

IN THE HIGH COURT OF JUDICATURE OF MADRAS

JUDGMENT RESERVED ON : 19.01.2017

JUDGMENT PRONOUNCED ON : 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

O.S.A.No.370 of 2013

The Recovery Officer,
Employees Provident Fund Organisation,
Sub Regional Office,
SJ Plaza, Swarnapuri,
Anna Salai,
Salem - 636 004. Appellant

-vs-

The Official Liquidator,
High Court, Madras, as the Liquidator of
Uma Maheswari Spinning Mills Ltd.,
(in liquidation). Respondent

Prayer: Original Side Appeal filed under Order XXXVI, Rule 9 of
Original Side Rules read with Clause 15 of the Letters Patent,
against the fair and decretal order dated 26.03.2013 passed in
Company Application No.987 of 2011 in C.P.No.173 of 2001 on the
file of the Original Side of the High Court of Madras.

For Appellant : Mrs.R.Meenakshi

For Respondent : Mr.B.Dhanaraj

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J U D G M E N T

[Judgment of the Court was delivered by N.AUTHINATHAN, J.]

M/s.Uma Maheswari Mills Ltd., is a covered
Establishment under the Employees Provident Fund and
Miscellaneous Provisions Act, 1952. The said Company was ordered
to be wound up by this Court on 20.12.2006 in C.P.No.173 of
2001.

2. The Official Liquidator issued notice as required by the Companies (Court) Rules, 1959. Thereafter, in response to the notice issued by the Official Liquidator, the appellant made a claim dated 28.03.2007 for Rs.7,90,60,506/-. The Official Liquidator has admitted their claim to the tune of Rs.7,90,60,506/-.

3. Thereafter, the appellant made an additional claim of Rs.30,31,062/-. The Official Liquidator rejected the claim by his order dated 10.11.2011.

4. Aggrieved by the said order, the appellant filed C.A.No.987 of 2011 under Order XIV Rule 8 of the Original Side Rules and Rule 9, 11(b), 19 and 164 of the Company (Court) Rules, 1959, to set aside the order passed by the respondent in Claim No.1/173/2001/Claims dated 10.11.2011 and consequently, direct the Official Liquidator to pay the appellant full provident dues amounting to Rs.8,20,91,568/- on priority over all other dues.

5. The Company Court has held that it was not within the jurisdiction of the Official Liquidator to extend the time to entertain the additional claim made by the appellant, as no permission was obtained from the Company Court to raise additional claim.

6. The learned counsel appearing for the appellant would submit that the provisions of Limitation Act do not apply to the claims of the appellant under E.P.F. Act and that, therefore the order of the learned single Judge is liable to be set aside. The learned counsel appearing for the appellant would further submit that the Official Liquidator should have returned and not rejected their additional claim. He has relied on the decision in EMPLOYEES PROVIDENT FUND COMMISSIONER vs. O.L. OF ESSKAY PHARMACEUTICALS LIMITED [2012-I-LLJ-1], wherein the Hon'ble Supreme Court held that the "Amount of dues under E.P.F. Act, 1952 would be a first charge under Section 11(2) thereof, on assets of establishment payable in priority to dues of workmen and secured creditors under Section 529-A, of Companies Act, 1956".

7. It is not in dispute that the Official Liquidator has already admitted the claim of the appellant to the tune of Rs.7,90,60,506/-. As the appellant has made additional claim invoking the provisions of Companies (Court) Rules, 1959, their additional claim has to be dealt with in accordance with the provisions of the Rules. The Rules prescribed procedure for estimating and assessing the liabilities of their company as on the relevant date.

8. It is not the case of the appellant that they have filed proof of their claim with the Official Liquidator, within the time specified in his advertisement. It is also not in dispute that the appellant did not apply to the Company Court for a direction to the Official Liquidator to adjudicate upon their claim. Therefore, the impugned order rejecting the application of the appellant by the Company Court cannot be said to be bad in law and it is to be upheld. However, the rejection will not operate as a bar for the appellant to move the Company Court for a direction to the Official Liquidator to adjudicate upon their additional claim.

9. With the above observations, the Original Side Appeal is disposed of. No costs.

sd/
Assistant Registrar (CS V)

/true copy/

Sub Assistant Registrar

sri

To

1. The Official Liquidator,
High Court, Madras.
2. The Sub assistant registrar, Original Side,
High Court, Madras.

+1cc to Mr.R.Meenakshi, Advocate SR.No.11642

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O.S.A.No.370 of 2013

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GN(07/03/2017)

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