

(2004) 06 BOM CK 0058

In the Bombay High Court

Case No : Company Petition No. 970 of 1997

Mineral Sales (P.) Ltd.

APPELLANT

Vs

Otoklin Plants and Equipments Ltd. (In Prov. Liquidation)

RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Companies Act, 1956 — Section 443

Citation : (2005) 59 SCL 75

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : D.J. Khambatta, Shyam Mehta, N.R. Jagtap, Rafiq Dada, Milind Vasudeo, Mohana Nair, Naushad Engineer, Shakuntala Joshi, S.R. Rajguru, S.R. Kom, H.N. Shaikh and M.A. Magdum, for the Appellant;

Judgement

A.M. Khanwilkar, J.—This order will dispose of the report submitted by the Official Liquidator dated January 2, 2004 and incidental reports thereto. This report was moved before me for the following directions :

"(a) In view of paras 11, 12 and 13 supra whether this Hon''ble Court may be pleased to direct the Police authorities at Gandhidham to register the F.I.R. and take up immediate investigation on the basis of information furnished by the Official Liquidator in respect of the missing plant and machineries belonging to M/s. Al-Qahtani Pipe Coating Terminal, Saudi Arabia and book the culprits as well as recover the missing plant and machineries.

(b) In view of para 14 above, whether this Hon''ble Court will be placed to direct the Centurion Bank Limited and its dismantling agent M/s. R.K. Steel Syndicate to make good of the loss of value of the machineries removed from the site at Khandla, Gandhidham at the time of removal of lease machineries to Centurion Bank Limited.

(c) for such other and further directions as this Hon''ble Court may deem fit and proper."

2. On 7th January, 2003, after hearing Counsel for the parties, I proceeded to grant directions in terms of reliefs (a) and (b), however, after that order was dictated in open Court, it was brought to my notice by the Counsel for the Centurion Bank Limited (hereinafter referred to as "CBL") that the machinery which was dismantled and made over to CBL has already been sold. In the light of the said statement, Counsel for the CBL was asked to disclose the details about sale transaction, on affidavit. Consequent thereto, affidavits of CBL as well as M/s. R.K. Steel Syndicate (hereinafter referred to as "RKS") have been filed, so as to disclose the nature of transaction and the steps taken from time to time on the site for dismantling and for removal of the goods in question. The affidavit of M/s. Al-Qahtani Pipe Coating Terminal (hereinafter referred to as "AQH") asserts that they had leased out about 83 items of plant and machinery to Otoklin Plants & Equipments Limited (In Prov. Liquidation) (hereinafter referred to as "Otoklin") and the said items were lying on the site, as has been noticed in the proceedings taken out by AQH for permission to take away the same. AQH had filed Company Application before this Court, in which, it has come on record that 83 items belonging to AQH were lying on the site at the relevant date. Joint inspection taken in this behalf pursuant to the direction of the Court dated November 20, 2002 also reinforces this position. The same reads thus :

"Minutes recorded at the time of giving joint Inspection to the representative of M/s. Al-Qahtani Pipe Coating Terminal, Saudi Arabia and Al-Qahtani Pipe Coating Terminal India of the plant and machineries lying at to M/s. Otoklin Plant & Machine Equipment Ltd. (In liqn.) lying as and where it lies basis in the factory premises situated at Sector No. IV, Kandla Special Free Trade Zone, Kandla.

As per the Court's order dated 31-10-2002 passed by the Hon'ble Judge Shri R.K. Kochar passed under Company Application (L) No. 862 of 2002 in Company Petition No. 970 of 1997 and subsequently to the letter of the Official Liquidator dated 17-11-2002 addressed to the Advocates on behalf of Al-Qahtani Pipe Coating Terminal in Saudi Arabia and Mumbai and as per the office order of the Official Liquidator No. OL/Inspn./888 dated 18-11-2002 the representative being Sr. No. 1 of the office of the Official Liquidator alongwith the representatives at Sr. Nos. 2 to 4 had been to the factory premises situated at Sector No. IV, Kandla Special Free Trade Zone, Kandla today i.e. on 20-11-2002 at 2.00 P.M. The Field Officer Mr. Tiwari one gun man, one supervisor and 10 security guards as per shift were present at the factory premises. The seals were in tact which were sealed on locks.

All the aforesaid representatives took round inside the factory premises and saw that the machinery items as mentioned in the Manifesto/Export statement No, 4032 dated ... for the vessel Winco. A copy of the same is attached. Mr. Hazefa Abbas representative of M/s. Al-Qahtani Pipe Coating Terminal Saudi Arabia has specifically and personally verified and identified each and every item as listed in the aforesaid statement No. 4032.

We. all the representatives came across with identification marks viz. Serial

No. ... as mentioned in the Manifesto on each and every item. Some of the items have the logo of the company marked in plant A.O.H. in the triangle. In some cases stickers of Al-Qahtani (AQH) are available. All the items as per the Manifesto/statement No. 4032 were found as and where it lies basis except one Hopper. Some of the parts forming structural steel platforms/conveyor extension are available in dismantle condition but have no marking over it. Some of the small pieces from the equipment which formed part of the plant were also found in facility. In addition to containers as per the statement there are some other containers. Electrical cabling and parallel control station were also found.

The general conditions of all the equipments/machineries found to be in deteriorated condition due to lack of maintenance. Equipments were also found to be exposed due to atmosphere on the roofing sheets shed have been fallen, broken and the shed was found to be extensively damaged due to natural calamities.

The persons present have signed the minutes as witness hereof.

1. Sd/-
2. Sd/-
3. Sd/-
4. Sd/-
5. Sd/-"

3. This joint inspection was carried out in the presence of representative of Official Liquidator, representative of AQH, representative of Security Agency, M/s. Crack Detective Network Private Limited (hereinafter referred to as "Security Agency") and representative of M/s. Gandhi and Associates. The report indicates that except one hopper, which was found to be missing, rest of the items claimed by AQH were found on the site. As per the directions of this Court, the matter was examined by the Official Liquidator to establish the ownership of the said items claimed by AQH. That meeting was attended by the representatives of the CBL as well as other secured creditors of the Company in liquidation and Bank of Baroda. The meeting was held on 10th January, 2003. The representative of AQH established the ownership in respect of the stated items, which fact has been recorded in the said Minutes. The Minutes reads thus :

"Minutes of the meeting held on 10-1-2003 at 11.00 A.M. in the Chamber of Dy. Director (Technical) in the matter of M/s. Otoklin Plants and Equipments Ltd. (In Lion.).

ILLEGIBLE Centurion Bank Ltd. (.....)Mohana Nair Associates Advocate for the Applicant

- Al-Qahtani Applicant in Company Application No. 865/2002 Rashmikant of M/s. Federal & Rashmikant/

-.....

Bank of Baroda, Prarthana Samaj, Navi Mumbai.

- U.L. Laijawala, Sr. Manager, Bank of Baroda, IBB Branch, Nariman Point.

The Hon"ble High Court, Bombay by order dated 31-10-2002 in Company Application No. 865 of 2003 in Company Petition No. 970 of 1997 passed by Justice R.J. Kochar, J. directed the Official Liquidator to allow the applicant and their authorised representative to take inspection of the machinery at site i.e. Kandla factory premises of the company (in liqn.) at their own cost. The Official Liquidator provided inspection to the applicant and inspection was completed within 3 weeks from the date of order, in compliance thereof.

Accordingly, after giving the inspection to the applicant viz. Al-Qahtani Pipe Coating Terminal on 20-11-2002 and copy of the minutes drawn at site is annexed as Ex. "A" to these minutes. At the site present were representative of Al-Qahtani Pipe Coating Terminal, applicant, their valuer represented by M/s. Gandhi & Associates, representative of Official Liquidator apart from the security provided at the site by the Official Liquidator.

Subsequent thereto, the applicant requested to fix meeting in connection with satisfying the claim of ownership of the plant and machinery claimed by the applicant. Shri Rashmikant from Federal & Rashmikant submits that on completion of inspection, it was observed that by and large, all their machinery supplied by their client are available at site, except one item i.e. Hopper No. 1974.1 placed Sl. No. 15 of the List Ex. "B". Support of their claim about ownership of the machinery as per the list Ex. "B" they produced the certified copy of various bills leasing certified by Indian Embassy, Saudi Arabia, further supported by Chamber of Commerce Industries, Kingdom of Saudi Arabia, Ministry of External Affairs, Kingdom of Saudi Arabia. Copy of the list item claimed by the applicant was circulated to Centurion Bank and Bank of Baroda (only secured creditor) to seek clarification whether any of the machinery claimed by the applicant were hypothecated to the Bank of Baroda.

Shri Rashmikant from Federal & Rashmikant, Advocate of applicant submits that there is no question of hypothecation to any secured creditor as the company does not have ownership of the said machinery supplied by the applicant Al-Qahtani Pipe Coating Terminal List of Machinery claimed by the applicant were given to the representative of Bank of Baroda, Prarthana Samaj Branch, Mumbai who was also present in the meeting to verify and give a reply by 15-1-2003, failing which it will be presumed that they have no claim over said machinery as per the list given to them.

On expiry of 15-1-2003, the Official Liquidator will submit a report to the Hon"ble Company Judge for release of machineries claimed by the applicant.

Shri Rashmikant, Federal & Rashmikant, Advocate for the applicant was advised to submit the certified copies of the original documents before Official Liquidator

by today itself."

4. After the ownership of AQH in respect of items lying on the site was established, this Court (Justice D.K. Deshmukh) by order dated 20th February, 2003 allowed AQH to dismantle, remove and transport the machinery which belonged to them. By the same order, this Court had also directed Oil & Natural Gas Corporation Limited (hereinafter referred to as "ONGC" to take away its pipes, 396 in number, on payment of certain amounts, which were lying on the site. The relevant portion of the said order reads thus:

" 1. Company Application No. 32 of 2003 has been taken out for directions to the liquidator to return to the Applicant the plant and machinery belonging to the Applicant. Perusal of the report of the liquidator and documents accompanying the same shows that the plant and machinery has been inspected together with all the documents produced by the Applicant and the liquidator has been satisfied about the ownership of the machinery as per the list of the Applicant. It was found that except one hopper, which was not found, plant and machinery were found as per the manifesto produced by the Applicant.

In this view of the matter, therefore, as the ownership of the Applicant of the Plant and machinery, details of which are in Schedule "I" to the Plaint is now established. The Company Application No. 32 of 2003 is granted in terms of prayer clause (a).

Dismantle, removal and transportation of the machineries shall be at the cost of the Applicant. The Official Liquidator shall give certified copies of the documents relating to the machineries that may be found by the liquidator in the record of the company. The Applicant shall also deposit with the liquidator an amount of Rs. 1,00,000 towards security charges. The liability of the Applicant to pay the security charges, however, shall be finally determined after the liquidator puts in a report for recovery of security charges from various persons including creditors, Company Application No. 32 of 2003 is disposed of.

2. So far as Company Application No. 486 of 2002 is concerned, it is filed by ONGC for return of its pipes, 396 in number. Admitted position appears to be that these pipes are owned by ONGC and therefore, the ONGC is entitled to remove the same.

The learned Counsel appearing for ONGC points out that an amount of Rs. 3,72,56,507 is payable by ONGC. However, only 50% of that amount is payable to the Company under liquidation and that the ONGC is willing to deposit that amount with the liquidator. The learned Counsel further state that this amount will be deposited within a period of four weeks from today. The learned Counsel further points out that as per the contract between the ONGC and the Company under liquidation, trailer was to be provided for transportation of the pipes by the Company, and, therefore, according to the learned Counsel, the Company under liquidation is liable to pay for the transportation charges. In this view of the matter, therefore, Company Application No. 486 of 2002 is disposed of in

following terms:-

The ONGC, as per their statement, to deposit an amount of Rs. 1,86,28,753 (Rupees One Crore Eighty Six Lakh Twenty Eight Thousand Seven Hundred & Fifty-three only) with the liquidator within a period of four weeks from today.

The ONGC is permitted to remove the 396 pipes. The ONGC, after removal of the pipes, shall submit the bills of the expenses incurred by it for transportation to the Official Liquidator. Bills shall be verified by the Liquidator and the amount which may be payable by the Company on account of transportation charges in terms of the contract between the parties shall be paid by the Liquidator within two weeks from the date of submission of bills. If there is any dispute in this regard, the Liquidator shall put in a report for appropriate orders.

The learned Counsel appearing for ONGC states that the ONGC has received a notice from the Income Tax Department that certain amounts are payable by the Company to the Income Tax Department. The Official Liquidator, therefore, to inform the Income Tax Department that pursuant to this order the amount payable by ONGC to the Company has been deposited with the Official Liquidator and therefore, the Income Tax Department shall act in accordance with law. Company Application No. 486 of 2002 is disposed of."

5. From the record as is produced by the parties and the Official Liquidator, it is established that the goods belonging to AQH in the shape of plant and machinery were lying intact on the site till February 2003 when this Court by order dated 20th February, 2003 permitted AQH to take away the items belonging to them. The said goods, however, could not be removed for reasons which need not be elaborated here - except to state that the modalities were being worked out by the Official Liquidator.

6. In the meantime, CBL had also sought permission from this Court for removal of items belonging to CBL. By orders dated 27th January, 2003 and 10th April, 2003, CBL was permitted to take away 68 items which were leased by them to company in liquidation (Otoklin). The order dated 27th January, 2003 passed by Justice P.V. Kakade reads thus :

"Heard learned Counsel for the parties. Also heard representative of the Official Liquidator. This Chamber Summons is taken out by the plaintiff for directions of this Court to permit the Court Receiver, High Court, Bombay, to take possession of the suit equipment, more particularly described in Exhibit "A" to the plaint and in the schedule.

After hearing the parties this court by order dated 3rd June, 2002 directed the Court Receiver to take inventory to ascertain whether the goods are indigenous or imported to meet the arguments advanced on behalf of defendant No. 2 Union of India that customs duty is not paid on the said goods. Consequent upon that the Court Receiver made the inventory and his report is dated 6th January, 2003. The Court Receiver appears to have taken assistance from technical assistant

appointed in the matter. His report is annexed to the Court Receiver's report. The Court Receiver's report is based on the technical assistant's report and unequivocally mentions that the goods were identified to be indigenous. The inventory of the said goods is also attached to the technical assistant's report and therefore there is no reason why the report should be doubted. Learned Counsel for defendant No. 2 vehemently urged that the report is incorrect and the customs duty of the said goods is yet to be paid as they are imported. However, there is no substance in the said submission.

The Official Liquidator submits that the factory premises is in their possession and the goods are lying in the said factory premises. In view of this situation it is directed that the Court Receiver, High Court, Bombay, shall take possession of the suit equipments, more particularly described in exhibit "A" as per the inventory list of the technical assistant's report. It is made clear that the plaintiff may obtain further directions from the Company Court regarding the fate of the goods and this chamber summons cannot determine that issue as the claim of the Official Liquidator has to be decided in due course. With these directions the chamber summons stands disposed of."

The order dated 10th April, 2003 passed by Justice D.G. Karnik reads thus :

"1. Heard the learned counsel for the applicant and Mr. Ansari, Dy. Official Liquidator appearing for the Official Liquidator. M/s. Mineral Sales Pvt. Ltd. Petitioner in the winding up petition bearing Company Petition No. 970/97 is absent though served by the applicant.

2. By an order dated 4th May, 1999 passed in Company Petition No. 970/97, M/s. Kotak Lands and Equipments Ltd. (for short "the company") is ordered to be wound up and Official Liquidator has been appointed to take charge of the assets and business of the Company. The applicant had given on lease certain equipments of the Company. On failure of the Company to pay lease rent, the applicant filed a suit bearing Suit No. 45/98 in this Court for recovery of the lease rent and also for the recovery of the leased machinery and equipment. By an order dated 4th May, 1998, this Court appointed the Court Receiver in respect of the lease equipment and directed the receiver to take possession thereof. Thereafter, the Receiver went to the site for taking possession but actual possession could not be taken on account of the objection raised by customs authorities regarding the non-payment of the customs duty by the Company. Thereafter, Union of India was joined as defendant No. 2 to the suit.

3. By an order dated 3rd June, 2002, this Court directed the applicant to produce before the receiver originals of true copies of the invoice regarding the title to the leased equipment so that the receiver could ascertain whether the leased equipment was imported or indigenous. By a further order dated 27th January, 2003 passed in Chamber Summons No. 1013/01 in Suit No. 45/98, this Court directed that the Court Receiver shall take possession of the leased equipment as per the inventory list of the technical assistant's report. The Court, however,

directed that further steps would be taken after obtaining the necessary directions from the Company Court. Hence, present application has been moved for the directions to the Official Liquidator to hand over the leased equipment to the Court Receiver.

4. From the orders passed by the Court referred to earlier, it is clear that the leased equipment did not belong to the Company but belonged to the applicant. Official Liquidator has been appointed as an Official Liquidator only in respect of the assets of the Company. Leased equipment is not an asset of the Company but is an asset of the applicant which it had given on lease.

5. In the circumstances, Official Liquidator cannot have any claim over the said leased equipment which is not and was never the asset of the Company. The possession of the leased equipment must therefore be given to the Court Receiver as per the order of this Court dated 27th January, 2003. In the circumstances, Judges Summons is made absolute in terms of prayer clauses (a) and (c).

6. The Official Liquidator points out that in the meeting dated 9th December, 2002, the applicant Company had agreed to bear and pay security charges in respect of the leased equipment. The applicant Company shall accordingly pay proportionate charges to the Official Liquidator whereupon the Official Liquidator shall hand over possession to the Court Receiver."

7. Pursuant to the liberty granted to CBL, meeting was held in the office of the Official Liquidator on 12th June, 2003 for deciding on the security charges. Thereafter, joint inspection was taken at the Kandla site by the representatives of the CBL, Security Agency and the Official Liquidator. The proposed purchaser of goods belonging to CBL, RKS made offer of Rs. 58,25,000 (Rupees Fifty Eight Lakhs Twenty Five Thousand) in respect of the 68 items belonging to CBL, which were estimated by CBL at much lesser amount. What is relevant for our purpose to note is that there is nothing on record to show that during this joint inspection, any missing items of the Plant and Machinery was noticed on the site. In other words, it is common ground that the entire Plant and Machinery (constituting items of CBL as well as AQH) was found in intact condition and in place. It is stated that after the offer made by RKS was accepted by CBL, the Official Liquidator directed his representative Shri C.L. Saraiya and Shri S.M. Shetty to give possession of the items belonging to CBL to the Court Receiver, who in turn, was expected to hand over delivery of the said items to the CBL for dismantling and removing the same from the site. Accordingly, the representative of the Official Liquidator and the representative of the Court Receiver along with the representatives of CBL and the said RKS, visited the site on 1st July, 2003. It is apposite to advert to the Minutes drawn on 1st July, 2003, which reads thus:

"Kandla Gandhidham Dt. 1-7-2003.

Subject: In the matter of M/s. Otoklin Plants

Equipments Ltd. (in liqn.).

Minutes drawn at the time of handing over movable assets lying at the factory premises situated at above.

Pursuant to office order No. 782 of 2003 dated 26-6-2003 we had been i.e., Mr. C.L. Saraiya and Mr. S.M. Shetty of this office to handover movable leased assets belonging to the Centurion Bank to the Court Receiver as per Court's order dated 10-4-2003.

We reached to the abovesaid premises at 11.45 A.M. we round following persons present there:

We informed purpose of our visit to the site to the Security guards present there on duty.

Representatives of Centurion Bank and Court Receiver informed us that certain procedure of custom authority to be completed with before removal of movables assets lying therein belong to them.

In the circumstances we met Jt. Development Commissioner and explained him the position and we directed his officers to prepare a no objection letter issued by their office (i.e., custom office).

Today till and office hours abovesaid letter was not received and concerned officers requested us to receive the letter tomorrow on 2-7-2003. In the circumstances handing over possession of movable assets to Court Receiver belonging to Centurion Bank could not be materialised and decided to continue on 2-7-2003.

Representative of Bank of Baroda, IBB Branch, Nariman Point, Mumbai informed us to go through the attendance register of security guards as per court's order dated 25-6-2003. The hearing of the same also was attached by representative of this office. A separate minute has been drawn in this connection and attached to this minutes allowing him to do so.

One of the security guards informed that our U.L. Laijwala a representative of Bank of Baroda that the theft of the movable assets takes place frequently at night due to poor fencing of the factory premises and lack of security guards.

This minutes signed by above persons as under :-

1. Sd/-
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6. Sd/-

7. Sd/-

8. Sd/-

9. Sd/-"

8. After the CBL took over possession of its goods, as were identified by Mr. P.S. Rao, valuer, which were already marked as belonging to CBL, the same were made "over to RKS for dismantling and removing the same from the site. Here it is relevant to mention at the cost of repetition that when the items belonging to CBL were identified, the Plant and Machinery was a whole unit and in intact condition, which also constituted items of AQH as its component. The process of dismantling actually commenced only by RKS under the supervision of CBL and the other Officials from 3rd July, 2003 and was continued till 9th August, 2003. According to CBL as well as RKS, which was the agency engaged in the process of dismantling and removal of goods belonging to CBL, dismantling only of goods belonging to CBL was undertaken during this period and thereafter, the same were removed by employing 51 trucks between 3rd July, 2003 to 9th August, 2003 (weighing around 650 Tonnes in 48 trucks out of the 51 trucks. Three trucks were not weighed as it carried Air Compressor, Trailer and Godrej Fork Lift Truck as one unit). From the several affidavits filed on record by the parties including the Customs Authority and the Security Agency, it is more than established that till the dismantling process commenced on 3rd July, 2003, goods belonging to both the CBL as well as AQH were lying on the site and constituted the Plant and Machinery of the Company in Liquidation (Otoklin), which was under the control of the Official Liquidator. Moreover, dismantling process commenced only on 3rd July, 2003 and continued till 9th August, 2003 only; and the dismantled goods were immediately removed in phased manner, till 9th August, 2003. The CBL as well as RKS have accepted this position on affidavit, that the dismantled goods have been removed in 48 truck loads from time to time during that period in addition to three trucks carrying complete units of Air Compressor, trailer and Godrej Fork Lift truck i.e., 51 trucks. As mentioned earlier, the position as on 3rd July, 2003 that emerges from the record is that, there is nothing on record to even remotely indicate that the 83 items belonging to AQH were either found in dismantled condition or for that matter removed (except the one missing hopper).

9. The next question is: whether it is open for this Court to examine the grievance made on behalf of AQH and as reported by the Official Liquidator to this Court about the missing items belonging to AQH from the site as allegedly noticed in December 2003 by the Official Liquidator. To my mind, this Court has ample powers to examine the said aspects and to pass appropriate orders a may be warranted to do substantial justice between the parties. Reliance has been rightly placed on the Division Bench decision of our High Court in the case of Nilesh Lalit Parekh, In re 2002 (1) BCR 357 (Para 26). In Para 26 of this decision,

the Court has referred to several situations in which the Court can invoke its powers u/s 443 to pass such orders as may be necessary to do complete justice between the parties. The facts of the present case would surely warrant appropriate orders to be passed. The perfect order would be to direct restoration of status quo ante regarding the items of AQH.

10. Be that as it may, as mentioned earlier, the availability of goods belonging to AQH till 3rd July, 2003 on the site, cannot be disputed. However, it is only in December 2003 that the Official Liquidator claims to have acquired knowledge about the removal of substantial goods belonging to AQH and it is in that backdrop, the present report has been submitted to the Court for necessary directions. Whereas, according to AQH, the Officers of the Official Liquidator as well as that of the Court Receiver, in collusion with the representatives of CBL and RKS have allowed the goods belonging to AQH to be removed from the site while removing the goods of the CBL during July and August, 2003. On the other hand, the stand taken on behalf of CBL and RKS who have filed several affidavits before this Court is that they are not responsible for the loss of goods belonging to AQH; as according to them, the Official Liquidator is in amiss and is trying to shift the blame on them. From the several affidavits and the record filed by the parties, one thing that is certain, is that till 3rd July, 2003, goods belonging to AQH were lying on the site. It is also seen that the representatives of CBL and RKS along with the workers employed by RKS were on the site during July and August, 2003 and in fact, carried out dismantling work and have removed all the dismantled goods during this period by employing 51 trucks. It was suggested by CBL and RKS that the possibility of ONGC having subsequently removed the goods belonging to AQH cannot be ruled out. However, that suggestion, to my mind, cannot be sustained, for more than one reason. Inasmuch as by order dated 20th February, 2003, ONGC was permitted to take away the 396 pipes lying on the site. The said pipes were kept far away from the place where the plant and machinery was situated. Besides, there is nothing to even remotely suggest that the agencies of ONGC had engaged in the dismantling of the plant and machinery, without which it was not possible to remove the same as one single unit because of its sheer size and weight. Moreover, it is seen from the record that ONGC employed transport agency, who has transported 367 pipes during 19th August, 2003 till 24th November, 2003 out of the 396 pipes. Each of the truck which carried the pipes were issued transship permits, and the same have been duly registered. The Customs Authorities have produced on record a complete list of trucks employed from 14th July, 2003 till 14th November, 2003 for transport of goods located in the Free Trade Zone; and every truck passing through the site, was required to comply with the formality of weighment on the Weigh Bridge in the Free Trade Zone. From the chart so produced, it is more than clear that all trucks employed after 21st of August, 2003 were used only for carrying pipe load belonging to ONGC. In that sense, the record would clearly establish the position that movement of trucks for carrying dismantled goods was undertaken "only during 3rd July and 9th August" when representatives of CBL

and RKS were on the site for dismantling and removing the goods purportedly belonging to CBL. This inference can be legitimately drawn from the contemporaneous record which has come on record.

11. An attempt is also made to suggest that the Security Guards were responsible in protecting the property and in ensuring that the goods of AQH are not removed. Once again, this plea is only an attempt in desperation. In the first place, the record unequivocally establishes that the movement of trucks from the site to carry dismantled items is only from July till August. The movement of trucks can be tracked from the weighment slips issued by the sole weighment Bridge operating in the free Trade Zone (Milak Weighing Bridge). Moreover, the trucks left the site only upon issuance of pass initialled by the representatives of Court Receiver, Official Liquidator, CBL, RKS and Customs. From the materials on record, it is possible to accept the plea of the Security Agency that the entire process was controlled by the representatives of the Official Liquidator, the Court Receiver, Customs, CBL and RKS. Taking overall view of the matter, there is no substance in the argument canvassed on behalf of the CBL and RKS that the missing items must have been gradually removed or lost due to theft, especially when the removal of the huge items constituting almost 70 per cent of the items is noticed and which was possible only if the items were transported in truck loads. Accordingly, even this defence does not commend to me.

11A. To overcome this position, it is the case of the CBL and RKS that only the goods belonging to CBL were dismantled and none of the other goods belonging to Company in Liquidation, for that matter, AQH, have been dealt with in any manner by them. Interestingly, it is conceded before this Court that the goods purportedly belonging to CBL were dismantled by RKS under the supervision and instructions of the representative of CBL; and sold on the site as scrap to M/s. Deepak Steel and Pankaj Traders of Rajkot, who in turn, were expected to take away the same as scrap items. Notices were issued to the proprietors of the said firms, but in spite of notices, they have neither appeared before this Court, nor filed any reply controverting the serious allegations. At any rate, it is not the case of CBL or RKS that the representatives of M/s. Deepak Steel or Pankaj Traders might have carried the goods other than the scrap items sold to them. To my mind, from the totality of circumstances which has come on record, there is substance in the stand that the goods belonging to AQH have been dismantled during the process of dismantling the goods belonging to CBL. It has come on record that the dismantling process was carried out continuously for almost 17 days by 47 workers and the workers were althroughout on the site. There is nothing to show that dismantling was carried out any time after 9th August or earlier to 1st July by any one on the site. As is mentioned earlier, it is noticed that the plant and machinery was generally in intact condition except some damage due to exposure of items. As already noted earlier, all the dismantled items were removed from the site during July and August by RKS under the supervision of CBL and the concerned officials. It has also come on record that because of dismantling of the unit/items, it was not possible to decipher or

identify the items. As the entire dismantled items have been removed from the site, it follows that the dismantled items of AQH have also been taken away as goods of CBL. Interestingly, it is seen from the record that apprehension was expressed by some third party, i.e., M.R. Traders informing this Court that there is possibility of goods belonging to AQH being dismantled and taken away under the pretext that the goods of CBL were being removed. To ensure that such a situation did not occur, it is stated that three tier scheme was evolved, whereunder, the representatives of CBL would dismantle only those goods which were to be certified by the Customs Authorities being indigenous and were identified by the valuer Shri P.S. Rao. Besides the Customs Officer, even the representatives of the Official Liquidator and Court Receiver were to certify before delivery of goods to the CBL and permitting them to remove the same from the site in dismantled condition. The Customs Officer was expected to certify before the truck actually left the site. However, now the affidavit filed by the Customs Authorities before this Court indicates that their role was very limited and as the goods of CBL were indigenous, the question of their ensuring compliance of customs formalities did not arise. In other words, in practice, the abovesaid three tier scheme was employed more in breach; and each of the representative of the Official Liquidator, Court Receiver or for that matter the Customs Authorities are now only engaged in passing on the buck.

12. Be that as it may, the question is whether it is possible for this Court to issue directions in terms of relief (b) prayed by the Official Liquidator. As is seen from the record, the substantial part of the plant and machinery (almost 70 per cent) belonging to AQH has been allegedly dismantled and the left over machinery on the site has been rendered either in damaged condition or useless. It is also seen from the record that all the dismantled goods have already been removed from the site by the representatives of CBL and RKS on the pretext that the same belonged to CBL. It is stated on behalf of the RKS that in fact RKS has sold the dismantled goods in the form of scrap to the two dealers named earlier, who in turn, promptly took away the goods from the site. Since the goods have changed its original form and also changed hands, it is not possible for this Court to issue direction to CBL and its dismantling agent RKS to bring back the goods, so as to restore status quo ante. Therefore, the question is whether in this summary proceedings, it is possible for this Court to direct the CBL and its dismantling agent RKS, who worked on the site together for dismantling and removal of the goods, to pay the value of the goods belonging to AQH, which have been taken away and to make good the loss or damage caused to the left over items of AQH. This, to my mind, cannot be answered in the present proceedings. For, the affidavits which have come on record indicate that both sides have claimed ownership with regard to some of the items which are now missing from the site. As there is dispute regarding ownership of the goods, and more so, it is not possible in this summary proceedings to quantify the value of the lost goods or the goods removed from the site as also the goods which are left behind and rendered damaged or useless, the appropriate course, to my mind, is to relegate

AQH to take recourse to appropriate proceedings against CBL or RKS or any other person including M/s. Deepak Steel or Pankaj Traders, who in turn, have purchased the dismantled goods as scrap from the site. If such proceedings are taken out, the parties will have to establish the ownership of their respective items and also adduce evidence with regard to the actual loss caused to them due to the loss of items removed from the site and also the damage which has been suffered to the items which are left behind on the site. All these aspects can be and will have to be examined in such substantive proceedings to be taken out by AQH.

13. In view of the course that I have adopted, I have consciously not elaborated on the arguments canvassed on behalf of the respective parties including regarding ownership claimed in respect of the items which are now found to be missing from the site as that would affect the outcome of the proposed proceedings.

14. Although, the relief of quantifying damages will be gone into in the substantive proceedings, if taken out by AQH, it needs to be placed on record that the Officials of Court Receiver as well as Official Liquidator and even for that matter, the Customs Authorities have not discharged the role that was expected of them to ensure that the items belonging to AQH which were imported items and were in the custody of the Official Liquidator, were unaffected in any manner during the process of dismantling of goods belonging to CBL or for that matter, the possibility of the goods belonging to AQH being removed from the site under the pretext of removing the dismantled goods of CBL. Indeed, the present situation has occurred and is the making of the concerned officials of the Court Receiver, Official Liquidator and the Customs Officials. The laxity of the Officials and perhaps because of their connivance, not only the imported items belonging to AQH are clandestinely removed from the site but that has also resulted in loss to the public exchequer in the form of customs duty, etc. This is a serious matter and it is necessary for the concerned higher authorities to examine the cause of such lapses and to take appropriate corrective action against the concerned Officers including taking steps for recovery of the revenue. That be done as expeditiously as possible, and compliance report be submitted to this Court within six months from the receipt of writ of this Court.

15. Copy of this order be forwarded to the Secretary, Ministry of Company Affairs and Regional Director. Copy of this order be also forwarded to the appropriate Authority of the High Court, who will examine the nature of action to be taken against the concerned Officers of the Court Receiver; because in my opinion, without the laxity or collusion of the Officers of the Court Receiver and the Official Liquidator, the present situation would not have arisen. It is obvious that they have failed to discharge their duty diligently, which was expected of them. Whether it be a case of laxity, or collusion of the Officials, in either case, it is a serious matter. As mentioned earlier, what is more concerning is that if the goods belonging to AQH, which were admittedly imported goods, have been allowed to

be taken away, it is a reflection also on the Officers of the Customs Department - because if the said goods have crossed the Free Trade Zone, that definitely will have financial ramifications in the shape of loss to the public exchequer. In the circumstances, even that aspect will have to be examined by the Customs Department and corrective measures adopted forthwith and report compliance to this court.

16. While parting, I will like to place on record word of appreciation for all the Advocates who have appeared in this case, for having assisted the Court very ably and for observing objectivity.

17. For the aforesaid reasons, the report of the Official Liquidator dated 2nd January, 2004 and incidental resubmitted reports, will stand disposed of.

18. No directions are passed on relief (b) and that issue is left open for the reasons already recorded.

19. Insofar as direction in terms of Clause (a), that is already issued by order dated January 7, 2003 and I am informed that the said direction has been already complied with by registering First Information Report (F.I.R.), and investigation in that behalf has already commenced. No further directions in that behalf will, therefore, be necessary.

20. Accordingly, this Office reports are disposed of.

21. This Court by order dated 3rd May, 2004 directed Shri P.S. Rao, Valuer to make inventory of the goods which are still lying on the site. I understand that the said inventory has been made and report submitted in sealed cover to the Office of the Official Liquidator. Copy of that report be made available to the parties appearing in this proceeding at their cost.

22. The files belonging to Official Liquidator which were kept in sealed cover, be returned to the Official Liquidator. However, the Official Liquidator is directed to keep the said record in safe custody.

23. Mrs. Mohana Nair for CBL has made a request that the report of Shri P.S. Rao dated 9th March, 2004 regarding weights of the items belonging to CBL which was obtained by this Court and was kept in sealed cover, be also made available to all the parties. Official Liquidator to make available copy of that report to all the parties at the cost of the parties.

24. The Registers submitted by the Security Agency may also be returned back to the Security Guard Detective Agency to be preserved by them for being made available to the Court when required.

25. At this stage, Mr. Rajguru prays for stay of operation of this Order. Having regard to the nature of directions issued, I see no reason why the operation of this Order should be stayed. That prayer is rejected.

26. It is brought to my notice that RKS has submitted information in terms of

order dated 13th January, 2004 in sealed cover. The sealed envelop be returned to the Advocate M/s. Niranjana Jagtap & Co. Record submitted in sealed envelop, submitted by the Court Receiver pursuant to order dated 13th January, 2004 be also returned, if not required.

27. Issuance of certified copy is expedited.