Argha Sen Vs. Interra Information Technologies (India) (P.) Ltd.

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Court : Delhi

Decided On : Sep-12-2005

Reported in : [2007]75SCL150(Delhi)

Judge : A.K. Sikri, J.

Acts : Limitation Act - Sections 18; Companies Act, 1956 - Sections 43, 433, 434, 434(1), 439, 439(1) and 529A; Bankruptcy Act, 1001(11); Administrative Law

Appeal No. : CP Nos. 244 and 245 of 2004 and CA Nos. 1046 and 1047 of 2004

Appellant : Argha Sen

Respondent : interra Information Technologies (India) (P.) Ltd.

Advocate for Def. : Daleep Goswami and ; Sandeep Kumar, Advs.

Advocate for Pet/Ap. : Rahul Gupta and; Rakesh Makhija, Advs

Judgement :

A.K. Sikri, J.

1. The two petitioners in these petitions, which have been filed against the same respondent-company, were the employees of the respondent-company. They allege that their terminal dues are not paid in spite of statutory notice and, thereforee, it be deemed that the respondent-company is unable to pay the debt

and it be ordered to be wound up. We may first take note of the bare facts of the two cases making the claims.

2. Petitioner in his case was appointed as Vice-President on 16-1-2001. According to the averments made in the petition, he had to leave the services of the company because he was told that the company was winding-up its 'business group division' where the petitioner was working directly. The respondent was not in a position to pay up his salary dues, etc., and, thereforee, requested the petitioner to submit his resignation without insisting for full and final payment assuring that salary and dues, etc., would be paid as soon as funds were available. On this assurance the petitioner submitted his resignation on 13-8-2001. Thereafter the managing director of the company, vide letter dated 2-9-2001, reiterated his assurance to pay the dues. However, the needful was not done. The petitioner, in these circumstances, sent statutory notice dated 28-7-2004 calling upon the company to pay a sum of Rs. 3,54,315 on account of unpaid salary, perks and allowances. The break-up of this amount is as under:

Rs.Gross Salary due June to August 2001 3,55,800Less : Deductions (PF and profession tax) 16,200----------3,39,600----------Allowances due:-LTA 15,737Less : Leave encashment 3,55,337---------- 59,772 ----------2,95,565Add: Unpaid reimbursement of expenses 58,750----------Total 3,54,315----------

Interest of Rs. 2,55,107 was also payable. The company in its reply dated 18-8-2004 sent through its advocate, denied the liability to make any such payment. According to the petitioner, as the reply was not bona fide and afterthought plea was raised to deny legitimate dues of the petitioner, this petition has been filed.

3. The respondent-company, in reply to this petition, has denied this liability on the ground that the petitioner was appointed as Vice-President of Interra Software (India) (P.) Ltd. ('ISIPL') with effect from 16-1-2001 and his services from the said company were terminated with effect from 31-3-2001. thereforee, there is no legal relationship of debtor and creditor between the petitioner and the respondent-company and liability, if any, is that of Interra Information Technologies Enabled Services (P.) Ltd. ('UTESPL'), which is a separate legal entity. Even the

resignation was accepted by the management of IITESPL. It is also mentioned that IITESPL was amalgamated/merged as a transferor-company with the respondent -company pursuant to a scheme of amalgamation approved by this Court. thereforee, the respondent-company has no liability. Apart from this submission, there is a plea of limitation raised stating that the alleged debt in any case has become time-barred. Another objection to the maintainability of the petition is taken on the ground that no such petition for winding-up is maintainable at the instance of an employee of a company.

4. Petitioner in this case was employed as senior Vice-President. He has also given the same reasons which compelled the petitioner to submit his resignation on 13-8-2001 on persuasion by the respondent on the ground that business division was being wound up and on assurance that petitioner's dues would be settled as and when funds were available. Under same circumstances he issued legal notice dated 28-7-2004 claiming a sum of Rs. 4,29,252 as per the following details:

Rs.Gross salary due June to August 2001 3,69,250Less : Deductions (PF and profession tax) 27,330----------Allowances due: 3,41,920- LTA 15,737- Leave encashment 22,613Add: Unpaid reimbursement of expenses 48,982---------- Total 4,29,252----------

Besides the above-said amount interest of Rs. 3,09,061 is also claimed. To the aforesaid notice the respondent has given reply dated 18-8-2004 denying the liability. In reply to the petition the defense raised by the respondent-company is identical to the defense raised in earlier petition and note whereof has been taken above.

5. It may be noted that the petitioners have themselves admitted in their respective petitions that they were employed by IITESPL. They have also stated that pursuant to a scheme of amalgamation sanctioned by this Court vide orders dated 25-8-2003 the said company was taken over by the respondent-company. thereforee, on this basis it is stated that the liability of the transferor-company with which the petitioners were employed becomes that of the transferee-company, namely, the respondent-company and the petitioner would be creditors of the

respondent-company as far as payment of their salary and perks, etc., is concerned which remained unpaid. This submission of the petitioners is well-founded. Merely because the company with which the petitioners were employed has been amalgamated with the respondent-company, the respondent-company cannot shy away from assuming the liability of paying the creditors of the transferor-company. thereforee, the submission of the respondent that liability, if any, is of the transferor-company and there is no relationship of debtor and creditor, would not hold any water. It may be noted that the respondents have not produced on record the scheme of amalgamation which would have shown takeover of liabilities of the transferor-company by the respondent-company and, thereforee, adverse inference can be drawn against the respondent-company even on this ground.

6. Insofar as the argument of limitation is concerned, the petitioner have produced on record copy of e-mail dated 2-9-2001 sent by the managing director of IITESPL wherein it is, inter alia, slated as under:

I received your e-mail. Thanks for your co-operation. As you arc aware, we have lost over 1 crore rupees in DBG business to date. The money, we received from P and G, is much lower than our Bombay office expenses. We just do not have money at present to pay for all DMG folks, until we recover outstanding payments from the vendors - HCL, Mantra and Lafarge.

Our plan is to pay back the dues in phased manner; as we recover some money, we will start paying the folks their outstanding dues. I am committed to pay back everybody's all legal dues - the question is when.

I will highly appreciate if you and Abeer can help us collecting the outstanding dues from all vendors. This will help us to pay your and others' dues as quickly as possible.

7. In an unconditional manner and in unambiguous and categorical terms liability to pay the dues of the petitioners have been admitted in this letter. Once there is acknowledgement of debt, three years for the purpose of computing the limitation period in view of Section 18 of the Limitation Act, for the purpose of limitation

would start from this date. Petitions were filed on 31-8-2004 and, thereforee, these petitions would be within the period of limitation.

8. With this I revert to the interesting plea raised by the respondent about the maintainability of winding-up petition at the instance of an employee, which needs detailed consideration as it was this issue which was argued by the learned Counsel for the respondent with utmost vehemence.

9. Submission of learned Counsel for the respondent-company was that an employee is not a 'creditor' within the meaning of Section 439 of the Companies Act, 1956 ('the Act') and winding-up petition under Section 433(e) of the Act could be filed only at the instance of a creditor. In support of this plea he relied upon the following judgments : (i) National Textile Workers Union v. P.R. Ramakrishnan : (1983)ILLJ45SC , (ii) Mumbai Labour Union v. Indo French Times Industries Ltd. [2001] 45 CLA 412 : [2002] 38 SCL 924 (Bom.), and (iii) Pawan Kumar Khullar v. Kaushal Leather Board Ltd. : AIR 1996 MP85 . He also submitted that it was for the petitioner to prove that he was a 'creditor' and the Court could refuse to pass winding-up order in the absence of any such petition. Reliance was placed on the judgment of the Calcutta High Court, on this proposition, in the case of Ram Kumar Aganvalla v. Buxar Oil & Rice Mills Ltd. : AIR1960 Cal764 . He also submitted that claim by an employee could not be treated as 'debt' as held in B.R. Somashekarappa v. Vignam Industries Ltd. .

10. Learned Counsel for the respondent on the other hand, submitted that under Section 433(e) of the Act a company could be wound up by this Court if it is established that such a company is unable to pay its debts. Deeming provision of inability to pay the debt was attracted if the company neglected to pay the debt for a period of three weeks after the demand.

11. According to the Learned Counsel, dues payable to an employee would be covered by the expression 'debt' and, thereforee, provisions of Section 433(e) of the Act would be applicable. For definition of 'debt' he relied upon Black's Law Dictionary. His submission was that the Courts had given broader meaning to the term 'debt' in various pronouncements.

12. Section 433 of the Act stipulates the circumstances in which company may be wound up by the Court. One of the grounds stipulated in Clause (e) of Section 433 permits the Court to wind up a company if the company is unable to pay its debts. Section 434 is a deeming provision and lays down the circumstances in which it would be deemed that a company is unable to pay its debts. As per Clause (a) of Sub-section (1) of Section 434, this deeming provision would be attracted if after the notice given by 'creditor' to the company making a demand to pay the sum due, company neglects to pay the same or to secure or compound for it to a reasonable satisfaction of the creditor for three weeks after the service of notice. Section 439 of the Act permits different categories of persons who can file a petition for winding-up and Clause (b) of Sub-section (1) of Section 439 stipulates that petition for winding-up can be presented by any creditor or creditors. Conjoint reading of the aforesaid, in our content, would show that a petition under Section 433(e) would be maintainable when (a) there is 'debt' payable by the company; (b) this debt is payable by a creditor; and (c) company must be unable to pay the debt.-Pradeshiya Industrial & Investment Corporation of UP v. North India Petro Chemicals Ltd. [1994] 13 CLA 363 (SC).

13. The first question is as to whether non-payment of dues of an employee would constitute debt. Black's Law Dictionary defines the term 'debt' as under:

Debt. - A sum of money due by certain and express agreement. A specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of creditor to receive and enforce payment. State v. Ducey 25 Ohio Appl. D50, 266, NE 2D 233, 235. Liability on a claim. Bankruptcy Act, 1001(11).

14. The book of Words and Phrases defames the expression 'debt' in various contexts. General connotation of the expression 'debt' as laid down in various judgments, is reproduced below:

Ordinarily, the word 'debt' imports a sum of money arising upon a contract express or implied. In its more general sense, it is defined to be that which is due from one person to another, whether money, goods or services : that which one person to another, whether money, goods or services : that which one person is bound to pay or perform to another Garsson v. American Diesel Engine Corporation 39 NE

2D 566, 569, 310 Mass 618....

The idea of a 'debt' in the constitutional sense of imposing limitation on indebtedness, is that an obligation has arisen out of contract, express or implied, which entitles the creditor unconditionally to receive from the debtor a sum of money, which the debtor is under a legal, equitable, or moral duty to pay without regard to any future contingency - State Office Bldg. Commission v. Trujillo 120 P.2d 434, 442, 46 NM 29.

The word 'debt' has several recognised meanings. Any financial obligation is a debt in a broad and general sense; but, where the term is used technically and restrictively, it implies an ascertained amount, and sometimes, as well, a foundation in contract. The same distinction exists in the use of the word 'creditor' which may mean one having any character of claim against another, or one having a liquidated demand based on an agreement - Trunkey v. Johnson 121 P. 2d 247, 249, 154 Kan. 725.

15. The expression 'debt' is defined by the Supreme Court also in the case of Kesoram Industries & Cotton Milk Ltd. v. CWT : [1966]59ITR767(SC) in the following words: 'a debt means a sum of money which is now payable or will become payable in future by reason of present obligation deplume in praesenti, Solved in future. A debt involves an obligation incurred by the debtor and the liability to pay a sum of money in present or future. The liability must, however, be to pay a sum of money i.e., to pay an amount which is determined or determinable in the light of factors, existing on the date when the nature of the liability is to be ascertained.'

16. It cannot be disputed that non-payment of salary/terminal dues would give a right to an employee to bring an action against the employer, i.e., an actionable claim. Here we are concerned with a private employer. The Supreme Court has gone to the extent of holding that even salary payable to a Government servant would constitute debt and earlier thinking that a Government servant cannot sue for his salary, it being bounty of the Crown and not a contractual debt, is no more valid, pleasure doctrine would not apply in such a case and Government servant would be within its right to maintain a suit against Government for recovery of his

earned salary/dues, which is debt payable to the employee.- Union of India v. Tulsiram Patel [1985] 3 SCC 399 . thereforee, it can be concluded that the dues, which are recoverable by the petitioner from the respondent-company, are the 'debts'. As a corollary, the employee whose debts are not paid shall have to be treated as a 'creditor'.

17. At this stage I may take note of two judgments, one is the judgment rendered by Madhya Pradesh High Court in Pawan Kumar Khullar's case (supra), wherein the Madhya Pradesh High Court drew distinction between 'debt' and 'remuneration' and held that outstanding salary cannot be treated as debt. It is a short judgment and the entire discussion contained on this aspect is in para 4, which makes the following reading:

4. There is difference between debt and salary. The salary is the remuneration paid to a person or employee in lieu of services rendered by him/her whereas debt is not remuneration. Debt is something which is borrowed by a person on settled terms and conditions and settled rate of interest and can be re-settled between the parties.

This judgment, obviously, was relied by the Learned Counsel for the respondent to contend that the petitioners in the present case could not say that the outstanding salary payable to them was debt.

18. Per contra learned Counsel for the petitioner relied upon the judgment of Andhra Pradesh High Court in Capt. B.S. Demogray v. VIF Airways Ltd. [1998] 94 Comp. Cas. 291 : 6 SCL 349. In this case Andhra Pradesh High Court took note of the aforesaid judgment of Madhya Pradesh High Court and dissented there from while holding that the outstanding salary would also constitute a debt. For distinction of 'debt' judgment of the Supreme Court in the case of Kesoram Industries & Cotton Mills Ltd. (supra) was relied upon and it was held that the unpaid salary of an employee is liable to be recovered from the employer because the employer is obliged to pay the employee's salary for the services rendered by the employee. The relevant observations in this judgment are as under:

The claim of short delivery of materials has been held to be debt in the case of Kundremukh Iron Ore Co. Ltd. v. Kooky Roadways (P.) Ltd. . The unpaid salary of an employee is liable to be recovered from the employer, because the employer is obliged to a pay it to the employee for the services rendered by it. As noted above, a debt is a sum which is to be recovered from a person who is obliged to pay the same and, thereforee, no lien of demarcation can be drawn between a remuneration due to be recovered and a sum which is to be recovered because a person has to pay for the price goods which has been purchased by him on credit. With respect I am unable to agree with the view taken by the learned Single Judge of the Madhya Pradesh High Court in the case of Pawan Kumar Khidlar v. Kaushal Leather Board Ltd. : AIR 1996 MP85 . I, thereforee, hold that an unpaid salary is also a debt.

19. For the reasons given by me hereinabove, I am in agreement with the view expressed by Andhra Pradesh High Court. I cannot persuade myself to accept the view of Madhya Pradesh High Court which draws illusory distinction between 'remuneration' and 'debt'.

20. Learned Counsel for the respondent then, argued that in any case an employee cannot file a petition for winding-up as he is not a person covered by Section 439 of the Act. In support of this proposition Learned Counsel for the respondent relied upon the judgment of the Apex Court in the case of National Textile Workers' Union (supra) as well as judgment of the Bombay High Court in the case of Indo French Times Industries Ltd. (supra). The specific portion of the judgment in the case of National Textiles Workers' Union (supra), on which great thrust was laid by the learned Counsel for the respondent is contained in para 7 and reads as under:

7...The first provision relied upon by respondent Nos. 6 to 9 was Section 439 which, inter alia, provides as to who shall be entitled to make an application for winding-up of a company. It is no doubt true that this section confers the right to present a winding-up petition only on certain specifically enumerated persons and the workers are not included in that enumeration and, thereforee, obviously, the workers have no right to prefer a petition for winding-up of a company. The right to

apply for winding-up a company being a creature of statute, none other than those on whom the right to present a winding-up petition is conferred by the statute can make an application for winding-up a company and no such right having been conferred on the workers, they cannot prefer a winding-up petition against a company....

21. In first blush, when the aforesaid observations are, read in isolation the impression which would be gathered is that workers have no right to file the winding-up petition as they do not come within the scope of Section 439 of the Act. However, when these observations are, read in totality and the context in which they were made in the said judgment of the Hon'ble Supreme Court, their import would be clearly discernible. thereforee, we shall have to first understand the issue involved in this case which the Apex Court was called upon to decide and the circumstances which led the court to make those observations. At the outset it may be noted that workers had not filed the winding-up petition. Winding-up petition was filed against the company by one group of shareholders as serious disputes had arisen between two groups of shareholders, who were equally represented on the Board of Trustees and these disputes could not be settled. The petition was filed under Sections 433(e) and (f). Thus, one ground was that the company was unable to pay its debts and 'just and equitable' clause was also pressed. In the said company petition workers union sought to intervene and wanted to oppose the prayer for winding-up. The question that arose was as to whether workers can be allowed to intervene in the petition. The Court framed this question which arose for determination in para 3 in the following manner:

3...The question, briefly stated, is : when a petition for winding-up of a company is filed in Court are the workmen of the company entitled to ask the Court to implead them as parties in the winding-up petition or to allow them to appear and contest the winding-up petition or they have no locus standi at all so far as winding-up petition is concerned and they must helplessly watch the proceedings as outsiders though the result of the winding-up petition may be to bring about termination of their services and thus affect them vitally by depriving them of their means of livelihood ?....

It is this question which the Hon'ble Court thereafter proceeded to determine and held that workers shall have right to be heard in such a petition. This conclusion was based on number of reasons. Notable among those are, well-established principles of Administrative Law warrant that no order entailing adverse consequences be made and as winding-up order may put an end the services of the workmen, they had right to be heard; the concept of a company had undergone radical transformation in the last few decades and the earlier view that the shareholders were the owners of the company had significantly eroded inasmuch as workers were also an important part of the enterprise as labour contributed a major share of the product; their role in a corporate entity had undergone a change after the doctrine of laissez fairs has given way to the social welfare economy keeping in view the provisions of the Constitution, including Directive Principles of State Policy.

21.1 After this discussion the Court proceeded to consider the argument of the petitioners against the right of the workers to be heard contending that only creditors and contributories had right to maintain a winding-up petition and, thereforee, workers had no right to intervene in a winding-up petition when no such right was spelt out in their favor in the Companies Act. Opening portion of para 7 takes note of this argument and immediately thereafter the Court has made the observation quoted above stating that Section 439 does not describe 'workers' as a category which can file a winding-up petition. After making these observations the Court answered that 'but for this exclusion of the workers from the right to present a winding-up petition, it does not follow as a necessary consequence that the workers have not right to appear and be heard in a winding-up petition filed by one or more of the persons specified in Section 439 of the Act.'.

22. Once we take note of this background fact situation, it is not difficult to spell out the true intention behind the afore-quoted observation. Workers in the said case wanted to oppose the winding-up petition. The petitioners, who had filed the winding-up petition, disputed the workers' right to participate in these proceedings. In support of their contention the petitioner relied upon Section 439 of the Act to contend that when the workers had no right to file the petition they could not intervene also. The Supreme Court held that the workers had a right to participate

in such proceedings even if they could not file the winding-up petition. While making the observation that the workers may not have right to file winding-up petition under Section 43 of the Act, the Supreme Court treated them as 'workers alone' and it was held that Section 439 does not mention the category of the workers. It may be mentioned that Section 439 stipulates various categories of persons who are competent to file a petition for winding-up. The persons specified are company itself, creditor, contributory, Registrar and in some cases Central or State Governments. In this context the Supreme Court stated that workers are not included in Section 439. However, the position of workers was 'creditor' as neither in issue nor dealt with by the Supreme Court. A worker per se may not have right to file the winding-up petition. But when he becomes a 'creditor' he will have right to file the petition as a 'creditor' which category is stipulated in Section 439(1)(b) of the Act. The judgment the Bombay High Court in the case of Indo French Times Industries Ltd. (supra) has not examined the issue from this angle. That was a case where labour union had filed the winding-up petition and it was held that a labour union cannot be called a 'creditor' to enable it to file a winding-up. While I may agree that on the facts of that case the Bombay High Court was justified in not entertaining the petition filed by the labour union, I am not able to persuade myself in the manner in which judgment of the Supreme Court in National Textile Workers' Union's case (supra) has been interpreted by the Bombay High Court. I do not agree with the extreme conclusion drawn by the Bombay High Court in para 7, which gives an impression that under no circumstances the workers can have right to prefer a petition for winding-up of a company even if they are the creditors.

23. While holding that if employees as the creditors, who have not been paid their salaries and other allowances, file a petition for winding-up, their petition would be maintainable under Section 439(1)(b) of the Act, I may enter a caveat here. Even if such a petition is maintainable, in a given case the Court may refuse to entertain the prayer for winding-up as it exercises discretionary jurisdiction. The Court would be loathe to exercise such a jurisdiction at the instance of an existing employee on worker on the ground that the worker should not make an attempt to 'bury the employer', the expression used by the Bombay High Court. It is for this reason that in the facts of that case I have no quarrel with the outcome of the petition wherein the Bombay High Court refused to entertain the petition filed by a labour union

claiming to represent the class of 'unpaid employees' collectively as creditors of the company. Additional ground was that an union cannot become the creditor as the creditor would be employees in their individual capacity.

24. Normally, thereforee, at the instance of existing employee/worker the Court may not pass winding-up order. Again this may not be a general rule and there may be instances justifying the exercise of this discretion for example, in a case where the factory/establishment is closed with no chance of revival and the workers whose dues remain unpaid and they have not been terminated either, those workers may have right to approach the court for winding-up as that would not be a case where they would be trying to 'bury the employer'. The employer is almost 'dead'. The attempt of the workers would, in such circumstances, would be to salvage whatever is possible so that assets are not frittered away and a liquidator is appointed to ensure that they get their legitimate dues under Section 529A of the Act once the company is wound up. Likewise, if a particular worker/employee is terminated or he has resigned from service but his dues are not paid, he would not be in the same category as existing workman. He would be an ex-employee who wants to recover his legitimate dues from the company. thereforee, he is, in that capacity, only a creditor and is no longer wearing another cap, i.e., of an employee. Petition at his instance would be entertained. Even if employee files the case as 'creditor' and petition is maintainable, there may be other grounds justifying refrain from passing the order of winding-up. B.K. Malhotra v. Cross Country Diu Hotels Ltd. [2005] 7 AD (Delhi) 230.

25. These petitions are filed by two ex-employees. Once it is held that they are the creditors and as creditors they have right to file petition under Section 439(1)(b) of the Act, there is no embargo in entertaining this petition on merits. thereforee, in the facts of this case I do not agree with the submission of the Learned Counsel for the company that these petitions are not maintainable.

26. Since I have rejected the contentions of the respondent-company about the maintainability of these petitions, I revert to the merits of the case. I have already concluded earlier that though the petitioners were employed by IITESPL (transferor-company) since this company merged with the respondent-company

(transferee-company) the respondent-company will have to assume the liability to pay the debt of the transferor-company as well, which is the position even as per the scheme of amalgamation. Once the liabilities are taken over by the respondent-company, it cannot state that there is no privity of contract between the petitioner and the respondent-company and the respondent-company is not liable to make the payment. thereforee, judgments in the case of Bharat Bijlee Ltd. v. National Industrial Development Corporation [2002] 39 SCL 408 (Delhi) or Bhoruka Steels Ltd. v. Suresh & Suresh Wires (P.) Ltd. will have no application. In the first case, petition was filed against a company of architects which had engaged a company for providing elevators of their client's company's building and the building owner had not paid the amount for the supplies made. It was held that there was no contract with the architects and the petition was dismissed. In the latter case, supply was made to sister concern of the company and no material could be produced on record to establish that the company was responsible for payment thereof. In the present case, the respondent-company is neither in the category of an agent of IITESPL nor its sister concern but as successor of IITESPL has taken over all its liabilities.

27. Insofar as liability to pay the amount is concerned, there is categorical admission and acknowledgement of debt in e-mail dated 2-9-2001 is not by the managing director of IITESPL. Thus, the respondent cannot contend that the petitioners have failed to prove that they are the creditors or have failed to prove the 'determined debt'. Once it is held that liability to make the payment exists, which is also crystallised, argument of the respondent alleging that the petition is mala fide and has been filed to exert pressure need to be also rejected. It is not a petition for recovery of any disputed debt. The amount in question is clearly payable by the respondent-company to the petitioners which is on account of salary and allowances, etc. In spite of giving an assurance to make the payment, the dues are not paid. The defense put forth by the respondent-company is clearly sham. thereforee, I am of prima facie view that debt is payable by the company and it is unable to pay the same.

28. In view of the circumstances explained above, following directions are given:

(a) CP No. 244/2004 is admitted to hearing. Citations shall be published in 'The Statesman'(English) and 'Jansatta'(Hindi) for 8-11-2005. The Official Liquidator attached to this Court is appointed as the Provisional Liquidator, who shall take charge of the assets and records of the company.

(b) This order shall remain in abeyance for a period of six weeks to enable the company to deposit the amount involved in both the petition in this Court.

(c) In case the amount is not deposited within six weeks, the petitioners shall take steps for getting the citations published. For publication of citations both the petitioners shall share the expenses in equal proportion. The Official Liquidator, in that eventuality, shall take immediate steps as per the aforesaid directions.

(d) In view of appointment of Provisional Liquidator in CP No. 244/2004, CP No. 245/2004 is disposed of making it clear that the orders passed in CP No. 244/2004 shall ensure to the benefit of the petitioner in CP No. 245/2004 as well and he shall also be entitled to participate in the proceedings in CP No. 244/2004 CA Nos. 1046 and 1047/2004 also stand disposed of.