

(1940) 07 BOM CK 0028
In the Bombay High Court
Case No : I.C. No. 4 of 1940

In Re: Peoples International Travel Education and Commercial Co. Ltd.

Date of Decision : 29-07-1940

Acts Referred:

Companies Act, 1956 — Section 207(9)

Citation : AIR 1941 Bom 25 : (1940) 42 BOMLR 1021

Hon'ble Judges : Kania, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kania, J.—This is a petition by the Registrar of Companies praying that an order may be made for removing the voluntary liquidator and appointing another liquidator, preferably the Court Liquidator, in his place, or in the alternative that the company may be directed to be wound up under the supervision and by and under the directions of the Court. It is conceded by both parties that the right to make the petition has to be decided according to the provisions of the Indian Companies Act, VII of 1913. It is conceded on behalf of the applicant that the alternative prayer to wind up the company under the supervision of the Court or by the Court cannot be granted as he is not one of the persons named in the Act to maintain an application of that nature. The question therefore resolves itself into determining whether the applicant is a person entitled to make the application to remove the liquidator. The objection being urged as a preliminary objection, I have thought it necessary to decide it in the first instance.

2. On behalf of the applicant it is urged that u/s 207 (9) it is provided that a Court may on cause shown remove a liquidator and appoint another in his place. It is argued that because nothing is mentioned in the Sub-Section showing who is entitled to make the application, the Court can entertain such an application at the instance of any party. In support of this contention the learned Advocate General relied on Sunlight Incandescent Gas Lamp Company, In re [1900] 2 Ch. 728, and Kaikhushru Nusserwanji Chandabhoy Vs. Tata Industrial Bank Ltd., . It must be noticed that in neither of those cases the question whether the applicant

was entitled to make the application was considered or discussed. It appears to be assumed that the party was entitled to make the application and the applications were disposed of. The facts reported in the last case do not show that the application was not by the liquidator. They further show that the winding up in that case was proceeding under special agreements and circumstances. On the other hand the opponent here relies on *New De Kaap, Limited, In re* [1908] 1 Ch. 589. Under the English Companies Act, 1862, Section 141 comprised what is found in Section 207 (8) and (9). Section 138, as amended by Section 25 of the Companies Act of 1900, was in terms similar to Section 215 of the Indian Companies Act, 1913. It is evident that Sub-Section s (8) and (9) of Section 207 are out of place. Section 207 begins with the words " The following consequences shall ensue on the winding up of a Company." It is clear that the provisions found in Sub-Section s (8) and (9) are not consequences which ensue on the voluntary winding up of a Company. The English Companies Act, 1862, properly contained in a separate Section (Section 141) provisions similar to Section 207 (8) and (9). The marginal note there is " Powers of a Court to appoint liquidator." In giving judgment Neville J. first considered the effect of the words "on the application of a contributory " in the first part of Section 141 and thought that apart from other considerations, if Section 141 stood as it was, there may be difficulty in holding that anyone who was not a contributory was entitled to make the application under the second part of Section 141. The learned Judge then proceeded to consider the effect of Section 138 (which is similar to Section 215) and held as follows: "...so that in a voluntary winding up all applications to the Court are made u/s 138...." The application made in that case by the liquidator of a new Company was dismissed on the ground that he was not a creditor of the Company whose liquidator he sought to get removed. The preliminary objection was thus upheld and the petition was dismissed with costs. This decision is shown to be good law and is noticed in recognised text books on company law as an authority for the proposition that the parties mentioned in Section 138 only were entitled to make applications in a voluntary winding] up.

3. I respectfully agree with that conclusion. It is obvious that in the voluntary winding up of a Company the shareholders or creditors or the liquidator only are interested. Section 215 of Act VII of 1913 under the circumstances mentions these three parties as entitled to make applications to the Court, to determine any question arising in the voluntary winding up of a company. If any outsider attempts to intermeddle with the winding up of the Company, naturally the Court would ask the question " What is the interest of that outsider ? " In order to leave no room for doubt Section 215 of the Indian Companies Act, 1913, specifically mentions the three sets of persons who can make applications to the Court in a voluntary winding up. In my opinion that Section is exhaustive of the persons who are entitled to make applications, and the Registrar of Companies, not being one of them, has no locus standi to make the application. The petition therefore fails and is dismissed with costs. Counsel certified.