

(1968) 03 MAD CK 0017

In the Madras High Court

Case No : O.S.A. No. 68 of 1959 and C.M.P. No"s. 14419 and 14420 of 1967

Sree Shanmugar Mills Ltd., by Managing Agents Sri Alagai Ltd. APPELLANT

Vs

S.K. Dharmaraja Nadar and Another RESPONDENT

Date of Decision : 14-03-1968

Acts Referred:

Companies Act, 1956 — Section 433, 434, 466

Citation : AIR 1970 Mad 203

Hon'ble Judges : Venkataraman, J;Venkatadri, J

Bench : Division Bench

Advocate : V. Balasubramanyam, for the Appellant;

Judgement

Venkataraman, J.—This appeal has been filed against the order dated 30-4-1959 of Ramachandra Iyer, J. (as he then was), in O.P. No.

297 of 1957 on the file of mis Court directing a winding up of the appellant company, Sri Shanmugar Mills Ltd. The company was incorporated in

1945 with its registered office at Rajapalayam in Ramanathapuram District, and with a shard capital of rupees twenty-five lakhs of which rupees

eight lakhs odd worth of shares have been subscribed and paid up. The primary object and business of the company was to buy cotton and spin it

into yarn, Dharmaraj Nadar, who filed the petition for the winding up of the company was a creditor of the company in a sum of Rs. 48,548.98 as

on 30-10-1957. He had supplied cotton to the company and had not been paid therefor. The petition for winding up was filed on 15-11-1957,

The ground stated in the petition for the winding up was that the company was unable to pay its debts within the meaning of Section 433(e) of the

Companies Act, 1956. Section 434 says that a company shall be deemed to be unable to pay its debts under three contingencies numbered as (a),

(b) and (c). Clause (a) deals with a case where a creditor makes a demand and the company for three weeks thereafter neglects to pay the sum.

The creditor did not give any notice and did not invoke this clause. Clause (b) deals with a case where execution is returned unsatisfied in whole or

in part. That also does not apply. It was Clause (c) that was invoked and which was applied by the learned Judge. That says that a company shall

be deemed to be unable to pay its debts, if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and in

determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the

company.

The learned Judge passed his order on the ground that on 31-10-1957 the company was unable to pay its debts within the meaning of the above

clause. On 31-10-1957 the total liabilities of the company amounted to Rs. 8,72,414. (Vide p, 49 of the typed bundle supplied by the appellant).

No doubt, the book value of the assets of the company was Rs. 10,79,130 and mainly on that footing the company contended that the assets

exceeded the liabilities and that it could not be said that the company was unable to pay its debts. The learned Judge, however, repelled this

argument on the following reasoning:--

As against these liabilities the assets are substantially the machinery and the building. It is admitted in the counter-affidavit that the machinery is old.

The company has not even been able to pay for the additional spindles allotted by the Government The mere fact that the book value of the assets

is estimated at nearly rupees ten lakhs would not mean that the company would be able to pay its debts, The question whether a company would

be able to meet its present demands could not entirely depend upon the circumstances that the assets if realised might exceed the liabilities. The

nature of the assets, e.g., machinery and building is such that they should not be realised if the company were to run. They could not, therefore, be

taken as presently realisable assets. That being so, they cannot be properly taken into consideration for considering the ability of the company to

pay its debts, when one is viewing the matter as to whether the company while functioning as a company would be able to pay its debts. It may be

noticed that the liabilities of the company are such that it would be impossible to

pay them except by the sale of the assets, which are necessary for the functioning of the company. The demands of the Income Tax authorities and the other creditors have to be paid. It is not disputed that the company was unable to meet the claim of a creditor who subsequently filed a suit, O.S. No. 4 of 1957, in the District Munsif Court, Srivilliputhur, The petitioner's claim which was for cotton supplies to the company has not been paid. Even the charges for the consumption of electricity by the mills remained undischarged and the explanation that the initial deposit would cover the amount due by way of arrears cannot be accepted as the deposit could not be so adjusted unless contract for the supply of electrical energy is terminated. In that event the mills would have to stop working.

Mr. Mohan Kumaramangalam, the learned advocate for the company, contended that when the assets of the company on the date of the presentation of the petition are compared with the liabilities of the company, the former would exceed the latter and, therefore, the company should not be held to be commercially insolvent. In making that submission the learned counsel included the value of the machinery and building. The test of inability to pay the debt u/s 433(c) is not whether the company, if it converts all its assets into cash, could be able to discharge its debts, but whether in a commercial sense the existing liabilities could be paid by the company while it is running as a company. It cannot be said that if the machinery and the building had to be realised for the purpose of paying the existing debts the company could run its business, If such assets are excluded the other assets which amount to about rupees three lakhs (vide market value adopted in the counter-affidavit) would hardly be sufficient to meet the demands.

2. The learned Judge proceeded to point out that on 5-3-1959 the position was even worse.

3. We are of the opinion that the learned Judge was right in taking into account the position as on 31-10-1957 and that the reasoning on which he ordered the winding up is correct. The essence of the reasoning is that the debts of the company could not be paid without selling its machinery and building and, if the machinery and the building were to be sold, the mills could not run and the company would necessarily have to be wound up.

The correctness of this reasoning cannot be questioned and has not been questioned before us by Sri V. Balasubramanian, the learned counsel for the appellant.

But his attempt has been to make out before us that in view of the events which happened subsequent to 80-4-1959 and the circumstances as they

stand today, the position is different, In order to appreciate his argument, it is necessary to state briefly what happened after the appeal was filed.

4. The Official Liquidator took charge of the company and its assets. The shareholders were able to persuade a partnership called Sri Jaya Jothi

and Company to advance moneys to the company to pay off the various creditors, and in consideration of the advances Jaya Jothi and Company

were to become lessees of the company for a period of ten years to work the mills and earn profit. In the first instance, they were to pay an

amount which would discharge the creditors of the company to the extent of 25 per cent straightway and the rest of the amount had to be paid in

installments. This arrangement was embodied in a compromise dated 29-4-1960 in the application (C. M. P. No. 1285 of 1960) which was filed

for stay of the operation of the winding up. This compromise was approved by the Bench of this Court dealing with the appeal then. It was later

modified by order dated 21-6-1960 and it was provided that the duration of the lease should be a period of ten years or till the advances of Jaya

Jothi and Company were repaid whichever was later. The advances were to carry interest at 7½ per cent per annum. The monthly rent which the

lessees had to pay for the 6,500 spindles then existing was Rs. 6,000. The compromise provided for a rent of 63 p. per month for every additional

spindle which, might be installed -- actually the Government had already sanctioned an additional spindleage of 5,000.

Clauses 14, 15 and 17 may be usefully quoted:

14. Sri Jaya Jothi and Company is to hold a charge over the company's properties and assets in respect of the amounts due to it by the company

but the charge shall take effect only after the payment in full to the creditors is completed.

15. The Official Liquidator is not to sell the mills and other properties of the company so long as no default occurs on the part of Sri Jaya Jothi and

Company in discharge of its obligations under the foregoing provisions.

17. The winding up is to be stayed permanently on payment in full to the creditors by the Official Liquidator and on a report to that effect being filed in this Honourable Court.

5. In pursuance of the compromise, Jaya Jothi and Company advanced amounts from time to time and it may be taken that as on 31-12-1967 all

the original creditors of the company had been paid off and the lessees had also provided the Official Liquidator with the funds necessary to meet

the liabilities of the Income Tax Department. The details may be gathered from the reports of the Official Liquidator, one dated 11-1-1968 in

C.M.P. No. 14730 of 1967, and the other dated 18-1-1968 in C.M.P. Nos. 14419 and 14420 of 1967. On the ground that the other creditors

have all been paid, Jaya Jothi and Company have filed C.M.P. No. 11974 of 1966 and C.M.P. No. 14730 of 1967 for a declaration of a charge

in their favour for the amounts advanced by them under clause (14) of the compromise quoted above. The advances made by the lessees

amounted to Rupees 8,66,203.46 on 31-12-1967 and the interest due thereon as on 31-12-1967 was about Rs. 3,09,000. The principal sum,

viz. Rs. 8,66,203.46 would carry interest at 7 1/2 per cent per annum even after 31-12-1967. Any small amounts which might have been adjusted

or paid off would have to be deducted from this but it would not be much and would only be in the region of Rupees 50,000,

6. The main argument of Sri V. Balasubramanyam is that here was a person, Jaya Jothi and Company, who was prepared to advance such huge

amounts within a year of the order of winding up and has worked the mills for over seven years, apparently, with profit at least in the earlier years.

On these facts Sri Balasubramanyam contends that the company must be said to be in a position to command credit and therefore can no longer

be said to be unable to pay its debts within the meaning of Section 434(c). In other words, it cannot now be called ""commercially insolvent"", to use

the usual parlance.

7. The subsidiary argument of Sri V. Balasubramanyam is that now that all the original creditors have been paid off and the only creditor remaining

is Jaya Jothi and Company, clause (17) of the compromise will come into play and, according to that, the winding up order is to be stayed

permanently, Sri Balasubramanyam contends that, in effect, this means that the

winding up order has to be set aside. There is a provision in the Companies Act itself, namely, Section 466, which contemplates an order of the Court staying the winding up proceedings either altogether or for a Limited time on such terms as the Court thinks fit.

8. Before considering the arguments it is necessary to state some further facts. On 2-11-1966 Jaya Jothi and Company filed C.M.P, Nos. 11974

to 11976 of 1966 supported by a common affidavit dated 30-10-1968. In that affidavit they stated that the annual income by way of rentals, etc.,

which would accrue to the company was Rupees 81,455 per year, but as against that the liabilities would amount to about Rupees 96,000 a year

(the principal liability being Rs. 65,000 due as interest to the lessees on their advances), showing a net loss of about Rs. 10,000 a year. At that rate

even the interest due to the lessees could not be paid completely and would be mounting up and there could be no hope of the company repaying

the debts of Rs. 11,75,000 due to the lessees. Now the lease in favour of Jaya Jothi and Company commenced on 12-6-1960, (vide order dated

21-6-1960), and though the lessees were entitled to continue as lessees for ten years from 12-6-1960, the lessees stated in their affidavit that they

were willing to forego their right to run the mills for the remaining period of three and a half years and surrender possession of the mills on condition

that the entire amount due to them was paid. They stated that they were incurring only loss by running the mills. They further stated that the assets

of the company, worth over rupees ten lakhs in 1959, would not be worth more than rupees five lakhs when they filed the affidavit, because of

depreciation. They, therefore, prayed firstly for a declaration of their charge (C. M. P. No. 11974 of 1966) secondly for a direction to the Official

Liquidator to pay the amounts lying in his hands towards the debts payable to the lessees and thirdly to dispose of this appeal expeditiously.

8-A. In regard to the above the Official Liquidator filed his report dated 27-1-1967. He pointed out that it was not practicable to pay off the dues

of Jaya Jothi and Company with the amount available with him and that the amount available with him had to be utilised to meet other liabilities. We

disposed of the matter in part on 9-3-1967 and as an interim measure we directed the Official Liquidator to pay a sum of Rupees 25,000 to Jaya

Jothi and Company and we allowed Jaya Jothi and Company to adjust a sum of

Rs. 25,000 per mensem out of the rentals payable by them

towards the interest due to them. Before disposing of the appeal and declaring the charge we directed the Official Liquidator to convene a meeting

of the share-holders to ascertain their opinion whether the winding up was to be continued or discontinued. Accordingly a meeting was held on 11-

5-1987, The share-holders passed the following resolution:

Whereas Rajapalayam Sree Shanmuga Mills Limited, was ordered to be wound up by the High Court, Madras, in O, P. No. 297 of 1957 on 30-

4-1959 on the ground of inability to pay its debts, whereas the debts have all been now paid except the amount due to the lessees which is

governed by the terms of the lease agreement dated 29-4-1960 and whereas steps are being taken to discharge the liability to the lessees, it is

resolved by this General Body of Shareholders to pray the High Court to set aside the winding up order. Otherwise the shareholders are unable to

dispose of or purchase the shares as needed or the heirs are not able to get transmission of the shares of the deceased shareholders and the

shareholders are thereby put to loss and suffering, whereas the company is under liquidation, the shareholders are unable to do anything for the

amelioration of the Company and whereas the scheme for the reconstruction of the company is about to be filed in Court the shareholders resolve

to have the winding up order of Court set aside.

9. The shareholders met again on 4-6-1967 for proposing a scheme to be placed before the Court so that this Court may be persuaded to set

aside the order of winding up. At that meeting they unanimously resolved to constitute a committee of nine members consisting of Mohamed

Hussain, Advocate, as President, and one Arumugham and others as members. They were to take charge of the company and run it. The

committee was authorised to collect funds for meeting the expenses for carrying on the management. The rights of Java Jothi and Company should,

however, be left intact till their dues were paid off. Arumugham, one of the members of the Committee so appointed, filed C. M. P. No, 8713 of

1967 with a prayer to set aside the order of winding up. We considered C. M. P. No. 11974 of 1966 and C. M. P. No. 8713 of 1967 on 4-8-

1967 and passed an order pointing out, in the first place, that the meeting convened on 4-6-1967 was not quite in accordance with the statutory

provisions and that a further meeting should be convened. We also pointed out that the resolution passed on 4-6-1967 could not deserve the name

of a scheme which could be considered by the Court before possession was handed over to the shareholders. We invited schemes for the

reconstruction of the company under Sections 391 and 392 of the Act.

10. Notification was accordingly made in the dailies and otherwise and Arumugham has filed C. M. P. No. 14419 of 1967 submitting what he calls

a draft scheme which, in effect, is the same as what was resolved at the meeting on 4-6-1967. This it is stated that a meeting of the shareholders

would be held under the Chairmanship of the Official Liquidator and at such a meeting nine directors would be elected. The names of the nine

persons are also commended for the approval of the shareholders. On the nine directors thus being elected, the winding up order should be

cancelled and the directors should be entrusted with the administration of the company and they would have power to raise loans from banks or

financiers or from shareholders to pay off the amount due to the lessees and other lawful dues.

11. Another person, Mohamed Ismail Rowther has filed a similar application, C, M. P. No. 14420 of 1967. Sri R. Ramamurthi Iyer appears for

Arumugham and Mohamed Ismail Rowther and submits that under the provisions of Section 466 of the Act the winding up order should be stayed

permanently and, in effect, should be cancelled.

12. Jaya Jothi and Company then filed C. M. P. No. 14730 of 1967 reiterating their allegations in the prior application, C. M. P. No. 11976 of

1966 praying for a charge and other incidental remedies which need not be considered here. They have stressed the fact that during the last three

years they have sustained a loss of nearly rupees seven lakhs and that it is not possible to run the mill without any financial assistance from the

Government or other sources. Their learned counsel Sri G, Ramanujam (Government Pleader) states that their attitude is neutral on the question of

winding up; in other words, that it is immaterial to them whether the appeal is allowed or dismissed, and that all they want is that their rights should

not be prejudiced, that a charge should be declared in their favour straightway for the advances made by them and that they are willing to walk out

immediately if the amounts due to them are repaid. They would also show some

substantial concession if payment was made immediately or within a short time.

13. At one of the previous hearings Sri R. Ramamurthi Iyer, the learned Counsel for Arumugham took an adjournment to find out whether any

financier or banker would come forward to help the shareholders to pay off the reduced amount which the lessees are prepared to take. Sri

Ramamurthi Iyer however states now that nobody is prepared to advance the huge amount which would be required, say, rupees ten lakhs, so

long as the winding up order to be cancelled or at least to be permanently stayed, within the meaning of Section 466. He urges that the proposals

put forward in C. M, P. Nos. 14419 and 14420 of 1967 should be sufficient to satisfy the Court before passing the order of setting aside the

winding up order or permanently staying the winding up order.

14. The Official Liquidator has filed his report dated 11-1-1968 in reply to C. M. P. No. 14730 of 1967. We directed him to file a reply with

reference to C. M. P. Nos. 14419 and 14420 of 1967, giving up a rough idea of the current income and expenditure position of the company. The

Official Liquidator accordingly filed his report dated 18-1-1968. We have passed orders in C. M. P. Nos. 11974 of 1968 and 14730 of 1967

declaring the charge in favour of Jaya Jothi and Company for the advances made by them (amounting roughly to Rs. 11,75,000) with interest on

Rupees 8,66,600-96 at 7 1/2 per cent, less any amount adjusted or paid. The report dated 18-1-1968 shows that the annual income of the

company at present is Rs. 93,982-05, the bulk of which is made up of rentals paid by the lessees. Excluding the interest, but including the

provision for income tax and other charges, the company will have a sum of Rs. 49,969-39. The interest payable to the lessees is about Rs.

63,900 per year and thus the amount available with the company for payment of interest is only Rs. 49,969-39, whereas the interest payable is Rs.

63,900. In other words, the present position is that the income of the company is not sufficient to pay interest in full, and it is, therefore, out of

question to pay any portion of the indebtedness of Rupees 11,75,000. It is thus clear that so long as the lessees continue, as they are entitled to,

the company cannot pay its debts, and it is clear that the company is unable to pay its debts within the meaning of Section 333(e) read with Section

434(c) even today. This means that the appeal is liable to be dismissed.

15. The argument of Sri Balasubramanyam has no validity now. The only inference which can be drawn from the fact that Jaya Jothi and Company

were prepared to advance huge amounts even in April 1960 is that they themselves hoped that by becoming lessees they could earn substantial

profits and there was sufficient security for the advances to be made by them. Their hopes were realised to a large extent because for at least three

or four years they were earning good profits in view of the facts that the price of cotton which they had to purchase was comparatively low and

that the price of yarn which they sold was high. The position, however, seems to be the reverse just now. Textile mills are working at a loss and

many of them have closed down because cotton is not available at moderate prices. Egyptian cotton is not available at all. Nobody seems to be

prepared to come forward today offering more advantageous terms to the company than those offered by Jaya Jothi and Company so far. The

contention that Clause 17 of the compromise decree, of its own force, provides for an automatic permanent stay of the winding up proceedings on

payment in full to the original creditors by the Official Liquidator, is untenable. Section 466 of the Companies Act contemplates a specific

application to the Court for permanent stay of the winding up order. It may be noted that the decretal order embodying the compromise did not

give a direction that on payment in full to the original creditors there would be an automatic stay of the winding up.

16. This brings us to a consideration of C.M.P. Nos. 14419 and 14420 of 1967. No doubt, the affidavits therein contemplate a cancellation of the

winding up order, but we are prepared to treat them as applications u/s 466 for a permanent stay of the winding up order. We are not, however,

prepared to stay the winding up order permanently or for a limited period, merely on the proposals put forward in these applications. The

proposals are that the winding up order should be stayed and the shareholders should be permitted to raise money from third parties, pay off Jaya

Jothi and Company and run the mills themselves. No affidavit has been filed from any third party who would be prepared to advance moneys to

the shareholders without taking charge of the mills themselves, even if the winding up order is stayed. We shall, however, assume, for the sake of

argument, that there are third parties who would be willing to advance moneys to the shareholders if the winding up order is stayed, but obviously the rate of interest they would demand will be 12 per cent or more, probably 18 per cent. We shall not be justified in allowing the shareholders to raise credit on such onerous terms unless we are satisfied that the shareholders will be able to pay off the new creditors, who will be prepared to advance moneys, merely by working the mills. On the materials placed before us so far, there could be no hope of the shareholders running the mills at a profit to the extent of being able to pay the new creditors, who might come in.

Jaya Jothi and Company state that they have themselves been running it at a loss during the last three years, the loss amounting to about rupees seven lakhs. We see no reason to disbelieve that, particularly as their learned counsel Shri G. Ramaujam submits that they are prepared to walk out of the mills, even paying some reasonable compensation for the premature termination on their part of the liability to run the mills and paying the rentals. The market conditions are such that if Jaya Jothi and Company have not been able to run the mills at a profit, the shareholders also cannot run the mills at a profit. Sri Ramamurthi Iyer appearing for the petitioners in C.M.P. Nos. 14419 and 14420 of 1967 tried to get over this by urging that the reason why Jaya Jothi and Company have not been able to make profits recently is that they are anxious to expand. Sri Ramanujam, the learned counsel for Jaya Jothi and Company, denies this and there is no basis for this allegation, it may be remembered that when the market conditions were more favourable for running the mills in 1957, the mills were not worked properly on behalf of the shareholders. There is no reason to think that they will fare better now, when the market conditions are worse.

17. In spite of these factors we might have been inclined to consider the proposals for a stay of the winding up, further, if the shareholders had themselves come forward with a proposal to meet at least part of the liability of Jaya Jothi and Company, that is, by taking additional shares which have not yet been issued or by advancing moneys as creditors; for instance, if the shareholders come forward to take shares for Rs. 6,00,000 or advance moneys to that extent, it would show their bona fides, because they would then have a real interest in the working of the company. We

adjourned the appeal for this purpose, to see whether the shareholders would come forward to advance Rs. 6,00,000 or take shares to that

extent. Sri Ramamurthi Iyer has reported that the shareholders are not willing to advance any amount or take share.

18. Sri Ramamurthi Iyer strongly urges that by sanctioning the proposals in C.M.P. Nos. 14419 and 14420 of 1967 as they stand the rights of

Jaya Jothi and Company are in no way prejudiced, and asks, for whose benefit the winding up order is to be continued? That is not at all the

proper approach in a case of this kind. The Court cannot hand over a commercially insolvent company to the shareholders and let the shareholders

loose upon the market, free to raise loans. The Court owes a duty to the public in such a matter. This is the principle which has been laid down in

the cases decided so far. The cases have been collected in Buckley's Commentary on the Companies Act of England, u/s 256 of the Companies

Act, 1948, p. 533 of the 13th Edn., 1957, and in Halsbury's Laws of England, in paragraphs 1397 and 1398 Vol. 6, and in Palmers Companies

Precedent. Part II, Chap. 12. The cases lay down that the considerations which should govern the Court in an application for stay of the winding

up order are precisely the considerations which would govern the Court when it is asked to stay a receiving order in bankruptcy. These principles

are discussed in some cases.

Thus, in *In re Hester*, (1889) 22 QBD 632, a receiving order was made in bankruptcy. The debtor originally wanted to appeal, but later gave up

his intention, and, instead, applied to rescind the receiving order on the ground that the creditors consented to the rescission. Many of them had

given receipts in full for their dues, but it was not portended that payment in full had, in fact, been made to them. No meeting of the creditors had

been held but the consent had been obtained by means of applications made by the debtor to each creditor individually. The Registrar refused to

rescind the receiving order. His order was upheld by Cave, J., and Charles, J. There was a further appeal to the Court of Appeal, and there also

the decision of the Registrar was confirmed. It is pointed out in all the judgments that the consent of the creditors alone will not justify the Court in

annulling the adjudication or rescinding the receiving order. Cave, J., observed that it is not right to let a man, who is unable to pay his debts in full,

loose upon the public to continue his trading without the Court having any right of vote, Lower down he observed that the consent of the creditors

was not the only thing to be considered and added:

The Court must consider the position of the debtor the possibility of his getting over his difficulties, and the interests of the public. It is clearly

contrary to their interests that a man who is insolvent should be allowed to go on trading. In fact, it is an offence under the Act for a trader to

continue trading after he knows that he is insolvent.

Lower down he states:

We should not be doing our duty to the community if we were to sanction the rescission of the receiving order. To my mind, this man is hopelessly

insolvent. Without any estimate, even by himself, much less by any competent person, of his present position -- his assets and liabilities -- he asks

us to take for granted that, if he is allowed to go on, he will be able to pay his creditors in full. I am perfectly certain that he will not. He will

probably succeed in very much enlarging the area of his indebtedness, but I am pretty certain he will not diminish it.

18-A. In the Court of Appeal, Lord Esher, M.R., stated (p. 639):

Although the consent of all the creditors has been obtained, the Court will still consider whether what they have agreed to is for the benefit of the

creditors as a whole. The Court has gone still further, and, I think rightly so, and has said that under the present Bankruptcy Act it will consider not

only whether what is proposed is for the benefit of the creditors, but also whether it is conclusive or detrimental to commercial morality and to the

interests of the public at large; and they will take into consideration the position of the bankrupt with regard to his creditors, and see whether what

is proposed will not place his future creditors, who must come into existence immediately, in a position of imminent danger. The Court has said this

before, and adhere to it now.

Fry, L. J., observed (at p. 641):

We are not only bound to regard the interests of the creditors themselves, who are sometimes careless of their best interests, but we have a duty

with regard to the commercial morality of the country.

19. The above decision was followed in *In re Flatau*, (1893) 2 QB 219.

20. In *In re Izod*, 18981 1 QB 241, the above decisions were explained. It was stated that the above decisions did not mean that the receiving order could be rescinded only if all the creditors had been paid in full. In that case the creditors themselves felt that it would be more profitable for them to receive immediate cash payment of 10 shillings in the pound than to have the affairs of the debtor wound up in bankruptcy. The debtor's father accordingly paid to all the creditors 10 sh. in the pound and the creditors had released the debtor therefrom. The Official Receiver did not make any objection. The Registrar rescinded the receiving order. The Registrar's order was upheld by two of the learned Judges, Rigby, L. J., differing. It will be noted that in that case the creditors had accepted satisfaction of their debts, and the case is entirely distinguishable.

21. In *In re South Barrule Slate Quarry Co.*, (1869) 8 Eq 688, the winding up order was stayed under a scheme by which the shareholders made further payments, in respect of their shares, which sufficed to pay off the existing debts of the company and there was sufficient money in the hands of the liquidator to meet the current charges. Only one shareholder objected to the scheme. The learned Vice-Chancellor held that one could not stand in the way of wishes of the fellow shareholders and he was given an option to retire from the company upon the company computing the value of his present interest. The case is clearly distinguishable from the present case.

22. In *In re Stephen Waltore and Sons* 1926 WN 236, the Court sanctioned a scheme of arrangement with the creditors and shareholders which involved reduction, reorganisation and increase of the company's capital and stay of the winding up. The facts are not fully stated, and evidently, the facts were such as to satisfy the Court that the winding up order should be stayed.

23. The principles laid down in England were reiterated in the matter of *E. I. Cotton Mills*, AIR 1949 Cal 69.

24. No case has been brought to our notice, and we have not been able to find any, where in a case analogous to the present, the Court stayed the winding up order. On the contrary, the principles laid down in the decided cases forbid us from staying the winding up order either permanently or for a limited period, on the terms actually put forward before us so far. We need not add that even if we dismiss the appeal now, it will not

preclude the shareholders from making an application u/s 468 later with a proper proposal, The only difference will be that the application will have to be made to the company Judge, and not to this appellate Court, after the disposal of the appeal.

25. We accordingly dismiss O.S.A. No. 68 of 1959 with liberty to the shareholders to put forward a proper scheme of reconstruction and apply for the staying of the winding up order u/s 466 before the Company Judge. C.M.P. Nos. 14419 and 14420 of 1967 are dismissed. The petitioners in C.M.P. Nos. 14419 and 14420 of 1967. will bear their own costs. The costs of the appellant in O.S.A. No. 68 of 1959 will come out of the company's funds.

26. A cheque for the costs of the appellant (Rs. 500) (five hundred rupees) may be paid by the Official Liquidator in the name of the counsel for the appellant Sri V. Balasubramanyam.