

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/414/2023
IA NO. ACO/1/2023

IN THE MATTER OF: M/S DUNLOP INDIA LIMITED (IN LIQUIDATION)
AND
EYELID MERCANTILES PRIVATE LIMITED
Vs
THE OFFICIAL LIQUIDATOR, HON'BLE HIGH COURT AT CALCUTTA AND ANR.

BEFORE:

The Hon'ble JUSTICE SBYASACHI BHATTACHARYYA

&

The Hon'ble JUSTICE PARTHA SARATHI CHATTERJEE

Date : 2nd November, 2023.

[VACATION BENCH]

Appearance:

Mr. Debasish Mitra, Adv.

Mr. Rupak Ghosh, Adv.

Ms. Trisha Mukherjee, Adv.

Mr. Rounak Bose, Adv.

...for the appellant

Mr. Soumya Mazumdar, Adv.

Mr. Shaunak Mitra, Adv.

Mr. Zulfiqar Ali Al Quaderi, Adv.

Mr. Indrajeet Banerjee, Adv.

...for respondent no. 2

Ms. Tanushree Dasgupta, Adv.

...for Official Liquidator

Mr. Aritra Basu, Adv.

The Court : Learned Counsel for the appellant contends that during pendency of an application of the petitioner for a direction on the Official Liquidator to disclaim undivided half share of the concerned property at 46B, Chowringhee Road, Kolkata-700071, the Official Liquidator is proceeding with an e-auction sale which is scheduled to be held on November 7, 2023. It is argued that unless the rights of the appellant are adjudicated, the sale should not go through.

Learned Counsel appearing for the respondent no. 2 submits that in any event, in terms of Rule 272 of the Companies (Court) Rules, 1959, unless the Court otherwise orders, no property belonging to company which is being wound up by the Court shall be sold by the Official Liquidator without previous sanction of the Court and every such sale shall be subject to confirmation by this Court.

Learned Counsel appearing for the workers in the concerned company argues that the said workers ought to be impleaded, since a direction of disbursal of particular amounts was passed in favour of the said workers in the impugned order as well.

We find from the impugned order that the direction of disbursal of the amount of Rs.30,000/- each to 12,000 workers stands on an entirely independent footing, based on the observation of the learned Trial Judge that the Official Liquidator presently has a fund of Rs.43,62,05,979/-, and nothing hinges on the sale with regard to such disbursal. Hence, the workmen of the company are not necessary parties to the appeal.

Insofar as the merits of the appeal are concerned, learned Counsel for the respondent no.2 is justified in arguing that sufficient protection has been afforded in Rule 272, inasmuch as the sale cannot be concluded unless it is confirmed by the Court.

Keeping in view the balance of convenience and inconvenience of the parties, APOT/414/2023 along with ACO/1/2023 are disposed of with a request to the learned Trial Judge, subject to the convenience of the said court, to take up the application bearing no. CA/83/2021 pending at the behest of the present appellant before the learned Trial Judge confirms the sale proposed to be held on November 7, 2023.

It is made clear that the merit of the allegations and counter-allegations have not been gone into by this Court and it will be open to the learned Trial Judge to decide all issues independently in accordance with law.

(SABYASACHI BHATTACHARYYA, J.)

(PARTHA SARATHI CHATTERJEE, J.)

s.pal/sk