HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Company Petition No. 23/2006

M/s Thar Cements Ltd Jhunjhunu

----Petitioner

Versus

Kotak Mahindra Bank Limited & Ors.

----Respondent

For Petitioner(s)	:	Ms. Anita Aggarwal with Mr. Anubhav Aggarwal & Mr. Vaibhav Sharma
For Respondent(s)	:	Mr. Ayush Kumar Jain for Mr. Ram Naresh Vijay Mr. Ravindra Singh Nathawat for Mr. Ashish Tiwari Mr. Tej Prakash Sharma Mr. Vijay Choudhary for O.L. Mr. Vineet Sharma with Mohd. Naved Rafiq & Ms. Neha Sharma for respondent No.3

HON'BLE MR. JUSTICE SAMEER JAIN

Order

06/10/2023

Application (I.A. No. 1/2020) has been filed under Rule 9 of The Companies (Court) Rules, 1959 with a prayer for the issuance of directions to the Official Liquidator to consider and re-adjudicate the claim of the applicant-bank, based upon the revised claim affidavit.

It is submitted by the applicant-bank i.e. Kotak Mahindra Bank Ltd. that the applicant-bank is the holder of recovery certificate as an assignee of ICICI Bank vide assignment deed dated 31.03.2006. In this regard, it is submitted that the company under liquidation-M/s Thar Cement Ltd. was directed to be wound up on 21.11.2008. Thereafter, the Official Liquidator in a meeting of the creditors of the company in liquidation held on 20.07.2018, ascertained interim dividend in a sum of Rs. 3,30,00,000/- on an *ad hoc* basis to the three secured creditors as per the following ratio:

IFCI- 23.64%	Rs.78,01,345/-
KMB- 28.95%	Rs.95,54,339/-
ARCIL- 47.41%	Rs.1,56,44,316/-

Learned counsel submitted that in terms of the above, a sum to the tune of Rs. 95,54,339/- was given to the applicant-bank through NEFT-RTGS on 25.10.2018. Subsequently, a report came to be filed by the Official Liquidator under Rules 275 and 276 of the Companies (Court) Rules, 1959 before this Court. In the said report, it was averred by the Official Liquidator that it had adjudicated/admitted the claim amount of the applicant-bank as a secured creditor and thereafter, upon final adjudication, it was decided that the final dividend payable to the applicant-bank was to the tune of Rs. 80,75,657/- as opposed to the sum of Rs. 95,54,339/- already paid. Therefore, a prayer for recovering of the excess amount to the tune of Rs. 14,78,682 was made by the Official Liquidator. As a result, this Court vide order dated 11.02.2020 permitted the Official Liquidator to recover the excess amount from the applicant-bank, as stated above.

In this background, learned counsel for the applicant-bank submitted that the aforesaid finding of the Official Liquidator qua the excess amount paid to the applicant-bank is erroneous. To support the said claim, it was argued that the amount determined/calculated by the Official Liquidator was solely on the basis of the claim affidavit submitted by the applicant-bank, wherein inadvertently a calculation error had crept in, thereby reducing the amount to be paid substantially. The said mistake in calculation was bonafide and purely arithmetic in nature. Therefore, it was submitted that the Official Liquidator, instead of calculating the amount on the basis of the said claim affidavit filed by the applicant-bank, ought to have calculated the same as per recovery certificate issued by the Debt Recovery Tribunal.

It was further averred that due to the inadvertent error in calculating the due amount, an amount of Rs. 3,60,52,040.59/- was shown due towards the company in liquidation in the claim affidavit filed by the applicant-bank before the Official Liquidator. Whereas, in actuality, as per the recovery certificate so issued, the company in liquidation is indebted to the applicant-bank for an amount of Rs. 4,96,88,076/- as on 21.11.2008 i.e. on the date of winding up of the company. Therefore, since the arithmetic error and/or calculation error is apparent on the face of the record, the computation of the dividends needs to be redone.

Heard.

Considering the submissions advanced herein-above, and taking note of the bonafide mistake on part of the applicant-bank by way of which a reduced amount of debt was reflected in the claim affidavit, resulting into an incorrect/inaccurate determination of dividends payable and the subsequent recovery of excess amount sought by the Official Liquidator, this Court is inclined to set aside the recovery so made by the Official Liquidator qua the applicant-bank. As a result, this Court after taking note the recovery certificate so issued, deems it fit to modify the order dated 11.02.2020 to the extent that the applicant-bank would be entitled to a sum of Rs. 95,54,339/- as dividends as opposed to

80,75,657/-. Therefore, no recovery to the tune of Rs. 14,78,682/- is tenable.

In light of the foregoing discussion, application (I.A. No. 1/2020) stands disposed of.

(SAMEER JAIN),J

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