
(1902) 07 CAL CK 0015
In the Calcutta High Court

Jadu Nandan Goswami

APPELLANT

Vs

Ashutosh Goswami

RESPONDENT

Date of Decision : 07-07-1902

Acts Referred:

Companies Act, 1956 — Section 136, 173, 214, 77

Citation : (1902) ILR (Cal) 688

Hon'ble Judges : Stevens, J;Harington, J

Bench : Division Bench

Judgement

Stevens and Harington, JJ.—This is an appeal against an order made by the District Judge of Bankura u/s 214 of Act VI of 1882 (the Indian Companies Act), dated the 8th June 1901, directing the Directors of "The Chhatna Lakshmi Narianpore Helping Fund Company, Limited," to refund to the Company Rs. 11,698-12-5 with interest, and a further sum of 264 rupees 7 annas to certain shareholders described as the Bankati people. These persons were entitled to receive, and were recorded as having received, certain sums from the Company. They really received less than the amounts recorded" This sum of rupees 264-7 represents the difference between the amounts they actually received and those they are recorded as having received.

2. It has been argued on behalf of the appellants (1) that there had been a voluntary winding up, and that therefore the District Judge had no jurisdiction to wind up the Company, and (2) that the order u/s 214 is bad, as it is made against the Directors generally and not against the individuals who were actually responsibly for the particular acts of misappropriation.

3. From the evidence on the record it appears that the shareholders were much dissatisfied with the way in which the business of the Company Was carried on, and that on the 11th of Jaistha 1306, corresponding to the 24th May 1899, a large and turbulent mob of subscribers attended at the office of the Company, and the Directors then arranged that they would have a special sitting to enable the shareholders to get their money back. At a meeting held on the 29th Assar

1306, corresponding to the 13th July 1899, the Directors, who appear to have been in considerable alarm for their safety, appealed to the Magistrate for protection and offered to pay Rs. 5,000 to make good the losses of the Company. They decided to abolish the Company by convening a general meeting on the 10th Sraban, that is, the 25th July, for that purpose, and directed notices to be issued. The meeting was held and the Magistrate was present, and appointed two gentlemen as liquidators and directed that the Company's balance and the Rs. 5,000 found by the Directors should be divided amongst the subscribers. This proceeding by the Magistrate, though probably the best thing that could be done in the interests of the shareholders, could only stand, if all the parties consented to it. Some shareholders did not, and accordingly a petition was presented to the District Judge by the dissentient shareholders, and an order was made on 25th September, 1899, u/s 136 of the Companies Act, winding up the Company. An Official Liquidator was appointed, and, on the strength of his report, a notice was served on the Directors calling on them to show cause why they should not be compelled to repay the moneys misappropriated. After hearing them, the learned Judge made the order, now appealed against, u/s 214 of the Companies Act.

4. On these facts there was, in our opinion, no voluntary winding-up.

5. Rule 52 of this Company's rules provides: "The Directors, or Secretary with the permission of the Directors, shall be able to wind up the Company's business with the assistance of the Court, save and except in this way that the Company's business shall not be wound up in any other way or by any other person."

6. Now there was no voluntary winding-up by the assistance of the Court as contemplated by this rule, and, moreover, the rule is ultra vires, because it purports to preclude the winding up of the Company for reasons for which, and under circumstances in which, the Companies Act provides that a Company may be wound up: see *Trevor v. Whitworth* (1887) L. R. 12 A. C. 409. It is unnecessary to discuss this further, as it was agreed by the learned vakils both for the appellant and for the respondent that the rule in question is of no effect.

7. The next question is, was there a voluntary winding-up of the Company u/s 173 of the Indian Companies Act?

8. The only clause of that section which could be possibly made applicable to the present case is clause (b), which enables a Company to be wound up, whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily. Now "special resolution" is defined by Section 77 of the Companies Act. It must be passed by a majority of three-fourths of the members of the Company for the time being entitled to vote in person or by proxy at a general meeting, of which notice specifying the intention to propose such resolution has been duly given, and it must be confirmed by a majority of such members at a subsequent general meeting, of which notice has been duly given, held at an interval of not less than 14 days, nor more than one month from the date of the meeting, at which such resolution was first passed. There is nothing

on the record to show that notice of the special resolution was given as provided by the Act, or that a resolution to wind up the Company was passed by three-fourths of the members voting either in person or by proxy at the meeting; but it does not appear that at the meeting there was not a quorum of Directors as required by Rule 31. It does not seem that any meeting confirming such resolution was ever held. Clause (b) of Section 173 has therefore not been complied with, and the case cannot be brought within clause (c), as there has been no resolution to the effect that the Company is unable by reason of its liabilities to carry on its business, nor is there anything to show that the Company is not perfectly able to discharge its liabilities. Neither Rule 31 of the Company's rules nor Section 173 of the Companies Act has been complied with.

9. We have not lost sight of the fact, although we have not commented on it, that the Company appears to have been unworkable in its inception, and that its rules contain obvious absurdities, so that it might be argued that the rules applicable to a Company formed on rational lines by business-like men should not be applied strictly to such a production as the. Company In question. We are unable, however, on the most liberal construction that can be given to the Act and the rules, to say that there has been any voluntary winding-up of the Company under the Act or under the rules.

10. The jurisdiction of the Judge, therefore, to wind up the Company was not ousted. That being so, the second question, namely, whether the order u/s 214 can stand, must be considered. The question whether the Judge had before him the proper materials for making an order to (sic) up the Company cannot be gone into, for it is agreed on both sides that the time for appealing against the winding-up order has long gone by.

11. The objection which has been taken to the order u/s 214 is that it is made against the Directors without any sort of finding as to which of them has misapplied the moneys of the Company, or has committed any act of misfeasance. The section of the Act is in these terms:

Where, in the course of the winding up of any company under this Act, it appears that any past or present Director, Manager, Official or other Liquidator or any officer of such company has misapplied or retained in his own hands, or become liable or accountable for, any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such Director, Manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

12. In our opinion this section gives a summary remedy only against such Director or Directors or other officer as have been personally guilty of some act of misfeasance, and does not give the Court power to make an order against the Directors en masse without any finding whether they have all or whether any or which of them have been personally guilty of any of the acts which u/s 214 enable the Court to exercise a summary power.

13. A number of cases decided under the English. Act were cited to us in the course of the argument; but none of them deal directly with the precise objection raised in the present case. The case of *In re National Funds Assurance Company* (1878) 10. L. R. Ch. D. 118. which was cited in argument, was one in which a summons u/s 165 of the Companies Act, 1862 (corresponding to Section 214 of the Indian Companies Act), was taken out against the Directors, alleging an improper payment of interest on share warrants and claiming that it should be repaid. But the summons was only taken out against those Directors, who were on the board at the time the improper payments were made, and in the judgment the Master of the Rolls, while declaring each Director jointly and severally liable to make good the sums improperly paid, in express terms limits the liability of each Director to those sums, which he participated in paying. In *re Denham and Company* (1883) 25 L. R. Ch. D. 752 is an authority for the proposition that an innocent Director is not liable u/s 165 for the fraud of his co-Directors. In the case of *In re British Guardian Life Assurance Company* (1880) 14 L. R. Ch. D. 335, which was relied on for the respondent, the point did not arise. The question whether the body of the Directors had not a good answer in point of law to the summons was determined on an argument as to the liability of one particular representative Director. He was held liable; but there was evidence, which is referred to in the judgment of the learned Judge, that he took an active part in the proceedings of the Board of Directors. All that the case decided was that an objection in point of law to the liability of the Directors as a body failed; but it did not decide that any of the Directors (other than the representative Directors) were liable on the facts.

14. In the present case the learned District Judge makes his order against the Directors en masse. He does not limit the joint and several liability of the individual Directors to the replacement of the particular sums misappropriated or lost by acts of misfeasance to which that particular Director or those Directors were parties, but makes all equally liable without any finding that every individual Director joined in every misappropriation and in every act of misfeasance. Further, his judgment is open to another objection, and that is that he does not distinguish between moneys misappropriated or lost to the Company directly through acts of misfeasance by the Directors, and moneys lost through the neglect of the Directors to enforce payment of the subscription; in short, he treats the Directors as liable en masse for all acts of nonfeasance as well as misfeasance causing loss to the Company. This, in our opinion, he is not entitled to do u/s 214. We think, therefore, that the appeal must be allowed and the order set aside; but the learned Judge is not debarred from making an order

under that section against the particular Director or Directors for the repayment of the particular sums which he or they may be found, to have misappropriated, misapplied, retained, or become accountable for.