
(2003) 05 CAL CK 0005
In the Calcutta High Court

Case No : G.A. No's. 2107 and 3889 of 2002 and C.S. No. 236 of 2002

Nabendu Dutta and Others

APPELLANT

Vs

Arindam Mukherjee and Others

RESPONDENT

Date of Decision : 20-05-2003

Acts Referred:

Companies Act, 1956 — Section 274, 274(1), 294
Reserve Bank of India Act, 1934 — Section 45QA

Citation : (2004) 121 CompCas 150 : (2004) 55 SCL 146

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Sudipta Sarkar, P.C. Sen, P.K. Roy, Hirak Mitra and Joyanta Mitra, for the Appellant;

Judgement

Kalyan Jyoti Sengupta, J.

1. In this motion, the petitioner succeeded in obtaining an ad interim order of status quo, passed by this court in a declaratory action for holding that defendants Nos. 1 and 2 have become disqualified to be directors in defendant No. 3-company in view of the provision of Section 274, Sub-section (1)(g) of the Companies Act, 1956. Defendants Nos. 1 and 2 applied for vacating of the aforesaid order of status quo. However, this application has not been disposed of separately and the same has been treated to be an affidavit-in-opposition to the petition of this motion for convenience sake.

2. Short narration of the facts in this case would be relevant in order to find out, prima facie, as to whether the plaintiffs/petitioners are entitled to continuation of the interim order till the disposal of the suit or not. The plaintiffs/ petitioners are holders of equity shares in defendant No. 3, Yule Financing and Leasing (hereinafter referred to as "Yule"), being defendant No. 7 which was floated in the year 1981 by Andrue Yule and Company (the fourth defendant). Defendants Nos. 1 and 2 had been the directors of Yule who had accepted deposits from the public under various schemes but failed to repay on their respective dates on

maturity.

3. They were appointed directors on June 28, 1999, and June 26, 1998, respectively, and had been till October 15, 2001, and September 26, 2001, respectively, when, the aforesaid two persons are said to have resigned from the office of the director of defendant No. 7. Now these two persons are sought to be appointed directors in defendant No. 3. It appears that during their tenure of directorship defendant No. 7 is alleged to have defaulted in repaying the amount of deposit together with interest to the public upon maturity. So, defendant No. 7 approached the Company Law Board for suitable order for reschedulement of repayment under the Companies Act, 1956.

By an order in August, 2000, pursuant to the scheme submitted by defendant No. 7 reschedulement of repayment of the deposits to the respective depositors was allowed. During the tenure of the directorship of defendants Nos. 1 and 2 Section 274 of Sub-section (1) of the Corporate Laws was amended on December 13, 2000, by incorporating in Sub-section (1), Clause (g) (A and B). Therefore, the aforesaid section as amended are set out hereunder :

"274. Disqualification of directors.--(1) A person shall not be capable of being appointed a director of a company, if ...

(g) such person is already a director of a public company, which--

(A) has not filed the annual accounts and annual returns for any continuous three financial years the commencing on and after the first day of April, 1999, or-

(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more :

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, failed to file annual accounts and annual returns, under Sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in Clause (B)."

Learned counsel for both the parties have argued and agreed that any Act cannot have any retrospective operation and the law is very well settled that unless expressly it is intended by the Legislature, retrospective operation cannot be thought of and it is always prospective.

4. In this amending Act, there is no such expressed intention. Both the parties have cited the various authorities in support of their respective submissions. Mr. P. C. Sen, learned senior counsel in support of the petition, submits that it is true the aforesaid principle of interpretation of statutes is applicable generally but there may be certain cases where the language of the section itself may work in retrospection. He submits that ordinary grammatical meaning of the wordings shall be given. When the ordinary grammatical meaning is clear and

unambiguous, no further aid and assistance from the object and reason of the Act should be taken. In this case, the aforesaid provision will be applicable if a person who is already a director on the date of commencement of the Act, is associated with any defaulting company, he would be inviting this disqualification. In support of his aforesaid submission he has relied on a number of decisions of the Supreme Court reported in *The Union of India Vs. Madan Gopal Kabra, , Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others, , Syed Bashiruddin Ashraf Vs. Bihar Subai Sunni Majlis-e-awqaf and Others, and T.K. Lakshmana Iyer and Others Vs. State of Madras and Others*, and an English decision in *A Solicitor's Clerk, In re* [1957] 3 All ER 617.

5. He contends that the aforesaid amending Act, namely, Section 132, which is a relevant one, came into force on December 14, 2000. In this case, even assuming defendants Nos. 1 and 2 having retired on May 21, 2002, and September 11, 2002, have been director of defendant No. 7 on the date of commencement of the aforesaid Act. Admittedly, defendant No. 7 fails to repay the deposit amount to the respective depositors for a period of one year or more on and from the date of notification. The respective fixed deposits became matured on December 31, 1999. As such, there is clear default on the part of defendant No. 7.

6. He submits that the order of the Company Law Board rescheduling the date of repayment does not change the due date as expressed in the aforesaid section. The effect of the order of the Company Law Board is mere postponement of payment but deposit becoming due to be repaid is not diluted. He wants to make a distinction between the word "due" and "payable". He submits on the strength of the Oudh High Court judgment in *Mansif Jahan v. Rajendra Prasad* AIR 1946 Oudh 226, that the words "due" and "payable" are not convertible terms. A debt is said to be due in the instant case that it has existed as a debt, though it may be payable on future time. In this case, the repayment has become due on December 31, 1999, and even before their resignation the aforesaid amount were not paid.

7. Even if the order of the Company Law Board is taken into consideration, still then, there is default in paying the amount of the deposit, so far as it relates to the deposit holders of Rs. 5,000, there has been a default for one year.

8. Mr. P. K. Roy, learned senior counsel whose clients have sought to come into this proceeding for being added as a party, supports the argument of Mr. Sen and he submits the aforesaid amendment is intended to protect the deposit holders and the public at large. So, this has to be construed strictly and the language employed in the said section is intended to mean the person who is already a director meaning thereby in essence, because of the language used therein, it has retrospective operation.

9. Mr. Hirak Mitra, learned senior counsel, while opposing this application,

contends that the language of the section is very clear. There is no provision either expressed or by necessary implication that the said section is intended to give a retrospective operation. A portion of the said amended section has been expressly given retrospective operation from April 1, 1999, whereas the other portion has not been mentioned specifically. So, it is clear that it will have prospective operation. Therefore, upon a careful reading of the said section it will appear that defaulting period of one year or more and holding office of director will be counted on and from December 13, 2000. In terms of the above section one year is the minimum time. Before expiry of one year defendants Nos. 1 and 2 have resigned admittedly. Therefore, they do not come within the mischief of the aforesaid section.

10. Mr. Joyanta Mitra, learned senior counsel also opposes this application and has advanced the same argument and in support of their arguments they relied on the following decisions of the Supreme Court and other courts :

Jagir Kaur and Another Vs. Jaswant Singh, , Kanai Lal Sur Vs. Paramnidhi Sadhukhan, , State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, , Harbhajan Singh Vs. Press Council of India and Others, , AIR 1939 47 (Privy Council) , Rananjaya Singh Vs. Baijnath Singh and Others, , Nelson Motis Vs. Union of India and another, , Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, , Ganesh Wire Industries Vs. C.E.S.C. Limited and Others, , Films Rover International Ltd. v. Cannon Film Sales Ltd. [1986] 3 All ER 772 (Ch D), Luke v. IRC [1963] AC 557 (HL) and [1884] 13 QBD 337.

11. Mr. Joyanta Mitra adds that the aforesaid section operates for disqualification and has got civil consequences. So, the construction of the section should be very restrictive and the clear and literal meaning should be given.

12. Mr. Sudipta Sarkar, learned senior counsel submits that in view of the order passed by the Company Law Board no question of disqualification within the section is applied as the due date for payment of the deposits has been rescheduled and, therefore, the minimum period of one year is not fulfilled. As such the suit as well as the application are frivolous one and interim order should be vacated.

13. Of course, Mr. Hirak Mitra at the very outset contended that the plaintiff/petitioner have no locus standi to maintain the suit, as the shareholders are not concerned with the management of the company they are interested only in the dividend of shares.

14. Before I advert to the main issues I think I should decide the question of locus standi first. I am unable to accept the argument of Mr. Hirak Mitra that the plaintiff/petitioner being the shareholder and the clients of Mr. P. K. Roy, who are also the shareholder, have no locus standi. The shareholders are vitally interested in the proper and lawful management of company, inasmuch as they are represented by the directors, and obviously they must see that company is

managed and controlled by the competent and untainted person to protect their interest if a company mans the office of director with disqualified persons, it certainly brings disrepute to the company itself and it may have adverse effect in the business of the company.

15. The aforesaid amended portion of Section 274, is in my view, punitive measure for the benefit and protection of the deposit holders against failure, either wilful or otherwise in repayment of deposit on due date. In my view, not only the shareholder of a particular company in which tainted directors are sought to be appointed from a defaulting company, any person in the member of the public who is interested to transact with that limited company can also come in and question the appointment of the tainted directors. This section intends to identify those directors under whose management the default has occurred. So, I hold that the plaintiff/petitioner and the clients of Mr. Roy have locus standi.

16. Going by the prayers of the petition, I am of the view that the prayers (a), (b) and (c) cannot be granted and this can only be granted by passing a decree. The prayer (d) is not clear. However, since the order of status quo has been passed initially, it has to be considered in totality of the facts and circumstances of this case and without resorting to technicality, whether this can be maintained till the disposal of the suit or not.

17. The moot question in this case is, on the facts and circumstances of this case, whether this section has retrospective operation or prospective operation. Even if it is made prospective operation, then, because of the language employed therein the effect thereof can be given for the failure of the company that has already taken place on the date of commencement of the Act or not. I think the argument of Mr. Sarkar has to be considered first, as to whether the aforesaid section can be applied in view of the order passed by the Company Law Board, rescheduling the date of repayment.

18. On the factual score it appears that had there been no order of the Company Law Board then due date of maturity of all the deposits would have been for the various slabs of the deposits from December 31, 1998, till June 30, 2000. However, these dates of repayment have been rescheduled by the order of the Company Law Board and it appears that this has been done for all slabs of deposits.

19. Mr. P. C. Sen argues that the effect of the order of the Company Law Board is the postponement of date of repayment but the original due date cannot be altered as this has been fixed in terms of the agreement between the defaulting company and the deposit holders as there was failure to make payment on due date and that is why a scheme had to be filed for repayment. The Company Law Board has accepted and approved such scheme. In this case point for consideration is, whether there is failure to make payment on due date and such failure continues for a period of one year or more, and further, whether, the defaulting company can get any advantage of the order of the Company Law

Board. So, I feel that the effect of the order of the Company Law Board has to be seen. The Company Law Board has been conferred with jurisdiction to approve the scheme by rescheduling dates of repayment which has fallen due u/s 45QA of the Reserve Bank of India Act, 1934. So, the aforesaid section is set out hereunder :

"45QA. Power of Company Law Board to order repayment of deposit.-

(1) Every deposit accepted by non-banking financial company, unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.

(2) Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted u/s 10E of the Companies Act, 1956, may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order :

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter."

It will be very clear from the aforesaid section that on an application being made upon notice to the deposit holder the Company Law Board, hearing all the persons interested, accepts and/or approves the scheme. So, the adjudicating process under the aforesaid section, in my view, is a conciliatory one and is having the effect of an agreement in the shape of an order, unless the same is set aside by the appropriate forum. It is true that due date for repayment is fixed in terms of the certificate of deposit by the agreement between the parties and such due date cannot be changed and/or modified without the consent of both the parties.

20. It appears to me from the order of the Company Law Board that deposit holder appeared and they participated in the hearing, after hearing them the Company Law Board had passed order. So, this order has got the effect of consent as it has not been challenged nor set aside. When the parties themselves, namely, the company and the shareholders have agreed mutually to reschedule the payment with the mode of instalment, in my view, due date initially fixed has been changed and/or varied.

21. The Oudh High Court case cited by Mr. Sen is not applicable in this case as in that case on facts the case proceeded in a different footing.

22. The provision of Section 45QA, Sub-section (2) of the Reserve Bank of India Act is intended to provide measure in the case of default in repayment of the deposits on maturity to the depositors and it subserves two purposes--(i) when the company deliberately fails and neglects to make repayment to give relief to

the depositors for passing appropriate order, and (ii) for any unforeseen circumstances or situation beyond the control of the company to give relief to the company by extending time for repayment of the deposits with interest.

23. In either of the case the effect is that upon intervention of the Company Law Board the contractual terms, as regards date of repayment stands modified. I am unable to accept the submission of Mr. P. C Sen that the order of the Company Law Board u/s 45QA Sub-section (2) of the RBI Act cannot vary the contractual terms between the company and the depositors. Such an argument, in my view, is absolutely contrary to the basic principle of equity and good sense. It is a settled position of the law, that contractual terms cannot always be adhered to and in adverse situation arising beyond control of the defaulting parties to give relief to the party affected, the court has every power to vary the contractual terms. In this case, I find, in consonance with the provision of the aforesaid section of the RBI Act upon hearing the deposit holders and the company and other person and upon proper publication, the Company Law Board has rescheduled the date of repayment of deposits for various categories of depositors. No appeal has been preferred against this order. As such the same is binding upon all the person concerned, regardless of the contractual provision.

24. I cannot accept the argument of Mr. Sen that by this order the due date does not stand changed and/or modified for the purpose of the aforesaid Section 274, Sub-section (1), Clause (g)(B). When the date of repayment is rescheduled, due date automatically stands extended and/or varied. The beneficial part of legislation should be given to all persons without any discrimination. When the company is getting benefit of the aforesaid order and it is saved from the evil consequences for failure to make payment on maturity, why the director(s) concerned should not get such benefit of extension as the failure of the company in making payment within due date is correlated to the legal disqualification of the directors.

Therefore, I am of the view that due date for computing one year or more to repay is to be reckoned from the rescheduled dates as fixed by the Company Law Board in respect of all categories of deposits.

25. In the order of the Company Law Board the rescheduled date of repayment for various categories of deposits are stated hereunder :

Categories of deposits Schedule of repayment of deposits

Up to Rs. 5,000 One instalment within 4 (four) months from the date of maturity or the date of the order, whichever is later. Rs. 5,001 to Rs. 15,000 Two equal instalments within 6 (six) months, commencing from the date of maturity or the date of the order, whichever is later in the manner--50 per cent. within 3 (three) months and the balance 50 per cent. within next 3 (three) months. Rs. 15,001 to Rs. 25,000 Two equal instalments within 8 (eight) months, commencing from the date of maturity or the date of the order, whichever is later in the manner--50 per cent. within 4 (four) months and the balance 50

per cent. within next 4 (four) months. Rs. 25,001 to Rs. 50,000 Three instalments within 12 (twelve) months, commencing from the date of maturity or the date of the order, whichever is later in the manner--30 per cent. within 4 (four) months, 35 per cent. within next 4 (four) months and the balance 35 per cent. within 4 (four) months there after. Rs. 50,001 and above Four equal instalments within 16 (sixteen) months, commencing from the date of maturity or the date of the order, whichever is later in the manner--25 per cent. each in every 4 (four) months.

26. The date of the order of the Company Law Board is June 30, 2000. Therefore, in terms of the aforesaid order the time given therein has to be reckoned from the date of the order as the date of maturity in respect of all categories of deposits are earlier than the date of the order.

27. Defendants Nos. 1 and 2 were appointed directors on June 28, 1999, and June 26, 1998, respectively, in defendant No. 4-company and they are said to have resigned on October 15, 2001 and September 26, 2001, respectively.

28. Therefore, factually it has to be ascertained as to whether during the aforesaid period defendant No. 4 fails to repay the amount of deposit with interest within the rescheduled date or not. The repayment was to be made within October 30, 2000, as far as deposit of Rs. 5,000 is concerned. Similarly, 50 per cent. of the amount in the category of deposit of Rs. 5,001-15,000 was to be made within three months from the date of the order, that is to say, by September 30, 2000. As regards category of deposit of Rs. 15,001-25,000 the first 50 per cent. is to be repaid by October 30, 2000, and in all other deposits are to be repaid by latest October 30, 2002.

29. From the affidavit-in-opposition of defendants Nos. 1 and 2 or for that matter defendant No. 4, I do not find anything to show that such repayment has been made within the rescheduled date. Rather it is an admitted position the repayment has not been made.

Now, in the aforesaid background, it is to be examined whether the aforesaid amended provision of the Companies Act, 1956, will have any applicability to disqualify defendants Nos. 1 and 2 or not

30. The law courts of our country as well as the English court consistently laid down the rules of construction of a statute basically as follows :

The first and primary rule and canon of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open for the courts to adopt another hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provision of the statute must be interpreted in their plain grammatical meaning, and it is only when such words are capable of true construction the question of giving effect to the policy or

object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act, whilst the other construction is likely to assist the achievement of the said policy, then the courts prefer to adopt the later construction. It is only in such cases that it is relevant to consider the mischief and defect which the Act purports to remedy and correct.

The Supreme Court in the case of Kanai Lal Sur Vs. Paramnidhi Sadhukhan, , while dealing with the interpretation of Section 5(1) of the Calcutta Thika Tenancy Act (2 of 1949) (as amended by Act 6 of 1953) has applied and further laid down the aforesaid principle.

Later, in a decision of the recent past of the Supreme Court in the case of State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, has held amongst other that "when the language of a statute is fairly and reasonably clear, then inconvenience or hardships are no considerations for refusing to give effect to that meaning".

31. The Supreme Court while observing as above has accepted the rule of construction laid down in an English case in *Sussex Peerage* [1844] 11 CI & Fin 85; 8 ER 1034 (HL) and has laid down as follows : "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such case best declare the intent of the lawgiver".

32. Again, in paragraph 11 in the said judgment, it has been concluded that "the intention of the Legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support an additional substitution of words or which results in rejection of words as meaningless has to be avoided".

33. In a fairly recent decision in the case of Harbhajan Singh Vs. Press Council of India and Others, , the Supreme Court while interpreting Section 6, Sub-section (7) of the Press Council Act has followed that ". . . ordinary, grammatical and natural meaning as it was found the language used therein was plain and simple. Their Lordships without any hesitation followed the aforesaid established rule of interpretation as stated hereinabove".

34. In the illustrious decision of the Privy Council in the case of AIR 1939 47 (Privy Council) while construing Section 162 of the Criminal Procedure Code, 1898 (since repealed), has laid down the aforesaid rule at page 51 column 2 amongst others that "when the meaning of words is plain it is not the duty of the courts to busy themselves with supposed intentions".

35. An old decision of the Supreme Court reported in *Rananjaya Singh Vs. Baijnath Singh and Others*, , it has been held amongst others in paragraph 3, at page 752, that "the spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain

language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this court".

36. In the case of *Nelson Motis Vs. Union of India and another*, , the Supreme Court has reiterated in paragraph 8 that "... if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences".

37. In the case of *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, , the Supreme Court has laid down the rule of interpretation of statutory provision in the manner as follows (page 939):

"The principles that have to be applied for interpretation of statutory provisions of this nature are well established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature had made them retrospective ; and the retrospective operation will be limited only to the extent to which it has been so made by express words, or necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary even by modification of the language used".

38. The learned single judge of this court in the case of *Ganesh Wire Industries Vs. C.E.S.C. Limited and Others*, , while examining the words and language of Section 49B as amended in the Electricity (Supply) West Bengal Amendment Act, 1994, has followed the aforesaid rule of construction though not referring to the above Supreme Court decision but referring to other Supreme Court decisions. In that case, by Section 49B a liability was sought to be created so it was held that the aforesaid Amendment Act is not intended by the Legislature to give retrospective operation as the liability sought to be created. So, it was held that operation of the Act must be prospective not retrospective.

39. In an English decision rendered in the case of *Luke v. Inland Revenue Commissioners* [1963] AC 557, the House of Lords observed that "the general principle is well settled. It is only where the words are absolutely incapable of a

construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail".

40. In the case of *The Union of India Vs. Madan Gopal Kabra*, , the Supreme Court observed in paragraph 13 amongst others as follows (page 68) : "While it is true that the Constitution has no retrospective operation, except where a different intention clearly appears, it is not correct to say that in bringing into existence new Legislatures and conferring on them certain powers of legislation, the Constitution operated retrospectively. The legislative powers conferred upon Parliament under Article 245 and Article 246 read with List I of the Seventh Schedule could obviously be exercised only after the Constitution came into force and no retrospective operation of the Constitution is involved in the conferment of those powers. But it is a different thing to say that Parliament in exercising the powers thus acquired is precluded from making a retroactive law. The question must depend upon the scope of the powers conferred, and that must be determined with reference to the terms of the instrument by which affirmatively, the legislative powers were created and by which negatively, they were restricted".

41. Again, in paragraph 14, it is observed (page 69) :

"It could not be assumed that such a Legislature had the power of making a law having retrospective operation in relation to a period prior to its birth unless the Constitution itself clearly and explicitly conferred such power".

42. In the case of *Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others*, , it has been held in paragraph 9 amongst others that "in order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retrospective operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur".

43. In an English decision in *Re A Solicitor's Clerk* [1957] 3 All ER 617, it has been observed "in all editions of Maxwell on the Interpretation of Statutes it is stated that it is a fundamental rule of English law that no statute should be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by a necessary or distinct implication . . . It would be retrospective if the Act provided that anything done before the Act came into force . . .".

44. The ratio laid down in the aforementioned authorities it appears to me that the modern rule of construction or interpretation should be as follows :

(i) Unless the statute expressly provides for retrospective operation in the case of creation or taking away of any substantive right and further creating any liability such operation cannot be given or be read, for it is the absolute domain and prerogative of the Legislature to give effect retrospectively or prospectively. Courts shall not venture to give any mode of operation different from the apparent intention of the Legislature. If it is attempted to be done then that will be an act of excess to power of judiciary which is strictly prohibited under the Constitution of India.

(ii) The plain and grammatical meaning of the language and words are to be given and while doing so if the object of the Legislature is fulfilled then no other thought should come in the mind of the court and the court will instantly accept such meaning, however, if while giving plain and grammatical meaning of the words and sentence of a section or any part thereof the very intention and object of the Act is defeated certainly the court must find out the object and purpose of the Act to give the meaningful workability of the section or Act. The court must also see while constructing statute or any section thereof if express intention is not apparent, there shall not be any absurdity.

If it is found that on the plain grammatical meaning of the language employed in the section suggests retrospective operation then in that case such operation should be given although one may be affected as it is held by the apex court in State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, .

45. In the background of the aforesaid analysis of the position of the law now it has to be examined in which way Section 274, Sub-section (1), Clause (g)(A) and (B) is to be operated. The said section as amended is reproduced below :

"274. Disqualification of directors.--(1) A person shall not be capable of being appointed a director of a company, if-- . . .

(g) such person is already a director of a public company, which,--

(A) has not filed the annual accounts and annual returns for any continuous three financial years the commencement on or after the first day of April, 1999, or

(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continuous for one year or more :

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, fail to file annual accounts and annual returns, under Sub-clause (A) or has failed to pay its deposit or interest or redeem its debentures on due date or pay dividend referred to in Sub-clause (B)."

It appears to me the governing language of the aforesaid section is "such person

is already a director . . ." and "such company has failed to repay its deposit or interest. . ."

46. The language mentioned in Clause (g) such person is already a director, in my view, on giving literal, plain and grammatical meaning clearly suggests that on the date of commencement of the aforesaid amending Act if any person has been director in a defaulting company he will be affected by this sub-section. It is true that the Legislature has not made any retrospective operation expressly but the language employed therein contextually, makes it implicit that the Legislature intends retrospective operation (see *Rafiquennessa Vs. Lal Bahadur Chettri (Dead) through his Representatives and Others*,). The words "is already director" suggest that who has been continuing to be director till the date of commencement of the Act. This is supported by the words "has failed to repay its deposits". The plain grammatical position of these latter "few words" is present perfect tense and these suggest that the failure has been started even before commencement of the Act. If the operation of this language is intended by the Legislature to mean for future event or occurrence, then the words "has failed to deposit" or "is already a director" would not have been employed in the sub-section. If the meaning, as explored by me, is given then this will not lead to any absurdity as the amending Act is framed no doubt basically to protect interest of deposit holders by prohibiting entry of tainted directors against possible act of misappropriation and/or breach of trust meaning thereby to curb the wrong deeds, misdeeds to be perpetrated by wrongful act or omission by the same directors. To check and prevent public wrong the moment discovered is part of good governance in any form of Government by legislative or executive action.

47. On the other hand, if the aforesaid words are treated to be for future occurrence then, the position will emerge that the aforesaid amending portion cannot be given any effect at all for a period of at least one year. One year is the minimum period for default in order to take the advantage of the aforesaid sub-section. This amending Act on the contrary has been given effect on and from the date of notification itself. It is an absurd thought after an Act having been notified it cannot be given effect immediately. The operation of this Act cannot be suspended for a period of one year unless of course it is provided expressly, at least by giving interpretation of the words and language of the section itself. The aforesaid Supreme Court decisions, as referred to above, have clearly held that interpretation of the words of any statute cannot be given effect to frustrate or defeat the object of the Act or lead to an absurdity (see *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*,).

48. So, I think in this case this provision will be applicable against respondents Nos. 1 and 2. From the records I find *prima facie* that even after rescheduling of date of repayment of the deposit the company has failed to repay within one year or more. The company was obliged to repay on or before October 30, 2000, as far as deposit holders of Rs. 5,000 are concerned and even after filing of the suit this default continues as in the affidavit-in-opposition of defendant No. 7 nor

in the affidavit-in-opposition of defendants Nos. 1 and 2 have stated that repayment has been effected even after order of the Company Law Board. I do not find any statement or averment whether any instalment has been paid with regard to other category of deposits.

49. Therefore, it is clear that default of the company has been continuing. Defendant No. 1 has been a director from June 28, 1999, till October 15, 2001, when he is said to have resigned from the office of directorship of defendant No. 7. Though I do not find any document in the affidavit-in-opposition of any of the defendants that defendant No. 1 has resigned. No copy of the resignation letter has been disclosed nor annexed nor any resolution of the board of the company has been annexed showing acceptance of resignation. It is the special knowledge of defendants Nos. 1 and 2 and for that matter defendant No. 7 to produce this document by way of evidence to establish the resignation was tendered and it has been accepted under the provision of the Companies Act, 1956, or it has been legalized under the provision of the Companies Act, 1956, by the Registrar of Companies. It is a legal requirement to be complied before resignation is held operative, lawful and valid. It is true that the petitioner in its petition has admitted the fact of resignation. In my view, admission of the petitioner in this case does not matter as against the provision of law. I hold that respondents Nos. 1 and 2 in the absence of those documents are said to have been technically continuing director for the purpose of applying the aforesaid provision.

In my view, the aforesaid findings at this interlocutory stage are prima facie, and to hold that defendant No. 1 is disqualified to be appointed as a director in defendant No. 3.

50. In the case of defendant No. 2 he was appointed as the director on June 26, 1998, and remained till September 26, 2001, in defendant No. 7 when the default of the company continued for one year or more. In his case also likewise defendant No. 1, I do not find any document that he has tendered a resignation nor any document to show such resignation had been accepted not to speak of furnishing any copy of statement in Form 32. So, he is deemed to have been continuing as director.

51. Accordingly, I am of the view that order of status quo passed by this court shall continue till the disposal of the suit and I do not find any reason either on fact or in law to vacate the same. The application for vacating interim order is thus dismissed. Cost of this application will be cost in the cause.

However, I expedite the hearing of the suit. Let the written statement be filed by the defendants/respondents within a period of fortnight from date. Service of writ of summons is not required to be served as it would be an academic formality. Since copies of the plaints have already been received by the parties as it appears from the interlocutory proceedings if not received then copies thereof shall be served upon the learned advocates on records of the respective defendants/respondents. There will be cross order for discovery, within a

fortnight thereof. Inspection forthwith. Parties would be at liberty to pray for early hearing of the suit before appropriate Bench.