(1953) 04 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Appln. No. 16 of 2008

In Re: Jammu and Kashmir Industries Ltd.

Date of Decision : 24-04-1953

Acts Referred:
Companies Act, 1956 — Section 138, 166, 215

Citation : (1953) 04 J&K CK 0001

Hon'ble Judges : Wazir, C.J

Bench : Single Bench

Advocate : Jaswant Singh, for Registrar Joint Stock Companies, for the Appellant; Inderdass, Suraj Prakash and Harbans Bhagat for Voluntary Liquidators, for the Respondent

Judgement

Wazir, C.J.—This is an application made by the Registrar Joint Stock Companies for compulsory winding up of the Company by the Court

or failing that under the supervision of the Court.

2. The first question for consideration is whether the winding up can be ordered by the Court. A preliminary objection is raised on behalf of P.

Premnath and on behalf of the voluntary Liquidator that the Registrar has no locus standi to ask for the winding up by the Court, in reply to this

preliminary objection the counsel for the applicant has drawn my attention to Section 166, Clause (aa) of the Companies Act. Clause (aa) of the

said section lays down that the Registrar shall not be entitled to present a petition for winding up of a company except on the ground that from the

financial position of the company as disclosed in its balance-sheet or from the report of the Inspector appointed u/s 138 it appears that the

Company is unable to pay its debt and unless the previous sanction of the government has been obtained to the presentation of the petition. It is

true that the petitioner had satisfied these conditions but the company had already gone into voluntary liquidation and the Registrar could not, after

it had gone into voluntary liquidation, apply to the Court for taking winding up proceedings against the company.

3. Section 166, Clause (aa) is applicable only when the company is carrying on its business and it appears to the Registrar that it is not able to pay

its debt, the Registrar may (sic) to the Court after taking necessary (sic) from the Government for the winding up of the company. If the company is

already wound up, in my opinion, the Registrar is not competent to take any action in the matter. The learned Counsel appearing on behalf of

Pandit Premnath and the voluntary liquidator have cited a ruling of the Bombay High Court reported as- In Re: Peoples International Travel

Education and Commercial Co. Ltd., (A) in which it was held that Section 215 is exhaustive of the persons who are entitled to make applications

and the Registrar not being one of them has no locus standi to apply for the removal of the voluntary liquidator. I think this ruling is not applicable

to the present case as there is no question of removal of the liquidator in this case. The question or consideration in this case is whether alter the

company has gone into liquidation the Registrar can challenge that liquidation and apply to the Court that the company be wound up compulsorily.

The learned Counsel for the petitioner has not been able to show any pro-vision in the Companies Act nor any ruling on the basis of which it can

be held that after the Company has gone into liquidation the Registrar can ask for compulsory winding up of the Company. The only section which

has been relied upon is 166 of the Companies Act in regard to which I have stated that that section is applicable only in case the Company is

carrying on its business and not after it has gone in voluntary liquidation.

4. There is a prayer in the application made by the Registrar that the voluntary liquidator may be continued under the supervision of the Court. In

regard to this prayer there is no objection on the part of the creditors nor is there any objection on the part of the voluntary liquidator. In fact the

voluntary liquidator has himself prayed that the liquidation may continue under the supervision of the Court. In these circumstances I direct that the

liquidation proceedings shall in future be conducted under the supervision of the Court. The voluntary liquidator shall perform the duties of

liquidator according to law and shall furnish the list of the assets and liabilities of the company to this Court within two weeks.

