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

COMPANY APPLICATION NO.805 OF 2015
IN
COMPANY PETITION NO.1044 OF 1997

M/s.Paper Chase International .. Applicant

In the matter between
M/s.Paper Chase International .. Petitioner
Vs.
The Official Liquidator of
M/s.B.K. Paper Mills Ltd. .. Respondent

Mr.Amey Patil i/by M/s.Vivek Kantawala & Associates for the applicant/petitioner.
Mr.Naushad Engineer for the official liquidator.
Mr.Mohindher Aithe, Company Prosecutor for the official liquidator present.

CORAM : R.D. DHANUKA, J.
DATE : 15th February 2017

P.C. :

. There is no dispute that the official liquidator has already adjudicated upon the claim of the applicant/petitioner. The applicant however, has not collected the adjudicated amount from the official liquidator till date though offered on the ground that the applicant is also entitled to claim for interest on the said amount for last several years.

2. Mr.Engineer, learned counsel for the official liquidator, on the other hand, submits that in so far as the claim for interest from the date of winding up under Rule 179 of the Companies (Court) Rules, 1959 is concerned, the applicant is not entitled to be awarded any payment of interest from the date of winding up till payment. He submits that in so

far as the claim for interest prior to the date of winding up is concerned, the applicant did not produce any contract with the company in liquidation for payment of interest.

3. Learned counsel for the applicant in rejoinder submits that though there is no provision in the contract with the respondent for payment of interest, since the applicant had demanded payment of interest in the notice, the applicant is entitled to be paid interest.

4. Learned counsel for the applicant placed reliance on the judgment of the Supreme Court in the case of ***B.V. Radha Krishna Vs.Sponge Iron India Ltd.,*** reported in ***AIR 1997 SC 1324*** and in particular paragraph 16 thereof.

5. A perusal of the said judgment rendered by the Supreme Court clearly indicates that Supreme Court has considered Section 3(1)(b) of the Interest Act, 1978 in the Arbitration matter whenin there was money claim made by the appellant. In that matter, the Supreme Court interpreted Section 3(1)(b) of the Interest Act, 1978 and has held that the appellant was entitled to interest from the date mentioned in the notice for payment of interest under Section 3(1)(b) of the Interest Act, 1978. In my view, the said judgment of the Supreme Court in the case of ***B.V. Radha Krishna (supra)*** would not assist the case of the applicant in view of the fact that the winding up proceeding is not filed for recovery of claim.

6. A perusal of Section 3(1)(b) of the Interest Act, 1978 clearly indicates that the said provision is attracted only in any proceedings for

the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made. In my view, since winding up proceeding is not filed for the recovery of any debt or damages but is filed for winding up, Section 3(1)(b) of the Interest Act, 1978 is not attracted. The claim for interest for the past period upto the date of winding up is thus untenable and is rightly rejected by the official liquidator.

7. It is made clear that if the respondent-company comes out of the liquidation, the applicant would be at liberty to file claim for recovery of the balance amount. If there is any surplus in the account of the company with the official liquidator, the applicant can revive its claim for payment of interest from the date of winding up till payment.

8. Learned counsel for the applicant, at this stage, states that his client will accept the adjudicated sum from the official liquidator within one week from today.

9. The official liquidator is directed to release the adjudicated amount as far as the applicant is concerned upon receipt of the further amount from the ex-directors. Such release shall be made within one week from the date of receipt of the amount from the ex-directors. Company application is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.