

(2013) 10 DEL CK 0043

In the Delhi High Court

Case No : Co. Appls. 1565-66 of 2013 and CO. Petition 36 of 2003

Advance Steel Tubes Ltd.

APPELLANT

Vs

Spack Turnkey Projects P. Ltd.

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Companies Act, 1956 — Section 135, 239(a), 439, 443, 443(1)(b)

Citation : (2013) 10 AD 613

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Ashok Kumar, R. Salecha for R-2 and Mr. Manish K. Bishnoi, for official liquidator, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Easwar, J.—These applications have come to be filed in the following circumstances. In the main company petition filed by Advance Steel Tubes Ltd. seeking winding up of Spack Turn Key Projects Pvt. Ltd., the applicant herein, this Court appointed a provisional liquidator by order dated 15.1.2005. Thereafter, CA 1713 of 2009 was moved by the provisional liquidator praying for issue of directions to the State Bank of Indore, to stop the sale of property bearing No. 916, Sector 15, Faridabad. It would appear that this property was mortgaged by the company in liquidation with the bank which sold the property to realise its dues. The property was sold through auction. Not only this property, but two more properties which were mortgaged by the company (in liquidation) were sold by the State Bank of Indore which had by then merged with State Bank of India (SBI), in terms of the SARFAESI Act, 2002. This Court had passed certain orders in the aforesaid application filed by the Official Liquidator on various dates seeking details relating to the properties, the manner in which they were sold etc. and had also directed notice to be issued to the purchasers of the properties. While the application was pending, a status report No. 64/2013 was filed by the provisional liquidator. One of the prayers in the status report was for

an order to be passed by this Court directing the Official Liquidator to invite claims and after the claims, if any, having been received, direct the SBI, M-77, Greater Kailash-II, New Delhi to make the payment of the sale consideration of the properties lying with it to the Official Liquidator. By order dated 2nd August, 2013 this Court took the report on record and directed the Official Liquidator to invite claims as prayed for subject to the expenses being met by the SBI. By the same order, both the company petition No. 36 of 2003 and CA No. 1713/2009 were directed to be listed on 30th October, 2013. They are pending disposal. Thereafter, the respondent company filed the present applications seeking recall of the order passed by this Court on 2.8.2013 in so far as it sought to direct the Official Liquidator to invite the claims as prayed for in the report. Interim relief was also sought by way of a prayer for stay of the operation of the order dated 2.8.2013 till the disposal of the application. In the application it was pointed out that by order dated 2.7.2010, passed in CA 1713/2009 this Court had directed that no further steps shall be taken by the Bank in connection with the sale of any property belonging to the company and even during the pendency of this application, the Official Liquidator has sought for a direction permitting him to invite claims as also to direct the bank to remit the sale proceeds to the Official Liquidator, and this Court by order dated 2.8.2013 has permitted the Official Liquidator to invite claims, which according to the applicant is erroneous in law. It is submitted that this Court was wrong in permitting the Official Liquidator to invite claims even while the CA 1713/2009 questioning the sale of the properties by the bank was pending disposal. Without prejudice to this contention, it is contended that the provisional liquidator has no power to invite claims and it is only the Official Liquidator appointed by this Court can do so after the passing of the winding up order. It is submitted that the situation is not ripe for the application of sections 529, 529A and 530 of the Companies Act for distribution of the monies. It is pointed out that Rules 147 to 179 of the Company (Court) Rules, 1959 provide that the process of inviting claims from the creditors can be commenced only when the company is under winding up by the Court and in the absence of any winding up order in the present case, the provisional liquidator has no power to invite claims.

2. Arguing the application with great conviction, the learned counsel for the applicant contended that there is no such thing as a "provisional liquidation" of a company and that it is only the official liquidator who is appointed by this court pursuant to a winding up order who has all the powers of the liquidator of the company, including the power to invite claims. He submitted that the winding up order is yet to be passed by this Court and no Official Liquidator has been appointed as yet. In this situation, he contends, the provisional liquidator cannot exercise the power of inviting the claims from the creditors etc.

3. Section 443(1)(b) permits the company court hearing a winding up petition to make an order for winding up a company with or without costs, or any other order that it thinks fit. Section 449 states that on a winding up order being made in respect of the company, the Official Liquidator shall, by virtue of his office,

become the liquidator of the company. Section 450 provides for the appointment and powers of the provisional liquidator. It states that at any time after the presentation of a winding up and before the making of a winding up order, the Court may appoint the Official Liquidator to be the provisional liquidator. This can be done only after giving notice to the company and an opportunity to it to make its representations. Section 451 makes general provisions as to liquidators. Sub-section (1) says that the official liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose. Subsection (3) of section 450 says that where the provisional liquidator is appointed, the court may limit and restrict his powers by the order appointing him or any subsequent order, "but otherwise he shall have the same powers as a liquidator". Sub-section (4) says that on a winding up order being made, the provisional liquidator shall cease to hold office, and the Official Liquidator shall automatically become the liquidator of the company. There is only one more provision which needs to be noticed and that is clause (e) of sub-section (1) of section 457 which says that in a case of winding up, the liquidator shall have the power, with the sanction of the court, "to do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets". Sub-section (3) of the section says that the liquidator shall exercise the powers conferred by the section "subject to the control of the court".

4. A superficial reading of the above statutory provisions indicates that a provisional liquidator appointed by the Court shall have the same powers as the liquidator except to the extent to which such powers may be limited or restricted by the Court appointing him. Now it cannot be disputed that the Official Liquidator can invite claims from the creditors, workmen etc. Such powers seemingly can also be exercised by the provisional liquidator by virtue of sub-section (3) of section 450. The order appointing the provisional liquidator in the present case was passed on 15.1.2005. A perusal thereof shows that the Court did not place any limit or restrictions on the powers of the provisional liquidator.

5. In *re A.B.C. Coupler & Engineering Co. Ltd.* (No. 3) (Ch. D) (1970) 40 Comp. Cases 952 the position of a provisional liquidator was held by Plowman, J. to be the following:-

I heard argument on the question whether the provisional liquidator can, as a matter of law, exercise the ordinary powers of a liquidator. On the one hand it was said by Mr. Wheeler that the Act does not differentiate the powers of the two and that he can; on the other, it was said by Mr. Arnold that section 239(a) and rule 112 of the Company's (Winding Up) Rules, 1949, did suggest a difference. I do not think that I am called on to decide this question because if Mr. Arnold is right in saying that the official receiver's "motivation" is the crucial question, as I think he is, the question whether he had power in law to dispose of the lease while only provisional liquidator does not matter, since his motivation was controlled by the fact that he was only provisional liquidator. But if it were necessary for me to express an opinion, it would be in favour of Mr. Wheeler's

submission, because the word "provisional" in this context seems to me to imply a qualification not of the liquidator's powers, but of the tenure of his office; he is a liquidator but his appointment is temporary. It is perhaps significant that in the Companies Act, 1862, a provisional liquidator is spoken of as a liquidator provisionally appointed. How far it is expedient for a provisional liquidator to exercise his powers is, of course, a different question which must depend on the circumstances of the case.

The aforesaid observations of Plowman, suggest that the powers of the provisional liquidator are the same as those of the liquidator. His judgment however has come in for criticism in Palmer's Company Law, 25th Edition. In volume 2 at page 15.308 it has been stated by Palmer (with reference to Plowman, J's observations) as follows:

This latter proposition must, however, be regarded as doubtful since *Re Dry Docks Corporation of London* (above) was not cited to the learned judge who did not think himself called on to decide the question. It is suggested that the essence of the appointment of a provisional liquidator is its temporary nature. Although the court is given a discretion as to limits and restrictions it would not seem to be open to it to invest a provisional liquidator with all the powers of an ordinary liquidator. Put in another way, even where the court does not expressly limit his powers they are impliedly limited by the nature of his appointment u/s 135. It is important, therefore, that the terms of the provisional liquidator's appointment should be clearly specified in the order and failing this the provisional liquidator, if in doubt, should seek the court's approval for any particular course of action. The court will consider the terms of any particular provision of the Act to determine whether a reference to a liquidator covers a provisional liquidator.

In the case of *Dry Docks Corporation of London*, [(1888) Vol. 39, 306], cited by Palmer, the appellate court of the Chancery Division observed as under:-

Now the provisional liquidator's appointment is not only provisional, but contingent in this sense, that it operates to protect the property for an equal distribution only in the event of an order for compulsory winding-up being made; and if no such order be made, then his appointment ought not to interfere with the rights of third persons. He was in the position of a receiver, whose appointment might interfere with the rights of third persons.

The object of the appointment of a provisional liquidator is the protection and preservation of the assets of a company before passing an order of winding up. It is an undisputed position that the moment a winding up order is passed by the company court, at that very instant the tenure of the provisional liquidator comes to an end and the Official Liquidator takes over. This is also statutorily recognized by sub-section (4) of section 450, which says that "the Official Liquidator shall cease to hold office as provisional liquidator, and shall become the liquidator, of the company, on a winding up order being made". As if to

reiterate this position, section 449 also provides that on a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company. In *Sri Chamundi Theatre Mysore Talkies Ltd. Vs. S. Chandrasekara Rao, Ramaprasada Rao, J.* (as he then was) speaking for a Division Bench of the Madras High Court compared the powers of the provisional liquidator with those of the Official Liquidator in the following words:-

Whatever may be said of the rights of the official liquidator after an order for winding up is made and which is also circumscribed by the various and strict provisions under the Companies Act, these do not apply, as a matter of course, to the office of the provisional liquidator. It is always controlled by the instrument which appoints him and he is equated for technical purposes with the official liquidator. His office is not an equation to that of an official liquidator but he is an officer of court who has to take directions of court in the matter of exercise of his powers attached to his office and he cannot assume the role of an official liquidator and invoke the provisions of the Companies Act and the Rules made thereunder and claim that he is a receiver and in physical, juridical and sole custody and control of the properties of the company and that no one can interfere with such alleged possession of his and create instruments such as mortgages to his prejudice and to the prejudice of the company.

6. The argument on behalf of the applicant is that it is only after the winding up order is passed that the question of realising the assets of the company in liquidation and inviting claims would normally arise, and the power to invite claims can therefore be exercised only by the Official Liquidator, after the winding up order is passed, in the very nature of things. Therefore, it is contended that there can be no question of the provisional liquidator, who can hold office only till the winding up order is passed, exercising the power to invite the claims. It is said that even though the powers of the provisional liquidator are equal to that of the liquidator, certain powers which can be exercised only by the liquidator, cannot be exercised by the provisional liquidator for the simple reason that the basic condition for the exercise of that power has not been fulfilled.

7. The learned counsel for the Official Liquidator drew my attention to clause (e) of sub-section 1 of section 457. This clause says that the liquidator in a winding up by the court shall have power, with the sanction of the court, to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets. This provision, according to him, is a complete answer to the point raised in the applications, and on the basis of this provision the provisional liquidator can do all such things necessary for winding up the affairs of the company and for distribution of its assets, albeit with the sanction of the court. This argument is countered by the learned counsel for the applicant who says that the provision is triggered only when a winding up order has been passed, necessitating the distribution of the assets of the company. It is at that time that the question of inviting claims would arise. If it is only on the passing of the winding up order that the provisional liquidator vanishes from the scene

and the liquidator steps in, how then can it be said that the provisional liquidator can invite claims? asks the learned counsel for the applicants.

8. I shall now refer to certain judgments of this Court on the question. In *Jaipal Singh Vs. Tanwar Finance (P) Ltd. and Another*, a learned single judge of this Court (Dalip K. Kapur, J.) referred to the provisions of section 446(2) and noted that it is under this provision that the jurisdiction of the company court arises concurrently with other courts in respect of suits or proceedings by or against the company. In that case, proceedings which were initiated before the company court were not a proceeding by or against the company, but was a proceeding wherein the petitioner sought to have the winding up of the company declared invalid. Rejecting the petition, the learned judge noted that there must be a winding up proceeding before the court gets any jurisdiction u/s 446(2) and such a winding up may be achieved in several ways. He noted that there could be a winding up order u/s 439 read with section 443 of the Act or there could be an order of winding up u/s 522 of the Act, under the supervision of the court. The observations of the learned single judge, are as below.

This provision shows that the court's jurisdiction arises concurrently with other courts in respect of suits or proceedings by or against the company. The present proceeding is not a proceeding by or against the company. It is a proceeding wherein the petitioner is seeking to have the winding up of the company declared invalid. The opening words of the section show that the provisions of Section 446 are only available to the court when it is winding up a company. In other words, there must be a winding up proceeding before the Court gets any jurisdiction u/s 446(2) of the Act. The winding up may be achieved in several ways. There may be a winding up order, i.e., a compulsory liquidation of a company by reason of an order passed by the Court u/s 439 read with section 443 of the Companies Act, 1956. Only after a winding up order is passed by the Court, only then the Court gets jurisdiction to proceed u/s 446(2) of the Act. Furthermore, if a company is being wound up under the supervision of the Court, that is to say, in a case in which an order has been passed u/s 522 of the Act, then the provisions of Section 526 come into effect and the Court has power to proceed u/s 446(2). Therefore, a second condition in which section 446 becomes applicable is when a winding up takes place subject to the supervision of the Court, and the Court commences to exercise jurisdiction u/s 526 and in consequence Section 446(2) becomes applicable and the Court is able to hear disputes falling within the scope of Section 446(2).

The observations show that the provisions of section 446(2) become applicable and the court would be able to hear disputes falling within the scope of the sub-section only on the passing of the winding up order. Clause (b) of sub-section (2) refers to any claim made by or against the company (including claims by or against any of its branches in India); the company court will have jurisdiction to entertain and dispose of any claim made by or against the company on the passing of the winding up order u/s 446(2). Section 443(1)(d) empowers the

company court to make an order for winding up a company with or without costs on hearing the winding up petition. Thus the company court gets jurisdiction to entertain and dispose of any claim made by or against the company only on the passing of winding up order.

9. The question has also been dealt with by a Full Bench of this Court in Faridabad Cold Storage and Allied Industry Vs. The Official Liquidator of Ammonia Supplies Corporation (P.) Ltd., The question arose in that case this way. The official liquidator filed a claim petition before the Additional District Judge, Delhi u/s 446(2) of the Act seeking to recover a sum of Rs. 845.32 from another company called the Faridabad Cold Storage and Allied Industry. The Additional District Judge granted a decree for the recovery of Rs. 504/- from the company and the return of an empty cylinder; on failure of the debtor-company to return the cylinder the official liquidator was further held entitled to recover Rs. 340/-. An appeal was filed by Faridabad Cold Storage and Allied Industry before the High Court. A Division Bench of this Court referred the appeal to a Full Bench. Before the Full Bench, the only question which survived for decision was whether the claim petition filed by the official liquidator u/s 446(2) was within the period of limitation. The view of the Additional District Judge was that the claim petition was not a suit and therefore the provisions of the Limitation Act had no application. It was the validity of this view that was canvassed before the Full Bench. It was in this connection argued before the Full Bench as to what was the meaning and content of the expression "any claim" occurring in section 446(2) (b) of the Companies Act. Justice Yogeshwar Dayal (as he then was), speaking for the Full Bench noted that clause (b) of section 446(2) was a machinery provision for enforcement of claims and enabling the court to make an order for any contributory in the list of contributories to pay any money due to the company. It was held that this provision acted both ways-the company can pursue its claim against third parties and the third parties can also utilise this provision to press their claims against the company. It was then held by the Full Bench that the expression "any claim" means any claim enforceable at law. The next question decided by the Full Bench, is as to the date on which it is to be seen whether the claim was enforceable at law or not. It was in this context, observed by the Full Bench as follows:

The next question which arises is as to the date on which it is to be seen whether the claim was enforceable at law or not. The right to avail of the remedy by filing a claim petition, as against the suit, conferred by clause (b) of section 446(2) can be availed of only in a court which is winding-up the company and, therefore, it goes without saying that the right to avail of the remedy provided by the aforesaid clause (b) will arise only after the passing of the winding-up order. So long as the winding-up order is not passed, no claim can be preferred under clause (b) of section 446(2). u/s 458A, which we have already reproduced above, apart from the period between the date of the commencement of the winding-up of the company and the date on which the winding-up order, a period of one year immediately following the winding-up order is also excluded for

purposes of computing the limitation. As the right to avail of the remedy provided by clause (b) of section 446(2) of the Act arises only after the passing of the winding-up order, the appropriate date to be seen for purposes of determining whether the claim was enforceable at law or not is the date of the winding-up order. Of course, the claimant will be entitled to the full benefit of section 458A of the Act.

The right to file a claim petition u/s 446(2)(b) for a claim enforceable at law on the date of the winding-up order arises on the date when the winding-up order is passed and, therefore, the period of limitation is three years from the date of the winding-up order after giving full benefit of section 458A of the Act.

It has been held by the Full Bench that the right to avail of the remedy provided by clause (b) of section 446(2) will arise only after the passing of the winding up order and that so long as a winding up order is not passed, no claim can be preferred under this provision. The ratio of the Full Bench judgment in my humble understanding is that the right to file a claim petition against the company arises on the date on which the winding up order is passed and it is on the basis of this ratio that it was held that the period of limitation of three years under Article 137 of the limitation shall be reckoned from the date of the winding up order. Therefore, though the main question decided by the Full Bench of this court concerned the period of limitation for filing a claim by or against a company u/s 446(2)(b) within the meaning of Article 137 of the Limitation Act, the basis or the ratio of the decision is that such a right accrues only on the passing of the winding up order and therefore the period of limitation of three years is to be reckoned from that date.

10. Though it would appear, on the basis of the above discussion, that the judgment of the Full Bench of this Court in Faridabad Cold Storage (supra) concludes the issue in favour of the applicants, a perusal of the judgment of the Supreme Court in Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others, a judgment of three judges of the Supreme Court, shows that the ratio of the judgment of the Full Bench of this Court cannot be invoked in the present case as it does not afford a complete or direct answer to the question posed. Section 446(2) opens with the words "the court which is winding up the company". The key to the precise question which arises in the present applications lies in the meaning to be given to this expression. This question directly arose before the Supreme Court in the judgment cited supra. In that case the company judge of the Kerala High Court passed a winding up order. An appeal was taken to the Appellate Bench which directed that the winding up order shall be held in abeyance until the scheme of compromise, which was afoot, was implemented. The Appellate Bench also declined to direct the provisional liquidator to file a claim petition at the instance of the company u/s 446(2)(b) of the Act. The reason given by the Appellate Bench was that since the winding up order was kept in abeyance, it followed that no winding up proceedings were pending in any court, with the result that there is no question of any claim petition being filed.

When the matter reached the Supreme Court, the Supreme Court observed that the question of law that arose in the appeal was what was the scope and ambit of the jurisdiction conferred on the court winding up a company by section 446(2) (b), upon its true construction. The Supreme Court looked at the question from two perspectives. The first perspective was whether it can be said that no winding up proceedings were pending before company court when the Appellate Bench kept the winding up order in abeyance. It was held that if the winding up order was merely held in abeyance, it did not mean that there were no winding up proceedings pending, but on the contrary it was merely kept inoperative for the time being, and did not cease to exist and therefore, the consequence would be that the winding-up proceedings were in fact pending and the court which made the winding up order would be the court which is winding up the company. In this view of the matter, it was held that the Appellate Bench of the High Court was in error in rejecting the application made on behalf of the company for directing the provisional liquidator to prefer claims on the materials furnished and expenses borne by the company. The second angle from which the question was looked at by the Supreme Court and which is relevant for the purpose of the present applications, in the words of the Supreme Court, is as below:

Sub-section (2) of s. 446 confers jurisdiction on the court which is winding-up the company to entertain and dispose of proceedings set out in cls. (a) to (d). The expression "court which is winding-up the company" will comprehend the court before which a winding-up petition is pending or which has made an order for winding-up of the company and further winding-up proceedings are continued under its directions. Undoubtedly, a look at the language of s. 446(1) and (2) and its setting in Part VII, which deals with winding-up proceedings, would clearly show that the jurisdiction of the court to entertain and dispose of proceedings set out in sub-cls. (a) to (d) of sub-s. (2) can be invoked in the court which is winding-up the company.

Reverting to the facts of this case, the Appellate Bench held that as the winding up proceeding in respect of the appellant company is no more pending, and there is no court which could be said to be the court winding up the company and therefore, the claim petition on behalf of the company which is not being wound up could not be instituted as contemplated by Sec 446(2). In reaching this conclusion, the Appellate Bench gave a restricted meaning to the expression "court which is winding up the company" in sub-sec. (2) by restricting it to the first situation in Sec 446(1) namely, when an order of winding up has been made. The Appellate Bench appeared to be of the view that where the official Liquidator has been appointed as the provisional Liquidator which implies that no winding up order has been made, jurisdiction under Sec. 446(2) cannot be invoked. The Court felt that an anomalous situation would arise if claim petitions are moved under Sec. 446(2)(b) at a stage when no winding up order has been made because if ultimately the winding up order is not made, the proceedings initiated under Sec. 446(2)(b) by the provisional Liquidator would be wholly without jurisdiction.

The approach of the High Court, with respect, overlooks the object and purpose sought to be achieved by introducing sub-sec. (2) in Sec. 446 by Amending Act 65 of 1960. As noted earlier, winding up proceedings dragged on for decades with no end in sight and with no benefit to the creditors and contributories of the Company. To accelerate the process of winding up so as to bring them to an end, this sub-section was amended in its present form in 1960 conferring jurisdiction on the court winding up the company to entertain, amongst others any suit or proceeding by or against the company or any claim made by or against the company. If therefore, a winding up petition is pending meaning thereby that an official liquidator is appointed as provisional liquidator which is a stage in the process of winding up, the court before which such proceeding is pending can be styled as a court winding up of the company and ipso facto it would have jurisdiction to entertain the proceeding enumerated in clauses (a) to (d) of sub-sec. (2) of Sec. 446. The apprehension of the High Court that if such jurisdiction is conferred on the court at a stage anterior to the winding up order being made but subsequent to the appointment of official liquidator as provisional liquidator, an anomalous situation would arise, has left us unimpressed. If the winding up petition fails, the proceedings pending in the court may have to be transferred to the court which can entertain the proceeding. But if the petition praying for winding up the company ends in a winding up order, the proceedings initiated under sub-sec. (2) will have to be proceeded with till they are finally disposed of because winding up order will relate back to the date of the presentation of the winding up petition. In this view of the matter, no anomalous situation can ever arise.

The aforesaid observations of the Supreme Court afford a full and complete answer to the question raised in the present applications. The real controversy in the present case is not whether the provisional liquidator is empowered to invite claims against the company in liquidation on the footing that his powers are the same as those of the Official Liquidator. The real question, as I have observed earlier, is what is the import of the opening words "the court which is winding up the company" appearing in section 446(2). It is the court which is winding up the company which shall have jurisdiction to entertain or dispose of any claim made by or against the company. According to the Supreme Court, the expression would include not only the court which has made an order for winding up of the company, but will also take in the court before which the winding up petition is pending, and where the provisional liquidator has been appointed. This position has been made clear by the Supreme Court in the observations quoted above. It is noteworthy that the Kerala High Court, against whose judgment the appeal was preferred to the Supreme Court, had relied upon, inter alia, the judgment of the Full Bench of this court in Faridabad Cold Storage (*supra*) while concluding that the right to file a claim petition, conferred by clause (b) of section 446(2), can be availed of only in a court which passed the winding up order. But the court which is winding up the company would include the court in which the winding up petition is pending, where the Official Liquidator has been appointed

as the provisional liquidator and where no winding up order has been passed, as per the decision of the Supreme Court. This is the fact-situation in the present case. Herein, the winding-up petition was admitted and the Official Liquidator was appointed as the provisional liquidator in the year 2005. No winding up order has however been passed. That however does not mean that this Court is not engaged in the process of winding up the company. On this basis, I am of the view that the controversy in the present case falls more appropriately within the verdict of the Supreme Court in the case of Sudarsan Chits (supra) rather than within the ruling of the Full Bench judgment of this Court in Faridabad Cold Storage (supra).

11. It accordingly seems to me that the correct view is that a provisional liquidator has the power to invite claims having regard to the provisions of Section 446(2)(b) of the Act. Mr. Bishnoi, the learned counsel for the Official Liquidator also expressed the apprehension that if the order permitting the provisional liquidator to invite claims is recalled, that may allow or embolden the ex-management of the company to take certain steps which may cause prejudice to the claims of the workers and other creditors. Having regard to these circumstances, and on the basis of the judgment of the Supreme Court in Sudarsan Chits (I) Ltd. (supra), I do not think that there is any justification for modifying or recalling the order dated 2nd August, 2013 permitting the provisional liquidator to invite claims. If anything, I see some advantage as a result of the order, in the sense that some time may be saved if the claims are permitted to be invited at this stage itself, even though no winding-up order has been passed. It was submitted by the applicants that the sale of the properties by SBI was itself under challenge at the behest of the provisional liquidator in CA 1713/2009 which is pending disposal and therefore no useful purpose would be served by permitting the provisional liquidator to invite claims. This however, is a matter not of any statutory prescription, but is one of discretion. It is true that the sale of the properties by the bank is under challenge which is pending before this Court and is listed for hearing on 30th October, 2013, but that cannot act as a legal bar or prohibition on this Court from permitting the provisional liquidator from inviting the claims. However, the provisional liquidator shall not take any further steps beyond inviting claims from the creditors etc. until CA 1713/2013 is disposed of, after which only a clear picture of the monies available to the company for distribution will emerge. In the order dated 2nd August, 2013, I have merely permitted the provisional liquidator to invite claims. The provisional liquidator will strictly comply with this order and until CA 1713/2009 is disposed of, he shall not take any steps beyond inviting claims, except with the leave of this Court. Subject to this remark the applications stand dismissed.