

(1958) 05 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Liquidation Miscellaneous No. 134 of 1957

Bhai Mohan Singh

APPELLANT

Vs

Hind Iran Bank Ltd. (In Liquidation)

RESPONDENT

Date of Decision : 23-05-1958

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 19, 19(1), 20

Citation : AIR 1959 P&H 225

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : K.L. Kapur and D.K. Mahajan, for the Appellant; B.R. Tuli, for the Respondent

Final Decision : Dismissed

Judgement

Tek Chand, J.—This judgment will dispose of three petitions u/s 19 of Displaced Persons (Debts Adjustment) Act (No. 70 of 1951) read with Section 45B of the Banking Companies Act, namely, L. M. 134 of 1957, L. M. 123 of 1957 and L. M. 133 of 1957, as they involve common points.

2. In L. M. No. 134 of 1957, Bhai Mohan Singh, son of, Bhai Gian Chand, has submitted an application u/s 19 of the Displaced Persons (Debts Adjustment) Act (No. 70 of 1951) read with Section 45B of the Banking Companies Act, alleging that he is a displaced person from West Pakistan which fact is not denied by the respondent-Bank. The petitioner has also stated that his father was on 15th August, 1947, and upto his death on 18th of August, 1954, holder of 200 shares in the respondent-Bank of the value of Rs. 100/- each and, on which a sum of Rs. 50/- per share was paid up. It is further stated that the Official Liquidator, despite the petitioner's protests, has erroneously settled his name on the list of contributories in respect of the above mentioned shares.

The petitioner claimed the benefit as a displaced person under the Displaced Persons (Debts Adjustment) Act and wrote to the Official Liquidator on 12th of

August, 1957, by registered A. D. post requesting him to convert his partly paid up shares into a smaller number of fully paid up shares but the Official Liquidator sent him no reply, and, on the other hand, issued a notice dated 18th of September, 1957, demanding payment of Rs. 10,000/- as the amount of call on the said shares. The petitioner has, therefore, prayed that u/s 19(4) of the Act he should be directed to convert his 200 partly paid up shares into 100 fully paid up shares.

3. In reply, the respondent contends that the petition is not maintainable as it has been filed after the 15th of August, 1957, beyond the period of ten years allowed under Sub-section (6) of section 19. It was also averred that section 19 of the Act did not apply to Companies in liquidation which are covered by section 20. Relief u/s 19 is confined to Companies which are going and work-ing concerns. On the merits, it was stated that the petitioner's letter dated the 12th of August, 1957, reached the respondent on 17th of August, 1957, and could not be acted upon.

4. The following issues were framed:

(1) Whether the petition is maintainable ?

(2) Whether the petitioner is entitled to the relief claimed"?

5. Issue No. 1. The Official Liquidator appeared as R. W. 1 and stated that the Bank was ordered to be wound up by order of this Court dated 9th of April, 1954, and the call, upon the contributories, was made in pursuance of this Court's order dated 30th of August, 1957. Letter of the petitioner dated 12th of August, 1957 (Exhibit R. 2) was received by the Official Liquidator on 17th of August, 1957. It As proved on the record of this case mat the petitioner sent two letters identically worded to the Official Liquidator, one by registered post and the other under certificate of posting. Both these letters were sent from Delhi to the respondent at his Delhi address. The Official Liquidator has produced the letter Exhibit Rule 2, which was sent under certificate of posting and not the registered letter.

He admits that one registered letter was received on 14th of August, 1957, but has expressed ignorance of its contents and is not in a position to produce the letter. The registered letter which the Official Liquidator admits to have received, has not been entered in the receipt register of the Company and no reason is given for this omission. From the statement of R. W. 1, I am satisfied that the registered letter despatched from Delhi on 12th of August, 1957, was received by the Official Liquidator on or before 15th of August, 1957, and the benefit of the provisions of section 19 was claimed within the time specified under Sub-section (6) of that section. I, therefore, decide the first issue in favour of the petitioner.

6. In L. M. No. 123 of 1957 the petition is admittedly maintainable as there is no dispute that the petitioner's letter dated 1st of August, 1957 (Exhibit R. 2) seeking conversion of his 105 partly paid up shares into a smaller number of fully

paid up shares, was received by the Official Liquidator on 3rd of August 1957. This petition admittedly does not violate the provisions of Sub-section (6) of section 19 of the Act.

7. In L.M. No. 133 of 1957 the Official Liquidator has not denied the petitioner's allegation that in reply to a notice dated 6th September, 1955, the petitioner claimed the benefit of Act No. 70 of 1951. The petitioner's reminder dated 6th of August, 1957, by registered A. D. post, requesting conversion of his partly paid up shares into a smaller number of fully paid up shares was also received by the Bank.

8. In all these three petitions, the first issue is decided in favour of the petitioner and against the Bank.

9. Issue No. 2. Under this issue it is contended on behalf of the Official Liquidator that section 19 does not apply to a Company in liquidation. It will be convenient to reproduce below both Sections 19 and 20 of the Displaced Persons (Debts Adjustment) Act:

"19. Calls on, shares in companies.-

(1) Where a company or a co-operative society has made any call upon a displaced person or a displaced bank in respect of any moneys remaining unpaid on any share held by him or it on the 15th day of August, 1947, in the company or cooperative society, as the case may be, and there has been a failure on the part of the shareholder to pay any moneys due in respect of such call, then, notwithstanding anything to the contrary contained in the Companies Act, or in the memorandum or articles of association or the Co-operative Societies Act, no interest shall be payable in respect of any such moneys due and the company or the co-operative society, as the case may be, shall not be entitled to forfeit the share or any part thereof, and any forfeiture made before the commencement of this Act in respect of any share in the circumstances specified in this Sub-section shall be deemed to have had no effect, and no person shall be deemed to have ceased to be a member of the company or cooperative society merely by reason of such forfeiture.

(2) Notwithstanding anything contained in the Companies Act, or in the memorandum or articles of association, or the Co-operative Societies Act it shall be lawful for a displaced person or a displaced bank to apply to the company or the co-operative society, as the case may be for the conversion of any partly paid up shares held by him or it in the company or society into such smaller number of fully paid up shares as the society or company may have issued and in respect of which calls have already been made.

(3) Where any share forfeited before the commencement of this Act has been disposed of by the company in accordance with its articles of association and it is not possible for the company to give to the displaced person the relief to which he is entitled under this section without increasing its capital, the capital of the

company shall be deemed to have been increased to the extent to which it is necessary to provide that relief.

(4) If the company or the co-operative society refuses to comply with any such request as is contained in an application under Sub-section (2), the Tribunal may, on application made to it in this behalf and if satisfied that there is no cause for such refusal issue a direction to the company or the co-operative society accordingly, and the company or society shall be bound to comply therewith and every such direction shall take effect from the date thereof.

(5) Save as otherwise provided in this section, nothing contained herein shall affect the validity or any action taken by the company or its board of directors in pursuance of the provisions of the Companies Act or of the memorandum or articles of association relating to the company.

(6) The provisions of this section shall have effect for a period of ten years from the 15th day of August, 1947, and thereafter shall cease to have effect except as respects things done or omitted to be done.

20. No calls to be made on displaced person or bank when company or co-operative society is in liquidation, --

(1) Where a company or a co-operative society is being wound up, no displaced person or displaced bank shall be called upon notwithstanding anything to the contrary contained in the Companies Act or in the memorandum or articles of association or the Co-operative Societies Act, to make any contribution to the assets of the company or co-operative society as the case may be, in respect of any share held by him or it in the company or society on the 15th day of August, 1947.

(2) The provisions of this section shall have effect for a period of ten years from the 15th day of August, 1947, and shall also apply in respect of any calls made and not satisfied before that date, and shall cease to have effect after the expiry of the said period except as respects things done or omitted to be done."

10. The main object of this Act is to make provisions for adjustment and settlement of debts owed by displaced persons. In the case of displaced persons who are holders of shares in a Company which is a going concern, section 19 provides the relief, and also the procedure for obtaining it. Under Sub-section (1) the shares of such persons cannot be forfeited by reason of failure to pay calls, and interest on unpaid call moneys in respect of such shares cannot be charged either, notwithstanding anything to the contrary contained in the Companies Act, or in the memorandum or articles of association. Sub-section (2) enables displaced persons to get their partly paid up shares converted into smaller number of fully paid up shares in respect of which calls have been made. This is to be done by making an application to the Company.

11. In order to see whether Section 19 also applies to a Company in liquidation, its relevant provisions may be analysed with a view to gather the intention of the

legislature. No express language has been used to show exclusion of Companies in liquidation. Subsection (1) contemplates a call made upon a displaced person by a Company. This means a call in compliance with a resolution of the Board of Directors in contradistinction to a call made by Court in accordance with the provisions of Section 187 of the Indian Companies Act of 1913 which is analogous to Section 470 of the Companies Act of 1956.

After the winding up order is made, the Directors cease to have any power to make a call. The words occurring in Sub-section (1) "Where a company... has made any call upon a displaced person or a displaced bank in respect of any moneys remaining unpaid on any shares" cannot be construed to include a call made in accordance with the provisions of Section 187 of the old Act by the Court after making a winding up order. Before winding up order, calls are made by the Company and subsequent to the winding up, only the Court can make calls. Section 19 refers to a call made by a Company but not to a call made by the Court.

This suggests that Section 19 refers to Companies which are going concerns and not in liquidation. The other pointer to the same conclusion, in Sub-section (1), is a reference to "failure on the part of the shareholder to pay any moneys due in respect of such call". The word used is "shareholder" and the word "contributory" is avoided. The liability of a contributory, after the winding up order has been passed, to contribute to the assets of the Company for payment of its debts and liabilities and costs, charges and expenses of the winding up etc., is elegiac, whereas the liability of a share-holder to pay the call money on his partly paid up shares is ex contractu, being under the memorandum or articles of association to which he has subscribed, vide *Mahomed Akbar Abdulla Fazalbhoi Vs. The Official Liquidator*, and *R. Lakshmi Narasa Reddi Vs. The Official Receiver, Sree Films Ltd.*,

The liability of a contributory arises when the Company is wound up. The term "contributory" as defined in Section 158 of the previous Act and Section 428 of the new Act, means every person liable to contribute to the assets of a company in the event of its being wound up, and, includes the holder of any shares which are fully paid up. The words "such call" also indicate such call as has been made upon a displaced person by a Company.

12. Sub-section (1) of Section 19 provides that "no interest shall be payable in respect of any such moneys due". Interest is chargeable under articles of association in respect of an unpaid call made by the Directors, but no interest is payable when a call has been made by the Court, Subsection (1) then goes on to state, that the Company shall not be entitled to forfeit the share or any part thereof. This also refers to a going concern because there is no question of forfeiture of shares by a Company after the winding up order has been made. Forfeiture is by Directors under the articles of association and cannot be ordered after the Company goes into liquidation, as the liability of the contributory is not contractual, but is statutory u/s 156 of the previous Act of 1913 which is

analogous to Section 426 of the new Act.

13. Under Sub-section (2) of Section 19, a displaced person is required to apply to the Company for the conversion of his partly paid up shares into smaller number of fully paid up shares. After the winding up order, the Board of Directors or the Company cannot function. An application made to a Company is to be considered by the Board of Directors but after the Company goes into liquidation, Court alone has jurisdiction. The Official Liquidator does not replace the Board, and as such, has no power. If a Company in liquidation were also within the purview of Section 19, the language should have indicated recourse to Court.

14. The language of Sub-section (3) also contemplates Company as a going concern and not one in liquidation. In the first place this provision refers to a share which has been forfeited before the commencement of the Act and has been disposed of by the Company in accordance with its articles of association. It obviously cannot refer to a Company which is being wound up. The contingency contemplated is the impossibility of the relief on the part of the Company to give to the displaced person. Finally, the Sub-section provides that the capital of the Company shall be deemed to have been increased to the extent to which it is necessary for providing the relief. The capital of a Company in liquidation cannot be increased. The language of Sub-section (3) by necessary implication excludes its operation to the case of a Company in liquidation.

15. Sub-section (4) provides a remedy to a displaced person by means of an application to the Tribunal where "the company refuses to comply with any such request as is contained in an application under Sub-section (2)." As already stated, a Company in liquidation cannot function and the question of refusal to comply with any request of a displaced person, does not arise in the case of such a Company.

16. Sub-section (5) refers to action taken by the Company or its Board of Directors under the Companies Act or under the memorandum or articles of association. This provision excludes by necessary implication a Company in liquidation which cannot take any action suo motu and the quondam Board of Directors has no locus standi to act. Such a Company has no place in Sub-section (5) which has within its purview a going concern only.

17. The several provisions of Section 19 when scrutinised suggest, exclusion of Companies in liquidation from their scope. A Company which is being wound up has no place within the framework of Section 19, and cannot be dovetailed into it without doing serious violence not only to the verba legis but also to the sententia legis. Section 19 does not refer expressly or inferentially to a Company in liquidation. I am of the view that Section 19 refers exclusively to the benefits conferred by the legislature upon a displaced person or a displaced bank holding shares in a Company or a Co-operative Society, which is a going concern and not to a Company or Society in liquidation.

18. Similarly Section 20 deals with the rights of displaced persons or displaced

bank when a Company or Co-operative Society is in liquidation, and excludes concerns which are living and functioning and have not been ordered to be wound up. Under Subsection (1) of Section 20, a displaced person or displaced bank is absolved from the obligation of making any contribution to the assets of the Company or the Cooperative Society in respect of any partly paid up shares held by him or it on the 15th day of August, 1947, for a period of ten years.

The relief that is given to a contributory who holds such shares, is temporary and only extends to the suspending of contribution for a period of ten years; and after 15th day of August, 1957, a displaced person or Banking Company is liable to pay the unpaid amount on partly paid up shares. There, is no option to get partly paid up shares converted into a smaller number of fully paid up shares.

19. If Section 19 were to apply to a displaced person holding shares in a Company in liquidation, then the relief granted under Sub-section (2) of Section 20 would be redundant. u/s 19 it would always be open to a displaced person to get his partly paid up shares converted into smaller number of fully paid up shares. The relief u/s 19 confers absolute immunity to the displaced person against a call in respect of partly paid up shares.

If such a complete remedy were available to a displaced person with respect to a Company in liquidation, then there is no point in the legislature, also granting to him, a lesser and an inadequate relief in the nature of a moratorium suspending contribution to the assets of the Company or Co-operative Society in liquidation for a limited period of ten years. It seems to me that Sections 19 and 20 are independent of each other, functioning within separate, spheres; the former governs the case of Companies and Co-operative Societies not in liquidation, and the latter applies to concerns which have been ordered to be wound up.

The two provisions are mutually exclusive and collectively exhaustive and do not overlap each other in the sense that the earlier section has within its orbit going concerns as well as those in liquidation. A view to the contrary can only be possible by reading something into the language of Section 19 which is not there and which the legislature, if it had so intended, would have expressed in precise and clear terms; I cannot read into section 19 what is not mentioned therein and assume what has not been expressed, to have been implied. In interpreting Sections 19 and 20, the maxim "Expressio unius est exclusio alterius" is helpful and the legislature should be deemed to have borne in mind the principle that "expressum facit cessare tacitum" (What is expressed makes what is silent to cease). I agree with the observations of Falslow J. in *A. N. Savara v. Simla Banking and Industrial Co. Ltd.* (1957) 27 Com Cas 335 (P&H) (337), that Section 19 refers to Companies which are going concerns and Section 20 to Companies in liquidation.

20. My attention has been drawn to an unreported judgment of Dulat J. in Civil Original No. 56 of 1955, *Inder Devi Pria Das Tandon v. Simla Banking and Industrial Co. Ltd.*, where no doubt there are certain observations supporting the

petitioners" contention. This decision, however, is distinguishable on facts. In that case an application u/s 19 was made in December, 1951 to the Company while it was a going concern and the Company was ordered to be wound up in September 1953. The application when made was competent within section 19(2). To such a case the provisions of Section 19 were considered applicable. But the facts of the case before me are totally different.

21. The Hind Iran Bank Limited was ordered to be wound up by this Court on the 9th of April, 1954. The call upon the contributories was made in pursuance of the order of the Court dated 30th of August, 1957, made u/s 187 of the Indian Companies Act, 1913," analogous to Section 470 of the new Act. Not only at the time of presenting the petition u/s 19 of the Displaced Persons (Debts Adjustment) Act, but also when the call was made upon the contributories, the Company was being wound up. Section 19 does not, therefore, provide any relief to a displaced person in such a case. I therefore, decide the second issue against the petitioners in all the three cases, being of the view that the provisions of Section 19 do not apply to Companies and Co-operative Societies in liquidation, but to going concerns.

22. The three petitions (L. M. Nos. 134, 123 and 133 of 1957) therefore fail and are dismissed, but there will be no order as to costs.