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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CO.APP. 9/2009

FEDERAL BANK LTD. ..... Appellant

Through: Mr C.V. Francis and Ms Sindhu Mohan, Advs.

versus

CRB CAPITAL MARKETS LTD. (IN LIQ0 AND ANR.

..... Respondents

Through: Mr Sudhanshu Batra, Sr. Adv with
Mr Bhuvan Gugnani, Adv. for R-1
Mr Dayan Krishnan, Sr. Adv with
Ms Malavika Lal and Ms Akashi Lodha, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 29.02.2016

The question urged by the appellant in these proceedings is whether the learned Company Judge by the impugned order fell into error in not acceding to its request, i.e., whether M/s Merind Limited, the Company's debtor ought to be further directed to pay additional amounts over and above the sums deposited before the Court.

CRB Capital Markets Ltd. is a company facing provisional liquidation. The winding up petition was moved. In the course of the proceedings, the learned Company Judge had issued directions requiring M/s Merind Limited, which owed amounts towards lease rentals to the company in liquidation, to deposit with them 15% interest for the period from 01.04.1997 to 24.02.2004. These amounts were deposited. By subsequent order of 22.08.2005, amounts, so deposited, were released in favour of the present appellant. M/s Merind Limited was also directed to deposit interest in terms of the order dated 23.07.2005. The said concern, i.e., M/s Merind Limited moved an application contending that the amounts payable by it included the interest component at aggregate rate of 13% and a further direction was, therefore, unnecessary. The Court accepted this application after hearing parties by an order dated 20.04.2007. In these circumstances, the impugned order was made on 22.08.2008. This order clarified that the applicant (M/s Merind Limited) had to pay 15% interest *per annum* with effect from 01.04.1997 till 24.02.2004. The appellant Federal Bank Limited, a secured creditor of CRB Capital Markets, contends that the direction misconstrued the conditions applicable to lessee and that the amounts, including interest was payable. It is urged that in overlooking this aspect, the learned Single Judge fell into error of law. Counsel for M/s Merind Limited points out that there is no privity of contract between the said applicant and the Federal Bank, which is the only secured creditor vis-a-vis the company facing winding up proceedings, i.e., CRB Capital Markets. It is submitted that directions which were made had been complied with and under the circumstances no interference with the order is called for.

This Court notices that the terms of the *inter se* arrangement between the company facing winding up and its secured creditors, the appellant had not been gone into. All that the official liquidator did—and the Company Court accepted or affirmed in its order—was to permit settlement of claims of the said company with its debtors as a consequence of which the entire amounts payable to CRB Capital Markets—the sum of Rs.64 lakhs (inclusive of interest) were deposited. In the given circumstances of the case, considering that the amounts payable to the appellant are yet to be determined, no exception can be made to the impugned order which is based upon pure appreciation of facts.

The appeal fails and is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 29, 2016
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