

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.28679 of 2014

ORDER:

Heard Mr.Y.Sinivasa Murthy for petitioner and Ms.C.Jhansi Rani for 2nd respondent.

The issue arises under the Provincial Insolvency Act, 1920 (for short 'the Act'). The petitioner challenges final notice dated 26.07.2014 issued by 2nd respondent calling upon the petitioner to firstly receive Rs.8,03,737/- and file full satisfaction memo before 2nd respondent.

The petitioner through reply dated 02.08.2014 has stated how and why its claim for a higher sum is required to be accepted.

Admittedly, the 2nd respondent did not pass order on the reply submitted by petitioner.

The contention of Mr.Sinivasa Murthy submits that the 2nd respondent in law is entitled to issue final notice under Section 64 of the Act declaring the final dividend to which the petitioner is entitled, but the 2nd respondent cannot impose the condition to file full satisfaction memo to accept the amount determined by 2nd respondent. According to Mr.Sinivasa Murthy, the petitioner has remedy of appeal under Section 68 of the Act. The petitioner can certainly challenge the conclusions of 2nd respondent both in law and fact before the Court of appeal and the decision of the appellate court is finally binding on the

petitioner or the estate of insolvent. Therefore, he prays for disposing of the notice taking note of the reply submitted by petitioner as expeditiously as possible.

The counsel for 2nd respondent firstly tried to persuade this Court that the petitioner, if so advised, would have treated the notice impugned in the writ petition as final determination by 2nd respondent and filed appeal. It is alternatively contended that the reasons given in the final notice are justifiable and the 2nd respondent considers passing order under Section 64 by taking note of the reply dated 02.08.2014 submitted by petitioner. The Provisional Insolvency Act is a self contained Code. The issue has cropped up during and in the course of administration of estate of the insolvent. It is no doubt true that one of the functions assigned to 2nd respondent is to determine the entitlement or dividend to which the claimant before him is entitled. In the considered view of this Court, if a final decision is communicated, by keeping in view the reply dated 02.08.2014, the petitioner, thereafter, if aggrieved can work out remedies under Section 68 of the Act.

For the above reasons, I am satisfied the writ petition can be disposed of by this order.

(a) The 2nd respondent considers reply of petitioner dated 02.08.2014 as expeditiously as possible, preferably within four weeks from today

and communicates final dividend under Section 64 of the Act to petitioner.

(b) The petitioner on receipt of such decision, if so advised and circumstances warrant, can assail the same before the Court having jurisdiction.

The writ petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 19-06-2018
Prv



S. V. BHATT, J