

HON'BLE SRI JUSTICE S.V.BHATT

COMPANY APPEAL No.27 OF 2017

ORDER:

IDBI Chapel Road Branch, Hyderabad is the appellant.

The undisputed circumstances are status thus:

The appellant on 25.03.2003 filed Form 66. The Official Liquidator through notice of admission/rejection of proof of debt dated 29.04.2005 admitted the part of claim of appellant herein and rejected the balance. The Official Liquidator through communication dated 29.07.2016 called upon the appellant to refund a sum of Rs.19,78,033-06 Ps as excess paid to appellant. On 14.03.2017, the appellant prayed for re-adjudication on the ground that the appellant is not treated on par with IFCI and ICICI in quantifying the amount payable to all the banks. The request for re-adjudication is succinctly rejected by this communication and the operative portion reads thus:

“With reference to the above, it is to state that your request for re-adjudication of claims of secured creditors cannot be considered at this stage. Hence, you are once again advised to refund the excess payment of Rs.19,78,033.06 immediately. Further, you are at liberty to take legal course for your grievance.

Please treat this matter as most urgent, since the undersigned has to file a settled list of creditors before the Hon'ble High Court.”

Sri P.V.Markandeyulu contends that the Official Liquidator committed an illegality by not entertaining the prayer of appellant for re-adjudication, more particularly when circumstances warrant re-adjudication are brought to his notice. One of the circumstances which he strongly relies on is the Official Liquidator even assuming there is consent given by the parties, still consent by no measure can be treated as basis for deciding the claim, but there should be adjudication of each one of the claims before the Official Liquidator. As the omission in this

behalf goes to the very root of adjudication, the appellant requested for re-adjudication. According to him, by referring to the grievance of appellant, the Official Liquidator would have appreciated the necessity to re-look at the issue and re-adjudicate, but there is no reference to the core point raised by appellant. Mr. Anil Kumar, firstly though tried to sustain the order dated 29.04.2005, submits that the Official Liquidator is not precluded from re-adjudicating, if circumstances are brought to his notice and in the case on hand, the communication dated 23.03.2017 cannot be sustained in law or on fact.

I have perused the record and taken note of submissions of learned counsel appearing for the parties. *Prima facie*, this Court is of the view that when a crucial aspect of claims and also resultant adjudication are brought to the notice of Official Liquidator, the Official Liquidator ought to have looked at the points raised by the appellant herein and adjudicated the claims, for as Official Liquidator is administering the affairs of company under liquidation and the administration should be according to law and the facts of the case. In the case on hand, the matter requires re-adjudication.

Hence, the appeal is allowed. The communication dated 23.03.2017 is set aside. The Official Liquidator is directed to re-adjudicate Form 66 filed by the appellant without reference to 2005 order. No costs.

S. V. BHATT, J

01st February, 2018

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