

(1958) 07 PAT CK 0007

In the Patna High Court

Case No : Company Act Case No. 12 of 1956

In Re: Bihar Bolts, Rivets and Engineering Works Ltd., (In liquidation)

Date of Decision : 29-07-1958

Acts Referred:

Companies Act, 1913 — Section 230
Companies Act, 1956 — Section 462(5), 530(1)
Employees State Insurance Act, 1948 — Section 94

Citation : AIR 1959 Patna 417 : (1958) 6 BLJR 675 : (1959) 29 CompCas 482 : (1959) 1 LLJ 164

Hon'ble Judges : K. Sahai, J

Bench : Single Bench

Advocate : S.C. Mukherji and C.P. Sinha, for the Appellant; G.N. Mukherjee and H.K. Banerjee, for the Respondent

Judgement

K. Sahai, J.—Item No. 1: Report of the Official Liquidator dated 13-5-1958, at flag 99 re: payment of fees to Mr. Sreenath Singh:

Mr. Sreenath Singh, the Advocate for the Official Liquidator, has submitted a bill for Rs. 522.50 on the basis that he worked for nineteen days between 2-4-1957, and the end of May 1958. The office has checked and found that work was actually done by Mr. Sreenath Singh in sixteen days. The Official Liquidator has, however, recommended that, as Mr. Sreenath Singh claims to have actually done work on nineteen days, he should be allowed the entire amount of Rs 522.50. Mr. Sreenath Singh has stated that he would prefer have sixteen days' fee as the office and the Official Liquidator have found that he actually worked for that number of days only. In my opinion, Mr. Sreenath Singh's stand is perfectly appropriate and correct. Sanction is, therefore, accorded to the payment of sixteen days' fees, i. e. Rs 440/-only to Mr. Sreenath Singh on account of his fees for the period in question.

Item No. 2: Report of the Official Liquidator dated the 24th July, 1958, at flag 99A re list of creditors:

2. The Official Liquidator has submitted the list of creditors and has prayed for an

appointment when the claims would be heard in court. Let 2-9-1958, be fixed for the purpose. The Official Liquidator should immediately issue notice to all the creditors.

3. As requested by the Official Liquidator sanction to spend a sum of Rs. 35.05 in connection with postal expenses is accorded.

4. Sanction to withdraw a sum of Rs. 25/- on account of contingent expenses is also accorded.

Item No. 3. Report of the Official Liquidator dated 9-5-1958, at flag 100 re. claim of the Employees" State Insurance Corporation:

5. The Employees" State Insurance Corporation has claimed Rs. 476/- from the Official Liquidator u/s 94 of the Employees" State Insurance Act, 1948, and it claims that the entire amount be treated as preferential claim. On the other hand, the Official Liquidator has reported that the entire amount cannot be treated as preferential claim. In his opinion, the sum of Rs. 87/- only can be treated as preferential claim, and the Corporation has to be treated like any other creditor in respect of the balance of its claim, viz., Rs. 389/-.

6. Section 230 of the Indian Companies Act, 1913, gives a list of preferential payments. Section 94 of the Employees" State Insurance Act, 1948, reads:

"There shall be deemed to be included among the debts which,under Section 230 of the Indian Companies Act 1913 (VII of 1913), are, in the distribution of the property of the insolvent or in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, the amount due in respect of any contribution or any other amount payable under this Act the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the winding up, as the case may be."

I have omitted those parts of the section which are irrelevant for the present purpose.

7. In a case where Section 230 of the Indian Companies Act, 1913, is applicable, therefore, the entire amount due in respect of any contribution to the Employees" State Insurance Corporation is to be paid in priority to all other debts. In the present case, however, the Act of 1913 does not apply. The Companies Act of 1956 came into effect on 1-4-1956, and the appointment of the Provisional Liquidator in this case took place on 25-9-1956. That being so, the Act of 1956 is applicable in the present liquidation proceeding.

8. Clause (d) of Sub-section (1) of Section 530 of the Act of 1956 provides:

"(d) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company, all amounts due, in respect of contribution payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees" State Insurance Act, 1948 (XXXIV of 1948), or any other law for the

time being in force."

Under Clause (c) of Sub-section (8) of the same section, the expression "relevant date" had been defined to mean the date of the appointment of a provisional liquidator where such an appointment is made.

9. Under the provisions of Clause (d) of Sub-section (1) of Section 530, therefore, all that the Employees' State Insurance Corporation is entitled to is the amount which was payable to it as contribution during the twelve months next before the date of appointment of the Provisional Liquidator. Learned Counsel for the Corporation has drawn my attention to Clause (c) of Section 6 of the General Clauses Act, 1897 (X of 1897) which may be read as follows:

"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;"

This provision would have been helpful to the Corporation if the Companies Act of 1913 had been applicable because, in that case, the argument on its behalf could have been that the right u/s 94 of the Employees' State Insurance Act had already vested in it, and the enactment of the Companies Act of 1956 could not affect that right. As I have said, however, the Act of 1913 is not but the Act of 1956 is applicable in the present proceeding. Learned Counsel for the Corporation has next drawn my attention to Sub-section (1) of Section 8 of the General Clauses Act which lays down:

"(1) where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

This merely means that one has to read Section 530 of the Act of 1956 in place of Section 230 of the Act of 1913 in Section 94 of the Employees' State Insurance Act. In my opinion, this is also not helpful to the Corporation. It is clear that Clause (d) of Sub-section (1) of Section 530 of the Act of 1956 is entirely based upon Section 94 of the Employees' State Insurance Act and modifies that section only to the extent that contribution in respect of only twelve months next before the relevant date is made payable as a priority claim in a case of liquidation of a company under the Act of 1956. Beyond that, Section 94 continues to stand in force without any modification. It cannot be assumed that the legislature, though it made pointed reference to the Employees State Insurance Act in Clause (d), intended to leave it fully in force, though it clearly indicated its intention to modify the provisions of Section 94 to the extent which I have already mentioned. The words used by the legislature cannot be held to

be nugatory.

10. For the reasons given above, I am clearly of the opinion that the Corporation is entitled to get as a priority debt only the contribution payable to it during the twelve months next before the appointment of the Provisional Liquidator in this case. There is no dispute that this contribution amounts to Rs. 87/-. I, therefore, direct that this amount of Rs. 87/- will be the priority debt due to the Corporation, and the Corporation will stand as an ordinary creditor in respect of the rest of the amount which is due to it. The Official Liquidator is directed to pay the sum of Rs. 87/- to the Corporation without any undue delay.

Item No. 4: Report of the Official Liquidator dated the 9th May, 1958, at flag 101 re: claims of the Sales-tax Department.

11. Put up this matter on 1-8-1958.

Item No. 5: Report of the Official Liquidator dated the 14th July, 1958 at flag 102 re: Salary of Sugan Jamadar:

12. The Official Liquidator has reported that the amount of Rs. 4.17 due to Sugan Jamadar has not been paid because he cannot be traced, and hence he has prayed for permission to deposit this amount in the State Bank of India in the name of the Company. This is allowed.

Item No. 6: Accounts of the Official Liquidator for the period between 1-10-57 and 31-3-58 at flag H:

13. This relates to the accounts submitted by the Official Liquidator for the period from 1-10-1957, to 31-3-1958. As required by Sub-section (3) of S. 462 of the Companies Act, 1956, the account has to be audited. Shri Shashidhar Misra audited the previous account for two periods on a consolidated fee of Rs. 75/-. If he consents, he may audit the present account on a fee of Rs. 37.50.

14. Under Sub-section (5) of Section 462, the Liquidator is required to send printed copies of the account or a summary thereof by post to every creditor and every contributory. As the assets of the Company are rather small, I do not think, in the circumstances of this case, that copies need be sent to the creditors or contributories. The printing and sending of such copies are, therefore, dispensed with.

15. Item No. 7: The Official Liquidator will take steps for the issue of fresh notices on debtors Nos. 4, 22, 25 and 26 within two weeks from today.