

**(2009) 02 AHC CK 0042**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Claim Application No. 221902 of 2007 in Civil Miscellaneous Appeal No. 45180 of 2008

Air Force Naval Housing Board

APPELLANT

Vs

Official Liquidator

RESPONDENT

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**Date of Decision:** Feb. 19, 2009

**Acts Referred:**

- Companies (Court) Rules, 1959 - Rule 6, 9

**Hon'ble Judges:** Prakash Krishna, J

**Final Decision:** Dismissed

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### **Judgement**

Prakash Krishna, J.

Feeling aggrieved by the order dated 23rd of November, 2007 passed by the Claims Committee rejecting the claim of the present applicant, the present petition has been filed under Rules 6 and 9 of the Company (Court) Rules, 1959. The facts in brief are as follows:

2. Air Force Naval Housing Board (hereinafter referred to as the Board), registered under the Societies Registration Act, 1860 with the object to promote suitable housing scheme for serving Air Force and Naval on all India basis made a fixed deposit of Rs. 1 crore on 13th of October, 1986 for a period of 12 months with interest at the rate of 15% per annum with M/s. Premier Vinyl Flooring Limited.

3. The said company was ordered to be wound up by this Court by the order dated 12th of March, 2003. The Official Liquidator attached to the Court took the possession of the assets of the company. A claim for refund of principal amount with accrued interest was filed before the Claims Committee which was constituted for examining the claims of the creditors, secured and unsecured against the company in liquidation. The Claims Committee found that the present applicant was a nonsecured creditor and due to the paucity of fund rejected the claim by the order dated 23rd of November, 2007. The said order is under challenge in the present

petition. The Official Liquidator in reply submits that the authenticity of the said facts of fixed deposit receipt is subject to the production of the original receipts and verification thereof, that the claim of the applicant in accordance with the Sections 529, 529A and 530 of the Companies Act, was considered and rightly rejected.

4. Shri Dhruv Narain, advocate, learned counsel appearing in support of the present petition submits that the deposit made with the company in liquidation was in the nature of a trust. The money belongs to the applicant and there was no relation of creditor and debtor in between the applicant and the company in liquidation. Elaborating the argument he submits that the said money belongs to the applicant and as such the applicant is entitled for the same and has preferential claim over all the claims of the creditors even above the secured creditors. He submits that on the facts of the present case the law of trust came into operation and entrustment of money itself clearly created a trust for specific purpose so as to impress upon the money as a trust, express or construction in favour of the applicant. Strong relation was placed by him on *Official Liquidator v. N. Chandra Narayanan*, (1973) 43 Comp Cas 244. Shri Raj Nath N. Shukla, advocate, on behalf of the Official Liquidator, on the other hand, submits that the deposit made by the appellant was in the nature of Fixed Deposit for a period of 12 months at the rate of 15 per cent interest to mature on 30th October, 1997. It, according to him, was a commercial transaction and a relationship of creditor and debtor in between the company in liquidation and the depositor was created. The company in liquidation was authorized to utilize the money as per its requirement and had complete dominion and control over the amount. Reliance has been placed by him on a Division Bench decision of this Court in *Jessa Ram Fatehchand v. Official Liquidator and others*, AIR 1962 All 370, which has been approved by the Apex Court in *M/s. Rai Bahadur Seth Jessa Ram Fatehchand v. Om Narain Tankha and another*, AIR 1967 SC 1162.

5. Shri Om Prakash Mishra, learned counsel for secured creditors such as IFCI Ltd., IDBI Bank Ltd., etc. submits that there is no provision under the Companies Act and the Company (Court) Rules, 1959 for payment in priority to the debts like the appellant who has claimed it as a sum deposited with the company to be held in trust by the company.

6. Considered the respective submissions of the learned counsel for the parties and perused the record. Few facts which are not much in dispute that are as follows:

A sum of Rs. 1 crore was deposited by the appellant with the company in liquidation, carrying on an interest at the rate of 15 per cent per annum. The said company failed to repay the said amount on maturity i.e. on 30th October, 1997. The company has been ordered to be wound up and the Official Liquidator attached to the Court has taken possession of the assets of the Company in liquidation. The terms of deposit, if any, is not on the record of the case. Nor it is the case of appellant that the company in liquidation in any manner was prohibited to mix up the said deposit with the other funds of the company in liquidation.

7. In this background the question raised by learned counsel for the appellant that the money was held by the company in liquidation as trustee is to be examined. No material has been placed before this Court to show that the money was given to the company in liquidation for any reason other than the commercial object of earning the interest on the said deposit. In other words, it is safe to draw an inference that it was a simple commercial transaction and the company was free to utilize the said money in the manner it liked. There is no material either in the form of an agreement or otherwise to show that the deposit was in the nature of a trust.

8. In *Seth Jessa Ram Fatehchand v. Om Narain Tankha and another*, AIR 1967 SC 1162 (supra) the Apex Court has considered in depth the nature of security deposit with the company. It has laid down certain criteria for determining the nature of such deposit. It has been provided that if the terms of agreement of deposit clearly indicate that the deposit was in the nature of a trust, the Court will come to that conclusion in spite of the fact that interest is provided for in the agreement. But where the terms of the agreement do not clearly indicate the term, the Court will have to consider the facts and circumstances of each case alongwith the terms to decide whether in fact something in the nature of a trust was impressed on the security deposit. It has been laid down that where segregation is not provided for and the deposit is permitted to be mixed up with the funds (in the present case) with whom deposit is made, the Court may come to the conclusion that anything in the nature of trust was not intended, for generally speaking in view of Section 51 of the Indian Trust Act, a trustee cannot use or deal with the trust property for his own profit or for any other purpose connected with the trust.

9. Applying the above ratio on the facts of the present case, it is clear that in response to the advertisement issued by the company inviting deposits on interest, the appellant made the deposit like any other deposit. It was not in the nature of a security deposit. The intention of the appellant was to earn income by way of interest on the said deposit. The company was free to mingle the said deposit with other funds for the purposes of business of the company. There is no whisper even of the slightest nature to show that any kind of trust was created with the said deposit while making the same. No such inference of trust can be drawn even from the receipt of the deposit. If the argument as advanced by the learned counsel for the appellant is accepted irrespective of the fact that the person with whom the deposit was made, was entitled to use the same for any purpose, as he may desire, would amount the creation of trust, will destroy the very nature of loan transaction. In other words, in every loan transaction there would be creation of trust if the argument of the learned counsel for appellant is accepted.

10. So far as the case of *Official Liquidators. N. Chandranarayanan* (supra) is concerned, the same is distinguishable on facts. The facts of the said case are as follows:

The company was carrying on the business and it appointed one of his stockists for distribution of paper in the city of Madras for total quantity of 250 tons per annum. An agreement was arrived at in between the company and the said stockist. One of the important conditions of the said agreement was that the stockist shall pay a sum of Rs. 35,000/ as minimum deposit. Of the said deposit, 50% shall be paid immediately at the time of appointment, and the balance at such time as the company may call for it. The amount of deposit will carry interest at certain rate per annum. The company agreed to refund the deposit amount of the stockist in the event of stockistship being cancelled and upon settlement of all accounts.

11. In this factual background a dispute arose with regard to the nature of the deposit. The Court on interpretation of the agreement entered into between the company and the stocks reached to the conclusion that in respect of the said deposit the company was a trustee.

12. The basis of the judgment seems to be that if some money is entrusted for specific purposes and if that purpose failed, the company became insolvent, the money entrusted would not constitute the assets of company in the hands of the Liquidator, but it will be only the assets of the person who entrusted it.

13. In the case on hand, the factual scenario is entirely different. Here, there was no entrustment of money by the appellant for any specific purpose. On the contrary, as soon as the deposit was made, the said money became the property of the company and the company became its owner. The company was under no obligation to get the said money segregated or keep apart. The transaction was entered into with a business point of view to earn interest on the said deposit. This being so, the view taken by the Claims Committee and the Official Liquidator in rejecting the claim of the appellant and not giving it any preference over the secured creditors is legally justified and the order of the Claims Committee is on terra firma and calls for no interference being in consonance of law.

14. There is no merit in the petition/appeal. It is dismissed accordingly.