

IN THE SUPREME COURT OF INDIA

SUBJECT : WINDING UP

CASE NO.: Appeal (civil) 2045 of 2008

DATE OF JUDGMENT: 12/03/2008

EASTERN INDIA APPAREL & TEXTILE EXPORTER
ASSOCIATION AND ANR

PETITIONER:

OFFICIAL LIQUIDATOR AND ANR

RESPONDENT:

BENCH:

S.B. SINHA & P.P. NAOLEKAR

CIVIL APPEAL NO. 2045 OF 2008

[Arising out of SLP(C) No.229/2005]

Leave granted. This appeal is directed against the judgment and order dated 14.10.2004 passed by a Division Bench of the Calcutta High Court in A.P.O.T. No.434/2004 whereby and whereunder the appeal filed by the appellants was dismissed in limine. The said appeal was preferred by the appellants from an order dated 29.6.2004 passed by a learned Single Judge of the High Court, directing: The representative of the Official Liquidator is directed to visit the premises at 10 O'Clock in the morning on June 21, 2004 and the representative is directed to hand over possession of the premises in question to the persons from whom the Official Liquidator has taken possession upon receipt of the said sum of Rs. 1,65,000/-. After receipt of the said sum the Official Liquidator will hold the same until further orders of the Court. Appellants contend that the building in question, namely, 26/Park Lane, 2nd Floor, Calcutta, originally belonged to one Mrs. Nasreen Wahhab. One B.Q. Nandy is said to be the tenant in the said premises. According to the appellants, Shri B.Q. Nandy had allowed the following five different concerns to use 'table spaces' at the aforesaid premises:

- i) M/s. Fortune Multitraders Ltd.
- ii) M/s. Eastern India Apparel & Textiles Exporters Association

iii) M/s. Mon Lam (India) Pvt. Ltd.

iv) M/s. Nandy Associates

v) M/s. B.Q. Global

An affidavit of B.Q. Nandy has been placed on record. If what is stated by him in his affidavit is correct, we are prima facie of the opinion that there is some force in the contention of the learned learned counsel for the appellants that M/s. Fortune Multitraders Ltd., the company in liquidation was also only a table space holder and, thus, the right, title and interest of the other table space holders, like the appellants before us, could not have been the subject matter of any direction by the learned Company Judge. We are, therefore, of the opinion that the Division Bench of the High Court committed a serious error in dismissing the appeal in limine. The impugned judgment is, therefore, set aside and the matter is remitted to the High Court for consideration of the appeal afresh on merit. The appeal is allowed with the aforementioned direction. No costs.

DATE OF JUDGMENT: 12/03/2008

Sd./-
S.B. SINHA,J
Sd./-
P.P. NAOLEKAR,J