



2023:DHC:8397-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.11.2023

+ **CO.APP. 11/2023 and CM No. 25886/2023**

PANKAJ KAPOOR

..... Appellant

versus

**M/S WESTON ELECTRONICS LTD (COMPANY IN
LIQUIDATION) & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Anil Nauriya and Ms Sumita
Hazarika, Advocates.

For the Respondents : Mr Piyush Beriwal and Ms Chetanya Puri,
Advocates for R-3.
Ms Ruchi Sindhwani, Senior Standing
Counsel with Ms Megha Bharara, Advocate
for Official Liquidator.
Ms Manmeet Kaur Sareen and Mr Kirtiman
Singh, CGSC for UOI.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The appellant is an ex-workman of the company in liquidation (Western Electronics Ltd.) and claims that he also represents other



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workmen. The appellant has filed the present appeal impugning an order dated 17.02.2023 (hereafter '**the impugned order**') passed by the Company Court in Co. Appl. No. 114/2023 in Co. Pet. No. 368/2001.

2. The appellant had filed the said application (Co.Appl.114/2023) for directions under Section 529A of the Companies Act, 1956 (hereafter '**the Act**') read with Rule 9 of the Companies (Court) Rules, 1959 (hereafter '**the Rules**'). The appellant claims that he represents five ex-workers of the company in liquidation. The claims of the said workmen amounted to ₹34,09,525/-. However, the funds available with the Official Liquidator were limited. The Report dated 24.07.2019 submitted by the Official Liquidator indicated that the funds available with the Official Liquidator were to the extent of ₹2,95,032.1/-. In the aforesaid context, the said workmen had agreed to accept a sum of ₹55,000/- each. Accordingly, the Official Liquidator filed the Report dated 24.07.2019, *inter alia*, praying for orders for disbursing the said amount to the workmen from the available balance. The said directions were issued and an amount of ₹55,000/- was disbursed to each of the five workmen in question.

3. The appellant filed the aforementioned application claiming that additional amounts ought to have been disbursed to the applicant and other workmen as they ranked higher in priority for receiving such funds than the claims of the Government Commission and the Establishment. The appellant claimed that a sum of ₹19,41,853.61/- had been transferred as Government Commission (fee paid to the Central



Government) and a sum of ₹28,94,972/- had been transferred towards “Estt. Account”. The appellant claimed that the said amounts, which had been disbursed, were required to be recovered and disbursed to the workmen. The appellant claimed that the transfer of amounts as Government Commission and to the Establishment Account were unjustified and contrary to the order of priority as set out in Section 529A of the Act.

4. The aforesaid application was dismissed by the learned Company Court by the impugned order. During the course of the proceedings before the learned Company Court, the appellant did not press any objection regarding payment of sums transferred to the Establishment Account. He confined the application to the payment of commission to the Government. The learned Company Court held that the Government Commission (Official Liquidator’s fees) as contemplated under Section 451(2) of the Act was not a “debt obligation” of the company in liquidation, to be disbursed in the order of priority under Section 529A of the Act. The payment of such fees is triggered only after the winding up petition is admitted and the Official Liquidator is appointed as a Provisional Liquidator or as a Liquidator, which is in contrast with the debts covered under Section 529A of the Act.

5. The learned counsel appearing for the appellant contended that the dues of the workmen and of the secured creditors to the extent as specified under Section 529A of the Act would override the liability to



pay the Government Commission under the Rules. He contended that the Rules must necessarily yield to the provisions of the Act.

6. In view of the above, the only question to be addressed is whether the payment of Government Commission falls lower in order of priority than the dues of workmen and secured creditors.

7. Section 451 of the Act is relevant and is set out below:

“451. GENERAL PROVISIONS AS TO LIQUIDATORS.—

(1) The liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Tribunal may impose.

(2) Where the Official Liquidator referred to in clause (c) of sub-section (1) of section 448 becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

(3) The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification :

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.”

8. It is material to note that Sub-section (2) of Section 451 of the Act mandates that the Official Liquidator shall be paid fees out of the assets of the company in respect of which the Official Liquidator becomes or acts as a Liquidator. It is clear that the said fee is payable to the Official Liquidator for discharge of the function of liquidating the company. It is obvious that funds from liquidating the assets of the



company would be available only on liquidation of such assets. Thus, the expenses and charges for liquidating the assets would necessarily have to be incurred in order to make available the funds, which may be utilised for the payment of dividends.

9. Sections 529A and 530 of the Act refer to the disbursement of the net funds as may be available with the Official Liquidator. To illustrate the point further, an immovable property of the company may be sold to pay its debts. The expenses for sale of such a property, such as fees payable to the Court Commissioner, expenses for conducting the auction etc., would necessarily have to be incurred for realising the value of that asset. It is the only the net value, which is realised that can be disbursed in the order of preference.

10. Sections 529A and 530 of the Act set out the priority for the payment of debts. The proviso to Clause (c) of Section 529(1) of the Act provides that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen. Section 529A(1) of the Act expressly provides that the workmen's dues and debts due to secured creditor, to the extent that such debts rank *pari passu* with the workmen's dues by virtue of proviso to Clause (c) of Section 529(1) of the Act, shall be paid in priority to other debts. Section 530 of the Act also contains provisions regarding preferential payments and sets out the order in which the payments are required to be made. However, as stated above, the order of preference as set out in Sections 529, 529A and 530 of the Act relate to the order in which funds of a



company in liquidation are to be disbursed. However, the funds available for distribution are funds that would be available on liquidation of the assets.

11. The commission to be paid to the Government under Section 451(2) of the Act is, essentially, the fee payable on the Official Liquidator being appointed. Thus, clearly the said payment refers to the amount payable for an Official Liquidator to act as such. The nature of the fees is clearly, in the nature of an expense for liquidating the assets and winding up the company. This is not covered under Sections 529, 529A and 530 of the Act, which refer to the order of priority for payment of dividends on liquidation of a company.

12. In *IISCO Ujjain Pipe and Foundry Company Limited. v. Ujjain Nagar Palika Nigam & Ors.*: (2023) 8 SCC 138, the Supreme Court held that Sections 529A and 530 of the Act would have no relevance in the context of a claim of an auction purchaser regarding the arrears of tax under the Madhya Pradesh Municipal Corporation Act, 1956. The said principle is equally applicable in this case. The relevant extract of the said decision reads as under:

“70. The submissions made on behalf of the appellant about the likely prejudice to the other pre-liquidation creditors if such post-liquidation liabilities are given preference over other liabilities; and reference to Sections 529-A and 530 of the Companies Act do not carry any relevance and do not make out any case for interference. The provisions contained in Sections 529-A and 530 essentially relate to overriding preferential payments as also preferential payments in relation to the classes of dues/debts specified therein. However, the question of



payment of the same would arise after payment of costs and expenses of winding-up that are properly incurred by the appellant OL and are to be paid in priority. As aforesaid, the taxes payable to Respondent 1 Nigam during the period in question would directly amount to the costs and expenses of liquidation.

71. This being the position, in our view, the Company Court and then the Division Bench of the High Court have rightly underscored the faults on the part of the appellant OL and have rightly held that the liability on account of the property tax and water tax claimed by Respondent 1 to the extent rejected by the appellant OL has been a post-liquidation liability, which the OL was obliged to discharge, in view of omission in the sale notice and then, in view of the operation of Rule 338 of the 1959 Rules.

72. Put in different words, as regards the operation of the said Rule 338 of the 1959 Rules, we are inclined to accept the reasoning of the High Court that on the facts and in the circumstances of the present case, arrears of property tax and water tax until the date of confirmation of sale i.e. 4-7-2003, would qualify as the expenses for “preserving, realising or getting in” the assets of the company and thus, shall have to be paid in priority by the appellant OL.”

[emphasis added]

13. It is also relevant to refer to Rule 338 of the Rules, which reads as under:

“338. Cost and expenses payable out of the assets in a winding up by the Court.—(1) The assets of a company in a winding-up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets including, where the company has previously commenced to be wound-up voluntarily, such remuneration, cost and expenses as the Court may allow to the liquidator in such voluntary winding-up, shall, subject to any order of the Court and to the rights of secured creditors if any,



be liable to the following payments which shall be made in the following order of priority, namely—

First.—the taxed costs of the petition including the taxed costs of any person appearing on the petition, whose costs are allowed by the Court;

Next.—the costs and expenses of any person who makes, or concurs in making, the Company's statement of affairs;

Next.—the necessary disbursements of the Official Liquidator other than expenses properly incurred in preserving, realising or getting in the properties of the company;

Next.—the costs of any person properly employed by the Official Liquidators;

Next.—the fees to be credited to Government under section 451(2);

Next.—the actual out of pocket expenses necessarily incurred by the members of the Committee of Inspection, and sanctioned by the Court.

(2) Save as otherwise ordered by the Court no payments in respect of bills of advocates, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the taxing officer of the Court. The taxing officer shall before passing the Bills or charges of an advocate, satisfy himself that the appointment of an advocate to assist the liquidator in the performance of his duties has been duly sanctioned.

(3) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against the company which is being wound-up by the Court, are ordered by the Court in which such proceedings are pending, to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.”



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14. In view of the above, we are unable to accept that the fee paid to the Government in terms of Section 451(2) of the Act is required to be accorded a lower priority than the debts payable to the workmen. The appeal is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

**NOVEMBER 23, 2023
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