

(1927) 11 AHC CK 0016
In the Allahabad High Court

In Re: Sri Yogashram Pharmacy Ltd. (in liquidation)

Date of Decision : 15-11-1927

Acts Referred:

Companies Act, 1956 — Section 215

Citation : AIR 1928 All 265 : (1928) ILR (All) 482

Hon'ble Judges : Ashworth, J

Bench : Division Bench

Judgement

Ashworth, J.—This is an application for stay of execution of two decrees obtained against a company in voluntary liquidation. The decrees were obtained a few days before liquidation was resolved upon by the company. It is said that there are only these two decrees against the company, and that the assets of the company have only realized Rs. 800, while the liabilities of the company amount to Rs. 6,000. These decrees together amount to just over Rs. 100. No one appears for the decree-holder.

2. This application is made u/s 215, Companies Act, which reproduces word for word Section 193 of the English Act of 1908. It enacts that the liquidator may apply to the Court to exercise any of the powers which the Court may exercise if the company were being wound up by the Court. I have asked the liquidator to explain what is the power that he wishes this Court to exercise, and in what section of the Act that power is described and defined. He refers to Sections 169, 171 and 232, Companies Act. Section 169 does not apply as it relates to a power to be exercised by the Court to restrain proceedings against the company between the date of a petition for winding up and the date of an order for winding up. To apply this section to a voluntary liquidation we must regard the resolution of the company to wind up as equivalent to an order for winding up. The section, therefore, applies to an earlier stage of the proceedings than the present one. As regards Section 171: it provides that no legal proceedings shall be proceeded with against the company except by leave of the Court. This section appears to me to give the Court power to grant leave, but not to give the Court power to refuse leave. The latter power is unnecessary because the section of itself imposes a statutory bar on proceedings against the company. The same

remarks apply to 8. 232. It does not appear to me, therefore, that under 8. 215, Companies Act, strictly construed, the Court could issue an order staying execution against the company. On the other hand, there is authority for holding that Section 193 of the English Companies Act will entitle a Court in a case like this to stay execution proceedings. It was held, in the case of *Anglo-Baltic and Mediterranean Bank v. Barber & Co.* [1924] 2 K.B 410, that there is a general practice of staying execution when a company is in voluntary liquidation for the reason that the execution, if allowed, would necessarily interfere with the distribution of the assets *pari passu*. Indeed it was remarked by Lord Selborne in *Black & Co.'s case* [1872] 8 Ch. A. 254 that Section 138 had the effect, where application was made to the Court, of making applicable to voluntary liquidation all the powers of the Court exercisable in the case of liquidation by the Court. It follows that the interpretation given to Section 193 by the English Courts, and acted on invariably in practice, is that this section will give the Court the power in a voluntary liquidation to stay further proceedings though that is a power which in a compulsory liquidation does not exist, because the statute itself forbids execution being taken out. As Section 215 of the Indian Act is in the same words as Section 193 of the English Act, I consider that I am entitled to interpret it in the manner in which it has been interpreted by the Courts in England.

3. For these reasons I consider that I have power to grant the application, and that it should be granted. Accordingly I direct that the relief as prayed for in this application be granted. This order is *ex parte*.