Comp.A.No.155 of 2018
in
C.P.No.255 of 2014

C.SARAVANAN, J.

The learned counsel for the respondent in the above company application appears and reports no instructions and has filed a copy of the letter dated 03.11.2023 addressed to the respondent to give particulars. However, no details have been given and therefore submits that the said letter dated 03.11.2023 may be taken on record.

2. The submission of the learned counsel for the respondent and letter dated 03.11.2023 addressed by the learned counsel are taken on record.

3. This application has been filed by the Official Liquidator for the following reliefs:-

> "a) To direct the respondent/debtor to pay the debt due amount of Rs.67,58,277.76/- towards entire settlement along with subsequent interest @ 18% per annum till the date of final payment.
>
> b) To permit the Official Liquidator, in case of default in making payment of outstanding dues to seize the Asset and Machinery as per Schedule to the Agreement and to take possession of the same.

c) To permit the Official Liquidator the cost of this application does come out of the funds of the company in Provisional Liquidation."

4. In the report of the Official Liquidator, it has been stated as follows:-

"3. That the Official Liquidator submits that the Respondent had entered into Hire Purchase Agreement with the Company in Provisional Liquidation and borrowed money for the purpose of Station Rotary, Indexing, Milling, Drilling Grooving SPM Machine.

The details of the agreement are mentioned below:-

Agreement No.	*Nature*	*Agreement Value*	*Agreement Date*	*Tenor got over on*
1	*Hire Purchase*	*1,00,00,000.00*	*21.06.2010*	*01.01.2016*

(Copies of Hire Purchase Agreement and Disbursement Report are annexed as Annexure - A & B)

4. That the Official Liquidator in the course of Liquidation proceedings has deposited the collected Post Dated Cheques for the period from 01/08/2014 to 01/01/2016 and to state that all the cheques got bounced (Copy of List of Cheque Return are annexed as Annexure - C).

5. That the Ex-Managing Director of the Company in Provisional Liquidation has filed the Statement of Affairs along with a list of borrowers on 21.08.2014. As per the list of borrowers, the respondent herein has been shown as a debtor and a sum of Rs.9,42,735/- payable by them as on date of winding up *order.*

6. That the Official Liquidator submits that as per the Statement of Affairs filed by the Ex-Directors, Official Liquidator has issued Demand-cum-Final Notice dated 01.09.2015 demanding a sum of Rs.9,42,735.00/- together with interest @ 18% per annum from the date of which the amount has fallen due i.e., 31.07.2014 to till the date of entire settlement within 15 days, which was acknowledged by the respondent. The respondent's Advocate Shri.Shashi Kataria in his letter dated 14.09.2015 in his reply letter has requested to accept the amount in three equal monthly installments and to waive the interest. Thereafter, Official Liquidator after crystallizing their amount sent Final Notice dated 13.10.2015 to the respondent company to pay the outstanding debt due amount of Rs.62,08,855.35/- together with interest @ 8% per annum within 15 days from the date of this letter. The respondent Advocate Shri.Shashi Kataria in his reply letter dated 21.10.2015 stated that his client has paid Rs.15,67,592/- i.e., Rs.3,14,592/- on 17.10.2014, Rs.6,30,000/- on 15.01.2015 Rs.3,15,000/- on 25.02.2015 and Rs.3,08,000/- on 28.04.2015 respectively through RTGS in ESCROW account maintained by the subject Company under Provisional Liquidation with State Bank of India and the same was not accounted in their ledger statement maintained by the subject Company in Liquidation. The Official Liquidator after accounting the above said amount in their ledger account maintained by the subject Company in Liquidation has issued Final Notice dated 05.07.2017 directing to pay the outstanding amount of Rs.44,95,934.35/- as on 05.01.2016 along with have to pay interest @ 18% per annum on the monthly outstanding from 31.07.2014 to 30.06.2017 amounting to Rs.18,09,659.72/- totaling to Rs.63,05,594.07/- on or before 30.06.2017. The respondent Advocate Shri.Shashi Kataria in his reply letter dated 18.07.2017 has requested to waive the interest charges by the Official Liquidator and has accepted to pay the outstanding amount and not to take any legal action, but this Office has not received even a single payment from the date of demand i.e., from 01.09.2015 to till date. (Copies of the Letters and acknowledgement cards are Annexed as Annexure-

D).

7. That the Official Liquidator further submits that since the respondent has not shown any interest on settling the debt due amount, the Official Liquidator has no other option except to prefer this application under Section 446(2) of the Companies Act, 1956 before this Hon'ble Court praying for an order directing the respondent to pay outstanding amount of Rs.44,95,934.35/- as on 05.01.2016 along with interest @ 18% per annum from 31.07.2014 to 31.08.2017 for Rs.22,62,343.41/- and totaling to Rs.67,58,277.76/- along with subsequent interest @ 18% per annum till date of final payment. (Copy of Ledger Statement along with Interest Calculation Sheet are annexed as Annexure-E). The debt is well within the Limitation as per Law."

5. Being satisfied with the reasons stated in the report and considering the fund position, this Company Application for the above reliefs is allowed.

01.12.2023
(1/2)

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C.SARAVANAN, J.

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