

(1928) 05 AHC CK 0038
In the Allahabad High Court

In Re: Dehra Dun Mussoorie Tramway Co. Ltd.

Date of Decision : 21-05-1928

Acts Referred:

Citation : (1928) 05 AHC CK 0038

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Judgement

Mukerji, J.—This is an application, filed on 18th May 1928, in chambers, by one of the official liquidators, Mr. Asthana for Dehra Dun Mussoorie Electric Tramway Co. Ltd. (in liquidation) and Mr. Ladli Prasad representing the Allahabad Bank, Ltd.

2. It appears that a few months back the liquidators obtained permission from Ashworth, J. (see In Re: Dehra-Dun-Mussoorie Electric Tramway Co., to institute a suit against the Allahabad Bank, Ltd., for recovery of over two lakhs of rupees on certain grounds. The liquidators and the Allahabad Bank now desire that the difference between them should be settled by a private arbitration of two gentlemen, one nominated by each of the parties and mentioned in the application.

3. The first question that arises is whether the Companies Act permits such a reference to arbitration by official liquidators, even with the sanction of the Court. I heard Sir Tej Bahadur Sapru representing the Allahabad Bank, Ltd., and Mr. Asthana, one of the official liquidators, in support of the application. Both the learned gentlemen expressed their view and submitted certain arguments that a reference to private arbitration was permissible u/s 179, Clauses (a) and (i), Companies Act. I deferred passing orders till I had carefully considered the matter, with the help of the arguments advanced before me.

4. It is to be noticed that Section 179, by itself does not make any mention of reference to arbitration. Clause (a) permits the liquidator to institute or defend any suit or prosecution or other legal proceeding civil or criminal. A reference to private arbitration does not come within any of the expressions used in the clause. Clause (i) is in general terms and permits a liquidator to

do all such other acts as may be necessary for winding up the affairs of the company and distributing its assets,

5. with the sanction of the Court. This omnibus clause was undoubtedly meant to signify that besides the powers expressly given in Clauses (a) to (b) such other powers as may be necessary for winding up the affairs, may be exercised. I do not think that when an express mention of power to institute or defend suits or legal proceedings is made the general rule may be construed as including a power to refer to private arbitration.

6. Reference was made to Section 152 of the Act which gives a company power to refer to arbitration. There the rule is limited to a reference under the Indian Arbitration Act. A reference under Schedule 2, Civil P.C. is not mentioned there. Then the powers which a living company may possess may not be co-extensive with the powers to be exercised by the liquidators. The directors of the company are supposed to know their own business, being business men, while an official liquidator is very often a new man unconnected with the business carried on by the company. His knowledge and information of men and things is not likely to be co-extensive with similar knowledge of the directors. It, therefore, does not follow that because a living company is allowed to refer matters in difference to arbitration in a particular way that an official liquidator is allowed to make a reference to private arbitration.

7. A reference to Section 234, Companies Act, will show that the liquidator, with the sanction of the Court, may compromise certain claims, against the company and outstanding in favour of the company. It is, therefore, significant that while the Act deals with a power of compromise in the arbitrator, it makes no mention of his power to make a reference to arbitration. The reason for this omission may be this. In the case of a compromise the Court has the actual terms before it and may be in a position to see whether the terms should be accepted or not. In the case of arbitration by private gentlemen the whole matter is left in the dark, however eminent and learned the arbitrators may be. The arbitration shuts out all controversy for ever and, in the case of even obvious mistakes by arbitrators, no remedy by way of appeal is available. It is true that no official liquidator or the Court controlling his actions may foresee what decision a Court, to which the official liquidator may resort, will give. But then proceeding for redress to the Court is a legitimate process which can never be objected to on any principle. In an ordinary case of arbitration, the parties are supposed to know their own minds and, acting as they do in their own interest, are held precluded from questioning the decision, however wrong or inequitable it may be. The liquidator acts not on his own behalf but in the interest of a large body of men. It can therefore be easily conceived that the legislature did not think it proper that, even with the sanction of the Court, the liquidator may be permitted to choose his own Court, in the place of the regularly constituted Courts. This may be a solid reason why the Companies Act makes no mention of a power to refer to arbitration in the case of an official liquidator. The Act does refer to "arbitration"

and "compromises" and it is therefore not open to us to suppose that it was a matter of pure omission through inadvertence, that reference to arbitration was not one of the powers granted to the liquidator.

8. It has been held that suits instituted u/s 92, Civil P.C. cannot very well be made the subject-matter of private arbitration. The principle on which this conclusion was arrived at equally applies to a case of this nature.

9. I asked Sir Tej Bahadur Sapru if he could cite any authority, English or Indian, establishing the power of an official liquidator to refer a matter in dispute to private arbitration with the sanction of the Court. He frankly admitted that he did not come across any such authority. He also assured me that he did not come across any authority which might go against the existence of such power. But only an affirmative authority can be of any use in the present instance, and not the absence of authority to the contrary. In the course of my study I came across the case of *Van Den Hurk v. R. Martens & Co. Ltd.* [1920] 1 K.B. 850. In this case the controversy was about costs and whether costs should be paid by the liquidator in person or whether it should come out of the assets. There is some reference in this judgment to arbitration but it is not clear whether the arbitration was after the company went into liquidation or whether an arbitration was pending when the company went into liquidation. There is no discussion in the case as to liquidator's power to refer to private arbitration. I do not therefore find this case to be of any guidance to me.

10. Looking from all points of view it appears to me that I should not permit the official liquidators to refer the present dispute to private arbitration. I accordingly refuse the application.

11. I may point out, that in any case, the present application could not be granted except to authorize the official liquidators to execute an "agreement of a reference to arbitration" jointly with the Allahabad Bank. The present application is framed as if a suit is already pending in this Court and a reference is to be made, in the suit, under para I Schedule 2, Civil P.C.

12. The sanction to institute the suit was given some time back and it will be the duty of the official liquidators to institute the suit forthwith. Question of limitation may arise in the case and the liquidators must bear the responsibility if, owing to delay, any portion of the claim be lost.