

(1995) 12 CAL CK 0035
In the Calcutta High Court

Case No : Company Application No's. 527 and 528 of 1995 connected with
Company Petition No. 170 of 1992

UCO Bank

APPELLANT

Vs

Concast Products Ltd. (Now in Liquidation)

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Companies Act, 1956 — Section 446(1), 446(2), 446(3)

Citation : (1996) 1 CALLT 266 : 100 CWN 717

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

Shyamal Kumar Sen, J.—By consent of the parties, this application is treated as an Adjourned Motion" in the day's list.

2. The question involved in this application is that in view of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 if the suit pending in this Court was transferred to the Debt Recovery Tribunal the same should be brought back to this Court in view of the fact that subsequently the defendant company went into liquidation during the pendency of the suit.

3. Mr. Debdatta Sen Learned Advocate for the Bank has referred to section 446(1) (2) & (3) of the Companies Act and has submitted that in view of the clear provisions in the Section the proceeding pending before the Debt Recovery Tribunal should be transferred to this Court.

4. The Official liquidator has appeared and submitted that in view of the specific provisions in Section 446 of the Act the proceeding before the Debt Recovery Tribunal should be transferred to this Court, otherwise complications will arise at the time of execution.

5. A further question arises what is the effect of Section 446 of the Companies Act on such a proceeding. The said Section is set out herein below:

Section 446: "(1) When a winding-up order has been, made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding 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 having jurisdiction to entertain, or dispose of-

(2) The Court which is winding-up the Company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made u/s 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to arise in course of the winding-up of the company;

whether such suit or proceeding has been instituted, or is instituted, or such claim or question as arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960;

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that court.

(4) Nothing in Sub-section (1) or Sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

6. It is clear from the provisions contained in Section 446 of the Act that no suit or proceeding shall be proceeded with against the company (in liquidation) except with the leave of Court and further in view of the clear provisions under Sub-section (3) of Section 446 of the Act the pending proceeding against the company (in liquidation) notwithstanding any provisions contained in any other Act ought to be transferred to the Court which is in seisin of the winding-up proceeding. In that view of the matter, in my view, the said suit or proceeding pending before the Debt Recovery Tribunal should be transferred to this Court since the winding-up proceeding is pending in this Court.

7. Accordingly, the Registrar, Original Side of this Court is directed to call for the records in Suit No. 735 of 1989 being registered as T. A. No. 168 of 1995 from the Debts Recovery Tribunal. The Registrar, O. S. is also directed to take expeditious steps in the matter and Registrar, Debt Recovery Tribunal is directed to take appropriate steps for transfer of the records in Suit No. 735 of 1989 being registered as T.A. 168 of 1995 for transfer of the suit to this Court.

8. The learned advocate does not make any submission on other prayers made in the Judge's Summons and it is made clear that I have not adjudicated on the merits of the said prayers at this stage. It will be open to the applicant to make any application on the basis of the said prayers after the records are sent back to this Court.

9. The Registrar, O. S. of this Court, the Registrar, Debt Recovery Tribunal and all parties concerned are to act on a signed xerox copy of this dictated order on the usual undertaking.