

IN THE HIGH COURT OF KARNATAKA AT
BANGALORE

DATED THIS THE 28TH DAY OF FEBRUARY 2014

BEFORE

THE HONOURABLE MR. JUSTICE ANAND BYRAREDDY

COMPANY APPLICATION No.891 OF 2010

IN

COMPANY PETITION No.68 OF 1997

BETWEEN:

Indian Bank,
M.G.Road Branch,
No.110, M.G.Road,
Bangalore – 560 001.
Represented by its present
Assistant General Manager,
S. Chezhan,
Son of P.N.Sengodan,
Aged 50 years,
Residing at Bangalore.

...APPLICANT

(By Shri. G.L. Mohan Maiya, Advocate for Shri. A. Keshava
Bhat, Advocate)

AND:

Swede India Teletronics Limited,
(in liquidation by Official Liquidator)
Represented by The Official Liquidator,

High Court of Karnataka,
Bangalore.

...RESPONDENT

(By Shri. K.S. Mahadevan, Advocate for Official Liquidator)

This Company Application filed under Rule 164 of the Company Court Rules, praying to set aside the order of the respondent Liquidator dated 8.10.2010 in Co.P.No.68/97/JTA®/CI.No.4/4618/2010 (Annexure-C), rejecting the proof of the claim of the Bank to a sum of Rs.27,60,47,264/- with interest thereon and direct the respondent to release the entire amount claimed, in the interest of justice.

This Company Application coming on for Hearing this day, the court made the following:

ORDER

This application is filed seeking a direction to the Official Liquidator to release the entire amount as claimed by the applicant. It is the claim of the applicant that even before the company in liquidation was ordered to be wound up by this court, the applicant – bank had filed an application before the Debt Recovery Tribunal (DRT), laying claim to certain amounts from the company in liquidation and the applicant,

along with the Canara Bank and Indian Bank as well as the State Bank of Mysore, had sought to recover the same from the company in liquidation. There was a decree for a sum of Rs.2,44,32,519.46 with interest at 24.25% compounded quarterly from the date of application till the date of realisation. The bank had sought to recover the said amounts, while seeking to stand outside the winding up and it is thereafter that the Official Liquidator had issued notice to the bank, to prove its debt and the Bank had filed its affidavit, enclosing a copy of the Recovery Certificate of the DRT and had made a claim of Rs.27,60,47,264.31, which included other charges and interest. It was rejected by the Official Liquidator, indicating that the bank was entitled only to the extent of Rs.4,69,47,085/- . It is this rejection which is sought to be challenged in this application .

2. The present application is disposed of while observing that pursuant to the order passed in O.A.1171/1996

decided on 3.0.2.2003, any Recovery Certificate obtained by the present applicant, would not be the subject matter of adjudication by the Official Liquidator in the light of the fact that the workmen's dues and employees provident fund dues, which the Official Liquidator would claim and the same, which are recoverable from the amounts that have been disbursed pursuant to a sale by the Consortium of Banks before the DRT, it is irrelevant for the Official Liquidator to adjudicate on any claims of the present applicant, which has not received any monies from the aforesaid sale and since the applicant has obtained the Recovery Certificate from the DRT independent of the winding up proceedings, the said applicant is not answerable to any amounts that may have been disbursed and received by others. Further, the applicant is only a second charge holder in respect of the immovable assets.

Accordingly, the findings of the Official Liquidator as to the disentitlement of the applicant to any interest, is held bad

in law. The question of directing the Official Liquidator to release any monies in favour of the applicant, also does not arise as the Official Liquidator is empty handed and there are no funds, which he could account for or release in favour of the applicant.

The application stands disposed of accordingly.

Sd/-
JUDGE

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