the Company has been ordered to be maintained.*

This report is disposed of noting these submissions.

Fresh status report be filed by the Official Liquidator.

Co.Appl.2191 of 2012

This is an application filed by the IFCI which is not being pressed in view of the report filed by the Official Liquidator.

This application is disposed of in terms of the report filed by the Official Liquidator.

Co.Pet.55/2000

Orders of the Apex Court dated 13.09.2012 and 04.10.2012 have been placed on record. The Official Liquidator has been directed to take over symbolic possession of the assets of the Company and the parties i.e., the Official Liquidator and the parties in possession have further been directed to maintain status quo of the said property. Further direction is that the directors of the Company shall deposit a sum of Rs.1 crore which amount has since been deposited; this amount has to be utilized by the Official Liquidator in paying the dues of the workmen on pro rata basis.

Renotify for 07.02.2013."

Since the Official Liquidator had already been directed to settle the claims, the petitioners are given liberty to file fresh claims before the Official Liquidator and the Official Liquidator shall determine the claims of the workmen in accordance with law and settle their dues thereafter. It is made clear that the findings of the Labour Court shall not come in the way of the workmen and the Official Liquidator shall determine the claims of the workmen uninfluenced with the observations given in the award under challenge.

The workmen shall also be at liberty to move an appropriate application before the Company Court, if need arises for seeking condonation of delay in filing the claims in case the Official Liquidator had already invited the claims.

With the aforementioned observations, the writ petitions stand disposed of.

May 14, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**