THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPLICATION No.630 of 2018

IN

COMPANY PETITION No.151 of 2009

ORDER:

This application is filed praying the Court to direct the Official Liquidator to release the amount of Rs.2.15 Crores received as sale consideration from the sale of Lot No.1 along with interest accrued on the said amount, subject to the condition that the applicant deposits the workmen dues as computed under Section 529-A of the Companies Act, 1956.

A counter affidavit is filed by the Official Liquidator praying to take on record the counter affidavit, and also direct the applicant-company to file their claim afresh.

Brief facts are that the applicant/appellant-M/s Tata Capital Ltd., made a claim of Rs.25,49,62,494/- as on 20.03.2015 by filing Form-66 before the Official Liquidator on 24.03.2015. As the claim was filed beyond the limitation, this Court condoned the delay by order dated 31.03.2015 in Company Application No.505 of 2015 and directed the Official Liquidator to adjudicate the claim and pass necessary orders. The claim was adjudicated by the Official Liquidator and Form No.69 dated 08.06.2015 was issued, whereunder the claim was admitted only to the extent of Rs.9,94,47,759/- with interest at 21.5% per annum on the said amount from 21.02.2009 till the date of winding up order dated 30.08.2010 (totaling to Rs.13,19,87,011/-), and the claim for Rs.12,29,75,483/- was rejected.

Aggrieved by the same, the applicant filed Company Appeal No.9 of 2015 which was allowed by this Court by order dated 06.10.2015, holding as under:

> "In the above view of the matter, the order of the Assistant Official Liquidator, dated 08.06.2015, to the extent of rejecting the balance claim of Rs.12,29,75,483/- claimed towards term loan cannot be sustained and the same is accordingly set aside. The respondent is directed to take necessary steps to sell the balance secured asset, entertain a fresh claim that may be made by the appellant after such sale and adjudicate the same in the light of the above observations.
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> Accordingly, the Company Appeal is allowed to the extent indicated above."

In other words, by order dated 06.10.2015, the claim of the appellant to the tune of Rs.25,49,62,494/- stood allowed as recoverable from the company in liquidation. As per the counter affidavit filed by the Official Liquidator, only a sum of Rs.2.15 crores is available with accrued interest to the credit of the company in liquidation.

Learned counsel appearing for the Official Liquidator would submit inasmuch as this Court while allowing the Company Appeal No.9 of 2015 has directed the Official Liquidator to sell the balance secured asset and entertain a fresh claim from the appellant and adjudicate the same in the light of the observations made in the Company Appeal, and as the appellant has not made any application making a fresh claim, no steps could be taken for releasing the amount lying to the credit of the company in liquidation.

Having regard to the respective submissions, as can be understood from the submissions made by the learned counsel appearing for the Official Liquidator, the only impediment for releasing the amount is that the appellant has not made a fresh claim as directed by this Court in Company Appeal No.9 of 2015, dated 06.10.2015.

A perusal of the order dated 06.10.2015 passed in Company Appeal No.9 of 2015 does not indicate that the intention of the Court in directing the Official Liquidator to adjudicate the claim of the appellant by entertaining a fresh claim is not to once again undertake adjudication process for determination of the amount payable, as the amount initially determined by the Official Liquidator through Form 69 dated 08.06.2015 has been set aside by this Court in Criminal Appeal No.9 of 2015, dated 06.10.2015.

In other words, the entitlement amount that has to be paid to the appellant stands determined and now what all is required to be done is the disbursal of the entitled amount. The order dated 06.10.2015 needs to be understood in the context of the material on record and the developments which have taken place.

In those circumstances, the company application is allowed, with a direction to the Official Liquidator to take necessary steps for disbursal of the amount lying to the credit of the company in liquidation. This Court also takes note of the submission of the learned counsel appearing for the Official Liquidator that there are no further amounts lying to the credit of the company in liquidation and there are also no other claimants whose claims have to be adjudicated. The Official Liquidator shall take necessary steps for liquidating the company in liquidation, and file necessary forms within two weeks. No costs. Pending miscellaneous petitions, if any, shall also stand closed.

JUSTICE CHALLA KODANDA RAM

19th June, 2019
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