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

COMPANY APPLICATION NO.336 OF 2016
IN
COMPANY PETITION NO.1044 OF 1997

IN THE MATTER OF B.K.PAPER MILLS LIMITED (In Liquidation)

Harshraj Nitin Thar)….Applicant/Creditor
V/s.
B.K.Paper Mills Ltd.)....Respondent

Mr.Jayesh Bhatt for the applicant.
Mr.Vachan Bodke i/by Chitnis Vaithy and Co. for Ex-director.
Mr.Naushad Engineer for Official Liquidator.
Mr.Mahendhar Aithe-Company prosecutor for OL present.

CORAM : K.R.SHRIRAM,J
DATE : 18.12.2017

P.C.:-

1 This application is taken out by the applicant who is one of the unsecured creditor of the company in liquidation praying for setting aside an order dated 23.6.2015 passed by the Official Liquidator under which the applicant was not paid any interest.

2 The applicant states that his claim was for goods sold and delivered and as against 32 invoices for which goods were supplied, liquidator has only cleared payments relating to 27 invoices and has paid to the applicant sum of Rs.26,82,742/-. The applicant is not contesting the decision of the Official Liquidator who has rejected 5 invoices as not proved. What the applicant states is that the liquidator

should have granted interest on the amount of Rs.26,82,742/- that was paid. Mr.Bhatt for the applicant submitted that this court in an order dated 6.7.2010 on an application taken out by the ex-director of the company observed that the ex-director shall be entitled to recover the amount deposited only from the balance amount lying to the credit of the company or being found due to the company after paying all the creditors in full. According to Mr.Bhatt the expression "after paying all the creditors in full" in the said order means that the present applicant should be paid interest @ 15% p.a. on the amount paid by the liquidator.

3 The liquidator while considering the claim of the applicant herein has adjudicated the claim as under :-

> *"Claim No.157 – Claim towards supplies to B.K.Paper by Harsh Trading again for Rs.31,04,411/- which OL office had admitted only to the extent of Rs.416956/- under the earlier notice of admission of proof dated 30th March 2015 (OL Sec VIII23125).*
>
> *During the hearing of 8th May & 18th May 2015 Mr.Nitin Thar produced original copies of receipted challans available for verification. It was noticed that out of 32 invoices, he could produce original copies for 27 invoices.*
>
> *The amount admissible against these 27 bills (excluding 5 inadmissible) works out to be Rs.22,65,786/- as per Exhibit D (Claim No.157).*
>
> *The balance amount and interest is rejected as not proved.*
>
> *This adjudication is supplementary to earlier amounts admitted in respect of the aforesaid two*

claimants.

There is no proof of interest against both these amounts, hence no interest is admissible on these amounts. However considering the delay of about 20 years the claimant is at liberty to approach the Honorable Court for grant of interest.

And take further notice that subject to the power of the court to extend the time, no application to reverse or vary my decision in rejecting either in full or in part, any of your claims as aforesaid will be entertained after the expiry of 14 days from the date of service of this notice."

4 Despite repeatedly asking Mr.Bhatt as to which is the document on which the applicant herein is relying to say that he is entitled to interest @ 15 % p.a., Mr.Bhatt was unable to produce any such document. Mr.Bhatt stated that the claim was for goods sold and delivered and the applicant was entitled to interest @ 15% p.a. I am afraid I cannot accept this submission because there is no contract with the company in liquidation to show that the company had agreed to pay interest @ 15% p.a. The only provision in law is Rule 179 of the Companies (Court) Rules, 1959 which deals with payment of interest post date of winding up. Rule 179 of the Companies (Court) Rules, 1959 reads as under :-

*"**Payment of subsequent interest**- In the event of there being a surplus after payment in full of all the claims admitted to proof, creditors whose proofs have been admitted shall be paid interest from the date of the winding up order or of the resolution as the case may be,*

up to the date of the declaration of the final dividend, at a rate not exceeding 4 per cent per annum on the admitted amount of the claim, after adjusting against the said amount the dividends declared as on the date of the declaration of each dividend."

5 Mr.Engineer for Official Liquidator states that even less than a month ago the liquidator has received various claims from creditors and ex-employees and large number of depositors who have lodged their claims under Maharashtra Protection of Interest of Depositors Act 1999 (MPID) and therefore, as on date there is nothing to indicate that there will be any surplus money left to even consider payment of interest under Rule 179. Mr.Bhatt submitted that the present applicant's related companies got interest from the liquidator against the claim lodged by those persons. Despite asking Mr.Bhatt to produce copies of those adjudication orders, so that court can consider the stand of the present applicant, Mr.Bhatt was unable to produce the documents.

6 in the circumstances, application is rejected. At the same time, the applicant may approach this court for payment of interest under Rule 179 once the dues of all claimants are paid and liquidator files a report that there is a surplus after payment in full.

(K.R.SHRIRAM,J)

KJ