

Tvs Finance and Services Ltd. Vs. Orient Vision Ltd.

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Court : Chennai

Decided On : Jan-20-2004

Reported in : [2005]123CompCas783(Mad); [2004]55SCL284(Mad)

Judge : V. Kanagaraj, J.

Acts : [Companies Act, 1956](#) - Sections 443 and 447

Appeal No. : Application No. 3471 of 2003

Appellant : Tvs Finance and Services Ltd.

Respondent : Orient Vision Ltd.

Advocate for Def. : Nithyanandam, Adv.

Advocate for Pet/Ap. : P.H. Manoj Pandian, Adv.

Disposition : Application dismissed

Judgement :

ORDER

V. Kanagaraj, J.

1. The above application has been filed praying to appoint an Advocate-Commissioner to call for offers and sell the schedule 'A' property and deposit the sale proceeds with the applicant.

2. The applicant is a creditor of the respondent company and he submits that as on 26-7-2003, an amount of Rs. 49,15,833.90 is outstanding and that no prejudice would be caused to the respondent if the 'A' schedule property, which is a house site in Bangalore is sold and on such grounds the applicant has come forward to file the above application.

3. On a perusal of the materials made available on record and the report filed by the learned Official Liquidator, it comes to be known that the respondent company was wound up by this Court on 18-9-2002 in C.P. No. 166 of 1997 and the Official Liquidator of this Court has been appointed the Provisional Liquidator to take charge of all the assets and effects of the respondent company .Therefore, as per Section 456(2) of the [Companies Act, 1956](#), all the assets and effects of the respondent debtor company are deemed to be in the custody of this Court from the date of order of winding up i.e. from 18-9-2002.

4. Further, as per Section 447 of the Companies Act, an order for winding up a company shall operate in favour of all the creditors and all the contributors of the company, as if it had been made on the joint petition of a creditor and of a contributory. Hence, the applicant, in his capacity as a creditor of a wound up company, cannot repossess the property, which is in the custody of the Official Liquidator, without adjudicating the claim of all the creditors.

5. Under Section 446(1) of the Companies Act, on a winding up order having been passed and the Official Liquidator having been appointed as the Provisional Liquidator, 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 and subject to such terms as the court may impose. Therefore, the applicant has to mandatorily get the leave of the company court where the winding up proceedings are being conducted, to proceed further in the matter. Further, under Section 453 of the Companies Act, an Advocate Commissioner, more so with the powers of a Receiver to possess and sell the properties in the custody of the Official Liquidator, cannot be appointed since the Official Liquidator himself has been endowed with powers of a Receiver, Commissioner etc. to deal with the assets and effects of the company in liquidation

irrespective of the charges.

6. In this legal backdrop, the above application for appointment of the Advocate Commissioner docs not merit acceptance and the same becomes liable only to be dismissed.

In result,

(i) the above application is dismissed.

(ii) The applicant herein is directed to get the leave of the Company Court as required under Section 446(1) of the Companies Act to proceed further in the matter as against the respondent debtor company.

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