

(2001) 12 AHC CK 0033

In the Allahabad High Court

Case No : Company Application No. 5 of 2001 in Company Petition No. 29 of 1995

In Re: Bukeys Batteries (P.) Ltd. (In Liquidation)

Date of Decision : 22-12-2001

Acts Referred:

Companies Act, 1956 — Section 457

Citation : (2002) 2 AWC 884

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Shri Manish Goyal, for the Appellant;

Judgement

Sunil Ambwani, J.—This is an application u/s 457 of the Companies Act, 1956 by Shri Khalid Mukhtar, who is also the ex-director of the Company in Liquidation. He was also the guarantor of the loan given by the Bank to the Company in Liquidation. The applicant has prayed for a direction to the Official Liquidator, U. P. Allahabad for defending T.A. No. 976 of 2000, Canara Bank v. Bukeys Batteries Pvt. Ltd. pending before the Debt Recovery Tribunal. Allahabad as well as to take appropriate steps for recalling the order for proceeding ex parte against the company. The Official Liquidator has in compliance to the order dated 21.11.2001 filed a counter-affidavit, in which he has stated that the entire assets of the Company in Liquidation have been sold with the approval of the Court for a sum of Rs. 28.11 lacs in favour of M/s. Bawa Agro Products of Aligarh. He states that the claim of Canara Bank was of Rs. 78,02,943.48 filed by the Company whereas the amount available with the Official Liquidator as per the said representation was only 29.50 lacs. The official Liquidator has further stated that he has filed a detailed reply with the Registrar, D.R.T. by way of his letter dated 7.2.2000, and has fully complied with the provisions of the Act with regard to the winding-up proceedings and can proceed further for declaration of the dividend and ascertain all liabilities of the creditors when a special appeal is disposed of. He states that at present the Official Liquidator is not in a position to take any further action in the matter.

2. Shri Manish Goyal, appearing for the applicant relies upon the observation of a Division Bench in Special Appeal No. 613 of 1997, dated 31.3.1999. The Division Bench has directed that the Official Liquidator may decide the claims as per the order of the learned single Judge dated 16.3.1999, but no money should be disbursed until further orders. Shri Goel states that under the provisions of Sections 455 and 457 of the Companies Act, the Official Liquidator has to give statement to the Court and that it is his statutory duty to determine the debts of the Company as in *B.R. Thadani v. Syndicate Bank and Ors.*, 2001 CC 3569, the Bombay High Court held that the ex-director and guarantor is the affected party in the final decision of the matter. If under the adjudication order of the Liquidator, the liability of the Company was reduced, the guarantor shall benefit to that extent. If the Bank finally succeeds in getting that order set aside, the guarantor could be adversely affected and thus, it would not be proper to let the guarantor remain outside the Company application which challenges the order of the Liquidator and that he can be impleaded as a necessary respondent in the application.

3. Taking into account, the statutory provision under the Companies Act, 1956, the order passed in special appeal and the decision of the Bombay High Court in *B.R. Thadani v. Syndicate Bank and Ors.*, 2001 CC 3569, the Official Liquidator is directed to adjudicate and decide the claim of the creditors against the Company, and after having made such adjudication in accordance with the provisions of the Companies Act, 1956, he shall file a reply with the Debt Recovery Tribunal, Allahabad, with report to this Court. He shall, however, abide by the order of Division Bench in Special Appeal to the extent that no money shall be disbursed until the direction to that effect is issued in the special appeal.

4. With the aforesaid observation this Company application stands disposed of.