(1955) 04 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 130 of 1954

Raja Surrindar Singh and others — APPELLANT

Vs

P.B. and A. Products Co. Ltd. and others — RESPONDENT

Date of Decision : 22-04-1955

Acts Referred:

Companies Act, 1956 — Section 221
Companies Act, 1965 — Section 166

Citation : (1955) 04 P&H CK 0014

Hon'ble Judges : Chopra, J

Bench : Single Bench

Advocate : Dalip Chand, for the Appellant; L. Atma Ram, for the Respondent

Judgement

Chopra, J.—Certain preliminary objections to the maintainability of this petition under S. 166, Indian Companies Act are raised by the official liquidators of the respondent-company (in voluntary liquidation). The case has been heard on the following preliminary issues?

1. Have the petitioners, as fully paid-up contributories, no locus standi to file this petition? ?On respondent.

2. Is the petition properly signed and verified? ?On petitioner.

3. Whether the petition is not maintainable because of an earlier petition by S. Santokh Singh under S. 221, Indian Companies Act, which is still pending??On respondent.

4. Has the petition not been properly filed on behalf of Princess Rajindar Kumari of Lambi and Rani Ranbir Kaur of Kalsia? If so, what is its effect??On respondent

5. Is petitioner No. 1 (Col. Raja Surrindar Singh) estopped from presenting the present petition??On respondent.

(2) As regards issue No. 1, it is urged that all the petitioners are holders of fully paid-up shares and they therefore ought to have alleged in the petition that, on

the winding-up of the company, there will be left, after providing for liabilities of the company and payment of expenses of winding-up, a substantial surplus for being distributed among the share-holders. As no such allegation is made the petition is liable to be summarily dismissed without going into its merits. Reliance in this connection is placed on Ss. 156 and 158, Indian Companies Act and the decision in - ''Bharat Bank Ltd. v. Lajpat Rai Sawhney'', AIR 1950 EP 328 (A). The main basis of the contention is that a fully paid-up share-holder of a limited concern, as provided by S. 156, is not required, in the event of its winding-up, to contribute to the assets of the company. That being so, he cannot be regarded as a "contributory", as the term Is defined by S. 158; and consequently he cannot present an application for an order of compulsory winding-up under S. 166 of the Act.

3. An application for winding-up of a company, under S. 166 of the Act, may be presented either by the company, or by any creditor or creditors, contributory or contributories, or by all or any of those parties, together or separately, or by the Registrar. The question that arises is whether a fully paid-up share-holder is a "contributory", as the term is used in the section, and therefore, entitled to present an application. In this connection, it may be useful to reproduce the objection as contained in the reply submitted by the respondent Para. 1 of the preliminary objections says?

The petitioners have no locus standi to file this petition. They are all fully paid up contributories and it has nut been alleged that on the winding up of the respondent Company, there will be any surplus left after providing for the liabilities of the company and the expenses of winding up, to be distributed amongst the contributories.

The position now taken by the respondent is somewhat different from the one taken in the reply. There, it is not denied that the petitioners are "contributories", though they are holding fully paid-up shares. In spite of it, the contention is without substance.

4. Section 158, Indian Companies Act says?

The term ''contributory'' means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

This section, in no way, defines the persons on whom the liability created by it is to attach, but it refers to the liability under the Act and leaves it to be collected from other parts of the Act on whom the liability is intended to be fixed. The only provision in the Act, which describes the persons who are to be liable, is the one contained in S. 156. It is, therefore, to the description contained in that section that S. 158 must be taken to refer.

5. By virtue of S. 156, every present and past member of a company, in the event of its being wound up, is liable to contribute to its assets to an amount sufficient for payment of its debts and liabilities and the costs, etc. of the winding-up, and also for the adjustment of the rights of the contributories among themselves. One of the qualifications attached to this liability is that, in case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member. Reading this section apart from the qualifications, there can be no doubt as to the persons upon whom the liability is fixed. It is clearly fixed upon the present and past members of the company, and the present and past members must be "contributories" within the meaning of S. 158. The first part of S. 156, in effect, describes the persons to whom S. 158 refers.

The above qualification contained in sub-cl. (iv) of S. 156(1) does not derogate from the description given in the first part of the section. On the contrary, it assumes all the members to be liable, and merely provides in what cases and to what extent the liability is to be enforced against them. A fully paid-up share-holder is equally liable to contribute and does contribute to the assets of the company under S. 156 and he would, therefore, be included in the term "contributory", although one of the qualifications laid by the section places certain limitations on such liability.

6. Part V of the Indian Companies Act deals with "Winding Up", and the two sections (156 and 158) of this part fall under the series headed as "contributories". Possibly, there may be some slight justification in the argument that in this series of sections the word "contributories" is used in a narrower sense, namely, the holders of partly paid-up shares. But, when one looks at the scope and purpose of the Act and examines its other provisions no room is left for any doubt. The series of sections, which follow and are headed as "Winding up by Court", "Official Liquidator" and "Ordinary powers of Court", leave no doubt that the word "contributories" is really used as synonymous with the word "members". In these provisions no distinction can be made between fully-paid and partly-paid share-holders, and both being "members" are to be deemed included in the term "contributories" used therein. For instance, in S. 167, an order for winding up of a company shall operate in favour of all the creditors and of all the contributories of the company. It would be difficult to say that the holder of a fully paid-up shares is meant to be excluded from the category of "all the contributories".

In S. 173, which deals with the power of Court to stay winding-up, it is again obvious that "contributory" includes the holder of fully paid-up shares. Section 174 provides that the Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. Wishes of the fully paid-up share-holders in this connection would be equally important and worthy of consideration. Section 177-A enjoins upon the Directors, Secretary, Manager or any other chief officer of the Company to submit to the official liquidator a statement of the affairs of the company, containing the particulars mentioned in the section, within twenty-one days of the winding up order. Sub-section (6) provides that

any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

Can it be said that partly paid-up share-holders alone are entitled to the benefit of this provision? The answer cannot but be in negative. Under S. 178-A, the official liquidator is required to convene a meeting of the creditors, and within one week thereof a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications. Here again, the word "contributories" stands for the members of the company without any distinction. The same would be true with respect to the authority of the "contributories" to give any directions to the official liquidator by passing a resolution at a general meeting, as provided by S. 183 (1). Sub-section (2) of this section authorises the official liquidator to summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes.

7. Similarly, in the series of sections headed as "Ordinary powers of Court", the word "contributory" has to be taken to have been used in that sense. Section 185 empowers the Court to require any contributory to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, debt or documents in his hands to which the company is prima facie entitled. Section 186 gives the court power to make an order on any "contributory" to pay, in manner directed by the order, any money due from him to the company. Under S. 187 the Court may make calls for satisfaction of the debts, liabilities etc. of the company and also for the adjustment of the rights of contributories among themselves. Much argument is not required to impress that the word "contributories" in these sections is used interchangeably for "members." Moreover, the right that the "contributories" have for adjustment among themselves clearly shows that a fully paid-up share-holder is not a totally dis-interested person in the winding up of the company. The word "contributory" in other sections under this heading, such as 188, 190 and 192, must also be interpreted in the wider sense.

8. There are various provisions relating to "Voluntary winding up", in which the word "contributory" must necessarily be taken to have been used in that sense. Section 212(2) enjoins upon the liquidator to pay the debts of the company and also to adjust the rights of the "contributories" among themselves. Section 215(2) gives the right of appeal to a "contributory" against any arrangement that may be entered into between the company and its creditors under sub-s. (1) of the section. Section 216 (2) entitles "any creditor or contributory" to apply for an order setting aside any attachment, distress or execution put into force against

the estate or effects of the company. It would be going against the very purpose of these and other similar provisions if the word "contributory" used therein is limited to mean only the holder of partly paid shares. There is no acceptable reason to exclude the fully paid-up share-holders from their operation or from the benefits thereof.

9. No exception need necessarily be created in the case of the provisions of S. 166. A "contributory" under this section is entitled to present an application for the winding up of a company. There is no particular reason why this right should be limited to a holder of partly paid-up shares. A fully paid-up share-holder is equally interested in the affairs of the company and their proper settlement. His interest is not merely confined to a share in the surplus assets. and then, he has a right of adjustment among the members themselves. His right to present an application, therefore, cannot be made to depend upon his alleging and proving that, in case of winding up, there will be substantial surplus for distribution amongst the share-holders. To hold otherwise would be unreasonably limiting the scope of S. 166. In fact, a fully paid-up shareholder has greater interest in the affairs of the company as compared to a share-holder who has not paid the full amount, and consequently, there would be no justification in placing the former in a less advantageous position. The word "contributories" in the section, in my opinion, includes a fully paid-up share-holder, and since no limitation in this connection is placed by the section itself he need not allege or prove that, in case of winding-up, there will be substantial surplus for distribution among the share-holders.

10. I am supported in the view that I take by another clear provision in the Act. Section 170, inter alia, lays down that the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets. If the application of a fully paid-up share-holder cannot be dismissed on the ground that the company owns no assets, why should he be required to allege and prove, before his application can be considered on merits, that the winding-up shall leave a substantial surplus for distribution among the shareholders.

11. A provision similar to the one contained in S. 170, Indian Companies Act was introduced in England for the first time by S. 29, Companies Act of 1907 {7 Edw. 7 c. 50). Before this enactment, the view held in some of the cases was that a fully paid-up share-holder''s application may be dismissed ii he fails to allege and show that the company has assets to leave a surplus for distribution among the share-holders. Section 29 of the Act of 1907 was replaced by S. 141, Companies (Consolidation) Act, 1908, and then by S. 171, Companies Act, 1929; the latter is now reproduced as S. 225 in the Companies Act, 1948. Ever since 1907 the view has been that a fully paid-up shareholder lies under no disability and his application for winding-up need not necessarily fail simply because the company has no assets. The point is made clear at pages 56 and 57 of Palmer''s Company

Precedents (15th Edn., Part II) in the following terms:

A fully paid-up share-holder is a contributory, and as such entitled to present a winding-up petition. It was held in several cases before 1907 that being under no further liability, he must satisfy the Court that there will be a substantial surplus of either actual or probable assets divisible among the share-holders: - ''Re: Rica Gold Washing Co.'', (1879) 11 Ch D 36 (B); - ''Re Diamond Fuel Co.'', (1879) 13 Ch D 400 (C); but S. 29 of the Act of 1907 (replaced by S. 171 of 1929), provided that the Court shall not refuse to make a winding-up order on the ground that the company has no assets. This section appears to apply to a contributory''s petition. In - ''In re Kaslo-Slocan Mining and Financial Corpn.'', (1910) WN 13 (D), it was held that a shareholder who merely proved insolvency was not entitled to an order; but this case is very shortly reported, and it should be noted that the petition was opposed by a large body of share-holders. Other cases show that the insolvency of the company does not debar a share-holder from obtaining an order where there is a case for investigation, or other good reason for a winding up order.

At p. 500 of the same volume, it is stated that a holder of fully paid shares is a contributory for the purposes of adjusting the right of contributories.

12. Arthur Stiebel in his "Company Law and Precedents" at pp. 823 and 824 says?

Under the old Act it was held that a contributory included a fully paid share-holder, because he was liable to contribute to the assets of the company under S. 38 of the Act of 1862 (156 of the Indian Companies Act No. 7 of 1913), although it was true that the later words of that section took away such liability.

As regards his right to present an application for winding-up the author observes?

A fully paid share-holder will, however, have to prove and allege in his petition that there will be substantial assets for distribution among the share-holders, though possibly, since the Companies (Winding-up) Act, 1890, less will in some cases have to be shown in this way than formerly.

13. The view, in England had thus been gradually developing that insolvency of a company should not necessarily disentitle a fully paid-up share-holder to apply for its winding-up. In - ''In re Aidall, Ltd.'', (1933) 1 Ch 323 (E) the question was whether a fully paid-up share-holder could be regarded as a contributory for the purposes of Ss. 164 and 165, Companies (Consolidation) Act, 1908 (corresponding to Ss. 185 and 186, Indian Companies Act No. 7 of 1913), and consequently whether the court had jurisdiction to order payment of debts due from him to the company. It was contended that a "contributory" for the purposes of these sections only meant a person who was liable to contribute to the assets of the company in respect of his shares. Reliance in this connection was placed on the definition of the term "contributories" contained in S. 124 (same as S. 158, Indian Companies Act). Maugham J. did not accept the contention and observed?

In my opinion the proper course there is to hold that ''contributory'' is not limited to the narrower meaning of persons who owe money to the company in respect of their shares, but that unless such a share-holder is for the time being settled on the list of contributories the Court has no jurisdiction under these sections.

Before arriving at this conclusion the learned Judge, on a reference to the various relevant provisions of the Act of 1908, remarked?

It is unfortunate that in this Act, and in the Acts which it supersedes, the term ''contributory'' is used in a large number of places, not as limited to holders of partly paid shares, but as including holders of fully paid shares in the company.

Dealing particularly with Ss. 137 and 138 (corresponding to Ss. 166 and 167 respectively of the Indian Companies Act of 1913), the learned Judge expressed the view:

In S. 137, which deals with the parties who may apply to the Court for winding-up a company, it is obvious that a contributory includes a holder of fully paid up shares. In S. 138 the word ''contributory'' again must be used in the same wide sense.

Appeal against this decision was dismissed with the single observation?

Really it is impossible to add usefully to what has been said by Maugham J.

14 In - ''In re National Savings Bank Association'', (1866) 1 Ch 547 (F), it was held that a fully paid-up share-holder in a limited company could present a petition under the Companies Act, 1862, for winding up the company because he is a contributory within the meaning of the term as used in the English Companies Act, 1862.

15. In - ''In re Anglesea Colliery Co.'', (1866) 1 Ch 555 (G), it was again held that a holder of fully paid-up shares in a limited company is a "contributory" within the meaning of the Companies Act, 1862. It was consequently held that where under a voluntary winding-up all debts had been provided for, the liquidators were justified in making a call upon the partly paid-up share-holders for the purpose of adjusting the rights between them and the fully paid-up share-holders.

16. In Halsbury''s Laws of England, II Edn., Vol. V, (p. 554) it is stated:

A fully-paid share-holder may, as a contributory, present a winding up petition and the Court cannot refuse to make a winding up order on the ground only that the assets have been mortgaged to an amount equal to or in excess of those assets or that there are no assets.

At the footnotes it is mentioned that the cases decided before 1907 are modified by the express provision introduced in S. 29 of the Act of 1907.

17. It is correct that a contributory may not be entitled to an order in a case where there is no ground for a winding-up order except insolvency and the

petition is opposed by other share-holders. But that is a question to be decided on the merits of each case. The Court has a discretion and may refuse to make an order on a contributory''s petition where the circumstances do not justify a winding-up order. The Court will more readily make the order if the contributory alleges and proves that there is a reasonable probability of a surplus being left for distribution amongst the shareholders. A contributory to obtain an order of winding-up has to make out a special case, for the Companies Act establishes a domestic tribunal as between the members of the Company and thus enables the members themselves, by passing the requisite resolution, to determine whether there shall be a voluntary liquidation or whether the court shall be asked to make a compulsory order. The case usually to be made out is that it is just and equitable that the Company shall be wound up because the substratum of the company is gone.

18. Now coming to the decisions in India, it may be observed that, with the exception of AIR 1950 EP 328 (A), on which reliance is placed by the respondent, the general view is that the term "contributory", as used in most of the sections in Chap. IV, Indian Companies Act, 1913, includes a fully paid-up shareholder, and consequently a fully paid-up shareholder may apply for compulsory winding-up without alleging or proving that, in case of winding-up, there shall remain a sufficient surplus for distribution among the shareholders. In - Babu Parshottam Das Vs. Official Liquidator, Gorakhpur Electric Supply Co. Ltd., it is held that the term "contributory" as used in S. 186(2) includes a fully paid-up shareholder and accordingly where a limited company goes into liquidation and a winding-up order is passed by the court, such a shareholder cannot claim a set-off in respect of sums due to the company from him against any sums that may be due from the company to such shareholder. A similar view was taken by a Division Bench of the Madras High Court in - Narayandas Girdhardas Vs. P. and O. Banking Corporation Ltd., , and it was held that fully paid-up shareholders are contributories without any qualifications.

19. In - ''Imperial Oil Soap and General Mills Co. Ltd., Delhi v. Ram Chand'', AIR 1916 Lah 78 (2) (J), the petitioner for compulsory winding-up was recorded in the company''s books as a shareholder in respect of fully paid-up shares. The locus standi of the petitioner was challenged, on, inter alia, the ground that a fully paid-up shareholder is not a contributory within the meaning of S. 158 of Act 7 of 1913. Shadi Lal J. (as he then was) repelled the objection in the following terms:

Upon the first point it is sufficient to say that S. 158 is in to ''idem verbis'' with the corresponding section in the English Act, and that it has been repeatedly held in England that a fully paid-up shareholder is a contributory and may present a petition for winding-up.

20. In - The Sabapathi Rao Press Co., Ltd. Vs. R. Sabapathi Rao and Others, , it is held that the qualification contained in Cl. 4 of S. 156, that a member shall not be liable to pay more than the unpaid amount of his share, does not make him

the less a contributory in the particular case where the capital is fully paid-up, and a petition for winding-up by members who have paid up their share capital fully is maintainable under S. 186.

21. In - In re In Re: The Cine Industries and Recording Co. Ltd., Chagla J. (as he then was) dealing with an identical objection observed:

There is another important fact to be borne in mind. This is a shareholder''s petition. It is true that as the law stands today, he is under no disability as compared with a contributory nor is he under any obligation, as he at one time was, to satisfy the court that on a winding-up there would be surplus assets.

The learned Judge then went on to consider the facts of the case and dismissed the shareholders'' application for compulsory winding-up on merits.

22. Both the points (1) whether a fully paid-up shareholder is included in the term "contributory" as used in S. 166 and (2) whether, in his petition for compulsory winding-up, it is necessary for him to allege and prove that there will be a tangible surplus for distribution amongst the shareholders, were fully discussed by Krishnaswami Nayudu J. in - S.V. Angidi Chettiar Vs. Nataraja Textiles Ltd., The first point was disposed by the learned Judge with the observation:

It is established beyond any controversy that though the definition of "contributory" would raise a doubt as to whether a fully paid-up shareholder would come within the term, he is a ''contributory'' and can, under S. 166, Indian Companies Act, file a petition for winding up as any other contributory. Apart from the English decisions, Indian courts have placed this beyond any dispute.

As regards the second, it was observed that "a fully paid-up shareholders'' interests in the company cannot be said to be non-existent simply for the reason that he cannot show that there will be a surplus in which he will be entitled to be paid out" and that "there is no compelling ground to depart from the terms of S. 166, Indian Companies Act to impose limitations on the right of a fully paid-up shareholder to maintain a petition for winding-up". After discussing the various authorities and also the contrary view taken in AIR 1950 EP 328 (A), the learned Judge concluded as follows:

I am, therefore, of opinion that a fully paid-up shareholder can maintain a petition and it is not necessary for him to allege and prove and show a prima facie case that there are assets of the company of such amount that will be available in the winding up, and in which he will have a tangible interest. A petition by a fully paid-up shareholder contributory must be treated as any other petition for winding up by any creditor or other contributory and each case must be disposed of on its merits.

For the reasons already recorded I am in respectful agreement with this view.

23. In AIR 1950 EP 328 (A), Kapur J. while accepting that every holder of fully

paid-up shares is a "contributory" as he is entitled to share in the adjustment of the rights of the contributories among themselves, expressed the opinion that where such a shareholder "files an application for winding up and (1) does not allege that there is a surplus & (2) does not give prima facie evidence of the likelihood of there being some tangible surplus, he is not entitled to bring under the law a winding-up petition because he has no interest in winding-up and is not a contributory within the meaning of S. 166, although for the purpose of adjustment he will come within the definition of the word contributory.

In arriving at this conclusion the learned Judge relied upon the English cases decided before 1907, and did not take into consideration the change brought in by the introduction of S. 29 of the Act of 1907. These earlier decisions as already observed, should be regarded as modified by amendment of file law on which they were based.

24. It may be mentioned that in the case before me, the company has already decided to go into voluntary liquidation, and the present petition is being opposed by its liquidators. Before issuing notice for the meeting at which the resolution for winding-up was passed, the Directors had, as required by S. 207, Indian Companies Act, made a declaration, verified by an affidavit, to the effect that they were fully satisfied that the company would be able to pay its dues in full within a period of three years. This declaration is dated 5-11-1952 and was duly supported by a report of the company''s auditors. The declaration, supported as it is by the auditor''s report, may be regarded as a prima facie evidence of the company''s solvency. Another significant fact that needs mentioning is that the petitioners Nos. 8 and 13, namely S. Santokh Singh and Dr. Balwant Kaur, besides being fully paid-up shareholders, are also creditors of the company to the tune of Rs. 30,000/- and Rs. 74,000/-. This fact alleged in the petition is admitted by the respondent.

25. For all these reasons I would repel the objection and decide issue No. 1 against the respondent.

26. Rest of the issues need not detain me long. I do not find anything wrong with the signature or verification on the petition. It is signed by counsel for the petitioners, and bears the verification of one of the petitioners as provided by R. 10 of the Rules. It is urged that Bibi Mahesh Kaur, petitioner No. 5, has been out of India since 10-9-1954, and hence no instructions were or could have been given by her on 2830-1954, when the petition was presented. S. Santokh Singh, petitioner No. 8, who is the father of Bibi Mahesh Kaur, has sworn in reply that proper instructions for presenting the petition were obtained from her before she left for England.

27. Practically nothing has been said in support of the objection which is the subject-matter of issue No. 3 Sardar Santokh Singh is only one of the thirteen petitioners. Application on his behalf under S. 221,Companies Act, for winding-up subject to supervision of Court, which is still pending and is to be decided along

with this petition, cannot be regarded as a bar to the present petition under S. 166. As to the effect of it, the matter can be considered at the time of final hearing of the petition.

28. Rani Sahiba Ranbir Kaur of Kalsia and her daughter Princess Rajindar Kumari of Lambi are joint holders of six hundred fully paid-up shares. Both of them are, therefore, jointly shown as petitioner No. 4. The objection is (1) that Mr. Balraj Tulli, by whom the petition is signed, holds no Vakalatnama on behalf of Princess Rajindar Kumari, and (2) that the signature of Rani Ranbir Kaur was obtained on a blank power of attorney, without letting her know that it was meant for presenting a winding-up petition on her behalf. The objection has no force. In case of joint holders of any shares, Art. 91 of the Articles of Association of the Company provides that the member whose name stands first in the register shall be entitled to vote in respect of such shares, the other or others of the joint holders are only entitled to be present at the general meetings. It is not denied that Rani Ranbir Kaur''s name stands first in the register of members. Under Art. 153 of the same articles, any one of several persons who are registered as the joint holders of any shares may give effectual receipts for all the dividends and payments in respect of such shares. It is correct that these provisions do not expressly authorise one of the joint share-holders to present a petition for winding-up on behalf of others, but I do not see anything inherently wrong in a petition on his or her own behalf and in respect of those shares. As regards the second objection, reliance is placed on para. 3 of S. Sewa Singh respondent''s affidavit. It says:

That Rani Sahiba Ranbir Kaur of Kalsia - petitioner No. 4 - met me on or about 17-11-1954 at New Delhi and informed me that she had merely signed a blank Vakalatnama sent to her at Mussoorie by the Raj-Mata of Patiala without being aware of the purpose for which it was to be used and that she had not given any instructions of any type in the matter to any Advocate or any other person. She told mc that she was ignorant of the contents of the petition filed on her behalf along with other persons and of the allegations made therein against the Deponent.

Learned Counsel for the respondent has not been able to satisfy me as to its admissibility. It amounts to proving the statement of Rani Ranbir Kaur without the same having been put to her. Moreover, this petition was duly advertised and it is pending for the last so many months. Rani Sahiba has not come forward to oppose it or press her disapproval, even though she is alleged to have been informed about it by the respondent on 17-11-1954. The issue is, therefore, decided against the respondent.

29. With respect to petitioner No. 1, Raja Surrindar Singh, it is contended that he is estopped from presenting this petition because (1) he was present in and took part in the proceedings of the general meeting held on 12-4-1953, when the resolution for voluntary winding-up was unanimously adopted, and (2) he, as one of the liquidators, was a party to the reply submitted on behalf or the

company opposing S. Santokh Singh''s application under S. 221, Companies Act. Validity and enforceability of the resolution dated 12-4-1953 is being challenged in the petition, and the application of S. Santokh Singh is pending decision along with this petition. It would, therefore, be premature to express any opinion on either of the points at this stage. Moreover, decision of the issue either way will not finally dispose of the case as Raja Surrindar Singh is only one of the several petitioners. Issue No. 5 can, if pressed, be decided at the time of the final hearing.

30. Preliminary objections having been disposed of, the case shall come up on 29th April for further proceedings.

