(1989) 04 RAJ CK 0035

In the Rajasthan High Court

Case No : Company Application No. 12 of 1988

Official Liquidator APPELLANT

Vs

Assistant Collector, Customs Disposal Unit and Others RESPONDENT

Date of Decision : 28-04-1989

Acts Referred:
Companies Act, 1956 — Section 433, 446, 456, 456(2)
Major Port Trusts Act, 1963 — Section 61

Citation : (1990) 68 CompCas 184

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : S.K. Keshote, for the Appellant; Sudhir Gupta, for the Respondent

Final Decision : Allowed

Judgement

M.B. Sharma, J.—This is an application u/s 446 of the Companies Act, 1956 (for short, "the Act"), for an order that possession of the imported Articles which are contained at page six of the petition may be allowed to be given to the official liquidator and, thereafter, the non-petitioners may be directed to file claims for shipment charges and customs duties as and when the claims are invited by the official liquidator.

2. Some facts are not in dispute and they are these. Against import licence/ licences, the goods detailed at page six of the petition were imported by Rajasthan Wooltex Limited (for short, "the company in liquidation") and the said goods reached Bombay Port in the year 1985. The value of the goods as per the bill of entry was a few lakhs of rupees. As per the reply of the Assistant Collector, Customs, it appears that the goods were not cleared by the company in liquidation and an application for winding up by the company u/s 433/439 of the Act was filed in this court by Aristo Chemicals, Jaipur. This court allowed the application . and a winding up order was made on September 18, 1987. The goods remained in the custody of the Bombay Port Trust Docks, Bombay, and are still lying in the custody of the Assistant Manager of that dock.

3. There can be no dispute that once a winding-up order has been made u/s 433/439 of the Act, the property of the company in liquidation vests in the court. A bare reading of Section 456 of the Act and, more so, its Sub-section (2) will show that all the property and effects of the company shall be deemed to be in the custody of the court as from the date of the order for the winding up of the company. It could hardly be disputed that, whether the goods have been cleared or not, whether they are lying with the Assistant Manager of Sales of the Bombay Port Trust Dock, whether or not there maybe some claim of the Assistant Collector, Customs, for the customs duty payable on the imported goods, the property which is lying at the Bombay Port Trust Dock and belongs to the company in liquidation. That apart, once the winding-up order has been made under the provisions of the Act, all the matters including the claim, if any, are to be decided by the company judge and by no one else. No doubt, the Bombay Port Trust Dock have powers under the provisions of the Major Port Trusts Act, 1963, to sell the goods. (Under Section 61 of that Act, after the expiry of two months from the time the goods have passed into its custody or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit). The Board can sell, by public auction such goods or so much thereof as in the opinion of the Board, may be necessary. But it can only be done after notice to the owner of the goods. The fact that the word used in Section 63 of the Major Port Trusts Act, 1963, is "owner" goes to show that there can be no dispute that the goods lying at the docks are owned by the company, in this case the company in liquidation. So far as the claim of the customs department is concerned, the goods can be cleared only after the payment of customs duty. It was given out by Mr. Gupta that the claim of customs duty is only Rs. 31,000. The official liquidator has sufficient funds to discharge that claim. About Rs. 3,00,000 are lying in the fixed deposit in the bank and loan can be taken from the said bank to make the payment of customs duty. Other funds are also with the official liquidator. But, so far as the claim of the Bombay Port Trust Dock is concerned, after a winding-up order is made by this court and the claim of the Bombay Port Trust Dock is yet to be finalised which can only be finalised as and when the claims are invited and claims are filed (sic). It cannot be said that the claim is undisputed. But, at the same time, the dock authorities have to sell the goods and, therefore, the proper order to be made appears to be that the Assistant Manager (Sales), Bombay Port Trust Dock, in exercise of his powers u/s 61 of the Major Port Trusts Act, 1963, may sell the goods but only in the presence of the official liquidator and only after extensive publicity so that a proper price may be realised for the goods. The sale shall be subject to confirmation by this court. After the sale as aforesaid takes place, the sale amount shall be remitted to the official liquidator. It may be stated that the powers of this court under Sub-section (1) of Section 446 and Sub-section (2) are distinct powers. So far as Sub-section (1) of Section 446 is concerned, no suit or other legal proceedings shall be commenced or, if pending at the date of winding-up order, shall be proceeded with, against the company, except by leave

of the court, but so far as Sub-section (2) of Section 446 is concerned, the court which is winding up the company shall, notwithstanding anything contained in any law for the time being in force, have jurisdiction to dispose of any suit or proceeding by or against the company.

4. This court could have ordered that the official liquidator shall dispose of the goods lying at Bombay Port Trust Dock, but this court has considered it equitable to allow the Bombay Port Trust Dock authorities to sell the goods lying there in the presence of the official liquidator and then to remit the amount to the official liquidator.

5. Consequently, the application is allowed as aforesaid. So far as the claim of the Customs department to the extent of Rs. 31,000 is concerned, the official liquidator shall make the payment to the competent authority, if necessary after taking from the bank a loan on the security of the F. D. Rs., for which permission is accorded. Thereafter, the port authorities at Bombay will sell the goods lying there in the presence of the official liquidator after extensive publicity and in consultation with the official liquidator so that maximum price for the goods is received, remit the price to the official liquidator and file claims as and when claims are invited by the official liquidator, A copy of this order may be sent to the Assistant Manager (Sales), Bombay Port Trust Docks, Bombay, for compliance. The official liquidator shall also contact him for sale of the goods lying there in terms of this court''s order.