

(1934) 01 CAL CK 0022
In the Calcutta High Court

Brahmanbaria Loan Co., Ltd.

APPELLANT

Vs

In re

RESPONDENT

Date of Decision : 22-01-1934

Acts Referred:

Companies Act, 1913 — Section 76

Citation : AIR 1934 Cal 624

Hon'ble Judges : Buckland, J

Bench : Division Bench

Judgement

Buckland, J.—This is an application, made u/s 76, Companies Act, 1913, for an order that the Court do direct the calling of a general meeting of the company. The grounds for the application are a petition verified by the affidavit of Gobindalal Datta, who is described as a member of the board of directors of the company. In his petition, he states that the last balance-sheet of the company up to 31st March 1932, was adopted at its general meeting held on 30th September in the same year. That, it appears, is the date when the last general meeting of the company was held. The section provides that a general meeting of every company shall be held once at the least in every year, and not more than 15 months after the holding of the last preceding general meeting.

2. In the event of default, the company and every officer of the company, who is knowingly a party to the default, is liable to a fine. It is clear that the section has not been complied with, as more than 15 months have elapsed since the last general meeting was held. The petition also states that, on 6th March 1933 criminal proceedings were instituted by the company against its former secretary, in which proceedings certain books of the company were exhibited and remained in Court, as the result of which the accounts of the company could not be audited and the balance-sheet for the year ending 31st March 1933 could not be prepared and that in consequence thereof no annual general meeting for the adoption of any balance sheet for the said year could be held as yet.

3. It is then stated that the criminal proceedings terminated on 11th December

1933, with the conviction of the former secretary, who, however has filed an appeal against his conviction in the Court of the District Judge of Tippera, which appeal is not likely to be disposed of until the end of next month, and that, until the appeal has been disposed of, the books will not be returned to the company, and the auditor then will require about two months to audit the accounts of the company. In these circumstances, the Court is asked to make an order directing the calling of a general meeting of the company "within" 31st May 1934. In my opinion, this application is entirely misconceived. The object of the section is to enable a member of a company, where there has been default on the part of those whose duty it is to summon the meeting, to apply to the Court to direct the calling of a meeting. It is not, as is undis-guisedly said by learned counsel, who appears on behalf of the applicant, is the object of this, application, intended to enable the Court to make an order which will excuse the persons responsible from the consequences of their omission. What the petition says with regard to the balance-sheet, upon which learned counsel has laid considerable stress, has nothing to do with the matter. Possibly, the general meeting, which should have been called, is one before which the balance sheet should have been placed, but Section 76 makes no reference to the balance-sheet and its terms are mandatory.

4. I have enquired as to the genesis of this application and have been informed that in cases where persons have rendered themselves liable to a penalty, it is the Registrar of joint stock companies who initiates the proceedings, and that the Registrar was approached in relation to this matter and said that he would stay his hand for three weeks in order to enable an application to be made under this section. If this information is correct the Registrar has taken an erroneous view of the object of the section, as there is nothing in the section which would excuse the persons liable for the default even if an order were made as desired. Take a case for which the section is obviously intended to provide, namely where the directors, for reasons of their own, or it may be negligently or in furtherance of fraudulent dealing, fail to call a general meeting, and a share-holder considers it his business to take action under the section. In such case, could it be said that the persons responsible were to escape the consequences of their omission to call a general meeting? Certainly not. The fact that a director makes the application makes no difference. On the Contrary, I conceive that it is possible that he could have taken steps to have the meeting convened. He can only apply qua member of the company, and even were I to make the order, he might still be liable to a fine under the section. I need hardly say that I am not prejudging any proceedings that may hereafter be instituted Under the section and, in this connection, I desire to add that it would be extremely unsatisfactory on an ex parte application, such as this is, to excuse any officer of the company from the consequences of his omission.

5. The order is one which may be made ex parte, but it may be that there are other matters to be considered which do not find a place in a petition and exculpation would not be justified. If proceedings are instituted and if there are

sufficient grounds for not having complied with the mandatory provisions of the section. I apprehend that they will furnish a defence and the person or persons charged will be acquitted, but this, in my judgment, is not the time or place at which either directly or indirectly to adjudicate on the point. The application will be dismissed.