

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPEAL No.1 of 2018

IN

R.C.C. No.12 of 2001

ORDER:

This Company Appeal is filed seeking to readjudicate the claim of the petitioner by considering the funded interest as forming part of the interest component and not as a separate loan.

It is the case of the Appellant-company that at the time of making a claim, it has not included the funded interest component, unlike the IDBI, Kotak Mahindar Bank (ICICI) and other secured creditors, who have included the same in the main claim amount and that they had shown the funded interest as separate amount, on account of which, the Official Liquidator has excluded the same on the ground that the said amount would not form part of the secured debt. It is the case of the Appellant-company that only for the purpose of calculation, the funded interest has been shown as separate and the security, which was offered at the time of original loan agreement, holds good even with respect to the funded interest. Though the respondent seeks refund of Rs.13,37,953/-, as the amount was paid in excess, the case of the appellant is that if the funded amount is reckoned and taken into consideration, it would be entitled to receive the additional amount, as was done in the case of other creditors.

Having regard to the financial arrangement between the appellant and the company in liquidation and as the guarantee agreement being a composite one, covering the principle as well as the interest, the claim of the appellant to consider the funded interest also to be included in the secured debt, is justified.

Accordingly, the Company Appeal is allowed. The Official Liquidator shall readjudicate the claim of the appellant, duly calculating the funded interest for the purpose of distribution of dividend. It is also made clear, with respect to other secured creditors also, such recalculation may be made and the amount be distributed. No costs.

CHALLA KODANDA RAM, J

Date: 18.09.2018.

Ssv

