

**(2014) 12 CAL CK 0037**

**Calcutta High Court**

**Case No:** APO 444 of 2014, CP 39 of 2009, APO 442 of 2014 and CS 74 of 2008

SST Media Private Limited

APPELLANT

Vs

Official Liquidator

RESPONDENT

**Date of Decision:** Dec. 16, 2014

**Acts Referred:**

- Companies Act, 1956 - Section 446, 456, 456(2), 457, 466
- Constitution of India, 1950 - Article 136
- West Bengal Premises Tenancy Act, 1956 - Section 14

**Citation:** (2015) 1 CHN 566 : (2015) 4 WBLR 366

**Hon'ble Judges:** A.K. Chakraborty, J; A.K. Banerjee, J

**Bench:** Division Bench

**Advocate:** S.N. Mookherjee, Ratnanko Banerjee, Senior Advocates, Kuldeep Mallick and Rahul Karmakar, Advocate for the Appellant; Tilak Bose, Senior Advocate, D.N. Sharma, Shaunak Mitra, Gourav Khaitan, Debjani Chatterjee and Ruma Sikder, Advocate for the Respondent

**Judgement**

A.K. Chakraborty, J.

These two appeals arise out of the orders dated May 14, 2013 and October 30, 2014 respectively passed by the learned Company Judge in the proceedings for disclaimer of the property being a flat comprising 10,000 square feet (approx) on the ground floor and basement of premises No. 119, Park Street, Kolkata and two covered and two uncovered car parking space (hereinafter referred to as "the said property") owned by the respondent No. 2. By the first order, the learned Company Judge directed the Official Liquidator to disclaim the said property, to evict the appellant from the said property, if necessary, by use of police force and handover possession of the property to the respondent No. 2, latest by June 15, 2014. The Official Liquidator did not comply with the first order, the respondent No. 2 sought execution of the first order, and the second order dated October 30, 2014, was passed directing the Police Authorities to render all help and assistance to the

Official Liquidator to handover vacant possession of the said property to the respondent No. 2. Both the appeals are filed by the purchaser of the business of the company in liquidation, SST Media Private Limited (hereinafter referred to as "SST Media").

2. The respondent No. 2, let out the said property to a company, Xenitis Infotech Ltd. as a licensee, for a period of three years from December 01, 2005, at a monthly fee of Rs. 6,14,000/- In March, 2006 Xenitis Infotech Ltd. requested the respondent No. 2 to allow its sister concern the said SST Media to carry on its business activities from the said property. Thereafter, the said SST Media started to use the said property as its registered office. However, the said Xenitis Infotech though remained liable for payment of the monthly licence fee to the respondent No. 2, did not pay the licence fee. The respondent No. 2 filed a suit being C.S. No. 74 of 2008, before this Court, against both Xenitis Infotech (as the defendant No. 1) and SST Media (as the defendant No. 2), for recovery of the outstanding licence fee and possession of the said property. In an application filed in the said suit by an order dated April 17, 2008 a learned Single Judge appointed a Special Officer to ascertain as to the persons in occupation of the said property. By an order dated April 28, 2008 the learned Single Judge recorded that the second defendant, (being SST Media) was in occupation of the said property and is running the office of a television news channel therefrom. The learned Single Judge directed SST Media to pay monthly occupation charges of Rs. 6,14,000/- to the respondent No. 2 and the latter will accept the same without prejudice to its rights and contentions. In 2009, one of the creditors of SST Media filed an application being C.P. No. 39 of 2009 praying of its winding up. By an order dated May 21, 2009, a learned Single Judge of this Court wound up SST Media and directed the Official Liquidator to take possession of all assets and properties of the company. The Official Liquidator, however, could not take possession of the assets and properties of SST Media, due to resistance put by the employees.

3. In August and October, 2009, two sets of employees of SST Media filed two separate applications, under 466 of the Companies Act, 1956, for revival of the company in liquidation through the fund to be provided by the appellant. By an order dated August 27, 2009 the learned Company Judge directed the Official Liquidator to visit the registered office of the SST Media at the said property, to make an inventory of the assets of the company. On the basis of interim orders passed in the said applications, the winding up proceeding was stayed and by depositing Rs. 2 crore with the Official Liquidator, the appellant started to carry on the business of SST Media from the said property.

4. The liability of SST Media, was about Rs. 73.61 crores. Ultimately, by an order dated January 08, 2010 the learned Company Judge held that it is abundantly clear that there is no one prepared to shoulder the liability of SST Media (the company in liquidation) and the appellant in these appeals, is only interested in taking over the

business of popular "Kolkata TV" keeping the large body of the creditors at bay for all time to come. By the said order the learned Company Judge rejected all the said applications of the employees and directed the Official Liquidator to resume possession forthwith. The said order dated January 08, 2010 was carried to the Division Bench, first by the workers of SST Media. The Division Bench initially admitted the appeal and stayed all further winding up proceeding. However, by an order dated February 16, 2010 the Division Bench dismissed the said appeal and a special leave petition filed against the said order, by applicants/workers, was withdrawn on February 25, 2010. Thereafter, the appellant, who was allowed to run the business of SST Media by virtue of interim orders passed by the learned Company Judge, filed an appeal from the said order dated January 08, 2010 which was also dismissed by the Division Bench on April 16, 2010. The appellant filed a special leave petition against the said order of dismissal dated April 16, 2010. By orders dated May 14, 2010 and May 04, 2010 the Supreme Court allowed the business of the SST Media to be run by the appellant and directed the Official Liquidator to pay all outstanding occupation charges in respect of the said property to the respondent No. 2, from the said Rs. 2 crore deposited by the appellant and further to disburse the future occupation charges at the rate of Rs. 6.14 lacs per month, till further order. By an order dated January 17, 2011 the Supreme Court disposed of the said special leave petition by directing, *inter alia*, that the business of SST Media, the company in liquidation to be sold by the Official Liquidator as a going concern by public auction, to be confirmed by the Company Court. The Supreme Court allowed the appellant to participate in the public auction and directed that the appellant will be entitled to seek adjustment of the amount paid by it during the post winding up period in case it becomes the highest bidder. It was, however, made clear that the said order will not prejudice the right of the respondent No. 2/landlord in the said eviction proceeding being C.S. No. 74 of 2008.

5. Thereafter, in March, 2011 the respondent No. 2 filed an application under Sections 446, 456, 457 and 535 of the Companies Act, 1956 (hereinafter referred to as "the disclaimer application") praying for, *inter alia*, direction upon the Official Liquidator to hand over vacant possession of the said property and/or otherwise disclaim the said property in its favour and pay occupational charges till delivery of possession of the said property. The learned Company Judge allowed the appellant to intervene and the appellant contested the disclaimer application.

6. By the first impugned order dated May 14, 2013 the learned Company Judge, after considering the said order of the Supreme Court in detail, held that the Official Liquidator has to disclaim the property or the Court has to pass orders for eviction of the appellant and delivery of vacant possession to the Official Liquidator and directed the Official Liquidator to hand over vacant possession of the property to the respondent No. 2. The learned Company Judge further directed the Official Liquidator to issue the sale notice for sale of the business of SST Media, as a going concern with the stipulation that the buyer of the said business will have to vacate

the said property within May 31, 2014 and after the said date any occupier of the said property would be liable to be evicted by the Official Liquidator by using of police force. The learned Company Judge held that if the appellant is the successful buyer they should find another place to do the same business after Mar 31, 2014 and any other buyer should do likewise. The Company Judge specifically directed that the said decision dated May 14, 2013 would be treated as judgment and decree.

7. In terms of the said order dated May 14, 2013 the Official Liquidator issued the sale notice dated June 14, 2013, (hereinafter referred to as "the said sale notice") which was duly published in the newspaper. The sale notice expressly stated that the business of SST Media was lying situated at the said property and that the successful purchaser will have to vacate the said property before May 31, 2014. The appellant accepted the terms and conditions the said sale notice and submitted its offer of Rs. 42,61,30,557.70/- to the Official Liquidator. The appellant was the only offeror and by an order dated March 28, 2014 the Company Judge accepted the offer of the appellant.

8. Although the Official Liquidator complied with the said order dated May 14, 2013 for completion of the sale of the business of SST Media, the Official Liquidator took no step to comply with the other portion of the said order for the disclaimer of the said property or hand over vacant possession of the said property to the respondent No. 2 within May 31, 2014. It was only on September 8, 2014, after the receipt of a letter from the respondent No. 2, the Official Liquidator requested the appellant to hand over possession of the said property. On September 20, 2014 the respondent No. 2 filed an application, being C.A. No. 587 of 2014 under Section 634 of the Companies Act, 1956, before the Company Judge praying for an order directing the Official Liquidator, to hand over vacant possession of the said property to them and with police assistance and to pay a sum of Rs. 17,34,735/- to them on account of the outstanding occupation charges upto May 31, 2014. This application was taken up the hearing on September 25, 2014 but on the prayer of the counsel on behalf of the appellant, the hearing was adjourned till October 30, 2014. On October 30, 2014, the learned Company Judge passed the second impugned order allowing the said application being C.A. No. 587 of 2014. On November 7, 2014, the appellant filed the second appeal against the said order dated October 30, 2014.

9. Appearing in support of the appeals, Mr. S.N. Mookherjee, learned Senior Advocate submitted that in the instant case, by the said order dated January 17, 2011, the Supreme Court directed the business of SST Media to be sold by the Official Liquidator as a going concern and as such the appellant has purchased, the business of SST Media including the right to carry on the said business from the said property. Mr. Mookherjee contended that the Supreme Court expressly made it clear that the said order will not prejudice the rights of the respondent No. 2/landlord in the pending eviction proceeding, that is, C.S. No. 74 of 2008 and as such the respondent No. 2 was estopped from filing the said disclaimer application.

He strenuously argued that in any event, by the said order dated May 14, 2010 the learned Company Judge ought not to have entertained the disclaimer application as the respondent No. 2 failed to fulfill the requisite conditions laid down in Section 535 of the Companies Act for maintaining a disclaimer application. According to Mr. Mookherjee, from the language of the said Section 535 of the Companies Act and the sub-sections thereof it is evident that the property which can be disclaimed must be the property of the company in liquidation and the said property must be onerous for the Official Liquidator. He submitted "property" has not been defined in the said Act of 1956 and the word "property" is to be construed with widest amplitude. He contended that in the instant case, there is no proof that the SST Media was in possession of the said property or it had any right or interest in respect of the said property and even the Official Liquidator did not claim to have taken possession of the said property. Mr. Mookherjee relied on the observation of the learned Company Judge in the impugned judgment that if the appellant was not there, the Official Liquidator would have been in possession of the said property and submitted that such observation substantiates that the Official Liquidator was not in possession of the said property. According to Mr. Mookherjee, even in the sale notice there is no mention of the said property to be in possession of SST Media or the Official Liquidator.

10. In support of his aforesaid contention Mr. Mookherjee first relied on the decision of Chancery Division in the case of Re Potters Oils Ltd. reported in [1985] BCLC 203, where the Court rejected an application of the liquidator to disclaim a property in respect of which the company in liquidation had no right or interest. He further placed before us the a decision of the Division Bench of this Court in the case of Wellman Wacoma Ltd. Vs. Tivoli Park Apartments (P.) Ltd., and submitted that in that case the Division Bench allowed the disclaimer application of the relevant property as it was proved that the company in liquidation was a tenant, had interest over the subject property and that an unauthorized occupant was occupying the said property of the company in liquidation. Thus, according to Mr. Mookherjee, the said decision of the Division Bench of this Court has no application in this case.

11. It was further argued that, it is the appellant who is causing payment of the monthly occupation charges of Rs. 6,14,000/- and as such the said property cannot be treated as onerous for the Official Liquidator. Lastly, Mr. Mookherjee urged that in any event the said property is being used for carrying on the business of the news media involving three hundred employees, and if the appellant is required to vacate the said property, the livelihood of the said three hundred employees would be in jeopardy and as such no order could be passed for disclaimer of the said property by the Official Liquidator. In support of such contention, he placed reliance on a decision of a learned Single Judge of this Court in the case of Calorex India Ltd. Vs. Tara Properties Pvt. Ltd.,.

12. In support of the second appeal filed against the said order dated October 30, 2014, Mr. Mookherjee submitted that as the order dated May 14, 2013 directing the Official Liquidator to disclaim the said property and directing for eviction of the appellant from the said property is vitiated by error as stated hereinabove and liable to be set aside, consequently, the order dated October 30, 2014 is also liable to be set aside.

13. On the other hand, Mr. Tilak Bose, learned Senior Advocate appearing for the respondent No. 2 owner, submitted that the appellant with mala fide intent filed these appeals and both the appeals are liable to be dismissed. Mr. Bose contended the appellant filed the appeal against the said order dated May 14, 2013 in November 10, 2014, after purchasing the business of SST Media as a going concern subject to the condition stipulated in the sale notice that the buyer will have to vacate the said property before May 31, 2014. Mr. Bose contented that having accepted the sale notice stipulating the said condition the appellant elected to accept the entirety of the said order dated May 14, 2013 and the sale notice. Thus, according to him, the appellant is estopped from challenging the portion of the said order dated May 14, 2013 directing the Official Liquidator to disclaim the said property and make over vacant possession of the said property to the respondent No. 2.

14. Mr. Bose further submitted that by the said order dated May 14, 2013 the learned Company Judge had even granted breathing time of one year till May 31, 2014 to the appellant to vacate the said property and the appellant did not prefer appeal within such period. He strenuously argued that the appellant took the benefit of the said order dated May 14, 2013, and participated in the auction held by the Official Liquidator for sale of the business of SST Media on the basis of the sale notice, with express stipulation that the purchaser has to vacate the said property within May 31, 2014. Thus, according, Mr. Bose, the appellant cannot approbate and reprobate and in support of such contention he cited on the decisions of the Supreme Court in the cases of New Bihar Biri Leaves Co. and Others Vs. State of Bihar and Others, and Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport and Another,. In those decisions, the Supreme Court held that a party taking benefit from a transaction or contract is estopped from repudiating the other part of the same contract or transaction which might be disadvantageous to him.

15. With regard to the contention of the appellant that SST Media was not in possession in the said property Mr. Bose submitted that by the said order dated August 27, 2009 passed in the said proceedings under Section 466 of the Companies Act, the learned Company Judge directed the Official Liquidator to visit the registered office of SST Media at the said property and the order dated September 01, 2009, records that the Official Liquidator visited the registered office of SST Media at the said property. He further relied on the order dated April 28 of 2008 passed by the learned Single Judge, in the said suit being CS. No. 74 of 2008,

recording that the special officer appointed by this Court found SST Media in occupation of the said property and running the office of television news channel therefrom. By the said order the learned Single Judge directed the SST Media, to tender the occupation charges in respect of the said property. Further, from the pleadings of the respondent No. 2 before the learned Company Judge, Mr. Bose pointed out that in 2007 before SST Media went into in liquidation, it filed a suit before the learned of City Civil Court at Calcutta and obtained an interim order restraining the respondent No. 2 owner from disturbing its possession in respect of the said property. He pointed out that in the very first paragraph of the sale notice dated June 14, 2013 issued by the Official Liquidator it is stated that the business SST Media was carried on from the said property. Thus, according to Mr. Bose the contention of the appellant that SST Media was not in possession of the said property or that it had no interest in the said property is absolutely misconceived. With regard to the issue of the Official Liquidator's possession of the said property, Mr. Bose relied on Section 456(2) of the Companies Act, providing that from the date of the order of winding up of a company, the company's assets and properties shall be deemed to be in the custody of the Official Liquidator. He also pointed out that in paragraph 20 of the stay application filed by the appellant in the first appeal, the appellant itself has made the averment that the property was under possession of the Official Liquidator by reason of the fact that the assets of the company in liquidation was housed thereat.

16. Mr. Bose contended, in any event the business of SST Media together with all, the plants, machinery and equipments of SST Media have already been sold and as such the occupation of the said property by the Official Liquidator with the liability to pay monthly occupation charges of Rs. 6,14,000/- shall be absolutely onerous for the Official Liquidator. He submitted that since the appeal being APO No. 444 of 2014, against the order dated May 14, 2013 is liable to be rejected, consequently the appeal against the order dated October 30, 2014 is also liable to be rejected.

17. Mrs. Ruma Sikder appearing for the Official Liquidator submitted that on February 21, 2011 the Official Liquidator had taken symbolic possession of all the assets and properties of the company including the said property.

18. In reply Mr. S.N. Mookherjee, learned Senior Advocate strenuously argued that the contention of the respondent No. 2 that the appellant is estopped from challenging the said the first order dated May 14, 2013, is misconceived and none of the said decisions in the cases Bihar Biri Leaves Co. (Supra) and Mumbai International Airport Pvt. Ltd. (Supra) has any application in the instant case. Mr. Mookherjee submitted that the right of the appellant to prefer an appeal against the said order dated May 14, 2013 is a statutory right under Section 483 of the Companies Act, 1956 and there cannot be any estoppel when statutory rights and liabilities are involved. In support of such contention, he placed reliance on the decision of the Supreme Court in the case of P.R. Deshpande Vs. Maruti Balaram

Haibatti, .

19. We have considered the rival submissions made on behalf both the appellant and the respondent No. 2. Since Mr. Bose urged that the appeal being APO No. 444 of 2014 filed by the appellant is not maintainable, on the ground of estoppel, we will first give our decision on such issue.

20. As stated above by the said order dated May 14, 2013, the learned Company Judge not only directed disclaimer of the said property by the Official Liquidator making over possession/delivery of the said property to the respondent No. 2, His Lordship also directed for sale of the business of SST Media as a going concern, by public auction, subject to the condition that the successful purchaser, (including the appellant) shall have to vacate the said property within May 31, 2014. The learned Company Judge further directed the purchaser (even it is the appellant) should find another place to do the same business after May 31, 2014 and the purchaser would have to obtain licence to operate from other property. The sale notice issued by the Official Liquidator also specifically mentioned that the purchaser shall have to vacate the said property by May 31, 2014. The appellant never challenged either the direction of the learned Company Judge or the specific condition stated in the sale notice that the successful purchaser shall have to vacate the said property within May 31, 2014. The appellant accepted the direction of the learned Company Judge contained in the said order dated May 14, 2013 for sale of the business of SST Media as also the express condition stipulated in the sale notice issued by the Official Liquidator, and submitted its offer to the Official Liquidator. The appellant purchased the business of the said SST Media along with all plants and machinery and equipment, subject to the condition that it had to vacate the said property on or before May 31, 2014. Thus, after taking benefit of the said sale notice on its own accord, the appellant is estopped from challenging the said order dated May 14, 2013 with the object to wriggle out of its obligation to vacate the said property within May 31, 2014. The appellant accepted both the said order and the stipulation contained in the sale notice, it took benefit of purchasing the said business of SST Media and now the appellant cannot turn a complete volte face and seek to assail the order dated May 14, 2013. It is settled law that a party having benefit under an order, cannot claim that it was valid for one purpose and invalid for another. Thus, we find merit in the contention of Mr. Bose that the appellant cannot approbate and reprobate. We find that the ratio of the decision of the Supreme Court in the cases cited by Mr. Bose, Bihar Biri Leaves Co. (Supra) and Mumbai International Airport Pvt. Ltd. (Supra) that a person cannot approbate and reprobate is squarely applicable in this case.

21. In equity, a person drawing benefit from a transaction is not permitted to escape from the disadvantage, if any flowing from it.

22. In the instant case the appellant is estopped from challenging the said order dated May 14, 2013 as it accepted the benefit of the sale notice containing the

stipulation fixed by the learned Company Judge that the successful purchaser shall have to vacate the said property within May 31, 2014. The factual matrix of the said decision of the Supreme Court in the case of P.R. Deshpande (supra) relied by Mr. Mookherjee was entirely different. In that case while dismissing a revision petition challenging an eviction decree, the High Court stayed operation of the order of dismissal upon an undertaking by the petitioner that he shall vacate the property within six months. The Supreme Court held that this undertaking did not estop the tenant to file special leave petition, under Article 136 of the Constitution of India against the order of dismissal by the High Court. The ratio of the said decision, as stated earlier, that there cannot be any estoppel against statutory or constitutional right. Thus, the said decision has no application in this case.

23. In view of the reasons for our finding that the appellant is estopped from challenging the first impugned order, we also reject the contention of the appellant that by purchasing the business of SST Media they are entitled to carry on the said business from said property.

24. Now, let us test the merit of the first appeal filed by the appellant otherwise. Mr. Mookherjee, learned Senior Counsel appearing for the appellant contended that since by the said order dated January 17, 2011 the Supreme Court preserved the right of the respondent No. 2 in the said eviction suit being CS No. 74 of 2008 the remedy of the respondent No. 2 to recover possession of the said property lied in the said suit only and the respondent No. 2 was estopped from filing the said disclaimer application. We are unable to accept the contention of Mr. Mookherjee. However, we find merit in the contention of Mr. Bose that the said order dated January 17, 2011, cannot by any means be construed to deprive the respondent No. 2 of the statutory right provided under Section 535 of the Companies Act or Sections 446, 456 and 457 thereof. The said provisions of the Companies Act provide statutory remedy to the owner for recovery of possession of his/her property from the official liquidator without requirement of filing any eviction suit against the Official Liquidator. Thus, the right of the landlord to invoke Sections 535 and 446 of the Companies Act for recovery of possession of a property from the Official Liquidator is a statutory right for public benefit. It is now trite that the principle of estoppel has no application when the statutory rights and liabilities are involved. In this regard, we are strengthened by the decision of the Supreme Court in the case of P.R. Deshpande (supra) relied upon by Mr. Mookherjee (para 9). Thus, we have no hesitation to hold that the respondent No. 2 was entitled to file the said disclaimer application.

25. Now with regard to the merit of the said disclaimer application, according to the appellant, the conditions prescribed under Section 535 of the Companies Act for disclaimer of the property was not fulfilled in the instant case.

26. We are afraid that we are unable to convince ourselves to find any merit in any of the above contentions of the appellant. First, from the said order dated April 17,

2008 passed by the learned Single Judge in the said CS No. 74 of 2008 it is evident that the said SST Media, the company in liquidation was in the possession of the said property. Before its winding up the said SST Media filed the suit before the learned City Civil Court at Calcutta against the respondent No. 2 and obtained an interim order restraining the respondent No. 2/owner from disturbing its possession in respect of the said property.

27. Further, as would be evident from the said orders dated August 27, 2009 and September 01, 2009 the said SST Media was having its registered office at the said property. Even in paragraph 20 of the stay petition filed before the Division Bench the appellant admitted the assets of the said SST Media, was housed at the said property and after the winding up of SST Media, the said property in question was under possession of the Official Liquidator. All these, ex-facie substantiate that the said property was in possession of the said SST Media, the company in liquidation. Thus, when the said SST Media was in possession of the said property, their right in respect of the said property would be property in its widest amplitude under Section 535 of the Companies Act. So far as the decision of the Chancery Division relied upon by Mr. Mookherjee in the case of Re Potters Oils Ltd. (supra) we find that in that case the Court rejected the prayer of Official Liquidator to disclaim the subject tanks as the company in liquidation was not in possession of the land and had no estate or interest in the ground on which the tanks stood or the structure of the tanks themselves. Whereas, in the instant case we find beyond all doubts that the said SST Media was in possession of the said property and had its right in respect of the said property. Thus, we find the appellant's reliance on the said decision in the case of Re Potters Oil Ltd. is misplaced.

28. Mrs. Sikder appearing for the Official Liquidator submitted that on February 21, 2011 the Official Liquidator took symbolic possession of the said property. Further, in paragraph 20 of the stay petition filed before the Division Bench the appellant admitted that the said property was under possession of the Official Liquidator by reason of the fact that the assets of the company in liquidation housed thereat. In any event in terms of Section 456(2) of the Companies Act after passing of the order of winding up dated May 21, 2009, the Official Liquidator shall be deemed to be in possession of the said property. Thus, we cannot accept the contention of the appellant that any observation of the learned Company Judge, in the first impugned order suggests that the Official Liquidator was not, in possession of the said property.

29. In the facts of the case as discussed above, we are even unable to accept the contention of the appellant that the said property is not onerous for the Official Liquidator. The business of SST Media, the company in liquidation, including all its assets, plant and equipments have been sold to the appellant. As was held by the said order dated January 08, 2010, the liability of the company in liquidation was in the region of Rs. 74 crores. Now so long as the Official Liquidator does not disclaim

and hand over possession of the said property, it remains liable to pay Rs. 6.14 lacs per month to the respondent No. 2. The occupation of the said property by the Official Liquidator is not required for beneficial winding up of SST Media. Therefore, there cannot be any doubt that the said property is onerous for the Official Liquidator.

30. Mr. Mookherjee, on behalf of the appellant also contended that the said eviction suit would be the "due process of law" which should be pursued by the respondent No. 2 for obtaining possession of the said property. Mr. Bose submitted that it is well settled principle of law that a proceeding under Section 446 or Section 535 of the Companies Act, 1956 adjudicating the right of the owner of a property for recovery of possession of the property from the official liquidator is "due process of law". In support of such contention, he placed reliance on decision of the Division Bench of this Court in the case of Wellman Wacoma Ltd. (Supra).

31. We are also unable to accept this contention of the appellant. The Division Bench of this Court, has already held in the said case of Wellman Wacoma Ltd.(supra) that a proceeding under Sections 446 and 535 of the Companies Act, 1956 relating to a question pertaining to the company in liquidation is the due process of law wherein any person, claiming interest over such property is given liberty to approach the Company Judge for adjudication of his/her right towards completion of the beneficial winding up of the company in liquidation.

32. So far as the decision of the learned Single Judge of this Court in the case of Calorex India Limited (In Liquidation) [supra] with utmost humility and great respect for His Lordship, we find that the said judgment does not contain the correct exposition of law. In the said case, the landlord had filed an application for disclaimer of its property by the official liquidator and the landlord had specific objection to grant any tenancy in respect of the property in favour of the purchaser of the business of the company in liquidation. The landlord contended that without his specific consent in writing, as provided in Section 14 of the West Bengal Premises Tenancy Act, 1956, there was no scope for creation of any tenancy in favour of the said purchaser. Whereas the purchaser of the business of the company in liquidation contended that without the said property its 45 employees will have no scope of employment and as such by the said decision the learned Single Judge created a tenancy in favour of the said purchaser. This was contrary to the provisions contained in Section 14 of the West Bengal Tenancy Act, 1956 as also the well-settled principle of law that a Court of law cannot create a tenancy, that too, against specific objection of the landlord.

33. With the expiry on May 31, 2014 the Official Liquidator was also duty bound to comply with the said order dated May 14, 2013, to have the appellant evicted from the said property by use of police force and make over possession of the said property to the respondent No. 2. We, however, find that the Official Liquidator was loathe to take steps to comply with the said portion of the order dated May 14, 2013

passed by the learned Company Judge.

34. In the instant case, from the conduct of the appellant it is evident that it was all along interested to wrongfully continue to occupy the said property and we find total lack of bona fide on the part of the appellant to file these appeals. It is further interesting to note, while in the Memo of Appeal filed in the second appeal, the appellant states that they are looking for a new accommodation to carry on their business, still they strenuously urged the first appeal challenging the decision of the learned Company Judge for disclaimer of the said property. At the same time, we are also disturbed with the conduct of the official liquidator. In spite of the fact that it had sold the business of SST Media property, in terms of the said order dated May 14, 2013, with the express stipulation that the appellant had to vacate the said property on or before May 31, 2014, the Official Liquidator took no step to comply with the said order dated May 14, 2013 passed by the learned Company Judge to disclaim of the said property and hand over possession of the said property, if required with the police assistance, to the respondent No. 2. The Official Liquidator, belatedly issued a letter dated September 8, 2014 requesting the appellant to vacate the said property, but the appellant refused to vacate the said property. Still the Official Liquidator took no step. Thus, the learned Company Judge had to pass the order dated May 30, 2014.

35. In view of our above findings, we find no merit in the first appeal being APO No. 442 of 2014 and the same is rejected. Consequently, the second appeal filed against the order dated October 30, 2014 being APO No. 444 of 2014 also stands dismissed. The cost, in both the appeals, is assessed at 600 GMS to be paid by the appellant to the respondent No. 2.

36. We direct the Official Liquidator to have the said property vacated by the appellant, if necessary with police help within January 31, 2015 and make over vacant possession of the said property to the respondent No. 2 within February 07, 2015. The appellant shall cause payment of the monthly occupation charges at the rate of Rs. 6,14,000/- to the Official Liquidator for the period till the month of January, 2015. All such monthly occupation charges, including the arrear amount, if any, shall be paid by the appellant to the Official Liquidator within January 07, 2015 and the Official Liquidator shall in turn pay the said sum to the respondent No. 2.

Ashim Kumar Banerjee, J.

37. I agree.