(1952) 02 CAL CK 0004

In the Calcutta High Court

In Re: Woodcrafts Industries (India) Ltd.

Date of Decision : 27-02-1952

Acts Referred:
Companies Act, 1956 — Section 277(1)

Citation : 57 CWN 61

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Ginzvalla, for the Appellant;R. Chaudhuri for the Company, for the Respondent

Final Decision : Dismissed

Judgement

Banerjee, J.—This is a creditors'' petition to wind up a company which, from its certificate of incorporation, appears to have been incorporated on 5th March, 1946, under the Indian Companies Act, 1913, as adapted in the Kalahandi State. That State is in the province of Orissa, and at the time of the incorporation of the Company was part of the British India. The Dominions of India and Pakistan were constituted in August, 1947. The petitioners'' debt is admitted and is sufficient to entitle the petitioner to present the petition.

2. The company opposes the application on the ground (and that is the only ground taken), that this Court has no jurisdiction to entertain the application.

3. u/s 3 of the Indian Companies Act, the Court that has jurisdiction to wind up a company is the High Court having jurisdiction in the place at which the registered office of the company is situate. The District Court may however assume jurisdiction, if it is so authorised by the Central Government. In this case it is admitted that the registered or the principal office of the company is in Kalahandi, Orissa. The Company after incorporation established a place of business at 3, Baretto''s Lane, Calcutta, and filed with the Registrar particulars mentioned in section 277(1).

4. It appears from a copy of the particulars, set out in the affidavit of Hendrik Meddepohl, affirmed on 22nd November, 1951, and filed in these proceedings,

that the company has its registered or principal office in Bhawani Patua, Kalahandi State, Orissa, Eastern Estate Agency-that is to say not within the province or State of West Bengal.

5. Mr. Ginwala, Counsel for the petitioner, points out that the company should be wound up under Part IX of the Indian Companies Act which deals with the winding up of unregistered companies. He contends that this company which was incorporated under the Indian Companies Act as adapted by Kalahandi State comes within the meaning of the words "any partnership, association or company consisting of more than seven members", in section 270, and by virtue of section 277(1) (e) the office at Baretto Lane, is to be deemed the principal place of business in the Union of India and as such this company can be wound up u/s 271, Sub-section (1) (i) of which provides that 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. In this case counsel contends that the office at Baretto Lane for the purpose of winding up, is the principal place of business, and as such this court has jurisdiction to wind up the company.

6. Mr. R. Chaudhuri on behalf of the company in answer says that that office cannot be regarded as the principal place of business within the meaning of section 271, which is in Part IX, whereas section 277(1)(e) is in Part X. But his main argument rests on Act LIX of 1949, called the Merged States (Laws) Act, 1949, which received the assent of the Governor-General on 26th December, 1949. This Act came into force on 1st January, 1950, a date long before the winding-up petition was presented to this Court.

7. By that Act the Indian Companies Act of 1913, which is to be found in the Schedule of the Act, is one of the Laws extended to the Merged States. By virtue of sec. 5, the corresponding Act in the Kalahandi State was repealed.

8. Mr. Chaudhuri submits that Kalahandi State is now a part of the Indian Union, and by reason of sub-section (2) of section 6, the registration of the Company effected in the Kalahandi State shall be deemed to have been done under the Indian Companies Act, and, therefore, the Company cannot be regarded as an unregistered company. To this argument Mr. Ginwala retorts by saying that sub-section 2 of section 6 is subject to the provisions of sub-section 1, which provides that the repeal by sec. 5 of the Act of any corresponding law in force in the merged States immediately before the commencement of that Act shall not affect (a) the previous operation of any such law, or (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or (c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, contained or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

9. There is no substance in this contention of petitioner''s Counsel. This

application does not seek to affect the previous operation of the Indian Companies Act as adapted by the Kalahandi State. Nothing done under that Act is sought to bo modified or affected. The winding-up petition does not seek to affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the Kalahandi State Company Law, nor does it seek to affect any instigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment.

10. This is an application to wind up the company and was presented long after the Kalahandi State Company Law was replaced by the Indian Companies Act, by virtue of the Merged States (Laws) Act, 1949. Alter the merger, the Indian Companies Act has become the law of Kalahandi State. Sub-sec?tion 2 of section 6 of Merged States (Laws) Act is as follows :

11. Subject to the provisions of sub-section (1) anything done or any action taken, including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation, form, by-law or scheme framed, certificate, patent, permit or licence granted or registration effected, under such corresponding law shall be deemed to have been done or taken under the corresponding provision of the Act, Ordinance or Regulation as now extended to, and in force in, the new Province or merged State and shall continue in force accordingly unless and until superseded by anything done or any action taken under the said Act, Ordnance or Regulation.

12. It is quite clear from the sub-section that the registration effected under the Kalahandi State Company Law shall be deemed to have been done or taken under the Indian Companies Act, 1913. The question as to whether this Court has jurisdiction or not must be decided with reference to the Indian Companies Act. The company, in my view, cannot be regarded as an unregistered Company within the meaning of section 270 of the Indian Companies Act. That Act says (inter alia) that a company registered under the Indian Companies Act cannot be regarded as an unregistered Company. That being the position, this Court has no jurisdiction to wind up the company u/s 271, which is applicable to the winding up of unregistered companies.

13. If I am wrong in the view I have taken, even so, I would not be inclined to make the winding-up order in this case Section 162 says "a company may be wound up by the Court......." The court is not bound to make the winding up order. It has to exercise its discretion in the matter. In this case has not been stated in the petition the any part of the assets of the Company is within the province of Bengal, an Mr. Ginwala was unable to give me any information on this point. If there were assets within the province which could be administered by this Court there would have been justification for making the winding-up order, assuming this Court has jurisdiction. But in this case there is no asset at all. If a liquidator is appointed, that liquidator will have to go to Orissa and administer the assets there. If, on the other hand a local liquidator is appointed, he will have to come from time to time to this Court for directions. Both these procedures

involve unnecessary waste of time and money. On the other hand, the petitioner is not without his remedy. He can go to the High Court at Cuttack, and ask for the winding up of the company. It will be very convenient for that court to administer the assets through its own liquidator. Even assuming that this Court has jurisdiction, I would not be disposed to make the winding-up order on the grounds I have stated above. I dismiss this application, but I do not make any order as to costs.

