(1959) 09 MAD CK 0039

In the Madras High Court

Indian Commerce and Industries Co. Ltd. — APPELLANT

Vs

Free Press Journals Limited
In Re: The Official Liquidator, Madras High Court, the Official Liquidator of the company abovenamed — RESPONDENT

Date of Decision : 11-09-1959

Acts Referred:
Companies Act, 1956 — Section 467

Citation : (1960) 73 LW 91 : (1960) 1 MLJ 146

Hon'ble Judges : Ramaswami, J

Bench : Division Bench

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 order 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 L.R. (1892) 1 Ch. 391, 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.

It is only on the list of contributories being settled that the amount realisable from them can be ascertained.

5. 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.

6. 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 contractum. So if he fails to object in time he will be liable as contributor and estopped from denying the same.

7. In settling the list of contributories the Court is not bound by the register of shareholders, 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.

8. 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 men motu suo.

9. These principles are embodied in Re Westways Georges Limited (1942) 2 All. E.R. 147, Sichall''s case (1867) L.R. 3 Ch. App. 1942, Re

Sussex Brick Co. L.R. (1904) 1 Ch. 598, In re Nathan L.R. 35 ch. D. 1, Ganesh Singh v. Sankar Lal 28 T.C. 142, Waryam Singh v. Official

Liquidator AIR 1926 Lah. 414, In re Indian Specie Bank Ltd. ILR (1915) 40 Bom. 134, In Re: Peninsular Life Assurance Company Ltd., , Bank

of Hindustan Ltd. and Another Vs. Kowtha Suryanarayana Rao and Others, , Amar Nath and Another Vs. Karnal Electric Supply Co. Ltd., , R.

Lakshmi Narasa Reddi Vs. The Official Receiver, Sree Films Ltd., ; Syed Ahammad and Another Vs. Makku Mia and Others, .

10. These principles can be gathered from the analysis in the standard text-books : Buckley on The Companies Acts, 13th Edn., (Butterworth)

1957, page 534. Magnus and Estrin Companies, Law and Practice, 3rd Edn, page 254; Sir N.N. Sircar, K.C.S.I. and Sushil C. Sen. The Indian

Companies Act (1937), page 594, Sri T.R. Srinivasa Iyengar, Companies Winding-up (1959) (Company Law Series No. 4) (Law Book Co.,

Allahabad), page 103 and following.

11. Therefore, whenever an application is made by the Official Liquidator for exercising the powers contained in the proviso to Section 467, it

must be scrutinised with great care as the consequences are very large.

12. 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 realised and a dividend has been declared. There are

a few small outstanding debts which are being realised. The company is a 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 minute 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 realisations 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 nP. in the rupee had been declared to the creditors and the further assets

which could be realised will not yield, even one more naya paisa in the rupee. Therefore prayer (a) is granted.

13. 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.

14. The cost of this application will come out of the estate.