HIGH COURT OF JHARKHAND

Bench: Justices Sujit Narayan Prasad and Arun Kumar Rai

Date of Decision: 14th May 2024

COMPANY APPELLATE JURISDICTION

Company Appeal No. 1 of 2019

Company Appeal No. 2 of 2019

Gopal Mahto …Appellant

Versus

The Official Liquidator, Jharkhand High Court & Ors. …Respondents

Nand Keshwar Prasad …Appellant

Versus

The Official Liquidator, Jharkhand High Court & Ors. …Respondents

Legislation:

Sections 529, 529A, 483 of the Companies Act, 1956

Rule 156 of the Companies (Court) Rules, 1959

Subject: Appeals against the rejection of statutory interest to workmen on arrears of salary following the liquidation of UMI Special Steel Ltd.

Headnotes:

Companies Act – Appeal under Section 483 against Rejection of Statutory Interest Claim by Workmen – Jharkhand High Court upheld the decision of the Single Judge rejecting the workmen's claim for statutory interest under Rule 156 of the Companies (Court) Rules, 1959 – The Court found no error in the previous order as the claim for interest was not raised or adjudicated upon at the time of initial proceedings – Reiterated that workmen cannot claim interest on the basis of pari passu principle applicable to arrears of salary and secured creditors – Appeals dismissed. [Paras 1-72]

Interest Claim by Workmen – Applicability of Rule 156 of Companies (Court) Rules, 1959 – Supreme Court's decision in Vijay Industries vs. NATL Technologies Ltd. did not support workmen's claim for statutory interest as no specific contract or provision existed for interest payment – Court held that interest claims must be based on a contractual or statutory provision – Workmen's right to interest not established. [Paras 63-66]

Section 483 of Companies Act – Appellate Court's Powers – High Court emphasized that appellate court under Section 483 has wide powers to ensure complete justice – Appeals can be dismissed at the admission stage if found without merit – Right of appeal does not automatically entitle the appellant to relief. [Paras 69-70]

Decision – Dismissal of Appeals – Held – Appeals dismissed as no error was found in the Single Judge's decision – Claims for statutory interest by workmen under Rule 156 were not substantiated – Workmen's appeal for interest payment rejected due to lack of prior claim and absence of legal basis. [Para 72]

Referred Cases:

- Vijay Industries v. NATL Technologies Ltd. (2009) 3 SCC 527
- Textile Labour Assn. v. Official Liquidator (2004) 9 SCC 741
- MGB Gramin Bank v. Chakrawarti Singh (2014) 13 SCC 583
- Dr. Subramanian Swamy v. State of Tamil Nadu & Ors. (2014) 5 SCC 75
- Bolin Chetia v. Jogadish Bhuyan (2005) 6 SCC 81

Representing Advocates:

Mr. Awnish Shankar, Advocate for appellant in Company Appeal No. 1/2019
Mr. Kalyan Roy, Advocate for appellant in Company Appeal No. 2/2019
Mr. Himanshu Kr. Mehta and Mrs. Manjushri Patra, Advocates for respondents in both cases

---

Per Sujit Narayan Prasad, J.

1. Both the appeals since arise out of common order dated 01.11.2018 passed in I.A. No.7469 of 2016 filed in Company Petition No.2/2002. Accordingly, both the appeals have been heard together and are being disposed of by this common order.

Prayer

2. The instant appeals have been filed under Section 483 of the Companies Act, 1956 against the order dated 01.11.2018 passed in I.A. No.7469 of 2016 arising out of Company Petition No.2/2002, whereby and whereunder, the prayer made in the interlocutory application being I.A. No.7469 of 2016 for grant of statutory interest in accordance with Rule 156 of the Companies (Court) Rules, 1959 in favour of the workmen, has been rejected.

Facts

3. The brief facts of the case, as per the pleading made in the memo of appeal, require to be enumerated, as hereunder:- 4. It is the case of the appellants that the workmen filed an application before the learned Labour Court, Hazaribag in M.J Case No. 7/2001, 18/2003, 3/2004 and PG Case No. 3/2003 to 241/2003 against the management of the Company in liquidation and the same was decreed awarding a sum of Rs. 14,96,29,240/- in favour of the 236 workmen for the wages for the period from 01/08/1997 to 04/08/2003 along with retrenchment compensation and gratuity.

5. The company went in liquidation on 05/08/2003. The appellants along with other 236 workmen filed their claim within the stipulated period as per the award prepared by the learned Labour Court, Hazaribag. The learned official Liquidator on 15/12/2006 admitted the proof of debt of Rs.14,96,29,240/- for 236 workmen under section 529A of the Companies Act, 1956 and notice of admission of proof was issued to workmen vide memo no. OL/JHR/117/Sett/02.

6. The official Liquidator sold the unsecured assets of the company situated in other parts of the Country and received a sum of Rs.8,51,01,000/-. The workmen by way of filing interlocutory application being I.A No 1511/2008 on 06/05/2008 prayed for payment of their balance debt from the sale proceeds on the unsecured assets on priority basis, since, the secured

creditors have no charge over unsecured assets, the same was opposed by the Secured creditors. The amount of Rs.8,51,01,000/- which relates to the sale proceeds of the unsecured assets, was kept in a Fixed deposit account in a Nationalized Bank earning interest as per Banking rates due to the dispute between the workmen and the secured creditors.

7. It is the further case that the prayer of the workmen made in I.A No.1511/2008 was dismissed by the Company Court on 28/11/2008. The workmen filed Company Appeal No.10/2008 against the order dated 28/11/08 but the same was also dismissed by this Court on 30/9/2010.

8. Thereafter, the workmen filed appeal before the Hon'ble Supreme Court against the order dated 30/9/2010 passed in Company Appeal No.10/2008 which was registered as Civil Appeal No. 6755/2012.

9. The Hon'ble Supreme Court, in terms of judgment dated 21/09/2012, allowed the appeal and set aside the order dated 30/09/2010 passed in Company Appeal No.10/2008 by the Division Bench of the High Court and order dated 28/11/2008 passed by the Company Judge in I.A. No. 1511/08 and remitted the matter to the Company Court to decide the I.A No. 1511/2008 afresh in accordance with law.

10. It is the further case that after remand, the matter was heard again by the Company Court and the prayer of the workmen for payment of their proved balance debt on priority basis from the sale proceeds of the unsecured assets, was allowed in terms of order dated 12/08/2016 passed in I.A No. 3369/2012, wherein, it has been held that since the secured creditors were participating in the liquidation proceedings and thus, they are not entitled to claim that their unrealized dues in terms of distribution of secured assets under clause-c of the proviso to Section 529(1) shall be pari passu with that of the workmen in the matter of apportionment of debt in terms of Section 529A of the Companies Act, 1956.

11. In pursuant to the order dated 12/08/2016 passed in I.A No.3369/2012, the workmen got their remaining proved balanced debts. The workmen, after receiving their proved debts, had filed an interlocutory application being I.A. No. 7469/2016 on 09/11/2016 for grant of statutory interest accrued from the sale proceeds of the unsecured assets of the Company in liquidation as the same was ordered to be kept in fixed deposit account in a Nationalized Bank since the year 2008.

12. The workmen pleaded that the amount of Rs. 8,51,01,000/- which is the sale proceed arising from unsecured assets, was kept in a separate fixed deposit account since the year 2008 and accruing interest as per the Banking rates and the said interest amount may be given to them because their claim for payment on priority basis was finally affirmed on 12/08/2016 by the Company Court after long eight years.

13. The learned Official Liquidator submitted his reply vide its reports dated 24/8/2017 and 27/11/2017 that secured creditors were wrongly paid Rs.4,09,50,478/- from the sale of unsecured assets for which they were not entitled and hence made a prayer for recovery of the excess amount paid to them.

14. The Official Liquidator further pleaded that the workmen are entitled for payment of interest under Rule 179 of the Companies Act, 1959 at the rate of 2 percent on the total dividend paid to the workmen and the secured creditors have received interest, liquidation damages, claimed over draft and over draft interest on the said deposited amount.

15. The Secured creditors had also submitted their reply submitting that workmen are not entitled for grant of any statutory interest under section 179 of the Companies (Court) Rules, 1959 because secured creditors have not received their debt fully during the liquidation proceedings.

16. After hearing the plea of all the parties, the learned Single Judge of this Court, vide order dated 01/11/2018 passed in I.A. No.7469/2016 arising out of Company Petition No.02/2002, has rejected the prayer made on behalf of the workmen for grant of statutory interest to 236 workmen under Rule 156 of the Companies (Court) Rules, 1959, which is the subject matter of the instant appeals.

<u>Argument advanced on behalf of the appellants</u>

17. Mr. Awnish Shankar, learned counsel appearing for the appellant in Company Appeal No.01 of 2019 and Mr. Kalyan Roy, learned counsel appearing for the appellant in Company Appeal No.02 of 2019 have jointly argued by taking the following grounds in assailing the impugned order:-

(i) Learned Company Court has failed to appreciate while rejecting the prayer made in the interlocutory application being I.A. No.7469 of 2016 only on the ground that the claim of the interest has never been

raised. However, it has been tried to impress upon the Court that such claim was made but giving go-by to the said contention, the impugned order has been passed.

(ii) The Official Liquidator has disbursed the amount in favour of the secured creditor along with the interest, while no such interest is being granted in favour of the workmen, even though, in view of the provision of Section 529 of the Companies Act, both the secured creditor and workmen are to be treated as pari passu. Therefore, the argument has been advanced that when the secured creditor has been paid amount along with the interest, then why not such interest is to be paid to the workmen, even though, the workmen have been paid their arrears of salary after lapse of eight years.

(iii) It is submitted that the claim of the workmen is supported by the provisions of Rule 156 of the Companies (Court) Rules, 1959, and in spite of that the interest component on the proved debt, has not been given to the workmen.

(iv) Relying upon the judgment of the Apex Court rendered in Vijay Industries Vs. NATL Technologies Ltd. reported in (2009) 3 SCC 527, it is further submitted that debt also includes statutory interest but Workmen have not received any interest on their debts.

18. Learned counsel appearing for the appellants on these grounds, have assailed the impugned order.

Argument advanced on behalf of the Respondents

19. Per contra, Mr. Himanshu Kumar Mehta, learned counsel appearing for the respondents has raised the following grounds in defending the impugned order:-

(i) Learned Court has taken into consideration the fact by rejecting the claim of the appellants on the ground that the claim has been decided and the same has attained its finality, as per the order dated 12th August, 2016 and hence, without challenging the said order, the subsequent prayer made by filing the interlocutory application being I.A. No.7469 of 2016 for making payment of the statutory interest cannot be said to be just and proper. It has been submitted that the learned court by taking into consideration the aforesaid fact, if has rejected the said claim, which cannot be said to suffer from an error.

(ii) The learned counsel has taken the ground by referring to the finding so recorded by the learned Court regarding the argument of claim based upon the pari passu principle and in that view of the matter, both the secured creditor and the workmen are to be treated at par but the said principle will not be applicable so far as the interest part is concerned, as has been dealt with by the Court by distinguishing the ratio laid down by the Hon'ble Apex Court rendered in the case of Vijay Industries Vs. NATL Technologies Ltd., reported in (2009) 3 SCC 527, wherein, while discarding the claim on the basis of the distinction that if the prayer with respect to the interest is a part of contract, then the interest is to be paid but in absence of any contract for payment of statutory interest, there cannot be any direction for making payment of statutory interest. The learned Company Court, while distinguishing the judgment rendered by the Hon'ble Apex Court in the case of Vijay Industries (supra), if has passed an order denying the claim of the appellant, which cannot be said to suffer from an error.

(iii) The learned Counsel further submitted that the Rule 156 under Chapter 'Debts and Claims against Company' does not provide for claim of interest at this stage on the part of the workmen. The scheme of the Chapter under 'Debts and Claims against Company' starting from Rule 147 up to Rule 164 and thereafter, Rule 168 and Rule 169 present a complete picture on the statutory meaning to Rule 156.

20. On the aforesaid premise, the learned counsel for the respondent has submitted that the order impugned may not require any interference by this Court.

Analysis

21. We have heard the learned counsel for the parties and gone across the finding recorded by the learned Company Court in the impugned order.

22. This Court, before proceeding to examine the factual aspect, needs to refer herein the very scope of the Section 483 of the Companies Act, 1956, under which both of the instant appeals have been preferred.

23. Section 483 of the Companies Act provides that appeals from any order made, or decision given, in the matter of the winding up of a company by the court shall lie to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from

any order or decision of the court in cases within its ordinary jurisdiction. Section 483 is placed in Chapter II of Part VII.

24. Therefore, at the first blush, it would appear that Section 483 provides for appeals from any order made, or decision given, in the matter of winding up of the company by the court. Section 483 indicates that the appeal would lie in the same manner to the same court and naturally and logically, an appeal from the decision of the Single Judge would lie to the Division Bench.

25. Thus, it is evident that the Section 483 confers the right to appeal and forum for the same in respect of any order made in the matter of the winding up of a company by the High Court having jurisdiction in the matter.

26. Further, it is settled position of law that while exercising the power of appeal under the provision of law, the appellate court is to exercise the power of appellate jurisdiction if the order is passed on erroneous consideration of the factual aspect.

27. This Court, is now adverting to the facts of the case.

28. It is evident from the pleading as referred hereinabove that the company went in liquidation on 05/08/2003 and the appellants along with other workmen filed their claim within the stipulated period as per the award prepared by the learned Labour Court, Hazaribag. The Official Liquidator admitted the proof of debt of Rs.14,96,29,240/- for 236 workmen under section 529A of the Companies Act, 1956 and accordingly, notice of admission of proof was issued to workmen.

29. Further, it is evident that the Official Liquidator sold the unsecured assets of the company situated in other parts of the Country and received a sum of Rs.8,51,01,000/-. The workmen by way of filing interlocutory application being I.A No. 1511/2008 prayed for payment of their balance debt from the sale proceeds on the unsecured assets on priority basis. The said sale relates to the sale proceeds of the unsecured assets, was kept in a fixed deposit account in a Nationalized Bank earning interest as per banking rates.

30. It is apparent from record that the prayer of the workmen made in I.A. No. 1511/2008 was dismissed by the Company Court and against the said order, the workmen preferred the Company Appeal but the same was also dismissed by this Court on 30/9/2010. Thereafter, the workmen filed appeal before the Hon'ble Supreme Court which was allowed and matter

was remitted to the Company Court to decide the I.A No. 1511/2008 afresh in accordance with law.

31. It is evident that the matter was heard again by the Company Court and the prayer of the workmen for payment of their proved balance debt on priority basis from the sale proceeds of the unsecured assets, was allowed in terms of order dated 12/08/2016 passed in I.A No. 3369/2012, taking in to consideration clause-c of the proviso to Section 529(1), shall be pari passu with that of the workmen in the matter of apportionment of debt in terms of Section 529A of the Companies Act, 1956.

32. It is evident that in pursuant to the order dated 12/08/2016 passed in I.A No.3369/2012, the workmen got their remaining balanced debts. The workmen, after receiving their proved debts, had filed an interlocutory application being I.A. No. 7469/2016 on 09/11/2016 for grant of statutory interest accrued from the sale proceeds of the unsecured assets of the Company in liquidation as the same was ordered to be kept in fixed deposit account in a Nationalized Bank since the year 2008.

33. The Official Liquidator pleaded that the workmen are entitled for payment of interest under Rule 179 of the Companies Act, 1959 at the rate of 2 percent on the total dividend paid to the workmen.

34. The Secured creditors had also submitted their reply submitting that workmen are not entitled for grant of any statutory interest under section 179 of the Companies (Court) Rules, 1959 because secured creditors have not received their debt fully during the liquidation proceedings.

35. Further, it is evident that the learned Single Judge of this Court, vide order dated 01/11/2018 passed in I.A. No.7469/2016 arising out of Company Petition No.02/2002, has rejected the prayer made on behalf of the workmen for grant of statutory interest, which is the subject matter of the instant appeals.

36. Thus, in the backdrop of aforesaid facts, the admitted position herein is that the appellants are workmen, who had claimed the arrears of salary but the same was being discarded on the ground that the first right is of the secured creditor. But, the aforesaid issue has been settled by round of litigations and the workmen and the secured creditor have been treated to be pari passu, in view of the provision of Section 529 of the Companies Act.

37. At this juncture, this Court thinks fit to discuss the effect of Section 529 of the Act 1956. The effect of Sections 529 and 529-A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under Section 529-A to the extent of the workmen's dues.

38. The purpose of Section 529-A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be pari passu with the charge of the secured creditors.

39. Further, there is no other statutory provision overriding the claim of the secured creditors except Section 529-A. This section overrides preferential claims under Section 530 also. Under Section 529-A, the dues of the workers and debts due to the secured creditors are to be treated pari passu and have to be treated as prior to all other dues. Reference in this regard may be made to the Judgment as rendered by the Hon'ble Apex Court in the case of Textile Labour Assn. v. Official Liquidator, (2004) 9 SCC 741. For ready reference, the relevant paragraph of the aforesaid judgment is being quoted as under:

> 8. The effect of Sections 529 and 529-A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under Section 529-A to the extent of the workmen's dues. The purpose of Section 529-A is to ensure that the workmen should not be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be pari passu with the charge of the secured creditors. There is no other statutory provision overriding the claim of the secured creditors except Section 529-A. This section overrides preferential claims under Section 530 also. Under Section 529-A the dues of the workers and debts due to the secured creditors are to be treated pari passu and have to be treated as prior to all other dues.

40. It is manifestly apparent from the record that the appellants have made claim at the time of disbursement of the amount which has elaborately been dealt with by the Company Court in the order dated 12th August, 2016 and at that time, no claim was made so far as the payment of interest is concerned. It is the admitted fact that the order dated 12th August, 2016 has not been assailed before the Higher Forum and hence, the same has attained its finality.

41. Further, it appears that the arrears of amount have been paid in favour of the workmen. But, the amount has been paid in favour of the workmen only with respect to the arrears of salary. After the subsequent time having been elapsed, one interlocutory application being I.A. No.7469 of 2016 has been filed seeking therein the statutory interest which is to be paid in favour of the workmen also on the ground that the secured creditor and the workmen are to be treated as pari passu.

42. The aforesaid prayer has been refused on the ground that the aforesaid ground has not been raised while pressing the application, based upon that, the order dated 12.08.2016 has been passed, which has also not been challenged.

43. In the backdrop of the aforesaid facts and the rival contention of the learned counsel for the parties, the issue in the instant case which requires adjudication by this Court is that:

"whether the workmen claim parity with respect to the payment of interest on the basis of principle of pari passu, will be said to be acceptable"

Or

"whether the prayer of the workmen for grant of statutory interest in accordance with Rule 156 of the Companies (Court) Rules, 1959 is tenable in law and facts or not?"

44. There is no dispute that the workmen and the secured creditor has been said to be pari passu for the purpose of disbursement of the legitimate amount in favour of the secured creditor and the workmen, since, both have been treated to be in the same pedestal. But the workmen cannot be equated with the bank so far as the payment of interest is concerned, reason being that the interest is the exclusive part at the time of sanction of the loan by the secured creditor in favour of the unit concerned.

45. But so far as the arrears of salary which is to be paid in favour of the workmen is concerned, the payment of statutory interest cannot be said to be exclusive part of the contract, rather, the salary has not been paid due to the proceeding having been initiated for liquidating the unit.

46. The question will be that if the unit itself in the liquidation process, then from where the amount of interest will be paid. The payment of interest requires adjudication and if the amount which is to be paid by the unit itself is not in a position to make payment, rather, the unit itself is facing the liquidation process, then from where the amount will be paid.

47. So far as the interest of the secured creditor is concerned, the interest is the exclusive part of the amount and hence, the interest will also be said to be part of the principal amount which has been sanctioned in favour of the concerned unit.

48. But the amount of interest which is being claimed by the workmen, cannot be said to be exclusive part of the salary and in that view of the matter, the workmen cannot be allowed to raise the claim by way of an accrued right for payment of the same.

49. Here, it would be relevant to deal with the vested/accrued right. Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

50. The word ‘vested’ is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word ‘vest’ has also acquired a meaning as “an absolute or indefeasible right”. It has a ‘legitimate’ or “settled expectation” to obtain right to enjoy the property etc. Such “settled expectation” can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a “settled expectation” or the socalled “vested right” cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law.

51. Thus, “vested right” is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course.

52. In the light of the definition of the “vested right”, it is evident that right accrues to person or persons attached to an institution or building or anything whatsoever, meaning thereby, if an incumbent is claiming a vested right, he is to substantiate before the court of law that the right has been created in his favour by an order passed by the competent authority in accordance with law.

53. Reference in this regard may be made to the judgment as rendered by the Hon’ble Apex Court in the case of MGB Gramin Bank Vrs. Chakrawarti Singh, reported in [(2014) 13 SCC 583] wherein at paragraphs 11, 12 and 13, the Hon’ble Apex Court has observed, as follows:

“11. The word “vested” is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:

“Vested.—fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute ‘vested rights’.”

12.In Webster's Comprehensive Dictionary (International Edition) at p. 1397, “vested” is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.”

54. Further, the learned counsel for the appellants has taken the recourse of Rule 156 of Companies (Court) Rules, 1959 for payment of interest in favour of the workmen. Thus, it is required to refer herein the Rule 156 of Rules, 1959 which is being quoted as under :-

“R.156. Interest.—On any debt or certain sum payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and

which is overdue at the date of the winding-up order, or the resolution as the case may be, the creditor may prove for interest as a rate not exceeding four percent per annum up to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment."

55. This aforesaid rule is incorporated under the Chapter 'Debts and Claims against Company' and starts from Rule 147 which stipulates for fixing a date for proving debts. The liquidator is required to give notice under Rule 148 of not less than 14 days fixed by the advertisement to be published in daily newspapers, to prove their debts required under R. 149. The proof is to be submitted on affidavit verifying the debts giving statement of account showing particulars of the debts and the vouchers by which the same may be substantiated. These affidavits are to be in Form 66.

56. The workmen may, under R. 152, submit one proof in Form 67 for all the claims annexing therewith a schedule setting forth their names and amounts severally due to them. Rule 154 provides that the value of debts and claims against the company shall, as far as it is possible, be estimated according to the value thereof on the date of the order of winding up of the company or where before the presentation of the petition for winding up. A resolution has been passed for voluntary winding up on the date of passing of such resolution. 57. Rule 156 provides for interest to the creditors which shall not exceed 4% per annum to that date from the time when the debts or sum was payable. If the debt or sum, is payable by virtue of written instrument at a certain time and if payable otherwise then from the time when a demand in writing has been made.

58. Under Rule 159, the Official Liquidator is required to examine every proof and the grounds of the debt and he may call for the production of voucher if any referred to in the affidavit of proof or require further evidence in support of the debt. Acceptance and rejection of proof of debt are to be communicated in terms of Rule 163. Rule 164 provides of appeal against such decision of Official Liquidator. Thus, an appellate provision is available to a creditor if dissatisfied with such decision of the Liquidator.

59. After the aforesaid process are over, under Rule 167, the Official Liquidator shall within three months from the date fixed for submission of proof under Rule 147 or such further time as the court may allow, file in court a certificate containing a list of the creditors who submitted to him proofs of their claims in tune of the advertisement and the notices referred to in Rule 148. This list of creditors would not be varied or added except with the order of the Court and as per Rule 168. The scheme of the chapter “Debts and Claims against Company” makes the placement of Rule 156 quite clear in the context.

60. It is not a matter of dispute that the claims submitted by the workmen stood adjudicated by the Official Liquidator and no claim of interest was either made or accepted at that point of time, thus the question of implication of Rule 156 of Rule, 1959 cannot be aroused herein.

61. Further, in order to substantiate the claim of statutory interest, the learned counsel for the petitioner/appellant has put his reliance on the judgment rendered by the Hon’ble Apex Court in the case of Vijay Industries (supra).

62. In the aforesaid context, it is bounden duty of this Court to go through the aforesaid judgment in order to reach out the conclusion that whether the claim of the interest amount by the workmen has some legal sanction or not.

63. In the case of Vijay Industries (supra), appellant was a small-scale industry which supplied castor oil to the respondent valued at Rs.89,13,589/- out of which Rs.49,99,000/- was paid. Invoices of the credit bill attached with each of the supply contained a clause relating to payment of interest @ 2% per month. At the foot of each credited bill the officer of the respondent company has put a signature as a token of acceptance.

64. On failure of payment of the outstanding dues, a winding up petition was filed by the appellant before the Company Court. The learned court admitted the company petition and held that prima-facie case was made out. On being aggrieved, the respondent preferred an appeal which was allowed by the learned Division Bench. When the matter was travelled to the Apex Court, it was argued that the High Court committed error in accepting the contention of the respondent that there was no agreement between the parties to pay interest and it had not been

informed about the adjustment of payments made by it towards interest. In these factual scenario, the Hon'ble Apex Court at para-34 of the said judgment held as under :-

"34. Section 433 of the Companies Act does not state that the debt must be precisely a definite sum. It has not been disputed before us that failure to pay the agreed interest or the statutory interest would come within the purview of the word "debt". It is one thing to say that the amount of debt is not definite or ascertainable because of the bonafide dispute raised thereabout or there exists a dispute as regards quantity or quality of supply or such other defences which are available to the purchaser; but it is another thing to say that although the dues as regards the principal amount resulting from the quantity or quality of supply of the goods stands admitted but a question is raised as to whether any agreement had been entered into for payment of interest or whether the rate of interest would be applicable or not. In the latter case, in our opinion, the application for winding up cannot be dismissed."

65. Thus, it is evident that the question involved herein was directly not an issue in the case of Vijay Industries (supra). In the case of Vijay Industries there was a specific clause under the invoices that the payments should be made within seven days on failure of which it would carry 2% interest per month. In that context, the Apex Court held that failure to pay the agreed interest or the statutory interest would come within the purview of the word 'debt' but in the instant case, there is no such contract existed.

66. Further, it is settled proposition of law that the applicability of the judgment depends upon the facts and circumstances of each and every case and there cannot be any universal application of the judgment rather each judgment is to be decided on the basis of fact of each case. Reference in this regard may be made to the judgment as rendered by the Hon'ble Apex Court in the case of Dr. Subramanian Swamy vs. State of Tamil Nadu & Ors reported in (2014) 5 SCC 75. For ready reference the relevant paragraph is quoted as under:

47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what

logically follows from it. “The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.”

67. It is evident that in the instant case, the workmen never raised the claim of interest and no such claim of interest was ever adjudicated upon. The payments have been made to the workmen in priority against sale proceeds of unsecured assets of the company in compliance of the order dated 12th August 2016. It has been accepted by the parties and has attained finality.

68. Moreover, at the time of making claim before the Company Court for arrear of the salary, there was no claim for making payment of the interest upon the said arrear which also suggests that the workmen are well aware with the fact that they are not entitled for the interest, otherwise, the issue of interest would have been raised at the very inception by raising the said issue in the interlocutory application which has been filed for arrears of the salary.

69. As we have discussed in preceding paragraphs that Section 483 provides that the appeals from any order or decision in the matter of the winding up of a company by the court, shall “lie” to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the court in cases within its ordinary jurisdiction. The use of the word “shall” make it clear that the right of appeal conferred by the provision is as of right. The provision provides clearly for a remedy and is not intended to limit or control the exercise of the powers of the court, and hence, appeal under Section 483 has to be treated and proceeded with like any other civil appeal. Reference in this regard may be taken from the judgment as rendered by the Hon’ble Apex court in the case of Bolin Chetia Vrs. Jogadish Bhuyan, reported in (2005) 6 SCC 81. The relevant paragraph of the said judgment is being referred as under:-

13. In S.P. Khanna v. S.N. Ghosh [1976 Tax LR 1740 (Bom)] Section 483 of the Companies Act, 1956 came up for the consideration of the Division Bench of the Bombay High Court. Section 483 provides that the appeals from any order or decision in the matter of the winding up of a company by the court, shall “lie” to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the court in

cases within its ordinary jurisdiction. The use of the word "shall" makes it clear that the right of appeal conferred by the provision is as of right. But, the Division Bench held that an appellate court under Section 483 has authority to hear the appellant on the merits at the admission stage and decide whether the controversy raised in appeal has any prima facie substance or not. The provision does not put any fetters on the power of the court to reject worthless appeals at the initial or admission stage and it could not be said that mere institution of the appeal would tantamount to its admission and must go for final hearing. The provision provides clearly for a remedy and is not intended to limit or control the exercise of the powers of the court, and hence, appeal under Section 483 has to be treated and proceeded with like any other civil appeal. The power of the appellate court exercisable at the stage of admission of the appeal to dismiss a non-deserving appeal, not a fit one to go for final hearing, is not taken away.

70. Further, it is evident that the section 483 of the Act 1956, confers power of the widest amplitude on the appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to the parties concern.

71. This Court, after having discussed the aforesaid issue and taking in to consideration the above discussed settled proposition of law and coming back to the impugned order passed by the learned Single Judge, is of the view that if the learned Single Judge has declined to interfere with the prayer made in the interlocutory application being I.A. No.7469 of 2016 for grant of statutory interest, the same cannot be said to suffer from an error.

72. Accordingly, the instant Company appeals are hereby dismissed.

73. Pending interlocutory application(s), if any, also stands disposed of.