IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO.4 OF 2019
IN
COMPANY PETITION NO.11 OF 2013

AMIANTIT FIBERGLASS INDUSTRIES
INDIA PVT. LTD. (IN LIQUIDATION),
THR. OFFICIAL LIQUIDATOR. … Applicant

Versus

CORPORATION BANK, PANAJI. …. Respondent

Ms. Amira Abdul Razaq, Advocate for the Applicant.
Mr. Sudin Usgaonkar, Senior Advocate with Ms. Priyanka Kamat, Advocate for the Respondent.
Mr. D. J. Pangam and Mr. P. Sawant, Advocates for the Workmen.

Coram: M. S. SONAK, J
Date: 12th March 2021

P.C.

Heard Ms. Amira Razaq, learned counsel for the Official Liquidator, Mr. Sudin Usgaonkar, learned Senior Advocate who appears along with Ms. Priyanka Kamat for the Corporation Bank, the secured creditor, and Mr. D. Pangam who appears along with Mr. P. Sawant on behalf of 121 workmen.

2. The Official Liquidator, by filing this report has sought the following directions from the Court :

> (a) In view of para 7 supra, whether this Hon'ble Court may be pleased to take on record the certified list of 121 adjudicated claims of Ex-workers as admitted by the Official

Liquidator;

(b) In view of para 8 supra, whether this Hon'ble Court may be pleased to direct the Corporation Bank to deposit an amount of ₹7,45,79,292/- with Official Liquidator to enable the Official Liquidator to distribute the same to 121 workers;

(c) In view of para 9 supra, whether this Hon'ble Court may be pleased to consider the request of P. V. Bhandre & Co. Chartered Accountant for increasing the rate of adjudication of claim to the extent of ₹250/- per claim instead of ₹150/- per claim as ordered by this Hon'ble Court vide order dated 25.10.2018; and

(d) For issue of such other order/orders as this Hon'ble Court may deem fit and proper.

3. In support of calculations that an amount of ₹7,45,79,292/- is due and payable to the 121 workmen of the Company which is being wound up, the Official Liquidator, in his report has referred to various advertisements issued and the reports of the Chartered Accountant M/s. P. V. Bhandre & Co., from the panel of the Official Liquidator. Besides, the report indicates that the representatives of the workmen as also the Bank were granted an opportunity of hearing and it is only after hearing them this figure of ₹7.45 crores or thereabouts came to be determined.

4. Now the documents annexed to the report are perused, then, it is reflected that even the Ex-directors of the Company were summoned and they were heard on the issue of determination of

workmen dues. Thus, after comprehensive exercise, quite consistent with the principles of natural justice and fair play, this amount of ₹7.45 crores approximately came to be determined as dues payable to the 121 workmen. The workings have been placed on record by the Official Liquidator along with all details and there is no reason not to accept such determination.

5. The Corporation Bank however disputes this amount of ₹7.45 crores as payable to the 121 workmen. This dispute is almost entirely based on "*report of enquiry*" submitted by Advocate Vijay Palekar who claims to have inspected the file of the Company which is being wound up and who has ultimately opined that "*overall dues are inflated to the extent of around 14.84% i.e. around ₹1,10,67,563/-".* This Advocate has gone to the extent of further opining that "*the assessment of dues as worked out by M/s. P. V. Bhandre & Co., and confirmed by the Official Liquidator does not represent the actual dues of the workmen and they suffer from being inflated".*

6. Now, as noted above M/s. P. V. Bhandre & Co. is a respectable firm of Chartered Accountants on the panel of Official Liquidator as approved by this Court from time to time. In contrast and with due respect, the learned Advocate has not even claimed any expertise when it comes to accounting or accounts. The enquiry report has been prepared casually to somehow support the interest of the Bank without any regard to the documents on record or the accounting

principles.

7. Besides, it is not known as to how this Advocate obtained access to the documents which were in the custody of the Official Liquidator. These documents and others were duly examined and analyzed by the accounting experts and only thereafter the dues payable to the workmen were determined. The Bank and the workmen were granted due opportunity during this process. In contrast, the self-serving enquiry report is bereft of such due process.

8. Mr. Usgaonkar points out that the certified copies were obtained from the Official Liquidator. The report itself states that the Official Liquidator had not furnished all the records to the learned Advocate. In any case, the reports prepared by the Official Liquidator or the Chartered Accountants on the panel of the Official Liquidator cannot be assailed in such a casual manner *inter alia* based on some extraneous material taken into account by the learned Advocate. The Corporation Bank which is a Nationalized Bank should not have indulged in such an exercise, simply to obstruct or delay the disbursement of the workmen's dues. No doubt, the Corporation Bank is entitled to challenge the determination by the Official Liquidator but surely this is not how the reports prepared by the professional can be assailed.

9. To this self-serving enquiry report, is annexed a summary of

information collected in respect of 121 workmen. This is supposed to be based upon certain payslips that were discovered by the enquiry officer at a later point in time. Again, there is no credibility to such discovery. Suffice to note that at the initial stage, the calculations were made by the Official Liquidator and the Chartered Accountants appointed by the Official Liquidator after giving an opportunity of hearing not only to the Bank and the workmen but also to the Ex-directors. All records were examined professionally and this is the figure was arrived at.

10. Now the enquiry report filed by the learned Advocate proposes to cut down this figure drastically though, there is no clarity on this issue as well. The report at one stage suggests that the entire dues of the workmen are only in the region of ₹1.10 crores and another place the report suggests that there is an inflation of ₹1.10 crores meaning thereby that amount of almost ₹6.35 crores is due and payable to the workmen. Such a self-serving report made by the learned Advocate who does not claim any expertise in accounting, so casually prepared to defeat or at least unreasonably delay the disbursements of workmen's dues cannot be accepted.

11. As if this was not sufficient after the affidavit was filed by the Corporation Bank on 10th April 2019 relying upon the enquiry report dated 5th April 2019, the Official Liquidator filed an affidavit on 25th April 2019. Now in this affidavit, the Official Liquidator has also very casually referred to some search made in the premises of the

Company which is being wound up and claimed to have found some salary slips for July 2013 which are allegedly at variance with salary slips for May 2013. There are absolutely no details set out in the affidavit as to the nature of such alleged variance. The affidavit then seeks to leave to recheck the figures and if necessary, re-adjudicate the matter by once again consulting with Ex-directors of the Company.

12. Based on such a vague affidavit and devoid of any particulars whatsoever, there is no question of re-adjudication of the workmen dues. The entire exercise carried out by the professionals cannot be upset based upon some alleged chance discovery of salary slips. There is no guarantee about the authenticity of such salary slips and in any case, there is no reason to revisit this issue of determination of the workmen dues based on surmises and conjectures. The earlier determination process was fair and after the involvement of all stakeholders. Such determination cannot be set at naught based on such vague premises. Besides, it is quite surprising that the OL seeks to express doubts on the exercise undertaken by its empannelled Chartered Accountants on the fanciful grounds to be found in the self-serving report got prepared by the Bank. The OL who filed and stood by the earlier determination, within barely 10-15days from the Bank producing the self-serving report, files a vague affidavit seeking leave to re-adjudicate the matter. This is not how the OL should deal with the sensitive issue of workmen's dues. At the urging of Ms. Razak, nothing more needs to be said on this occasion.

13. Therefore, earlier determination by the Official Liquidator and the Chartered Accountants from the panel of the Official Liquidator can stand and there is no reason for any re-adjudication based upon surmises and conjectures or even vague and fanciful doubts. According to me, this is not how the dues payable to the workmen should be delayed either by the Official Liquidator or the Nationalized Bank.

14. Mr. Usgaonkar then pointed out that in terms of Section 529 and 529A of the Companies Act, 1956, both the workmen as well as the Bank which is a secured creditor have a *pari passu* charge. He pointed out that both the workmen as well as the Bank have the right of preferential payment as compared to all other debtors. He however submits that as between the Corporation Bank and the workmen, the payment will have to be done only on a *pro-rata* basis. He refers to the illustration below Section 529 of the Companies Act as also the decision of the Hon'ble Supreme Court in ***Andhra Bank Vs Official Liquidator and another***[1], to explain the concept of *pro-rata* distribution. He also refers to the mode of calculations based on such illustration in the affidavit filed by the authorized officer of the Bank.

15. Mr. Pangam does not dispute the principles proposed by Mr. Usgaonkar. So also Ms. Razaq, learned counsel for the Official Liquidator also does not dispute the principles proposed by Mr. Usgaonkar. Even according to me, the principles proposed by

[1] (2005)5 SCC 75

Mr. Usgaonkar are quite correct and consistent with the provisions of Sections 529 and 529A of the Companies Act as explained in the illustration and the decision of the Hon'ble Supreme Court in *Andhra Bank* (supra). However, while applying these principles the dues payable to the 121 workmen will have to be taken as ₹7.45 crores as originally and correctly determined by the Official Liquidator based on detailed calculations provided by M/s. P. V. Bhandre and Co., the Chartered Accountants on the panel of Official Liquidator.

16. Besides, the Corporation Bank, through its authorized officer Ayub Khan has stated on affidavit that the total outstanding liability of the Company in winding up towards the bank was ₹83.36 crores as referred to in paragraph 7. The calculations will therefore have to be made on this statement and the Bank, cannot insist on running its interest meter and at the same time freezing dues payable to the workmen. Such an attempt is neither fair nor proper.

17. By applying such principles, the calculations will have to be made on the following basis:-

(a) Amount recovered by Corporation Bank from the sale of assets located at Goa and Gujarat is 45.30 crores;
(b) Total outstanding of the Company is 83.36 crores;
(c) Total outstanding dues of the workmen adjudicated by the liquidator is 7.45 crores

83.36 crores (Total outstanding dues)
+ 7.45 crores (Workmen's dues)
90.81 crores

(d) From 90.81 crores the share of the Corporation Bank is 91.79%;
(e) And share of workmen's dues is 8.20%;
(f) 91.79% of 45.30 crores is = 41.58 crores; and
(g) 8.20% of 45.30 crores is 3.71 crores.

18. This means that out of the amount of ₹45.30 crores which has been recovered by the Corporation Bank for and on behalf of the Official Liquidator, the Corporation Bank can be permitted to retain an amount of ₹41.58 crores or thereabouts and an amount of ₹3.71 crores will have to be paid to the 121 workmen with whom this Court is presently concerned.

19. By orders dated 26th February 2021 and 5th March 2021, an amount of ₹1.46 crores or thereabouts was already directed to be paid to the 121 workmen *on pro-rata* basis. Therefore, this amount will have to be deducted from the amount of ₹3.71 crores now payable to these 121 workmen. Further, Mr. Usgaonkar pointed out that by order dated 1st October 2015, an amount of ₹71,19,770/- was also paid to the 121 workmen. Therefore, even this amount will have to be deducted from the amount of ₹3.71 crores as aforesaid.

20. Ms. Razaq points out that even on the amount of ₹45.30, interest must have accrued and orders can be made for the distribution of such interest on a *pro-rata* basis. This is correct. However, since the payments to be made in terms of this order are only provisional and subject to the Official Liquidator/Bank recovering further amounts by

the sale of assets of the Company in winding up, this amount accrued by way of interest can be taken into consideration at a later stage. Therefore, this amount will have to abide by further orders as and when the Official Liquidator takes out a fresh report seeking directions.

21. So also it is clarified that the issue of 40 additional workmen will also have to be treated separately and the Official Liquidator is at liberty to complete the process and file a further report, if necessary.

22. Company Application No.4 of 2019 is disposed of in the aforesaid terms. However, specific liberty is granted to the Official Liquidator to file a fresh report concerning 40 additional workmen and also concerning the interest amount accrued or any further amount which the Official Liquidator/Bank may recover from the disposal of assets of the Company in winding up.

23. The Corporation Bank to give details of interest accrual to the Official Liquidator within four weeks from today to enable the Official Liquidator to take necessary steps in the matter.

M. S. SONAK, J.

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