Comp.A.No.238 of 2018
in
C.P.No.255 of 2014

Krishnan Ramasamy,J.,

This Application was filed by the Official Liquidator seeking for following prayers:-

> a) To direct the respondent/debtor Company to pay the outstanding due amount of Rs.3,78,893.34 along with subsequent interest at 18% p.a. till the date of final payment towards entire settlement.
>
> b) to permit the Official Liquidator, in case of default in making the payment of outstanding dues to seize the I.T. Equipments and Plant and Machinery as per schedule to the agreement and to take possession of the same.
>
> c) To permit the Official Liquidator to meet the cost of this application comes out of the funds of the Company in provisional liquidation.

2. Ms.B.Ambili, learned Deputy Official Liquidator would submit that as per the order passed by this Court in the Company Petition, the Official Liquidator attached to this Court was appointed as Provisional Liquidator of the

Company, named "M/s. First Leasing Company of India Ltd."; that though in course of liquidation proceedings, the Official Liquidator deposited the post dated cheques for the period from 01.08.2014 to 01.02.2016, and all cheques were got realized, but, still there was a short payment of rental due to increase in SBI PLR rate from 2011 onwards, hence, the Official Liquidator issued a demand notice dated 18.02.2015 to the respondent for a sum of Rs.1,95,182/- together with interest, however, the respondent has not shown any interest for settling the due amount, hence, Official Liquidator issued a final notice dated 31.07.2017, to the respondent to pay the outstanding due, which was also not responded to. Therefore, the learned Deputy Official Liquidator has filed the present Company Application seeking for the prayer, as decribed in the preable portion of this order.

3. On the other hand, Mr.P.Giridharan, learned counsel for the respondent by referring to Ex.P.1/ Loan Agreement, particularly, clause 39 (d), would submit that the change made, pursuant to increase in the lending rate, the increased rate should have been included in instalment by revising the instalment in the subsequent months during the subsistence of the contract. In this regard, no steps have been taken by the Company against the alleged increased in PLR rate to pay the increased rate of interest along with the instalments in the subsequent months, during the subsistence of the agreement. Therefore, the learned counsel would submit that they are not liable to pay the increased rate of interest.

4. Heard Ms.B.Ambili, learned Deputy Official Liquidator for the applicant and Mr.P.Giridharan, learned counsel for the respondent and perused the materials available on record, including the report filed by the applicant.

5. As per the Statement of Affairs filed by the ex-Directors of the Company in liquidation, the Official Liquidator issued a demand notice dated 18.02.2015 to the respondent for a sum of Rs.1,95,182/- together with interest, since the respondent borrowed money from the Company in liquidation for the purpose of purchase of I.T. Equipments. However, the respondent has not shown any interest for settling the due amount. Hence, the Official Liquidator, issued a final notice dated 31.07.2017 directing the respondent to pay the outstanding due, which also evoked no response. Having left with no other option, the Official Liquidator has preferred the present Company Application seeking for the aforesaid prayer.

6. On behalf of the applicant-Official Liquidator, one Mr/V/Sambu, working as Assistant Manager in the applicant-Company was examined and 12 documents were marked as Exs.A.1 to 12. On the side of the respondent, neither any witness was examined nor any document was marked. Therefore, she prayed to issue appropriate direction.

7. According to the applicant-Official Liquidator, the respondent is liable to pay a sum of Rs.3,78,893.34 with interest from 01.08.2014 till the date of last payment after the last instalment on 01.02.2016, since, due to increase in SBI PLR Rate, rental instalments have been modified, in terms of clause 39 (c and d) of the Loan Agreement.

8. Though a perusal of clause 39 (c and d) of the Loan Agreement, which would state that "for every increase/decrease in the lending rate of 100 basis points, the instalments as mentioned in the schedule falling due on or after the date of such change shall stand revised by Rs.1 per thousand per month during the subsistence of the contract", considering the fact no steps were carried out to add the increased amount in the instalment by revising the instalment in the subsequent months, since 2011 (viz., the year, during which, PLR got increased) till the last instalment to be made by the respondent, it is crystal clear that clause 39(c and d) of the Loan Agreement, dated 05.01.2011, was not given effect to in an effective manner during the susistence of the contract/agreement.

9. Therefore, this Court is of the view that unless and until, the clause 39 (d) was given effect to immediately upon revision of the PLR rate and a communication in regard to the said increase in the PLR rate is sent to the respondent in time by adding the increased rate in the instalments by revising the instalments in the subsequent months, and the respondent was called upon to pay the increaed amount of instalment, the respondent cannot be mulcted with any liability pursuant such increased PLR Rate.

10. However, this Court is in order to give quietus to the matter since the matter has been pending for a decade after winding up of the Company, effected reconciliation between the parties, upon conciliation, which is not on the aspect of increase in PLR rate, but on the aspect of settlement of Rs.68,939.60, by the respondent, and it is stated that two cheques were dishonoured in respect of which, due amount has to be settled by the respondent, however, the learned counsel for the applicant fairly submitted that the said amount is not in issue, is inclined to dispose of the Application by directing the respondent to pay a sum of Rs.1,00,000/- towards full and final settlement of the entire claims made against them.

11. Accordingly, the respondent is directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) towards full and final settlment as against the entire claim made by the applicant within a period of four weeks from the date of receipt of a copy of this order.

12. In fine, this Company Application is diposed of on the aforesaid terms.

Krishnan Ramasamy,J.,

11.07.2024

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