

Company Application No.231 of 2019
in
CP.No.255 of 2014

M.SUNDAR, J

'First Leasing Company of India Limited' [hereinafter 'said company' for the sake of brevity and clarity] is the company which has gone into liquidation in aforementioned Company Petition namely, 'Company Petition No.255 of 2014' (hereinafter 'main CP' for the sake of brevity).

2. Captioned application has been taken out by Punjab and Sind Bank, which is a creditor qua said company.

3. Applicant Bank made a claim for a total sum of Rs.18,34,30,714/- (Rupees Eighteen Crores Thirty Four Lakhs Thirty Thousand Seven Hundred and Fourteen Only), post adjudication, the 'Official Liquidator attached to this Court' [hereinafter 'OL' for the sake of brevity] allowed Rs.15,00,00,000/- (Rupees Fifteen Crores Only) and rejected Rs.3,34,30,714/- (Rupees Three Crores Thirty Four Lakhs Thirty Thousand Seven Hundred and Fourteen Only).

4. Captioned application is against the rejected portion of the claim is the learned counsel's say. To be noted, Mr.K.Jayaraman, learned counsel is before this Company Court in this web hearing on a video conferencing platform on behalf of the applicant.

5. In response to captioned application, OL has filed a 'report dated 26.08.2019' [hereinafter 'said report' for the sake of brevity]. To be noted, the said report is a common report in response to the captioned application and another application namely, Company Application No.232 of 2019.

6. A perusal of the captioned application, more particularly, Paragraph No.5 brings to light that OL has proceeded on the basis that Rs.3,34,30,714/- (Rupees Three Crores Thirty Four Lakhs Thirty Thousand Seven Hundred and Fourteen Only) is towards penalty and interest, but a perusal of Form 66 reveals that it is not so. A sum of Rs.2,76,97,397/- (Rupees Two Crores Seventy Six Lakhs Ninety Seven Thousand Three Hundred and Ninety Seven Only) alone is interest claimed by the applicant Bank at the rate of 12.10% p.a. and the remaining amount of Rs.57,33,317/- (Rupees Fifty Seven Lakhs

Thirty Three Thousand Three Hundred and Seventeen Only) is only towards penal interest.

7. As far as the interest portion is concerned, it will be payable upto the commencement of winding up is learned applicant counsel's say.

8. Learned counsel for applicant very fairly submits that the penal interest of Rs.57,33,317/- (Rupees Fifty Seven Lakhs Thirty Three Thousand Three Hundred and Seventeen Only) is not pressed. This submission is recorded.

9. Before this Court proceeds further, it is necessary to set out that the order of the OL admitting Rs.15,00,00,000/- (Rupees Fifteen Crores Only) and rejecting little over Rs.3,34,30,714/- (Rupees Three Crores Thirty Four Lakhs Thirty Thousand Seven Hundred and Fourteen Only) has been made under Rule 163 of the 'Companies (Court) Rules, 1959' [hereinafter 'said Rules' for the sake of brevity]. An order made by the OL under Rule 163 is an appealable order. A perusal of the judge's summons in the captioned

application reveals that the same has been filed under Rules 9, 11(b) and 19 of the said Rules, but an appeal ought to have been preferred under Rule 164 of said Rules. In any event, the appeal also has to be filed by way of judges summons supported by an affidavit. Therefore, it is a case of quoting a wrong provision of law. It is well settled that quoting wrong provision of law will not dis-entitle the applicant to relief, if the Court otherwise has powers. Under Rule 164 of said Rules, this Court has all the powers of the appellate Court. Therefore, that includes the power of remand.

10. Now that the dispute is only with regard to the interest component of Rs.2,76,97,397/- (Rupees Two Crores Seventy Six Lakhs Ninety Seven Thousand Three Hundred and Ninety Seven Only), the computation as to the date of commencement of running of interest, date of winding up, rate of interest, as to whether it is contractual etc., which are all matters which require a re-look. Therefore, this Court deems it appropriate to dispose of the captioned application by remanding Claim No.2/255 of 2014/CLAIMS II to the OL with regard to the rejection of interest portion alone i.e., with regard to claim of applicant to the extent of Rs.2,76,97,397/-

(Rupees Two Crores Seventy Six Lakhs Ninety Seven Thousand Three Hundred and Ninety Seven Only) alone. OL shall re-adjudicate this interest portion claim alone in accordance with law and pass fresh orders.

11. To be noted, rejection of interest claim portion of order of OL dated 07.06.2019 bearing reference Claim No.2/255 of 2014/CLAIMS II alone is set aside. In all other aspects, the order dated 07.06.2019 made by OL in Claim No.2/255 of 2014/CLAIMS II will stand sustained.

12. Captioned Company Application is disposed of on above terms. There shall be no order as to costs.

सत्यमेव जयते

06.11.2020

mk

WEB COPY

M.SUNDAR. J

mk



Company Application No.231 of 2019
in
CP.No.255 of 2014

WEB COPY

06.11.2020