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(1936) 11 CAL CK 0016

In the Calcutta High Court

Case No : In the matter of the Indian Companies (Act VII of 1913)

In Re: the Rajbari Ice Factory, Ltd.

Date of Decision : 25-11-1936

Acts Referred:

Citation : (1936) 11 CAL CK 0016

Judgement

Lort-Williams, J.—The Petitioner is a creditor of the Rajbari Ice Factory, Ltd., now in voluntary liquidation. She says that the Company is indebted to her to the extent of Rs. 16,120-4-9. Her husband is the managing director. She asks that the Company may be wound up by the Court or under the supervision of the Court, and that all legal proceedings against the Company may be stayed.

2. The Company is insolvent, and on the 27th October, 1936, a resolution was passed for voluntarily winding it up.

3. The whole of the assets of the Company have been attached. They have been advertised for sale in the Court of the first Subordinate Judge at Faridpur, in execution of a decree for Rs 18,302-5-6 obtained by Amaresh Chandra Lahiri and others.

4. The decree-holder opposes the petition on the ground that the effect of this attachment is such that it ought to be allowed to prevail over the interests of other creditors.

5. The sale has not yet taken place because of the interim stay granted by this Court. The question I have to decide is whether I ought to exercise my discretion in this matter in favour of the general body of creditors, and order a further stay of the execution proceedings.

6. The general practice with regard to staying executions, where there is a voluntary liquidation, has been described by Scrutton, L. J., in Anglo-Baltic and Mediterranean Bank v. Barber & Co. [1924] 2 K. B. 410, 418. He states the general practice to be to grant an order staying execution for the reason that the execution, if allowed, would necessarily interfere with the distribution of the assets pari passu, and that it was only in very special circumstances that the

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Court would depart from that general practice, such as, for instance, where the judgment-creditor had been induced by a false pretext on the part of the Company to postpone the execution, as was the case in Armorduct Manufacturing Co. v. General Incandescent Co. [1012] 2 K. B. 143..

7. There are no special circumstances in the present case.

Sec. 268 (1) of the English Companies Act, 1929, provides:-

Where a creditor has issued execution against the goods or lands of a Company or has attached any debt due to the Company, and the Company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the Company unless he has completed the execution or attachment before the commencement of the winding up

and sub-sec. (2) provides:-

For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

There is no such provision in the Indian Companies Act.

8. I am satisfied that a distinction must be drawn between a seizure under the English writ of fieri facias, and an attachment under the Indian Law, as has been made in the present case.

9. In my opinion, such an attachment, which has not been yet completed by sale, cannot be treated as if the execution had been completed before the commencement of the winding up, without statutory provision to that effect analogous to the provisions of sec. 268 of the English Companies Act, 1929.

10. I am informed that the debt owing to the decree-holder was for monies lent to this Company, and that the Petitioner''s debt is also for monies similarly lent at a later period. Whether the Petitioner''s is a valid debt will be decided in the winding-up. Beside the claims of these two alleged creditors there are a number of smaller claims.

It is, therefore, clearly in the interests of the whole body of creditors that the value of this factory should be realised in the liquidation proceedings, and the assets of the Company divided among the creditors pari passu, and in view of the circumstances and the doubts which have been thrown upon the genuineness of the Petitioner''s claim by the decree-holder, I think it preferable that the Company should be wound up by the Court.

11. I accordingly admit the petition, and appoint as provisional liquidator the gentleman who has already been appointed in the voluntary liquidation.

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12. I stay all legal proceedings against the Company, including the execution proceedings which I have referred to.

13. Advertisements will be published in the " Calcutta Gazette," the " Statesman " and the " Amrita Bazar Patrika."

Costs of all parties to this application will come out of the assets. Certified for Counsel. The liquidator''s costs will be as between attorney and client. The decree-holder will have liberty to add the costs of the suit and of the execution proceedings to his claim.

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