

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION NO. 731 OF 2015
IN
COMPANY PETITION NO. 311 OF 2011**

State Trading Corporation of India Ltd. .. Applicant

In the matter between :

State Trading Corporation of India Ltd. .. Petitioner

Vs.

M/s. Ushma Jeweller & Packing Exports
Pvt. Ltd.

.. Respondent

And

The Official Liquidator of
High Court, Mumbai

Ms.S.I. Shah i/b S.I. Shah & Co. for applicant.

Mr.Mustafa Doctor, senior advocate a/w. Mr.Chirag Modi, Ms. Ms.Saanya
Chowkulkar i/b Divya Shah Associates for respondent.

Mr.S. Ramakantha, O.L. present.

**CORAM : K.R.SHRIRAM, J.
DATED : 16TH DECEMBER, 2015**

P.C.

1 This application is for leave under Section 446 of the Companies Act, 1956 to permit the applicant to continue with the summary suit no.1811 of 2012 pending in this Court by joining the official liquidator as a defendant. The official liquidator has no objection but the counsel appearing for the erstwhile directors raises an objection. The counsel relied on a judgment of the Punjab and Haryana High Court in *Smt. Gian Devi & Anr. Vs. Bachan*

Motor Financiers (Pvt.) Ltd.¹ to submit that the applicant is an unsecured creditor and, therefore, its remedy lies in proving its debt before the official liquidator in accordance with the provisions of Section 528 read with 524 of the Act and the Rules.

3 In my view, this judgement does not really apply to the facts of the present case since the summary suit that is pending is not only against the company in liquidation but also against the erstwhile directors who were guarantors to the applicant. The said suit against guarantors or any other person who may be a party other than of a company can be proceeded with in the Civil Court without attracting provisions contained in Section 446(1). Section 446 in any event does not create any absolute embargo on institution of suits against the company. It only provides for leave of the Court and on grant of leave proceedings against the company become valid.

4 I find support to this view in the judgement of a Division Bench of this Court, Panaji Bench in **Deutche Bank Vs. S.P. Kala & Anr.**² ; in a judgement of a Single Judge of this Court in the matter of **Deutche Bank Vs. S.P. Kala, Official Liquidator of Sea Transportation (P) Ltd. (in**

1 1988 Company Cases Vo. 64,767

2 1992 Company Cases Vol.74 Page 577

liquidation)³ and a judgement of Punjab and Haryana High Court in the matter of *Punjab & Sind Bank Vs. Domino Leathers Ltd. (In Liquidation)*⁴.

5 The summary suit was filed by the applicant in the year 2011 against the company (in liquidation) and its directors who are also the guarantors for post shipment finance facility availed off by the company along with its directors from the applicant and from the bankers of the applicant. The summons for judgement taken out by the applicant is yet to be heard and finally disposed. In the meanwhile, pursuant to an order dated 30.03.2015, the company was directed to be wound up and the official liquidator was appointed.

6 Having considered the nature of the matter and in view of the fact that the official liquidator has no objection and in view of the fact that the summary suit is not just against the company (in liquidation) but also against the erstwhile directors and directors, the application is allowed in terms of prayer clause (a) and accordingly disposed of.

(K.R. SHRIRAM, J.)

3 1990 Company Cases Vol.67, 474

4 [2009] 150 Comp. Cas.385 (P & H)