

(2012) 09 CAL CK 0065

Calcutta High Court

Case No: CC No"s. 56, 277, 421, 464 and 476 of 2012

In Re: AOP (India) Private Limited
(in Liquidation)

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 14, 2012

Acts Referred:

- Companies Act, 1956 - Section 391, 394, 466

Citation: (2013) 1 CALLT 491

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: Swagata Datta, for Rabindranath Saha, Mr. Dhruva Ghosh, Mr. Rajarshee Dutta, Mr. Rajib Mullick and Mr. Kausik Chatterjee, s in CA No. 476 of 2012, Mr. Shubhankar Nag, Mr. Arik Banerjee and Mr. Shaunak Ghosh, s in CA No. 464 of 2012, Mr. Tilok Kumar Bose, Sr, Ms. Ditipriya Bagchi and Mr. Amit Kumar Saha, for the owners of the Sealdah Property, Mr. Jayanta Mitra, Sr, Mr. Anubhav Sinha, Ms. Ahana Sikdar, Mr. Hemanta Das and Mr. Rohit Chowdhury, for Mr. Kaushik Banerjee, Mr. A.C. Kar, for Ashim Sarkar, Mr. Gulshan Sony In person in CA No. 277 of 2012 and The Officiating Liquidator in CA No. 421 of 2012, for the Appellant;

Judgement

Sanjib Banerjee, J.

Some seemingly unsavoury matters have come to light upon the second highest bidder at a court sale of the assets of a company in liquidation alleging that the offer ascribed to him in the order confirming the sale was not at his bidding. The assets of AOP (India) Limited (in liquidation) were sold at an open auction held in court on March 2, 2012. The company in liquidation has a manufacturing facility in Maniktala with substantial machinery and equipment in the line of printing business. The company is also a tenant at a building in the Sealdah area. The Sealdah tenancy covered five rooms spread over the second and third floors of the building at 127/1 AJC Bose Road. At the time that the sale of the company in liquidation was taken up,

the owners of the Sealdah property presented an application in the nature of disclaimer by way of CA No. 169 of 2012. The owners of the Maniktala property at 237 A & C Maniktala Main Road, whereat the company in liquidation is a tenant, were also represented. There were two principal bidders in the fray who lasted the distance. Rabindranath Saha bid Rs. 4.50 crore over and above the liability of the company in liquidation. On the same terms, the next highest offer was of Gulshan Sony of Rs. 4.20 crore. Both offers were considerably higher than the valuation of the assets of the company in liquidation. The sale was on the basis of the company being taken over by the highest bidder as a going concern. The order of March 2, 2012 in its opening paragraph indicated that the implication of the sale of a company in liquidation as a going concern was that the purchaser would have to take over all liabilities of the company in liquidation and the purchase price would be retained by the official liquidator, first to meet the liquidation expenses and then to proportionately distribute the balance among the contributories of the company in liquidation. The appearing parties, particularly the bidders or counsel representing them, were made aware of the rules of the game at the outset and reminded of them continually in course of the substantially long period spent in conducting the sale and dealing with the connected matters.

2. There is a background to the matter that needs to be narrated for it to be appreciated in the proper perspective. Over the years, a practice had developed in this Court under which the business of several companies in liquidation had been permitted to be carried on under the official liquidator. The legitimacy of such practice does not appear to have been conclusively pronounced upon, but the practice started with the most pious of intentions and did seem to have the constitutional mandate in the prevailing social context. Oftentimes, the promoters of companies would allow the business of the companies to go to seed and throw the book at the hapless workers clamouring for payment for services rendered. After all, the word "limited" appearing in the names of all limited liability companies is a warning to all: that the liability of the shareholders of the company is limited to the value of their shareholding therein. The practice that started in this Court several decades ago was, in most cases, to allow the workers or employees to continue the business of the company in liquidation under the ultimate supervision of the official liquidator. It offered some solace to the workers in their being able to sustain themselves with the nominal income generated from the business. In course of time, the practice degenerated to the workers being put up as fronts for some other sponsors to continue the business without having to take over the liability that had been run up by the previous management. There have been several cases of the assets of the companies in liquidation being plundered by fly-by-night operators in course of the business being run under committees of management appointed by the court. In most cases it would be the banks as secured creditors, in whose favour the plant and machinery were hypothecated, that would suffer. The practice has been arrested in recent years and is only allowed with

stricter controls and more as an exception than the rule.

3. Shortly after the AOP (India) Private Ltd went into liquidation pursuant to an order dated March 8, 2006, at the behest of some employees of the company in liquidation a committee of management was set up by the company court by an order of July 2, 2008 to carry on the business of the company in liquidation. It appears that the employees roped in one Rabindranath Saha to fund the operations. It is equally possible that Saha took control of the business of the company with some employees of the company as his front. An appeal was preferred from the order dated July 2, 2008 by the Mullick landlords of the Maniktala property which was dismissed on November 25, 2008. Buoyed by the success of the gimmick in this day and age, the one or more persons who had hatched the gameplan set about charting out a course to perpetuate their illegitimate control of the company's assets and valuable properties without having to tender a farthing for the use thereof to any person. Saha appears to have been used only as a pawn in the opening gambit and, as it usually happens to pawns when the bigger players take over, Saha was quickly cast aside as the real mastermind thereafter took to the field to manoeuvre himself into the key position by way of a petition u/s 466 of the Companies Act, 1956. Such stratagem backfired as not only was the petition dismissed but the committee of management was also disbanded by the company court by an order of March 8, 2010. In course of such order it was noticed that two persons had invoked Section 466 of the Act for a permanent stay of the order of winding up only to try and perpetuate their illicit control of the assets of the company in liquidation without being liable to pay the previous creditors of the company.

4. Those two petitioners were a workers' union of questionable acceptability and its publicist, a person by the name of Sovan Kumar Bose, who appears to have had a major role in the murky affairs referred to hereafter but who has later chosen to pull the strings from the wings and use at least one employee in the office of the official liquidator as his foot soldier. The order of March 8, 2010 found that the petition u/s 466 of the Act, CP No. 253 of 2009, had ostensibly been filed in aid of CA No. 383 of 2007, which had been made by six applicants including some workers of the company in liquidation along with an alleged well-wisher, invoking Sections 391, 394 and 466 of the Companies Act in the same breath. The order of March 8, 2010 observed that the fact that the petitioners in CP No. 253 of 2009 had tried to link such petition to CA No. 383 of 2007 without there being a complete identity of the parties thereto was, in itself, a fraud on court. Such order went to add that the petitioners who had invoked Section 466 of the Act by way of CP No. 253 of 2009 had not even chosen to seek the permission of the secured creditors or the contributories of the company in liquidation to make a prayer for a permanent stay of the order winding up the company. The order of March 8, 2010 found that the petitioners in CP No. 253 of 2009 were "complete strangers to the assets and business of the company in liquidation in that a workers' union and an ordinary

worker were not expected to be in control of a company or its books of record nor be able to assert the extent of indebtedness of a company or make any admission in such regard on behalf of the company." The order recorded that though the second petitioner to CP No. 253 of 2009 claimed to be the holder of 36% shares in the company, "this is a false impression ... (since) ... upon a company going into liquidation, its shares are not transferable and the transfers are void unless specific approval in such regard is obtained from the Court presiding over its winding up." The order documented that Bank of India, a secured creditor of the company in liquidation, claimed a sum in excess of Rs. 19 lakh and insisted that without such payment being made upfront the bank would not consider any purported scheme for continuing the business of the company in liquidation. The order dated March 8, 2010 also noticed that Saha had fallen out with Bose and Saha had only harsh and unkind words for Bose. The order perceived that it was Bose who had engineered the misadventures that were CA No. 383 of 2007 and CP No. 253 of 2009 and dismissed both matters upon assessing costs of 2000 GM to be paid by Bose to the official liquidator. On March 11, 2010 a further application, CA No. 171 of 2010, which had been taken out in aid of CA No. 383 of 2007, was dismissed as CA No. 383 of 2007 had already been discharged.

5. Appeals were preferred from the orders dated March 8, 2010 and March 11, 2010. The appeal from the order dated March 8, 2010 was dismissed and the order under appeal upheld, but the direction for Bose to pay the costs was deleted. Liberty was, however, given to the appellants to apply afresh under Sections 391 and 466 of the Act upon establishing their locus standi therefor. The first appellant, as appears from the order dated November 2, 2011, was the said Bose. Despite upholding the order dated March 8, 2010, the appellate order of November 2, 2011 provided that "the Official Liquidator shall run the business with the help of the persons who are in the management until fresh decision is taken by the learned Trial Judge." Since no application in such regard was pending before the company court at such point of time, the twist in the tail of the appellate order would have allowed the illegitimate arrangement - after the appeal court agreed that it was illegal by endorsing the order of March 8, 2010 - to continue indefinitely, if Saha and Bose had not fallen out. The appeal from the order dated March 11, 2010 was dismissed by another order of November 2, 2011, but the appellate court observed after dismissing the appeal that it would be open for the appellant, Saha, "to approach afresh to the learned Trial Judge with fresh materials and proposal ... (since Saha was) ... willing to buy up the company as going concern upon payment of market price of the same." It is in such light that following Saha's subsequent application, being CA No. 5 of 2012, the company court passed an order for sale of the company as a going concern. The order recorded that such direction was necessary in view of the appellate order of November 2, 2011 that permitted the official liquidator to remain in supervision and allow those running the business of the company to continue it for the purpose of the beneficial winding up of the company in liquidation.

6. The official liquidator had the liabilities of the company ascertained and the company valued for sale as a going concern. The sale was conducted on March 2, 2012 and the entirety of the order confirming the sale of the company as a going concern must be seen to gauge what transpired in course of the sale. The sale of the company as a going concern was taken up along with an application by the landlords of the Sealdah property, CA No. 169 of 2012, seeking a direction on the official liquidator to disclaim the Sealdah property. The landlords of the Maniktala property were also represented in course of the sale. Mr. Kaushik Banerjee, Advocate, appeared for Gulshan Sony who turned out to be the second higher bidder after Saha, for taking over the company in liquidation as a going concern.

7. On March 2, 2012, the landlords of the Maniktala and Sealdah properties claimed that substantial sums remained due to them and it appeared that even though the business of the company was conducted under the aegis of court orders, no rent or occupation charges had been tendered for the use of the properties during such period. It is one of the hazards involved in the court allowing informal arrangements for the business of companies in liquidation being carried on; some prosper, while many other suffer. In this case the landlords of the two properties received no return on their capital for the months that some few had use of the company's premises and its assets. The secured creditors of the company in liquidation have also watched in horror as interlopers have used the secured assets as toys and grossly depreciated the value thereof. It is not without reason that the more informed judicial orders have frowned upon the misplaced sympathy sometimes shown by the company court for the assets of the companies in liquidation to be used to continue any business without them being sold.

8. The owners of the Sealdah property claimed that none of the rooms had been used by the company in liquidation for long and sought at least two of the five rooms to be immediately surrendered as the owners' family urgently required the same. Both the Maniktala and Sealdah owners also suggested that the monthly rents were abysmally low and the owners could not be expected to allow the company to retain the properties without a significant increase in the rents payable. In course of the sale of the company in liquidation as a going concern on March 2, 2012, realistic levels of monthly rents for the Maniktala and Sealdah properties were fixed on the basis of the bids made in court. Since the Maniktala property was integral to the company carrying on its business - which is the principal objective of the sale of a company being conducted as a going concern - a basic rent was fixed for the Maniktala property together with conditions for paying the outstanding monthly rents. Both bidders, and counsel representing them in court, were informed by court at every stage and the consent of the bidders and the owners of the Maniktala property obtained before the bidding progressed to the next level. Two of the rooms in the Sealdah property were directed to be disclaimed and the rent for the other three rooms fixed on the basis of the level of bidding with a corresponding direction at every level to pay the outstanding amount. With the bid

level going up, the quantum of rent payable in respect of the two properties was also revised with the consent of the bidders, or counsel representing them in court, and the concerned landlords. The direction contained in the order dated March 2, 2012 requiring the official liquidator to disclaim a part of the Sealdah property has been worked out and possession of the two rooms as specified in the relevant order has been made over to the landlords.

9. As is usually the practice, the sale of this company in liquidation as a going concern was confirmed in favour of the highest bidder, subject to the balance earnest deposit and balance consideration being tendered within the times specified in the order. In the event of default on the part of the highest bidder, his initial or earnest deposit was to stand forfeited and the second highest bidder was to step in with a further default clause operating on the second highest bidder for the forfeiture of the initial or the earnest deposit.

10. Saha had put in an initial deposit of Rs. 5 lakh and, upon a the request made on his behalf, he was given time to put in the balance earnest deposit representing 20 per cent of the bid amount; with further time to put in the remaining consideration. Sony furnished an initial deposit of Rs. 5 lakh and, upon Saha's default in putting in either the balance deposit or the remaining consideration, Sony was permitted to put in the balance deposit and the residual purchase money within the times as specified in the order.

11. Within a few weeks of the order of March 2, 2012, Sony appeared in person in the company court to complain that he had been led up the garden path to make an abnormally high bid for a company that was not worth the amount. He alleged that he had instructed advocate representing him to bid upto a particular level and, despite his instructions to the contrary, advocate representing him had proceeded to make a final bid which was many multiples of the money that he could garner. Sony was told that such allegations could only be given credence or looked into upon being made by way of an application or affidavit, whereupon he lodged CA No. 277 of 2012. The allegations made in such application are, to the extent relevant, as follows:

3. On or about 29th February, 2012 I had gone to the office of the company in liquidation at Manicktola to supply the goods on behalf of another customer wherein I found that a Notice has been put on the door of the office of the company stating that the company is in liquidation. I contact Mr. Somen (sic, Sovan Kumar) Bose the Manager of the Company who informed me that the Hon'ble High Court at Calcutta has directed the sale of APO (India) Private Limited in liquidation as a going concern. As I was interested in purchasing the company as a going concern, Mr. Somen Bose asked me to contact the office of the Official Liquidator to get a copy of the Terms & Conditions of the Sale. On 1st March, 2012 I appointed Ms. Runu Mukerjee as my advocate to take steps in the matter.

4. On 1st March, 2012 I went to the office of the Office Liquidator where I met one Mr. Ashim Sarkar who is working in the office of the Official Liquidator. Mr. Ashim Sarkar suggested that if I want to purchase the Company as a going concern I should engage Mr. Kaushik Banerjee, Advocate.
5. On 2nd March, 2012 I contacted Mr. Kaushik Banerjee at around 12-30 p.m. when Mr. Kaushik Banerjee told us that he has no time and asked me to reach Court No. 16 at 2 p.m.
6. I went to Court No. 16 at 2 p.m. and met Mr. Kaushik Banerjee, Advocate and I instructed him that I am ready to pay the liability of the company in liquidation of Rs. 1.62 crores and I am ready to pay at the highest Rs. 50 lacs in addition to the said Rs. 1.62 crores and I instructed to him that I will not pay anything more than this and he should not raise any bid more than this amount.
7. On 2nd March, 2012 when the matter was called on Mr. Kaushik Banerjee who represented me raised the bid and also agreed to make payment of rents of Rs. 4,10,000/- without our instruction. Mr. Kaushik Banerjee also agreed that out of the said 5 rooms, 2 rooms would be returned to the Landlord of the said premises and 3 rooms on the 2nd floor would be given to the company. However, I did not agree to any such terms and prompted him not to agree to that. I found that Mr. Somen Bose who is a Manager of the company in liquidation was also present there and was instructing Mr. Kaushik Banerjee to give bid though I had not authorized Mr. Somen Bose to act on our behalf. The situation was such that we did not understand as to what order is being passed to such bid. Mr. Kaushik Banerjee, Advocate did not pay heed to me and asked me to keep quiet otherwise I will be arrested and asked me to go and step back. As this was my first visit to the Court I was scared to do anything because I was told that if I say anything I will be arrested.
8. After the said order dated 2nd March, 2012 was passed when I came out of the Court Room Mr. Kaushik Banerjee and Mr. Ashim Sarkar congratulated me for being the second highest Bidder. I told them I had not agreed to the terms and on what basis he agreed to such terms. Mr. Somen Bose who was standing there told us that even if you lose Rs. 5 lac it does not matter and it would be a learning process regarding Court process.
9. Thereafter Mr. Kaushik Banerjee, Advocate, told me that within 7 days you would get back the earnest deposit of Rs. 5 lacs which you had deposited and told us that if you do not get the money back you contact me.
10. On or about 5th March, 2012 a copy of the order dated 2nd March, 2012 was given to us by Mr. Ashim Sarkar. I was shocked to see the order as Mr. Kaushik Banerjee had agreed to the terms I was not even aware of. A copy of the order dated 2nd March, 2012 is annexed hereto and marked as Annexure "A".

12. In the light of the allegations being directed against advocate representing Sony when the order dated March 2, 2012 was passed, Mr. Kaushik Banerjee, Advocate, was required to be given notice. The concerned employee in the office of the official liquidator named by Sony in his application was also directed to be served a copy of the application. The matter was set down for trial on evidence. The oral evidence of Sony, Sarkar and Mr. Banerjee has been recorded. Each of them was permitted to make a statement or be examined and cross-examined. For most of the proceedings, particularly in course of the oral testimony of the aforesaid three persons, Saha was present in court and keenly followed the matter. Upon there being an insinuation by Sony that Sony may have been used as a pawn to scuttle the sale and to help perpetuate the company in liquidation continuing business under the committee of management, a suo motu rule of contempt was issued against Saha on it appearing to court that Saha may have deliberately made a bid without having the financial backing, to render the sale nugatory and cement his de facto control over the company's assets. This step was taken without the court being mindful of the order dated March 8, 2010 which recorded that Saha and Bose had fallen out. Saha has made over a signed statement in impeccable Bengali and all appearing parties, including Sony, Sarkar and Mr. Banerjee, have been afforded an opportunity to deal with the statement.

13. It comes through from the oral evidence of Sony, Sarkar and Mr. Banerjee that none of them had an accurate recollection of what transpired in the couple of days preceding March 2, 2012, when the sale was conducted, and the few days thereafter. For a start, some of Sony's statements in his application are not borne out in their details by his oral testimony. Sony did not go to the office of the official liquidator on March 1, 2012 but remained downstairs on the pavement outside the building on Old Post Office Street while his cousin and, later, a clerk in the employment of advocate that Sony had contacted, pleaded his case in the office of the official liquidator such that Sony's bid could be accepted and presented before court on the next day. Sony has also insisted that it was Sarkar who asked him to contact Mr. Banerjee and accompanied him to Mr. Banerjee's chambers. Sarkar has countered that he had suggested four names out of which Sony chose Mr. Banerjee and, though he had directed Sony to Mr. Banerjee's chambers, he had not accompanied Sony to Mr. Banerjee. It is also evident from Sarkar's evidence that he knew Bose who was able to contact him on his mobile telephone. It is this nexus between Bose and Sarkar, which cries out from the oral evidence, that may hold the key.

14. Sony was present in court when the sale was conducted. Sony was aware that counsel representing him had made a bid of Rs. 4.20 crore over and above the liability of the company in liquidation which was to be taken over by him. Saha's bid was Rs. 4.5 crore over and above the liability of the company in liquidation. Sony insists that he was prevented by persons around him in court on March 2, 2010 to stop advocate appearing for him from enhancing the bid. Sony insinuates that

advocate engaged by him appeared to increase the offer on his behalf at Bose's prodding. But it may not be exactly true that Sony was altogether helpless or could not have arrested what was going on since, at the end of the bidding and in course of the order being dictated, Sony came up to the front row to hand over his visiting card to a court officer for the spelling of his name. Sony was aware of what transpired in court; he may have been asked not to question what had happened, but he had an opportunity to extricate himself from what had been done on his behalf and chose not to. His justification for this is that he was overawed in the intimidating court atmosphere.

15. The inescapable inference that needs to be drawn from the oral evidence of the three who climbed the box is that Sony may have been unwittingly dragged into a charade enacted by Sarkar, possibly at the behest of Bose or, to do Bose a favour by ensuring that the sale was scuttled and the business of the company was continued in terms of the appellate order of November 2, 2011 for an indefinite period. Sarkar has admitted to having a telephone conversation with Bose on February 29, 2012. The timing of the call matches with Sony's assertion that he was at the manufacturing facility of the company in liquidation in Maniktala on that day when Bose informed him of the imminent sale of the company; and, on Sony showing interest in the matter and seeking further information, Bose made a call to give Sony the details of how to make a bid therefor. Sarkar appears to have put Sony up to the altar as the sacrificial lamb to sabotage the sale and prolong Bose's de facto control of the business of the company, now that Saha was out of the way following his disputes with Bose after Saha may have invested for the continued operations of the company in liquidation. Sony was a godsend for Bose to neutralise Saha's lone bid for taking over the company as a going concern and to catapult Bose from a measly supervisor to a businessman with no care to pay for the tools or the space used for the business by virtue of the court largesse. Sarkar was the perfect ally to prey on the gullibility of Sony with the finesse of a dispassionate executioner. Sarkar delved into his experience in court and gambled that Sony would not have the gumption to carry a complaint against his lawyer to the court; or an overburdened court would skim the matter at the surface and take an uninformed, ad hoc decision without attempting to fathom what may actually have transpired. Sarkar counted the odds well and took a calculated risk that almost came off. That Sarkar pointed Sony to Mr. Banerjee is beyond doubt. As to whether Mr. Banerjee was aware of the scheme hatched by Sarkar is unclear and the lack of clarity may have more to do with Sony's inability to present the case as he has appeared in person and his only endeavour has been to take back his money and run. But it cannot be conclusively said on the basis of the oral testimony available to court that Mr. Banerjee was a party to the heinous strategy that a lowly clerical employee in the office of the official liquidator orchestrated for a seemingly invisible master.

16. Saha has said in his voluntary statement submitted to court that he had made the initial bid on March 2, 2012 with the support of his partners in business; that he

continued to bid higher to match and outbid Sony as he perceived from the conduct of his partners present in court not stopping him that they supported his act. Saha seeks to justify his attempt to outdo Sony on the ground that unless he got the company he would lose the previous investments made by him in its business operations. Saha has said in his statement that he could not honour his bid since his partners were not willing to put up the kind of money to meet the shortfall after taking into account what he could garner therefor. Saha has claimed to have been in the same line of business and associated with the company for a considerable period. Though it is evident that Saha may have gone way beyond his means to make a bid of Rs. 4.50 crore for the company over and above its liabilities, he may have been misled by his partners' tacit support therefor. There was good cause also for Saha to ensure that he did not lose the company as he had already invested considerable time and money therein.

17. Despite there being several chinks in Sony's version of things, he appears to have been set up by Sarkar. Neither Saha nor Sony seems to be a person of any great wealth who would not miss a sum of Rs. 5 lakh if the initial deposits are forfeited. Both look to be resourceful enough to garner substantial amounts for business purposes, but neither may have any substantial bank balance or cash in hand that one would associate with a Rs. 5 crore bidder. Though the order of March 2, 2012 mandates that the initial deposits of the defaulters would be forfeited, such direction is not written in stone that it cannot be undone if appropriate circumstances are cited. Sony has applied for return of the money. Saha has also pleaded for the refund without having formally applied therefor. Both have expressed considerable regret for the inconvenience and embarrassment caused by what they now perceive was foolish conduct on their part. They maintain that they did not attempt to deceive court and their motives were not dishonourable.

18. As to whether the amounts deposited by Saha and Sony may be returned to them in full or in part would depend on the assessment of the damage that they may have caused. The official liquidator reports that the expenses for conducting the sale have been defrayed by Saha since it was on Saha's application that the company was directed to be sold as a going concern. What cannot be measured in terms of money is the court time wasted, both in course of the sale and in the matters arising therefrom. On the positive side, the matter has been an eye-opener of sorts. The shady goings-on in the office of the official liquidator and the unholy nexus between some persons manning that office and persons connected with companies in liquidation have come out in the open. As to whether such unholy nexus extends to a more venerable class of persons, or a few from such revered class, may not have been established in the present matter but ample suspicion in such regard has been raised. The court needs to be more careful in the conduct of court sales and the extent of credence that it would attach to those habitually appearing in such matters. For years, lawyers of reasonable standing and reputation have been reluctant to be associated with sale matters conducted in the company

court, particularly on behalf of the regular bidders. It is not unusual for steady company practitioners to be conspicuous in their absence on Friday afternoons and for another set of lawyers to be in regular attendance in sale matters.

19. In the light of the conduct of those informally running the business of the company in liquidation as it appeared at the interlocutory stage of the present proceedings, the official liquidator has been directed to take possession of the assets of the company in liquidation and they ought now to be in his control. The official liquidator has applied for a direction for the sale of the assets of the company in liquidation. Even if a part of money that Saha has deposited is returned to him, he is no longer eligible - and, indeed, he does not insist - to take over the company as a going concern. The unfortunate experiment of allowing the assets of the company in liquidation to be used to run a private business of a few without any accountability has, at last, met its inevitable end.

20. If the assets of the company in liquidation are now to be sold as in the usual case of any other company in liquidation, the properties held by the company in liquidation in Sealdah and Maniktala would not be necessary. The Sealdah owners have produced the title-deeds establishing their ownership of the land and building thereat. There are two sets of landlords in respect of the Maniktala property. The applicants in CA No. 476 of 2012 are the Mullicks and the applicants in CA No. 464 of 2012 are members of a family by the name of Popli. The Poplis claim to have purchased a part of the Mullicks' Maniktala property and assert that the company in liquidation is a tenant in respect of a portion of the Maniktala property that belongs to them. The Mullicks have filed a supplementary affidavit in lieu of title-deeds and though the Poplis have produced a deed of conveyance, it may be unwise to hand over the valuable Maniktala property to persons who have chosen to be represented in court when other possible claimants may not be aware of the proceedings.

21. The several matters, being CC No. 56 of 2012, CA No. 277 of 2012, CA No. 421 of 2012, CA No. 464 of 2012, and, CA No. 476 of 2012, are disposed of with the following directions:

i) In view of it not being established that Saha made the frivolous bid to scuttle the sale - on the contrary, Saha appears to have been a victim of sorts - of the company and perpetuate its business operations being informally run, the suo motu rule of contempt issued against him stands discharged and he is honourably acquitted.

ii) Sony will be refunded a sum of Rs. 4.50 lakh out of the deposit of Rs. 5 lakh that he has made with the official liquidator. The balance amount will stand forfeited, for Sony not asserting himself at the time of the sale and causing the matter to be blown up beyond it was necessary, and be retained by the official liquidator to be available for distribution to the creditors of the company in liquidation in accordance with law.

iii) Saha will be refunded a sum of Rs. 4 lakh out of the deposit of Rs. 5 lakh that he has made with the official liquidator. The balance amount will stand forfeited, for Saha having failed to honour his bid but having cited some mitigating circumstances, and be retained by the official liquidator to be available for distribution to the creditors of the company in liquidation in accordance with law.

iv) The Official liquidator will invite offers for sale of the assets of the company in liquidation upon a fresh valuation of the assets by an empanelled valuer other than the one who had been engaged to value the company as a going concern. The expenses for the valuation will be decided at the time of sale, but an initial ad hoc payment of Rs. 10,000/- may be made to the valuer from out of the official liquidator's Establishment Charges Account. Advertisements should be published in The Statesman and in Bartamaan newspapers indicating that the sale will be conducted in court on November 30, 2012, again with the outflow therefor initially coming from out of the official liquidator's Establishment Charges Account.

v) The official liquidator will ensure that Ashim Sarkar is given a desk job not having any connection with any money transaction or anything to do with the sale or preservation of the assets of any company in liquidation till such time that a decision as to his further continuation in the office is taken in course of appropriate proceedings to be initiated within a fortnight from the date hereof by the official liquidator in accordance with law. For his role as perceived, Sarkar will also pay costs assessed at 1000 GM to the official liquidator within a fortnight from date which the official liquidator will use as part of the expenses required for conducting the sale of the assets of the company in liquidation.

vi) Upon the sale of the assets of the company in liquidation being completed, the official liquidator will ensure that all movables are removed from the three rooms in the Sealdah property that continue to be held by the company in liquidation within a reasonable time of the conclusion of the sale. The official liquidator will thereafter make over possession of the three remaining rooms to the owners of the Sealdah property. The order of March 2, 2012 insofar as it dealt with CA No. 169 of 2012 is modified accordingly.

vii) The official liquidator will cause the assets of the company in liquidation to be removed from the Maniktala property within reasonable time of the conclusion of the sale. The official liquidator will immediately thereafter engage security guards in consultation with the applicants in CA No. 464 of 2012 and CA No. 476 of 2012, who will be liable to bear the expenses therefor in proportion to the extent of their lands rented to the company in liquidation, to protect the Maniktala property from any encroacher or trespasser. It will be open to the applicants in CA No. 464 of 2012 and CA No. 476 of 2012 to obtain any order from an appropriate forum for taking over possession of the Maniktala property whereupon, the official liquidator will cease to be in possession thereof.

viii) The official liquidator will take immediate, appropriate measures to preserve the assets of the company in liquidation till the conclusion of the sale and the handing over thereof to the rightful persons upon consulting the secured creditors and, for such purpose, the secured creditors will have to bear the expenses therefor; such expenditure will be regarded as liquidation expenses and have priority at the time of disbursements. The official liquidator will brook no resistance in shutting out all from having any access to the assets of the company in liquidation with police assistance, if necessary, except for allowing inspection under strict supervision to prospective purchasers at the times to be specified in the sale notice. If the applicants in CA No. 464 of 2012 and CA No. 476 of 2012 desire the Maniktala property to be protected from now till the conclusion of the sale and the handing over of the company's assets to the rightful persons, they will cause the official liquidator to engage security guards thereat against the expenses therefor to be borne by them.

ix) The order dated March 2, 2012 stands modified to the extent indicated herein and as would be in consonance with the observations and directions as contained in this order.

x) It is recorded that both the owners of the Sealdah property and the applicants in CA No. 464 of 2012 and CA No. 476 of 2012 have abandoned their claims on account of outstanding rents in respect of the properties.

22. There will be no further order as to costs. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.