**Official Liquiator Vs. .**

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**SooperKanoon Citation** : sooperkanoon.com/965122

**Court** : Chennai

**Decided On :** Mar-15-2013

**Judge** : Vinod K.Sharma

**Appellant** : Official Liquiator

**Respondent** : .

**Judgement** :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

15. 03/2013 CORAM THE HON'BLE MR.JUSTICE VINOD K.SHARMA Comp.A.No.321 of 2013 in C.P.No.17 of 2004 THE OFFICIAL LIQUIATOR HIGH COURT, MADRAS LIQUIDATOR OF SIV INDUSTRIES LTD. (IN LIQN.) ORDER This application under Sections 460(4), 555 of the Companies Act, 1956, read with Rules 9, 11(b), 167, 280 of the Companies (Court) Rules, 1959, has been moved to permit the Official Liquidator to disburse the dividend of Rs.47,03,647/- (Rupees forty seven lakhs three thousand six hundred forty seven only) @ 48 paise in a rupee, to 62 claimants, as detailed in the list of creditors as per Annexure 'A' and Annexure 'B'. 2.In support of the application, a report has been filed by the Official Liquidator recording therein that M/s.S.I.V. Industries was ordered to be wound up on 25.08.2004 in Company Petition No.17 of 2004. 3.In pursuance of the order passed by this Court in C.A.No.1325 of 2006 dated 17.08.2006, the Official Liquidator invited claims from the creditors including workmen creditors of the company in liquidation. 4.The total number of claims received were 3680. Out of 3680 claims, the Official Liquidator adjudicated the claims of 3313 under Section

529 A of the Companies Act, 1956 and filed 14 lists of creditors in this Court on various dates. 5.The Official Liquidator also made disbursement of four dividends, to workmen creditors, as well as secured creditors at 12% each, as per first to fourteen list of creditors filed in this Court. 6.It is the case of the Official Liquidator that there are 62 workmen creditors, whose applications for condonation of delay were allowed by this Court and their claims were entertained by the Official Liquidator, and adjudicated. 7.The total admitted claim of the workmen comes to Rs.97,99,265/- (Rupees ninety seven lakhs ninety nine thousand two hundred sixty five only). 8.It is also reported that other list of creditors showing 21 claims was filed before this Court under Rule 167 of the Companies Court Rules, 1959, in prescribed Form No.71 on 06.01.2012, for an amount of Rs.42,53,923/- (Rupees forty two lakhs fifty three thousand nine hundred and twenty three only). The copies of those are enclosed as Annexure 'A' and another Form No.71 in respect of 41 persons claiming Rs.55,45,342/- (Rupees fifty five lakhs forty five thousand three hundred forty two only) is filed as Annexure 'B'. 9.The funds position of the Company in liquidation as on 17.01.2013 is as under: Cash : Rs.631.50 (Rupees six hundred thirty one and paise fifty only) Bank : Rs.73,65,122.84 (Rupees seventy three lakhs sixty five thousand one hundred twenty two and paise eighty four only) Investments :

11. 60,00,000/- (Rupees eleven crores sixty lakhs only) 10.It is submitted that in view of the availability of funds with the company in liquidation, and keeping in view the fact that the workmen have already been paid @ 48 paise in a rupee as dividend, in order to restore parity among the present claimants, it is necessary that the Official Liquidator be permitted to declare and disburse the dividend @ 48 paise in a rupee amounting to Rs.47,03,647/- (Rupees forty seven lakhs three thousand six hundred forty seven only) to the remaining workmen creditors as per the list of creditors mentioned above numbering 62 totalling to Rs.97,99,265/- (Rupees ninety seven lakhs ninety nine thousand two hundred sixty five only). 11.It is reported that 62 workmen creditors can be paid, after the approval by this Court. 12.It is prayed that the Official Liquidator may be permitted to disburse a sum of Rs.47,03,647/- (Rupees forty seven lakhs three thousand six hundred forty seven only) @ 48 paise in a rupee to 62 claimants, i.e., workmen as mentioned in the list of creditors as per Annexures 'A' and 'B'. 13.It is also prayed that the

Official Liquidator be permitted to open a new dividend account in the Punjab National Bank, for a sum of Rs.Rs.47,03,647/- (Rupees forty seven lakhs three thousand six hundred forty seven only), so as to enable him to disburse the dividend to 62 workmen creditors of the company in liquidation. 14.Prayer is also made to dispense with the publication of notice for declaration of dividend and to incur the expenses towards printing and stationery out of the funds of the company. 15.Sections 529 A and 530 of the Companies Act read as under:- "Section 529A OVERRIDING PREFERENTIAL PAYMENTS. (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company - (a) workmen's dues; and (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts. (2) the debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions. Section 530 PREFERENTIAL PAYMENTS. (1) In a winding up, subject to the provisions of section 529A, there shall be paid in priority to all other debts - (a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date; (b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (2) ; (c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution; (d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force; (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in sectio

885. of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company; (f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company, and (g) the expenses of any investigation held in pursuance of section 235 or 237, in so far as they are payable by the company. (2) The sum to which priority is to be given under clause (b) of sub-section (1), shall not, in the case of any one claimant, exceed such sum as may be notified 886a by the Central Government in the Official Gazette. (3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e) of subsection (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act. (4) Where any payment has been made to any employee of a company, - (i) on account of wages or salary; or (ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration; out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made. (5) The foregoing debts shall - (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge. (6) Subject to the retention of such

sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed. (7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof : Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made. (8) For the purposes of this section - (a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period; (b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday; (bb) the expression "employee" does not include a workman; and (c) the expression "the relevant date" means - (i) in the case of a company ordered to be wound up compulsorily the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and (ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company. (9) This section shall not apply in the case of a winding up where the date referred to in subsection (5) of section 230 of the Indian Companies Act, 1913 (7 of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force." 16.According to Section 529 A of the Companies Act, out of the funds received by the Official Liquidator, the secured creditors and the workmen have to be paid in full and it is only thereafter the unsecured creditors can be paid as they cannot be kept at par, to claim pari passu amount with the secured creditors/workmen. 17.The contention of the Company Prosecutor that under Section 529 A, the payment has to be in equal proportion with respect to all the creditors irrespective of the fact whether secured or unsecured cannot be accepted. 18.However, in this case, application has been filed to allow the Official Liquidator to disburse the dividends to the workmen to bring them at par with other workmen, who were already paid dividends of 48%. 19.While rejecting the contention of the Company Prosecutor, that under Section 529 A, the payment has to be in equal proportion to all the creditors irrespective of the fact whether they are secured or unsecured creditors, this application is allowed, as the workmen hold pari passu charge with the secured creditors, and it is not disputed that all the secured creditors have been paid dividends at 48 paise per rupee. 20.The Official Liquidator is permitted to disburse the dividends at 48 paise to rupee to 62 claimants as per the Annexure A & B. 21.However, it is directed that the Official Liquidator shall first settle the dues of secured creditors and workmen in terms of Section 529 A and 530 of the Companies Act, and the remaining amount should only be distributed to the unsecured creditors and others in accordance with the provisions of the Companies Act. The needful be done within two weeks of receipt of certified copy of this order. sra