

(1933) 11 AHC CK 0055
In the Allahabad High Court
Case No : Mis. Case No. 784 of 1931
In Re: In dan States Bank Ltd.

Date of Decision : 29-11-1933

Acts Referred:

Companies Act, 1956 — Section 230(b), 231

Citation : (1933) 11 AHC CK 0055

Hon'ble Judges : Young, J

Bench : Single Bench

Advocate : Bhagwati Shankar for the Bank, for the Appellant;

Final Decision : Disposed Off

Judgement

Young, J.—This is a report by the Official Liquidator of the Indian States Bank Ltd., for direction under the following circumstances. The company in liquidation passed a resolution for voluntary winding-up on 21st September, 1931. A compulsory order for winding-up was made on 18th December, 1931. There were a number of servants of the company who had not been paid their wages for some time before the voluntary winding-up. u/s 230 (b) of the Indian Companies Act,

all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant, shall be paid in priority to all other debts.

2. Under the same Section, Sub-section (5), it is enacted that "the date hereinbefore in this section referred to is: a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and (b) in any other case, the date of the commencement of the winding-up".

3. The report seeks for directions on the point as to whether the two months should run from before the date of the voluntary winding-up or from before the date of the compulsory order. If the two months run from before the date of the

compulsory order, the servants who have lost their employment at the date of the resolution for voluntary winding-up would not have any claim in priority. If, however, the date from which the two months period is to be reckoned is the date of the voluntary winding-up, then they all would have a claim in priority to the extent of two months salary. The construction of this section, in my opinion, is clear. The date of the commencement of the winding-up in the case of a compulsory winding-up which had been preceded by a voluntary winding-up must be the date of the commencement of the voluntary winding-up. The winding-up undoubtedly commenced when the resolution was passed on 21st September, 1931. In my opinion, Section 230 makes the winding-up one continuous process. The winding-up may be commenced as voluntary and continued as compulsory. There would have been no difficulty about the construction of Section 230, if it had not been for a decision of the Chancery Division in England in *In re: Russell Hunting Record Company* (1910) 2 Ch. 78, on the construction of Section 164 of the English Act of 1862 equivalent to Section 210 of the Act of 1908 and to Section 231 of the Indian Companies Act. In that case it was decided that when a voluntary winding-up is followed by a compulsory winding-up, then for the purposes of the fraudulent preference section, that is, Section 164 of the Act of 1862 and Section 210 of the Act of 1908, the act of bankruptcy is the presentation of the petition, that is, the presentation of the petition for a compulsory winding-up. This case, however, was considered in the case of the Havana Exploration Company, Ltd. (2). There the learned Master of the Rolls came to the conclusion that the wordings of the two sections were completely different, and that a decision on the fraudulent preference section could not be taken to be an authority on the preferential claim section.

4. I therefore direct the Official Liquidator to treat the claim for preference by the servants of the company in liquidation as if liquidation commenced from the date of the resolution for the voluntary winding-up.