IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPEAL NO. 4 OF 2011

Menino J. Rodrigyes,
resident of House No.61/2,
Caralo, Paroda,
Quepem Goa. ... Appellant

Versus

Official Liquidator of
M/s National Auto Accessories Limited,
(in Liquidation), EDC House,
Dr. Dada Vaidya Road,
Panaji Goa. ... Respondent

Mr. K. Noorani, Advocate for the appellant under Free Legal Aid Scheme.

Ms. A. Razak, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 11th March, 2016

ORAL JUDGMENT

Heard Mr. K. Noorani, learned counsel appearing for the appellant and Ms. A. Razak, learned counsel appearing for the respondent.

2. This is an appeal preferred by the appellant against the order

passed by the Official Liquidator on 20.02.2009 whereby the claim of the appellant was rejected and allowing the claim of Rs.680.66. It is the contention of the learned counsel appearing for the appellant that in terms of the Memorandum of Settlement (herein after referred to as " the said MOS") signed by the subject company and the workers, the schedule attached to the said MOS discloses that the sum of Rs.18,875/- is payable to the appellant. The learned counsel further pointed out that according to the appellant a sum of Rs.54,416/- was due and payable by the company to the appellant. The learned counsel further pointed out that the Official Liquidator has relied upon the statement of affairs filed by the Ex-Director to direct the payment of only a sum of Rs.680.66. The learned counsel has thereafter taken me through the impugned order to point out that there is no justification to pass such order. The learned counsel further submits that the appellant is entitled for interest on the said amount and any further amount, if at all the appellant is entitled to claim from the company in accordance with law.

3. On the other hand, Ms. A. Razak, learned counsel appearing for the respondent has submitted that the statement of affairs filed by the Ex-Director to point out that only a sum of Rs.680.66 is payable to the

appellant. The learned counsel however submits upon instructions that there are no receipts on record of the company to show that any amount was received by the appellant after the said MOS came to be signed. The learned counsel further points out that the question of payment of any interest would not arise as according to her no interest is payable on such amount unless there is surplus after all the amounts are duly paid in terms of Rule 179 of the Companies Rules. The learned counsel as such points out that the appeal be rejected.

4. I have considered the submissions of the learned counsel and I have gone through the records. In identical circumstance, while disposing of Company Appeal No.2 of 2011, I have taken a view that when there are no receipts on record to establish that any amount are received by the appellant, the Official Liquidator has to pay the amount in terms of the schedule attached to the said MOS. It is admitted position that there is no receipt on record to point out that any amounts were received by the appellant. Consequently, the Official Liquidator was not justified to refuse the amount of Rs. 18,875/- as reflected in the schedule attached to the said MOS. The contention of the learned counsel appearing for the appellant that the appellant is entitled for a

sum of Rs.54,416/- as well as interest thereon is devoid of any substance. There is no document on record or any material produced to substantiate such claim. In any case, the question of payment of interest would not arise in terms of the said Rule. As such, interest would be payable in case any surplus in the amount after liquidating all liabilities of the subject company in terms of the said Rules. As such, I pass the following :

O R D E R

(1) The appeal is partly allowed.

(2) The appellant is entitled for a sum of Rs.18,875/- only.

(3) Needless to say that in case the appellant is entitled for any further amount, the same shall be adjudicated in accordance with law.

(4) The appeal stands disposed of accordingly.

F. M. REIS, J.

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