Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION LODGING NO.95 OF 2017
IN
COMPANY PETTION NO.270 OF 2001

SICOM Limited,
a company registered under
Companies Act, 1956 having
registered address at Solitaire Corporate Park,
Building No.4, Guru Hargovindji Road,
Andheri (East),
Mumbai 400 093. ...Applicant.

IN THE MATTER BETWEEN

BIFR	]	…Petitioner.
	]	
And	]	
	]	
Set Telecom Limited (in Liquidation)	]	
through Official Liquidator,	]	
High Court, Bombay	]	
having office at Bank of India Building,	]	
Fort, Mumbai 400 023.	]	...Respondent.

WITH
OFFICIAL LIQUIDATOR'S REPORT
NO.18 OF 2017/LIQN. VIII
IN
COMPANY PETTION NO.27O OF 2001

In the matter of companies Act, 1 of 1956.
And
In the matter of M/s. Set Telecom Limited (in Liquidation)

B.I.F.R.]...Petitioner.

Mr. Nirman Sharma i/by Sunil M. Kadam for the Applicant.
Mr. Prathamesh Kamat for the Official Liquidator.
None for the MSFC.

CORAM : A.S.GADKARI, J.
DATE : 23rd June, 2017.

PC:

1. The Official Liquidator has filed the present report, for condonation of delay of 39 days in reassessment of claims of the secured creditors and the workers as per the order dated 12.8.2016 of this Court; to permit the Official Liquidator to file revised certified list of 35 workers and the secured creditors; to direct SICOM and MSFC to bring back an amount of Rs.18,75,152/-and Rs.11,87,225/- respectively and deposit the same with the Official Liquidator within one week which is appropriated by them in excess of its entitlement as per the pari passu distribution among the secured creditors and workers to enable the Official Liquidator to declare and distribute the dividend to workers and ARCIL; and to rectify the action of Official Liquidator in taking the assistance of M/s. S.M. Pradhan, Chartered Accountant & Co. for re-assessment of

the claim of workers and secured creditors and to pay Rs.250/- per claim plus taxes after receipt of bill out of the funds available to the credit of the company (in liquidation).

2. SICOM has filed the aforestated application for setting aside the reassessment of claim by the Official Liquidator vide notice of admission dated 31.10.2016 and for adjudication of the entire claim of SICOM as per its affidavit of debt dated 8.9.2016 and for adjudication of the claim of SICOM to the extent of Rs.5,73,35,714/- as secured creditors.

3. Heard Shri. Sharma, learned counsel appearing for the SICOM and Shri.Kamat the learned counsel for the Official Liquidator.

4. The record indicates that, the MSFC has been duly served by the Official Liquidator and despite the service none appeared for the MSFC.

4. Mr. Sharma, learned counsel appearing for SICOM vehemently opposed the Official Liquidator's Report and submitted that the claim asserted by SICOM in

its revised affidavit of proof of debt dated 8.9.2016 with the Official Liquidator is just, right and proper and needs to be allowed. He submitted that in the absence of specific terms such as “compound interest” “half yearly rests” in the modified terms of agreement it will have to be construed that SICOM is entitled for claiming compound interest with half yearly rests. In support of his contention he relied on the decision of the Karnataka High Court in the case of Jayakunvar Manilal Shah vs. Syndicate Bank reported in 1991 SCC Online Kar 467 : ILR 1992 Karnataka 1053. He therefore, prayed that the Company Application (L) No.95 of 2017 be allowed in terms of prayers mentioned therein.

4. The record indicates that in Company Petition No.270 of 2001 presented by the BIFR, this Court by an order dated 7.12.2006 appointed Official Liquidator as the Provisional Liquidator of M/s. Set Telecom Limited (in Liquidation). That, by an order dated 22.6.2010 the company was ordered to be wound up and the Official Liquidator was appointed as Liquidator with all the powers under the Companies Act, 1956. On 1.7.2016 the Official

Liquidator placed a report bearing OLR No. 225/2016 seeking directions from this Court to SICOM and MSFC to bring back an amount of Rs.21,96,293/-and Rs.15,20,228/- respectively with interest at the rate of 12% per annum from 2003 till date within 15 days. On the said report this Court by its order dated 11.7.2016 directed SICOM and MSFC to make the said payment to the Official Liquidator within a period of two weeks from the date of the said order. That, SICOM filed Company Application (L) No.512 of 2016 for modification and for recalling of the order dated 11.7.2016 and for directions to the Official Liquidator to re-adjudicate the claim of the SICOM and other creditors. This Court by an order dated 12.8.2016 directed the Official Liquidator to complete the process of reassessment and revaluation of the claims of workers and secured creditors and to hold the meetings with all necessary parties within a period of 6-weeks from the date of passing of the order. That, in pursuance of the said order dated 12.8.2016, the Official Liquidator appointed panel Chartered Accountant namely M/s. S.M. Pradhan and Co. for reassessment of the claims of the workers of M/s. Set Telecom Limited (in Liquidation). SICOM thereafter filed the revised affidavit of proof of debt dated 8.9.2016 with the Official Liquidator claiming Rs.5,73,35,714/-. It appears from the record that, as per the order dated 12.8.2016 meetings were held by the Official Liquidator with the secured creditors on 1.9.2016, 9.9.2016 and 16.9.2016 to discuss the reassessment of the claims. The Official Liquidator thereafter issued a notice of admission of proof of debt dated 31.10.2016 intimating that an amount of Rs.2,51,23,842/- has been allowed against the claim amount of Rs.5,73,35,714/- to SICOM. The basis of reassessment of adjudication of SICOM has been mentioned on Page Nos. 2 and 3 of the said notice of admission of proof of debt (Pages- 35 and 36 of Company Application (L) No.95/2017). SICOM by its reply dated 19.11.2016, to the notice of admission of debt, contended that the interest amount calculated by the Official Liquidator is wrong and it is entitled for compound interest with rests and not for simple interest as simple interest was never agreed by SICOM. In the premise, the aforestated Official Liquidator's Report No.18 of 2017 and Company Application No.95 of 2017 in Company Petition No.270 of 2001 have been filed by the respective parties.

5. The original terms of the agreement between SICOM and the Company reads as under:

> "The company agreed to pay interest at the rate of 15.5.% payable by half yearly <u>rests</u> on 31st March and 30th September every year with proviso to pay additional interest/<u>compound</u> interest (underlined supplied) at the rate of 2.5 % p.a. over and above SICOM's lending rate as applicable prior to IDBI refinance on the total amount in default during the period of such default".

That the aforestated terms of the agreement were modified by an agreement dated 5.12.1990 and the modified terms of the agreement reads as under:

> "The company agreed to pay interest on the said loan of Rs.65,00,000/- at the rate of 16.5% per annum with effect from 1st April 1990 payable quarterly on 31st January, 30th April, 31st July and 31st October every year and agreed to pay additional interest at the rate of 2.5% per annum on the total amount in default during the period of such default."

6. A plain reading of the aforestated terms would clearly indicate that, there is clear novation in the terms of the contract and in view of the modified terms of the agreement the original terms/conditions of the contract which were providing for half yearly rests on 31st March and 30th September every year with proviso to pay additional interest/compound interest has been waived by SICOM and therefore now SICOM and MSFC cannot be permitted to raise a specious plea that, in the absence of the said terms in the modified agreement dated 5.12.1990, it can levy compound interest as it is implied in the contract. According to me the reliance on the decision of the Karnataka High Court in the case of Jayakunvar Manilal Shah (supra) is totally misplaced, as the said decision is pronounced in a different set of facts and it does not deal with novation in the contract/agreement. In view thereof SICOM and MSFC are now precluded from claiming compound interest and therefore, the claim of the SICOM cannot be entertained. The record clearly indicates that the Official Liquidator has taken assistance of an expert in the

field, namely a Chartered Accountant for re-assessing the entire claim of SICOM in view of the order dated 12.8.2016 passed by this Court and the conclusion arrived at by the said Chartered Accountant appears to be proper and rational.

7. In view of the above, the Official Liquidator's Report No.18 of 2017 is allowed in terms of prayer clause (a), (b) and (d).

8. As far as prayer clause (c) is concerned, SICOM and MSFC respectively are directed to bring back an amount of Rs.18,75,152/- and Rs. 11,87,225/- respectively and deposit the same with the office of the Official Liquidator within a period of two weeks from the date of receipt of this order and accordingly the Company Application No.95 of 2017 is dismissed.

9. At this Stage, learned counsel appearing for the SICOM submitted that it would like to test the correctness of the present order before the Appellate Court and therefore, implementation and operation of the present order may be stayed for a period of 8-weeks from today.

At the request of Mr. Sharma the implementation and operation of the present order is stayed for a period of 8-weeks from today.

(A.S.GADKARI, J.)