



-14-2018

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

COMPANY APPLICATION NO. 14 OF 2018
IN COMPANY PETITION NO. 4 OF 2001

(Official Liquidator, Nagpur Vs. M/s. Navalkishore Kothari Sons & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Dr. Anjan De, Counsel for the Official Liquidator.
Shri S.D. Patil, Official Liquidator.

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CORAM : ANIL L. PANSARE, J.
MAY 9, 2024

This is yet another application, where the Official Liquidator has failed to take recourse to the appropriate provisions of the Companies Act, 1956 (for short "Act of 1956"). By present application, the Official Liquidator is seeking direction against four tenants to vacate the registered office premises and handover vacant possession of all the assets and properties of the Company in liquidation to the Official Liquidator.

2] The attention of the learned Counsel for the Official Liquidator as also of the Official Liquidator is invited to Section 456 of the Act of 1956, which reads thus :

"456. Custody of company's property.- (1)
Where a winding up order has been made or where a provisional Liquidator has been appointed, the Liquidator or the provisional Liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(1-A) For the purpose of enabling the Liquidator or the provisional Liquidator, as the

case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the Liquidator or the provisional Liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon, after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the Liquidator or the provisional Liquidator.

(1-B) For the purpose of securing compliance with the provisions of sub-section (1-A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.

(2) All the property and effects of the company shall be deemed to be in the custody of the Tribunal as from the date of the order for the winding up of the company.”

3] Bare perusal of sub-section 1-A of Section 456 of the Act of 1956 indicates that a complete mechanism is provided for taking possession of the properties of the Company under liquidation. The Official Liquidator, therefore, ought to have approached the District Magistrate. Instead, he has approached this Court.

4] Experience shows that the Official Liquidator, without referring to the provisions of the statute, approach this Court in matters which could be easily avoided, for remedy lies somewhere else. Accordingly, this Court has passed orders in Company Application No. 265/2024 that all the applications that

will be filed by the Official Liquidator would be vetted by the Counsel for the Official Liquidator.

5] By this order, it is directed that in all pending matters, the learned Counsel shall examine whether the applications, Official Liquidator's proceedings, etc. filed would be maintainable or whether remedy is otherwise available. This process will definitely save judicial time of the Court. Order accordingly.

6] So far as present application is concerned, the Official Liquidator shall approach appropriate authority in terms of Section 456 of the Act of 1956.

7] The application is disposed of in above terms.

(ANIL L. PANSARE, J.)

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