

(1946) 03 MAD CK 0035
In the Madras High Court

The Official Receiver, High Court

APPELLANT

Vs

Rao and Co. and Others

RESPONDENT

Date of Decision : 25-03-1946

Acts Referred:

Companies Act, 1956 — Section 228

Citation : (1947) 1 MLJ 242

Hon'ble Judges : Clark, J

Bench : Division Bench

Judgement

Clark, J.—This is an application by the Official Receiver as Official Liquidator for directions regarding the payment of interest to the

creditors of the company and the amount to be paid to the contributories of the company.

2. When this application first came before me, I directed notice to issue to the creditors, as I desired to give them an opportunity of being heard on

the application as regards the payment of interest. One creditor has appeared and is represented before me by Counsel. This company is able to

pay all its debts including in the case of those bearing interest, interest up to the date of payment. There is also sufficient to pay interest on the debts

which do not carry interest, if such payment is permissible in law. The directions asked for by the Official Receiver are on this point and the

question accordingly is whether a creditor of a company whose debt does not carry interest is, in any circumstances, entitled in winding up to

payment of interest.

3. It has been held in England consistently since 1869 that, where a company in liquidation turns out to be solvent, creditors whose debts carry

interest by agreement or otherwise, are entitled out of the surplus assets to payment of interest accruing after the commencement of the liquidation

until payment is made. The doubt which the Official Receiver feels is as regards those creditors whose debts do not carry interest by agreement or

otherwise and the creditor who is represented before me is a creditor of that class, his debt being an amount due in respect of professional services.

4. Section 228 of the Companies Act provides that all claims against a company, present or future, certain or contingent, shall be admissible to

proof against the company subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of

insolvency. The following section (Section 229) provides that in the winding up of an insolvent company, the same rule shall prevail and be

observed...and to debts provable...as are in force for the time being in the law of insolvency....

The winding up of (his company has arrived at a stage when it has been ascertained that the company is not insolvent and accordingly it seems to

me that Section 229 can have no application and the right of a creditor can only be that given to him u/s 228. His proof of debt will be the same as

it would have been, had it been a proof as between himself and the company. Apart altogether from liquidation proceedings, that would be a debt

due to him with interest, if his contract allowed it or if he could establish that he was otherwise entitled to interest. He would be otherwise entitled,

if he was entitled to interest under the terms of a decree or if he had become entitled by reason of a "demand" within the meaning of that expression

in the Interest Act.

5. Only one case has been brought to my notice in which it was held that in circumstances like the present a creditor whose debt does not carry

interest will be entitled to receive interest. That is In the matter of the Dehra Dun-Mussoorie Electric Tramway Co.; Ltd. ILR (1933) All. 423 In

that case Young, J., held that when there was a surplus in the winding up of a company, the creditors are entitled to payment of interest from the

date of the winding up until payment and that such interest is payable not only to the creditors whose debts carried interest but also to those in

whose cases there was no contract for interest. In arriving at this decision,

Young, J., stated that the point was covered by authority and quoted *Devi Dutta Mal v. Official Liquidator, Amritsar Bank, Ltd.* ILR (1920) Lah. 368 That case is undoubtedly authority for the proposition that the creditors whose debts carry interest are entitled to claim interest up to the date of payment, but it furnishes no authority for the further proposition that creditors who are not so entitled by their contracts are similarly entitled. With the greatest possible respect. I find myself unable to agree with the decision arrived at in the Allahabad case. The view to the contrary is, I think, fully supported by the decisions of Lord Westbury in *Ex parte Greenwood: Re Hadfield's Patent Carsk and Package Co., Ltd.* 8 L.T.R. 846 of the Court of Appeal in *In re Humber Iron Works and Shipbuilding Co.* (1869) L.R. 4 Ch.Ap. 643 and of Lord Romilly in *In re Herefordshire Banking Co.* (1867) 84 Eq. cases 250 Lord West-bury's decision turned on a construction of the provision in the Company Law as then in force which is not contained in Section 187 of our Act. The Lord Chancellor held that notwithstanding that there was a surplus, that surplus could not be applied towards payment of interest on a simple contract debt, which did not carry interest. Lord Romilly based his decision on the provision of the Company Law and followed Lord Westbury. After holding that the debt in question was one which did not carry interest, His Lordship observed:

It cannot make the slightest difference whether there is a balance in the hands of the Official Liquidator, or whether a call is to be made. The question is, whether you are entitled to interest ? If you are entitled to interest, I should make a call to pay it; but I am of opinion, you are not so entitled, and therefore, except upon all those debts which carry interest (and on those you must have interest according to the rate which they respectively carry according to the agreement between the parties), I must hold that you are not entitled to any interest.

In passing I may observe that His Lordship went on to express the view that a claim made in a winding up proceeding could not amount to a demand under the Statute 3 and 4 William IV, Chapter 42 (extended to India by the Interest Act XXXII of 1839). In *In re Humber Iron Works and Shipbuilding Co.* (1869) L.R. 4 Ch. Ap. 643 Selwyn, L.J., at page 645 of the report said:

In the present case we have to consider what are the positions of the creditors of the company, when, as here, there are some creditors who have

a right to receive interest, and others having debts not bearing interest. In the first place, it appears to me that we must consider the case under two

aspects--first, where there is and next where there is not, a surplus. I apprehend that in whatever manner the payments may have been made,

whether originally they may have been made, in respect of capital or in respect of interest, still, inasmuch as they have all been paid in process of

law, and without any contract or agreement between the parties the account must, in the event of there being an ultimate surplus, be taken as

between the company and the creditors in the ordinary way and Giffard, L.J., at page 647 said:

...For these reasons I am of opinion that dividends ought to be paid on the debts as they stand at the date of the winding-up; for when the estate is

insolvent, this rule distributes the assets in the fairest way; and where the estate is solvent, it works with equal fairness, because, as soon as it is

ascertained that there is a surplus, the creditor whose debt carries interest is remitted to his rights under his contract; and on the other hand, a

creditor who has not stipulated for interest does not get it.

For these reasons, I hold that interest is payable up to the date of payment to those creditors, if any, whose debts carried interest, but that no

interest should be paid to the creditors whose debts did not carry interest. I give that direction on the first point asked by the Official Receiver.

6. The second point on which directions are asked is as regards the rate of payment to the contributories. In a further report which the Official

Receiver has filed, he states that he will be in a position to pay the contributories a return of their capital at the rate of 0-2-9 in the rupee in the

event of my directing on the first point in the way in which I have directed. I accordingly direct the Official Receiver to make a return to the

contributories at that rate, or at such rate as may prove possible when the final figures are drawn up.

7. As regards costs, the Official Receiver will of course be entitled to debit the company with the costs of this application. I think also in the

circumstances it will be proper for the creditor who has appeared to have his costs. He did not come before the Court to urge that his client should

receive interest. He came in response to the notice issued by the Official Receiver at my direction. That being so, I think it will be reasonable to order his costs to be paid out of the assets of the company. I fix these costs at Rs. 17-8-0. I do not consider that there is any need in this case for the Official Liquidator to append to the order the schedule or list referred to in Rule 114 of the Companies Rules.