

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.17482 of 2012
Date of Decision:08.02.2018**

M/s Nand Kishore Jain

...Petitioner

Versus

Bhuna Cooperative Sugar Mills Ltd. and another

...Respondents

**CM No.16763-CII/2012
IN CR-268-2007**

Bhuna Co-op Sugar Mill Ltd. Bhuna

...Applicant/petitioner

Versus

M/s Nand Kishore Jain

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Puneet Bali, Sr. Advocate with
Mr.Arav Gupta, Advocate for the petitioner in
CWP No.17482 of 2012 and for the non-applicant/respondent
in CR No.268 of 2007.
Mr.Naveen S. Bhardwaj, Advoc ate for the respondent in
CWP No.17482 of 2012 and for the applicant-petitioner in
CR No.268 of 2007.

ANIL KSHETARPAL, J. (ORAL)

This order shall dispose of CWP No.17482 of 2012 and CM
No.16763-CII/2012 in CR-268-2007.

The limited dispute before this Court is as to which category
the writ petitioner is to be placed while paying off the liabilities of the
respondent-Co-operative Sugar Mills which has gone into litigation. It is
not disputed that the writ petitioner was a contractor and in the arbitration

proceeding an award was passed in its favour which was made rule of the court. The aforesaid award has become final between the parties. In the earlier round, this Court, while disposing of Civil Revision No.268 of 2007, had held as under:-

“I do not find any merit in the argument raised by the learned counsel for the respondent. Even if, the respondent has got a decree in its favour, the respondent would be still an unsecured creditor. There cannot be any preferential payment in favour of one unsecured creditor. The claim of all the unsecured creditors has to be adjudicated upon by the Liquidator and the amount disbursed pari passu amongst all the unsecured creditors after satisfying the claim of other preferential creditors.”

The review application filed by the petitioner was also dismissed vide order dated 14.12.2010. The petitioner has drawn attention of the Court to an order passed by the liquidator, wherein contractors have been placed in Category-3-Creditor with floating charge, whereas name of the petitioner had been placed in Category 4, i.e. Unsecured Loans/Creditors.

The limited grievance of the petitioner is that since all the contractors have been put in Category 3, therefore, the petitioner cannot be discriminated only on the ground that there is a decree in his favour.

On the other hand, learned counsel for the respondent has submitted that since this Court had dismissed the review application, therefore, petitioner has been kept in Category 4.

In my considered opinion, the argument of the learned counsel for the respondent is wholly incorrect. This Court had only determined the issue whether amongst the contractors the petitioner was entitled to any priority or not. This Court had not directed that the petitioner should not be treated as a contractor.

In view thereof, the categorisation by the Liquidator to that extent is set aside. Petitioner shall be treated as a contractor along with other contractors in Category 3 B and paid the amount treating the petitioner at par with other contractors. Thus, this writ petition is allowed to the limited extent referred to above.

The application CM No.16763-CII of 2012 filed by Bhuna Co-op Sugar Mill is allowed. The amount deposited in this Court shall be released to the liquidator for disbursement. The interim payment released on the direction of this Court vide order dated 31.5.2016 shall be liable to be adjusted against the payment to which the petitioner is ultimately held entitled to.

08.02.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No