



OD-3

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APO/141/2020
With BIFR/29/1995
CA/349/2017**

**WEST BENGAL INDUSTRIAL DEVELOPMENT CORPORATION LTD.
-VS-
EASTERN EXPLOSIVES AND CHEMICALS LIMITED (IN LIQN.)**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Jaydip Kar, Sr. Adv.
Mr. Debdeep Sinha, Adv.
Mr. Dibanath Dey, Adv.

For the Official Liquidator : Ms. Tanushree Dasgupta, Adv.

For the P.F. Authorities : Mr. Shiv Chandra Prasad, Adv.

For the LICl : Ms. Sanjukta Ray, Adv.

For the Assets Reconstruction : Mr. Rohit Das, Adv.
Company India Ltd./ Secured : Ms. Kishwar Rahman, Adv.
Creditor : Ms. Divya Tekriwal, Adv.

HEARD ON : 10.02.2026

DELIVERED ON : 10.02.2026

**DEBANGSU BASAK, J.:-**

1. Appeal is at the behest of the West Bengal Industrial Development Corporation Limited and directed against an order dated September 18, 2019 passed by the learned Single Judge in CA/349/2017 with BIFR/29/1995.
2. Learned senior advocate appearing for the appellant draws the attention of the Court to the charge created in respect of the immovable and movable properties of the company (in liquidation). He submits that, such charge was initially created on March 3, 1983.
3. Learned senior advocate appearing for the appellant submits that, the company was directed to be wound up by an order dated July 29, 1997. Official Liquidator invited claims in respect of the creditors of the company in liquidation. The appellant submitted its claim along with others. Minuscule claim of the appellant was allowed as an unsecured creditor on January 13, 2015. He submits that, since the appellant is a secured creditor, the Official Liquidator erred in treating the appellant as an unsecured creditor. Moreover, he points out that, the appellant was treated by the Official Liquidator as a secured creditor. Since, the appellant contributed for the security guard expenses as a secured creditor, at least to the extent of the security guard expenses, the appellant is entitled to be reimbursed in priority from out of the sale proceeds.



4. Learned Senior Advocate appearing for the appellant submits that, the appellant initially did not lodge the charge registration documents with the Official Liquidator. Subsequently, it did so. The lodgement was prior to the Official Liquidator taking a decision on the subject of adjudicating on the respective claims.
5. Learned Senior Advocate appearing for the appellant submits that, the appellant being aggrieved by the admission of claims as undertaken by the Official Liquidator, preferred an appeal before the Company Court. Such application was disposed of by the impugned order. He contends that, the learned Single Judge erred in failing to appreciate that, contemporaneously, appellant submitted its charge document with the Official Liquidator. He submits that, the Official Liquidator failed and neglected to treat the appellant as a secured creditor. Calculation of admission of claims, made by the Official Liquidator is incorrect.
6. Official Liquidator, Provident Fund authorities, Life Insurance Corporation of India and ARCIL company are represented.
7. Learned Advocate appearing for the Official Liquidator submits that, the Official Liquidator acted in terms of the orders of the Court from time to time. She submits that, the admission of claims and disbursements took place pursuant to orders of Court.
8. Learned Advocate appearing for the Provident Fund authorities submits that, the entire claim of the Provident Fund authority was not allowed.
9. Learned Advocate appearing for ARCIL submits that, immovable properties of the company were put up for sale separately. ARCIL



received its claim as a secured creditor in respect of the immovable property which was mortgaged to it. So far as the immovable property over which the appellant claims mortgage, the same was put up for sale separately.

- 10.** Company (in liquidation) was initially referred to the Board for Industrial and Financial Reconstruction (BIFR) established under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. Reference before the BIFR culminated into a recommendation for winding up. Such recommendation for winding up was considered by the High Court and an order of winding up was passed on July 29, 1997. Official Liquidator invited claims in respect of the company (in liquidation). Various creditors submitted claims with the Official Liquidator. Amongst persons who lodged claims before the Official Liquidator, in respect of the company (in liquidation), are the appellant, Provident Fund authority, ARCIL company and the Life Insurance Corporation of India. Such claims were adjudicated by the Official Liquidator on November 3, 2016.
- 11.** During the pendency of the proceedings for adjudication of claims, Official Liquidator, by a letter dated January 17, 2015 informed the appellant that, the claim of the appellant was unaccompanied with charge document. In response thereto, appellant, by a letter dated February 2, 2015 submitted the charge documents with the Official Liquidator. This letter was subsequently followed up on February 11, 2015.



- 12.** Therefore, on the date, when, the Official Liquidator adjudicated on the claims, that is November 3, 2016, the Official Liquidator was informed as to the charge of the appellant over the immovable properties concerned as also the movable.
- 13.** However, Official Liquidator proceeded to treat the appellant as an unsecured creditor. Official Liquidator admitted a sum of Rs.1,82,000/- as an unsecured creditor.
- 14.** Materials placed before us suggest that, the appellant is a secured creditor in respect of an immovable property of the company (in liquidation). It is also a secured creditor in respect of movables lying and situate at specific locations of the company (in liquidation).
- 15.** Apart from the appellant being a secured creditor, in the manner as noted above, the appellant also contributed towards the security guard expenses.
- 16.** Expenses for the purpose of maintaining the assets of a company (in liquidation), in the process of the liquidation of such company, is to come out of the sale proceeds of the assets of the company (in liquidation), as a priority claim.
- 17.** A creditor, of a company (in liquidation) is classified on the basis of the charge that existed in respect of the assets put up for sale.
- 18.** In the facts and circumstances of the present case, therefore, the Official Liquidator is required to treat the appellant as a secured creditor, in view of the documents submitted by the appellant with it. As noted above, charge documents were submitted prior to the



adjudication of the claim made by the Official Liquidator. Appellant is entitled to prefer an appeal before the Company Court, on the merits of the claim adjudicated by the Official Liquidator, which the appellant did, resulting in the impugned order.

- 19.** Learned Company Court proceeded on the basis that, the charge documents were submitted subsequent to the adjudication of claim and in fact, disbursement of the amount.
- 20.** With respect, such is not the case. The appellant submitted its claim pursuant to the invitation by the Official Liquidator. In such claim, appellant contended that, it was a secured creditor. However, claim application was not accompanied by the security documents. They were subsequently forwarded to the Official Liquidator on February 2, 2015 prior to the Official Liquidator adjudicating upon the claims. In such circumstances, the Official Liquidator erred in not taking into consideration the documents relating to the charge of the assets of the company (in liquidation) as claimed by the appellant.
- 21.** In such context, the impugned order is set aside. Official Liquidator is directed to adjudicate upon the claim lodged by the appellant on consideration of the charge documents, in accordance with law. Official Liquidator will afford a reasonable opportunity of hearing to the appellant. Official Liquidator is at liberty to hear such other parties that it deems fit and proper in such exercise. Upon such adjudication being completed, Official Liquidator will inform the appellant as to the result



thereof. Official Liquidator will also communicate its decision to the parties, it heard.

- 22.** In the event, the Official Liquidator finds that, the initial adjudication was incorrect and that, the payments were made to the respective creditors, which requires readjustment, then, the Official Liquidator will call upon such creditors to refund the excess amount paid. The Official Liquidator is at liberty to take suitable steps in this regard.
- 23.** APO/141/2020 along with connected applications are disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

- 24.** I agree.

(MD. SHABBAR RASHIDI, J.)