
67 CWN 945

Calcutta High Court

Case No: Suit No. C.P. 229 of 1962

In Re: Bank of China

Vs

APPELLANT

RESPONDENT

Date of Decision: Dec. 10, 1962

Acts Referred:

- Banking Companies Act, 1949 - Section 22(1), 22(4), 38(3)
- Companies Act, 1956 - Section 457

Citation: 67 CWN 945

Hon'ble Judges: S.P. Mitra, J

Bench: Single Bench

Advocate: Subrata Roy Chowdhury and Tapes Kumar Banerjee, for the Reserve Bank of India, for the Appellant;

Judgement

S.P. Mitra, J.

This is an application by the Reserve Bank of India, inter alia, for an order that the Bank of China be wound up by and under the directions of this court under the provisions of the Companies Act, 1956, and the Banking Companies Act, 1949. In the petition it is stated, inter alia, that, the entire shareholdings of the company are being held and controlled by the People's Republic of China and persons of Chinese nationality. The policy and administrative control of the company are in the hands of the Central People's Government of the People's Republic of China and persons of Chinese nationality. In the light of recent events, namely, the act of aggression committed by the People's Republic of China on Indian territories, which illegal acts are still continuing, the Reserve Bank is satisfied that the continuance of the company is prejudicial to the interests of the depositors and further that the carrying on of banking business by the company in India will not be in the public interests. On the 2nd November, 1962, the licence granted to the Bank of China under the provisions of section 22(1) of the Banking Companies Act, 1949, was cancelled by the Reserve Bank in terms of section 22(4), inter alia, on the ground that the carrying on of banking business by the company in India is not in public interests.

The Reserve Bank was further of opinion that the delay involved in giving the company an opportunity in terms of the proviso to section 22 (4) of the Banking Companies Act, 1949, was prejudicial to the interests of the depositors of the company and the public. This application has been made u/s 38(3) of the Banking Companies Act, 1949, on the ground :

(a) that in the opinion of the Reserve Bank, the continuance of the Bank of China is prejudicial to the interests of its depositors, and

(b) that by reason of the cancellation of licence, the Bank of China has become disentitled to carry on banking business in India.

2. The petition was admitted by P.B. Mukharji, J., on the 2nd November, 1962. His Lordship, upon hearing the Reserve Bank, was pleased to appoint the Official Liquidator as Provisional Liquidator of the Bank of China. His Lordship also gave directions, inter alia, as to advertisement of the petition and service of the petition at the principal office of the Bank of China. Pursuant to these directions, the winding up petition has been advertised in the "Statesman" of Calcutta on the 13th November, 1962; in "Jugantar" of Calcutta on the 14th November, 1962, in the "Calcutta Gazette" on the 15th November, 1962; in "Maharashtra Times" of Bombay on the 16th November, 1962; in the "Gazette of India" on the 17th November, 1962; and in the "Times of India" of Bombay on the 20th November, 1962. The petition has also been served at the principal office of the Bank of China at Calcutta on the 3rd November, 1962 and there is an acknowledgement receipt given by one H.J. Puh, acting manager of the Bank in Calcutta.

3. No notice has been given by any person intending to appear at the hearing of the petition under rule 34 of the Companies (Court) Rules, 1959. It was also open to the Bank of China u/s 22(5) of the Banking Companies Act, 1949, to prefer an appeal to the Central Government against the decision of the Reserve Bank cancelling the licence under the said section within 30 days from the date on which the decision to cancel was communicated to the Bank. Learned counsel appearing for the Reserve Bank states that no such appeal has been preferred and submits that the decision of the Reserve Bank is now final under the provisions of subsection 6 of section 22. On the 3rd December, 1962, H.J. Puh, Acting Manager of the Bank of China at No. 15, Brabourne Road, Calcutta-1, addressed a letter to the Registrar, Original Side of this Court enclosing a statement on behalf of both the offices of the Bank in Calcutta and Bombay together with a statement made by Mr. Nan HanChen, Chairman of the Board of Directors of the Bank. The Acting Manager was informed by the Assistant Registrar (Company) by his letter dated the 7th of December, 1962 that if he waited to make representations to this court at the hearing of the application fixed on the 10th December, 1962, he might do so according to law. No such representation has been made before me to-day.

4. In the result, therefore, having regard to the provisions of Section 38 of the Banking Companies Act, 1949, there will be an order

(a) that the Bank of China be wound up by and under the directions of this Court under the provisions of the Companies Act, 1956, and the Banking Companies Act, 1949;

(b) that the Official Liquidator of this Court be appointed Liquidator of the Bank of China with all necessary powers under the provisions of the Companies Act, 1956, and the Banking Companies Act, 1949, including the powers specified in section 457 of the Companies Act, 1956;

(c) that the Official Liquidator is to take custody and possession and control forthwith of the entire assets, properties and affairs of the Bank of China;

(d) that the winding up order in accordance with Form No. 53 be advertised once in the Gazette of India, once in the Calcutta Gazette, once in "Statesman" of Calcutta, once in "Jugantar" of Calcutta, once in the "Times of India", and once in the "Maharashtra Times", Bombay, within 14 days from date;

(e) that notices of all further proceedings in the liquidation of the Bank of China shall be given to the Reserve Bank of India through its solicitors;

(f) that costs of and incidental to this application including the costs of hearing on the 2nd November, 1962, of the petitioner Reserve Bank of India be paid out of the assets of the Bank of China; and,

(g) that the Official Liquidator is to act on a signed copy of the minutes.

Certified for Counsel.