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

\+ CO.APP. 36/2014

CENTRAL BANK OF INDIA ..... Appellant
Through : Sh. Jaswinder Singh, Advocate.

versus

OFFICIAL LIQUIDATOR ..... Respondent
Through : Sh. Rajiv Bahl, Advocate.
Sh. R.D. Makheeja, Advocate.

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

ORDER
% 07.04.2016

The question urged in this appeal which challenges the correctness of the decision of the learned Company Judge is whether the Official Liquidator (OL) acted justly in rejecting the subsequent representation of the appellant's claim for ₹104 lakhs in the course of winding-up proceedings.

The company, i.e. M/s. Consolidated Steel and Alloys Ltd. was directed to be wound-up. The appellant bank was concededly one of its secured creditors. It pressed its claims under Form No.66 of the Companies (Court) Rules, 1959. In the course of the proceedings, the OL took into account the submissions of all secured creditors, including the institutions and public banks and adopted a criteria of taking into account the principal amount due as on the date of appointment of the Provisional Liquidator and decided the debts on which funds could be disbursed. The appellant sought to include an additional sum of ₹104 lakhs as outstanding by way of a representation, urging it as a funded interest loan. It was urged that this amount was due to the appellant bank and was determined by the Debts Recovery Tribunal (DRT) in its order dated 18.08.2009. The OL declined the request. Learned Single Judge rejected the bank's appeal after noticing the essential facts and *inter alia* observed as follows:

> *"10. ....The Official Liquidator, in order to simplify the process, adopted the criteria of only taking into account the principal amount payable to all secured creditors as on the date of appointment of a Provisional Liquidator in order to determine the ratio in which the available funds could be disbursed. This method was adopted, apparently, for the reason that the funds available with the Official Liquidator were less than the principal amount payable to the secured creditors. The representative of the Central Bank had agreed with this methodology and confirmed the amount of principal outstanding. The appellant now submits that the claim of the appellant should also be accepted to include the amount of interest funded by the bank. This contention cannot be accepted. In the event any interest is accepted as payable to the appellant bank it would also be necessary to consider the interest payable by the company to other secured creditors in order to arrive at the ratio in which the disbursement ought to be made. The other secured creditors have accepted and acted on the basis of the unanimous decision that only the principal amount would be considered by the Official Liquidator and the appellant is now estopped from challenging the same. In view of the fact that the representative of the appellant bank had agreed with the criteria adopted by the Official Liquidator, I find no reason to entertain the present appeal. The Official Liquidator exercises quasi judicial functions and the appellant cannot be permitted to resile from the concessions made before the Official Liquidator in*

discharge of his functions.

11. The present appeal is accordingly dismissed"

It is urged by the appellant that the learned Single Judge failed to notice that the funded interest itself also constituted principal amounts and, therefore, had to necessarily be taken into account by the OL since they had lost the character of interest recoverable. Learned counsel also urged that the DRT's order in fact confirmed this submission and should not have been, therefore, overlooked.

Learned Single Judge noticed the fact that the OL evolved a criteria after hearing the representations of all secured creditors, including the appellant bank. At that stage, it was within the knowing and contemplation of the bank that funded interest liability – contingent at best, could be included. Neither in its claim nor in its submission before the OL did it urge this aspect. That it subsequently chose to represent and seek these amounts as due in the claims previously furnished, therefore, could not have bound the OL, who had completed the process of ascertaining the dues. Learned Single Judge, therefore, correctly held that no injustice was caused to the appellant. This Court entirely concurs with that view. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

APRIL 07, 2016
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