(1950) 06 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous No. 172/L of 1949 in C.O. No. 72 of 1949

In Re: The Frontier Bank Ltd.

Date of Decision : 29-06-1950

Acts Referred:

Bankruptcy Act, 1914 — Section 14(2)
Companies (Amendment) Act, 1936 — Section 153, 153(6), 153(7)
Companies Act, 1865 — Section 2(7)
Companies Act, 1879 — Section 12, 4
Companies Act, 1882 — Section 153(3), 153(6), 271(3), 320
Companies Act, 1913 — Section 12, 133, 15(6), 153, 153(1)
Companies Act, 1923 — Section 108, 338, 342
Companies Act, 1929 — Section 120(3), 153, 153(6), 338, 380
Companies Act, 1948 — Section 206, 456
Companies Act, 1951 — Section 153
Joint Stock Companies Arrangement Act, 1870 — Section 2
Provincial Insolvency Act, 1920 — Section 38

Citation : (1950) 06 SHI CK 0007

Hon'ble Judges : Khosla, J;Kapur, J;Harnam Singh, J

Bench : Full Bench

Advocate : Gosain Kundan Lal and Bal Raj Tuli, for the Appellant;

Judgement

Khosla, J.—The question for our decision in this case is whether this Court has jurisdiction to sanction a scheme of arrangement in respect of a company whose registered office is in Pakistan and which has complied with the requirements of Section 277, Indian Companies Act; in other words, whether Section 153 applies to such companies.

2. The Company in question is the Frontier Bank Ltd., with its registered head office in Dera Ismail Khan (Pakistan). After 15-8-1947 the Bank complied with the requirements of Section 277, Companies Act, and thereafter on 14541-48 a scheme u/s 153, Companies Act, 1951 Simla/19 and 20 was sanctioned by the Lahore High Courts A petition was also presented, to this Court on 16-9-48 and a scheme was sanctioned by that Court on 15-7-49. The registered office of the Bank was not transferred to India before the partition of the country, but it is said that, at the moment, all the Directors and most of the shareholders are in

India. They had sot up an office in Delhi before reporting the fact to the Registrar of Joint Stock Companies u/s 277 of the Act. After a scheme of arrangement had been sanctioned by this Court, two further applications for the amendment of the scheme were made on 18-10-49 and 22-10-49 respectively. The object of these petitions was to seek an extension of time. This- necessitated the sanctioning of a new scheme. The question, therefore, arises whether this Court has jurisdiction to sanction such a scheme having regard to the provisions of Section 276, Companies Act.

3. The argument for the Bank may be briefly summarised as follows. The Petitioner Company is to be treated as an unregistered Company by virtue of the provision of Section 271 of the Act and is, therefore, liable to be wound tip under part IX of the Act. That being so, it is to be treated as a company for the purposes of Section 153 because Section 153(6) brings such companies within the purview of that section. Section 153(6) reads as follows:

In this section the expression ''Company'' means any company liable to be wound up under this Act....

4. As against this, it may be argued that under the provisions of Section 276 an unregistered company (which includes a foreign company like the Frontier Bank Limited) can be treated as a company only for the purposes of Part IX of the Act and for no other purpose and, therefore, it is not a company within the meaning of Section 153(6) and, therefore, no scheme of arrangement in respect of such a Company can be sanctioned by the Court.

5. There is no doubt that Section 276 in express terms lays down that:

an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part.

This would appear to imply that an unregistered company is not a company for the purposes of Section 153 because Section 153 is not in Part IX of the Act. In spite of the general direction, however, some other part of the Act may contain an exception and if that be so, the exception must be given effect to. It appears clear to roe that Section 153, sub 9(6) engrafts such an exception to Section 276 inasmuch as Sub-section (6) of Section 153 applies to all companies which are "liable to be wound up." It cannot be denied that an unregistered company is liable to be wound up and, therefore, it comes within the exception mentioned in Section 153. The matter arose in some cases cited before us in which it was held that a scheme of arrangement could be sanctioned in respect of an unregistered company. In Mohan Lal Huja and Others Vs. Chawla Bank, Ltd., a Division Bench of the Allahabad High Court had under consideration the sanctioning of a scheme in respect of a bank having its registered office in the Frontier Province and a branch in U.P. The bank had complied with the requirements of Section 277, Companies Act after 15.08.1947. The bank was, therefore, to be treated as an unregistered company and the Allahabad High Court held that Section 153 applied to such a company. The following passage occurs in page 782:

It may be pointed out in passing that the expression ''company'' in Sub-sections (1) and (2) of Section 153, Companies Act, cannot be continued to companies formed and registered under the Act, or an existing company but it includes an unregistered company also. In Sub-section (6 of Section 153 it is provided that in the said section the expression ''company'' means any company liable to be wound up under this Act, and an unregistered company is liable to be wound up u/s 271 of the Act.

There is no reference in this judgment to Section 276 of the Act, but I cannot assume that this section was not present to the mind of the Hon''ble Judges. Their attention was drawn to Section 271 and they had, therefore, before them Part IX of the Act. It can scarcely be argued that they were oblivious of the provisions or Section 276 Indeed, the argument used by them seems to imply that they did read the provisions of this section and came to the conclusion that Section 153(6) contained an exception to the general rule of Section 276.

6. Another case cited before us was in Re Travancore National and Quilon Bank Ltd. AIR 1939 Mad. 318 : (183 I.C. 353) In this case the company in question was a bank with its registered head office in Travancore. The bank had complied with the requirement of Section 277 of the Companies Act by thing with the Registrar, Joint Stock Companies, Madras, the necessary documents required by that Section. The question then arose whether the Madras High Court had jurisdiction to Section a Scheme of arrangement u/s 153. Venkataramana Rao J., held that there was jurisdiction. One of the arguments employed by the learned Judge was that a scheme u/s 163 provides an alternative mode of winding up and that, therefore, Section 153 could be read as a general law as to winding up. Therefore, a scheme in respect of an unregistered company could be sanctioned. This argument is not altogether sound, for the learned Judge could have said with equal force that Section 153 covers the case of all companies which; are liable to be wound up whether u/s 271 or any other provisions of the Act. Out attention was also drawn to certain cross references contained in Buckley''s Book on the Companies Acts. It is to be observed that the provisions of the English Law are exactly similar on these points. Section 404 of the English Act corresponds to Section 276 of the Indian Act and Section 206 corresponds to our Section 153. Sections 399 and 400 of the English Act correspond to Sections 271 and 277 respectively of the Indian Act. Section 206, Sub-section (6), English Companies Act of 1948 provides. "A company means any company liable to be wound up under this Act." Thu learned author has referred to Sections 455, 399 and 400 of the Act in order to show what companies are liable to be wound up. Therefore, a company which can be wound up u/s 399(corresponding to our Section 271) is a company in respect of which a scheme of arrangement can be sanctioned. It cannot be said that Buckley was completely oblivious of the provisions of Section 404 (which corresponds to our Section 276). Similarly, Palmer''s Book on Company Precedents expressed the same opinion (pp. 904 and

965 of Vol. II, Edn. 15).

7. I am, therefore, of the view that Section 153(6) provides an exception to the provisions of Section 276 and the general rule laid down in Section 276 is not absolute. Therefore, if a foreign company has complied with the requirements of Section 277 and is to be treated as an unregistered company for the purposes of Part IX of the Act, it is a company liable to be wound up within the meaning of Section 153(6) and therefore, a scheme of arrangement can be sanctioned in respect of such a company.

Harnam Singh, J.

8. The question that arisen for declaration of Civi1 Misc. Nos. 172/L, 193/L and 194/L of 1949 is whether this Court has jurisdiction to sanction a scheme of arrangement in respect to the Frontier Bank Ltd., with its registered office in Dara Ismail Khan (Pakistan). The Bank has set up on office at Deim and has complied with the requirements of Section 277, Companies Act 1913, hereinafter referred to as the Indian Act.

9. The facts, so far as material, are that on 15-1-1948 a scheme of arrangement with retard to the Frontier bank Ltd., was sanctioned by the High Court at Lahore and a similar schema of arrangement with regard to that bank was sanctioned by this Court on 15-7-1949, on a petition u/s 153 of the Act.

10. Now, in Civil Misc. No. 172/L of 1949, the said bank applies for the amendment of the scheme of arrangement Sanctioned by the Court On 15-7-1949. In Civil Misc. No. 193/L of 1949, the bank applies for permission to pay to the non-Muslim depositors of the bank in India 50 per cent of the amount due out of the first instalment under the scheme and in Civil Misc. No 194/L of 1949 the bank asks the Court to amend Clause 3(a) of the scheme of arrangement sanctioned on 15-7-1949. In all the three cases the que-stion that arises for decision is whether this Court has jurisdiction u/s 153 of the Act is a Saction a scheme of arrangement, with regard to the Frontier Bank, Ltd. Section 153 of the Act reads:

(1) Where a compromise or arrangement is proposed between on a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the Company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator order a meeting of the creditor or class of creditors, or of the members of too company or class of members as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourth in value of the creditors or class of creditors, or members or class of members as the case may be, present either in parson or by proxy at the meeting, agree to any compromise or arrangement., the compromise or arrangement shall. If sanctioned by too Court,

be binding on all i.e. creditors or the class of creditors, or on all the members or class of member or on all case may be, and also on the company, or, in the case of a company or in the course of having wound up, on the liquidator and contributories of the company.

(3) An order made under Sub-section (2) shall have no effect until a certified copy of the under has been died with the Registrar, and copy of the every copy order shall be annexed to every copy of the memorandum of the Company issued after the order has been made, or in the case of a company not having a memorandum of every copy so issued of the instrument constituting or defining the Constitution of the company.

(4) If a company makes default in complying with Sub-section (3) the Company and every office of the company who is knowingly and willfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this Section stay the commencement or continuation of any suit or preceding against a company on such terms it thinks fit and proper until the application is finally disposed of.

(6) In this section the expression ''company'' means any Company liable to be Wound up under this Act and the expression ''arrangement'' includes a reorganisation of the share-capital of the company by the consolidation of shares of different clasps or by the division of shares into shares of different classes or by both those methods, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court.

11. Now, on the question of the construction of Section 153 I have no difficulty. An application u/s 153 of the Act has to be made to the ''Court'' which term, according to Section 2 of the Act means "the Court having jurisdiction under the Act." Section 3(1) which defines the expression "the Court having jurisdiction under the Act" read:

(1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.

12. The question that then arises for decision is whether this Court has jurisdiction in Dera Ismial Khan (Pakistan) where the registered office of the Frontier Bank Ltd., is situate.

13. The territorial jurisdiction of this Court is defined in Article 5, High Court (Punjab) Order, 1947. Article 5 enacts:

The High Court of the East Punjab shall be a Court of Record and shall have, in respect of the territories for the tune being included in the province of the East Punjab and in the province of Delhi all such original, Appellant and other jurisdictions as under the law in force immediately before the appointed date is exercisable in the sold territories by the High Court at Lahore.

14. Clearly this Court has no jurisdiction in Dera Ismial Khan (Pakistan) where the registration office of the Company is suite and that being so, this Court has no Jurisdiction sanction a scheme of arrangement with respect to affairs of the Frontier bank, Ltd.

15. The conclusion set out in the preceding paragraph receives support from the provisions of Section 276 of the Act Part IX of the Act deals with the winding up unregistered companies, including foreign companies. Section 216 of the Act is the last Section. Part IX and enacts the provision of Part in respect to unregistered companies shall be in ad tion to and not in restriction of the provisions contain in pares 1 to VI of the Act with respect to winding up of Companies by the Court, and the, Court or the Official Liquidator may excess any powers or do any act with respect to unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under the Act. There is then a restricting provision at the end of Section 276, namely, that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under the Act and then only to the extent provided by Part IX of the Act. Taking the word as they stand in their ordinary sense, I am inclined to bold that the effect of Section 276 is to render inapplicable to unregistered companies the whole of the Act except the provisions of the Act dealing with the winding up of companies.

16. The question that then arises is whether the provisions contained in Section 153 of the Act are provisions with respect to the winding up of the companies. In Re Travancore National and Quilon Bank, Ltd. AIR 1939 Mad. 318 : (183 I.C. 353), Venkataramana Rao J., said:

Under Section 271, all the provisions of the Act with respects to winding up would apply to an unregistered company and a provision to avert a winding up will be a provision with respects to the winding up. A scheme u/s 153 provides an alternative mode of winding up and it cannot be doubted that Section 153 being a general law as to winding up is as much applicable to the winding up of a foreign company and the corresponding section of the English Act has always been employed to give effect to a Bahama of compromise already arranged in a simultaneous winding up abroad.

17. With very great respect I am unable to accept the view expressed in In re Travancore National and Quilon Bank Ltd. AIR 1939 Mad 318 : 183 I.C. 353). In the first place Section provides that the winding up of a company may be either by a Court or voluntary or subject to the supervision of the Court. The definition of the phrase ''winding up'' given u/s 155 clearly shows that proceedings u/s 153

of the Act are not proceedings with respect to the winding up of a company. In the second place, it appears from an examination of Section 153 itself that proceedings under that Section are not in the matter of a winding up of a company. Section 153 was amended by the Companies (Amendment) Act, 1936, when Sub-section (7) was added to Section 153. Now, if provisions u/s 153 of the Act were provisions with respect to the winding up of companies the addition of 1 Sub-section (7) was not necessary. Sub-section (7) was, however, added for it was laid down in The Viramgam Spinning and Manufacturing Company Limited Vs. The Industrial Bank of Western India Limited, that there was no appeal u/s 202 of the Act from an order on an application made by the Court u/s 153 when the company was not in the course of being wound up and to remove that defect Sub-section (7) gave a right of appeal in such oases. On this point reference may also be made to the decision In the matter of In Re: Mymensingh Loan Office Ltd., This alone would show that proceedings u/s 153 of the Act are not proceedings in the matter of the winding up of company.

18. But it was said in Re Travancore National and Quilon Bank Ltd. AIR 1939 Mad. 318 : (183 I.C. 353), that a scheme of arrangement u/s 153 is intended to avert the winding up of a company and that a provision to avert winding up of a company is a provision with respect to the winding up. The reasoning in Re Travamore National and Quilon Bank Ltd., AIR 1933 Mad. 318 : (183 I.C. 353), however, fails to take notice of the fact that in proceedings initiated to avert a winding up of a company we are running away from the winding up proceedings. For ail these reasons, I expressed the view of Bhagwanii v. New Bank of India AIR 1950 E.P. 111 (F.B.) that the provisions contained in Section 153 of the Act are not provisions with respect to winding up of companies by the Court. I have since then carefully considered the point but nothing that I have heard sinca then has shaken the view that I expressed in that judgment.

19. From what I have said above it follows that Section 153 of the Act is not applicable to unregistered companies.

20. But then it is said that Section 153 of the Act engrafts an exception to the rule enacted in Section 276 of the Act. Alluri China Bapanna and Others Vs. Sri Mattangi Jaggiah alias Jaggarao Garu and Others, the question arose whether tbe High Court of Madras bad jurisdiction to entertain an application u/s 153 of the Act with regard to the Travancore National and Qdlon Bank Ltd., with its registered office situate in Travancore State. In deciding that question in the affirmative, Venkataramana Rao J. said:

But If the expression ''Court'' in Section 153 of the Indian Companies Act is interpreted in the light of Sub-sections. (2) and (3) of the Act, this High Court will have no jurisdiction to entertain the application. But when the Legislature has intended that Section 153 can be availed of even by a foreign company, we must be construe the expression ''Court'' as to make the right conferred on a foreign company and its creditors and members available to them. Further the definition of the word ''Court'' in Clause 2 and 3 is to prevail only in the absence of anything repugnant to the subject or context. When the Legislature itself has Bought to give the ''company'' a wide signification, it must also have meant to give the ''Court'' a wide signification. The expression ''Court,'' in my opinion, in the case of an unregistered company Including a foreign company would mean the Court in which the said company is liable to be wound up and that is fixed by reference to Section 271 and u/s 271 High Court will be the Court in which a foreign Company is liable to be wound up. It seams to me, therefore, that this High Court has jurisdiction to entertain an application at the instance of a creditor or a member of a foreign company.

21. Now, the judgment in Re Travancore National'' and Quilon Bank Ltd., AIR 1939 Mad. 318 : (189 I.C. 353) proceeds on the assumption that in Section 153 of the Act the Legislature has sought to give the ''company'' a wide signification and that being so, the word ''Court'' in Section 153 must also receive a wide signification. I am unable to accept this view. In the first place, the expression ''liable to be wound up, appears to have a restricting effect and excludes from the purview of Section 153 companies which do not satisfy the requirements of Section. 162 or Section 203 of the Act. On this point the decision in Re Traders Bank, Ltd., Lahore, AIR 1049 Lah. 48 : (pak. L.R. (1948) Lab. 209) may be referred to with advantage. In that case, Cornelius J. Said:

The expression ''liable'' in a legal context importing sanctions, can only be understood to mean a state of being exposed or contingently subject to Such jubilation. To take a simple example from the Criminal law, the mere fact that a punishment is prescribed for a particular offence does not render every person subject to the jurisdiction of the Criminal Court livable to such punishment; it is also necessary that in relation to such person the elements of the offence for which such punishment has bean prescribed should be duly satisfied.

22. With great respect I follow the reasoning of Cornelius J. in the passage set out above. Salmond in Edn. 10 of his celebrated work on Jurisprudence say at p. 304:

Liability or responsibility is the bond of necessity that exists between the wrong-doer and the remedy of the wrong. This vinicuhtm juris is not one of mere duty or obligation; it pertains not to the sphere of ought but to that of must. It has its source in that supreme will of the State, vindicating its supremacy by way job physical force in the last resort against the unconforming will of the individual. a man''s liability consists in those things which he must do or suffer because he has already failed in doing what he ought. It is the ultimatum of the law.

23. That being so, the expression liable to be wound up'' in Section 153(6) of the Act appears to be to have a restricting effect and of the companies formed and registered under the Act or of the existing companies only such of there are liable to be wound up as satisfy the conditions specified in Section 162 or Section 203 of the Act.

24. Now, the view that I have expressed in the preceding paragraph receives

support from the history of legislation on this point. u/s 2, Joint Stock Companies Arrangement Act, 1870, a company in the course of being wound up either voluntarily or by or under the supervision of the Court could alone apply for the sanction of a scheme of arrangement. The provisions contained in Section 2 of the said Act have now been liberalised and at present a scheme of arrangement can be sanctioned with respect to a company which is not being wound up provided it is a company which, at the time of the making of an application u/s 206 of the Companies Act, 1948 (II and 12 Geo. VI, c. 38), hereinafter referred to as the English Act, satisfies the conditions specified in Section 222 or Section 278 of the English Act. Sections 153, 162 and 203 of the Act correspond to Sections 206, 222 and 278 respectively of the English Act. In other words, whereas u/s 2, Joint Stock Companies Arrangement Act, 1870, a scheme of arrangement could only be sanctioned in the case of a company that was in the course of being wound up under the existing law in England, a schema of arrangement can be sanctioned in the case of a company which is not in the course of being wound up provided the company satisfied the conditions specified in Section 222 or Section 278 of the English Act.

25. Then, considering the provisions of Insolvency law as obtaining in England and India we come to the same conclusion. Section 38, Provincial Insolvency Act, 1920, provides for compositions and schemes of arrangement where a debtor after the making of an order of adjudication submits a proposal for composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs. Indeed, the Provincial Insolvency Act, 1920, does not contemplate a scheme of arrangement of the affairs of an insolvent debtor before an order of adjudication has been made. To similar effect is the provision made u/s 14(2), Bankruptcy Act, 1914. u/s 14(2), Bankruptcy Act, 1914, the statement of affairs has to be submitted in the case of a debtor''s petition within three days and in the case of a creditor''s petition within seven days after the making of the receiving order unless the time is extended. This would show that Section 153 of the Act is applicable to companies which are in the course of being wound up or which satisfy the conditions specified in Section 162 or Section 203 of the Act.

26. But reliance is placed on Palmer''s Company Precedents, Edition 15, Part II, pp. 904-5, wherein Palmer suggests with reference to the English Companies Act, 1929, that the following companies can be wound up under that Act;

(1) Companies formed and registered under Part I of the Act;

(2) Existing companies as defined by Section 380;

(3) Companies registered, but not formed, under the Companies Act, 1862;

(4) Companies registered as limited under the Companies Act, 1879;

(5) Unregistered companies as explained or denned in Section 377 of the Act, which section provides that for the purposes of that part of the Act, the expression.

''Unregistered company'' shall include any Trustee Savings Bank under the Trustee Savings Bank Act, 1863, and any partnership, whether limited or not, any also at association and any company with thus exceptions stated therein.

27. Before proceeding to examine the argument raised, it will be desirable to refer to footnote No. 7 at p. 405 of Buckley on the Companies Act, Edn. 12. Foot-noot No. 7 seems to show that in the opinion of Buckley the expression ''liable to be wound up'' occurring in Section 206(6) of the English Act includes companies defined in Section 399 of the English Act. Section 399 of the English Act corresponds to Section 271 of the Act. That being so, it is said that according to Palmer and Buckley an unregistered company falls within Section 206(6) of the English Act.

28. Now, the views expressed by Palmer proceed upon Companies Act, 1929 (19 and 20 Geo V.S. 23). Sections 108, 338 and 342 of that Act correspond to Sections 153, 271, 276 of the Act (Indian Companies Act, 1913). That being so, it is plain that the Court having jurisdiction u/s 338 will have jurisdiction u/s 153, Companies Act, 1929. Under the English Act, no difficulty arises because the definition of the expression ''Court'' in Section 380 of the English Act is "The Court having jurisdiction to wind up a company under the Act." The definition m in the Act is, however, different from the definition of the expression ''Court'' in Section 380, Companies Act, 1929 Section 380 corresponds is to Section 455 of the Companies Act, 1948 and to Sections 2 and 3 of the Act. That being so, I am firmly of the view that the view expressed by Palmer and Buckley does not support the proposition advanced in these proceedings. Clearly, if the expression ''Court'' used in Section 153 of the Act means the Court having jurisdiction to wind up the Company'', this Court will have jurisdiction to act u/s 153.

29. The view that I have expressed in the preceding paragraphs is decisive of the present case. But considering that a different view has been taken in Re Travancore National and Quilon Bank Ltd. AIR 1939 Mad. 318 : (183 I.C. 353), Mohan Lal Huja and Others Vs. Chawla Bank, Ltd., and In the ''matter of the Tracers Bank Ltd., Lahore, AIR 1949 Lah. 48 : (ink. L.R. 1918 Lab. 209), I propose to deal seriatim with the points underlying the decision in those cases.

30. AIR 1939 Mad 318 proceeds upon the assumption that the Legislature has intended that Section 153 should be availed of even by a foreign company and that, being so, we must so construe the expression Court in Section 153 as to make the right, c inferred on a foreign company and its creditors and members available to them. For reasons given above, I think that the definition of the word ''Court'' in Sections 2 and 3 of the Act governs the expression ''Court'' in Section 153 of the Act. On the last point reference may be made inter alia to Sections 3(2), 153(6), 153A(5), 271(1)(1) of the Act and Section 455 of the English Act.

31. Section 3(2) reads:

For the purposes of jurisdiction to wind up companies, the expression registered office means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

32. The provisions of Section 153(6) have been set out hereinbefore in extents Section 153A(5) provides:

Notwithstanding the provisions of Sub-section (6) of Section 153, the expression ''Company'' in this Section does not include any company other than a company within the meaning of this Act.

33. Section 271(1)(i) runs:

An unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up. be deemed to be registered in the province where its principal place of business is situate or if it has a principal place of business situate in more than one province, then in such province where is has a principal place of business; and the principal place of business situate in that province in which proceeding are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

34. In Section 455 of the English Act the expression ''Court'' used in relation to a company means the Court having jurisdiction to wind up the company.

35. Now, if the Legislature had intended to give the expression ''Court'' appearing in Section 153 a wide signification it would have given a special definition of that expression in Section 153 of the Act. The Legislature has, however, not conferred jurisdiction on the Court having jurisdiction to wind up, a foreign company to act u/s 153 of the Act.

36 That being so, it follows that the expression ''Court'' in Section 153 of the Act has the same meaning which has been given to the word ''Court'' in Sections 2 and 3(1) of the Act.

37. I now pass on to examine the view expressed in Mohan Lal Huja and Others Vs. Chawla Bank, Ltd., In that case Bhargava J. (Malik C.J. concurring) said:

Now, we have to determine in whit Court an application u/s 153, Companies Act, relating to an unregistered company, can be filed. Under the general law it must be filed in the High Court to whoso jurisdiction the company has submitted or made itself amenable or within whose jurisdiction the principal place of business of such a company is situate. Admittedly, after the orderly progress of the bank was jeopardised by the communal disturbances which preceded and followed the partition m of the Court the head office and all the branch and pay offices of the bank with the exception of Dehra Dun, office had to be closed and that for some time before it suspended payment in January 1948, the entire business of the bank was centralized at and was being controlled from Dehra Dun. Office the bank established its ''residence'' at Debra Dun and made it the principal place of business, it submitted to the jurisdiction of the Courts in these provinces.

38. Now, I think the law is clear that under the provisions of the Act, the High

Court possesses such powers as have been conferred upon the Court under the provisions of the Act Section 3(1) of the Act provides:

The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate. Provided that the Central Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such Distinct Court, shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

39. That this is the correct view as to the powers of the Court under the Act I have no doubt, for, apart from principle, the point is covered by authority. In the matter of In Re: Mymensingh Loan Office Ltd., Lort. Williarnn J. said:

The power of the Court under the Indian Companies Act are strictly limited to those given in specific sections such as Sections 12, 38, 77, 153 and 162.

40. This being the position of matters, it appears to me that this Court possesses only such powers as have been conferred upon the Court under the provisions of the Act. In other words, this Court does not possess any power under the general law of the country to act u/s 153.

41. And this brings me to the decision in In re Traders Bank Ltd. Lahore, AIR 1949 Lah. 48 : (Pak. L.R. 1948 Lab. 209). As mentioned in an earlier part of this judgment, Cornelius J., was inclined to hold that the expression liable to be wound up has a restricting effect, inasmuch as it confines the application of Section 153 to Companies whose condition is such that they are exposed to winding up. Cornelius J., however, thought that considering; the opinion expressed in Rudow v. Great Britain Mutual Life Assurance Society, (1861) 17 Chapter D. 600 : (50 L.J. Ch 504), there was no escape from the conclusion that the provisions of Section 163 of the Act are available in respect of unregistered companies.

42. Now, in Re Traders Bank Ltd. Lahore AIR 1949 Lah. 48 : (Pak. L.R. (1,948) Lah. 209), Cornelius J., has not noticed the definition of the word ''company'' in Section 2 and 3(1) of the Act. Indeed, he has failed to consider the real question that arises in such cases, namely, the jurisdiction of Court to act u/s 133 of the Act. Clearly, this Court as the Company Court bas no jurisdiction to act under the Act except in cases where jurisdiction has been conferred by the Act on this Court.

43. Then Cornelius J., has not correctly appreciated the view expressed in Rudow v. Great Britain Mutual Life Assurance Society, (1881) 17 Oh. D. 600 : (50 L.J. Oh. 504). In that case Jessel M.R. said:

But there are at the end of the section, these words upon which the Vice-Chancellar relied that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under the Act, and then only to the extent provided by this Part of the Act. His Lordship read ''being wound up'' as it bad been ''having been wound up'' which would make the Act absolutely unworkable. It is necessary that the provisions anterior to the actual order of winding up should apply to an unregistered company, and that he seems to have forgotten. It is plainly the meaning of the Act that all the provisions in Part IV shall apply a much to unregistered companies as to registered companies.

44. Baggalay and Lush L. JJ., concurred in the opinion expressed by the learned Master of the Rolls.

45. From the passage set out in the preceding paragraph it appears that provisions of part V. of the Act apply to unregistered companies as to registered companies. In other words, Section 276 of the Act renders applicable to foreign companies the provisions of the Act with respects to the winding up of companies by the Court and the other provisions of the Act have no application to foreign companies.

46. In this view of the matter, this Court has no jurisdiction to act u/s 153 of the Act unless it can be held that the provisions contained in Section 153 of the Act are provisions with respect to the winding up of companies. For reasons given hereinbefore I do not think that provisions contained in Section 153 of the Act are provisions with respect to the winding up of companies.

47. For all these reasons I respectfully differ from the view expressed by Cornelius J., in Re Traders Bank Ltd. Lahore AIR 1949 Lah. 48 : Pak. L.R. 1948 Lah. 209.

48. Having made these observations I pass on to point out that the Act does not contemn plate schemes of arrangement with regard to foreign companies. Now, a company formed and registered under the Act may be wound up by the Court, voluntarily or subject to supervision but no foreign company can be wound up under the Act voluntarily or subject to supervision. Reference in this connection may be made to Section 271 (ii)(ii) of the Act. That being so, I think that the Act does not permit scheme of arrangement with regard to unregistered companies which cannot be wound up voluntarily or subject to supervision.

49. From the foregoing discussion the rules mentioned hereunder are deducible:

(1) that Section 276 of the Act renders inapplicable (to unregistered companies the whole except Imparts IX and V of the Act;

(2) that provisions contained in Section 153 of the Act are not provisions with respect to the winding up of a company and that being so the application of Section 153 to a foreign company is excepted by Section 276 of the Act;

(3) that the expression "liable to be wound up" in Section 153(6) is not interchangeable with the expression can be wound up and that the special definition of the company given in Section 153(6) of the Act renders inapplicable

the provisions of Section 153 to companies which are not exposed to being wound up u/s 162 or Section 203 of the Act and

(4) that this Court not having jurisdiction in Pakistan has no jurisdiction to sanction a scheme of arrangement with respect to a Company having its registered office in Pakistan.

50. For the foregoing reasons I would answer the question arising in civil Misc. Nos. 172/L, 193/L and 194/L of 1949 in the negative.

Kapur, J.

51. I agree with the judgment of my learned brother Khoala J., but as the point is of some importance I think I should give reasons for my opinion.

52. The Petitioner, The Frontier Bank Ltd., is a Company which before the partition had its head office in Dera Ismial Khan in the N.W.F. Province of India (now in Pakistan). We are informed that all the directors and share-holders of the company have now migrated to India. The Bank has set up an office at Delhi and all necessary documents u/s 277, Indian Companies Act, have-been filed with the Registrar.

53. On 15-11-1949, a scheme of arrangement with regard to the Petitioner company was sanctioned by the High Court of Lahore and a similar scheme was sanctioned by this High Court on 15-7-1949. Two petitions have been filed for amendment of the scheme sanctioned by this Court, one dated 13-10-1949, and the Other dated 22-10-1949.

54. When this matter was placed before me I referred it to a Full Bench in view of the difference of opinion between my brother Harnam Singh J., and myself in Bhagwanti v. New Bank of India Ltd. Amritsar AIR 1950 E.P. 111 (F.B.). The point for decision is whether a scheme can be sanctioned under the provisions of Section 153, Companies Act, with regard to companies which are foreign, and, therefore, unregistered companies, in other words where a company which has its head office in Pakistan, and, therefore, for the purposes of the Indian Companies Act is a foreign company, a scheme of composition can be sanctioned u/s 153, Indian Companies Act and, therefore, is covered by the phrase ''liable to be wound up'' which finds place in Section 153(6) of the Act.

55. A reference to the various sections of the Indian Companies Act may perhaps be necessary to resolve this question. In Section 2(2) ''company'' means a company formed and registered under this Act or an existing company Section 2(7) says ''existing company'' means a company formed and registered under the Companies Act, 1865, or under any Act or Acts repealed thereby or under the Indian Companies Act, 1882. What is now Sub-Section 153(6) was originally Sub-section (3) of the same section and was renumbered Sub-section (6) by the Companies Amendment Act of 1936. It now runs as follows:

(6) In this section the expression ''company'' means any company liable to be

wound up under this Act and the expression ''arrangement'' includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares in to shares of different classes or by both these methods, and for the purposes of this section. unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same classes other unsecured creditors.

56. The word ''company'' appears again to Section 153A, and in Sub-section (5) it is provided:

Notwithstanding the provisions of Sub-section (6) Section 153, the expression ''company'' in this section does not include any company other than a company with in the meaning of this Act.

57. Part IX, Indian Companies Act, deals, with winding up of unregistered Companies. Section 270 gives the meaning of ''unregistered company'' It runs as follows:

For the purposes of this Part, the expression ''unregistered company'' shall not include a railway company incorporated by Act of Parliament or by an Act of the (Central Government), nor a company registered undo the Indian Companies Act, 1866, or under any Act repealed thereby, or under the Indian Companies Act, 1882, or under this'' Act, but save as aforesaid, shall include any partnership, association or company can listing of more than seven members.

58. Section 271 deals with winding of unregistered Companies and Sub-section (3) of this Section says:

Where a company incorporated outside ''all the provinces of India'' has been carrying on business in ''all the Provinces of India'' ceases to carry on business in ''all the Provinces of India'' it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

59. Section 272 describes the contributories in winding up of unregistered companies and Section 273 gives power to stay or restrain proceedings and Section 274 provides for the stay of suits on winding up orders, Section 275 deals with directions as to property in certain cases and in Section 276 it is provided as follows:

The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case at unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, exempt in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part

60. It will be noticed that in this Part it is definitely stated that an unregistered company in the event of its being wound up is not to be deemed a company under the Act, and then only to the extent provided by this Part.

61. Part X of the Act gives the requirements as to companies established outside all the provinces of India.

62. An objection is raised based on the last part of Section 276, Indian Companies Act, that an unregistered company is not a company under the Indian Companies Act except in the event of its being wound up and emphasis is laid on the phrase "and then only to the extent provided by this Part" and the contention is that because an unregistered company is not a company except within the limitation placed by Section 270 and thon only to the extent provided by Part IX a Court will have no jurisdiction to sanction a scheme of composition u/s 153 of the Act, In Section 153, the expression ''company'' means "any company'' liable to be wound up under this Act. "Now the framed of the Act must'' have had some object in adding these words because otherwise they would not have used this expression as the word ''company'' is defined in Section 2(2) of the Act. This opinion finds support from the fact that in the very next section i.e. 153A which deals with facilitating arrangements and compromises and applies to reconstruction of any company or to amalgamations the definition of the word ''company'' is different and in that section it does not include ''any company'' other than the company within the meaning of this Act.

63. In the English Companies Act, 1862, a provision such as that contained in Section 153(6), Indian Companies Act did not exist. This Act was found to be insufficient and to meet the need of the Companies the ''Joint Stock Companies in 1870 an Act called Arrangement Act was passed by the Parliament to facilitate compromises and arrangements between creditors and shareholders of joint Stock and other companies in liquidation. In the English Act of 1908 in Section 120, power to compromise with creditors and members was given where the company was or was not in liquidation; Sub-section (3) of this section runs as follows:

In this section the expression ''company'' means any company'' liable to be wound up under this Act.

64. In the English Act of 1929 the section corresponding to Section 120(3) is Section 153(5) and in the Act of 1948 it is Section 206(6). It may be noticed that in Section 208 which corresponds to Section 153A, Indian Companies Act, the expression ''company'' has been defined exactly in the same manner that it is defined in the Indian Companies Act and that is in spite of the fact that in Section 404 of the present English Act, which correspond to Section 276, Indian Companies Act, the words are identical.

65. In the unamended Indian Companies Act, 1913, Section 153(3) corresponds to our present Section 153(6) and this has now been brought is conformity with Section 153(5) of the English Act of 1929. Section 276 of the present Indian

Companies Act is the same as it was in 1913. In the English Act of 1862 there is a provision similar to our present Section 276 which was Section 204 in 1862 Act, and in spite of this Section which applies to unregistered companies the English Legislature introduced Section 120(3) in the Act of 1908 which has been continued in the Acts of 1929 and that of 1918. Section 204 has continued in practically unamended form as Section 273 in the Act of 1908, 342 in the Act of 1929 and 404 in the Act of 1948 and as far as I have been able to discover the same language has been used in Section 276 of the Act of 1913 and has remained the same up to date.

66. It is a point which is rather important to note as to why if the expression ''company'' had already been defined in the Interpretation Clauses of the English Acts as well as in the Indian Acts, it was found necessary to define the expression ''company'' differently in Section 153(3) in 1913 and 153(6) in 1936 and yet in another Section which also deals, with compositions, that is to say, 153A the definition of the company again became the same which is contained in Section 2(2), Indian Companies Act. The same can be said about the different English Act. The inference, to my mind, is obvious that the expression ''company'' means any company liable to be wound up under this Act" must have some special meaning. As I would interpret Section 276, Indian Companies Act, an unregistered company there for the purposes of winding-up is a company as defined in Section 2(2), Indian Companies Act. In other words, an unregistered company in the event of its being wound up has to be deemed to be a company within the meaning of Section 2(2) and that also only to the extent provided by Part IX. Unless we interpret-this section in this way the result will be that we will have to hold that when the expression ''company'' was differently defined in the sections dealing with schemes of arrangements the Legislature had no object behind it and that whatever be the words used it still remains the same definition as is given in Section 2(2) which I think it will be unreasonable for us to hold.

67. That the expression "''company'' means any company liable to be wound up under this Act is wider than that given in Section 2(2) in supported by Palmer and Buckley. In Palmer''s Company Precedents (Edn. 15) part 11 pp. 904-5 in regard to the expression ''company'' an used in Section 153(5) which corresponds to Section 153(6), Indian Companies Act it is stated:

Section 153(5) says that the expression ''company'' means in that section any company liable to be wound up under the Act. Now, as appears above (pp, 13 to 14) the following companies can be wound up, that is to say:

1. Companies formed and registered under Part I of the Act.

2. Existing companies as defined by Section 380.

3. Companies registered, but not formed, under the ''Companies Act, 1862. See Section 317.

4. Companies registered as limited under the Companies Act, 1879. Section 4.

See Act of 1929, Section 16.

5. Unregistered companies as explained or defined in Section 337 of the Act, which Section provides that for the purposes of this part of this Act, the expression ''unregistered Company'' shall include any Trustee Savings Bank certified under the Trustee Savings Bank Act, 1863, and any partnership, whether limited or not, any association and any company with the following exceptions : (1) a railway company incorporated by Act of Parliament (except in so far as provided by the Abandoumunt of Railways Act, 1850, and the Abandonment of Railways Act, 1869 and any Acts amending them); (2) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts (See Section 320) or under the Companies Act, 1882, or under the Companies (Consolidation) Act, 1908 or under this Act; (3) a partnership, association or company consisting of not less than eight members and not being a foreign partnership, association or company; (4) a limited partnership registered in England or Northern Ireland.

''Company'' therefore, as used in the section (Section 153) has a very wide signification. Its meaning is much wider than the meaning given to the word by Section 380 of the Act. The Court can apparently approve a scheme of arrangement affecting English creditors of a foreign company. This is convenient, as it may be doubted whether creditors whose debts were incurred in England and who are domiciled and resident in this country could be bound by a scheme sanctioned by the Courts of a foreign country. See Antony Gibbs and Sons v. La Sociate Industrielic Et Commercial Des Metaux (1890) 25 Q.B.D. 399 : 59 L.J.Q.B. 510 and Newzeland Loan and Mercantile Agency Co. v. Morrison (1898) A.C. 349 : 67 L.J.P.C. 10.

68. In ''Buckley on the Companies Act'' (Edn. 12) at p. 404 in the expression ''company'' occurring in sixth Sub-section of Section 206 of the English Act, 1948, companies us defined in this section in Section 455 (Section 2,Indian Companies Act) 399 and 400(Section 271, Indian Companies Act) are included. That is the import of note 7 given at p. 405 of Buckley. This learned author would include an unregistered company within the expression ''company'' as used in Section 163, Indian Companies Act. The authority of these two authors is very great.

69. In India Section 153 has been applied to foreign companies and arrangements with Indian creditors have been allowed under the Jaw. Alluri China Bapanna and Others Vs. Sri Mattangi Jaggiah alias Jaggarao Garu and Others, Venkataramana Rao J., said:

Under the English Act it is clear therefore that the provision corresponding to Section 153, Indian Companies Act is applicable to the ease of foreign companies because a foreign company is a company liable to be wound up under the Act.... There can be no doubt that the Travancore National Bank though incorporated outside British India and therefore a foreign company, would be an unregistered company within the meaning of Sections 270 and 271 of the Act. An unregistered company is a company liable to be wound up under the Act. When the Legislature itself has defined the expression ''company'' and has given it a wide signification, there is no reason for excluding a foreign company from its purview.

70. The Allahabad Court in Mohan Lal Huja and Others Vs. Chawla Bank, Ltd., a bank which had its head office in Bannu also in the North Western Frontier Province (now in Pakistan), asked for sanction of a schema of arrangement with the creditors of the company in India and it was there held that the expression ''company'' in Sub-Sections 1 and 2 of Section 153, Indian Companies Act could not be confine to companies formed and registered under the Act or an existing, company, but includes an unregistered company also. Bhargava J., said:

In Sub-section (6) of Section 153 it is provided that in the said section the expression ''company'' means any company liable to be wound up under this Act and unregistered company is liable to be wound up u/s 271 of the Act.

71. Reliance was there placed on the Madras case quoted above and on In re Strauss and Co. Ltd. AIR 1937 Bom. 15 : (167 I.C. 83), in which it was held that the High Court of Bombay had jurisdiction to make an order for the winding up of a company which was registered in England, but which had its branches within the jurisdiction of that Court. This last case may not be of much assistance in construing Section 153(6), Companies Act.

72. In a recent case decided by the Dacca High Court In re Noakhak Union Bank Ltd., 54 C.W.N. (2 U.R.) 201, Shahahbuddin J., has taken the same view as that taken by the Madras High Court in In re Travancore National it Quilon Bank Ltd. AIR 1939 Mad. 318 : (183 I.C. 353). In that case the learned Judge held that an application foe sanctioning of a scheme of arrangement u/s 153, Companies Act, in the High Court at Dacca in Pakistan in respect of a company having its registered office in Calcutta in India can be entertained by the High Court at Dacca which has jurisdiction u/s 153, Companies Act, to pass orders on the application.

73. In the case of In re Traders Bank Ltd of Lahore AIR 1949 Lah. 48 : (pak. L.R. 1948 Lah. 209), where a petition for winding up against the bank had been filed arid then an application was made u/s 153, the question arose whether the provisions of H. if. Indian Companies Act, were available in relation to that company which had transferred its head office to Delhi. Cornelius J., held that the expression ''liable to be wound up'' had a restricting office in as much as it confined the application to companies whoso condition was such that they were exposed to winding up. The expression ''liable'' the learned Judge held, could be understood to mean a state of being exposed or contingently subject to such sanction. It was held in that earthen that Section 153 would have no application to an unregistered company unless an order for winding up had first been made and this was because of Section 276, Indian Companies Act. Reference was made to Rudow v. Great Britain Mutual Life Assurance Society (1861) 44 L.T.

688 : (17 Chapter P. 6OO). Dealing with this case the learned Judge says:

On appeal, the matter was considered in detail by Jessel M.R. After citing the provisions of all the relevant sections the learned Master of the Rolls came to the conclusion that the expression ''being wound up'' in the phrase ''except in the event of its being wound up'' means too provisions as to wincing up'' relating to consequently decided that the provisions anterior to the actual order fur winding up, relating to registered companies, were by the operation of Section 204 made applicable to unregistered companion as well, it is well settled that the provisions of Section 153, Indian Act, apply equally to companies which are in process of being wound up as to companies in respect of which a petition for winding up has been instituted. Upon the view taken by the Court of Appeal In the case cited above there would seem to be no escape from the conclusion that provisions of Section 153, Indian Companies Act are available in respect of unregistered companies which are in process to the actual making of a winding up order. Although this decision was given in relation to the terms of the English Act, it seems to me to be of binding effect for the interpretation of Section 276, Indian Companies Act, for the reason that the latter section has been adopted preciously verbatim from the English Act.

74. So far as that case went there does not seem to be any difficulty. There an application for winding up had already been made and the company was a company to which Section 2(2), In diau Companies Act applied by virtue of the second portion of Section 276 That, in my opinion is no authority for saying that Section 153(6) will not include an unregistered company. I must say I am unable to agree with the interpretation placed on the expression ''liable to be wound up'' by the learned Judge. That expression is not used in a restrictive sense, but extends the, meaning as stated by Palmer and Buckley and also by Venkataramana Rao, J. in the Madras case, AIR 1939 Mad. 318 referred to above.

75. If I may say with very great respect, Rudow v. Great Britain Mutual Life Assurance Society (1861) 17 Ch. D. 600 : 44 L.T. 688 does not help us very much in the matter of interpretation of Section 153(6), Indian Companies Act, or Section 271 of that Act. In his commentary on Section 404 of the English Act, Buckley says at p. 743:

The action renders applicable to unregistered companies the whole, except as expressly excepted, of Part V of the Act

and relics on Rudow v. Great Britain Mutual Life Assurance Society, (1861) 17 Ch. D. 600 : (44 L.T. 688) for this opinion. As this case was largely relied on by Cornelius J., it may be necessary to deal with it at some length.

76. Ernestina Rudow commenced an action against the Society, an unregistered Mutual Life Assurance Society and C.G. Wurth, to recover ?100, the amount of a policy of assurance effected by the Defendant Wurth on the life of S.A. Wurth (since deceased) and mortgage by C.G. Wurth, after the death of S.A. Wurth, to the Plaintiff.

77. The Defendant society denied their liability, but subsequently paid into Court the amount claimed which was taken out by the Plaintiff under the orders made at the Chambers of the Master of the Rolls. The Plaintiff''s costs against the Defendant society were taxed and paid, but no provision was then made for the costs of the Defendant Wurth, who took summons against the Plaintiff and the Defendant society asking for payment of coats which were heard in Court by Bacon, V.C. and his Lordship ordered the Plaintiff to pay to Wurth his costs of the Section and that she should be at liberty to add what oho had to pay to her own costs of the action which would be recoverable from the Defendant society. The Plaintiff having paid Wurth costs took out execution for the recovery of those costs. The Defendant society moved before Bacon, V.C., for an order restraining the Plaintiff from issuing execution.

78. The Plaintiff objected that there was no jurisdiction to make the order u/s 85, Companies Act (which corresponds to Section 169, Indian Companies Act.) It was argued that the application being by the company and Section 201 (present Section. 402 and Indian Section. 273) could not apply and the only section under which the Court Could act would be Section 85 (present Section 226 and Indian Section 169) and because in the case of unregistered companies Section 201 is substituted for Section 85 the Court would not have jurisdiction to stay the action. The argument in reply was that Section 199, (present Sections 398 and 399 and Indian Sections 270 and 271) made all the sections with respect to winding up applicable to unregistered companies. Reliance was also placed on Section 204 (present Section 404 and Indian Section 276).

79. Bacon V.C. sustained the objection and held that Section 85 applied to registered, companies and Section 201 gave power to a creditor to bring an action. An appeal was taken against this judgment. It was argued by the Appellant that the Vice-Chancellor had construed the words at the end of Section 204,

an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and this only to the extent provided by this part of the Act.

to mean that an unregistered company is not within Section 85, unless the company has hem wound up; but it was submitted that the words "except in the event of its being wound up" must be read as meaning "except for the purpose of being wound up", and there being, therefore, jurisdiction the only remaining question was whether this was a proper ease for its exercise. The Respondents were not called upon.

80. Jessel, M.R., said:

I have a word or two, however, to say on the ground upon which the Vice-Chancellor decided this case, for I am unfortunately unable to accede to it. He did not decide it on the merits, but by reason of his opinion being that the Court had not jurisdiction to make the order, this being an unregistered company. It is necessary to look at one or two sections of the Act of Parliament to see, as I think we shall clearly see (with respect to him), that he had jurisdiction. Section 85 is general, ''and may at any time after presentation of the petition for winding up n company under this Act'' make the order. Then Section 199 does this. It says that an unregistered company, subject to certain restrictions, may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to such company, with certain exception and additions which I need not read for this purpose, Therefore, there is a general rule that, subject to what follows, all the provisions shall apply. That, of course, would import Section 85 if it stood alone. Then Section 201 says.... That Section 201 was necessary, because, in the case of an unregistered company, you might sue the contributory as well as the company. Section 85, when it is looked at, applies only to a registered company, and it is on the application of the company, or a creditor, or a contributory. But this is not on the application of the company, but the application of a creditor only, and it restrains proceedings against the contributory or company, and it is for a different purpose, and on the application of a different person, and, standing alone without the subsequent section which I am going to mention, I think it would still be held not to interfere with the application of Section 85. But any question on that part of the Act is got rid of by the provisions of Section 204, that ''....''

Therefore it is quite plain that, so far, the Section 85 applies to an unregistered company. But there are these latter words at the end of the section upon which the Vice-Chancellor relied, that an unregistered company shall not, except In the event of its "being wound up be deemed to be a company under this Act, and then only to the extent provided by this part of this Act; and be read ''being wound up'' as if it had been ''having been wound up'' which would make the Act absolutely unworkable....

It is plain that ''being wound up'' means the provisions as to winding up, and reading it in that way the whole of the Act becomes sensible, and this section applies, therefore, as much to the winding up of an unregistered company a3 to the winding up of a registered company.

81. Baggallay, L.J., concurred in this opinion and held that the Vice-Chancellor had jurisdiction to make an order which was asked for in the action.

82. All that this case lays down is that the provisions of the winding up chapter could be used in addition to the provisions contained in the part relating to unregistered companies which is Part IX of the Indian Act. As I would read the judgment, it does not seem to be any authority for the view that an unregistered company does not become a company within the meaning of Section 153(6) or that the jurisdiction of the Court in regard to schemes of arrangements is taken away by the last Part of Section 276, Indian Companies Act. As I have said before u/s 276 an unregistered company becomes a registered company for certain purposes but the definition given in Section 153(6) widens the definition of the term ''company''.

83. I would, therefore, answer the question in the following way:

(1) For the purposes of winding up, an registered company'' would be covered by the definition of the ''company'' given in Section 2(2), Indian Companies Act:

(2) Section 153(6) enlarges the definition of the expression ''company'' and brings within its ambit all companies which can be wound up under the provisions of the Indian Companies Act which would include foreign companies. See Mercantile Bank of Australia, (1892) 2 Ch. 204 : (61 L.J.C. 417) and North Australian Co. v. Goldsborough Co. (1890) 61 L.T. 716 .

(3) A scheme of arrangement between the! Indian creditors of the Frontier Bank Limited is allowable under the provisions of the Indian'' Companies Act.

(4) If a proper case is made out, the High Court, having jurisdiction, will section a proposed scheme.

ORDER

84. The question referred to the Full Bench is answered in the affirmative.