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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

APO/76/2019
With
BIFR/510/1992

IN THE MATTER OF:

MINING AND ALLIED MACHINERY CORPORATION LTD.
AND
ASANSOL DURGAPUR DEVELOPMENT AUTHORITY
VS.
STATE BANK OF INDIA & ANR.

AND

APO/77/2019
With
BIFR/510/1992

IN THE MATTER OF:

MINING AND ALLIED MACHINERY CORPORATION LTD.
AND
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VS.
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AND

APO/78/2019
With
BIFR/510/1992

IN THE MATTER OF:

MINING AND ALLIED MACHINERY CORPORATION LTD.
AND
ASANSOL DURGAPUR DEVELOPMENT AUTHORITY
VS.
THE OFFICIAL LIQUIDATOR, HIGH COURT,

CALCUTTA

AND

APO/79/2019

With

BIFR/510/1992

IN THE MATTER OF:

MINING AND ALLIED MACHINERY CORPORATION LTD.

AND

ASANSOL DURGAPUR DEVELOPMENT AUTHORITY

VS.

MINING AND ALLIED MACHINERY CORPORATION LTD.(NOW IN LIQN.) & ORS.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE SIDDHARTHA ROY CHOWDHURY

Date : 16th August, 2022

Appearance:

Mr. Malay Kr. Ghosh, Sr. Adv.

Mr. Sayantan Bose, Adv.

Mr. Rajarshi Dutta, Adv.

Ms. Madhurima Das, Adv.

...for the appellant

Mr. Joy Saha, Sr. Adv.

Mr. Shamit Sanyal, Adv.

Mr. Sabyasachi Roy, Adv.

...for the State Bank of India

Mr. Jayanta Banerjee, Adv.

Mr. Anida Bhattacharjee, Adv.

...for the Official Liquidator

Mr. Soumya Majumdar, Adv.

Mr. Santanu Chatterjee, Adv.

...for the respondent no.2 in APO 79 of 2019

Mr. Susanta Pal, Adv.

...for MAMC Township Abasik Welfare Association &

MAMC Praktan Sramik Kalyan Samiti

The Court:- These appeals are at the instance of the Asansol Durgapur Development Authority (in short 'ADDA'). Four applications have been filed between 2011 and 2013 by the ADDA and the State Bank of India. The ADDA

in both the applications essentially prayed for transfer of the security deposit with accrued amount to ADDA on the basis of a settlement arrived at by ADDA with MAMC Retired (VRS & VSS) and Superannuating Employees' Association of Society, MAMC Township Abasik Welfare Association and MAMC Praktan Sramik Kalyan Samiti.

The learned Single Judge disposed of all the four applications with the following observation :

“Accordingly, CA 488 of 2011, CA 514 of 2013, CA 515 of 2013 and CA 33 of 2013 are disposed of by holding that the fixed deposit receipts or cash or KVP certificates that the ex-workers of the company (in liquidation) deposited prior to the company going into liquidation with the company are to be retained and immediately taken control of by the Official Liquidator without ADDA or the ex-workers having any right in respect thereof or any right to deal with the same. The Official Liquidator will use such funds for disbursement to the creditors of the company (in liquidation), including the ex-workers who made the deposits, in their turn and in accordance with law. It is elementary that till the dues of the secured creditors are discharged to the extent of the securities enjoyed by such creditors, the dues of the unsecured creditors cannot be taken up. Even if the deposits are not part of the securities of the secured creditors, the general pool of the unsecured creditors of the company (in liquidation) will be entitled thereto without the depositors having any preferential right therein.”

The ADDA has preferred three separate appeals being aggrieved by the said judgment and order passed by the learned Single Judge. The appeals involve very short question, namely, whether certain Fixed Deposit Receipts, KVP Certificates and cash deposited by the erstwhile employees of the

company (in liquidation), with the company prior to its liquidation are liable to be refunded to such erstwhile employees or to their order or they are to be dealt with by the Official Liquidator in accordance with law.

Mr. Malay Kumar Ghosh, learned Senior Counsel representing the ADDA submits that several orders were passed during the pendency of the winding up proceedings which show that the amount deposited towards security by the ex-employees, with whom ADDA has now entered into a settlement for their occupation after the township was transferred to ADDA on or from 1st July, 2003 are required to be refunded to ADDA in terms of the settlement arrived at between ADDA and such ex-employees. Mr. Ghosh has referred to various orders in this regard and tried to impress upon this Court that having regard to the nature of the deposits made by such ex-employees the Official Liquidator was under obligation to refund the said security deposits after the township is made over to the ADDA.

Mr. Jayanta Banerjee, representing the Official Liquidator, submits that the Official Liquidator upon adjudication has determined that a sum of Rs.66,25,96,494/- is due and payable to 3738 regular/permanent workmen of the company (in liquidation). The claim of 286 contract labourers for a sum of Rs.16,61,82,079/- was not admitted and there is no formal claim on behalf of the MAMC Praktan Sramik Kalyan Samiti apart from a letter dated 27th May, 2019. They have not filed their proof of debts and accordingly, their claim could not be adjudicated. Mr. Banerjee further submits that proof of debts would not show that any claim was made on account of refund of security deposit.

Mr. Joy Saha, learned senior counsel appearing on behalf of the State Bank of India, one of the secured creditors, submits that initially, ADDA wanted to snatch an order from the Court by giving a false impression that all the necessary parties are equipped with the terms of settlement, which, however, on the intervention of SBI was recalled. It is submitted that the circular dated 3rd June, 1999 issued by the office of the General Manager (Personnel), MAMC Limited clearly states that ex-employees may occupy the quarters as a licensee on a temporary basis for six months from the date of separation and it has laid down various conditions for their continued occupation of the said quarters, which, inter alia, required them to submit security deposit and the monthly licence fees as applicable as per Annexure-I to the said circular. It is submitted that all such ex-employees who have now joined with ADDA in the settlement process continued to remain in occupation beyond the period of six months and it needs to be adjudicated whether they have paid their electricity and all other charges beyond the period of six months and whether there had been any breach in terms of the said license agreement thereby forfeiting their rights to claim any amount.

Mr. Soumya Majumdar, learned counsel appearing on behalf of the MAMC Retired (VRS & VSS) and Superannuating Employees' Association of Society, submits that under the several arrangements agreed between the association and the company (in liquidation), the employees were to receive ex-gratia/gratuity out of the security deposit and the claim of the workmen includes such claim towards ex-gratia and gratuity. However, he has fairly

submitted that some of the ex-employees have deposited cash towards security for their continued occupation of the quarters.

In the aforesaid backdrop, the merits of the appeals have to be assessed. The company was referred to BIFR under the provision of Sick Industrial Companies (Special Provisions) Act, 1985. All efforts to revive the company had failed before the BIFR. Accordingly, BIFR made a recommendation for winding up of the company. The Appellate Forum also accepted the order of the BIFR. Thereafter, a recommendation was made under Section 20(1) of the Act of 1985 for the company to be wound up. The company was wound up by this Court by an order dated 16th May, 2002. In an appeal arising out of the order of winding-up or one of the subsequent orders, a scheme was directed to be framed by the Appellate Court so that the township which was occupied by the erstwhile employees of the company (in liquidation) did not have to be vacated. The township had been built on land made available to the company by the State of West Bengal. In short, under the scheme, the houses and dwelling units under the occupation of the ex-employees of the company (in liquidation) continued to be retained by them on certain terms and conditions, including as to payment, which may not be relevant for the present purpose.

We have already referred to the initial circular dated 3rd June, 1999 which carried the number of 11/99. It pertains to erstwhile employees who were at the relevant time still occupying the company quarters in spite of their retirement. This circular contemplates certain situation for which they were provided with the benefits to occupy their quarters on a temporary basis as licensees for a period of six months. It was an option given to the ex-employees

that on fulfillment of certain obligations and conditions stipulated in the license agreement, they would be allowed to retain the quarters. Their occupation as licensee is dependent upon certain conditions to be fulfilled by such employees.

A proforma licence agreement was appended to the circular and such licence agreement contemplated licence fees and security deposits to be paid by the erstwhile employees who continued to enjoy the company's quarters.

Clause 2 of the licence agreement appended to circular no.11/99 dated June 3, 1999 provided as follows:

“It is agreed that the Licensee shall deposit and keep in deposit with the Licensor a sum of Rs. only as Security for the due and proper performance of the terms of this leave and licence, which amount shall be refunded to the Licensee mentioned on the termination or revocation of this licence after deducting therefrom such amount as may be due to the Licensor by way of arrears of charges/compensation for the use and occupation of the said premises and/or for the loss and/or damage to the depositors, if required, articles and things belonging to the Licensor.”

In addition, clause(3) of the proforma licence agreement referred to a licence fee that was payable. The figures would have, probably, varied from person to person and in the proforma agreement it was kept blank. An annexure to the proforma licence agreement or to the circular itself of June 3, 1999 indicated the quantum of security deposits required to be furnished by the erstwhile employees in occupation of the various categories of

accommodation and the corresponding licence fees. The quantum of deposit ranged from Rs.61,300/- to Rs.8,85,400/- and the licence fees ranged from Rs.818 to Rs.5000/- per month. Water charges were also payable at variable rates depending on the type of accommodation.

A corrigendum to the circular of June 3, 1999 was issued on June 17, 1999. Clause (ii) of such corrigendum is of some relevance:

“(ii) Ex employees residing in residential accommodation provided by the Corporation in Sagarbhangra/Bidhannagar who are willing to get the tenancy residential accommodation under their occupancy transferred in their names may apply to the Housing Board and forward a copy to the office of the Chief Town Administrator, MAMC Ltd., Durgapur-10. Till the time transfer of tenancy in personal name is concluded, an amount of Rs.15,000/- shall be withheld towards security deposit from the ex-gratia amount for those ex-employees released under VSS. For other category employees released under superannuation/VRS shall be required to deposit the The security deposit as indicated above shall be refunded after transfer of tenancy of residential accommodation and electric connection in the personal name of the occupant is concluded subject to adjustment of outstanding dues towards rent, electricity & water charges.”

It is not in dispute that in terms of the said circular and the corrigendum relating thereto, the security deposits that were required to be furnished were, indeed, furnished whether by way of cash or by way of deposit of fixed deposit

receipts or KVP certificates or the like. The Official Liquidator reports that fixed deposits of value in excess of Rs.65 Crore are available, whether with the Official Liquidator or as made over to ADDA pursuant to the previous order, but which money has not yet been appropriated by ADDA. In addition, KVPs of value of about Rs.1.85 Crore and cash of about Rs.26 lakh remain with the Official Liquidator or ADDA.

The money or the fixed deposits or certificates and the like were almost lost to the company (in liquidation) pursuant to the unilateral arrangement between the ex workers of the company (in liquidation) and ADDA and the application filed in Court which was allowed without reference to the secured creditors of the company (in liquidation). At the instance of the secured creditors of the company (in liquidation) the order has been kept in abeyance in the sense that ADDA has not been permitted to appropriate the money or funds that it may have received or the deposits that may have been made over to it.

The secured creditors, primarily nationalised banks, say that against their dues running into several hundreds of crores of rupees, a total amount of about Rs.63 crore has been released on a pro rata basis upon the assets of the company (in liquidation) fetching a price of about Rs.100 crore. The balance amount has been retained by the Official Liquidator to cover the Official Liquidator's expenses and to await further orders of the Company Court as to how the same may be disbursed. The secured creditors, speaking thorough the State Bank of India, insist that the deposits were required to be received by the company and the position after the company has gone into liquidation is

that the depositors or the ex workers of the company (in liquidation) would be creditors of the company (in liquidation) and no more. It is the further submission on behalf of the State Bank that in respect of such dues of the workers of the company (in liquidation) Section 529A of the Companies Act, 1956 cannot be pressed into service and, as such, the ex workers of the company (in liquidation) who have made such deposits have to be regarded as ordinary creditors who will stand in the queue to be eligible to receive their dues after the entire dues of the secured creditors have been discharged.

The ex-workers or the associations espousing their cause and ADDA, which has no conflict of interest with the ex-workers, submit that the ex-workers were only required to keep a certain amount of money by way of deposit which could never been appropriated by the company (in liquidation) till such time that the conditions for such appropriation arose. It is the further submission, particularly of ADDA, that in the majority of cases fixed deposit receipts were merely made over by the ex-workers of the company to the company. As such, ADDA maintains that the fixed deposit receipts were retained by the company without the property in the fixed deposits ever passing from the depositors to the company.

What is evident from the circular of June 3, 1999, including its corrigendum of June 17, 1999, is that the ex-workers of the company who retained possession of the company's quarters were required to put in liquid cash by way of deposit. The circular or its corrigendum did not contemplate the deposit to be made in any other form. It is true that that the deposits could be touched by the company only upon certain conditions in the nature of

default happening. However, the right of the ex-workmen to receive back the deposits, for the moment not considering that the deposits were made by furnishing bank deposit receipts, would amount to the refund of the money by the company.

Once the company went into liquidation, the status of the ex-workers who made the deposits would be no higher than the status of an unsecured creditor of the company. It is quite irrelevant in the circumstances as to the manner in which the deposits were made, once it is appreciated that the deposits were made pursuant to the circular of June 3, 1999 that contemplated liquid money to be kept in deposit. Further, water charges and like dues could be deducted from the deposits by the company and only the balance was liable to be refunded. If any refund was not made despite a demand, the relevant ex-worker would be entitled to lodge a money claim.

Mr. Saha, learned senior counsel representing the secured creditor, has strenuously argued and insisted that the deposits were required to be received by the company and the position of the said deposit after the company has gone into liquidation is that the depositors or the ex-workers of the company (in liquidation) would be placed in the category of creditors of the company (in liquidation) and cannot be elevated to the position of secured creditors. It is further argued that dues of the secured creditors, namely financial institution shall not rank *pari passu* with the dues of the workmen under Section 529A of the Companies Act, 1956. The subsequent deposits made by the ex-workmen after their employment have ceased for their continued occupation in the quarters on a temporary basis cannot be treated at par with the claim of the

secured creditors as envisaged under Section 529A of the Companies Act, 1956.

We are in agreement with the argument advanced on behalf of the secured creditors. The circular dated 3rd June, 1999 with the corrigendum of 17th June, 1999 made it abundantly clear that such deposits were made for fulfillment of certain conditions stipulated in the license agreement and the nature of such deposits cannot be stretched beyond as contemplated under the said license agreement. It is true that the deposit could be utilized by the company only upon certain conditions in the nature of default happening, however, the right of the ex-workmen to receive such amount would be in the nature of refund of the money by the company.

There is nothing on record to show that erstwhile employees had paid all the amounts that were required to be paid under the license agreement for their continued occupation or there were any arrangement after the expiry of six months time under the license agreement. Moreover, it could not be made clear by the erstwhile employees whether the claim lodged by the workmen were adjudicated upon by the Official Liquidator towards ex-gratia or gratuity. They are unable to say whether the proof of debts/claim mentioned any outstanding ex-gratia or gratuity.

Once the company while in liquidation, the status of the Ex-workers who made the deposits cannot be elevated to the status of secured creditors, their status would be no higher than the status of the unsecured creditors of the company. We are in agreement with the learned trial Judge that it is quite irrelevant in the circumstances as to the manner in which the deposits were

made, once it is appreciated that the deposits were made pursuant to the circular of 3rd June, 1999 that contemplated liquid money to be kept in deposit. Further, water charges and like dues could be deducted from the deposits by the company and only the balance was liable to be refunded. It is also quite clear that once a company has gone into liquidation, all the deposits were, by law, come under the control of the Official Liquidator for the Official Liquidator to deal with the same in accordance with the provisions of the Act, 1956. The deposits, regardless of its nature by reason of the provisions of the act, should be treated to be a money that had come into the hands of the Official Liquidator upon the company going into liquidation and the disbursement thereof cannot be made otherwise than as recognized in the statute.

On such consideration, we do not find any reason to interfere with the order of the learned Single Judge. Accordingly, all the appeals i.e., APO/76/2019, APO/77/2019, APO/78/2019 and APO/79/2019 stand dismissed.

There shall, however, be no order as to costs.

(SOUMEN SEN, J.)

(SIDDHARTHA ROY CHOWDHURY , J.)