

(1980) 03 CAL CK 0014

In the Calcutta High Court

Case No : Company Petition No. 270 of 1967

In Re: United Provinces Commercial Corporation (In liquidation)

Date of Decision : 21-03-1980

Acts Referred:

Companies Act, 1956 — Section 446(3)

Citation : (1983) 53 CompCas 441

Hon'ble Judges : Salil K. Roy Chowdhury, J

Bench : Single Bench

Advocate : S. Bandopadhyay, for the Appellant; A.C. Law, for (Union of India), for the Respondent

Judgement

Salil K. Roy Chowdhury, J.—This is an application u/s 446(3) by the official liquidator for the transfer of a series of suits which were filed by the Union of India against the company in liquidation in the Delhi High Court before the winding-up order of the company was passed on 4th June, 1968. The said suits are pending in the Delhi High Court, being 23 suits numbered 530 to 552 of 1967.

2. The company now in liquidation has attained a notoriety in respect of the road roller business which came up before Parliament and in the course of administration of the company in liquidation the matter came up before me from time to time and, in fact, the official liquidator in the course of liquidation has come to know for the first time about the said various suits and legal proceedings by or against the company including a suit being Suit No. 2028 of 1978 filed by the company on or about 1st September, 1967, before this High Court against the Union of India. The said suit involved a sum of Rs. 1,38,00,000. It also appeared in the course of the winding-up, and the official liquidator discovered, that the Union of India through the Director-General of Supplies and Disposal, New Delhi, has filed 23 suits, being Suits Nos. 530 to 552 of 1967 in the Delhi High Court against the company and the said suits are still pending. It also appears that the company before it was wound up moved an application before this court praying, inter alia, for a stay of hearing of the said twenty-three suits filed by the Union of India in the Delhi High Court and

obtained an ad interim order on 18th September, 1967, whereby the hearing of the said twenty-three suits pending in the Delhi High Court was stayed. It appears that the said stay application came up for hearing before this court and was dismissed on 15th December, 1970, by Ghose J. vacating all interim orders. It further appears that in September, 1970, the Union of India moved an application praying, inter alia, leave to proceed with the 23 suits against the company pending in the Delhi High Court and vacate the stay order dated 18th September, 1967, and leave for hearing of the said suits pending in the Delhi High Court. On 7th December, 1972, Ghose J. granted leave to the Union of India to proceed with the said Delhi suits. Thereafter, the Union of India filed 23 applications before the Delhi High Court praying, inter alia, amendment of the cause title of those 23 pending suits in the Delhi High Court and the company took steps to defend the said suits. The official liquidator filed a report on 20th January, 1977, before this court praying for leave to engage a counsel as advocate to conduct the suits and leave was accordingly granted by this court on 11th March, 1977, with a direction to the official liquidator to settle the fees of the said counsel at Delhi.

3. It further appears that the official liquidator made a good number of correspondence with the said advocate at Delhi to charge reasonable professional fees considering the defendant-company being in liquidation and for the interest of the general creditors and contributories of the company and the said counsel agreed to accept Rs. 600 per suit as a special case. Thereafter it appears that nothing happened in the said suits and it is becoming inconvenient to conduct the said suits by the official liquidator at Delhi as enormous costs are being incurred. Therefore, this Hon"ble court directed the official liquidator by an order dated 10th March, 1978, to move an application u/s 446(3) of the Companies Act, to get the said suits transferred from the Delhi High Court to this court so that the matter may be expedited and unnecessary expenses may be avoided, i.e., the disposal of the said pending suits would be cheap and speedy if it is heard by this court, which is the winding-up court dealing with all the matters of the company. Further, the official liquidator has failed to obtain any information from the advocate as to the nature of the defence by the company and also the cause title of the suits in spite of repeated correspondence with the ex-directors of the company and their solicitors at Delhi and Calcutta. The official liquidator has been unable to get any papers and documents in respect of the said pending suits as quite a number of suits and proceedings are pending in this court which is the winding-up court and all the records of the company as delivered by the ex-management are lying in the custody of the official liquidator at Calcutta and it will be convenient for the administration of the said company in liquidation in winding up its affairs expeditiously at Calcutta if the said 23 suits are transferred to this court u/s 446(3) of the Companies Act. It will also involve large amount of expenses for the official liquidator and its representatives to go to Delhi along with the documents and papers frequently for the purpose of disposal of the said suits and that will not enure to the benefit of the creditors and contributories of

the company as the company is utterly insolvent.

4. Mr. S. Bandopadhyay appearing for the petitioner-company represented by the official liquidator has submitted the said facts before this court and also pointed out that the present application has been made pursuant to the direction of the court dated 10th March, 1978, having regard to the peculiar and difficult position the official liquidator has been put in and unnecessary expenses and delay is occurring in disposing of all the said suits.

5. Mr. A. C. Law, appearing for the respondent-Union of India, submitted that as the Union of India has filed the said suits in the Delhi High Court and all relevant papers and documents are lying at Delhi, the balance of convenience is in favour of the said suits being heard at the Delhi High Court.

6. I am unable to accept the same as the said suits are admittedly pending for the last 13 years and leave has been obtained only in 1972 as hereinbefore stated, i. e., about 71/2 years back, and the official liquidator is experiencing great difficulty in disposing of the said suits at a minimum cost in spite of his best efforts.

7. Therefore, in the interest of justice and for better administration of the company in winding-up, in my view, in the facts and circumstances of the case, the power u/s 446(3) of the Companies Act should be exercised for the benefit of the company and its creditors and contributories. Further, the question of any inconvenience on the part of the Union of India cannot arise, as the Union of India is deemed to be residing all over India and there is no difficulty for the D.G.S. & D., to produce the necessary documents before this court at the time of hearing of these suits. It is quite clear that the plaintiff has not been diligent or taken any sincere, honest or efficient steps for the disposal of these suits knowing possibly that the company is hopelessly insolvent or some startling facts may come to light if the suits are heard. On the other hand, the official liquidator is experiencing difficulties in disposing of the said suits at Delhi and the winding-up proceedings, which is pending for the last 12 years, is not coming to an end as these suits are still pending. Further, all the papers, documents handed over by the ex-directors to the official liquidator are lying at Calcutta and the balance of convenience seems to me to be overwhelmingly in favour of the suits being tried by this court and that is exactly the purpose and object of Section 446(3) of the Companies Act and the court should exercise that power in the present case where all the requirements of the said provision have been satisfied. If the court fails to do so, it will be really denying justice and the provisions of the Companies Act will be frustrated for expeditious disposal of winding-up matters and final dissolution of the company.

8. Therefore, considering the matter very carefully and the peculiar facts of this case in exercise of the power u/s 446(3) of the Companies Act, I am making the following order :

There will be an order in terms of the prayer. The advocate on record of the

Union of India is directed to furnish the cause title of the said 23 suits being Suits Nos. 530 to 552 of 1967, in the High Court at Delhi filed by the Union of India against the company in liquidation and others to the official liquidator within a fortnight. The Registrar, Original Side of this court, shall transmit without delay a certified copy of this order to the Registrar of the Delhi High Court and the Delhi High Court after receipt of such order shall transmit the records of the said 23 suits to this court. The said suits along with the suit, being Suit No. 2028 of 1967, filed by the United Provinces Commercial Corporation (P) Ltd. (in liquidation) against the Union of India to come together in this list six weeks hence for direction.

9. The Registrar, Original Side, the Registrar, Delhi High Court, the official liquidator and the advocate on record of the Union of India to act on a signed copy of the minute.