(1959) 09 MAD CK 0058

In the Madras High Court

Case No : Application No. 1456 of 1959 in Original Petition No. 129 of 1955

In Re: The Official Liquidator Ltd.

Date of Decision : 11-09-1959

Acts Referred:
Companies Act, 1956 — Section 168, 184, 428, 467

Citation : (1960) ILR (Mad) 290

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : N. Arunachalam, for the Appellant;

Judgement

Ramaswami, J.—This is an application by the Official Liquidator in the matter of the liquidation of the Free Press Journals (Madras), Limited.

2. The Official Liquidator prays (a) that under the proviso to Section 467 of the Indian Companies Act, 1956, this Court may dispense with the settlement of the list of contributories in this liquidation; and (b) that except the statutory books, the other books, records and files of the company be permitted to be disposed of and the proceeds credited to the company.

3. Section 467 of the Companies Act is one of the most important sections of the said Act. This section corresponds to Section 184 of the previous Act and Section 257 of the English Act of 1948. As recommended by the Company Law Committee at page 317 of their report, the proviso to Section 257(1) of the English Act has been embodied in this Section. This section deals with the list of contributories. A contributory has been defined in Section 428 of the Act, which corresponds to Section 168 of the old Act and Section 213 of the English Act. The English section makes it clear that the term includes all the persons who have fully paid their share amounts and embodies the effect of the decisions in the matter. This section provides that after the list is prepared by the Liquidator it has to be settled by the Court.

4. The words ''as soon as'' used in Section 467 show that the list should be prepared and settled speedily. The necessity and importance of taking this step

speedily was pointed out by Chitty J., in In Re. English Bank of the River Plate [1892] 1 Ch. 391 395 in the following words:

The importance of settling the list of contributories is well-known because no call can be made till after it is settled; and there is a tendency for the assets of a company, which remain to be called up from the contributories to disappear where there is delay in settling the list and making the calls.

5. It is only on the list of contributories being settled that the amounts realizable from them can be ascertained.

6. In settling the list of contributories it is the duty of the Court to go into all questions of law and facts which may be raised in order to ascertain the question of liability. Liability means the liability existing at the time of making the order.

7. The effect of the settlement of the list of contributories and the placing of the name of a person in the said list is unless the order is set aside on appeal, to render the question of liability final and conclusive. The matter is res judicata. The liability of a member to be included in the list of contributories is ex-legis and not ex-contractu. So if he fails to object in time he will be liable as contributor and estopped from denying the same.

8. In settling the list of contributories the Court is not bound by the register of share-holders, and has authority to rectify the register, and may go into all questions of law and fact in order to determine the question as to who is the real owner of the shares. The power to rectify the register is not limited to the time when the Court is settling the list of contributories. The Court may revise the list of contributories at any time before the dissolution of the Company, and, if necessary, for that purpose rectify the register. There is nothing in the Act which prevents the Court even after the list of contributories is settled to resettle it. The Court is competent to alter the list at any time whenever it finds it just that it should be so altered.

9. The exercise of the jurisdiction given by the section is, however, discretionary. The Court must be set in motion by the party who wants to contest the liability or by the Liquidator, as the case may be, and it is not for the Court to act ex mere motu suo.

10. These Principles Are Embodied In Re Westways Garage, Ltd. [1942] 2 All. E.R. 147, Sichell''s Case (1867) 3 Ch. App. 119, In Re. Sussex Brick Co. (1904) 1 Ch. 598, In Re. Nathan Newman And Co. (1887) 35 Ch. D. 1, Ganesha Singh v. Shankar Lal (1915) 28 I.C 142, AIR 1926 414 (Lahore) Indian Speie Bank, Ltd., In Re I.L.R (1915) 40 Bom. 134 Peninsular Life Assurance Co., In Re: Peninsular Life Assurance Company Ltd., Bank of Hindustan, Ltd. v. Suryanarayana ILR [1957] Mad. 1058 Amar Nath and Another Vs. Karnal Electric Supply Co. Ltd., , Lakshmi Narasa Reddi v. Sree Films, Ltd. ILR [1952] Mad. 108, In The Matter of E.I. Cotton Mills AIR 1949 Cal. 69.

11. These principles can be gathered from the analysis in the standard text-

books: Buckley on the Companies Acts, thirteenth edition (Butterworth) (1957), page 534. Magnus and Estrin Companies-Law and Practice, third edition, page 254; Sir N.N. Sircar and Sushil C. Sen. The Indian Companies Act (1937), page 594, T.R. Srinivasa Iyengar Companies winding up (1959) (Company Law Series No. 4), page 103 and following.

12. Therefore, whenever an application is made by the Official Liquidator for exercising the powers contained in the proviso to Section 467 , it must be scrutinized with great care as the consequences are very large.

13. Bearing these principles in mind, if we examine the facts of this case, we find that the Official Liquidator has made out a case. In this liquidation practically all the assets consisting of printing plant and machinery and outstandings have been realized and a dividend has been declared. There are a few small outstanding debts which are being realized. The company is private limited company and the management changed hands in or about May 1953, by the previous directors transferring their shares which were fully paid up to the new set of directors consisting of only three persons. Subsequently the company was working for only a few months during which further shares had been allotted according to the minutes book but no regular procedure seems to have been adopted. The result was that certain persons who had lent moneys are allotted shares without their consent and they ultimately denied that they were contributories and had to be admitted as creditors for the moneys paid by them. The books of the company have not been kept properly. It has not been possible to rely upon the books of the company which are incomplete or on the returns sent to the Registrar for settling a correct list of contributories. Moreover, from the realizations there will be no surplus left after payment to the creditors for a return of the capital to the contributories, as only a dividend of 4 Naya paise, in the rupee had been declared to the creditors and the further assets which could be realized will not yield even one more Naya paise in the rupee. Therefore prayer (a) is granted.

14. Prayer (b).- In the circumstances excepting the statutory books, the rest of the useless books, records, and files which are large in volume and cluttering in appreciable portion of the limited record room of the Official Liquidator and whose preservation serves no useful purpose, are directed to be sold and the proceeds credited to the company.

15. The costs of this application will come out of the estate.

