
(1987) 07 BOM CK 0056

In the Bombay High Court

Case No : Appeal No. 355 of 1982 in Company Application No. 317 of 1981 in
Company Petition No. 113 of 1979

Colaba Land Mills Co. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:

Companies Act, 1956 — Section 391, 555, 555(4), 555(7)

Citation : (1989) 66 CompCas 610

Hon'ble Judges : Shah, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Shah, J.—This appeal is directed against the dismissal of Company Application No. 317 of 1981 by the company judge by his order dated April 8, 1982, whereby the company judge rejected the prayer of the company for directing the Union of India to pay to the company the sum of Rs. 5,40,667 and such other amounts deposited by the official liquidator in the Companies Liquidation Account as undistributed assets of the company.

2. The facts in brief are these. The company (The Colaba Land and Mills Co. Ltd.) was ordered to be wound up by order dated October 7, 1959, and the official liquidator was appointed the liquidator of the company. The authorised capital of the company was rupees one crore and the issued, subscribed and paid up capital was Rs. 49,00,000, divided into 49,000 shares of the face value of Rs. 100 each and the 49,000 shares were fully paid up when the winding up order was passed. During the course of the liquidation proceedings between 1959 and 1979, the official liquidator discharged all the liabilities of the company to its various creditors. However, further amounts were available to the official liquidator for distribution amongst the shareholders of the company. Accordingly, the official liquidator, in the first return, declared a dividend of Rs. 50 per share on April 17, 1973, and in the second return a further dividend of Rs. 50 per share on June 23, 1976, as also in the third return, a dividend of Rs. 40 per share was

declared on June 20, 1978. It would thus appear that against the face value of each share of Rs. 100 fully paid up, the shareholders received Rs. 10 from the official liquidator. Several shareholders, however, did not claim the amounts of the said dividends from the official liquidator. The official liquidator, therefore, in accordance with the provisions of section 555 of the Companies Act, deposited on different occasions an aggregate sum of Rs. 5,42,107 in the Companies Liquidation Account with the Reserve Bank of India. It appears that during the pendency of the winding-up of the company, one of the shareholders presented a scheme for reconstruction of the company u/s 391 of the Companies Act. The scheme was sanctioned by the court by order dated July 6, 1979, as a result of which the company came out of liquidation. The company filed Application No. 317 of 1981 praying that the aforesaid amount of Rs. 5,00,000 odd lying in the Companies Liquidation Account be paid to the company as and by way of undistributed assets of the company which have remained unclaimed by the various shareholders of the company. The application for payment of this amount is filed under the provisions of section 555(7)(a) of the Companies Act, 1956. The learned company judge rejected the application holding that the amount in question could not be considered as the asset of the company, but were the amounts belonging to the various shareholders and lying to their credit in the account known as the Companies Liquidation Account in the Reserve Bank of India. The learned judge held that the company was not entitled to claim the refund of the amounts which remained undistributed and credited in the said account in compliance with the provisions of section 555(1)(b) of the Act. This order of the learned company judge is challenged in this appeal.

3. In view of the submissions advanced before us, the short question that arises for our consideration is whether the moneys representing the distributable assets refundable to the contributories which the liquidator has credited in the Reserve Bank in compliance with the provisions of section 555(1)(b) of the Act could be treated as the assets of the company on its reconstruction u/s 391 of the Act. It was urged by Mr. Barucha that the assets transferred to the Companies Liquidation Account u/s 555(1) continued to vest in the company. According to learned counsel, the company in such a case will be entitled to make an application u/s 555(7)(a) as a person entitled to the money paid into the Companies Liquidation Account.

4. Section 555 deals with unpaid dividends and undistributed assets to be paid into the Companies Liquidation Account. Sub-section (1) of section 555, inter alia, provides that where any company is being wound up, if the liquidator has in his hands or under his control any money representing -

(a) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or

(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they became refundable,

the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Companies Liquidation Account.

Sub-section (2) of section 555 provides that :

(2) The liquidator shall, on the dissolution of the company similarly pay into the said account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

5. Sub-section (3) provides for the procedure to be followed by the liquidator while making such payment as referred to in sub-sections (1) and (2). The liquidator is required to furnish to an officer as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

6. Sub-section (4) of section 555 shows that on such amount being paid into the Reserve Bank of India, he is entitled to a receipt from the Reserve Bank of India and such receipt shall be an effectual discharge of the liquidator in respect thereof. Sub-sections (5) and (6) are not relevant for our purpose. Sub-sections (7) and (8) of section 555 of the Act run thus :

(7)(a) Any person claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the court for an order for payment thereof, and the court, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due :

Provided that before making such an order, the court shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(b) Any person claiming as aforesaid may, instead of applying to the court, apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied whether on a certificate by the liquidator or the official liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the court, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(8) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred under sub-section (7) and

shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

9. On a plain reading of sub-clause (a) of sub-section (7) of section 555, it would be clear that it is only the person who is entitled to any money paid into the Companies Liquidation Account who can apply to the court for an order for payment thereof. In order that a person can apply to the court under the said provisions, it is incumbent on him to establish that he is entitled to the amount. In present case, it is the company and not any of the contributories who has made this application. As far as the contributory is concerned, there can be no doubt that he would be the person who is entitled to claim the amount within the meaning of the said provisions. The question is whether the company has any right to lay its hands on the unclaimed amount lying in credit in the Companies Liquidation Account. There is no doubt that the various contributories were the persons who were entitled to this amount, and because of the fact that they failed to claim the said amount, the same was deposited by the liquidator in the Reserve Bank in compliance with the mandatory provisions of section 555. It must be borne in mind that before distributing the dividends, the liquidator has discharged all the debts of the company which have been duly proved in accordance with the provisions of the Act and what is distributed by the liquidator is the amount belonging to the contributories or the shareholders and none else. The mere fact that the provisions require the unclaimed amount to be deposited in the Companies Liquidation Account does not mean that this amount regains the character of an asset of the company by reason of the reconstruction of the company u/s 391 of the Act. Even according to Mr. Bharucha, what he wanted to urge before us was that the company is entitled to have control over the unclaimed amount as an asset of the company without jeopardising in any manner the right of the contributories to claim their amount from the company. We fail to see how the unclaimed amount which per se belongs to and vests in each of the contributories can partake of the character of an asset of the company merely by reason of the fact that the amount remained unclaimed by the contributories. The liquidator has declared dividends. Several contributories have taken the amounts because they were entitled to get the said amount. Some contributories have not, for their own reasons, claimed the amount from the liquidator. Even so, the amount still vests in the contributories and not in the company or the liquidator. The scheme of section 555 shows that it is intended to protect the rights of the contributories in whom the amount has vested, but have not claimed the same from the liquidator. It is precisely to protect the rights of the contributory to whom the unclaimed amount belongs that a procedure is evolved by the Legislature whereby not only the amount is protected, but the contributory is given a right to apply to the court for an order for payment of the amount to which is entitled. Sub-section (1) provides for transfer of the amount from the coffers of the liquidator to the bank. Sub-section (3) enjoins the liquidator to furnish the relevant information regarding each of the contributories who have failed to claim that amount within the prescribed period. The bank

passes a receipt in the name of the liquidator which has the effect of giving a complete discharge to the liquidator in respect of the amount which he has deposited. Thus, sub-sections (1) to (4), as it were, prescribe the procedure for protecting the amount by keeping it intact in a separate account, so that in future, the contributory may be able to claim the same. As pointed out above, sub-section (7)(a) of section 555 can be availed of by a person claiming to be "entitled" to any money which has been paid into the Companies Liquidation Account by the liquidator. On such an application the court may, if satisfied that the person claiming is entitled to it, pass an order for the payment to such person, of the sum due. Sub-clause (b) of sub-section (7) provides an alternative procedure for such a person claiming to be entitled to the money. Instead of applying to the court, he has been given an option to apply to the Central Government for an order for the payment of the money claimed by him. This position would remain for a period of 15 years, but after the expiry of the period of 15 years, under sub-section (8), the money which has been paid into the Companies Liquidation Account under the section and which was unclaimed thereafter for a period of 15 years has to be transferred to the General Revenue Account of the Central Government. A claim to any money so transferred can be preferred by the person entitled in accordance with the procedure prescribed in section 555(7) by either applying to the court or the Central Government. Thus, the right of the person to claim the amount does not get lost or forfeited.

9. It is clear that by its very nature, the undistributed amount of dividend declared by the liquidator belongs to the contributory. The mere fact that the contributory has failed to claim the said amount from the liquidator does not mean that he loses his right to get the amount which has already vested in him. We fail to see how the company can be said to be a person entitled to the unclaimed dividends which has been deposited in the Companies Liquidation Account. The dividend has been declared by the liquidator and the contributory is entitled to this specific amount in proportion to his shareholding. This right is neither lost nor transferred to the reconstituted company on account of the amount not being claimed by him. It must, however, be mentioned, in fairness to learned counsel, that he did not contend that the unclaimed amount vests in the company. All that he contended was that the amount continued to be an asset of the company subject to its liability to pay the amount as and when claimed by the persons entitled to it. We are afraid, this contention is not open in view of the mandatory requirements of the provisions of section 555. Section 555 clearly shows that not only that amount vests in the individual contributory, but that it is such contributory who alone has a right to make an application under sub-section (7). We are unable to see how the amount which has once vested in the contributory can revest in the company as its asset as urged by learned counsel. The unclaimed amount which belongs to the contributory has to be dealt with in the manner as set out in section 555. By claiming that the amount continues to remain as an asset of the company, the company is really asking for transfer of the amount from the Companies Liquidation Account with the bank to its own

coffers. This contention is clearly contrary to the provisions of section 555. The intention of the Legislature is very clear, viz., that the undistributed dividends should be safeguarded in the interest of the contributories who have not claimed the amounts and also to prescribe the procedure to enable such contributories to claim the amount in future. The amount is vested in the contributory as soon as dividend is declared and continue to vest in the contributory. By claiming the transfer of the unclaimed amount as an asset of the company, the company is trying to create a right for itself by divesting the rightful claim of the owner and creating for itself an interest in the amount. If the intention is merely to get control over the amount subject to the rights of the contributory, then the position of the company would be that of a trustee for the rightful claimant. In that event, it would amount to substituting a procedure different from the one prescribed by law u/s 555. There is no provision in the Act to allow the company to retain the unclaimed dividend as part of its assets or to transfer the amount from the Companies Liquidation Account to itself.

10. At this stage, it would be useful to refer to the provisions of section 205A of the Act which are analogous to section 555. Section 205A relates to the unpaid dividend to be transferred to a special dividend account. The provisions are almost similar. The amount is to be deposited in an account called "Unpaid Dividend Account of Company Limited". There are provisions in the said section which enable the shareholder to claim the amount. If the unpaid amount of dividend of a company is required to be deposited in the bank in a separate account, it is difficult to see how the company can claim any right to the unclaimed dividend when it is being wound up and reconstructed by framing a scheme. Taking any view of the matter, therefore, the company cannot be said to be a person entitled to make an application u/s 555(7) of the Act. The amount vests in the contributory. It cannot later form part of the assets of the company and as such the company cannot be said to be a person entitled to claim the amount. In our opinion, therefore, the application by the company u/s 555(7) is clearly misconceived and not maintainable in law.

11. Mr. Bharucha relied on a decision of a learned single judge of the Madras High Court in *Union of India v. Hindu Bank Karur Ltd.* [1977] 47 Comp Cas 224. The facts of that case were that the respondent-bank went into voluntary liquidation and was taken up for winding up on October 28, 1963. Certain arrears of Income Tax and super-tax to the extent of Rs. 10,853.55 were due from the respondent-bank which had gone into voluntary liquidation in pursuance of assessment made for the year 1963-64, which was pending in appeal. The liquidator of the company filed a statement in the office of the Registrar of Companies as required u/s 555(3) of the Companies Act, 1956, to the effect that a sum of Rs. 20,542.50 was payable to one L as surplus assets refundable to him in respect of 250 shares held by him in the company, which sum had been deposited in the Company's Liquidation Account as part of Rs. 70,730.74 being amounts not claimed and unpaid to the contributories. The Regional Director of the Company Law Board sanctioned the payment of this amount. The

Commissioner of Income Tax filed an application for payment out to him of the sum of Rs. 10,853.55 being the amount of arrears of Income Tax and super-tax due in respect of the assessment for the year 1963-64 (which assessment had become conclusive in a reference to the High court on April 25, 1975), contending that the amount deposited in the Companies Liquidation Account did not cease to be the asset of the company and could not be earmarked for the contributory and the claim of the Income Tax department will have to be satisfied first before the claims of the contributories are met. It was in the light of background of these facts that the learned single judge of the Madras High Court made the following observations in the judgment (p. 232 of 47 Comp Cas) :

"Merely because the statement is filed showing the nature of the claim and the claimant is entitled to the amount, it does not cease to be an asset of the company and is earmarked for the contributory. It can only mean that the contributory is prima facie entitled to the said sum and that entitlement can be defeated by the preferential claims like the arrears of revenue to the State. Equally, it cannot be held that the moment moneys are deposited into the Reserve Bank of India, the assets would cease to be that of the company. It still retains that character till the payment is made to the contributory."

12. In the first place, the observations made to the effect that the amount deposited into the Reserve Bank of India continues to retain the character as an asset of the company till the payment is made to the contributory, will have to be read in the context of the facts of that case. The court was required to consider the preferential claim of the Income Tax Department which had remained undischarged before the money was deposited in the Companies Liquidation Account which would mean that the surplus assets had been distributed without the company having discharged its liability. Similarly, u/s 530(1), in a winding up, Income Tax has a priority over other claims. The observations, though widely stated, appear to have been made in the context of the aforesaid facts and the circumstances of the case. However, if the aforesaid observations, as contended by learned counsel, are intended to mean that even after the debts of the company are discharged, the moneys deposited into the Reserve Bank of India in the Companies Liquidation Account still retain the character of the assets of the company till payment is made to the contributory, with respect, we are unable to agree with the said view. Moreover, the aforesaid observations (to be intended to mean that in every case, money deposited in the Companies Liquidation Account continues to remain an asset of the company till payment is made to the contributory) are clearly obiter and were not necessary for the decision of the case. Such a view would be contrary to the statutory provisions of section 555 which provisions are intended to safeguard the interests of the contributories who are rightful claimants of the moneys deposited in the bank.

13. It may, however, be mentioned that the matter was carried in appeal before the Madras High Court in *N. Dharmalingam v. Union of India* [1979] 49 Comp Cas 567. The Division Bench pointed out that before the learned single judge two

points were raised, viz., (1) the amount in the Companies Liquidation Account did not form part, but was earmarked for the principal contributory and, therefore, the Income Tax Department cannot lay a claim on that amount, and (2) the Regional Director was not aware of the pendency of any proceedings at the instance of the Income Tax Department and, therefore, the order of the liquidator was assailed. The Division Bench did not think it necessary to go into the first question since it felt that the appellant was entitled to succeed on the second point. The appeal court thus did not decide the first point.

14. In our opinion, the learned judge has rightly held that the money which goes to the contributories is on account of the surplus assets of the company in liquidation or on distribution. It is unclaimed or unpaid money which the liquidator is required to deposit into the Companies Liquidation Account. In the statement which the liquidator had to file, the name of the contributory as well as the amount which has remained unpaid to him has to be specified. The amount thus belongs to the contributory and there is no question of the company after reconstruction, to lay its claim on such amount on the plea that such amounts are the assets of the company. We fail to see how the company is entitled to such amount which is earmarked for the contributory and it is he who has the right to claim and receive the amount. In our opinion, if we were to accept the contention of Mr. Bharucha that the unclaimed surplus assets of the company which belong to the contributories continue to remain as assets of the company after liquidation and as such entitled to to claim the same, it would amount to defeating the very object of the provisions of section 555, apart from the fact that such an interpretation is not warranted by the express wording of section 555. We, therefore, hold that the learned single judge was justified in rejecting the application of the company as not maintainable.

15. In the result, the appeal fails and is dismissed. In the circumstances of the case, there shall be no order as to costs.