IN THE HIGH COURT OF JUDICATURE AT PATNA
Company Appeal (SJ) No.4 of 2013

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M/s Vipul Dye chem Ltd, 102, Andheri Industrial Estate, Off. Veera Desai Road, Andheri (West), Mumbai-400 053 – through its Managing Director Mr. Vipul P. Shah.

... ... Appellant/s

Versus

The Official Liquidator, High Court Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ashok Kr. Sinha, Sr. Adv.
		Mr. Rajeeva Roy, Adv.
		Mr. Amrendra Kr. Sinha No.1, Adv.
For the O.L.	:	Mr. Gautam Kejriwal, Adv.
For the Bank	:	Mr. K. K. Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 10-05-2018

Heard learned counsel for the parties.

In the present case, the petitioner, which is a Company incorporated under the Companies Act, has challenged the order dated 15th-16th May, 2013 passed by the Official Liquidator, whereby it has been mentioned that the claim of the petitioner for Rs.74,000,00/- will be treated to be an ordinary claim and also rejected the claim of Rs.1,15,13,589/- under the heading of interest against the petitioner-company on the ground that not maintainable as per the law as there is no specific agreement for payment of interest on the security deposit.

Primarily, learned counsel for the petitioner has submitted that the order of the Official Liquidator, treating the claim of the appellant-company as an ordinary claim, is completely illegal and unsustainable as the claim made by the appellant-company will be treated as first charge even have a preference over the claim of Secured Creditor as well as of workers on the premise that the appellant-company will not be treated to be creditor, neither the Pyrites Phosphates & Chemicals Limited nor the Official Liquidator will be treated as debtor as the said amount will be treated as the amount kept in trust.

The appellant-company is the seller of urea, which was to be supplied to the Pyrites Phosphates & Chemicals Limited (hereinafter mentioned as ‘Pyrites Company’). For the said transaction, an agreement dated 17.10.1995 was entered between the Pyrites Company as well as the appellant-company to supply 50,000 Metric Ton of urea at the rate of 2.25 US $ per Metric Ton. As per the agreement dated 17.10.1995, the last date for supply of urea was to be made by 20.01.1996 and as per the terms of the agreement, the petitioner-company furnished the Bank Guarantee, which was purchased from the Vijaya Bank, to the Pyrites Company. The total amount of Bank Guarantee was Rs.74,000,000/- in the break-up of Rs. 67,000,00/- and Rs. 7,000.00/-. Before expiry of the last date of supply of urea, the

Pyrites Company has purchased 60,000 Metric Ton from another Company on 19.01.1996 and on the next date the Pyrites Company has invoked the Bank Guarantee though it was a conditional. It was not so that it was an unconditional but also de hors to the terms of the agreement, invoked crediting the Bank Guarantee of the amount, accordingly, the amount was credited to the account of the Pyrites Company. After this incident of invoking of the Bank Guarantee, the petitioner-company placed demand to return of the said amount when it was refused, the petitioner-company as per the terms of the agreement for resolution of the dispute invoked the appointment of an Arbitrator and accordingly, Arbitrator was appointed, the Arbitrator fully deliberated the matter and passed the award of Rs.74,000,00/- in favour of the petitioner-company, the award passed by the Arbitrator was challenged under Section 34 of the Arbitration Act, unsuccessfully before the District Magistrate, Gautam Nagar, Noidas Accordingly, after dismissal of the objection under Section 34 of the Arbitration Act, a degree was prepared on 12.09.2000. As the financial condition of the company was deteriorated the company had approached under BIFR under Sick Industries SICA, and, accordingly, the matter was placed before the BIFR which was registered as Reference Case no.503 of 1999, the application was filed for revival of the company.

As the company was not satisfying the condition for revival, ultimately, referred the matter under Section 20 for winding up the company and accordingly, on the recommendation of BIFR, the case was registered under the Companies Act vide Company Petition no.40 of 2002. The award which was passed in favour of the appellant-company could not be executed on account of pendency of the case before the BIFR, accordingly, the appellant-company filed I.A. No.717 of 2008 and this Court, in view of the prayer made by the appellant-company, permitted to withdraw the said Interlocutory Application with the liberty to file its claim before the Official Liquidator within a period of two weeks from the date of passing of the order i.e. 05.11.2009 (Annexure-1 of the petition).

It will be relevant to mention that after winding up order, the Official Liquidator issued notification calling upon the Secured Creditors to file their respective claims against the Pyrites Company and the last date for entertaining the claim was fixed on 18.09.2009. In view of the said notice and after withdrawal of the

Interlocutory Application the appellant-company submitted the claim before the Official Liquidator and that application has generated two orders first order was passed on 21.02.2013 (Annexure-4), wherein the official liquidator after considering the judgment passed in Rai Bahadur Seth Jess Ram Fatechand vs. Om Narain Thankha & Anr. reported in AIR 1967 SC 1162, have finally decided the claim in the following manner "*In view of the above judgment and other submissions, I am considering that the claim filed by M/s. Vipul Dye Chem Limited is having a nature of Trust Money, however, present provisions of the Companies Act, 1956 does not permit me to consider as Preferential claim with other Secured Creditors. After sale of rest of the assets of the company (in liquidation) this claim along with other claims would be adjudicated by the Official Liquidator*" and thereby the Official Liquidator has passed the order dated 15th-16th May, 2013 (Annexure-5), wherein the Official Liquidator has recorded his finding that the claim made by the appellant-company of Rs.74,000,00/- will be treated to be an ordinary claim and the claim of the appellant-company under the heading of interest having been rejected holding not maintainable as per the law.

At the end, learned counsel for the petitioner has drawn attention of this Court towards the order dated 15th - 16th May, 2013, whereby, without examining the previous order dated 21.2.2013 or without taking care of the earlier order, has held that the amount, which the petitioner has claimed, is an ordinary claim, whereas, on earlier occasions, the then Official Liquidator, placing reliance on the judgment of Rai Bahadur Seth (supra), decided that the money is a trust money, has preferential claim over the secured creditors and other creditors including claim of worker which has been seriously objected by Mr. Kejriwal that in terms of the judgment, this money cannot be treated to be a trust money or having preferential claim over the other money and this objection has been supported by the State Bank of India.

The order dated 21.2.2013 as well as the order dated 15th - 16th May, 2013 appears to be very cryptic order, has not gone into the detail. It is expected that the Official Liquidator, while exercising jurisdiction as a quasi judicial body, in such circumstances, the order should be a reasoned order, that should not be dealt with ipsi dixit manner but finding should be recorded properly. It is well known principle that the reason is a living link between the judgment and the judgment maker so that the higher authority can examine the order reading the mind of the judgment maker for arriving to such finding. Reliance in this connection may be made to the judgment passed in the case of ***Chairman and Managing Director, United Commercial Bank and Ors. Vs. P.C.***

Kakkar reported in ***(2003) 4 SCC 364***, paragraph no.15 whereof reads as follows:-

> *"15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has*

superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

In that view of the matter, both the aforesaid orders i.e. order dated 21.2.2013 as well as the order dated 15th - 16th May, 2013 are set aside and the parties are directed to appear before the Official Liquidator on 26.6.2018 and all the parties will be at liberty to address the Official Liquidator, if so like, they may also file a written argument and the Official Liquidator will hear the matter on day-to-day basis and decide the matter accordingly.

This Court also authorizes Mr. Kejriwal to assist the Official Liquidator in disposal of the present case.

With the aforementioned observation, this company appeal is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
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