

Appellant Vs. Respondent

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Court : Kolkata

Decided On : May-07-2012

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CA NO.668 OF 201.BIFR NO.65 OF 198.IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : BIHAR STATE FINANCIAL CORPORATION AND KUMARDHUBI FIRE CLAY & SILICA WORKS LTD.(IN LIQN.) BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE
Date :

7. h May, 2012.

MR.S.C.PRASAD, ADVOCATE FOR PETITIONER MR.MUKTI GHOSH, MS.MITHUA SEN ADVOCATES FOR OFFICIAL LIQUIDATOR MR.S.K.SINHA, ADVOCATE FOR STATE BANK OF INDIA The Court : The present application is belated and utterly misconceived.

The Bihar State Financial Corporation has lodged an appeal following the Official Liquidator having rejected a substantial part of its claim.

The present application has been filed in the year 2011 when the rejection of the claim took place by a letter of the Official Liquidator dated September 19, 2005.

The Official Liquidator applied by way of a letter for directions to the company court for declaring and making payment of dividend to the 1572 workmen of the company in liquidation and for ancillary orders. Copies of such letter for directions were directed to be served on the two secured creditors of the company in liquidation, the Bihar State Financial Corporation which is the applicant in the present proceedings and the State Bank of India.

The relevant letter for directions was disposed of by an order of April 24, 2007 in the presence of both secured credit ORS. Such order required the workmen to be paid a sum of Rs.7,23,24,652.15 and State Bank of India to be paid a sum of Rs.3 crore in full and final satisfaction of its claim.

The order noticed that the Bihar State Financial Corporation had claimed a much larger sum but the Official Liquidator had settled the claim at Rs.1,87,96,743.49.

The order also recorded that such financial corporation had not been aggrieved by the settlement made by the Official Liquidator.

It may be appropriate to notice that the time to file an appeal from any order of rejection of claim by the Official Liquidator is 21 days from the date of receipt of notice thereof.

The order dated April 24, 2007 proceeded on the basis that the applicant herein could no longer object to the rejection by the Official Liquidator of a part to its claim.

It is submitted on behalf of the Bihar State Financial Corporation that an appeal was attempted to be preferred by it from the order dated April 24, 2007 and following the direction of the Appellate Court that appropriate steps may be taken before the company court, the present application has been made in the year 2011.

The Appellate Court order is of January 10, 2011.

It is evident from such order that the Appellate Court did not condone the delay in seeking to prefer the appeal.

An observation was made for the appellant therein to approach the company court with appropriate proceedings to assail the order dated April 24, 2007.

The application not made is under Rule 164 of the Companies (Court) Rules, 1959 and not for recalling the order of April 24, 2007, and the prayers sought in the application make it abundantly clear that the application is really an appeal against the order of rejection passed by the Official Liquidator.

The fiRs.prayer in the application is for condonation of delay.

The averment in support of the prayer for condonation of delay is found in paragraph 24 of the application: 24.

The applicant states that the delay, if any, in making this application may kindly be condoned."

The applicant cannot show any other averment in the body of the application to explain the inordinate delay between the years 2005 and 2011 in the appeal under Rule 164 being preferred.

It also appears that the applicant has affirmed the affidavit in support of the summons only on June 29, 2011, more than five months after the appellate order of January 10, 2011.

No ground has been made out for condoning the inordinate delay on the part of the applicant in seeking to prefer the appeal.

In any event, the order dated April 27, 2007 was passed in the presence of the applicant and the applicant remains bound thereby for the applicants belated challenge thereto not having been entertained by the Appellate Court.

C.A.No.668 of 2011 is dismissed.

There will be no order as to costs.

Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) sb.

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