

Supreme Court clarifies law regarding preference claims for advances for the payment of wages made after the commencement of liquidations and receiverships.

In the Matter of Bell Lines Limited (In Liquidation)

That decision has effectively been relied on since 2006 for the proposition that, except for the Social Insurance Fund, a party advancing monies for the payment of remuneration falling due before the commencement of an insolvency process but actually paid after such commencement is not entitled to subrogate to the employees' preferential claims.

The Appeal

On appeal, the Supreme Court overturned the decision of the High Court and held the right of subrogation provided by Section 285 of the Companies Act 1963 is to be interpreted as encompassing payments made by third parties both before and after the commencement of an insolvency process.

Comment

This decision is relevant for banks who may want to advance funds for the payment of wages. It clarifies that the advance can be made even after the insolvency process has commenced. The bank will be able to subrogate to the employees' preferential claims subject to the cap on such claims in respect of wages. Accordingly, if it appears that the preferential creditors will be paid in full, such advances may be made in relative safety.

[1] Now the Social Insurance Fund.

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