

(1966) 01 KAR CK 0011
In the Karnataka High Court

P.A. Tendolkar

APPELLANT

Vs

Official Liquidator and Others

RESPONDENT

Date of Decision : 07-01-1966

Acts Referred:

Companies (Amendment) Act, 1956 — Section 555 (7), 647
Companies Act, 1913 — Section 235

Citation : (1967) 37 CompCas 511

Hon'ble Judges : Hombe Gowda, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : K.R. Karanth, K.R.D. Karnth, T. Krishna Rao, B.V. Krishnaswamy Rao, M.V. Srinivasa Iyengar, K.I. Bhatta, G.D. Shirgurkar and A.V. Albal, for the Appellant; S.G. Sundarswamy and C. Nagaraja Rao, for the Respondent

Judgement

Chandrashekhar, J.—These five appeals arise out of the order of the learned company judge (Narayana Pai J.) [1964]34 Com34 Cas. 34.in misfeasance proceedings against the directors and officers of a banking company by name. The Supreme Bank of India Ltd., taken on an application of the official liquidator during the course of its winding up proceedings.

2. Respondents Nos. I to 7, namely, S.G. Pant Balekundri, S.K. Samant, P.A. Tendolkar , D. R Angolkar, L.S. Ajagaonkar, R.W. Porwal and R.N. Kalghatgi , in the proceedings before the learned the company judge , were the directors of the bank while respondents Nos. 8 to13 were its officers and respondent No. 14, the auditor of the bank, During the pendency of the misfeasance proceedings, respondents Nos. I,4,II and 14 dies. The learned company judge held that the misfeasance proceedings could not be continued against the legal representatives of these four deceased respondents and dismissed the application as against those legal representatives. The learned company judge also held that the application filed by the official liquidator was barred by time as against respondents Nos. 8 to 14 who were not directors of the bank, but was within time as against respondents Nos. I to 7 who were the directors of the bank. Hence the application as against respondents Nos. 8 to 14 was dismissed

as being barred by time.

3. The learned company judge made an order against respondents Nos.2,3,5,6 and 7 directing them to contribute jointly and severally, a sum of Rs. 2,50,000 to the assets of the bank in winding up with interest thereon at six percent. per annum from the date of the order till payment. There was a further direction that if each of respondents Nos. 6 and 7, namely R.W. Porwal and R.N. Khalghatgi, contributed a sum of Rs. 15,000 within three months from the date of the order with interest at six percent per annum from the date of the order with interest at six percent per annum from the date of the order till payment, he would be believed of further liability and that if either of them failed to make the payment as aforesaid, he would forfeit the relief so granted to him.

4. We are told that R.W. Porwal and R.N. Khalghatgi have paid Rs. 15,000 each under protest. They are the appellants in C.A. No.II of 1963 and C.A.No. 12 of 1963 respectively. P.A. Tendolkar S.K. Samant and L.S. Ajagaonkar are the appellants in C.A.No. 9 C.A. NO.13, C.A. No. 10 of 1963 respectively.

5. The official liquidator has not filed any appeal or cross-objections against any part of the order of the learned company judge.

6. These appeals are filed u/s 4 of the Mysore High Court Act, 1961, read with section 202 of the Indian Companies Act, 1913, and section 45N of the Banking Companies Act,1949.

7. In all these appeals, unless otherwise stated, the parties will be referred to with reference to their respective positions as respondents in the application before the learned company judge.

8. At the outset , it is convenient to set out a brief history of the banking company under liquidation and of its winding up proceedings based on uncontroverted facts.

9. The Supreme Bank of India was incorporated in the year 1939, and it started its business in the same year. Its head office and principal place of business was at Belgaum City. The bank's branch of Kolhapur was period in or about 1942 and the only other branch at Aronda in Ratnagiri District was opened in the year 1946 or 1947.

10. Respondents Nos. I to 5 were the founder-directors of the bank. Respondent No. 6,R.S. Porwal ,became a director in the middle or towards the end of the year 1951. Respondent No. 7,R.N. Kalghatgi became a director in July, 1953, in place of his brother, G.N.Kalghatgi, who died in 1952 Respondents No. I Balekundri , was the chairman of the bank and its legal adviser since its inception. One S.N. Savant was the first managing director of the bank and he seems to have relinquished the managing directorship in the year 1946. In his place, respondent No. 2 S.k. Samant, was appointed as the managing director by the board of directors in July, 1946. He was paid a monthly remuneration of Rs. 350 and certain other allowances. At the time of his appointment he was

engaged in a business of his own and does not appear to have given up that business of his own and does not appear to have given up that business after his appointment as the managing director. His appointment was intimated to the shareholders at the ensuing annual general body meeting of the shareholders.

11. Though the authorised capital of the bank was Rs. 5,00,000, the bank started business with a paid up capital of about Rs.59,000. By the year 1946, its paid up capital was only Rs. 83,000. As the amendment to the Indian Companies Act introduced a new provision which required that the paid up capital of a banking company should be at least fifty per cent. of its authorised capital of a banking company should be at least fifty percent. of its authorised capital, the management of the bank issued additional shares of the value of Rs. 1,70,000 in the year 1946. But, by the end of June, 1946, such new shares were subscribed only to an extent of about Rs. 1,20,000. To make up this deficiency of about Rs. 50,000 in the paid up share capital, the board of directors of the bank appear to have issued the remaining shares of the value of about Rs. 50,000 to the directors, their relatives and friends without actually receiving cash payment from them. These shares were shown as fully paid up shares and the amounts due from the parties to whom these shares were allotted were shown to their debit in a suspense account. The dividends declared on those shares were adjusted towards interest. In the balance-sheet of the bank , the paid up share capital of the bank was shown as exceeding Rs. 2,50,000. It is claimed by some directors that they subsequently paid cash to the bank in respect of these shares.

12. Though the total resources of the bank were not large but were only Rs. 2,00,000 in the beginning and never exceeded Rs. 20,00,000, large sums were advanced from time to time to directors, relatives of directors and firms in which the directors were either partners or were otherwise interested. Some of these loans were what are called" godown loans" on the security of merchandise or stock-in-trade while other loans were in the form of cash credits. Almost immediately after the starting of the bank a cash credit loan of Rs. 10,000 was allowed to one of the directors. The godown loans to firms in which the directors were partners sometimes ranged between Rs. 1,00,000 to Rs. 2,00,000.

13. In about the year 1948, the cashiers of the bank reported a shortage of cash to the extent of about Rs. 1,500. Of this shortage, the management wrote off Rs. 1,000 from the profits of the year 1946-47 and recovered from the cashiers only Rs. 500.

14. On the coming into force of the Banking Companies Act,1949, it became necessary for this bank to apply to the Reserve Bank Of India u/s 22 of the said Act for a licence to carry on banking business. When the bank made such an application for licence, the Reserve Bank made an inspection of the bank of satisfy itself that the condition set out in section 22(3) of the Banking Companies Act, for granting a licence to carry on the banking business, was fulfilled.

15. The first inspection by the Reserve Bank was in the year 1950 and the report

of such inspection was communicated to the managing director of the bank by the letter of the Reserve bank dated March 7, 1951, marked as exhibit A-I. In this report, a number of defects in the bank's business policy and the method of operation were brought to the notice of the board of directors of the company so that necessary steps might be taken to rectify them in the interest of depositors. Inter alia, this pointed out that the bank's account books and other records were not properly maintained and that there was no system of balancing the ledgers at frequent intervals; and that there was no system of obtaining periodical returns particularly of advances from the branches and of carrying out their inspection; with the result that the control over the branches appeared to be inadequate. The said report of Reserve Bank (exhibit A-I) was considered by the board of directors of the bank at its meeting held some time after the report was received.

16. In the year 1952, the Reserve Bank conducted another inspection of the affairs of the bank u/s 22 of the Banking Companies Act. The report of this inspection (exhibit A-2) was communicated to the managing director of the bank in March, 1953. This report revealed more serious defects in the working of the bank. Inter alia, this report stated that (i) the directors did not appear to evince any interest: there was no supervision or control maintained over the activities of the managing director who was appearing to be exercising very little supervision over the administration and working of the bank and that the control exercised by the head office over its branches was inadequate; (ii) the books of account and records of the bank were not maintained properly; many important books of account including the general ledgers did not appear to have been checked by any official in the bank and contained errors and over-writings; (iii) the cash balance of the head office did not appear to have been checked daily or even periodically by any responsible officer of the bank; and (iv) the head office of the bank did not maintain separate accounts in its books for the balance maintained by it with other banks and in respect of its borrowings; the bank's accounts were also not reconciled properly and hence it was not possible to watch day to day position of the funds available with the bank or the amounts due to other banks; the branch in the books of the head office were not reconciled periodically.

17. The second report not inspection made by the Reserve Bank of India was also considered by the board of directors at its meeting held on March 26, 1953. They made certain suggestions to effect improvements to the bank and the reply to this report sent by the chairman to the Reserve Bank was approved. The management of the bank appointed special staff with the help of the auditor of the bank for preparing reconciliation between the accounts of the bank in its own books and its accounts with the other banks. It also sanctioned remuneration for the said special staff. But even with the aid of the special staff, no significant progress was made in preparing such reconciliation. The board also appointed one R.K. Joshi as an officer of the bank presumably with the intention of rectifying the various defects in the working of the branches and to bring the affairs of the bank into order. But he did not appear to have got on well with the managing

director, S.K.Samant. So, after a few months, Joshi's services were terminated.

18. In December,1952, a sum of Rs.10,000 was brought from the Kolhapur branch to the head office. But the transfer of this amount from the Kolhapur branch was not shown in the account books of that branch. Similarly, in the year 1953, a sum of Rs.42000 was brought from Aronda branch to the head office and the transfer of this sum from that branch was not entered in the books of account of that branch.

19. In the middle of the year 1954, the Reserve Bank carried out an inspection of this bank u/s 35 of the Banking Companies Act. The inspection was held between the 17th and the 25th May,1954,with particular reference to the position of the bank as on the 26th March,1954. This report of the Reserve Bank dated August 27,1954, which is marked as exhibit A-3, was communicated to the bank along with its covering letter dated September 13,1954 (exhibit A-3(I)).Inter alia, this report stated that:

(i) The cash on hand at the head office on May 17,1954, was found to be short by Rs.53-15-9; and (ii) Lack of internal check and the unreconciled statement of banker's accounts appear to have been exploited by certain members of the staff, who in collusion with certain customers of the bank misappropriated the sums aggregating to Rs.121 lakhs during the period 1949 to 1951 by passing debits to the bank's accounts with other banks and thereby inflating the balances with the other banks in the books of the bank.

This report was also discussed by the directors.

20. It is only after the third report of the Reserve Bank (exhibit A- 3),the directors woke up and started looking into the matter seriously. In an attempt to minimise the losses and to regularise the defects, the directors got some promissory notes executed by the officials of the bank who had misappropriated funds and certain constituents who had unauthorisedly taken moneys in collusion with the officials of the bank. On November 19,1954,respondent No.2, the managing director,executed a promissory note in favour of the bank for a sum of Rs.53000.This pronote is marked as exhibit a-26.

21. By November,1954, the cash position of the bank became very precarious and the bank found difficulty in meeting the claims of the depositors. Some of the directors made last minute efforts to save the situation by putting into the bank certain moneys belonging to them and their close relatives, by way of deposits, so that the bank might be in a position to pay the depositors who demanded payment. But they found that even these efforts were inadequate to tide over the situation. A good part of the amounts deposited by them and their relatives in the month of November,1954, was withdrawn. Ultimately, the bank suspended payment on November 26,1954, at its head office at Belgaum. At the end of that day,the actual cash in the bank was only about Rs.647 while according to the day-book the cash balance should have been Rs.1,63,000.

22. On the following day, that is, on November 27,1954, payment was suspended at the bank`s branches at Kolhapur and Aronda. At Aronda branch, the actual cash balance was only Rs.4,505-II-8 which was short by Rs.42,000. The branch manager deposited this balance with the Sawanthwadi Co-operative Bank on the same day.

23. Immediately after suspending payment at the head office, the directors gave a complaint to the police against the managing director, S.K.Samant, and certain other officials of the bank. Respondent No.2, S.K.Samant, and certain other officials of the bank have been committed for trial by the sessions court. The sessions trial could not be proceeded with as certain documents on which the prosecution wanted to rely were summoned by the learned company judge and have been sent to this court. These documents are still retained in this court and have not been returned to the session court.

24. On December 1,1954, the bank applied to the High Court of Bombay u/s 37 of the Banking Companies Act, praying for grant of a moratorium for a period of six months. On the same day, that High Court made an interim order granting moratorium for a period of two months and staying all actions and proceedings against the bank during that period and appointing Mr. V.R.Kotbagi, advocate, Belgaum (who is examined as P.W.4) as the special officer of the bank u/s 37 of the Act. By this interim order the High Court called for the report of the Reserve Bank u/s 37 of the Act. Mr. Kotbagi took charge of the bank as its special officer on december 7, 1954. The initial period of 2 months" moratorium was extended by the High Court for a future period of two months.

25. On December 3, 1954, respondent No. 2, K. Samant, executed another promissory note in favour of the Supreme Bank for a sum of Rs. 58,500. Some time later, a truck and a car belonging to him were sold a sum of Rs. 14,000 was realised by the bank. On December 29,1954, he also executed a sale deed, exhibit B-49, conveying a house worth Rs. 24,000 in favour of the bank. The bank filed a suit on the foot of this sale deed and obtained a decree for possession. But his brothers had filed a claim petition in respect of this house. On February 26,1955, his brothers executed a bond, exhibit b-50, in favour of the special officer of the bank, standing as sureties for his paying a sum of Rs. 30,000. But this surety bond has not been enforced by the bank or the liquidator against the said sureties.

26. In accordance with the directions issued by the High Court of Bombay, the Reserve Bank deputed Amritlal Bhatia, banking officer of the Reserve Bank (who is examined as P.W. 1), to inspect the bank. Accordingly, he inspected the bank between the 14th December, 1954, and the 17th of December, 1954, and submitted his report dated January 13,1955, which is marked as exhibit A-4 in the case. In this report he stated, inter alia, that (i) there was shortage of cash to the extent of Rs. 2.01 lakhs; (ii) the attempts made by the bank to reconcile accounts reveal that certain members of its staff and certain customers had fraudulently obtained payments aggregating to Rs. 1.21 lakhs by resorting to

manipulation of the accounts of the bank with other banks; even after excluding this sum of Rs. 1.21 lakhs , there was a difference of Rs. 1.31 lakhs as on March 26,1954 between the amount of the bank balances according to the books of this bank and that shown in the statements received from the banks concerned; (iii) the total liabilities of the bank excluding its share capital amounted to Rs. 14.83 lakhs of which demand deposits and deposits payable within a period of six months from the date of suspension of payment amounted to Rs. 8.08 lakhs while the liquid assets of the bank, together with advances against readily realisable securities and merchandise, amounted to only Rs. 2.70 lakhs; and the remaining assets of the bank aggregated to Rs. 9.08 lakhs of which the advances amount to Rs. 6.67 lakhs.

27. The conclusion stated in this report was that there was no reasonable chance of the bank being able to pay its debts even if the moratorium was granted for the maximum period of six months permissible u/s 37 of the Banking Companies Act.

28. On December 20,1954, the board of directors, with the concurrence of Mr. Kotbagi, special officer, appointed Mr. K. Y. Wagle (P.W. 3 before the learned company judge), as auditor, to examine the books and records of the company and to make a report for exploring possibilities of reconstruction of the company. Mr. Wagle made his report dated February 16, 1955 (marked as exhibit A-21). The directors of the bank presented before the High Court a scheme for its reconstruction. The High Court of Bombay did not accept the scheme presumably in view of the report, exhibit A-4, of the Reserve Bank.

29. The application for the sanction of the scheme for reconstruction of the bank was dismissed by the High Court of Bombay on March 17,1955; on that date, the moratorium granted by the High Court also came to an end. The special officer, whose term of office also expired with the moratorium, handed back charge of the bank to respondent No. 1, the chairman of the bank, on April 4,1955.

30. After the directors resumed management of the bank, they appointed D.D.Joshi, an auditor (who has been examined as P.W.2 before the learned company judge),to investigate into and see whether the responsibility and liability for the fraud and misappropriations alleged to have been committed could be fixed on any particular individual or individuals. By the time he could complete his investigation and made his report, the winding-up proceedings had commenced and he submitted his report (exhibit A-9) to the official liquidator on May 10,1956. The directors appear to have paid the depositors a certain percentage of the amounts due towards their deposits. But the liquidation of the bank could not be averted.

31. On March 8,1956, a depositor of the bank presented a petition to the High Court of Bombay for winding up of the bank. This application was numbered by that High Court as C.A.No.690 of 1956. On this application the High Court of Bombay passed an order on March 13, 1956, appointing the provisional

liquidator. On April 16, 1956, the bank was ordered to be wound up and the provisional liquidator was confirmed as official liquidator.

32. The official liquidator filed into court on July 31, 1956, a report u/s 45C of the Banking Companies Act. In the meanwhile, consequent upon the Reorganisation of States, the winding-up proceedings were transferred from the High Court of Bombay to this court. The proceedings were re-numbered as C.P.(B)28 of 1956. On August 26, 1957, the official liquidator of this court was appointed official liquidator of the bank.

33. On July 22, 1958, the official liquidator filed before the learned company judge a report bringing to the notice of the learned company judge the report submitted by D.D.Joshi (P.W.2) and sought directions for obtaining explanations of the directors and officers of the bank. On July 29, 1958, the learned company judge directed him to send copies of the report (exhibit A-9) to the directors and officers and to obtain their explanations. After receipt of such explanations, the liquidator filed before the learned company judge his report No.20 on August 27, 1960 (marked I.A. No.I) and which is treated as the application for taking misfeasance proceedings against the directors.

34. In this application, I.A.No.I, the official liquidator alleged that the directors of the bank had been grossly negligent and failed to exercise due control over the conduct of the bank's business and thereby occasioned loss to the bank; that the managing director's conduct was fraudulent in the conduct of the business of the bank and large sums of money were misappropriated by him, under his instructions and directions; that he was guilty of breach of trust and misappropriation and had caused loss to the bank. The official liquidator also alleged that when additional shares were allotted to the directors in the year 1946, no cash was paid by them but the books of the bank contained fictitious entries crediting cash for the amount of the shares and that, even according to the entries in the available books of account of the bank, cash was not paid in respect of these shares except to the extent of Rs.9,345.

35. After setting out various allegations against the directors, the official liquidator submitted in this application that the respondents had applied or retained or become liable or accountable for a sum of Rs.4,26,000 to the bank, that they had been guilty of misfeasance, breach of trust and fraudulent conduct in relation to the bank, and prayed for an order directing the respondents to repay and restore the moneys of the bank by way of compensation in respect of misapplication, retainer, misfeasance or breach of trust as the court might be pleased to think just.

36. This application was supported by a formal affidavit in which the official liquidator stated that the facts averred in the application were gathered from the reports and proceedings including those relating to reports of winding-up proceedings and the records of the bank. The official liquidator largely relied upon the reports of inspection carried out by the Reserve Bank and the reports

submitted by Wagle and D.D.Joshi (exhibits A-9 & A-2I).

37. All the respondents filed objections to I.A.No.I and the official liquidator filed his reply. The official liquidator examined P.W. 1, Bhatia, banking officer of the Reserve Bank, who had submitted his report, exhibit A-4, and P.W.2, D.D.Joshi, who had submitted his report, exhibit A-9. After considering the pleadings of the parties, and the evidence of P.Ws. 1 and 2, the learned company judge formulated the questions for determination in the misfeasance proceedings initiated by I.A.No.I.

38. The official liquidator examined two more witnesses, P.W.3, K.Y.Wagle, who had submitted his report, exhibit 21, and P.W.4, V.R.Kotbagi, the special officer appointed by the Bombay High Court. Respondent No.5. Kulkarni, and respondent No.13, R.M.Kakare, gave evidence as R.Ws I to 4.

39. The learned company judge directed that the remaining directors who had not given evidence and the auditor should appear before the court to give evidence in the interest of justice and with a view to ensure clarifications on all matters in doubt and to see that no party suffered any prejudice by reason of the absence of full material for a proper decision.

40. Respondents Nos. 3, 5 and 7 challenged this order of the learned company judge in appeal before a bench of this court. But that appeal was dismissed upholding the direction of the learned company judge. Subsequently respondent No.2-S.K.Samant (the managing director), respondent No.3, P.A.Tendolkar, and respondent No.7, R.N.Kalghatgi, gave evidence as R.Ws.5 to 7.

41. Both section 196 of the Indian Companies Act, 1913, and section 45- G of the Banking Companies Act provide for public examination of a director or an officer of a company as to promotion, formation or the conduct of the business of the company or as to his conduct and dealings as director or manager or other officer. While section 196 of the Companies Act, 1913, enables the liquidator to make such an application for public examination only when he is of opinion that fraud had been committed by a director, u/s 45-G of the Banking Companies Act, all that is necessary for the official liquidator to make such an application is that he should be of opinion that any loss has been caused to the banking company by any act or omission of the director, whether or not any fraud has been committed by such act or omission.

42. Section 45A of the Banking Companies Act provides that the provisions of Part IIIA of that Act shall override the provisions of other laws. Section 45-G occurs in Part IIIA of that Act.

43. As the present company was a banking company, it was open to the official liquidator to have moved the learned company judge for holding public examination of the directors even before he made an application for initiating misfeasance proceedings against them. If such public examination had been made before the official liquidator filed I.A. No.I, valuable materials would have

been available on which he could have based his application for initiating misfeasance proceedings. Unfortunately, this course was not adopted by the official liquidator. It was only in the middle of the proceedings that the learned company judge suo moto directed the examination of some directors. But the material that became available as a result of examination of those directors could not be made use of in support of the application, I.A.No.I, except for the purpose of establishing the allegations already contained in I.A.No.I.

44. In *Cavendish Bentinck v. Fenn*¹, Lord Herschell observed that when it is intended to allege a breach of duty, fraud or deceit in misfeasance proceedings, those allegations should be clearly, satisfactorily and unequivocally made in the summons so that those against whom they are made should have their attention directed to them and should have an opportunity of meeting them

45. The same view was followed by the Bombay High Court in the *In re Jehangir B. Karani & Co.* ILR (1894) Bom. 88. Ferran J. observed that where it is sought to make an officer of a company liable for misapplication of the funds of a company or for misfeasance or breach of trust in relation to its affairs, the sum sought to be recovered should be definitely stated in the summons and the grounds upon which the application is based should be fully and adequately set out in an affidavit or affidavits. Similar was the view taken by Srivastava J. in *In the matter of Official Liquidator Vs. Mathura Prasad and Others*, . His Lordship observed as follows:

".....Specific allegations must be made before the court can start investigation in to the conduct of the respondent. Enough particulars must be furnished so that the respondent may meet the charges levelled against him. If something is discovered during the course of investigation, it may in appropriate cases be open to the court to allow an amendment of the application and then to give the respondent an opportunity of meeting the additional allegations. It will be grossly unfair to him if he is ultimately made liable for something discovered during investigation which he had never been called upon to meet. That the proceedings under the section do not amount to a suit or that a plaint is not required to be filed cannot justify dispensing with the requirement of making definite allegations about the acts complained of in respect of which the respondent has to explain his conduct."

In the present case, the official liquidator did not seek to amend his application when fresh materials were disclosed during the course of the examination of the directors or officers of the company. Hence, we think, the official liquidator should confine himself to the allegations contained in his application.

46. The first question formulated by the learned company judge is whether the official liquidator proves that there was shortage of cash when the bank closed its business and, if so, in what sum? On this question, the learned company judge came to the conclusion that it could be safely said that the shortage of cash was at least two lakhs of rupees.

47. The second question formulated was whether the liquidator proves that loss was occasioned to the company by misapplication of cash or funds shown to have been credited to the accounts of the bank with other banks but not actually so credited and, if so, what is the extent of such loss. The conclusion of the learned company judge was that discrepancy in the bank account was of the order of Rs. 1,79,000. But he held that the entire sum represented by the discrepancy of the bank accounts cannot be treated as total loss to the bank because, when the directors discovered this discrepancy, to cover up this discrepancy, they took loan documents from the managing director and certain official of the bank who were suspected to have misappropriated moneys by the device of manipulating bank balances and from a few customers who had unauthorisedly utilised the funds of the bank in collusion with the officials. The learned company judge estimated the reliability of these loan documents at no more than 50 or 60 percent.

48. The third question so formulated was which of the respondents were liable to make good the shortage in cash, and the loss occasioned to the bank by manipulation of bank balances and, if found liable, the extent of such liability. Adding up the shortage of cash and the discrepancy of bank balances and deducting therefrom the probable realisable portion of the said loan documents taken towards discrepancy in bank balances, the learned company judge determined the total loss to the bank at Rs. 2,65,000. He held that making every allowance in favour of the persons liable without exposing the depositors to greater loss than may be inevitable, the just sum which the persons liable should be called upon to contribute to the assets of the bank should be fixed at Rs. 2,50,000.

49. As stated earlier, all the living directors including the managing director, were made jointly and severally liable for this sum, but restricting the liability of each of respondents Nos. 6 and 7 of Rs. 15,000.

50. The fourth question considered by the learned company judge was whether the application was barred by limitation. As stated earlier, the learned company judge held that the application was barred only against the officials and the auditor of the bank and not against its directors.

51. The questions as formulated by the learned company judge do not relate to any losses that might be caused to the bank by improvident, improper or reckless lending of moneys without proper security or to borrowers not creditworthy nor has the learned company judge made any of the directors liable for such losses. The reports, exhibits A-I to A-4, A-9 and A-21, which are incorporated by reference to I.A. No. I, contain references to additional shares allotted to directors without any cash payment by them for the same. But the questions formulated by the learned company judge do not directly include any charge for such improper allotment of shares; nor does the learned company judge hold that such allegations have been proved. On the other hand, the learned company judge has observed that the question of cash said to have remained unpaid in respect of shares allotted to directors does not call for much

discussion as the cash deficit actually established included whatever cash might have remained unpaid in respect of shares allotted to directors.

52. The learned counsel in all the appeals have contended that- (i) the application, I.A. No. I, is barred by time even against the directors; (ii) there is no satisfactory material to justify the estimate made by the learned company judge of the shortage of cash and of the loss due to manipulation of balances with other banks; and (iii) the sum which the directors are asked to contribute to the assets of the bank are grossly excessive. The learned counsel for respondents Nos. 3 and 5 to 7 also contended that the ordinary directors were not responsible for these losses as the management of the bank had been entrusted to the managing director under the articles of association of the company and hence respondents Nos. 3 and 5 to 7 could not be asked to contribute any amount. The learned counsel for respondents Nos. 6 & 7 further contended that these two respondents joined as directors of the bank comparatively recently, that they were guided by the senior directors and did not know the alleged acts of mismanagement and hence they are not liable for any losses to the bank. The learned counsel for respondent No. 2 contended that, though this respondent was the managing director, he trusted the officers of the bank and merely carried out the orders of the board of directors and hence was not liable for any losses.

53. Before we deal with these contentions, it is necessary to examine the nature and scope of misfeasance proceedings and the relevant statutory provisions.

54. Section 235 of the Indian Companies Act, 1913, provides for misfeasance proceedings against directors and officers of a company. The corresponding provision in the new Act, namely, the Companies Act, 1956, is section 543.

55. Though the Indian Companies Act, 1913, is repealed by section 644 of the Companies Act, 1956, section 647 of the new Act provides that, where the winding up of a company has commenced before the commencement of the new Act, the provisions of the new Act with respect to winding up, except section 555(7) shall not apply, but the company shall be wound up in the same manner and with the same incidents as if the new Act had not been passed.

56. The Companies Act, 1956, came into force on April 1, 1956. As stated earlier, the petition for winding up was presented on March 8, 1956, before the High Court of Bombay which appointed the provisional liquidator on March 13, 1956. Both section 168 of the old Act and section 441(2) of the new Act provide that, except in the case of voluntary winding up, the winding up of the company by the court shall be deemed to commence at the time of the presentation of the petition for winding up. Hence, the winding up of the present company must be deemed to commence on March 8, 1956, and the winding up of this company is governed by the provisions of the old Act. The present misfeasance proceedings also are governed by section 235 of the Indian Companies Act, 1913, which reads as follows:

"235. Power of Court to assess damages against delinquent directors, etc-(I) Where, in the course of winding up a company , it appears that any person, who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property 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 the liquidator, or of any creditor or contributory made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication , retainer, misfeasance or breach of trust, as the case may be, whichever is longer, examine into conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible....."(Sub-section(3) was deleted by the amendment Act of 1936).

The wording of sub-section(I) of section 235 of the Indian Companies Act, 1913, is practically the same as that of section 165 of the English Companies Act, 1862, of section 215 of the English Companies (Consolidation) Act,1908, of section 276 of the English Companies Act, 1929, and of section 333 of the English Companies Act,1948. The scope of section 333 of the English Companies Act, 1948, as stated in Buckley's Companies Acts (13 th edition, at pages 672-673) and Palmer's Company Law (20th Edition, at page 574-575) and Halsbury's Laws of England (3rd edition, volume 6, at pages 621 to 623), may briefly be summarised as follows:

This section applied where a director , officer etc., has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of misfeasance or breach of trust in relation to the company. The court may compel a delinquent director, officer etc., to repay or restore any money or property which he has misapplied or retained or become liable or accountable to the company or to contribute to the company's assets an appropriate sum by way of compensation.

The section itself does not create any new right, but is a procedural section only. It provides for the summary and cheap remedy for enforcing such rights including new rights created by winding up, and liabilities as might have been enforced by the company or by its liquidator by means of an ordinary action. But the section is not applicable to all cases in which the company has a right of action against a director, officer etc., as where the claim is for a simple contract debt or is an ordinary claim for unliquidated damages.

57. The jurisdiction of the court under this section is discretionary. The court is

given discretion both as to whether or not it would grant the relief sought and as to the amount of relief which it gives. The court may, in its discretion, refuse relief under this section, although it would be bound to give a judgment in accordance with the legal rights established, if the relief had been claimed by way of an action.

58. The act or omission complained of must be one resulting in actual loss to the company. The section does not give the court power to fine a director for misconduct. To sustain a claim under this section, the applicant must show, (i) breach of trust or duty or misfeasance, (ii) loss arising therefrom, and (iii) an interest in the result of the application. Allegations of proof of fraud are not essential and it is immaterial that the act or omission constitutes an offence for which the director or the officer, etc., may be criminally liable.

59. The above statement of law is equally applicable to section 235 of the Indian Companies Act, 1913.

60. As to the meaning of the word "misfeasance." Sir Raymond Evershed M.R. stated in *In re B. Johnson & Co. Ltd.* [1955] 2 All E.R. 775. that there is no such distinct wrongful act known to law as misfeasance. The acts which are covered by the section are acts which are wrongful according to established rules of law or equity done by the person charged in his capacity as "promoter", "director", etc. But it is not every kind of wrongful act so done that is comprehended by the section (section 333 of the English Companies Act. 1948).

61. In *M.A. Malik v. Thiruvengadaswami* [1949] 19 Com 311 Cas. 311. , Horwill J. stated that a failure on the part of a person to do his duty with regard to the property of a company over which he had control by virtue of his being a director amounts to misfeasance within the meaning of section 235 of the Indian Companies Act, 1913.

62. Section 281 (I) of the Indian Companies Act, 1913, provides that if in any proceedings for negligence, default, breach of duty or breach of trust against a director, manager, officer or auditor of a company, it appears to the court that the person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him either wholly or partly from his liability on such terms as the court may think fit.

63. The contention of the appellants regarding the question of limitation can conveniently be dealt with first. u/s 235(I) of the Indian Companies Act, 1913, the period of limitation prescribed for an application made under that section is three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer misfeasance or breach of trust, as the case may be, whichever is longer. As stated by the learned company judge, the official liquidator's application (I.A. No. I) would have been barred by time if the matter

was governed only by section 235 of the Indian Companies Act, 1913.

64. As this company is a banking company, the special period of limitation prescribed by section 45-O of the Banking Companies Act, 1949, is applicable to the present application, Sub-section (2) of section 45-O, as amended by Central Act 33 of 1959, which came into force on October 1, 1959, reads as follows: "45-O Special period of Limitation.....(1)..... (2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or section 543 of the Companies Act, 1956, or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of call from any directors of banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims or five years from the date of the first appointment of the liquidator , whichever is longer."

65. As the present application I.A. No.I , was filed on August 27, 1960, section 45-O (2), as amended by Central Act 33 of 1959, is applicable.

66. Following the decisions in Bank of Meenachil V. Chacko Chacko [1962]32 Com 953 Cas. 953 and in Jwala Prasad Vs. Official Liquidator Jwala Bank Ltd., the learned company judge held that the claim made by the official liquidator in I.A.No. I for contribution by the directors came within the ambit of the words "all other claims occurring in section 45- O(2) of the Banking Companies Act and that, as I.A.No.I was filed within five years from the date of the first appointment of the liquidator, the said application was within time as against the directors.

67. Mr. T. Krishna Rao, the learned counsel for the appellant in C.A.No.10 of 1963, contended that the extended period of limitation provided by section 45-O (2) of the Banking Companies Act is applicable where the enforcement of any claim is sought only by the banking company and not by any other person like the creditor, contributory or the official liquidators. Continuing, Mr. Krishna Rao stated that the present claim under I.A. No.I, against the directors, was made by the banking company but by the official liquidator and hence section 45-O(2) of the Banking Companies Act cannot be invoked in the present case. According to Mr. Krishna Rao, when the official liquidator makes a claim u/s 235 of the Indian Companies Act, 1913, against the directors for repayment, restoration or for contribution, he does not make such claim on behalf of the banking company but in his own statutory right as the official liquidator, though the company, the creditors and contributories may incidentally benefit by his claim.

68. In support of this contention , Mr. Krishna Rao strongly relied on the observations of Lord Herschell in Cavendish Bentinck v. Fennl (1887) 12 App.Cas.652, at page 662:

"The right which the 165th section gives is not given to the company or the representative of the company with whom there is a contract , or as towards

whom there is a duty or as regards whom there is a breach of duty; but the right under the 165th section is given to `any liquidator or any creditor or contributory of the company". Now there is no duty or breach of duty to the company in respect of which a creditor or contributory can maintain an action, but he has a right to this extent, that if owing to a misfeasance or breach of duty the funds of the company in which he is interested have been diminished those funds shall again be made good and the assets of the company shall be recouped the loss which they have sustained....."

(*English Companies Act,1862).

No doubt, these observations support the contention of Mr. Krishna Rao. But the question whether an application made by the liquidator for repayment or contribution u/s 165 of the English Companies Act, 1862, can be said to be made on behalf of the company was not specifically in issue in Cavendish Bentinck's case (1887) 12 App. Cas.652.

69. In *Shiam Lal v. Official Liquidators* [1933] 3 Com 365 Cas.365 the question whether the application of the official liquidator u/s 235 of the Companies Act, 1913 is on behalf of the company specifically came up for consideration before a Full Bench of the Allahabad High Court. Sulaiman C.J., was delivered the opinion of the Full Bench, stated as follows:

"I think section 235 (Indian Companies Act,1913) must be read consistently with the other provisions in the same Act. u/s 179 an official liquidator is empowered with the sanction of the court to institute or defend any suit or prosecution or other legal proceedings, civil or criminal, in the name and on behalf of the company. It is also obvious that as no property vests in the official liquidator, he has no personal right to move in the matter. His power to sue in the name and on behalf of the company is conferred upon him by section 179 of the Act. It, therefore, follows that whatever suit he files or whatever legal proceedings, civil or criminal, he takes, he must take it in the name and on behalf of the company. No doubt, the liquidator is an officer of the court, having been appointed by the court, and he is under the direction and control of the court. But when a proceeding is started by him, that proceeding is not initiated in his personal capacity but in the name and on behalf of the company, and it must be deemed as if the proceeding is being continued not only in the interest of the company but actually by the company through its liquidator.....

No doubt u/s 235 persons other than the liquidator, namely a creditor or a contributory, also can apply. But, in my opinion, similar considerations apply to these applicants as well. There is no right conferred upon them to start a fresh proceeding in their own right and to get any relief for themselves. They merely move the machinery of the court by filing an application. The purport of the application is to make persons liable to repay money or restore property to the company, so that it may go into the common fund. It is obviously a representative application filed on behalf of a class of person."

70. In *Jwala Prasad Vs. Official Liquidator Jwala Bank Ltd.*, the question of the applicability of section 45-O of the Banking Companies Act, 1949, to an application made by the liquidator u/s 235 of the Companies Act, 1913 came up for consideration. The very contention advanced by Mr. Krishna Rao was put forward in that case. Repelling that contention, Srivastava J> stated as follows:

"Under the Companies Act a liquidator has several capacities and performs various functions. For certain purposes he represents the company he is also a custodian of the rights of the creditors of the company and has to safeguard the rights of the shareholders and contributories also. He is an officer of the court and acts under its directions. When he approaches the court u/s 235 with a complaint against the officers of the company or its directors and requests the court to take action against them and to make them refund to the company sums which they had misappropriated and to make good to the company the loss which they had caused, the liquidator, in our opinion, acts for the company in the interest of all the persons concerned including the creditors and the contributories. He does not act for his won benefit. The words `by a company', in our opinion, include `for or on behalf of a company.'" The application made by the liquidator u/s 235 may not be a suit but it is certainly an application on behalf of the company and, therefore, by the company."

In section 45-O (2) of the Banking Companies Act, the words and figures, "section 543 of the Companies Act, 1956" were substituted for "section 235 of the Indian Companies Act, 1913," by the Banking Companies (Amendment) Act, 1956, as the Companies Act, 1956, superseded the Indian Companies Act, 1913.

71. In the non obstinate clause at the beginning of sub-section (2) of section 45-O, reference to section 543 of the Companies Act, 1956, and the earlier reference to section 235 of the Indian Companies Act, 1913, would be redundant and wholly unmeaning full if an application u/s 543 of the Companies Act, 1956, or section 235 of the Companies Act, 1913, by the liquidator cannot be regarded as an application on behalf of the company. It is a well accepted rule of construction of statute that no word of a statute should be treated as redundant if a reasonable meaning can be given to it. We think, a reference to section 546 of the Companies Act, 1956, is made in the said non obstinate clause because of sub-section (2) of section 45-O, is to alter the period of limitation provided by section 543 of the Companies Act, 1956, and by section 235 of the Indian Companies Act, 1913, in so far as the misfeasance proceedings relate to a banking company.

72. While the observations of so eminent a judge as Lord Herschell are entitled to the greatest respect, our decision on the question whether section 45-O (2) of the Banking Companies Act applies to an application by the official liquidator u/s 235 of the Indian Companies Act, 1913, must ultimately rest on the construction of the provisions of these two Acts, taking into account the scheme of these two Acts.

73. Thus, we are unable to accept the contention of Mr. Krishna Rao that the enlarged period of limitation u/s 45-O (2) of the Banking Companies Act will not apply to this application, I.A.No.I, under the Indian Companies Act, 1913. We unhesitatingly hold that the view taken by the learned company judge that this application is within time as against the directors is correct.

74. On the first question, namely, the shortage of cash when the bank closed its business, the main attack of the learned counsel for the appellants is that, in the absence of relevant books of accounts, there is no satisfactory material to support the conclusion of the learned company judge Mr. K.R.Karant learned counsel for respondent No.3., invited our attention to the notice dated December 17, 1962, which we gave to the counsel then representing the official liquidator. In that notice, Mr. Karant asked for production of the "cash book or day book, counter cash book and savings bank account book, containing the entries for the period October-November, 1954, and the minutes of the Bank." On April 3, 1963, Mr. Karant filed a memo before the learned company judge on behalf of respondents Nos. 3, 5 and 7 in which he complained that the official liquidator had not, till then, filed anything in writing by way of an affidavit or otherwise stating if he had those books (the books referred to in the notice dated 17th December, 1962) or had not got those books and if he had them why he was not filing them. In this memo it was prayed that the official liquidator should be called upon to file the said books into court.

75. Mr. Karant submitted before us that in spite of the said notice and the said memo, the official liquidator neither produced those books, nor filed any objections or affidavit objecting for the production of the books or explaining the reasons for their non-production; and in those circumstances an inference had to be drawn that, if those books had been produced, they would not have supported the case of the official liquidator regarding the shortage of cash and manipulation of bank balance.

76. From the records in this case, we have not been able to find any objection or affidavit filed by the official liquidator in reply to the said notice or memo filed by Mr. Karant. Mr. S.G.Sunderaswamy, learned counsel for the official liquidator in these appeals, has submitted that, though the official liquidator did not file any objections or affidavits in reply to Mr. Karant's notice and memo, he (the official liquidator) informed all the respondents that they could inspect the books of accounts and other papers relating to the bank, which were in large bulk and stored in a room, that none of the respondents availed themselves of that opportunity, nor did they ask the official liquidator to produce before court any particular book of books. This statement has not been controverted by any of the learned counsel for the appellants.

77. It is unfortunate that at no stage of the various proceedings was any inventory of the books and documents with the bank prepared. Even when P.W.4, Kotbagi, special officer appointed by the High Court of Bombay, took charge of the bank, such an inventory does not appear to have been made nor was such an

inventory made when he handed over charge of the bank to the directors when his term as special officer expired. It is also not known whether the official liquidator of the Bombay High Court had prepared any such inventory. On the transfer of the winding up proceedings of this bank from the High Court of Bombay to this court, no such inventory was sent along with the books and records of the company.

78. As pointed out by the learned company judge, there is evidence to the effect that the liquidator appointed by the Bombay High Court or some representative of his had sold by auction at Belgaum some papers belonging to the company. It is not known whether the papers so sold included some important and valuable account books belonging to the the bank. The learned company judge has also pointed out that a set of books called the "rough cash books" which must have been available when P.W. D.D. Joshi, conducted investigation resulting in his report, exhibit A- 9, have since been lost and are not available.

79. In this state of affairs , we think it cannot be reasonably inferred that the official liquidator has deliberately suppressed or withheld production of any books of account or documents which might have been helpful to the respondents nor can any adverse inference be drawn against the official liquidator for non-production of the books and documents referred to in the said notice or memo filed on behalf of some of the respondents. There is no reason to disbelieve that many of the books of account like the rough cash books of certain periods are missing whosoever might have been responsible for such disappearance.

80. In dealing with the three remaining questions formulated by the learned company judge, we have to bear in mind the special rules of evidence provided by section 45 F of the Banking Companies Act and the special provisions for assessing damages against delinquent directors provided by section 45F of the Act.

81. Section 45 F of the Banking Companies Act provides for a special rule of evidence in relation to winding up of banking companies. Sub-section (2) of that section reads as follows:

"45 F.(2) Notwithstanding anything to the contrary contained in the Indian Evidence Act,1872 (I of 1872), all such entries in the books of account or other documents of a banking company shall, as against the director (officers and other employees) of the banking company in respect of which the winding up order has been made be prima facie evidence of the truth of all matters purporting to be therein recorded."

82. Explaining the scope of this section in Vastulal Pareek alias Bastilal Vs. Official Liquidator, Pareek Commercial Bank Ltd., . Sarjoo Prosad C.J. observed as follows:

"In dealing with the evidence in the case one has to bear in mind the fact that in a liquidation proceeding , the difficulty of establishing a claim against the director

or an officer of the bank u/s 235 of the Companies Act, 1913, is not inconsiderable. This is so, because the material facts in all such cases are within the special knowledge of the persons against whom the applications are made and the official liquidator appointed in the case at whose instance the application is presented may have no personal knowledge of the details relating to the alleged transactions. He is bound to rely on the records of the bank, such as are available to him, and, therefore, it is only fair that no such burden of proving act of misfeasance or breach of trust in respect of the assets of the bank should be placed on the applicant as to render his task impossible. This appears to be the meaning underlying section 45H of the Banking Companies Act. Under the law all that has to be shown by the applicant or should appear to the court from the evidence is that there is a prima facie case made out against the officer complained against, in order to make it obligatory on the court to pass an order directing the officer to repay or restore the assets unless the person concerned proves that he is not liable to make the repayment or restore the property.....

To make out a prima facie case, of course, the burden lies upon the applicant; but if the records do show a prima facie case, the task of rebutting that evidence or of exonerating himself from liability would lie upon the person against whom the application has been made, since he is the person who knows about the business of the company and is expected to throw greater light on the points in controversy in order to satisfy the conscience of the court that no liability should rest on him and that his conduct of affairs of the bank has been fair and above board. The initial burden on the applicant, having regard to the very nature of the case, had to be lightly placed, so as to compel the officer concerned to disclose his cards, failing which the claim should be allowed against him."

Section 45 H (I) of the Banking Companies Act reads as follows:

"Where an application is made to the High Court under` section 543 of the Companies Act, 1956," against any promoter , director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a prima facie case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property." * * We think this estimate is reasonable and the appellants have not succeeded in showing why this estimate of loss to the bank should not be accepted. The more important question for determination is whether all or any of the directors are liable to make good the loss and, if so, to what extent?

The learned counsel for the respondents Nos. 3 and 5 to 7 contended that the actual management of the bank was in the hands of the managing director as

provided by the articles of association of the bank, that the directors placed confidence in the managing director, that the directors could not be expected to take part in the actual control over the staff, that the auditor of the bank did not point out any irregularity, fraud, misapplication or misappropriation by the staff or the managing director, that the directors had no reason to suspect the honesty of the managing director and of the staff and, hence, they cannot be made responsible for the losses, caused by the negligence, dishonesty or misconduct of the managing director and the officials of the bank.

Article 108 of the articles of association of this company reads as follows:

"The business of the company shall, subject to the control of the board, be carried on by the managing director or the assistant managing director in the name of the company and all contracts, matters and things, which shall be entered into, executed, taken or done by him, on behalf of the company, and all receipts and discharges signed by him as such shall be good and sufficient to all intents and purposes and binding on the company."

Article 109 (a) of the said articles reads as follows:

"The managing director shall out of the money received by the company make all necessary and proper disbursements in carrying on the business of the company and shall cause proper accounts to be kept of all transactions of the company and shall, once in every year, settle and adjust such accounts with the board and auditors and shall make out the balance-sheet and profit and loss accounts and all the returns and statements required by the Acts to be audited and signed."

The board of directors had executed a power of attorney(exhibit A-39) in favour of respondent No.2, managing director (S.K.Samant), conferring on him wide powers to do several acts on behalf of the company.

83. In order to appreciate the contention of respondents Nos.3 and 5 to 8, it is necessary to examine the extent of the responsibility of the directors of a company under law. On this matters, the statement of law by Romer J. in *In re City Equitable Fire Insurance Company Limited* [1925] Ch.407 is regarded as locus classicus. As the learned company judge has set out extensively the passages from the judgment of Romer J., it is unnecessary to set them out again.

84. The learned company judge held that the directors cannot disclaim responsibility for the losses merely because the articles of association of the company provide for the business of the company being carried on by the managing director as the managing director is subject to the supervisions and control of the board of directors, The learned company judge observed.[1964]34 Com 34 Cas. 34.

"Supervision involves not only the initial formulation of duties and responsibilities of a person whose work is to be supervised but also subsequent scrutiny of the manner in which he performs his duties and discharges his responsibilities by periodical inspection and review of his work with a view to see that he obeys and

observes the instructions originally or from time to time issued to him and generally conducts himself in the matter of his work properly, honestly and efficiently....

Upon the whole, it seems to me that, so far as this matter is concerned the case of the directors on their own showing is that there never was any formal resolution defining the functions and responsibility of the managing director or indicating the extent to which he can, on his own and independently of the board, exercise powers in relation to the management of the affairs of the company or providing for the manner in which the board should exercise supervision over the work of the managing director."

The learned company judge ultimately observed:

"I hold therefore that the directors, other than the managing director, are also liable for the loss because they must be held to have failed in their duty of providing for good and efficient management of the affairs of the company and because they cannot in the circumstances claim that they were entitled to rely upon either the managing director or any members of the supervisory staff."

The learned counsel for the appellants contended that, since the articles of association of the company stated what the powers, duties and responsibilities of the managing director should be, there was no necessity for the directors to pass any formal resolution or to issue instructions formulating or defining the functions, duties and responsibilities of the managing director or to indicate the extent to which he can act on his own responsibility independently of the board. We think, this criticism by the learned counsel is well founded. We do not think that there was any breach of duty or negligence on the part of the directors by their omission to pass any such resolutions or to give any such instructions.

85. It was next contended by the learned counsel for the appellants that the learned company judge erred in drawing a conclusion that the directors had taken undue advantage of their position as such and departed from the standard of care and rectitude expected of them and, on account of such conduct on their part, it became difficult, if not impossible, for them to exercise supervision over the managing director, if not impossible, for them to exercise supervision over the managing director and the subordinates or to correct them or to take proper disciplinary action against the dishonest members of the staff. The criticism made by the learned counsel for the appellants is that this alleged improper conduct on the part of the directors did not form the subject-matter of any issue or point formulated by the learned company judge for determination. We think, this criticism is well founded.

86. Even the application, I.A. No.I, does not contain allegations that the directors had taken undue advantage of their position as such and had improperly granted large loans either for themselves or to their relatives or to firms in which they were interested. It may be that the evidence in the case would justify a conclusion that the directors had taken unfair advantage of their position and

granted large and improper loans to themselves or their relatives or to firms in which they were interested. But as we have stated earlier, unless these allegations were stated in the application of the liquidator or unless they were referred to in the issue or the questions formulated by the learned company judge, the directors were not called upon to meet them. Nor can such allegations form the basis for any adverse conclusion against them.

87. If the official liquidator had asked for the public examination of the directors u/s 45G of the Banking Companies Act and if facts elicited during the course of such public examination justified these allegations, it could have been possible for the official liquidator to make these allegations in his application and base on them his claim against the directors. Unfortunately, the omission of the official liquidator to ask for such public examination is responsible for this debacle.

88. We think. the allegations of improper conduct on the part of the directors in obtaining excessive loans for themselves which the directors were not called upon to meet should be kept out of view in determining the liability of the directors for making good losses due to shortage of cash and manipulation of bank balances.

89. However, the conclusion of the learned company judge as to the responsibility of the directors is mainly based on the ground that the directors abdicated their responsibility , left the matter entirely in the hands of the managing director and failed to prevent dishonest conduct on the part of the staff of the bank. We shall now examine the criticism on this ground made by the learned counsel for the appellants.

90. It does not admit of any doubt that the directors cannot totally abdicate their powers and functions and divest themselves of responsibility for proper management of the company. But the question is whether the directors are entitled to rely on the honesty and integrity of the managing director and if so, up to what stage; or whether they were bound to keep watch and vigilance over the conduct of business of the company by the managing director and other officers of the bank and if so, from when.

91. In *In re National Bank of Wales Limited* [1899]2 Ch.629 Lindley M.R.observed as as follows:

"Was it his (director"s) duty to test the accuracy or completeness of what he was told by the general manager and the managing director? This is a question on which opinions may differ, but we are not prepared to say that he failed in his legal duty. Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them. We agree that care and prudence do not involve distrust; but for a director acting honestly himself to be held legally liable for negligence, in trusting the officers under him not to conceal from him what they ought to report to him appears to us to be laying too heavy a burden on honest business men."

92. In the appeal which went up to the House of Lords from the above decision and which is reported under the name *Dovey v. Cory* [1901]A.C.477, Lord Halsbury L.C. observed as follows:

"The charge of neglect appears to rest on the assertion that Mr. Cory, like the other directors, did not attend to any details of business not brought before them by the general manager or the chairman, and the argument raises a serious question as to the responsibility of all persons holding positions like that of directors, how far they are called upon to distrust and be on their guard against the possibility of fraud being committed by their sub-ordinates of every degree. It is obvious if there is such a duty it must render anything like an intelligent devolution of labour impossible. Was Mr. Cory to turn himself into an auditor, a managing director, a chairman and find out whether auditors, managing directors and chairman were all alike deceiving him? That the letters of the auditor were kept from him is clear. That he was assured the provision had been made for bad debts, and that he believed such assurances, is involved in the admission that he was guilty of no moral fraud; so that it comes to this, that he ought to have discovered a net-work of conspiracy and fraud by which he was surrounded, and found out that his own brother and the managing director (who have since been made criminally responsible for frauds connected with their respective offices) were inducing him to make representations as to the prospects of the concern and the dividends properly payable which have turned out to be improper and false. I cannot think that it can be expected of a director that he should be watching either the inferior officers of the bank or verifying the calculations of the auditors himself. The business of life could not go on if people could not trust those who are put into a position of trust for the express purpose of attending to details of management....."

In the same case, Lord Davey in his speech observed as follows:

"I think the respondent was bound to give his attention to and exercise his judgment as a man of business on the matters which were brought before the board at the meetings which he attended, and it is not proved that he did not do so. But I think he was entitled to rely upon the judgment, information and advice, of the chairman and general manager, as to whose integrity, skill and competence he had no reason for suspicion. I agree with what was said by Sir George Jessel in *Hallmark's* case (1878) 9 Ch D.329, and by Chitty J. in *In re Denham & Co.* (1884) 25 Ch.D.752, that directors are not bound to examine entries in the company's books. It was the duty of the general manager and (possibly) of the chairman to go carefully through the returns from the branches, and to bring before the board any matter requiring their consideration; but the respondent was not, in my opinion, guilty of negligence in not examining them for himself, notwithstanding that they were laid on the table of the board for reference....."

The following are observations of Romer J. In *re City Equitable Fire Insurance Company Limited* [1925] Ch.407

"A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board meetings and at meetings, of any committee of the board upon which he happens to be placed. He is not, however, bound to attend all such meetings though he ought to attend whenever, in the circumstances, he is reasonably able to do so. In respect of all duties that, having regard to the exigencies of business, and the articles of association, may properly be left to some other official, a director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly."

The principles laid down in the above -quoted English cases have been followed in a large number of decisions of this country and it is unnecessary to refer to them. However, Mr. S.G. Sunderaswamy strongly relied on certain decisions of the High Courts in this country which, according to him, prescribe a more onerous standards of care on the part of directors. We may briefly refer to those decisions.

93. In *New Fleming Spinning and Weaving Company Limited v. Kessowjinaik* I.L.R.(1885) Bom. 373 one Kessowji was appointed secretary, treasurer and agent of the company for a period of 25 years. He began to borrow moneys upon the credit of the company far in excess of the legitimate wants of the company and to pay over the money so borrowed, to the firm of Nursey Kessowji & Co. to be used by that firm in speculative business. The said firm of Nursey Kessowji & Co. was not a firm of bankers but was a firm of merchants, in fact, and, to the knowledge of the directors, carrying on large speculative business in several commodities. The company sustained losses and, in the course of winding up proceeding, the directors were sought to be made liable for the losses. Scott J. held that the directors had not used fair and reasonable diligence in the management of the company's affairs, and were liable to refund the money entrusted by them to the agent, Nursey Kessowji, without proper knowledge as to whether it was needed, and without any subsequent investigation of a serious character with respect to its disposal and that such conduct amounted to gross negligence. Having regard to the circumstances of that case, his Lordship came to the conclusion that the directors knew even at the time when the agent was appointed that he was engaged in speculative business and that they authorised him to borrow moneys without verifying whether whose borrowings were necessary for the requirements of company. On the facts of that case, his Lordship held that, instead of showing reasonable diligence, the directors delegated all control to the agent and so enabled him to misapply the company's money.

94. We do not think that in this case his Lordship laid down any principle different from that laid down in the aforesaid decisions as can be seen from the following observations of his Lordship:

"In deciding such a question the court has to hold the balance fairly, in order to avoid alternative dangers. On the one hand, the interests of shareholders and of

creditors must be safeguarded against negligence and misconduct. On the other hand, the duties of directors must not be made so onerous as to cause every honest and prudent man shrink from accepting such a post. If directors were to be made peculiarly liable for every slip and error, all prudent men would refuse to act, and companies would be at the mercy of fools of rogues."

95. In *Govind Narayan Kakade Vs. Rangnath Gopal Rajopadhye*, the directors of a bank appointed managing agents giving them wide powers. On accounts of reckless advance made by the managing agents, the bank had to be wound up. On facts, it was found that there were only two effective directors meetings per annum and even in a period of financial anxiety for the bank at the meeting of the directors, the only business transacted was passing the balance-sheet. In those circumstances, a Bench of the Bombay High Court found that the directors did not exercise any effective supervision over the affairs of the bank or even made any effective enquiries, that no general rules were laid down for the guidance of the agent in making advances, that though they passed a resolution at a board meeting that the deposits should be reduced and that unsecured loans should be curtailed, they did not even enquire in the following board meeting whether that resolution was implemented. On the facts of that case, their Lordships held that the directors had wilfully shut their eyes to the acts of the managing agents and the conduct of the directors was such as to make them liable for the loss.

96. We think that even this decision does not purport to lay down any principle different from that laid down in the aforesaid English decisions. In fact, their Lordships have followed the decision of the House of Lords in *Dovey v. Cory* [1901] A.C.477 and the earlier decision of the Bombay High Court in *New Fleming Spinning and Weaving Company Limited* case I.L.R.(1885) Bom.373.

97. Mr. Sunderaswamy next referred to the decision in *In Re: The Union Bank*, . In that case, the directors of a company had distributed profits to the shareholders in the shape of dividends when, in fact, no profits were earned. The allegation against the directors was that they had misapplied funds belonging to the company. On facts, their Lordships found that the directors had failed to show that they had any reasonable belief that the company had profits to justify declaration of dividends. The directors were held liable for the payment which they had approved by the resolution or by signing the balance-sheet. In the course of the judgment. Walsh J. has expressed dissent from the view taken by the privy Council in the case of *Prefontaine v. Grenier* [1907] A.C.101. and observed that if the directors honestly trust a fraudulent manager and do not take the trouble to see what he did was even apparently what he ought to have done, the directors cannot escape liability. But we do not understand these observations as laying down a proposition that the directors cannot trust the manager or officers of the company to perform their duties honestly until there is any reason to distrust them. If his Lordship meant to lay down any such proposition as contended by Mr. Sunderaswamy, we must respectfully dissent

form the view taken by his Lordship.

98. That a director is not liable for mere omission to take all possible care is clear from the following observations of Lindley M.R. in *Lagunas Nitrate Company v. Lagunas Syndicate* [1899] 2 Ch 392.

"The amount of care to be taken is difficult to define; but it is plain that directors are not liable for all the mistakes they may make, although if they had taken more care they might have avoided them: see *Overend, Gurney & Co. v. Gibb* 1 L.R.(1872) H.C.480. Their negligence must be not the omission to take all possible care; it must be much more blamable than that: it must be in a business sense culpable or gross."

99. Applying the principles laid down in the above decisions to the facts of the present case, the position that emerges may briefly be stated as follows: (i) The directors were not bound to give continuous attention to the affairs of the bank and their duty was of an intermittent nature to be performed at the periodical board meetings and the meetings of Sub-committees of the board. They were not bound to check the cash of the bank or the books of account to detect shortage of cash or manipulation of bank balances; (ii) To begin with, the directors were entitled to trust the managing director and other officers of the bank to perform their duties honestly. They were entitled to continue to repose such trust until there were any ground for suspicion; (iii) Once there was any ground for suspecting the honesty, competence or skill of the managing director or other officers of the bank, the directors were bound to exercise such reasonable care as an ordinary prudent man would do in his own case, in order to avert losses to the company. Even after such ground for suspicion if they shut their eyes and do not take any effective steps to prevent losses resulting from their wilful neglect, they would make themselves liable for the resulting losses; and (iv) Until there is such ground for suspicion, the directors are not liable for losses due to the mistake, negligence or dishonesty of the managing director and other officers of the company, although such losses could have been averted if the directors had taken care.

100. Now, the crucial question is whether there were any circumstances arousing the suspicion of the directors and, if so, when their suspicion should have been aroused.

101. As stated earlier, in the year 1947, shortage of cash of the order of Rs.1,500 came to the attention of the director. The directors wrote off the shortage to the extent of Rs. 1,000 and appear to have recovered only a sum of Rs. 500 from the cashiers, Nadgouda and Savadi. But there is no evidence to show that this shortage was due to the dishonesty of the cashiers or the staff. It is not unusual in a bank that shortage of cash occurs on account of negligence, forgetfulness, inadvertance or error in counting on the part of cashiers or shroffs, even where there is no dishonesty on their part. Unless the shortage was of a large order or was found to be due to any dishonesty of any officer of the bank,

there was nothing to rouse the suspicion of the directors about the conduct of the affairs of the bank by the managing director or the officers of the bank.

102. As stated earlier, exhibit A-I , the report of the Reserve Bank dated March 7,1951, disclosed very serious defects in the working of the bank and in particular, this report pointed out that the bank's account books and other records were not properly maintained and there was no system of balancing ledgers at frequent intervals. It also pointed out that there was no system of obtaining periodical returns from branches and carrying out inspection of their accounts. When this report was brought to the notice of the directors, they should have given serious thought to the acts of mismanagement brought to their notice and should have taken prompt and effective steps for setting right the affairs of the bank and to prevent further losses to the bank. If the directors failed to do so, their conduct would, in effect, amount to shutting their eyes to the danger and wilful neglect.

103. Respondent No.5 Ajgaonkar, has stated in his evidence that in relation too the defects pointed out in exhibit A-I, the directors appointed R.P Joshi to rectify the defects and that at subsequent meetings they used to ask the managing director to expedite the removal of those defects. Respondent No.3, Tendolkar has gone so far as to say in his evidence that in the first two reports of the Reserve Bank there was no mention of any defects and that it was only in the third report (exhibit A-3) that there was mention of a small shortage of cash and that there was no reconciliation of the accounts with the other banks. The evidence of these two witnesses is sufficient to show that they did no realise the magnitude of the mismanagement brought to their notice by exhibits A-I and A-2. The directors even though they became aware of the report, exhibit A-I, took no steps to get the cash balance verified at the head office and at the branches or to have control over the drawings from other banks. To merely ask the managing director to set right the defects pointed out by the Reserve Bank can hardly be said to be an effective step to remedy the mismanagement as the managing director himself was likely to have contributed in a large measure to the several acts of mismanagement. After a few months, the directors terminated the services of R.P.Joshi and did not appoint any one in his place.

Exhibit A-2, the second report of the Reserve Bank, which became available to the directors in March ,1953, revealed much more serious acts of mismanagement. Even then, the directors did not appear to have acted with any seriousness. As stated earlier,respondent No.3, Tendolkar , did not consider that even exhibit A-2 disclosed any serious defects. Respondent No.5, Ajgaonkar, has stated in his evidence that, even after exhibit A-2 was received, the directors merely asked the managing director and the members of the staff to take steps to rectify the defects and that the directors were on the look out for a better qualified person to improve the situation. Even at that stage, no attempt was made to get the cash and the books of account checked from time to time and to arrange for inspection of the affairs at the branches.

Exhibit A-3, the third report of the Reserve Bank , disclosed a still graver state of affairs. This report was received by the directors a little over two months before the bank closed its business. Even though the directors showed some earnestness at that stage, it was too late to retrieve the situation.

Thus, though the directors might have been justified in trusting the managing director and the officers of the bank till they received exhibit A-I, the first report of the Reserve Bank, they have shown gross and wilful negligence thereafter. We think the directors are liable for the losses sustained by the bank subsequent to their becoming aware of exhibit A-I. In order to fix the liability of directors other than the managing director, we have to ascertain the losses due to shortage of cash and manipulation of bank balances subsequent to March, 1951.

104. Unfortunately, the official liquidator does not appear to have realised that the starting point for fixing the liability on the directors was the date of exhibit A-I. Hence no attempt has been made by the official liquidator or the witnesses examined to ascertain what portion of the total loss of Rs. 2.65 lakhs (on account of shortage in cash and manipulation of bank balances) can be attributed to the period prior to March 1951, and to the period subsequent thereto. In the circumstances, we must ascertain as best as we can, out of the meagre material available , what losses took place subsequent to March, 1951. Regarding losses due to shortage of cash, the two items, namely, loss of Rs.42,000 at Aronda Branch and of Rs. 10,000 at Kolhapur branch, undoubtedly took place subsequent to March 1951. Neither the reports, exhibits A-I to A- 4, nor A-9 and A-21 nor the evidence of witnesses enable us to ascertain which other items of Shortage of cash occurred after March, 1951.

105. Regarding the particulars of shortage due to manipulation of bank balances, with reference to different dates, the only available material appears to us to be appendix V to exhibit A-3. The heading of appendix V is stated as , " A statement showing the details of entries in respect of amounts debited to Bankers account" and misappropriated during the period 1949-1951 detected during the course of inspection." of the six items in this statement only three of them related to the period subsequent to March, 1951, and they are as follows:

Date of entry	Amount	14-8-1951	2000.00	12-8-1951	4000.00	1-10-1951
						7000.00

Three other items relate to the period prior to March ,1951, and they cannot be taken into account. Hence, all that can be stated with certainty about the manipulation of bank balances is that a sum of Rs. 13,000 was misappropriate subsequent to March,1951.

106. If the directors had taken prompt and effective steps after exhibit A-I, it can reasonably be inferred that the shortage of cash of Rs. 10,000 and of Rs.42,000 at Kolhapur and Aronda branches respectively and the misappropriation to the extent of Rs. 13,000 out of amounts drawn from other banks could have been averted. Thus the loss to the bank due to the negligence of the directors

subsequent to March, 1951, can be proved with certainty to the extent of Rs. 65,000. Though it is likely that such loss subsequent to March, 1951, was much larger, there is no positive material to fasten on the directors any liability in excess of Rs.65,000. Hence, in modification of the direction of the learned company judge, the amount which the directors should be required to contribute to the assets of the company is fixed at Rs.65,000 together with interest at six percent. per annum from the date of the order of the learned company judge till the date of payment.

107. The learned company judge has taken note of all the circumstances which mitigate the responsibility of respondent No.6, Porwal, and respondent No.7, Kalghatgi. Porwal became a director towards the latter part of the year 1951. By then exhibit A-I, the first report of the Reserve Bank, had already been discussed by the board of director. It is also in evidence that he attended very few meetings of the board of directors and that he had not borrowed any money. Until exhibit A-2, the second report of the Reserve Bank dated March 5, 1953, was discussed before the board of directors, there was nothing to impute notice to him of the acts of mismanagement of the bank. After the directors became aware of exhibit A-2, Porwal has also shown the same gross negligence as the other directors. Hence he cannot be altogether exonerated, though his liability to contribute to the assets of the company should be limited at Rs. 10,000 only, together with interest at six percent, from the date of the order till the date of payment. He will be entitled to the refund of any sum paid by him in excess of the aforesaid sum.

108. Respondent No.7, Kalghatgi, became a director only in July, 1953. By then exhibit A-2, the second report of the Reserve Bank, had been discussed by the directors. Since the original proceedings book of the company is not available, there is no reliable material to show when exactly he became aware of the mismanagement of the bank. Though he was a director for little over a year before the bank closed its business, he cannot also totally escape the liability for losses. But there is considered force in his contention that he, being the most recent largely on the senior directors to look after the affairs of the company. Having regard to these circumstances, we think, the liability of respondent No.7, Kalghatgi, should be limited to a sum of Rs.5,000 together with interest at 6 percent. Per annum from the date of the order of the learned company judge till date of payment. If he has paid any amount in excess of the aforesaid sum, he is entitled to the refund of such excess amount.

109. The position of respondent No.2 the managing director, entirely different. Under the articles of association of the company, he was the principal executive of the bank. The power of attorney executed in his favour also gave him wide powers. While the duties of directors were of an intermittent nature to be exercised at periodical board meetings, he, as the managing director, was required to give his continuous attention to the affairs of the company. He was paid a remuneration of Rs, 350 per month with certain allowances. Even if he

was not expected to devote his entire time for the management of the bank, he should have devoted his entire time for the management of the bank, he should have devoted a considerable part of his time every day towards the affairs of the bank. The bank was not a big one. It had only two branches. The evidence disclosed that there were only eight employees in the head office of the bank and that the premises of the bank consisted of a hall and two rooms.

110. Respondent No.2, as the managing director, was expected to have an effective supervision and control over the activities of the bank's employees. He has not stated in his evidence that he was checking the cash periodically or at regular intervals. Nor has he stated that he was keeping any check over the drawings of moneys from other banks. On the other hand, he has stated in his evidence that he never tallied the cash balance even on a single occasion and that he could not say whether both the keys of the safe in which cash was kept were left with the cashier. He did not take even the elementary precaution of seeing that the two keys of that safe were with two different officers.

111. The attempt of respondent No. 2 has been to show that he knew nothing of banking, that he was not even fully acquainted with the responsibilities of the managing director and consequently he could not exercise any effective control and supervision over the working of the bank and that he depended upon the honesty, skill and competence of the other officers of the bank. He has also admitted that he made no attempts to acquaint himself with the work of the bank.

112. In taking this stand, little did he realise that if he undertook a task without possessing the requisite knowledge, training and experience, which are usual in that calling, he is liable for breach of contractual duty. He cannot escape the responsibility for the consequences flowing from his lack of knowledge, training, experience and competence.

113. Respondent No.2, as managing director, is equally responsible with other directors for the loss of Rs. 65,000 proved to have taken place subsequent to March, 1951, when they became aware of exhibit A-I the first report of the Reserve Bank. Besides, Respondent No.2, who was the managing director, is also responsible for other losses due to shortage of cash and manipulation of the balances with other banks that took place subsequent to his becoming the managing director in July, 1946, since such losses can be attributed to his breach of duty to exercise proper control and supervision over the staff of the bank even if he had not himself misappropriated or misapplied the funds of the bank.

114. In quantifying the liability of respondent No.2, we are faced with the same difficulty as in the case of directors. Though the total loss to the bank under the aforesaid two heads (shortage of cash and manipulation of balances with other banks) may be estimated at Rs. 2,65,000, he is liable for only that portion of the said loss which occurred after he became the managing director in July, 1946. Unfortunately, neither the official liquidator nor the witnesses focussed their

attention to apportionment of the loss between the period prior to July,1946, and the period subsequent to July,1946.

115. As stated earlier ,it can be stated with certainty that loss to the extent of Rs.65,000 occurred subsequent to March,1951. Appendix V to exhibit A-3 shows the following three items of misappropriation prior to March 1951.

Date of entry	Amount	2-12-1949	Rs. 0.04 lakhs.	2-2-1950	Rs. 0.03 lakhs.	
		7.2.1950	Rs. 0.02 lakhs.	-----	Total	Rs. 0.09 lakhs.

Thus there is positive evidence regarding loss to the extent of Rs. 74,000 on and after December 2, 1949.

116. As stated earlier, respondent No.2 executed two promissory notes in favour of the bank for Rs. 53,000 and Rs. 58,500 on November 19, 1954, and December 3, 1954, respectively. Though he asserted in his letter, exhibit A-28, addressed to the Chairman on February 26, 1955, that he executed these two promissory notes on being pressed by the chairman and that on taking accounts it was found that he would be liable for only Rs. 65,000 in respect of his lapses, he has not adduced any satisfactory evidence that these two promissory notes were executed by him under threat of coercion or undue influence.

Exhibit A-25 is a statement in the handwriting of respondent No.2 and addressed to the special officer on December 8, 1954, showing the state of affairs of the bank according to respondent No. 2. In this statement, these two sums of Rs. 53,000 and Rs. 58,500 are shown as the sums adjusted and to be liability to pay these two sums.

117. Thus, even according to his own admission, respondent No.2 had undertaken to pay Rs. 1,11,500 to the bank. Hence, this sum can safely be taken as his liability for his negligence and breach of duty. Rupees 14,000 has been realised from him by the sale of his car and truck and another sum of Rs. 24,000 has been realised by the sale deed executed by him in favour of the bank conveying his house. Deducting these two sums, he is still liable for a sum of Rs. 73,500. Thus, his liability to contribute to the assets of the company can safely be fixed at Rs. 73,500 though it is likely that the extent of loss resulting from his negligence and breach of duty as managing director is much larger. He is also liable to pay interest on this sum of Rs. 73,500 at 6 per cent. per annum from the date of the order of the learned company judge till payment.

118. In the result, these are allowed in part and, in modification of the order of the learned company judge, we direct respondents Nos. 2,3 and 5 to 7 to contribute to the assets of the company in winding up as follows:

(i) Respondent No. 6 R.W. Porwal Rs. 10,000 (ii) Respondent No. 7, R.N. Kalghatgi Rs. 5,000

It is reported that respondents Nos. 6 and 7 have deposited Rs. 15,000 each in

pursuance of the order of the learned company judge. Hence, Rs. 15,000, being the aggregate of the sums directed to be paid by respondents Nos. 6 and 7, should be deducted in determining the amounts payable by respondents Nos. 2,3 and 5.

(iii) Respondent No. 2, S.K. Samant Rs. 58,500 (iv) Respondent No. 3, P.A. Tendolkar and Respondent No.5, L.S. Ajgaonkar Rs. 50,000 jointly and severally

Of the sum of Rs. 58,500 payable by respondent No. 2, S.K. Samant, to the extent of Rs. 50,000, the liability of respondent No. 2, S.K. Samant, respondent No. 3, P.A. Tendolkar, and respondent No. 5, L.S. Ajgaonkar, shall be joint and several.

119. On the aforesaid respective sums, they shall be also be liable to pay interest at 6 per cent. per annum from November 8, 1963, till date of payment.

120. Respondent Nos. 6 and 7 shall be entitled to refund of the amounts paid in excess of the respective amounts payable by them as aforesaid.

121. We direct the parties to bear their own costs in these appeals.