

(1961) 10 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Original No. 16 of 1960 and Liquidation Miscellaneous No. 17 of 1961

Pure Milk Supply Co. Ltd.

APPELLANT

Vs

S. Hari Singh and Others

RESPONDENT

Date of Decision : 23-10-1961

Acts Referred:

Companies Act, 1956 — Section 470, 512, 517(1), 518(1)

Displaced Persons (Debts Adjustment) Act, 1951 — Section 43

Citation : AIR 1962 P&H 190 : (1962) 32 CompCas 659

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Judgement

(1) These are two petitions, C. O. 16 and 28 of 1960, which may be disposed of together.

(2) The Pure Milk Supply Company Private Limited is a joint stock company which was incorporated on 28th October, 1942, with its registered office at Lahore. An application was made under S. 43 of the Displaced Persons (Debts Adjustment) Act (70 of 1951) for its recognition which was granted. It was re-incorporated in 1953 with its registered office at Jullunder City. A resolution for the voluntary winding up of the company as "creditors' voluntary winding up" was passed on 8th February, 1958, and Messrs. Jai Krishan Suri and Haranam Dass Bhasin were appointed voluntary liquidators. After notice to the shareholders and also by publication of the notice in Hind Samachar, lists of contributories were settled on 20th/22nd May, 1959, by the voluntary liquidators vide annexures A, A. 1, A.2 and A.3. On 13th October, 1959, a call was made by the voluntary liquidators of Rs. 1.50 per share out of Rs. 5/- unpaid on each share and the contributories were required to make the payment by 31st October, 1959. Annexure C is a specimen of the notice making calls.

It may be stated here that on 28th February 1947, before the company went into liquidation, the directors had made a call on the share-holders of Rs. 2/- per

share. Some of the contributories had not paid this call also, and it was mentioned in C.O. 16 of 1960 that the voluntary liquidators would make a fresh call in respect thereof. It was stated that the voluntary liquidators required about Rs. 16,553.64 as per details given in annexure "D". In C. O. 28 of 1960 it was prayed that in accordance with the provisions of Section 470(1)(b), read with Section 518(1)(b) of the Companies Act 1956 payment orders be passed against the contributories mentioned in the list attached as annexure "A" for the amount shown against each contributory (calls by liquidators with future interest at 6.00 per cent per annum) and that costs of the petition may also be awarded.

(3) Another application u/s 470(1)(b) read with Section 517(1)(b), (sic) was made in this Court on 19th April, 1960 (C. O. 28 of 1960). In this application it was stated that a call was made by the directors of the company on 28th February, 1947, of Rs. 2/- per share and some of the contributories had not paid that call. The total amount under this call was stated to be Rs. 690/-. The voluntary liquidators, with a view to legalise the arrears of calls, made a fresh call of Rs. 2/- on the contributories who were in arrears and a notice of the call was sent under registered cover wherever possible, and a specimen copy of the notice has been attached as annexure "B". It was mentioned that no contributory had paid any amount of the calls in respect of the arrears and that the voluntary liquidators required about Rs. 16,553.64. Reference was also made to the earlier petition C. O. 16 of 1960. A prayer was consequently made for passing of payment orders against contributories mentioned in the list attached as annexure "A" for the amount shown against each contributory (calls by liquidators) with future interest at 6.00 per cent per annum and costs of the petition.

(4) Separate written statements were filed by respondents Nos.1, 2, 3 and 5. In these written Statement, several objections were raised relating to both the petitions. On 2nd February, 1961, the following issues were framed in C.O. 28 of 1960:

- (1) Whether this Court has jurisdiction?
- (2) Whether the present petition is maintainable?
- (3) Whether the petition is maintainable having been filed by one liquidator only, whereas there are two liquidators?
- (4) Whether the claim for payment of the call is within time?
- (5) Whether the list of contributories was drawn up in accordance with the procedure laid down in the rules and the Act?
- (6) Whether the several claims against the company, as referred to in annexure "D" of the petition are admissible, and if so, to what extent?
- (7) Whether the call of Rs. 1.50 per share is justified in the circumstances of the case.

(8) Whether respondents Nos. 2 and 9 are share-holders of the company?

The issues framed in C. O. 16 of 1960, are as under:

(1) Whether this Court has jurisdiction?

(2) Whether the present petition is maintainable?

(3) Whether the petition is maintainable having been filed by one liquidator only, where as there are two liquidators?

(4) Whether the list of contributories was drawn up in accordance with the procedure laid down in the rules and the Act?

(5) Whether the several claims against the company, as referred to in annexure "D" of the petition, are admissible, and if so, to what extent?

(6) Whether the call of Rs. 1.50 per share is justified in the circumstances of the case?

(7) Whether respondent Nos. 2 and 9 are share holders of the company?

It appears that by inadvertence issue No. 7 in C. O. 28 of 1960 was framed in identical language as issue No. 6 in C. O. 16 of 1960. In C. O. 28 of 1960, in seventh issue, the figure of Rs. 2. 00 should be read instead of Rs. 1.50 being substituted therefor. The first three issues in both the petitions were of a preliminary nature and at the request of the parties evidence was recorded on the preliminary issues only and arguments have been heard. The preliminary issues are common to both the petitions.

(5) Mr. A. M. Suri, counsel for the petitioner examined Shri Jai Krishan Suri P.W. 1 and Shri Harnam Dass, P.W. 2. Both these witnesses are voluntary liquidators. The respondents did not produce any witness in support of the preliminary issues. Lengthy arguments have been addressed in this case by both the parties.

(6) P.W. 1, Jai Krishan Suri, in his detailed statement stated that the company was registered at Lahore and an application u/s 43 of the Displaced Persons (Debts Adjustment) Act, 1951, was made and the required certificate was issued by the Assistant Registrar of Joint Stock Companies, Punjab. In support of the application affidavits were filed before the Registrar of P.W. 1 and of respondents Joginder Singh, Mulkh Raj Mehta and Hari Singh who were the directors. A list of share-holders as on 14th august, 1947, was also furnished. He stated that copies of the resolutions of extraordinary meetings for voluntary winding up of the company and appointing P. Ws. 1 and 2 as voluntary liquidators were sent to the Registrar of Joint Stock Companies. He also stated that the application, C.O. 16 of 1960, which bore his signatures only, was got finalised at the instance of both the voluntary liquidators and the powers of attorney in favour of Shri Anand Mohan Suri were signed by both of them. In his cross-examination he stated that no information was given to the Registrar of Companies at Lahore before partition regarding the transfer of the registered office of the company from

Lahore to a place in India since they had left West Punjab in panic and no resolution was passed for transfer of the registered office. He said that after partition of the country, the registered office of the company was at Jullundur. He admitted that no meeting of the share-holders was called before the company was reorganised.

This company never functioned in India till its reorganisation. He also stated that no business was done in East Punjab after 1947 until the reorganisation, and during this period no meeting of the directors, or of the share-holders was held and that no property of the company was brought from Lahore as that was not possible. Before making the application u/s 43 of Act 70 of 1951 (Exhibit P.11), no resolution to this effect was passed either by the board of directors of the company or by the general meeting. He stated that under managing agency agreement he had the power to act in the interest of the company and, therefore, he made the application Exhibit P.11. After the recognition by the Registrar in pursuance of the application Exhibit P.11 P.W. 1 did not convene any meeting of the share-holders of the company or of the directors for permission to start business of the company.

(7) P.W. 2 is Harnam Dass, the second voluntary liquidator, who merely stated that the two petitions, C.O. 16 and C. O. 28 of 1960, had been filed under a power of attorney signed by him and that he was a party to the filing of the applications.

(8) Arguments were addressed by Messrs D. R. Nanda, B. R Tuli and K. N. Tiwari on behalf of their respective clients who had opposed the petition. The first argument is that in the absence of any resolution by the company or by its directors authorising the making of an application u/s 43 of Act 70 of 1951, the recognition given by the Registrar was bad in law. It was said that no meeting as admitted by Jai Krishan Suri in his statement had been called and the recognition had been sought as a unilateral act of an individual which was not the act of the company. A number of authorities were also cited in support of the proposition that the holding of a meeting and passing a resolution is imperative before an act can be said to be on behalf of the company. On the other hand, it is contended by the learned counsel for the company that this objection is no longer competent in view of S. 43(3), the Registrar, while making enquiry, had satisfied himself on the basis of four affidavits filed by the directors. One affidavit was filed by Jai Krishan Suri, the voluntary liquidator, and Joginder Singh, a director, who is now opposing this application, had filed the second affidavit. Mulkh Raj and Hari Singh, who are opposing this petition as respondents through their counsel Shri Des Raj Nanda, had also filed separate affidavits. The Registrar at that time happened to be Shri Des Raj Nanda himself who had made the enquiry and had given the recognition to the company.

Section 43 is reproduced below in extenso:

"43. Registration of certain societies and companies under Indian law:

(1) Where the registered office of any society or company registered before the 15th day of August, 1947, under the Societies Registration Act, 1860 (XXI of 1860), or the Co-operative Societies Act, 1912 (II of 1912) or under any other law then in force in any Province for the registration of cooperative societies or the Indian Companies Act, 1913 (VII of 1913), is situated in the territory now forming part of West Pakistan but a majority of its members for the time being are resident in India, or, in the case of a company, more than thirty-three and one-third per cent of its shares in value are being held by person resident in India the society, or company, as the case may be, may apply within one year from the commencement of this Act to the Registrar of Societies, Co-operative Societies or Companies, as the case may be, within the local limits of whose jurisdiction the majority of the members of the governing body reside or carry on business, for the recognition of the society or company as such in India.

(2) The Registrar, after making such inquiry into the matter as he deems fit, may either accord such recognition or refuse to do so.

(3) An appeal shall lie from the order of the Registrar under sub-section (2) to the State Government and no order passed by the Registrar or by the State Government on appeal shall be called in question in any Court.

(4) Where the Registrar accords recognition to a society, co-operative society or company, he shall cause necessary entries thereof to be made in his register and thereupon, notwithstanding anything to the contrary contained in any law for the time being in force or in any instrument, the society or the company, as the case maybe, shall be deemed to have been formed and registered under the relevant law as in force in India, and every such society or company shall, among other matters, have the right to demand and receive any moneys due to it from any person residing or carrying on business in India."

(9) In this case the Registrar, after making an enquiry into the matter, had accorded the recognition. An appeal lay from the order of the Registrar to the State Government but had not been preferred. It clearly provided that no order passed by the Registrar or by the State Government on appeal shall be called in question in any Court. This language leaves no room for doubt and does not allow the re-opening of the matter. The Registrar having accorded the recognition which has not been upset in appeal, effect must now be given to sub-section (4) notwithstanding anything to the contrary contained in any law for the time being in force. The result, therefore, is that the company.

"shall be deemed to have been formed and registered under the relevant law as in force in India and every such..... company shall, among other matters, have the right to demand and receive any moneys due to it from any person residing or carrying on business in India."

There is, in my view, no scope for the argument that the company is a foreign company with its domicile in Pakistan. The effect of the use of the word "deemed" in sub-section (4) is that the company is considered or treated as if it

had been formed and registered in India even though in reality it was formed and registered in a place which is no longer part of India. The effect of the use of the word "deemed" in a statute is that, in contemplation of law, the formation and registration is under the relevant law as in force in India though in actual facts that may not be so. By the use of the word "deemed" in this context conclusive presumption is raised and the matter cannot be disputed that the company has been formed and registered as required by the law in India. In *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, it was observed that when a statute enacts that something shall be deemed to have been done which in fact and truth was not done the Court must give effect to the statutory fiction and it should be carried to its logical conclusion. The Supreme Court cited with approval the following observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1952) AC 109:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it....."

The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of the state of affairs".

See also *Harindar Singh Vs. The State of Punjab*, in view of what has been stated above the jurisdiction of this Court cannot be said to have been taken away on the ground that this is an application by a foreign company. The first issue must, therefore, be decided in favour of the company.

(10) The next point urged is that the liquidation proceedings of the company suffered from an illegality. It was indicated in Exhibit P. 9, when the meeting was called, that proxies should reach within 72 hours though according to regulation 61 of table "A" the instrument appointing a proxy had to be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting. The respondents' learned counsel, however, could not say if any person had suffered because of exclusion, that is, whose proxy had been filed before 48 hours but not before 72 hours of the holding of the meeting. Exhibit P. 9 is a notice dated 15th January, 1958, relating to the calling of the meeting for 8th February, 1958.

(11) The next objection is that the present petition is not maintainable in view of S. 512, sub-section (10)(a) on the ground that the voluntary liquidator had not obtained sanction of this Court under S. 457, but sub-section (1)(c) and (d) of S. 512, provides that the liquidator may exercise the power of the Court under the Companies Act of settling a list of contributories and also exercise the power of the Court of making calls. The contention of the learned counsel for the respondents is that the provisions of S. 457(2)(iv) as amended have been violated because this power was exercisable only with the sanction of the Court.

The law before the amendment in 1960 does not affect this application. I am not satisfied that any sanction of the Court is required. Reference may also be made to *L. Gupta v. Vishnu Baburao Sarvate* AIR 1956 Nag 204 where it was held that there was no warrant for saying that the liquidator in a voluntary winding up could not exercise the power of the Court of making calls without the sanction of the Court. The liquidator was under S. 212(1)(d) of Indian Companies Act 1913, which corresponds to S. 512 of the present Act-empowered to exercise that power without reference to the Court. It was also observed that the liquidator might, under S. 216 (1)-corresponding to S. 518-apply to the Court for enforcing the call and the court might thereupon exercise all or any of the powers which it would up by the Court; but he was not bound to resort to S. 216 (10)and might proceed by way of a suit for the recovery of the statutory debt.

(12) This next point urged on behalf of the respondents is that the call of Rs. 2/- was made on 28th February 1947, and the period of limitation prescribed under Art. 112 of the Indian Limitation Act is three years from the date when the call is payable. According to this contention the Last date was 28th February, 1950. To this contention, the reply on behalf of the voluntary liquidator is that this call is not time barred as after the winding up the company, fresh call on this account was made by the voluntary liquidators with a view to regularise the first fall which had been made by the company in 1947. This is made clear in para 8 of the petition in C. O. 16 of 1960. It is stated there that the directors of the company had made a call on the shareholders before liquidation on 28th February 1947 of Rs. 2/- per share. Some of the contributories had paid that call and the voluntary liquidators would be making a fresh call in respect thereof.

The petition C. O. 16 of 1960 refers to a call of Rs. 1.50. In C. O. 28 of 1960 it is stated that the voluntary liquidators, in order to legalise the arrears of call of Rs. 2/- per share made in February 1947, had made a fresh call of Rs. 2/- or the contributories who were in arrears and that a notice was sent under registered cover and a specimen of the notice had been attached as annexure "B" with the petition. This call was made on 10th March, 1960 and was payable up to 31st March, 190. If the call relating to C. O. 28 of 1960 were not to be treated as a fresh call to one made in February 1947, the contention of the respondents that it is time-barred would prevail, but not otherwise. After the winding up, the liability to pay the call is *ex lege* and not *ex contractu*. After the winding up of the company, the obligation to make the payment is statutory and not contractual; *Mahomed Akbar Abdulla Fazalbhoy Vs. Associated Banking Corporation India Ltd.*, AIR 1932 240 (Privy Council) and *Prayan Prasad and Others Vs. Gaya Bank and Trades Association Ltd.*, . Reference may also be made to *Jagannath Prasad Vs. The U.P. Flour and Oil Mills Company Limited*, *Vaidiswara Ayyar v. Siva Subramania Mudaliar* ILR 31 Mad 66; *Sorabji v. Ishwardas Jugjivandas* ILR 20 Bom 654 and *In re Whitehouse and Co.* (1878) 9 Ch. D. 596.

In the last mentioned case Jessel, M. R. observed:

""That is a new liability; he is to contribute; it is a new contribution. It is a

mistake to call that debt due to the company. It is no such thing. It is no, as has been supposed, in any shape or way a debt due the company, but is a liability to contribute to the assets of the company.....It is quite true that a call made before the winding up..... is a debt due to the company, but that does not affect this new liability to contribution".

(13) It was then urged that no notice was given under S. 500(2) before winding up of the company. As the notice was mandatory, the winding up, it was contended, was bad. Notice of the resolution for winding up was published in two newspapers, the Hind Samachar and the Tribune, but it was not published in the official gazette. There was thus substantial compliance with the provisions of S. 500(2). If there is no compliance with the requirements of S. 500(2), the consequences of the default, as stated in sub-section (6) are that the company, or each of the directors shall be punishable with a fine. The meeting of creditors called by such a notice is not rendered invalid. Moreover, in the present proceedings the Court cannot go into the question of the validity of the liquidation. That matter can only be raised in proper proceedings; vide *J. C. Chandiok v. Pearey Lal* AIR 1942 All 136.

(14) The remaining point taken by the respondents is that neither C. O. 16 of 1960 nor C. O. 28 of 1960 has been signed by the other voluntary liquidator Shri H. D. Bhasin and therefore, both the petitions are bad. There is no force in this contention. There is a proper power of attorney in favour of Shri A.M. Suri duly signed by both the voluntary liquidators and there is also an application on the record on behalf of H. D. Bhasin stating that his name was inadvertently omitted in the heading of the petition although he had signed the power of attorney as well. He prayed that his name may be allowed to be added in the heading of the petition along with the of Jai Krishan Suri. In these circumstances, the petitions cannot be struck down on this ground.

(15) For reasons stated above, preliminary issues in both the petitions, C. O. 16 and 28 of 1960, are decided in favour of the petitioners.

(16) For evidence on remaining issues, case to come up on 1st December, 1961.

(17) Order accordingly.