

(1941) 06 CAL CK 0001
In the Calcutta High Court

In Re : Light of Asia Insurance Co., Ltd.

Date of Decision : 23-06-1941

Acts Referred:

Citation : (1941) 06 CAL CK 0001

Final Decision : Dismissed

Judgement

Lort-Williams, J.—This is an application for sanction of a scheme of compromise under sec. 153 of the Indian Companies Act. The matter has been before the Court on numerous occasions, and, owing to difficulties which were not foreseen by the promoters of the scheme, a good deal of time and money has been wasted. Thus a meeting for the purpose of approving the scheme was held so far back as September 27th, 1940. That, for reasons which I need not go into now, proved infructuous. The present meeting was held on April 3rd, 1941.

2. Previously to this, notice had been sent to the Superintendent of Insurance who made an application to wind up the Company on March 31st, 1941. This application is still pending.

3. In June, 1940, there had been an application to wind up the Company compulsorily and that application was adjourned sine die.

4. The result of the voting at the meeting which was of the creditors and policyholders, was, on the basis of the nominal value of the policies and of creditors' dues, in favour of the scheme 75.3 per cent, and against it 24.7 per cent; and on the basis of the paid-up value of the policies and creditors' dues, in favour of the scheme 67.8 per cent and against it 32.2 per cent., that is to say, upon the latter basis there was not a sufficient majority voting in favour of the scheme.

5. A number of grounds of objection have been advanced on behalf of the Crown represented by the Superintendent of Insurance, and certain policyholders, the first one being that in assessing the value of the debts and policies for the purpose of voting, not the nominal but the paid-up value ought to be taken.

6. On the other hand, it has been argued that the liquidator throughout has always proceeded upon the basis of the nominal value of the policies, as he did,

for instance, in his report dated November 27th, 1940, and on previous occasions the Court has sanctioned schemes based upon the nominal value of the policies.

7. It is contended on behalf of the Superintendent that such procedure was wrong. It is true that under sec. 153 of the Companies Act the policyholders are in the position of creditors, and it can hardly be argued that a creditor's debt can be assessed at a nominal value.

8. There is very little guidance to be found either in the Companies Acts or the Insurance Acts in England or India; nor has my attention been drawn to any decided case on the definition of the word "value" used in the Insurance Act of 1938.

9. Sec. 55 (1) provides that in the winding up of an insurance company the value of the assets and the liabilities shall be ascertained in such manner as the liquidator thinks fit subject so far as applicable to the rule contained in the sixth schedule and any directions which may be given by the Court.

10. The sixth schedule provides that the liability of an insurer in respect of a current contract affected in the course of life insurance business, shall be calculated by the method and upon the basis to be determined by an actuary approved by the Court, and the actuary shall take into account the purpose for which the valuation is to be made and any special directions given by the Court.

11. In Palmer's Company Precedents, 15th Edition, Part II, p. 441 the sixth schedule to the English Act is set out which provides rules for valuing a policy:

The value of the policy is to be the difference between the present value of the reversion in the sum assured according to the contingency upon which it is payable, including any bonus or addition thereto made before the commencement of the winding up, and the present value of the future annual premiums.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables as the Court may direct.

The premium to be calculated is to be such premium as according to the said rate of interest and rate of mortality is sufficient to provide for the risk insured by the Office in issuing the policy, exclusive of any addition thereto for Office expenses and other charges.

12. Sec. 33 of the Insurance Act deals with the power of the Superintendent of Insurance to order inspection, and provides incidently that if he receives a requisition signed by not less than 50 policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than Rs. 50,000 he may order an investigation of the affairs of the insurer.

13. In Halsbury's Laws of England, Hailsham, 2nd Edition, page 531, paragraph

838, it is stated that the value of a current policy of insurance depends upon the life-insured's expectation of life; and the value, though nominal only at the commencement of the risk usually increases according to the length of the period during which the policy has remained in force. If, therefore, the policy is allowed to lapse, its value is lost to the assured. To obviate this, provision may be made by which the assured becomes entitled on notice to surrender the policy and to be paid its surrender value. In lieu of being paid the surrender value, the assured may be given the option of taking a fully paid policy for a reduced amount proportionate to the number of premiums actually paid. And on page 585, paragraph 950, it is stated that where an insurance company is being wound up by or subject to the supervision of the Court, or voluntarily, the value of a policy of any class or of a liability under such a policy requiring to be valued in such winding up must be estimated in the prescribed manner. That is to say, the manner prescribed in the Assurance Companies Act, 1909.

14. In Palmer's Company Precedents, 15th edition, Part I, at page 1244-1245, the learned editors set out the usual course of proceedings at meetings held to consider a scheme for compromise. Thus it is stated that in case of doubt arising as to the right of any particular person to vote or as to whether the statutory majority has been obtained, and in case of a disputed debt, it may be impossible to bind the claiming creditor by means of a scheme. It is submitted, however, that even a creditor whose claim is contingent or disputed is bound by the scheme, unless he opposes it, and his opposition is held to be sufficient to defeat the scheme or to induce the Court not to sanction it, and that the proper course is to admit all those who claim to be creditors of each class to vote at the meeting of that class leaving the question of the value of the votes given to be determined by the Court, if necessary, when the result of the voting is known. "The value "in the case of creditors means the amount due to the particular creditor. In the case, however, of a creditor whose claim is not liquidated, the "value" is the amount for which he is entitled, or would be entitled in a winding up to prove. In the case of members, "value" has reference to the amount of the shares or stocks held by them respectively.

15. It seems to me therefore that neither the Chairman of the meeting, nor the Court, in the usual course of the proceedings, can ascertain what is the real value of policies issued by an insurance company. Neither the paid-up value nor the nominal value appears to me to be the real value of the policies according to the observations to which I have just referred. The real value is the value of the reversion and it depends upon the life-insured person's expectation of life.

16. In these circumstances, and in view of the fact that it is impracticable to try and ascertain the true or real value of the policies, I have come to the conclusion that the nominal value of the policies must be accepted for the purpose of ascertaining majorities at meetings held to approve or disapprove of a scheme of compromise.

17. Of the other objections raised on behalf of the Superintendent of Insurance,

those dealing with the question of separate meetings of the shareholders and of different classes of policy-holders are in my opinion met by the fact that after discussion by all interested parties the Court ordered one meeting of the creditors and policyholders to be held.

18. With regard to the share-holders, it was the share-holders who originally resolved to turn the present company into a mutual company, knowing full well that the result would be that their shares would be cancelled, and I did not think it was necessary in the circumstances either to hold a meeting of the share-holders or separate meetings of the matured policy-holders and those whose claims had not matured.

19. It is urged that lapsed policies have been taken into account and that this ought not to have been done either upon the basis of paid-up value or nominal value. These lapsed policies however are only twenty-five in number and so far as I can see did not make any difference to the decision of those voting upon the scheme.

20. Then it is urged that the scheme contemplates the conversion of a company limited by shares into a mutual company and that this cannot be done and is contrary to many of the provisions of the Companies Act. No such changes can be made in the Memorandum of Association, etc. But the answer to it is that it is not proposed to change one kind of company into another kind of company, but, in the process of reconstruction, to put an end to the first company and to create a new company. This disposes of all the objections that have been raised under the provisions of the Companies Act.

21. The meaning of reconstruction has been stated very clearly by Buckley, J., as he then was, in a case *In re: South African Supply and Cold Storage Company* L.R. [1904] 2 Ch. 286. in which he said:

Then it remains to consider whether what was done was for the purpose of "reconstruction or amalgamation." What does "reconstruction" mean? To my mind it means this. An undertaking of some definite kind is being carried on, and the conclusion is arrived at that it is not desirable to kill that undertaking, but that it is desirable to preserve it in some form, and to do so, not by selling it to an outsider who shall carry it on--that would be a mere sale--but in some altered form to continue the undertaking in such a manner as that the persons now carrying it on will substantially continue to carry it on. It involves, I think, that substantially the same business shall be carried on and substantially the same persons shall carry it on. But it does not involve that all the assets shall pass to the new Company or resuscitated Company, or that all the shareholders of the old Company shall be shareholders in the new or resuscitated Company. Substantially the business and the persons interested must be the same. * * * You have to see whether substantially the same persons carry on the same business; and if they do, that, I conceive, is a reconstruction

22. Then he goes on to deal with the question of what is amalgamation, namely,

the rolling somehow or other of two concerns into one.

The difference between reconstruction and amalgamation is that in the latter is involved the blending of two concerns one with the other, but not merely the continuance of one concern.

23. In Palmer's Company Precedents, 15th Edition, Part II, at page 975 the learned editors deal at length with the question of reconstruction and the meaning of the term. They say as follows :--

The expression " reconstruction " is not a tech. nical term, it is a popular phrase long in use, compendiously describing a well-known process. Reconstruction involves the winding up of an existing Company, and the transfer of its assets and liabilities to a new Company formed to take the place of the existing Company, and usually involves the conversion of the share-holders in the existing Company into share, holders in the new Company, the result being that the new Company and its assets and shareholders are substantially the old Company in a new form. Bat it is not practicable to define reconstruction with any precision, seeing that the features vary very considerably.

24. The next objection is that the scheme proposed is unfair, the existing shareholders lose their money, and the existing policy-holders not only lose 37 1/2 per cent, of the nominal value of their policies, but also become liable for an unlimited amount in the event of the new company being wound up.

25. The answer to the first part of this objection is that both the share-holders and the policy-holders have agreed to the scheme. The object of the shareholders, as I have already stated, was, from the beginning, to turn the company into a mutual Insurance Company.

26. There is some substance in the argument that it was never explained to the policy-holders that under the scheme they would incur unlimited liability, and that if it had been so explained, probably they would not have agreed to the scheme.

27. This can be met by altering the scheme so as to provide for limited liability. Against that it is contended that the creditors have not had an opportunity of considering such a scheme, and that the Court has no power to make so fundamental a change.

28. The report of the Chairman shows that those present at the meeting passed a resolution as part of the scheme that the Court be authorised to make such additions, alterations and modifications to the scheme as the Court might deem fit and proper, without the same being placed before a further meeting of creditors and policy-holders to sanction or approve it.

29. The debts of the Company amount approximately to Rs. 3,000, the number of policy-holders is approximately 400. If therefore I alter the scheme so that the policy-holders' liability is limited to Rs. 10 each, in my opinion, that will meet the

objections which have been raised on behalf of the Crown and will cover the present liabilities of the company to its creditors.

30. The next objection is that the scheme is unworkable, especially so far as the deposit money is affected. The scheme provides for an initial deposit of Rs. 25,000 and a working capital of Rs. 15,000. The present assets consist of a deposit amounting to Rs. 1,05,000 and Rs. 6,000 in cash with the Reserve Bank, making a total of Rs. 1,11,000.

31. It is proposed to withdraw from these assets Rs. 30,000 approximately to meet outstanding claims after reduction, in accordance with the scheme, Rs. 45,000 to provide for further claims to arise up to 1943, and Rs. 5,000 to pay sundry creditors and law expenses. The balance will be kept as a security deposit with the Reserve Bank for the new registration, that is to say, Rs. 31,000 will be so kept as deposit.

32. If this procedure be possible, I am satisfied that the scheme is a fair one, and that there is every possibility of the new company being and remaining solvent, but it is contended that the deposit cannot be used in the way suggested.

33. These objections, again, it seems to me, are based upon the misconception that the old company is to remain in being and be somehow changed in character. But that is not the effect of the scheme. As I have already stated, the original company will cease to be and a new company will be created. The result will be that the provisions of the Insurance Act with regard to refund of deposit will come into force. Sec. 9 provides:

Where an insurer has ceased to carry on in British India any class of insurance business in respect of which a deposit has been made u/s 7 or section 98 and his liabilities in British India in respect of business of that class have been satisfied or are otherwise provided for, the Court may, on the application of the insurer, order the return to the insurer of so much of the deposit as does not relate to the classes of insurance, if any, which he continues to carry on.

34. The liabilities in respect of the old business have been satisfied or otherwise provided for by the proposed scheme.

35. The remaining objections, all of which objections are set out in the "Grounds of Objection to the scheme on behalf of the Crown," which have been submitted to the Court, are based, like the others to which I have referred, on the misconception that the old company is to remain in being, whereas I have shown that the old company will cease to be as part of the scheme of reconstruction.

36. The same answer applies to the argument raised under sec. 56, which deals only with the procedure in winding-up. The effect of the sanctioning of this scheme will put an end to the winding-up proceedings, and the provisions of this section will no longer have any relevance.

37. After careful consideration of all these objections to and provisions of the

scheme, I have come to the conclusion that it ought to be sanctioned. Therefore there will be an order sanctioning the scheme, subject to the modification that the liability of the policyholders will be limited to Rs. 10 each.

38. The costs of all parties will be as of a hearing and will come out of the assets.

39. Certified for two Counsel.

40. The application dated 31st March for winding-up is adjourned sine die. Both this application and the winding-up application made in June, 1940, which has already been adjourned sine die, will depend upon whether the sanctioned scheme is carried into effect. If and when that has been done, both applications will stand dismissed. Liberty to apply for directions.