

(1959) 09 MAD CK 0006
In the Madras High Court
Case No : O.P. No. 158 of 1959

In Re: Panruti Industrial Co. (Private) Ltd.

Date of Decision : 01-09-1959

Acts Referred:

Companies Act, 1956 — Section 100, 100, 101, 101(2), 102

Citation : AIR 1960 Mad 537

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : A. Devanathan, for the Appellant;

Final Decision : Allowed

Judgement

Ramaswami, J.—This is a petition filed under S. 100 of the Indian Companies Act, 1956, on which our case law is thoroughly sparse. The

petitioner is Panruti Industrial Company (Private) Limited. It deals in oil and oilseeds, etc. The nominal capital of the company is Rs. 3,00,000

divided into 600 shares of Rs. 500 each, of which 323 shares have been issued and are fully paid up. The company has sustained as on 31st

March 1958 a net unabsorbed loss of Rs. 81,640-0-0. Consequently, the Board of Directors at the meeting held on 6th October 1958 resolved

to reduce the share capital paid up by Rs. 300 per share and to appropriate a sum of Rs. 96,900-0-0 realised thereby to wipe off the loss in the

profit and loss account, the preliminary expenses account and build up a reserve for bad and doubtful debts, and to lay by a reserve fund.

Therefore, under the provisions of S. 100 of the Indian Companies Act, 1956, and in pursuance of the powers in that behalf contained in the

Articles of Association, the company by a special resolution of its shareholders duly passed at a meeting convened for that purpose on 15th

November 1958 that the share capital be reduced as set out above. The reduction of the capital, according to the petitioner, will not involve either a diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital and in consequence creditors of the company are not entitled to object to the reduction under the provisions of S. 101 (2) of the Act. The petitioner therefore prays that it may be declared that the creditors are not entitled to object to the above reduction of the capital and the reduction of the capital effected by the special resolution be confirmed and that the period for which the words ""and reduced"" shall be added to the company's name be limited to one month from the date of the order of this Court.

2. Notice has been taken out under orders of Court to two creditors of the company and the Registrar of Companies, Madras, and no objection is forthcoming.

3. The provisions under the Indian Companies Act, 1956 relating to reduction of share capital are found in Ss. 100 to 105. Ss. 100 to 105 are based on Ss. 55 to 66 of the old Act and Ss. 66 to 71 of the English Act of 1948. The present Ss. 100 to 105 are Rearranged on the lines of the English Act. S. 100 corresponds to old S. 55, and English Act (1948) S. 66.

4. The word "" capital "" involved in ""reduction of capital"" includes nominal share capital, whether issued or unissued and if issued, whether fully paid or not, and ""share"" includes ""stock,"" so that a company may reduce its Stock: See *Re Allsopp & Sons Ltd.*, (1903) 51, W.R. 644 C. A. Every reduction of capital must reduce the nominal capital, and a reduction of unissued capital may be combined with a reduction of issued capital, while issued capital may be reduced, whether fully paid or not: *Re : Anglo-French Exploration Co.*, *In re* (1902) 2 Ch. 845 at p. 852.

5. The need for reducing capital may arise in various ways, for example, trading losses, heavy capital expenses (e.g., preliminary expenses), and assets of reduced or doubtful value. As a result, the original capital may either have become lost, or a company may find that it has more resources than it can profitably employ. In either case, the need may arise to adjust the relation between capital and assets. Unlike an individual, a company has no power to write off losses of this nature or to return capital except in the manner provided by the Act (See *Hilly. Permanent Trustee Co. of*

New South Wales, Ltd. (1930) A.C. 720, P.C, and this can be done as indicated in Sub-S. (1) of S. 100.

6. The principles upon which the discretion of the Court has to be exercised can be gathered from (a) Magnus & Estrin's Companies (Law and

Practice), Third Edition, pages 79-80; (b) Buckley on the Companies Act, 13th Edition, pages 156; 164-165 : (c) Sir N. N. Sircar & Susil C.

Sen's Indian Companies Act, 1913, (1937 Edition), pages 145, 148 and 149 and (d) Sri T. R. Srinivasa Iyengar's Companies Act, 1956 (First

Edition), page 97.

7. (a). The Court has power to sanction any reduction which is fair and equitable [British and American Trustee and Finance Corporation v.

Couper (1894) A.C. 399], but, subject to the Court's discretion as above any loss is to be borne among the members in such manner as a loss in

respect of capital is to be borne under the constitution of the company, and, if money is to be returned, it is to be returned in the same way as

capital is returnable (Re Chatterley-Whitefield Collieries, Ltd) (1948) 2 All E.R.593, C. A. Where a reduction proposes to pay off one class of

shareholders, e. g., preference shareholders, the fact that that class might have obtained a future benefit beyond what they will receive on

reduction, e. g., a share in compensation under the Coal Industry Nationalisation Act, 1946, does not in itself render the scheme inequitable (Be

Chatterley Whitefield Collieries, supra, Scottish Insurance Corporation Ltd\ Wilson and Glyde Coal Co. (1949) A.C. 462. Where, however, all

concerned were invited to proceed on the basis that the company would not reduce by repaying the whole of the preference shareholders until the

value of that compensation could be ascertained, the Court refused to confirm the reduction [Re Old Silk-stone Collieries, Ltd. (1954) Ch. 169,

In Re Stevenson, Anderson & Co. (1951) S.L.T. 235], the Court of Session confirmed a reduction where part of the share capital was to be

returned to the members on the footing that the amount so returned could be recalled, leaving the nominal capital as it was. In Be Fraser (A & D)

Ltd., (1951)T.R. 73, the same Court refused to confirm a reduction the main purpose of which was to avoid tax liability.

8. (b) When exercising its discretion, the Court is concerned to see that the reduction is fair and equitable but is not concerned to consider the

motive for the reduction; as, for example, that it was to avoid the effects of a threatened nationalization or to distribute accumulated profits in such a way as to avoid or diminish liability to tax or to provide for the payment of estate duty on the death of a large shareholder. In all these cases the reduction was confirmed by the Court; *Ex parte Westburn Sugar Refineries Ltd.*, (1951) A.C. 625 = (1951) 1 All, RR. 881, *David Bell Ltd.* (10), *Re A & D Fraser* (1954) S.C. 33.

9. The jurisdiction to confirm a reduction of capital is discretionary, and allows the Court to impose terms and conditions, as for instance a condition that the articles shall be so altered that the shares reduced in amount shall be reduced also in voting power: *Re Pictucy* (1951) S.C. 394.

The Court may, therefore, either confirm the reduction with or without [*Re James Colmar* (1897) 1C. H. 524], conditions or decline to confirm it.

It is not necessarily confined to seeing that the creditors are properly protected, but may take into account whether the reduction would work

injustice between the different classes of shareholders, and although it may not fall within its function to impose conditions which amount to an

alteration of the scheme, yet if such an alteration appears requisite it may refuse to confirm the reduction, leaving the company to resolve on a

reduction in altered form if it thinks fit. *Re Barrow Hoemotite Steel Co.* (1900) 2 C.H. 846, affirmed in (1901) 2 C.H. 746.

9-A. (c) The question of reduction of capital has been treated as a matter of domestic concern, one for the decision of the majority of the

shareholders of the company. Subject to the necessity of obtaining the confirmation of the Court, the company is left to choose the mode in which

the reduction is to be made, e-g., the extent of the reduction and all other questions concerning the reduction including the application of the

moneys which may be set free as the result of the reduction: See *British and American etc, Finance Corporation v. Couper* 1894 A. C. 399.

10. The application for this purpose has usually to be made by petition and in the petition the company must show all facts and circumstances on

which it relies in support of its prayer for sanction. In disposing of such applications subject to protecting the interest of creditors where by the

reduction such interest is likely to be affected, the Court acts on the principle that it is the policy of the legislature to entrust the prescribed majority

of the share-holders with the decision as to whether there should be a reduction of capital, and if so, how it should be carried into effect. In *Re De*

La Bue & Co., (1911) 2 Ch. 361. And the Court will refuse to sanction any reduction which may be unjust to either the creditors or to the

minority of the members; In *re Welsbach Incandescent etc., Co.*, (1904) 1 Ch. 87. But where however the reduction of the capital is based on the

ground that capital has been lost or unrepresented by available assets apart from the special resolution it is always prudent to proceed on sure

evidence: *Marwari Stores v. Gouri Shanker* 1936 Cal. 327 = 40 C.W.N. 661, *Jacton Stock Exchange* AIR 1952 Pepsu 114, *Bengal Burma*

Steam Navigation Co., AIR 1939 Rangoon 47.

11. It is quite true that the Court has a discretion in the matter and is not bound to accord its sanction, but that discretion has got to be exercised

according to well-known principles. The following passage from the judgment of Stirling, L. J., in *In re Welsbach Incandescent etc., Co.*, (Ibid) is

instructive on the point:

.....in all these cases the Court is not under an obligation to confirm any scheme for reduction, by whatever majorities it may be sanctioned, but

has a discretion which it is bound to exercise in a proper case. But, at the same time, in exercising that discretion.....the Court ought to be very

careful how it interferes with the bona fide judgment of businessmen on a matter of business in which they themselves are largely interested.

12. To sum up, no company has power to reduce the capital subject to confirmation by the Court and cannot return the capital to members

[*Robert Allen Hill and others* 1930 P. C. 302]. The question of reducing capital is a domestic one for its decision of the majority. The company is

to determine the extent, the mode and in credence of the reduction. It is the duty of the Court to protect the interests of minority shareholders and

creditors: *Carruth v. Imperial Chemical Industries Ltd.* 1937 A.C. 707 . Court will also consider whether the sanction ought to be refused out of

regard to the interests of members of the public induced to take shares in the company, and whether the reduction is fair between classes of

shareholders: *Poole v. National Bank of India Ltd.*, Courts will be slow to interfere with shareholders acting honestly and who are usually better

Judges of what is to their commercial advantage than the Court: *Abdul Hamid*

Khan Vs. Dhani Dusadh and Others, .

12. (a) The Company however is not bound to satisfy the Court that the proposals are not unfair; it is for the objectors to disclose such matters as

will stand in the way of the Court's approval: Scottish Insurance Corporation (1949) 1 All. E. R. 1068 H.L, Prudential Assurance Co., (1949) 1

All. E, R. 1094 H.L, Re Isle of Thanat (1949) 2 All. E, R. 1060 C.A Re John Smith (1952) 2 All. E.R. 751. For a form of order, See 6A

Encyclopaedia Court Forms, 66: For examples of conditions which have been imposed in the past, See Halsbury's Laws of England, Third

Edition, 166.

13. But as pointed out by L. C. B. Gower in his Modern Company Law, Second Edition, page 568 as follows :

In practice the action of the Courts has been reduced to ensuring that the necessary formalities have been complied with. This, of course, is useful

so far as it goes, especially as the formalities are designed to secure that the rights of creditors are fully protected. As we have seen, the Court is

only authorised to sanction a reduction of uncalled liability or a repayment of capital if satisfied that creditors have agreed, or been paid, or had

their debts secured. And the Court may take similar action in other types of reduction also, and may, as the Westburn case (supra) (1951) A. C.

625 H.L. recognises, consider the interests of future creditors as well as of existing ones--although here again there is more evidence of lip service

than practical application. But, in straightforward reduction schemes, there has been a considerable relaxation in every respect and it is rare today

to, find a reduction rejected even on technical grounds. Indeed, the freedom with which the Courts rubber-stamp reductions of capital adds further

to the doubts whether the elaborate rules for the raising and maintenance of share capital...really fulfil any purpose.

14. Bearing these principles in mind if we examine the facts of this case, I find no impediment to exercise my discretion in declaring that the

creditors are not entitled to object to the above reduction and that the reduction of the capital effected by the special resolution set out above be

confirmed.

15. Turning to the words "" and be reduced "", this is an important provision and as pointed out by Sir N.N. Sircar and Susil C. Sen (Ibid) at page

150,

By the provisions of S. 57 (1913 Act), every company is under an obligation on and from the passing of the resolution to reduce the share

capital, and in cases where the reduction does not involve either diminution of liability in respect of unpaid share capital or the payment to any

shareholder of any paid up share capitals from the date of the passing of the order, to add temporarily to the name of the company, until the Court

dispenses with the same, the words "and reduced". The Court has jurisdiction to dispense with the words only in cases where the reduction does

not involve either the diminution of any liability in respect of unpaid capital or the payment to any share holder of any paid up capital.

The reasons which prompted the Legislature to provide this was thus explained by Jessel, M. R., in *In re Ebbu Vale Steel, Iron etc. Co.* 4 Ch. D.

827 at p. 832.

Now what is the meaning of that? It means that the company is to give notice to the world that it is a company which previously offered to the

public the security of a larger amount of nominal capital, that is, of a larger capital, that is, of a larger amount of liability on the part of the

shareholders, than it offers now.

The use of the words " and reduced " is really intended to serve as a warning to the public that the capital of the company has been reduced. In *re*

Pinkaney etc., Steamship Co. (1892) 3 Ch. 125.

But instead of one month, I direct that the words ""and reduced"½ be added for a period of six months from this date.

This petition is allowed and the petitioner company will take the costs of this application from its funds.