

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jul-23-2012

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CA No.782 of 2011 BIFR No.221 of 1987 IN THE HIGH COURT AT CALCUTTA ORIGINAL JURISDICTION IN THE MATTER OF: SREE DURGA COTTON SPINING & WEAVING MILLS LTD.(IN LQN.).ORS.AND THE O/L HIGH COURT ,CALCUTTA BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

23. d July, 2012.

Appearance: Mr.Uptal Bose, Adv.Mr.M.Ghosh, Adv.Mr.A.K.

Dhandhanian, Adv.Mr.A.K.

Sur, Adv.The Court : Affidavit-in-opposition be filed within a week from date; reply thereto, if any, may be filed within a week thereafter.

CA No.782 of 2011 will appear as an Adjourned Company Matter.

in the monthly list of August, 2012.

The official liquidator has filed a report from which it appears that a sum in excess of Rs.1.57 crore has been paid in excess of the amount payable to United Bank of India.

The bank says that such amount was reflected in a previous report filed by the official liquidator whereupon an order of March 3, 2011 was made requiring further disbursements to be made to the creditors without insisting on the refund said to be due from the United Bank.

It does not appear that the order dated March 3, 2011 decided anything finally.

In any event, notwithstanding the order dated March 3, 2011, there is no impediment to a creditor being required to refund the amount that it has received in excess of its entitlement, particularly as the disbursements are made on ad hoc basis and at the invitation of the credit ORS. United Bank of India cannot immediately demonstrate that it was entitled to receive the money that has been paid to it.

The only effort on the part of the bank is to resist the refund and to cling on to the payment which appears to have been made in excess of what was its due on a pro-rata basis.

In the light of the conduct of this bank, the official liquidator will consider whether it is desirable to invest any funds of the official liquidator with this bank.

The entire amount of Rs.1,57,44,133/- which is claimed by the official liquidator to have been paid in excess to United Bank of India will be refunded together with interest at the rate of 12 per cent per annum from the date of the payment till the date of refund by United Bank to the official liquidator which the official liquidator will invest by way of a separate account in any other bank but the official liquidator will not use the money for any other purpose without specific leave of Court.

It is made clear that the money has to be refunded before a final adjudication is made as to whether such amount is actually refundable.

This order is made since it appears that there are some creditors who tend to obtain more than the amount that such creditors are entitled to and seek to sit on the additional funds without making refunds in time even if the earlier payments had been received on ad hoc basis.

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

(SANJIB BANERJEE, J.) bp.

A.R(C.R)

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