

(1935) 01 CAL CK 0031
In the Calcutta High Court

In Re: Melanda Loan Office, Ltd.

Date of Decision : 21-01-1935

Acts Referred:

Companies Act, 1956 — Section 153

Citation : 164 Ind. Cas. 189

Hon'ble Judges : Cunliffe, J

Bench : Single Bench

Judgement

Cunliffe, J.—This matter comes before me on an application to sanction the scheme of arrangement said to have been come to at a meeting of the creditors of the Melanda Loan Office, Limited, a concern which finds itself in financial difficulties. The order for the holding of this meeting was made by this Court and it is said that a certain scheme was approved of by the necessary statutory majority of the creditors present. There is no need to go into the scheme in its details. It is opposed by a gentleman who is a creditor of the Company. He is a decree-holder for a debt of Rs. 5,000. I am also told by Counsel that there is another creditor who has obtained another judgment for a small amount who is not represented before me on this application.

2. The objection which is put forward on this creditor's behalf is an objection on principle based upon the wording of the Section 153 of the Indian Companies Act. That section deals with the power to compromise lying in the hands of the creditors and members of the Company. The Act definitely in terms mentions not only the creditors in a general sense but also the classes of creditors and by its language it shows that the intention and scheme of the Act was to have any rearrangement or settlement approved of on a three-fourths basis by separate meetings of the creditors divided into these classes.

3. The objector here says that he constitutes, together with several decree-holders, a separate class which has not been considered apart from other creditors who are for the most part, I think, depositors.

4. The question before me is not res integra. It has been dealt with by decisions both in England and also in this High Court itself. It can be said to be so because

the English decisions whilst interpreting a different Act deal with the same statutory provisions because Section 153 is, I think I am right in saying, in the same language as Section 120 of the Companies Consolidated Act of 1903 which has now been superseded by the present English Companies Act where the agreement is represented under the number 153.

5. In the case of *In The United Provinces Insurance Company, Limited* (1910) 2 Ch. 477 : 79 LJ Ch. 639 : 103 LT 531, Swinfon Eady, J. as he then was (was?) asked to uphold an objection to the manner in which meetings of the Company had been held to sanction some compromise. In that case which is reported in *In re United Provident Assurance Co.* (1910) 2 Ch. 477 : 79 LJ Ch. 639 : 103 LT 531, there were meetings of the creditors under three group heads, the group heads being labelled (a), (b) and (c) but he held that there was a class of shareholders whose shares were partly paid and partly unpaid and that their interests had not been properly put forward by the three separate groups that I have mentioned. The learned Judge said at p. 480 Page 6 of (1912) 2 Ch.-[Ed.] of his judgment.

In my opinion the share-holders of group (c) constituted a separate class with separate right? u/s 120 and are not in the same position as fully paid shareholders.

6. He added that they clearly constitute a separate class within Section 120 as they have had no separate meeting other than the parties meeting which does not count and has not been a proper meeting under the section.

7. In another case in relation to the liquidation of a Life Insurance Company the same principle was upheld. There it was considered that the interests of certain policy holders whose Policies had already matured and whose rights, therefore, against the Company were already ripe, had been forced to put forward their objection at a meeting which was very largely composed of policy-holders with unmatured rights against the Company and the learned Chief Justice and Lord Justice Bowen pointed out that the interests of these two classes of policy-holders were quite divergent and indeed in certain circumstances opposed to one another. I think they thought that the policy-holder with unmatured rights would naturally be particularly anxious to preserve the assets of the Company as against the policy-holders with mature rights, who could at any time put forward their claims in full and as there were not two separate meetings for these two classes, it was held that the provisions of the section had not been properly complied with. Further, I think that the decision of Mr. Justice Buckland reported in *In Re: Dewangunj Bank and Industry Ltd.*, shows that he was fully aware of the necessity for construing the section in sub-divided classes properly. The case was cited to me as an authority against this contention and I think it is in favour of the objectors on the whole.

8. For these reasons I am forced to withhold my sanction at the present time to the scheme of arrangement put forward before me.