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

COMPANY APPLICATION NO.380 OF 2017
IN
COMPANY PETITION NO.648 OF 2004

The Jammu and Kashmir Bank Limited ….Applicant

IN THE MATTER BETWEEN :

Baroda Pioneer Asset Management Co. Ltd. ….Petitioner

Vs.

The Official Liquidator of M/s. Athena Financial Services Limited ...Respondent

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Mr. Subhash S. Satpute i/b. Satpute and Co. for applicant.
Mr. Ranabir Datta a/w. Mr. Mustaf Bohra i/b. Solomon and Co. for original petitioner.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM, J.
DATE : 13th FEBRUARY, 2018

P.C.:

1 This application is filed impugning the notice of admission of proof dated 3rd March, 2017 passed by the office of Official Liquidator.

2 Applicant is a bank which had lent certain sums of money to the company in liquidation. Applicant, it is stated in the affidavit in support, obtained decree from Debt Recovery Tribunal, Pune by which applicant had a decree in its favour for Rs.6,18,49,221.83/- with future interest at 14.33% p.a. from 7th March, 2005 to 9th January, 2009 amounting to Rs.3,41,16,454/- plus fees on the application for Rs.1,50,000/- and advocates' fees of Rs.25,000/- totaling to

Rs.9,61,40,675.83/-. Applicant lodged its affidavit of proof of debt which was considered by Official Liquidator. Admittedly, the amounts lent by applicant to the company in liquidation were secured against current assets of the company and not any fixed assets. Official Liquidator has admitted proof of debt in the sum of Rs.11,16,29,698.83/-. Official Liquidator, so far as the principal amount plus interest is concerned, has stated that the same will be treated as a claim of an unsecured creditor because the claim was secured against the hypothecation of all the current assets of the company in liquidation and no amount has been recovered from the sale of any current assets.

3 The counsel for applicant states that the company in liquidation was rendering financial services and how could Official Liquidator state that no amount was recovered from the sale of current assets.

4 Nothing prevented applicant from taking inspection of the records and proceedings of the company in liquidation and file an affidavit to disprove the statement made by the office of Official Liquidator in the impugned order. No such affidavit has been filed. At the same time, Official Liquidator treating applicant as an unsecured creditor cannot be faulted because the security was only of the current assets and not fixed assets and as no current assets are available, certainly applicant will be treated only as

an unsecured creditor.

5 So far as the fee on the application of Rs.1,50,000/- and advocate's fee of Rs.25,000/- are concerned, Official Liquidator has not given any basis as to why these two heads of amount were rejected.

Mr. Aithe, Company Prosecutor of Official Liquidator states that there is no proof submitted for these amounts. The order of the Debt Recovery Tribunal, which is a judicial order, itself is enough to prove that these amounts have to be paid to applicant. Therefore, Official Liquidator is directed to treat this claim of Rs.1,75,000/- in total, of applicant, as an unsecured creditor.

6 Application accordingly stands disposed.

(K.R. SHRIRAM, J.)