

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 846 OF 2017

Board of Control for Cricket in India ...Applicant/Petitioner

Versus

Nimbus Communications Ltd ...Respondent

Mr. Aditya Mehta, Ms. Gathi Prakash, Ms. Aditi Thakur I/b. Cyril
Amarchand Mangaldas for the Applicant/Petitioner.

Mr. Hemant Prabhulkar a/w. Mr. Yogesh Bhoge I/b. Jurisperitus
Mumbai for the Respondent.

CORAM: G.S. KULKARNI, J.

DATED: 28th August, 2017

PC:-

1. This is a formal application of the applicant/petitioner-Board
of Control for Cricket India making the following prayer:

*“(a) the Official Liquidator, Bombay High Court,
being the Provisional Liquidator of Nimbus
Communications Ltd, be substituted in the place and
stead of Nimbus Communications Ltd, as the
Respondent in Arbitration Petition No. 1707 of
2015;”*

2. In the affidavit in support of this application the applicant
has stated that this Court in its company jurisdiction, by an order
dated 17/04/2017 in Company Petition No.387 of 2015, filed by

the State Bank of Hyderabad, against the respondent-Nimbus Communications Limited, has appointed Official Liquidator, High Court Bombay as the provisional liquidator of the respondent company. An appeal filed by the respondent from the said order dated 17/04/2017 was also dismissed by the Division Bench by an order dated 05/05/2017. It is further stated that the applicant had also moved the Company Court by filing Company Application No. 272 of 2017 under Section 446(1) of the Companies Act, 1965 read with Rule 117 and Rule 9 of the Companies (Court) Rules, 1959 seeking leave of the Court to proceed with the legal proceedings (both pending and proposed) against the respondent company which came to be allowed by an order dated 16/06/2017.

3. In the above circumstances, the present application has been filed to substitute the Official Liquidator, High Court Bombay in place of the respondent-Nimbus Communications Limited. Though it is not in dispute that the provisional liquidator has been appointed in the company proceedings as noted above, on behalf of the respondent this application is resisted. In doing so the learned counsel for the respondent has placed reliance on an order

dated 17/07/2017 passed by the Supreme Court, in Special Leave to Appeal (C) No(s). 17074/2017, to submit that the Supreme Court has observed that till the Company Judge deals with the settlement proposal of the respondent (petitioner therein) given to the State Bank of Hyderabad, no further steps be taken in the matter on any aspect relating to the professional liquidator. Learned counsel for the respondent thus submits that this application is required to be rejected in the light of the said order passed by the Supreme Court. The order of the Supreme Court reads as under:-

“Upon hearing the counsel the Court made the following

ORDER

Mr. Rana Mukherjee, learned senior counsel submits that a discussion for settlement between the petitioner and the respondent-bank or its successor has taken place. In view of the aforesaid, we do not intend to keep this special leave petition pending. We are apprised by learned counsel for the petitioner that a proposal is going to be put up before the Company Judge within four weeks hence. Till the Company Judge deals with the proposal no further steps shall be taken in the matter on any aspect relating to the professional liquidator.

The special leave petition is accordingly disposed of.”

4. A perusal of the above order of the Supreme Court would firstly indicate that the order is passed in proceedings between the respondent (Nimbus Communications Limited) and the State Bank of Hyderabad in which the applicant/petitioner is not a party. The order further indicates that the respondent had made an offer in a settlement discussion, to the State Bank of Hyderabad/its successor. In view of the settlement talks, the respondent had apprised the Court that a settlement proposal would be put up before the learned Company Judge within four weeks. It is on this background, the Supreme Court observed that till the Company Judge deals with the proposal, no further steps shall be taken in the matter on any aspect relating to the professional liquidator.

5. It is thus quite clear that the observations of the Supreme Court are required to be read in the context of the dispute between the parties before the Supreme Court namely the respondent (Nimbus Communications Limited) and the State Bank of Hyderabad and these observations pertained to the further proceedings before the Company Court in the dispute between the said parties. There is nothing on record to indicate that the order dated 17/04/2017 passed by the Company Court appointing

provisional liquidator of the respondent-company are not subsisting and/or are set aside. A perusal of the said order passed by the Supreme Court also do not indicate that the appointment of the Official Liquidator is in any manner stayed or interfered by the Supreme Court. Thus the consequence of appointment of the official liquidator is required to be recognised.

6. On the above backdrop, in my considered opinion, there can be no reason for not allowing this application of the applicant/petitioner to bring on record the provisional liquidator of respondent-Nimbus Communications Limited.

7. Accordingly, the chamber summons is allowed in terms of prayer clause (a). No costs. Necessary amendment be carried out within a period of two weeks from today.

8. A copy of the proceedings be served on the Official Liquidator of M/s. Nimbus Communications Limited.

(G.S. Kulkarni, J.)