

(2011) 06 CAL CK 0001

Calcutta High Court

Case No: CA No. 941 of 2010 and BIFR No. 246 of 1988

In Re: Eastend Papers Industries
Ltd. (In Liqn.)

APPELLANT

Vs

RESPONDENT

Date of Decision: June 8, 2011

Acts Referred:

- Companies Act, 1956 - Section 530(f)
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A

Citation: (2013) 2 CHN 265

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: S.C. Prasad, for the Appellant; Rajiv Lal, for the Respondent

Judgement

I.P. Mukerji, J.

This is an appeal under Rule 164 of the Companies (Court) Rules, 1959. It is preferred by the Regional Provident Fund Commissioner. The provident fund authorities are aggrieved by a determination made by the official liquidator on 10th August, 2010 allowing their provident fund claim for Rs. 3,99,149-95P only. They are also aggrieved by the rejection of the balance claim amounting to Rs. 11,07,922-17P (at page 19 of the paper book). The reason advanced by the official liquidator's office for such rejection is this:

Due to lack of sufficient documentary evidence i.e. non-furnishing of copy of orders issued by Regional Provident Fund Commissioner u/s 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

2. Mr. Prasad refers to a letter dated 12th April, 2010 at page 34 of the paper book. By that letter the provident fund authorities forwarded some documents which included section 7A orders to the official liquidator. He says that despite forwarding of this order an erroneous recording was made in the determination made by the

office of the official liquidator that these orders were not available. Mr. Rajiv Lal, learned Advocate, appearing for the official liquidator submits that these section 7A orders and other documents furnished by the provident fund authorities established the claim for Rs. 3,99,149-95P only and were not proof for the rejected claim.

3. In my opinion, the reasons furnished by the office of the official liquidator do not indicate that the said documents furnished by the provident fund authorities related to the claim of Rs. 4 lakh and odd only. That reason should have been forthcoming.

4. In any event, after liquidation the official liquidator is custodian of the properties of the company, including its books of accounts, registers and all other papers. Since these documents are in his possession, he should allow inspection of them to the provident fund authorities to enable them to ascertain the provident fund liability of the company in liquidation. In my reading of section 530(f) of the Companies Act, 1956 an adjudication u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is not a sine qua non for establishing the provident fund liability of a company. What has to be ascertained is to what extent provident fund contribution was not made by the company and after such ascertainment such claim should be allowed by the official liquidator.

5. Therefore, a fresh determination is called for. At this stage, Mr. Prasad submits that he should be given an opportunity to produce further section 7A orders if they are found to be in his custody.

6. I am of the judgment that a fresh determination should be made on the basis of the documents already submitted to the official liquidator by the provident fund authorities and further documents which may be produced by them. Such documents should be produced by them by 15th July, 2011 before the official liquidator.

7. Furthermore, the provident fund authorities should be given an opportunity to find out from the records of the company the contribution towards provident fund which ought to have been made by the erstwhile employer but was not made and to lodge an additional claim on the basis of such records. Time for lodging such claim is extended till 15th July, 2011. Access of the records must be provided by the official liquidator to the provident fund authorities by 22nd June, 2011.

8. The official liquidator will make a fresh determination of the claim of the provident fund authorities by 31st August, 2011 by way of a reasoned order and after hearing all necessary parties. The determination dated 10th August, 2010 and the rejection of the claim at page 19 are accordingly set aside.

9. The appeal is disposed of accordingly. All parties concerned are to act on a signed photocopy of this order on the usual undertakings.