

(1940) 05 CAL CK 0030
In the Calcutta High Court

In Re: Light of Asia Insurance Co. Ltd.

Date of Decision : 06-05-1940

Acts Referred:

Companies Act, 1956 — Section 203

Citation : AIR 1941 Cal 30

Hon'ble Judges : Lort-Williams, J; Lord Williams, J

Bench : Division Bench

Judgement

Lort-Williams, J.—Under s.203, Companies Act, a company may be wound up voluntarily if the company resolves by special resolution that the company be wound up voluntarily. Section 207 provides that where it is proposed to wind up a company voluntarily and a declaration has been made and delivered in accordance with the section it is referred to in this Act as a members voluntary winding up" but where no such declaration has been made it is referred to as a "creditors" voluntary winding up." Section 209 and Sections 209A to H make provision for the procedure to be followed in a "creditors" voluntary winding up." Section 209A provides that the company shall call a meeting of the creditors of the company for the day or the day next following the day on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of such meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company. Owing to an oversight, in the present winding up, the provisions of Section 209 and Section 209A to H have not been followed. Section 209A (6) provides that in case of such default the company, directors or director, and every officer of the company shall be liable to fines. But no specific provision is made with regard to what is to happen to the winding up in such circumstances. Under the analogous section of the English Companies Act (1929), according to a note in the Hailsham edition of Halsbury's Laws of England at p. 761,

Where such oversight has occurred in some cases applications have been made to the Court for confirmation of the appointment of a liquidator appointed by the company, and orders have been made on such applications, subject to the

creditors" approval of the liquidator so appointed, as expressed either by a meeting thereof or by a notice in writing.

2. I think that the best course to adopt now will be to order that a meeting of the creditors shall be held on the Monday 27th May 1940, and that notices of the meeting shall be sent by post to the creditors forthwith, and the company shall cause notice of the meeting of the creditors to be advertised in the manner specified in Section 206 (1) for the publication of a notice under that sub-section, and the directors of the company shall cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before such meeting of creditors, and the directors of the company shall appoint one of their number to preside at the said meeting. At such meeting the creditors will consider the question of nomination of a liquidator under the provision of Section 209B, and the appointment of a committee of inspection u/s 209C, and other questions dealt with in Sections 209D to H. On the present liquidator appointed by the company undertaking not to proceed with the winding up pending the decisions to be made at the creditor's meeting, except to receive premiums which are to be paid into the company's account with Lloyds Bank forthwith, no further order is made at present with regard to the winding up. The liquidator will be allowed to draw from the assets of the company and pay to the directors a sum sufficient to enable them to carry out these directions. This application is adjourned for a month.