IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION NO. 801/2006 IN WRIT PETITION NO. 2243/2003

(KHANDELWAL TUBE MILL KAMGAR SANGH, KANHAN **VERSUS** THE GOVERNMENT OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	Court's or Judge's order

Shri R.B. Puranik, counsel for the petitioner.
Shri D.P. Thakare, Additional Government Pleader for the R-1, 2 and 7.
Shri H.V. Thakur, counsel for the R-3 and 4.
Shri A.C. Dharmadhikari, counsel for the R-5.
Shri S.M. Puranik, counsel for the Intervenors.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : AUGUST 30, 2022.

By this application, the respondent nos.3 and 4-Company seek modification of the order dated 11.08.2005 passed by this Court by which the Secured Creditor was permitted to be paid an amount of Rupees Five Crores towards the dues of the Company.

In the civil application, it has been stated that an amount of Rs.2.41 Crores was ordered to be distributed amongst the members of the Union and to the Secured Creditor. A statement had been made on behalf of the Secured Creditor that it was willing to restrict its claim to Rs.6.25 Crores. However the fact that the Secured Creditor had filed proceedings before the Debts Recovery Tribunal seeking to recover the outstanding amount from the Company was not disclosed when the order dated 11.08.2005 was passed. Since the entitlement of the Secured Creditor to its claim as made has not been adjudicated and the Secured Creditor was infact seeking such adjudication, it was not entitled to retain the amount of Rupees Five Crores as was directed to be paid on 11.08.2005. It has been further stated that after the said order was passed, the summons of the proceedings before the Debts Recovery Tribunal were served on the Company. On this count, the order dated 11.08.2005 to that extent was liable to be modified.

In the reply filed by the Secured Creditor, it has been stated that on being asked by the Court as to whether the Secured Creditor was willing to restrict its claim by quantifying the same it was agreed that such claim would be quantified to Rupees Six Crores. It has been further stated that according to the Secured Creditor if the amount of Rupees Six Crores was paid to it in full and final settlement of the claim the Secured Creditor did not intend to further prosecute the proceedings before the Tribunal. As the said amount of Rupees One Crore was in balance the said proceedings have been pursued. It is denied that there was any suppression of material fact as alleged by the Company. Since the Company had also agreed to the arrangement as indicated in the order dated 11.08.2005 there was no reason to modify that order.

On hearing the learned counsel for the parties, it is seen that the order dated 11.08.2005 was passed after considering the rival claims of the members of the Union, the Secured Creditor and other Creditors. With a view to undertake a workable arrangement various amounts were directed to be paid in the Provident Fund account of the Company as well as to the Assistant Commissioner of Labour to enable that Authority to make payment to the members of the Union. While directing an amount of Rupees Five Crores to be paid to the Secured Creditor its learned counsel was directed to make a statement whether the claim could be quantified at Rupees Six Crores. Thereafter directions were issued to the Collector to sell the assets of the Company. It was clarified that the aforesaid payments were “on account payments” to the members of the Union as well as to the Secured Creditor. The same was to be subject to final orders in the proceedings.

The writ petition has been decided and the right of the members of the Union as well as the Secured Creditor to receive respective dues *pari passu* have been issued. This is after taking into account the amounts already disbursed to them. Since the payments as directed to be made on 11.08.2005 were “on account payments”, we do not find any reason to modify the direction by which amount of Rupees Five Crores was paid to the Secured Creditor. Notwithstanding the pendency of the proceedings before the Tribunal initiated by the Secured Creditor the amount received by it is required to be taken into consideration alongwith what has been received by the Union.

In these facts we do not find any reason to modify the aforesaid direction dated 11.08.2005. The civil application is therefore rejected.

(URMILA JOSHI-PHALKE, J.) **(A. S. CHANDURKAR, J.)**

APTE