(1930) 08 MAD CK 0024

In the Madras High Court

Case No : Original Petition No. 94 of 1922

R. Sabapathy Rao and Others — APPELLANT

Vs

Sabapathy Press Company Ltd. — RESPONDENT

Date of Decision : 25-08-1930

Acts Referred:

Citation : (1930) 08 MAD CK 0024

Hon'ble Judges : Venkalasubba Rao, J

Bench : Single Bench

Advocate : B. Somayya, T. Krishnaswami Ayyangar and T.M. Venugopala Mudaliyar, for Creditirs and Shareholders, for the Appellant; T.R. Arunachala Ayyar, for Official Liquidator, for the Respondent

Judgement

Venkalasubba Rao, J.—I have to deal with this claim in the winding-up proceedings. A creditor, Pola Sankariah by name, applied to the liquidator for payment of his debt, He failed to comply with the request and I have now to decide whether the creditor''s claim is well-founded.

2. To make the point at issue clear, I must, briefly set forth the course taken by these liquidation proceedings. The petition to wind up this company (The Sabapathy Press Co., Ltd.) was tiled on the 8th of May 1922. Kumaraswami Sastri, J. dismissed the petition on 30th November 1022 holding that no valid grounds existed for making an order of compulsory winding-up. Against this order, an appeal was filed, and on 5th November 1924 the Appellate Court set it aside and remanded the petition to the Original Side for fresh disposal. The matter then came up before Beasley, J. (as he then was), and on the 9th of April 1927 he made an order referring two questions to the Official Referee. With one of those questions we are directly concerned. That related to the debt now claimed as due by the creditor. It was then pleaded that that debt was discharged either by payment or adjustment on the 31st of December 1921. The Official Referee submitted his report, finding, inter alia, that the debt due to the applicant was not discharged as alleged. Beasley, J. accepted the Official

Referee''s findings, found that the Company''s affairs were in a very unsatisfactory state and made an order, dated 16th November 1927, directing the Company to be compulsorily wound up. Mr. Venkata Rao, by dubious methods (this is the effect of the judgment of" Beasley, J.) acquired a dominant position in the Company and, by adopting an aggressive and high-handed attitude, used that position to gain dishonest advantage for himself, his relations, and friends. A firm known as "K.V.S.R." which, as the learned Judge observes, was Venkata Rao''s own firm, was appointed treasurers of the Company and some of the Company''s factories were leased to this firm on terms highly detrimental to the Company. This K.V.S.R. firm in their turn sub-leased the factories making a large profit to a joint family concern of which the present applicant, Pola Sankariah, was a member. There were two factories, one at Tadpatri and the other at Adoni. The sub-lessees effected certain repairs to these factories and a large sum became payable to them on this head by the Company. The debt became due before December 1921. If amounted to about Rs. 25,000 This fact is not disputed. Before proceeding further, I may mention that the winding-up order made by Beasley, J. was confirmed on the 18th of April 1929.

3. His Lordship then dealt with the question as to whether the debt duo to the creditor was discharged either on the 31st December 1921. or on the ''Mat December 1922 and found as follows:

I therefore find that neither on the 31st of December 1921 nor on the 31st of December 1922 was the debt duo to the creditor discharged by payment or adjustment.

4. Then there is another question that the, liquidator raises. I have already said that, the petition for winding-up was originally dismissed in 1922. Till the winding-up order was made in 1927, Mr. Venkata Rao continued to act as the Chairman of the Board of Directors. On the 10th of December 1926, in that capacity, he entered into a settlement of accounts with the creditor in question. It was found that the debt was reduced to Rs. 19,967-3-9. The creditor wants to abide by this settlement, and the question is, is if binding upon the liquidator? The capital of the Company is represented by 500 shares. Mr. Somayya appears for persons owning 312 shares and Mr. Venugopala Mudaliar for a gentleman holding 9 shares. On behalf of these shareholders, I am asked to treat the settlement as binding. Then there are three creditors of this Company, two represented by Mr. Somayya and one by Mr. T.K. Krishnaswami Aiyangar. On behalf of these creditors also, if is staled that the settlement should be I roiled as binding. In the view that the settlement is beneficial to the Company, the liquidator now concurs. My decision, therefore, is that the settlement, dated the 10th of December 1926, must be taken as binding.

5. In regard to this debt, there is a further question raised. In the case of a winding-up by the Court, the winding-up dates from the presentation of the petition (Section 168 of the Indian Companies Act). In this case, nearly six years elapsed between the presentation of the petition and the winding-up order. I

have already said that the petition was presented on the 8th of May 1922 and the winding-up order was made on the 9th of April 1927. The question I am asked to decide is whether interest is to be computed or not subsequent to the winding-up. It is not disputed that the debt carries interest. The law on this point is stated thus in Palmer''s Company Law (12th Ed., page 439):

When a company has been ordered to be wound up, the interest upon debts which carry interest ceases to run from the date of the winding-up order, unless the assets are enough to pay all debts in full.

6. The point was first fully considered in In re Humber Iron Works and Shipbuilding Co. (Warrant Finance Company''s case) (1869) 4 Ch. App. 648. The position of the creditors, Sklwyn L J. observes, must be considered under two aspects first when there is, and next when there is not, a surplus. Where the estate is insolvent, nothing should be allowed for interest, but the opposite rule applies where the estate is solvent, that is, where there is a surplus. In the latter case, in whatever manner the dividends may originally have been made, if it turns out that there is an ultimate surplus, the account must be taken as between the company and the creditors in the ordinary way; that is, by applying each dividend in the first place to the payment of the interest due at the date of such dividend and the surplus, if any, to the reduction of the principal. The rule that interest is payable notwithstanding the winding-up when there are surplus assets is also laid down in In re W.W. Duncan and Co. (1805) 1 Ch. 307. This is now treated as settled law. This question was considered in a Lahore case and this principle was applied. Shadi Lal J., after stating the rule in the terms I have just mentioned, proceeds to lay down the test of solvency. The company''s, solvency is established, if, after payment of the principal and interest up to the date of the winding-up, there are some assets sufficient to meet the liability on account of interest accruing alter the commencement of the liquidation, Ghanshyam Das v. Public Banking and Insurance Co. ILR (1919) 1 Lah. 154. The same view was taken in another Lahore case, Devi Dilla Mal v. Official Liquidator, Amritsar Bank, Limited I.L.R (1920) 1 Lah. 368. In the present case, it is admitted that even after ail the creditors are paid in full, there will be a substantial balance available for meeting the claims of the contributories. I therefore hold that interest has not ceased to run from the date of the winding-up order.

7. Thesis I understand, are the only three points in regard to which the liquidator wants my directions in respect of this debt. In the light of my judgment, the parties are directed to bring in a statement, showing the amount due to the applicant.

8. The matter will stand adjourned a, week for this purpose. The applicant''s costs, which I fix at Rs. 400, must, be paid out of the assets. I do not propose to allow the liquidator his costs, but, as ho does not press for them, I need not give my reasons.

[His Lordship next, dealt with the question of unpaid dividends and the claim of Hanumanthappa, a creditor.]

9. I shall now proceed to deal with the claim of Messrs. R.D. Lakshmi Das and Co., represented by Mr. T. Krishnaswami Aiyangar, their Counsel. They claim Rs. 3,381-13-6 in respect of goods supplied to the Company between the commencement of the winding-up?that is, the presentation of the petition?and the winding-up order. The effect of a, winding-up order u/s 227(2) is to avoid all dispositions of the property of the Company made between these two dates, unless the Court otherwise orders; that is to say, the winding-up order has a retrospective effect. What are avoided under the section are dispositions by the Company of its property. But even payments by the Company after the commencement of the winding-up are avoided unless sanctioned by the Court. See Lindley on Companies, [6th ED.] Vol. II, page 899.

10. Where payments are honestly made and in the ordinary course of business, it is usual for the Court to allow them (Palmer''s Company Law, [12th Ed.], page 220).

11. In regard to dispositions pending petition, the practice of the Court is to allow them if made honestly and in the ordinary course of business. (Palmer, page 426 and Lindley, Vol. II, page 900.)

12. But what we are here concerned with is neither a disposition of property nor a payment. The Company contracted to purchase goods and actually took delivery of them. Section 227(2) does not in terras apply to such a transaction; but in Gosling v. Gaskell (1897) A.C. 575 (H.L.). Lord HERSOHELL, seems to assume that, once the winding-up order is made, the Company becomes as from the date of the petition incapable of entering into contracts without the sanction of the Court (page 591). In the present case, it is conceded that the goods were purchased by the Company in the ordinary course of trade. I therefore confirm the transactions.

12. As regards the amount, it is admitted that Rs. 50 must go out from the amount claimed. Out of the balance of Rs. 3,331-13-6, I authorize payment of that sum less Rs. 500 with interest, at 9 per cent per annum from the 1st of January 1927. As regards the sum of Rs. 500 shown against the 15th of December 1926, it is described as a hand-loan paid to Mr. Venkata Rao who purported to receive it as the Chairman of the Board of Directors. Whether the liquidator is bound to pay this sum or not, I do not wish to decide at present. Granting that the liquidator is not bound to pay this sum from the assets of the Company, it may be open to the creditor to ask that it should be paid over to him from any amount, to be found payable by the Company to Mr. Venkata Rao. This point I must reserve for future consideration. The applicant''s costs, which I fix at Rs. 150, shall come from the assets. The liquidator may pay himself Rs. 50 for his costs. I also direct that Mr. Gopalaswami Mudaliar be paid from the assets the costs of his application, which I fix at Rs. 50.

