

Comp.A.No.19 of 2020
in C.P.No.24 of 2010

P.T.ASHA, J.

The above application has been moved by the learned Official seeking the permission of this Court to pay the professional charges to Shri.Mahendran Advocate, who had represented the Official Liquidator before the Hon'ble Supreme Court. Since the Company in liquidation has absolutely no funds and the secured creditor has also alienated the property even prior to the winding up proceedings, they are also not willing to make the payments to the counsel. Therefore, the Official Liquidator has moved this Court to incur the professional fee and expenses from the common pool fund.

2. It is also noticed from the report of the Official Liquidator that the Hon'ble Supreme Court, by order dated 06.12.2018 in C.A.No.1135 of 2015 has made the following observations.

"It is not in dispute that the issue is pending before the Hon'ble Supreme Court in S.L.P(Civil) No.29568 of 2009 and unless it is disposed of, this Court cannot pass any orders on the present application on hand (copy of order enclosed with this report as ANNEXURE 'G'). A reading of the

order of the Hon'ble Supreme Court makes it very clear that the fee payable to the Advocate has to be paid, in case any money is lying with the learned Official liquidator and the creditor bank were not on the scene, when the property was sold and the money was appropriated by the bank and that the winding up petition has been filed subsequently. As rightly contended by the learned counsel for the bank, no amount as on date could be payable to the lawyer. If any order is passed in S.L.P(Civil)No.29568 of 2009 and the contention of the workmen is accepted with regard to the winding up of the Company at the time of appropriation of the funds by the Bank, then there can be a direction to the bank to return a portion of the money as they cannot appropriate the entire money that would contravene Section 529A of the Companies Act."

3. In the light of the above, it is therefore clear that the Official Liquidator has been directed to make the payment to the Counsel concerned for the service rendered by him.

4. However, taking into consideration the fact that the amounts have to be paid from and out of the common pool fund, this Court is of the opinion that though the counsel has raised the fee bill

for Rs.4,45,000/-, the Official Liquidator may be directed to pay a sum of Rs.4,00,000/-. The Deputy Official Liquidator undertakes to pay the fees to the Counsel as soon as the order copy is furnished to him.

5. In view of the above, the application is ordered, directing the Official Liquidator to pay a sum of Rs.4,00,000/- (Rupees four lakhs only) from and out of the common pool fund to Shri.Mahendran, Advocate for the services rendered by him in appearing on behalf of the learned Official Liquidator before the Hon'ble Supreme Court in S.L.P(Civil) No.29568 of 2009

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