

In Re: Noakhali Union Bank Ltd.

Court: Calcutta High Court

Date of Decision: Jan. 30, 1950

Citation: 54 CWN 744

Hon'ble Judges: Sinha, J

Bench: Single Bench

Advocate: A.K. Sen with S.K. Mukherjee for the Official Liquidator, for the Appellant; S. Chatterjee for one of the Creditors, S.P. Ghosh, P. Pal and E.R. Meyer for other creditors and R. Chaudhuri for one of the Creditors, for the Respondent

Judgement

Sinha, J.

This matter comes before me for settlement of debts due by and of claims against the Company. I ordered advertisements to be

published under Rule 123 of the Company Rules. Pursuant to such direction, advertisements were published and creditors filed their claims before

the Official Liquidators. The Official Liquidators investigated into the debts and claims and have filed a list of creditors and claimants in Court.

Notice was given to the persons whose debts or claims were rejected in whole or in part requiring them to prove as much of them as had been

rejected by the Official Liquidators, in terms of Rule 132.

2. At the hearing before me, several creditors and claimants have appeared.

1. With regard to the claims of employees in respect of Provident Fund contributions and Security Deposits they will be treated as preferential

creditors and the list submitted by the Official Liquidators will be settled as filed but with the following alterations:--

(a) A.N. Chakravorty: will rank as ordinary creditor in respect of salary due to him from 1st January, 1949 to April 26th, 1949. He will, however,

rank as a preferential creditor in respect of salary due to him from April 27, 1949, up to May 18, 1948, amounting to Rs. 88.

(b) With regard to the claim of Adhir Chandra Dey, a suit has been pending in this Court: 1748 of 1948. It is agreed that the Official Liquidators

will retain in their hands a sum of Rs. 2,000 pending final disposal of the suit.

(c) The claim of Monoranjan Ghosh (Item No. 133) for Rs. 5,000 paid as Security Deposit should be allowed.

2. The next class of creditors whose claims have to be considered consist of persons who are holders of Draft orders issued by the Bank.

2. Drafts were drawn by the Bank in favour of third parties on another Bank by one branch of the Bank on another, or by one branch of the Bank

on its Head Office.

3. The holders of Drafts and Pay Orders may be divided into three classes:--

(a) Drafts issued by the Bank against money paid into the Bank.

(b) Drafts issued in payment of collections made by the Bank on the instructions of third parties.

(c) Drafts issued in payment of amount due on Fixed Deposit.

4. Where drafts have been from the Bank on payment of cash to it, the holder of the draft must be considered to be a creditor.

5. It is contended that where the object for which the draft was issued and accepted was remittance of money from one place to another, the draft

holder should be treated as a preferential creditor. Reliance is placed on a judgment of Achhru Ram, J., In the matter of the New Bank of India,

Ltd., Amritsar AIR 1949 sc 878. It was there held that "where it is proved beyond the possibility of reasonable doubt that the holder of the draft or

the person who secured the draft in his name had paid the money to a Banker only and expressly for the purpose of being transmitted to another

place for being paid to a specified person or for being otherwise spent in a specified manner and that the draft was obtained merely with the object

of facilitating realisation of the money at the place of destination by the person to whom it was intended to be transmitted," the payee will have the

right to have the sum paid in full. "The rule will have no application where the draft was obtained by the party concerned either for gain in the shape

of exchange commission or under a contract for giving accommodation to the prior or any other party or otherwise for commercial purposes

generally.

6. Ordinarily, when a draft is issued by a Bank, the holder is a creditor and his remedy is on the draft. The rights of the holder are defined by the

Negotiable Instruments Act. It is difficult to see how the holder of the draft can have all the rights of a holder of a bill of exchange and the

additional right to get the amount of the draft in preference to the general body of creditors. It is open to the payee to negotiate the drafts. If the

draft is negotiable, it is difficult to see how there can be an agreement that the money represented by the draft would be paid to a specified person

or would be spent in a specified manner. The fact that the draft has not in fact been negotiated does not affect the matter. If the draft was issued by

the Bank and accepted by the payee, his rights are those of the holder of a bill of exchange. There is in such cases no specified appropriation of the

funds in the hands of the drawee for meeting the demands of the holder.

7. Assuming it is possible for a person who secures the draft from the banker to agree that the money represented by the draft will be paid to a

specified person or be spent in a specified manner, it would require very strong evidence to prove such an agreement.

8. Where a claim has been made before the Official Liquidators based on a draft the claimant should, in my opinion, be treated as an ordinary

creditor and a mere statement in an affidavit filed in Court that the money was paid for being transmitted to another place and for being paid to a

specified person would not suffice to hold that the holder was a preferential creditor and better evidence will have to be produced.

9. In cases where the Bank has collected money and issued a draft or drafts in compliance with the instructions of the party or in accordance with

the ordinary course of business, the payee of the draft should be treated as ordinary creditor. [See *Alliance Bank of Simla v. Amritsar Bank* AIR

1915 Lah. 214].

10. Where the draft has been endorsed by the payee, the indorsee should be classed as an ordinary creditor. If there has been a re-indorsement in

favour of the original payee, he should also rank as ordinary creditor.

11. In cases where the Bank acted as agent for collecting money and issued draft contrary to the instructions of the principal or did not issue any

draft or pay order at all, the money collected should be treated as trust money and should be paid in full before payment is made to creditors. [His

Lordship then proceeded to deal with the respective claims of different claimants and made necessary directions in that behalf.]