courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 16/11/2025

(2010) 07 CAL CK 0075

Calcutta High Court

Case No: BIFR No. 43 of 2004

In Re: Consolidated Fibres and Chemicals Ltd. (In Liqn.) — APPELLANT

Vs

RESPONDENT

Date of Decision: July 30, 2010

Acts Referred:

- Companies Act, 1956 - Section 34, 34(2)

Citation: (2011) 1 CHN 58

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: Debdutta Sen, Indranil Karfa and S. Ghosh, for the Appellant;

Judgement

I.P. Mukerji, J.

Mr. Debdutta Sen, learned Advocate appears for the certificate holder, Assets Reconstruction Company of India Limited, in a proceeding before the Debts Recovery Tribunal, Mumbai.

2. The official liquidator is in custody and control of the assets of the company in liquidation.

3. It is quite certain that in the recovery of debts, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has primacy over the Companies Act, 1956. In Section 34(2) thereof, the Companies Act, 1956 is not one of the Acts which has overriding effect. u/s 34, the statutory remedy of winding up is not taken away. But in my opinion, after a winding up order is made, the question arises as to distribution of the assets of the company in liquidation to meet its debts. Then, the question of primacy does arise. In any event there are Supreme Court decisions which say that the Receiver for collection of rents appointed by the Debts Recovery Tribunal is to act in consultation with the Official Liquidator, as submitted by Mr.

Sen.

4. In my view, two proceedings cannot proceed side by side and at the same time. One has to proceed before the other. In view of my observations above, the recovery proceeding under the Debts Recovery Tribunal Act has to proceed first. Therefore, all proceedings connected with this company in liquidation are not to be proceeded with, including sale of assets. All earnest money which has been received by the official liquidator is to be returned by him to the respective bidders. It may be further recorded that one of the offerers of the four offers, Sarvajeet Singh of Lucknow did not furnish any earnest along with his letter of offer, as it appears, upon opening the seal and envelope in Court.

5. However, the official liquidator will retain custody and control of the assets of the company in liquidation till further orders. I clarify that I am not staying the sale ordered by the order dated 14th June, 2010. Mr. Sen submits that he is proceeding to take steps in terms of that order.

6. Liberty to apply to the official liquidator and all other interested parties when the situation so warrants to reopen the liquidation proceedings.

7. All parties concerned are to act on a signed photocopy of this order on the usual undertakings.