

(1910) 04 BOM CK 0007
In the Bombay High Court

In Re: Bombay Cotton Manufacturing Company Limited

Date of Decision : 13-04-1910

Acts Referred:

Companies Act, 1956 — Section 203

Citation : (1910) 12 BOMLR 525

Hon'ble Judges : Macleod, J

Bench : Single Bench

Judgement

Macleod, J.—This is an application to the Court to sanction a compromise or arrangement between the Bombay Cotton Company in liquidation and its creditors. A meeting of the creditors was ordered to be summoned u/s 203 of the Indian Companies Act to consider the scheme proposed by the Company and at the meeting held on the 4th of April 1910a three-fourth majority in value of the creditors present either in person or by proxies agreed to the scheme propounded.

2. The scheme, treated generally, proposes that the creditors shall receive somewhere between nine and ten annas in cash on account of their claims and the balance in preference shares. The scheme provides for 171/2 lacs being raised on a mortgage of the Company's property, which shall be paid, according to the scheme, to the present liquidator, who will distribute it amongst the creditors pro rata after deducting the expenses of the liquidation and the costs mentioned in the scheme. The creditors will also get preference shares for the balance of their claims and the Company will resume working. The creditors, therefore, as preference shareholders, will have a prior interest in the Company, subject of course to the interest of the mortgagees or debentures-holders for 171/2 lacs.

3. The scheme has been opposed by creditors of the value of between five and six lacs, and although they do not constitute a sufficient proportion to prevent the scheme being presented for sanction, still it is necessary for the Court to consider whether their objections to the scheme are well-founded.

4. Now, the principles on which the Court will sanction a scheme of this kind

were fully considered in re Alabama, New Orleans Texas and Pacific Junction Railway Company [1891] 1 Ch. 213. The scheme came before Mr. Justice North for sanction, and after hearing the creditors who opposed the scheme the learned Judge said :-

I must consider-whether the scheme as a whole is a fair one, or whether it bears inequitably upon any of the persons entitled. I cannot find any reason why I should intervene to intercept the prosecution of a scheme which has been submitted to all the parties interestood, and approved of by every one of them (ho far as I can see) except the two gentlemen who now oppose.

5. An appeal was filed and was argued before a Bench consisting of Lindley, Bowen and Fry L. JJ. Lindley L. J. says:-

What the Court has to do is to see, first of all,-that the provisions of that statute has been complied with; and, secondly, that the majority has been acting bona fide. The Court also has to" see that the minority is not being overridden by a majority having interests of its own clashing with those of the minority whom they seek to coerce. Further than that, the Court has to look at the scheme and see whether it is one as to which persons acting honestly, and viewing the scheme laid before them in the interests of those whom they represent, take a view which can be reasonably taken by business men. The Court must look at the scheme, and see whether the Act has been complied with, whether the majority are acting bona fide, and whether they are coercing the minority in order to promote interests-adverse to those of the class whom they purport to represent; and then see whether the scheme is a reasonable one or whether there is any reasonable objection to it, or such an objection to it as that any reasonable man might say that he could not approve of it. (pp. 238, 239).

6. And Fry L. J. says.-

Under what circumstances is the Court to sanction a resolution which has been passed approving of a compromise or arrangement ? I shall not attempt to define what elements may enter into the consideration of the Court beyond this, that I do not doubt for a moment that the Court is bound to ascertain that all the conditions required by the statute have been complied with; it is bound to be satisfied that the proposition was made in good faith; and, further, it must be satisfied that the proposal was at least so far fair and reasonable" as that an intelligent and honest man, who is a member of that class, and acting alone in respect of his interest as such a member, might approve of it. What other circumstances the Court may take into consideration I will no attempt to forecast. (p. 247).

7. That case was fully discussed in a later case, In re English, Scottish and Australian Chartered Bank [1893] 3 Ch. 385. A scheme of reconstruction of the Company came for sanction before Vaughan Williams J., and after pointing out that it is necessary in cases of bankruptcy whether of individuals or of companies to see that the creditors are looking after their own interests and that in many

cases they may not be capable of so doing, the learned Judge distinguishes the different points of view from which the Court looked at schemes of bankruptcy and schemes in liquidation. At page 397 he says :-

I think that the Judges who administered the law shortly after the passing of the Bankruptcy Act, 1869, shewed a much truer perception of the weakness of creditors and of the intention of the Legislature. They by no means adopted a scheme simply because a majority of the creditors voted in favour of the scheme and there was no affirmative evidence of any corruption or any wrong motive of voting. They took the scheme and looked at it, and ascertained from broad grounds whether it was plainly for the benefit of the creditors and if it appeared not to be for the benefit of the creditors, or if the benefit to accrue to the creditors was unintelligible and difficult to grasp, the scheme was never sanctioned or approved. But I am well aware that under the Companies Acts it has always been different. Under the Companies Acts greater attention has been given to the wishes of the creditors, and I feel that the very words of some of the sections of the Companies Acts as to the regard to be had to the wishes of creditors justify the conclusion that the Legislature may have meant something more with regard to the wishes of creditors in the case of companies than it was held to have meant with regard to individual bankrupts under the Bankruptcy Act.

8. Then, considering the scheme, the learned Judge goes on to say at page 399 discussing the decision in the Alabama case :-

These two Judges (Bowen and Pry L. JJ.) seem to me to hold that the duty of the Court is to approve of the scheme, unless there is something before it which shews it either that the scheme was not made in good faith, or that it is a scheme that, so far from being fair and reasonable, is one that an intelligent and honest man, acting alone in respect of his interests, could not approve of. I have had very considerable doubt upon this point. It does seem to me that there are very serious objections to this scheme. I am not at all sure that if I had been a creditor I should have voted in favour of the scheme. ***** I am not prepared to say, having regard to the facts and the decision in the case I have referred to, that the majority of creditors have not any right to impose this scheme upon the minority—that is to say, any right to insist upon the creditors giving up a portion of cash immediately payable to them with the view of obtaining a better realization and a large ultimate payment. Therefore, I have come to the conclusion that I ought to approve this scheme.

9. That decision was also appealed against and came on before Lindley, Lopes and Smith L. JJ. Lindley L. J. approves of the decision in the Alabama case, and goes somewhat beyond what he stated in that case with regard to the principles the Court should rely upon. At page 409 he says :-

While, therefore, I protest that we are not to register their decisions but to see that they have been properly convened and have been properly consulted, and have considered the matter from a proper point of view, that is, with a view to

the interests of the class to which they belong and are empowered to bind, the Court ought to be slow to differ from them. It should do so without hesitation if there is anything wrong; but it ought not to do so, in my judgment, unless something is brought to the attention of the Court to show that there has been some material oversight or miscarriage.

10. And Lopes L. J. at p. 414, says after reading a portion of Section 9 of the Act of 1870:-

This enables a majority of creditors, provided there is a proper statutable number, to bind the dissentient minority. Now, the mode in which this power is to be exercised has, to my mind, been very well and correctly laid down in *In re Alabama, New Orleans, Texas and Pacific Junction Railway " Company [1891] 1 Ch. 213* which has already been referred to. What I understood to be decided by that case is this, that it is not sufficient for the Court to ascertain " that the statutory conditions have been complied with; the Court must go further than that, and be satisfied that the statutable majority which are to bind the dissentient minority have acted bona fide, that they have not acted adversely to those whom they professed to represent, and, lastly, that the arrangement contemplated is a reasonable arrangement, such as that which a man of business would reasonably approve.

11. Now, in this case the contest between the majority and the minority is whether it will be more favourable, more advantageous, to go on with the liquidation and chance the Company's property realizing a good price, which would enable the Liquidator to pay according to certain calculations two or three annas more in cash than the present cash payment, or whether the creditors should forego their rights to obtain further cash payment from the realizations of the Company's assets and get Preference Shares for the whole of the balance of their claims after deducting what they will receive from the liquidator or Trustee under the scheme. Now, it is quite possible that weighing the chances, a reasonable man might prefer to side with the minority, and it is also possible that men eminently reasonable and well acquainted with business methods might prefer to side with the majority. There is no suggestion here that the majority are not acting bona fide, or that they are wishing to coerce the minority for purposes which the Court might consider improper. It is quite possible, hearing what Mr. Bhaishanker said yesterday as regards the future prospects of the earnings of this Company and the charges which will be laid on those earnings by way of interest and depreciation and agent's commission, that the Court or that I myself if I were a creditor might prefer to side with Mr. Bhaishanker against the majority. That was the position in which Williams J. found himself in the case I have last cited. But it seems to me that I should follow the principle laid down by Lindley L.J. that where it is quite possible that there may be reasonable men on both sides some approving and others objecting, then the Court should give effect to the wishes of the statutory majority unless something is brought to the attention of the Court to shew that there has been some material oversight or

miscarriage. And it is impossible to say that there has been any material oversight or miscarriage in this case. The scheme has been gone through in great detail before the Court, and those provisions contained in the scheme as originally propounded which could be considered as objectionable and tending to prevent it being properly worked, have now been removed.

12. There was one objection made, namely, that the property belonged to the creditors under the liquidation, but was now being taken away from them. But I should like to point out that that is not the case. The whole of the property is still reserved for the creditors. They get 171/2 lacs in cash which they borrow on mortgage of the property; but they have got that money. The property, subject to that mortgage, will still belong to them as preference share-holders in priority to the ordinary shareholders. Therefore, it cannot be said that the creditors are being deprived of anything which they would get in liquidation.

13. It is also said that a realization would result more favourably to the creditors. It has been pointed out that recently looms have been put in and a weaving shed erected and that that will influence purchasers. But that will also affect the earnings of the Company in which the share-holders are interested. While pointing out to the Court the past earnings of the Company and suggesting that in future they would not cover the interest on the mortgage, I think Mr. Bhaishanker forgot that it was only in 1908 that the looms were erected complete, and that will now influence the earnings of the Company to a very great extent. The earnings must be affected by the expenditure of nearly eight lacs of rupees in setting up the weaving machinery. Therefore, I think that certainly there are reasonable prospects, as the majority of the creditors appear to think, of the Company earning sufficient profits after deducting interest and depreciation and agent's commission, to pay dividends on the preference shares. It is certainly advisable, if possible, to get the Company out of liquidation. And as regards the ordinary share-holders, although at present their prospects cannot be considered very favourable, still they can feel they have still an interest in the Company, and it is yet within the bounds of possibility that in future not only may the preference shares rise to par, but also the ordinary shares will be of some value. Certainly if the Court can possibly see its way to sanction this scheme in order to get the Company out of liquidation, the Court will do so,

14. Therefore, I sanction the scheme as passed by me, with the same reservation with which Williams J. sanctioned the scheme in the English, Scottish and Australian Chartered Bank case, that is to say, I pass a provisional sanction, and when everything has been done which is necessary to bring the scheme into operation then I shall be prepared to finally stay the proceedings under the liquidation.

15. As to the costs of the application for sanction, I direct that one set of costs for the Company and creditors propounding the scheme, the costs of the petitioning creditors, one set of costs between the opposing creditors and one set of costs to other creditors supporting the scheme, including costs reserved, shall

be paid out of the assets.