(1957) 02 AP CK 0013

In the Andhra Pradesh High Court

Case No : Original Petition No. 11 of 1956

(sic)aldu Anantha Raghurama Arya — APPELLANT

Vs

(sic)st Coast Transport and Shipping Co. (Private) and others — RESPONDENT

Date of Decision : 08-02-1957

Acts Referred:
Companies Act, 1956 — Section 397, 398, 433, 439

Citation : (1957) 02 AP CK 0013

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : P. Somasundaram and P. Suryanarayana, for the Appellant; A. Siva Rao (for No. 8), M. Sitarama Rao (for No. 1); K. Suryanarayana, K.V. Ayyappa Sastry, C. Obulpathi Chaudary (for No. 3) and M. Seshachalapati, K. Suryanarayana and C. Obulapathi Choudary, (for No 4), for the Respondent

Judgement

Satyanarayana Raju, J.—This is a petition filed under Sections 433 and 439 of the Indian Companies Act (I of 1956), for an order that the East Coast Transport and Shipping Company (Private) Limited, Masulipatam, be wound up and for certain other incidental reliefs.

2. The East Coast Transport and Shipping Company, Masulipatam (hereinafter referred to as "The Company") is a private Limited Company which was incorporated under the Indian Companies Act, in the year 1937. Its authorized and paid up share capital is Rs. 2,00,000/- divided into forty shares of Rs. 5,000/-. These forty shares are held by five share-holders, viz., the petitioner and respondents 2 to 5; the petitioner and respondents 2 and 3 owning ten shares each and respondents 4 and 5 owning 5 shares each.

The main activity of the Company consists in conducting the business of clearing and forwarding agents for loading goods in the Masulipatam Port into ships which anchor at a distance from the shore through country craft owned and possessed by it Among the properties acquired by the Company on its formation are the rights, interests and the benefits of all existing contracts then possessed by P.V.

Rangayya of Masulipatam and his family. Contemporaneously with its formation, the Company entered into an agreement with the said Rangayya as a consequence of which his business of stevedoring was taken over by the Company as a going concern. The third respondent was the former Managing Director of the Company and the petitioner is its present Managing Director, he having been appointed at a meeting of its Directors to serve for the period from 15-7-1955 till 31-3-1957.

3. The grounds on which the relief is claimed are set out in paragraph 13 of the petition and they are:

In view of the serious misunderstandings and loss of confidence among the two rival parties of this Company often resulting in deadlock and loss of business to the Company, in view of the avowed intention expressed by all the shareholders to wind up this Company, a fact demonstrated by the resolution of 26-8-1956, in view of the hostile attitude of respondents 3 to 5, motivated by a desire to injure the interests of this Company to promote their rival business in the same field, it is but just and equitable that the 1st respondent Company should be wound up.

A further ground on which the petition is founded is that respondents 3 to 5 drew a sum of nearly Rs. 50,000/- from Maiden & Co., in which the 1st respondent Company and respondents 3 to 5 own each half a share, during the course of their management of the Company by respondents 3 and 4 from 1950 upto July 1955, arid that in spite of repeated requests by the petitioner as Managing Director to reimburse the Company, the respondents 3 to 5 failed to do so. This, it is alleged, amounts to misappropriation of the funds of the Company by respondents 3 to 5.

4. The 2nd respondent has, in his counter affidavit, supported the petitioner''s case and prayed that the petition might be granted.

5. The 3rd respondent, while stating that it is neither Just nor equitable to make an order for winding up of the Company, submits that if this Court were to come to the conclusion that the administration of the Company could not be carried on with any advantage to the share-holders, the boats and other assets of the Company should be divided among the share-holders so that they might develop their own business.

6. The effective opposition to the petition is by respondents 4 and 5.

7. Section 433 of the Companies Act enumerates the circumstances in which a Company may be wound up by a Court:

(a) If the Company has, by special resolution, resolved that the Company be wound up by the Court;

(b) If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) If the Company does not commence its business within a year from its

Incorporation, or suspends its business for a whole year;

(d) If the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(e) If the Company is unable to pay its debts;

(f) If the Court is of opinion that it is just and equitable that the company should be wound up.

8. None of the grounds mentioned in clauses (a) to (d) form the basis of the petition. Clause (e) also is not applicable because it is common ground that the Company has no debts to pay. The only ground on which the petitioner, therefore, claims relief is under clause (f), that is, that it is "just and equitable" that the Company should be wound up.

9. Here it is necessary to mention that the 4th and 5th respondents have filed an application No. 95 of 1956 under Ss. 397 and 398 of the Companies Act for the appointment of an administrator to administer the affairs of the Company and for associating both of them with the said administrator in the management of the Company. The averments contained in the affidavit filed in support of this application are that the petitioner and the 2nd respondent are anxious to liquidate the company so that they might purchase the assets of the company at a low price, that the 3rd respondent is also actively associating himself with the business started by his brothers and therefore he is not put to loss if the Company is wound up. Therefore, while according to them it is neither "just nor equitable that the company should be ordered to be wound up, it is necessary that an administrator should be appointed.

10. Respondents 4 and 5 have also filed another application No. 96 of 1956 wherein it is averred that the Company was being managed by the petitioner with intent to defraud the company and its members and in a manner oppressive to them, and they therefore pray for an order declaring that the affairs of the Company ought to be investigated by an Inspector appointed by the Central Government.

11. In application No. 100 of 1956, respondents 4 and 5 sought for an interim order by was of appointing an interim administrator to mana(sic) the affairs of the Company during the pendency of Application No. 95 of 1956.

12. All these applications have been head along with the main original petition.

13. Now as has already been mentioned, respondents 4 and 5 oppose the main petition for compulsory winding up of the Company. It is contended for them that the Company is in a prosperous state earning large profits, that there a no debts to be Paid by the Company, and the misunderstandings per se would not justify order for winding up of the Company. Mr. (sic) shachalapathi, their learned counsel, has a argued that the words "just and equitable should be construed ejusdem generis was the matters mentioned in the previous clauses Section 433

of the Act.

14. In a recent decision of the Supreme Court in Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, , their Lordships (sic) that the words ''just and equitable'' specified Section 433 of the Companies Act were not to read ejusdem generis with the precede words of the enactment. After this pronouncement by the Supreme Court, it is not neces(sic) to consider the decisions which have taken view that the "just and equitable" clause on to be interpreted ejusdem generis with previous clauses.

15. I shall now proceed to consider the (sic)rits of the contentions raised by the petitioner the contesting respondents. The 3rd respondent was the Managing Director of the Company the middle of July 1955. The 4th respondent sent a petition to the Registrar of Compa(sic) Andhra, making several allegations of misa(sic)priation and falsification of accounts. The (sic)gistrar called upon the Company by means c notice dated the 24th December 1955 to offence explanation with regard to the allegations (sic)tained in the petition sent to him by the 4th respondent. On the 26th of August 1956, the (sic)tioner and respondents 2 to 5 i.e., all the s(sic) holders of the Company met at the register office of the Company and passed the following resolutions :

(1) It has been agreed to sell by auction (sic)fitably to the Company before 15-10-1956 the lowing properties, Viz., the assets of the Cor i.e., Godowns, buildings, sites, boats, I stocks and good-will and all other,property also the interests in other companies, the Maiden & Co., and. all other Companies, (sic) share-holders of the Company are request bring bidders by making the necessary and carrying on negotiations with others, been resolved to appoint the necessary appellant officer for carrying out this work.

(2) It has been resolved to proportion divide the balance of the amounts as per ac(sic) after auditing the accounts subsequent completion of the audit till 31-3-1956 and holding a general body meeting. The time for this has been fixed at 15-12-1956. It has, resolved that from this day till this busi(sic) done Sri P.V. Raghavayya Garu should Managing Director jointly with the Ms Director Jaldu Rama Rao Garu.

(3) For crediting in the current account the Andhra Bank and in the current account the State Bank, the drafts, cheques, T.(sic) due to our company from this day, for e necessary signatures and for drawing cheques gainst the current account of the Andhra Bank (sic)nd the current Account of the State Bank, both the Managing Director Jaldu Rama Rao Garu and (sic)e Joint Managing Director Sri P.V. Raghavayya Garu have been empowered to draw the (sic)eques after affixing their signatures and it has been resolved accordingly. The said cheques could contain the signatures of both of them but the cheque containing the signature of any one them is not valid. It has been resolved to send copy of this resolution to the aforesaid two banks.

16. It is agreed by all the parties that these solutions are not valid inasmuch, as

the requirements of the Companies Act have not been (sic)mplied with. The fact, however remains that the five share-holders were agreed in the company being wound up and for the distribution of assets in the manner provided in the resolutions. While not denying the fact that these resolutions were passed at the meeting of all the are-holders held on 26-8-1956, the 3rd respondent stated in his counter-affidavit that the petitioner and the 2nd respondent tricked them into (sic)sing a resolution for the sale of the assets of (sic) Company. He also stated that it was in a (sic)ling of disgust that he and respondents 4 and (sic)greed to the resolutions. The 4th and 5th respondents pleaded that the aforesaid resolutions (sic)e vitiated by fraud and misrepresentation.

17. These resolutions establish clearly the (sic)stence of serious misunderstandings among share-holders. That there are serious mis(sic)lerstandings between them is also clear from a Sing of the allegations contained in the affida(sic) of all the share-holders, though each one of them tries to Put the blame on the other.

18. The second ground on which the petitioner for winding up is rested is that there is a (sic)l concern also operating in the same port as ste-(sic)res under the name and style of M/s P.V. (sic)igaiah Sons & Co., of which the 3rd respondent (sic) is the General Manager. The 3rd respondent submitted in his counter-affidavit that find-(sic)vast scope for expansion of the shipping contact business at the port and finding that the (sic)pany was not in favour of expanding its (sic)ness by constructing more ''lighters'', his brothers thought it wise to start shipping business order to attract at least a portion of the trade was going to Kakinada Port from Krishna (sic)rict and other areas nearer to Masulipatam. He, however, denied that he and respondents (sic)d. 5 had any concern with that business. He denied that the firm of P.V. Rangaiah Sons (sic)o., ever competed with the business of the company. That Arm consists of five partners of (sic)m three axe the brothers of the third respondent and what is more important, the wife (sic)e 3rd respondent is also a partner of P.V. (sic)aiah Sons & Co. Therefore, though the 3rd defendant is not eo(sic)nomine a partner of that as is but natural, he is interested in promo. the shipping business of the firm. This was (sic)ct one of the complaints by the 4th respondent in his petition to the Registrar of Company Andhra, referred to supra.

19. The third ground of complaint made by petitioner is that the Company and the respondents 3. to 5 own each half a share in another any, called Maiden and Co., doing steamer (sic) by business, and that Instead of crediting profits that accrued to Maiden & Co.. respondents 3 to 5 drew a sum of nearly Rs. 50,000/- (sic)e course of the management of the 1st respondent Company by respondents 3 and 4 from 1950, upto July, 1955, and it is stated that this unauthorised and unlawful drawing appears from the accounts of the 1st respondent Company and also Maiden & Co.

It is averred by the petitioner that in spite Of repeated requests in writing by him as Managing Director to pay back this amount to the Company, respondents 4 and 5 failed to do so. In paragraph 16 of his counter-affidavit, the 3rd respondent admitted that the accounts of the Company might show a debit of about Rs. 50,000/-against Maiden & Co., but he submitted that some adjustments have to be made between the accounts of the Company and those of Maiden & Co., which might greatly reduce the debit. He further stated that this debit had been in existence for several years and it could not, in any view, be a ground for passing an order for winding up of the Company.

In paragraph 15 of their counter-affidavit, respondents 4 and 5 denied that an amount of Rs. 50,000/- was due from Maiden & Co. They averred that the adjustments made by the Company in its accounts in respect of the affairs of Maiden & Co., were not binding on Maiden & Co., as they had not been made with the consent or approval of the share-holders of Maiden & Co., and that in any view the accounts between Maiden & Co., and the 1st respondent Company could not be relevant in the matter of winding up of the Company.

20. While there is a definite averment made by the petitioner with regard to the sum of Rs. 50,000/-, there is an evasive denial by respondents 4 and 5, while the 3rd respondent admitted the fact but pleaded that it was necessary to make some adjustments and that if those adjustments were made, it would be found that a part of the amount had been satisfactorily accounted for. On the above averments it is not unreasonable to assume that at least partially there is a valid foundation for the averments made by the petitioner.

21. It may also be stated that respondents 3, 4 and 5 themselves have made allegations that the petitioner and the 2nd respondent are not conducting the affairs of the Company with a view to promote the interests of all the shareholders, and as has been already noted, respondents 4 and 5 themselves have filed applications for an enquiry into the affairs of the company by an Inspector appointed by the Central Government and also for the appointment of an administrator to administer the affairs of the Company.

22. From the above consideration of the respective averments made by the parties, it is safe to conclude (1) that there are serious misunderstandings among the share-holders of the Company; (2)'' that the 3rd respondent. is actively engaged in promoting the interests of a firm which is conducting the same business; and (3) that there has been no satisfactory accounting with regard to the sum of Rs. 50,000/- by respondents 3 and 4.

23. On the above conclusions, the question for determination is whether it is just and convenient to make an order for the company being wound up- It is contended for respondents 4 and 5 by Mr. Seshachalanathi that the above circumstances, even if found to exist, would not justify the passing of an order; while it is argued by the petitioner''s counsel Mr. Somasundaram, that to the case of a small private Company facts which would justify the dissolution of a partnership would furnish a valid ground for a winding up order.

24. The decision of the Court of Appeal in In Re Yenidge Tobacco Company Ltd.

1916 2 Ch 426 (B), furnishes a close parallel to the present case.

There it was held that circumstances similar to those found to exist in the present case" justified the passing of a winding up order Lord Cozens-Hardy M.R.. at page 432 observed thus :

If ever there was a case of deadlock'' I think it exists here; but, whether it exists or not, I think the circumstances are such that we ought to apply, if necessary, the analogy of the partnership law and to say that this company is now in a state which could not have been contemplated by the parties when the Company was formed and which ought to be terminated as soon as possible. We are told that we ought not to do it because the Company is prosperous, making large profits, rather large profits than before the disputes became so acute.... Whether such profits would be made in circumstances like this or not, it does not seem to me to remove the difficulty which exists. It is contrary to the good faith and essence of the agreement between the parties that the state of things which we find here should be allowed to continue.

It was, further observed that circumstances which would justify the dissolution of a partnership were circumstances which should induce the Court to exercise its jurisdiction under the "just and equitable clause" and to make an order to wind up the Company. Warrington L.J., observed at page 434 that while it was true that the share-holders were carrying on the business by means of the machinery of a Limited Company, in substance they were partners and the litigation in substance was an action for dissolution of the partnership, but as there was that entity called a Company, in order to obtain what was equivalent to a dissolution of the partnership, the machinery for winding up had to be resorted, to. In that case the Company consisted of two shareholders.

25. In the next of the cases cited, In re, American Pioneer Leather Company Ltd., 1919 1 Ch 556 (C), the company consisted of three share-holders only. They were the original allottees and held all the issued shares, which were fully paid in equal proportions. Of those three, one was resident in America and the two others were Directors of the Company. The two share, holders quarrelled between themselves and difficulties had thereby arisen in carrying on the business of the Company and things "had reached a position of complete deadlock. Under the circumstances, Nelville J., held that having, regard to the position into which the affairs of the company had drifted, it was just and equitable to make an order for the winding up of the Company.

26. Palmer''s Company Law, (Nineteenth Edition) contains the following statement of the law at page 378 :

In the case of a small private Company, facts which would justify the dissolution of partnership may be a ground for a winding up order.

A similar statement of the law is contained in Lindley on Partnership, Eleventh Edition, at page 693 :

27. The above discussion of the law establishes that facts justifying an order for dissolution of a partnership would equally justify the making of a winding up order in the case of a small private Company.

28. At present the position of the Company is this. The company consists of five shareholders. The petitioner and the 2nd respondent holding among themselves shares of the value one lakh of rupees out of the subscribed capi(sic) of two lakhs, pray that the company should wound up. The 3rd respondent does not seem take serious objection to this course. Respondents 4 and 5 strongly oppose the petition.

While they also complain that the affairs the Company have not been carried on in spirit of amity among the share-holders, they ''. the blame on the shoulders of the petitioner a the 2nd respondent who, according to them, : trying to squeeze them out of the Company means of this winding up order. They hi themselves filed applications for the appointment of an Inspector for investigation into the aff(sic) of the Company and also for the appointment an Administrator for administering the company''s affairs.

29. In the above circumstances, if the petitioner and respondents 2 to 5 are carrying their business as a partnership, there would every justification for directing a dissolution the partnership. The fact that they are cond(sic)ing the business by means of the machinery a Limited Company would not make any defence. I have therefore come to the conclusion that it is just and equitable to make an or for winding up the Company, and I order accordingly.

