Comp.A.No.914 of 2016 in C.P.No.17 of 2004

T.S.SIVAGNANAM,J

Heard Ms.S.Indhumathi Ravi, learned counsel for the applicant, learned Official Liquidator and Mr.K.M.Aasim Shehzad, learned counsel for the IDBI Trusteeship Services.

2. In this application, the applicant - the LIC of India (hereinafter called the LIC), seeks to set aside the rejection of proof dated 15.3.2016 by the learned Official Liquidator to the extent of Rs.4,02,11,959/-, of which, the LIC's share is Rs.3,71,42,466/- under the caption of 'erroneous excess interest in NCD-G Series' and for a consequential direction to the learned Official Liquidator to consider the rejected claim on merits and pass fresh orders of adjudication related to debenture claim already made by the applicant.

3. This is the second time the applicant is before this Court with regard to similar claims. Earlier, they filed Comp.A.No.680 of 2015 in C.P.No.17 of 2004 wherein a direction was sought to set aside the rejection of proof dated 26.2.2015 in respect of the debentures issued by the company in liquidation in Series B, D, E and G and towards balance term loan claim and to direct the learned Official Liquidator to consider the rejected claim on merits.

4. This Court, after hearing the learned Official Liquidator, disposed of the said company application by order dated 7.8.2015, the operative portion of which, reads as follows :

"Be that as it may, the order passed by the Official Liquidator on 26.2.2015 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 made 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."

5. Thus, in terms of the above directions, the learned Official Liquidator was directed to give a personal hearing to the LIC and thereafter adjudicate the claim within a time frame. This Court was conscious of the fact that there should not be any overlapping and had issued necessary directions in that

regard also. Unfortunately, the learned Official Liquidator has not complied with the order and direction issued above. After the order was passed by this Court, the learned Official Liquidator considered the claims in respect of B, D, E and G Series and there is no dispute in that regard. The present controversy is only with regard to G-Series.

6. It appears that the IDBI Trusteeship Services filed an application in Comp.A.No.165 of 2012 before this Court for condonation of the delay of 1843 days in filing the claim petition. Further, this Court allowed Comp.A.No. 165 of 2012 by order dated 13.2.2012. Consequently, the learned Official Liquidator entertained their claim. The learned Official Liquidator ought to have considered the claim petition of the LIC, as the same was pending before the learned Official Liquidator since 2009. The proper procedure that should have been adopted was to hear both the LIC and the IDBI Trusteeship Services and adjudicate their claims in respect of G-Series. However, the adjudication has been done by the learned Official Liquidator after hearing IDBI Trusteeship Services alone and an amount of Rs.20,07,00,000/- was admitted and an amount of Rs.3,71,42,466/-, which is the claim made by the LIC, has been rejected.

7. The contention of the applicant herein is that without hearing them, the learned Official Liquidator could not have passed the orders merely on the basis of the directions issued in the earlier application.

8. The contention of the learned counsel for the applicant merits consideration, as, from the report of the learned Official Liquidator, it is evident that the applicant herein - the LIC was not heard.

9. The learned counsel appearing for the IDBI Trusteeship Services submits that they had been interacting with the LIC and had obtained documents from them and only thereafter, they appeared before the learned Official Liquidator and put forth their submissions and that the interest of the LIC has been sufficiently safeguarded.

10. However, this submission does not merit consideration because the had IDBI Trusteeship Services fairly contested the matter, they would have challenged the order dated 15.3.2016 in so far as the rejection of interest claim is concerned. This, having not been done, has compelled the LIC to come up before this Court.

11. In all fairness, the IDBI Trusteeship Services ought to have challenged the order of the learned Official Liquidator rejecting the claim to the extent indicated above.

12. The learned counsel for the IDBI Trusteeship Services submits that they were in the process of arranging to challenge the impugned proceedings, but the LIC was of the opinion that they will engage a separate counsel and challenge the same.

13. In the light of the above observations, the above application is allowed and the rejection of proof dated 15.3.2016 to the extent of

Rs.4,02,10,959/- is set aside and the matter is remitted back to the learned Official Liquidator for a fresh consideration. The learned Official Liquidator shall issue notice to the LIC as well as the IDBI Trusteeship Services, hear the authorized representatives of both organizations and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

09.12.2016

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<u>T.S.SIVAGNANAM,J</u>

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