

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

**COMPANY APPLICATION (L) NO. 133 OF 2016
IN
COMPANY PETITION NO. 425 OF 2011**

Bhawar U. Jain

...Applicant / Third Party

In the matter between

ICICI Bank Ltd.

...Petitioner

vs.

The Official Liquidator

....Respondent

Mr.C.N. Mehta I/b. MMK Law Associates for Applicant.

Mr.S.H. Patel for Punjab & Sind Bank / Intervener.

CORAM : S.C. GUPTE, J.

16 DECEMBER 2016

P.C. :

Heard learned Counsel for the Applicant and also M/s.Punjab and Sind Bank through their respective counsel.

2 This application seeks recall of a winding up order on the ground that the exparte winding up order passed against the Respondent company-M/s.Flawless Diamond (India) Ltd. was without notice to the company as required under Rule 28 of the Companies (Court) Rules, 1959. The application is made on behalf of an ex-director of the company (in liquidation). The record does not show that any notice as required by Rule 28 and as specifically directed by this court, when the original company petition (Company Petition No.425/2011) was admitted by this court, was given to the Respondent company. There is nothing on record to show that the Respondent company had at any time waived service of notice under

Rule 28. In the premises, the order of winding up will have to be set aside.

3 M/s.Punjab and Sind Bank, however, opposes this application. It is their submission that they had filed their own petition for winding up of the Respondent company, namely, Company Petition No.63/2014. When this petition came up before this court at a pre-admission stage, by its order dated 31 October 2014, this court disposed of the petition holding that since the Respondent company was already ordered to be wound up by the order of this court dated 20 June 2014 in CP 425/2011, the Punjab and Sind Bank shall file their claim before the Official Liquidator. Whatever may be the order passed in the company petition of Punjab and Sind Bank, since the winding up order passed on Company Petition No.425/2011 on 20 June 2014 is without complying with the requirements of service of the notice under Rule 28 on the Respondent company, the winding up order will have to be set aside. Setting aside of the winding up order relegates the Respondent company to the stage post-admission. Now that the dispute between the original Petitioner ICICI Bank Ltd. in Company Petition No.425/2011 and the Respondent company is settled, M/s.Punjab and Sind Bank, who were originally Petitioners in their own right claiming winding up of the company and whose petition was disposed of in view of the winding up order already passed, will have to be substituted in place of the original Petitioner-ICICI Bank. M/s.Punjab and Sind Bank may have to accordingly adopt steps for being substituted.

4 In the premises, the winding up order passed by this court on 20 June 2014 in Company Petition No.425/2011 is set aside and the petition is placed on board for directions on 9 January 2017. M/s.Punjab and Sind Bank may bring their application for substitution before the court on that

day. The Respondent company waives service of notice under Rule 28.

5 Since the winding up order is set aside, the Official Liquidator, who is appointed Liquidator of the Respondent company, shall stand discharged. Since the Official Liquidator is in possession of the company's property, and has taken various steps for safeguarding the property and also for valuing the same, the Respondent company will have to bear the costs of liquidation incurred by the Official Liquidator. The Official Liquidator shall accordingly raise his bill of costs on the Respondent company, who shall discharge the same within a period of three weeks after receipt of the same. Subject to payment of these costs, the Receiver shall hand over the possession of the company's property to the Respondent company. In addition to the security charges and valuation costs, the costs of the Official Liquidator are quantified at Rs.50,000/-.

6 Office to take on record the affidavit of service to be filed by the Petitioner.

(S.C. Gupte, J.)