

(1933) 11 AHC CK 0052
In the Allahabad High Court
In Re: Indian States Bank Ltd.

Date of Decision : 24-11-1933

Acts Referred:

Citation : AIR 1934 All 114 : 147 Ind. Cas. 332

Hon'ble Judges : Young, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Young, J.—This is a report by the official liquidator of the Indian States Bank Ltd., for directions 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. "Under Section 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 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 Co.* (1910) 2 Ch. 78, on the construction of Section 164, of English Act of 1862 equivalent to Section 210 of the Act of 1908 and to Section 231 of 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 Co. Ltd.* (1916) 1 Ch. 8. 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.