

(1988) 05 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Company Application No. 123 of 1987 in Company Petition No. 125 of 1986

S. Duleep Singh

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 30-05-1988

Acts Referred:

Companies (Court) Rules, 1959 — Rule 116
Companies Act, 1956 — Section 428, 433, 445(3), 466, 69

Citation : (1990) 69 CompCas 791 : (1988) 94 PLR 378

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : A.K. Jaiswal, B.D. Seth and A.C. Jain, for the Appellant; L.M. Suri, for Harjinder Singh, Ashok Bhan and A.K. Mittal for Amarjit Singh and Karemjit Singh, for the Respondent

Judgement

D.V. Sehgal, J.—This judgment shall dispose of C. A. No. 123 of 1987 in C. P. No. 125 of 1986, C. P. No. 24 of 1987, C. A. No. 24 of 1987 in C. P. No. 56 of 1982 and C. A. No. 189 of 1987 in C. P. No. 125 of 1986. All these applications and petitions have been filed either for recall or modification of the order dated December 11, 1986, passed by G. C. Mital J. in C. P. No. 125 of 1986. Therefore, I have considered it convenient to dispose of them by one and the same judgment.

2. It is necessary first to notice the facts in brief. Prem Singh and other shareholders of the National Transports and General Co. (P.) Ltd. (B group), Ludhiana (for short "the company"), filed C. P. No. 236 of 1980 under Sections 397 and 398 of the Companies Act, 1956 (for short "the Act"), for relief on the ground that the affairs of the company were being conducted in a manner which is prejudicial to the public interest and the petitioners therein and the company. They complained that the affairs of the company were being mismanaged. During the pendency of the same, C. P. No. 56 of 1982 was filed on July 27, 1982, by Pritam Singh and ten other creditors of the company u/s 433 of the Act

for winding up the company on the ground that it is unable to pay its debts to its creditors. C. P. No. 236 of 1980 filed by Prem Singh and other shareholders-petitioners was, however, dismissed as not pressed on February 24, 1983, as their counsel conceded that the same was not maintainable against a group of the company. C. P. No. 56 of 1982, however, culminated in an order of winding up of the company by R. N. Mittal J. (as he then was) vide order dated August 16, 1984. The official liquidator was appointed as liquidator of the company. He was directed to take charge of the company forthwith. The winding-up order was directed to be advertised in newspapers as also in the Punjab Government Gazette. A copy of the order was also directed to be sent to the Registrar of Companies.

3. When the proceedings for winding up of the company in pursuance of the order dated August 16, 1984, were still in progress and the official liquidator was having control, C. P. No. 125 of 1986 was filed by Shri Harjinder Singh, ex managing director of the company, u/s 466 of the Act read with rule 116 of the Companies (Court) Rules, 1959 (for short "the Rules"), for stay of the winding up proceedings. He candidly admitted that pending C. P. No. 56 of 1982, he and his associate shareholders could not arrange money in order to pay the creditors of the company to whom the total amount due was Rs. 77,015 besides interest from December 13, 1979. The company had various route permits to ply buses as mentioned in annexure P/1 to cover 1,406 miles per day. These route permits are very important and connect various cities and towns. It was further stated that Shri Harjinder Singh, the petitioner himself, is not in "a very sound financial position. He has, therefore, sought financial help from Shri Duleep Singh, son of Phagan Singh, resident of Chopan, District Mirza-pur (U. P.), who has 30/40 years experience as a transporter. Shri Duleep Singh suffered huge losses as a result of the riots in November, 1984, in U. P. He has, therefore, decided to shift his business to the State of Punjab. He is a very rich person. He has large deposits in the shape of F. D. R.s in different banks and he is prepared to invest Rs. 10,00,000 to 15,00,000 in the business of the company. It was further averred that Sarvshri Amarjit Singh and Karamjit Singh, sons of Shri Ajaib Singh, who were also contributories of the company are prepared to invest a sum of Rs. 5,00,000 in the company. They own a large fleet of trucks and buses. They have got vast experience in the transport business. It was asserted that with the financial help of the aforesaid gentlemen, the amount due to the petitioning creditors in C. P. No. 56 of 1982 can be paid off. There is no other creditor of the company. Shri Harjinder Singh undertook to pay off any legal and valid dues of any creditor. It was, therefore, prayed that the winding up proceedings as regards the company should be stayed for a period of five years so that the business of the company could be resumed and all financial matters settled. The petitioner also undertook to submit a report about the progress of the business of the company to the official liquidator regularly.

4. C. P. No. 125 of 1986 came up for motion hearing before G. C. Mital J. on November 20, 1986, when notice of the same was issued to the official liquidator

for December 11, 1986. The official liquidator submitted his report in the form of a reply on December 11, 1986, wherein he stated that he had no objection if an opportunity is given to Sarvshri Harjinder Singh and Duleep Singh to resume the business of the company. He recommended that the winding up proceedings may be stayed for a period of three years and not five years. He, however, laid down the following conditions for acceptance of the prayer made in the petition : --

- (i) winding up of the company may be stayed for a period of three years ;
- (ii) that the affairs of the company may be entrusted to Shri Duleep Singh along with Sarvshri Harjinder Singh, Amarjit Singh and Karamjit Singh ;
- (iii) that the company be allowed to be run by Shri Duleep Singh with the help of Sarvshri Amarjit Singh and Karamjit Singh under the supervision and control of the official liquidator for the above said period of three years. The petitioners should also be directed to file in the office of the official liquidator quarterly returns of accounts ;
- (iv) that the petitioning creditors be allowed to be paid through the official liquidator ;
- (v) that this court may pass any other orders as are deemed fit and proper in the circumstances of the case.

5. On considering the above report of the official liquidator, G. C. Mital J. allowed C. P. No. 125 of 1986 by making the following order on December 11, 1986:

"Reply has been filed by the official liquidator. Counsel for the petitioner and the official liquidator are agreed that the winding up proceedings may be stayed for three years subject to the conditions mentioned in the prayer clause of the reply filed by the official liquidator. Ordered accordingly. Copy of this order be sent to the Registrar of Companies."

6. It appears that Shri Duleep Singh, the financier, could not get on with Sarvshri Harjinder Singh, Amarjit Singh and Karamjit Singh. He, therefore, filed C. A. No. 123 of 1987 by taking resort to the provisions of Section 466 of the Act read with rule 9 of the Rules. He prayed that the order dated December 11, 1986, quoted above should be modified to the extent that Shri Duleep Singh should be given complete charge of the affairs of the company so as to resume its business. He, inter alia, stated in the application that he had requested the official liquidator to convene a meeting of the petitioning creditors so that the amount due to them could be paid to them. Vide his letter dated January 18, 1987, he expressed his readiness to pay off the petitioning creditors in C. P. No. 56 of 1982. He asked for advice regarding the mode of payment and the date on which he should bring the amount for payment. He also informed the official liquidator that he had placed an order for purchase of new buses. He averred that no reply to this letter was received from the official liquidator and as a result the amount could not be paid to the petitioning creditors. He further stated that Shri Harjinder Singh called a meeting of the shareholders of the company, vide notice dated January

25, 1987. The meeting was to be held on February 22, 1987, at 11 a.m. at the registered office of the company at Samrala. The meeting was held at the given time and date under the chairmanship of Shri Harjinder Singh. Six directors of the company were also appointed. In this meeting, he and his group invested a sum of Rs. 3,38,475 for purchasing shares of the company. He also invested more than Rs. 10,00,000. On the other hand, Sarvshri Amarjit Singh and Karamjit Singh did not invest anything for the reconstruction of the company. On the contrary, they had been hampering the affairs of the company. It was stated that Sarvshri Amarjit Singh and Karamjit Singh are closely related to Shri Harjinder Singh who is not at all helping in the reconstruction of the company. Shri Duleep Singh also averred that he had approached the Motor and General Finance Company, Delhi, which had disbursed a loan of Rs. 8,60,000 for purchase of new buses. This loan had been given on his personal guarantee. It was also alleged that instead of helping resumption of the business of the company, Sarvshri Amarjit Singh and Karamjit Singh took away a new bus purchased by him for the company from the bus stand at Samrala and kept it at Khanna. The conductor of the bus was also taken away by them. He filed a habeas corpus petition against them. The detenu, i.e., the conductor, was recovered from their premises at Khanna. The new bus was also found lying at their premises by the warrant officer appointed by this court. The bus was recovered but its new tyres had been replaced with old ones. The bus is standing at the police station, Samrala. Because of this non-co-operation on the part of Sarvshri Harjinder Singh, Amarjit Singh and Karamjit Singh, the modification of the order dated December 11, 1986, as mentioned above, was sought.

7. This petition was opposed by Sarvshri Harjinder Singh, Amarjit Singh, and Karamjit Singh. They denied all the allegations by filing a written statement dated September 29, 1987. I do not consider it necessary at this stage to refer to the averments made in this written statement.

8. C. A. No. 24 of 1987 was filed by Tara Singh and Prem Singh, petitioning creditors in C. P. No. 56 of 1982, praying for vacation of the order dated December 11, 1986, passed by G. C. Mital J. in C. P. No. 125 of 1986 staying the winding up proceedings of the company. They stated that in spite of the fact that one of the conditions laid down in the order aforesaid was that Shri Harjinder Singh along with Shri Duleep Singh shall pay off the petitioning creditors through the official liquidator, no step towards that end had been taken. They further stated that the order dated December 11, 1986, suffers from a serious irregularity, in that no notice of C. P. No. 125 of 1986 as contemplated by the mandatory provisions of rule 116 of the Rules had been given to the petitioning creditors. Here it is necessary to reproduce rule 116 *ibid*, which is to the following effect:

"116. Application for stay of winding up proceedings. --An application u/s 466 for stay of proceedings in the winding up shall be made upon notice to the parties to the winding up petition and to such other persons as the court may direct, and

where the application is made by any person other than the official liquidator, notice shall be given to the official liquidator. Where an order is made staying proceedings, the order shall direct that the applicant shall forthwith file a certified copy thereof with the Registrar of Companies."

9. It is not in dispute that notice of C. P. No. 125 of 1986 was not given to the petitioning creditors. This application of the petitioning creditors was, however, opposed by the official liquidator and Shri Harjinder Singh.

10. C. P. No. 24 of 1987 was filed by Shri Gurdial Singh, a shareholder, and now a contributory of the company. He also prayed for vacation of the order dated 11th December, 1986, passed in C. P. No. 125 of 1986, by G. C. Mital, J. He stated that the directors of the company did not file any statement of affairs u/s 454 of the Act after the winding up order was passed by R. N. Mittal, J., on August 16, 1984. The official liquidator, therefore, filed C. P. No. 56 of 1986, against Shri Harjinder Singh u/s 454(5) of the Act which is still pending. It was complained that no notice of C. P. No. 125 of 1986 had been issued to the petitioners and other shareholders of the company as required by rule 116 of the Rules. No ground existed for staying the winding up proceedings for three years. The interest of the general body of the creditors and the shareholders of the company demands that the winding up proceedings ordered by this court should be allowed to continue so that the creditors may be able to recover whatever little they can from the assets of the company. He, therefore, prayed that the order dated December 11, 1986 should be vacated and C. P. No. 125 of 1986 should be dismissed. This application was opposed by the respondents therein who filed their respective written statements.

11. At a later stage, C. A. No. 189 of 1987 in C. P. No. 125 of 1986 was filed by Shri Harjinder Singh seeking modification of the order dated December 11, 1986, passed by G. C. Mital J., to the effect that the name of Shri Duleep Singh should be omitted from the persons who are to manage the affairs of the company. He, inter alia, stated that Shri Duleep Singh never took him into confidence in the affairs of the company. Shri Duleep Singh took Rs. 2,50,000 from him and his associates for making payment to the creditors. However, no payment was made to the creditors. He provided Shri Duleep Singh with a car and driver throughout. Disputes had arisen between him and Shri Duleep Singh for the reason that he had not paid the creditors which was one of the primary conditions for staying the winding up proceedings. Instead, Shri Duleep Singh has committed acts of malfeasance and misfeasance and he is dishonestly dabbling with the financial affairs of the company. He has submitted a report to the official liquidator which has been attached with the rejoinder to C. A. No. 123 of 1987 showing the payment of salaries of Rs. 41,744.07 while there is no employee of the company. He has further shown that an amount of Rs. 34,997.38 had been spent on the repairs to the bus stand. In fact, no such expenditure had been incurred. He had further shown that legal expenses to the tune of Rs. 44,007 have been incurred while in fact no such expenditure has been incurred by the company. He has

falsely shown that he has paid Rs. 34,648 to the creditors which is not a fact. He has also shown to have spent Rs. 28,802 on furniture. In fact, no furniture was purchased. He has debited the company with travelling expenses to the tune of Rs. 1,23,357. In fact no such expenditure could have been incurred on behalf of the company. Besides, he has taken a loan of Rs. 12,72,800 from Motor and General Finance. The figure has been inflated. In fact, bus chassis have been purchased for Rs. 8,72,000 only. Four chassis were purchased. Two out of them have been taken back by the financier. One chassis with a cheap body is lying at the police station, Samrala, since July 7, 1987. The fourth chassis with the body built on it had also been taken back by the financier. He has floated shares for Rs. 3,34,475 which, according to him, have been purchased by his group. In fact, after the order of winding up of the company, no such shares could be floated or purchased. In these circumstances, the prayer mentioned above has been made in this application.

12. Notice of this application was given to the counsel for Shri Duleep Singh and to the official liquidator. However, no reply to the same has been filed by either of them.

13. On December 15, 1987, when C. A. No. 24 of 1987 filed by the petitioning creditors came up before me, their counsel, Shri Surjit Singh, stated that in case condition No. (iv) in the order of G. C. Mital J., dated December 11, 1986, to the effect that the petitioning creditors should be paid through the official liquidator is satisfied by payment of the amount due to them along with the interest calculated at 12 per cent, per annum, they shall not press their application. Shri A. C. Jain, appearing for Shri Duleep Singh, who himself was present in person in court, stated that a sum of Rs. 67,016 payable to the petitioning creditors along with interest due thereon shall be deposited by Shri Duleep Singh with the official liquidator within one month. On the application, I ordered that if the amount is so deposited by Shri Duleep Singh with the official liquidator, the latter shall make payment of the amount due to the petitioning creditors along with interest within 15 days. To ascertain that the parties do abide by their statements, I adjourned this application to February 19, 1988. When the arguments in all these connected cases were heard by me on May 11, 1988, it was not disputed that the aforesaid amount was not deposited by Shri Duleep Singh with the official liquidator and as a result the latter could not satisfy the claims of the petitioning creditors. Mr. Bhagirath Dass, learned senior advocate for Shri Duleep Singh, however, stated that in case his application, C. A. No. 123 of 1987, is allowed, he shall readily deposit the amount for payment to the petitioning creditors within a couple of days."

14. On December 18, 1987, while hearing arguments in C. A. No. 123 of 1987, the first meeting of the company allegedly held on February 22, 1987, and the proceedings recorded as a result was questioned by counsel for Shri Harjinder Singh. Likewise, the proceedings of the meetings of the board of directors of the company allegedly held on February 22, 1987, May 5, 1987, July 5, 1987, and

September 1, 1987, were also styled as a made-up affair by his counsel. The claim made by Shri Duleep Singh in this application to the effect that he had so far invested a sum of Rs. 22,34,172 to revive the company and bring it back to business was also seriously challenged. On the other hand, the claim of Shri Harjinder Singh that he and his associates had paid Rs. 2,50,000 to Shri Duleep Singh to run the affairs of the company was totally denied by the latter. I, therefore, directed the official liquidator to go into the accounts of the company maintained by Shri Duleep Singh as also the vouchers supporting the expenditure incurred so far and make his report. He was also required to scrutinise the minutes book as regards the meetings above mentioned and submit his comments.

15. The official liquidator submitted his report, vide letter dated January 12, 1988. Therein, he, inter alia, reported that the proceedings of the meeting of the company dated February 22, 1987, under the chairmanship of Shri Harjinder Singh did take place but the proceedings recorded in the original minutes book and those given in the photostat copy filed in this court and given to the official liquidator do not agree with each other in so far as the heading and signatures were concerned. He further reported that in the board meeting held on February 22, 1987, Shri Duleep Singh was elected as managing director of the company and 13,539 shares payable at Rs. 25 per share were allotted to 15 persons including Shri Duleep Singh himself, who got 3,939 shares. In the board meeting on May 5, 1987, Sarv shri Duleep Singh and Harjinder Singh have signed at the end of the proceedings under date July 5, 1987. Another board meeting dated September 1, 1987, is signed by Shri Duleep Singh alone at the end of the proceedings.

16. On a scrutiny of the accounts, the official liquidator reported that Shri Duleep Singh produced an audited balance-sheet for the period from December 15, 1986, to September 30, 1987, annexures I and J to the report. On scrutiny of the same, the official liquidator found that rent amounting to Rs. 5,600 for office premises were allegedly paid to one Shri Kulwant Singh. Shri Duleep Singh, however, produced three receipts of Rs. 700 each signed in Urdu for a total amount of Rs. 2,100. For the balance amount, no receipt had been produced. Again, salaries to the tune of Rs. 41,744.07 was shown to have been paid by Shri Duleep Singh. A register of the employees was produced to show that from December, 1986, to August, 1987, a sum of Rs. 35,456.07 had been paid to the employees against temporary receipts. The difference of Rs. 6,288 remained unaccounted for. A sum of Rs. 34,997.38 was shown to have been spent on the repair of the Bus Adda. However, no supporting voucher for this expenditure had been produced. Legal and professional expenses to the tune of Rs. 44,007 were shown to have been incurred. However, a receipt for Rs. 4,800 only was produced. The balance amount of Rs. 39,207 remained unaccounted for and unverified. A sum of Rs. 34,648 was shown to have been paid to the petitioning creditors. Under the orders of G. C. Mital J., dated December 11, 1986, the amount due to the petitioning creditors was required to be paid to them through

the official liquidator. In any case, no proof of this payment had been furnished. Inauguration expenses to the tune of Rs. 14,999.95 were shown to have been incurred but no supporting voucher "had been produced. It was alleged that the same had been stolen away. Printing and stationery charges of Rs. 9,700 were alleged to have been paid but no receipt was furnished and these amounts stood unaccounted for. Furniture and fixtures for Rs. 28,802.30 were also unaccounted for in that no proof of the same had been produced. Likewise, no receipt for the preliminary expenses allegedly incurred to the tune of Rs. 10,370.75 had been produced. As regards the travelling expenses for Rs. 1,23,357.70, Shri Duleep Singh could not produce any evidence in support of this expenditure. No tickets, receipts/registers were produced in support of the same. As regards expenditure on vehicles of Rs. 14,24,307.80 alleged to have been incurred, it was found that a sum of Rs. 12,72,800 was shown to be the liability of the company on account of the secured loan in respect of four buses purchased through Motor General and Insurance P. Ltd., New Delhi. However, the balance amount of Rs. 1,51,507.80 remained unverified as no documentary proof of the same had been produced. Further, an advance of Rs. 40,000 for body building had been shown. It was, however, found that this had been paid in excess to Super Star Engineering Company, Delhi, and no steps had been taken to record this amount. A sum of Rs. 3,100 had been shown to have been paid to Shri D. R. Aggarwal, advocate, but no receipt in support of the same had been produced. This amount thus remained unverified. As regards hire-purchase charges, etc. to the tune of Rs. 4,12,800, receipts for Rs. 3,47,400 had been produced which show that payment had been made to Super Star Engineering Company, Delhi. However, a sum of Rs. 65,400 remained unaccounted for. As regards investment of Rs. 9,59,522 allegedly made in the company by Shri Duleep Singh and his associates, the official liquidator reported that ordinarily, under the accounting principles, this amount should have been credited into the bank account of the company in the first instance. Thereafter, the amount required for day-to-day expenses should have been withdrawn by drawing cheques. This had, however, not been done. Only a sum of Rs. 1,30,000 is shown to have been deposited as per entry in the pass book of the company on March 13, 1987. It is not known as to in what way the balance amount of Rs. 8,29,522 had been spent without crediting to the company's account. Thus, this amount remained unverified. Lastly, it was observed that in the board meeting held on February 22, 1987, shares numbering 13,539, payable at the rate of Rs. 25 per share were allotted and share certificates issued to the allottees. The amount of share money of Rs. 3,38,475 was not at all deposited with the bank in the account of the company which is a statutory requirement. The pass book of the company has been enclosed with the report as annexure K.

17. The official liquidator further reported that Sarvshri Harjinder Singh, Amarjit Singh and Karamjit Singh could not prove that they paid a sum of Rs. 2,50,000 for bringing the business of the company back into operation. They could not produce any documentary evidence in support of their claim. All that they could

say orally was that payment of Rs. 1,40,000 was made by Shri Amarjit Singh to Shri Duleep Singh in the presence of certain persons, Likewise, the amounts of Rs. 1,25,000, Rs. 15,000 and Rs. 49,000 were paid on different dates. Again, a sum of Rs. 61,200 was claimed to have been paid by Shri Harjinder Singh to Shri Duleep Singh. There is, however, no documentary evidence to support any of these claims. Thus, the total amount of Rs. 2,50,000 claimed to have been invested by these persons for the business of the company remained unverified.

18. The above report of the official liquidator reflects a very sad state of affairs. It appears that Sarvshri Harjinder Singh and Duleep Singh did not understand the purport of the order passed u/s 466 of the Act on December 11, 1986, or else they intentionally observed it in its breach. When a winding up order is passed, it puts an end to the powers of the directors of making calls and it operates as a discharge of all officers of the company including the directors and the employees u/s 445(3) of the Act. In law, a company which is ordered by the court to be wound up is represented by the official liquidator for all purposes except where the order of winding up or appointment of official liquidator is itself under challenge.

19. In exercising the power u/s 466 of the Act, the court, so far as possible, follows the principle applicable to insolvency proceedings relating to an individual. In staying the winding up proceedings, the court usually enquires whether trading operations of the company have been fair and have regard to the commercial morality of the company. The court is generally empowered to make an order u/s 466 of the Act for stay to enable the company to frame a scheme of arrangement or reconstruction or amalgamation.

20. In the present case, however, it appears that both Shri Duleep Singh and Shri Harjinder Singh have misused the order of stay of winding up proceedings.

21. u/s 428 of the Act, the holders of the shares of a company which is wound up no longer remain shareholders. They, in fact, become contributories liable to contribute to the assets of the company in the event of its winding up. There was, therefore, no occasion for Shri Duleep Singh and his associates to float new shares, 13,539 in number, at Rs. 25 per share. Further issue of capital is permitted by the provisions of Section 81 of the Act only. These provisions were neither attracted to the given circumstances nor was the procedure laid down therein followed for allotment of further, shares. It is a statutory requirement u/s 69 of the Act that all moneys received from the applicants for shares should be deposited and kept deposited in a scheduled bank. This admittedly, has not been done. It appears that without understanding the legal position, Shri Duleep Singh tried to take over the control of the company by floating further shares and their purchase by his own group. I am doubtful whether the holders of these new shares shall be treated as contributories and can be required by the court u/s 470 of the Act to pay the money to satisfy the debts and liability of the company in their capacity as contributories.

22. The above discussion shows that the only substantial investment which has been made is that of the secured loan of Rs. 12,72,800 arranged by Shri Duleep Singh through Motor and General Finance Private Limited, New Delhi, for short "the financiers". The financiers have already taken under their control two chassis for new buses and one chassis with a partly or fully built body. One bus with new chassis and the body built on it is standing at the police station, Samrala, because of the dispute between the parties. Shri Duleep Singh and Shri Harjinder Singh did not abide by the conditions laid down by the order dated December 11, 1986. They did not pay the petitioning creditors through the official liquidator. In fact, a bogus debit to the account of the company has been made by Shri Duleep Singh claiming that he had paid Rs. 34,648 to the petitioning creditors. This action is clearly despicable. The affairs of the company were entrusted to Shri Duleep Singh along with Sarvshri Harjinder Singh, Amarjit Singh and Karamjit Singh. Instead of co-operating with each other, they fell out, and started raising false financial claims against each other. They did not work under the control and supervision of the official liquidator nor did they file quarterly returns of the accounts with him. I am thus satisfied that neither Shri Duleep Singh nor Shri Harjinder Singh and his associates did abide by the order dated December 11, 1986. Therefore, none of them deserves to run the affairs of the company to the exclusion of the others or collectively. I accordingly dismiss C. A. No. 123 and C. A. No. 189 of 1987 in C. P. No. 125 of 1986.

23. As regards C. P. No. 24 of 1986, I am of the considered view that Shri Gurdial Singh who is simply one of the contributories of the company in liquidation has no right to a notice of C. P. No. 125 of 1986 under Rule 116 of the Rules. He, therefore, has no locus standi to maintain this petition which is consequently dismissed. At the same time, I find force in C. A. No. 24 of 1987 in C. P. No. 56 of 1982, filed by the petitioning creditors. Their grievance that they were not given any notice of C. P. No. 125 of 1986 and were not afforded an opportunity of being heard before the order dated December 11, 1986, was passed is well founded. Had they been provided with an opportunity, they would have placed before the court their own view point and they would have properly watched their interest. In fact, the order dated December 11, 1986, in C. P. No. 125 of 1986 passed behind their back has virtually robbed them of the fruits of the legal battle which they fought in C. P. No. 56 of 1982 and which culminated in the order of winding up of the company dated August 16, 1984. This view is reinforced by the fact that in spite of a categorical condition laid down in the order dated December 11, 1986, that the petitioning creditors should be paid through the official liquidator, Sarvshri Harjinder Singh and Duleep Singh did not deposit even a penny with the official liquidator for payment to the petitioning creditors. They have thus been left high and dry. Neither of these two gentlemen has been able to establish his bona fides. I, therefore, find force in the above application of the petitioning creditors and allow the same.

24. As a result, the order dated December 11, 1986, passed in C. P. No. 125 of 1986 is recalled. The winding up proceedings of the company shall be taken up

by the official liquidator and finalised expeditiously. The official liquidator should take over control of the affairs of the company and proceed in accordance with law. In order to avoid any further litigation between the parties, it is made clear that the bus with the new chassis and body which is standing at the Police Station, Samrala, should be handed over to the financiers so that they can sell the same and appropriate its proceeds against the secured loan" which they had advanced to the company through Shri Duleep Singh. This order shall have effect irrespective of any civil or criminal proceedings which the rival claimants herein might have instituted against each other.

25. I, however, make no order as to costs in any of these applications and petitions. A certified copy of the order shall be sent by the official liquidator to the Registrar of Companies.