

(1934) 11 BOM CK 0015
In the Bombay High Court
Case No : I.C. No. 32 of 1933

In Re: Jamnadas Nursey Ginning and Pressing Co. Ld.

Date of Decision : 09-11-1934

Acts Referred:

Companies Act, 1913 — Section 183(5)

Citation : AIR 1935 Bom 337 : (1935) 37 BOMLR 401 : 157 Ind. Cas. 1093

Hon'ble Judges : Tyabji, J

Bench : Single Bench

Judgement

Tyabji, J.—This petition arises out of certain complicated proceedings, seeking the compulsory winding up of the Jamnadas Nursey Ginning and Pressing Company, Limited, in liquidation.

2. The petition for winding up was presented on October 10, 1933. Six days later Mr. Justice Rangnekar appointed Mr. H.H. Wadia as provisional liquidator of the company. Then the matter came on twice before Mr. Justice Kania., First, on March 12, 1934, he sanctioned a proposed scheme with some modifications. It was a second time placed before him on April 16, 1934, and he then sanctioned the scheme without any modification and dismissed the petition for winding up. Mr. Justice Kania's latter order was reversed by the Court of Appeal on September 25, 1934. The Court of Appeal ordered the company to be wound up and appointed Mr. H.H. Wadia, official liquidator. On the next day, i.e., September 26, 1934, the official liquidator obtained an ex parte order from me sanctioning the appointment of Messrs. Ardeshir,, Hormusji, Dinshaw & Co. as solicitors for the official liquidator. This firm of solicitors was not previously concerned with the proceedings.

3. The present petition is dated October 5, 1934, and prays that my ex parte order dated September 26, 1934, should be set aside and that the petitioning-creditors' attorneys should be appointed attorneys for the liquidator "in accordance with the usual practice".

4. The matter has been very fully argued before me, but the decision at which I have arrived may be shortly stated.

5. My order of September 26, 1934, having been made ex parte is liable to be reconsidered on the application of other parties interested in the matter, or, -to follow the language of Section 183, Sub-section (5), of the Indian Companies Act,- on the application of "a person aggrieved" thereby. I am of opinion, that the petitioning creditors are persons interested in the appointment of the solicitors for the official liquidator and ought to be deemed to be persons aggrieved by the act of the official liquidator u/s 183 (5). In the present case the sanction that I gave to the appointment of the solicitors was no doubt in accordance with the form prescribed by the rules, and with precedents of previous orders which are exhibited (exhibits 1, 2 and 3); but in fact no materials were placed before me on which I could have considered the propriety of sanctioning the appointment of the particular firm as the solicitors for the official liquidator. I, therefore, welcomed the opportunity of having more materials on which the question could be considered, provided that the materials could properly be placed before me.

6. The English practice (Halsbruy, Laws of England, Vol. V, p. 736, paragraph 1233) gives fourteen days for an application to discharge orders made in company matters. This was relied upon in view of Rule 750 of the High Court Rules. That rule requires the English practice and procedure to be followed in matters relating to companies in so far as they are applicable and not inconsistent with our rules and the Act.

7. Speaking with reference to the case before me, it is clear that the interests of the creditors of the company are involved in the selection by the liquidator of a firm of solicitors which was not previously concerned in the proceedings. The selection of a solicitor for the official liquidator is always a matter of some importance, and the Court accedes to an invitation to reconsider its ex parte decision on significant facts being brought to its notice, which were not previously within its cognisance : Consolidated Diesel Engine Manufacturers, Limited, In re [1915] 1 Ch. 192 and In re Anglo-Moravian Hungarian Junction Railway Co., Ex parte Watkin (1875) 1 Ch. D. 130, 135. The case for the liquidator was presented by Mr. Engineer with great skill, in spite of the difficulty that he encountered in steering clear on the one hand of the position that the appointment of the solicitor was in effect the liquidator's act, which would let in Section 183 (5) of the Indian Companies Act; and on the other hand, that it was by an order of the Court, in which case the ex parte order was liable to be reconsidered on further materials.

8. After hearing counsel who appeared for the official liquidator in support of the particular appointment, I am convinced that the appointment of a new set of solicitors will necessitate much investigation which will be unnecessary if the firm representing the petitioning creditors is employed as solicitors for the official liquidator. This means that the company will be put to further costs by the appointment of a new firm. I have arrived at this opinion not merely on a consideration of paragraphs 5 and 6 of the petitioning creditors' petition which is answered in paragraphs 12 and 14 of the affidavit of Narayanrao Babacharya

Kale, dated October 13, 1934 ; but from the impressions that the arguments of the case made on my mind, and the difficulty that the official liquidator's counsel had in dealing with the complicated facts which have already taken place. In several instances in spite of the very great care that Mr. Engineer took, he was misinformed as to the actual facts that took place; and several statements he made to me as statements of fact had to be corrected by the counsel who appeared for the petitioning creditors.

9. The petitioning creditors are entitled to see that the liquidation proceedings are carried on not only efficiently, but (consistently with efficiency) as economically as possible. The appointment of a firm of solicitors whose services would necessitate heavier costs is a grievance u/s 183 (5)-unless this additional expense is compensated for by enhanced efficiency. It follows that the petitioning creditors are entitled to have my ex parte order reconsidered if they satisfy me that there is greater expense but not any additional efficiency.

10. The text-books refer to the existence of a practice, in the existence of which all the counsel are agreed, favouring the appointment of the petitioning creditors' solicitors as the solicitors for the liquidator. "The Official Receiver," it is stated in Palmer's Company Precedents, Part II, Winding up Forms and Practice, 14th Edn., Ch. XX, pp. 245-246, and 13th Edn., p. 286, "usually employs the solicitor acting for the petitioner, but in important matters, especially where a question of principle is involved, he is frequently represented by the solicitor to the Board of Trade, e.g., in Great Kiugei Gold Mining Company, Ex parte Barnard [1892] 3 Ch. 307 and Telescriptor Syndicate, Limited, In re [1903] 2 Ch. 174." Stiebel in his Company Law and Precedents, 3rd Edn., (1929), Vol. II, p. 822, and 2nd Edn. (1912), p. 873, says: "The Official Receiver not infrequently instructs the petitioner's solicitor in cases where he requires assistance, but he is in no way obliged to do so, and in ordinary cases, and for ordinary purposes, he acts in person."

11. The practice cannot be put on a higher basis. But so stated it is obviously based on sound reasons.

12. Bearing this practice and the reasons underlying it in mind, the question might be considered to be, not whether Messrs. Ardeshir, Hormusji, Dinshaw & Co. would be proper solicitors for the official liquidator irrespective of all the circumstances of the case, nor whether the petitioning creditors' solicitors should in an abstract manner be preferred to Messrs. Ardeshir, Hormusji, Dinshaw & Co. but whether the petitioning creditors' solicitors should, for any reason, be deferred to another firm of solicitors. The question need not be, perhaps it is not capable of being formulated, in very precise terms. It must depend on the facts of each case. In the present case I consider the petitioning creditors' solicitors ought not merely not to be deferred to others but should be preferred to any solicitors unconcerned with the proceedings for the reasons that I have stated, viz., that the proceedings have been complicated, and have gone on for some time, that the petitioning creditors' attorneys are acquainted with the

proceedings and that a new firm of solicitors would require the expenditure of considerable time and labour in becoming familiar with them to anything like the same extent. I am clearly of opinion that at the present time the petitioning creditors' solicitors know the facts much better than Messrs. Ardeshir, Hormusji, Dinshaw & Co., and that the former are in an appreciably better position to assist the liquidator than a new firm. On the other hand no circumstances are pointed out to me which would be in any way counter-balance these advantages which the petitioner creditors' attorneys possess.

13. In any opinion, therefore, my ex-parte order sanctioning the appointment of Messrs. Ardeshir, Hormusji, Dinshaw and Co. as solicitors for the official liquidator was a wrong order. It was made on insufficient materials and if I had to consider the question in the light of the information which is now before me, I should have made the order that the petitioning creditors' solicitors should be employed by the official liquidator.

14. As I have already stated, I think I have jurisdiction to review and reconsider my order, and in reconsidering it I arrive at the decision that the petitioning creditors' solicitors should be employed by the official liquidator.

15. The official liquidators' costs as between attorney and client, one set of costs for the petitioning creditors, and one set of costs among the other creditors appearing will come out of the assets of the company. The taxing Master will allow instructions charges. Counsel certified.