

(1917) 01 AHC CK 0003
In the Allahabad High Court

In Re: Mahamandal Shashtra Prakashak Samity, Ltd.

Date of Decision : 16-01-1917

Acts Referred:

Companies Act, 1913 — Section 162(vi)

Citation : 39 Ind. Cas. 570(1)

Hon'ble Judges : George Knox, J

Bench : Single Bench

Judgement

George Knox, J.—The application before me is an application u/s 162 of the Indian Companies Act VII of 1913. It is presented by six persons who are shareholders of a Company known and registered as the Mahamandal Shashtra Prakashak Company, Limited, Benares, which will hereafter be cited in this judgment as the Mahamandal Company. The prayer in the application is that the Mahamandal Company be wound up by the Court under the provisions of Section 162 of the Companies Act of 1913. The application is opposed by other shareholders of the Company. The amount of shares in the Mahamandal Company held by the applicants as set out is 413 fully paid up shares worth Rs. 4,130. It is alleged in the application that the Company has been working at a loss since the year 1912, and that the total losses up to the end of the year 1915 amounted to over Rs. 7,600, that the total liabilities of the Company on the 31st of December 1915 amounted to over Rs. 24,000, further that in the balance sheet of the Company for the year ending 1915 the principal items of assets are shown as amounting to nearly Rs. 43,000, that a proper and sufficient sum has not been calculated for depreciation in value of the printing machinery and types, that if this were done, the total assets of the Company would not come to more than Rs. 27,817, and that if the sum of Rs. 24,254 on account of liabilities be deducted from this, it would leave the balance of Rs. 3,563 available for distribution amongst the shareholders. Lastly it is alleged that if the Company is allowed to work longer, the losses are to be increased every year, and the added liabilities will in the course of a year or two swallow up the balance still available for distribution. This application is supported by an affidavit. In the course of the hearing the verification of this affidavit was objected to as not being in

accordance with Rule 26 of the rules of this Court, Chapter XIX in the General Rules Civil of 1911. It is true that the affirmation is not in accordance with what is laid down in the rule; but the objection comes at a late stage, and inasmuch as the verification more or less practically amounts to what is required by the rules; I overrule this objection, though if it had been made at an earlier period, I should have been compelled to insist upon the verification being as required by the rules. The objection was raised at the very end of the argument addressed to me on the part of the objectors. The application is opposed by a large number of share-holders of the Mahamandal Company. The case put by them is contained in two affidavits which have been put in by Babu Tara Charan Banerji, Secretary of the Mahamandal Company. Those affidavits will be found on the file. One of them is Exhibit Q filed in this Court on the 24th of November 1916. The other is Exhibit R filed in this Court on the 11th of January 1917. It represents that Only 2701 shares were subscribed for.

2. Some of these have not been fully paid up. The total amount realized comet to Rs. 26,950 and with this sum the business of the Company has been carried on. That the Company has been working not at a loss since its commencement; but that the loss only began since the European war broke out; that there is reason to believe that no loss has been incurred during the months of January to October 1916 and that there will be appreciable amount of profits; that there is hope when the war is over that the business of the Company will result in handsome profits and the losses already suffered in the past years would be more than recouped within a short period after the termination of the said war; that the depreciation which the applicants state is far from being correct and that it should not exceed Rs. 150 per annum; that there is a clear margin of lis. 18,563 as the net assets to the credit of the Company: that the meeting of the share-holders has been followed by an extraordinary meeting at which 107 share-holders out of the total number 168 were present either personally or through proxy; that at the said extraordinary meeting it was unanimously resolved that the Company ought not to go into liquidation for the reasons already given and because liquidation at the present juncture would be a very heavy loss to the share-holders inasmuch as it would be very difficult to obtain reasonable price for the printing materials and heavy machineries etc., during war time; also that the petition for liquidation was a mala fide one, being the doing of one Dayanand Swami, one of the applicants, who entertained Some personal grudge against the Raja of Tahirpur, the President of the Board of Directors of the Company; that part of the loss incurred by the Company up to the half year ending 30th June 1912 is due in part to Babu Bhagwati Prasad having allowed a separate press to be started by his son Babu Alopri Prasad and this new press taking up work at a much lower rate than that of this Company, and that consequently the Board of Management thought it advisable to remove the press from the cantonment to the centre of the city and heavy expenses in transit, etc., were consequently incurred; that steps have been taken to use only part of the printing materials and thus lessen the amount which would result in depreciation if the whole of the

printing materials were used; and that there are other departments connected with the Company which will tend to keep it in a proper state of finance. These are the main allegations contained in the affidavits of Babu Tara Charan Banerji and relied upon by the learned Vakil who appears for the Company and urged as reasons why the application should not be granted. If the application were granted and the Company wound up it would have to be wound up for One of the reasons given in Section 162 of Act VII of 1913. None of the circumstances stated in Section 162 apply to the present case with the exception of circumstance No. (VI) which runs as follows-"If the Court is of opinion that it is just and equitable that the Company should be wound up." The Indian Companies Act follows in the main the English Statute on the subject. There was a time when it was held in England that the Words which I have just set out and which may be called the just and equitable cause ought to be confined to circumstances ejusdem generis with the circumstances set out in Clauses (i) to (v), Section 162. This is no longer apparently held, and the current of English decisions appear to be that the Court is no longer fettered by such a limitation to be put upon Clause (vi). This matter was considered by the Bombay High Court in *In re Shah Steam Navigation Company* 32 B. 415 : 10 Bom. L.R. 107. Mr. Justice Davar necessary before whom the case came thought it un- in the circumstances of the case to decide whether this would be the interpretation to be put upon the words of Clause (e) of Section 128 of Act VI of 1882 under which that particular case came. The words of Clause (e), Section 128, differ from the words contained in Clause (vi) Section 162 of Act VII of 1913. If I were to interpret clause (vi) as being confined to reasons ejusdem generis with the previous ones, the application before me must fail. If I give it a wider consideration, it is equally my opinion that this application must fail. The words just and equitable are strong words and must receive their full consideration at my hands. The strong point, if it may be so-called, of the application is that the applicants apprehend that whatever assets there may be at the present moment to be placed to the credit of the Mahamandal Company will be frittered away within the course of a year or two, and that, therefore, they apprehend loss instead of any gain from the Company continuing to work. There are certain cases set out in Palmer's Company Law, 10th Edition, page 391 I have considered those cases. They appear proceed more or less upon the ground either that the substratum of the Company was gone or that the Company was conceived and brought forth in fraud. One can understand reasons of this kind as grounds upon which it is just and equitable that the Company should be brought to a conclusion as speedily as possible, viz., that companies about which it can be shown that they have failed in the object for which they were registered or companies whose root is fraud should be put an end to without delay. The reasons, however, given by the Mahamandal Company in their extraordinary general meeting of the 15th of November, and which have been reiterated in the affidavits filed are not without weight, and it would be a serious step in the dark to say that they will probably result in a loss of such a nature as to imperil the Company. It is easy to understand the applicants especially if they are gentlemen of a timorous nature,

apprehending loss from the fact that the Company of late have not shown that their work has resulted in profits. But it does not follow that their apprehension will be realized and that the Company should be wound up. There is much force in what was said by Jessel, M.R. In re Langham Skating Rink Company (1877) 5 Ch. D. 669 : 46 L.J. Ch. 345 : 36 L.T. 605. "A power which must not be acted upon unless there is very strong ground for acting upon it, and for this reason, that these companies are governed by a majority of their own members, and where there is a domestic tribunal which has power to decide upon a question, it should, if possible, be left to that domestic tribunal." The application is dismissed with costs.