
(1949) 04 MAD CK 0026
In the Madras High Court

Vemuri Parandhamiah

APPELLANT

Vs

R. Narasimha Rao and Another

RESPONDENT

Date of Decision : 14-04-1949

Acts Referred:

Companies Act, 1956 — Section 235

Citation : (1949) 2 MLJ 147

Hon'ble Judges : Viswanatha Sastri, J; Satyanarayana Rao, J

Bench : Full Bench

Judgement

Satyanarayana Rao, J.—This is an appeal against the judgment of Bell, J., in a misfeasance proceedings u/s 235 of the Indian Companies

Act directing that the appellant's Conduct as managing director of the company should be examined u/s 235 of the Act and that the conduct of the

second respondent as official liquidator of the company now in voluntary liquidation should be similarly examined under the said section.

2. Sri Vijayavada Motor Transport Company Limited was incorporated as a private limited company under the Indian Companies Act on 17th

November, 1944. On 26th November, 1944, the Board of Directors appointed the appellant as its managing director. The company commenced

its business on 1st December, 1944, and the appellant continued as its managing director until 14th June, 1947. On that date, the company went

into voluntary liquidation and the second respondent who was the resident of the board of directors was appointed liquidator. There were some

prior proceedings relating to the winding up of this company which have been referred to in the course of the arguments but which are not very

material for the purpose of the disposal of this appeal. The present application—was filed by one R. Narasimha Rao under Sections 216 and 235 of

the Indian. Companies Act for an enquiry against the appellant and the second respondent, i.e., the ex-managing director and the liquidator with reference to certain charges of misfeasance, breach of trust, malfeasance and non-feasance, particulars of which were set out more fully in the affidavit filed in support of this application. The application was resisted by the appellant and the second respondent on the ground that as the company is under voluntary liquidation and was not wound up by an. order of the Court, misfeasance proceedings u/s 235 of the Companies Act could not be initiated and that Section 235 has no application at all to the facts of the present case. This objection was overruled by the learned Judge and he directed an enquiry. Against this order, the present appeal has been preferred by the ex-managing director.

3. On behalf of the respondent, a preliminary objection was taken regarding the maintainability of the appeal. The decision of this question turns mainly upon a proper interpretation of Section 202 of the Indian Companies Act. As we are, however, of opinion that the appeal should fail on merits, it is unnecessary to consider the preliminary objection and express an opinion upon it.

4. The main objection taken on behalf of the appellant is that Section 235 of the Companies Act does not apply to the case of a company which was wound up voluntarily. Reference was made before the learned Judge and also before us to Section 216 of the Act which enables a liquidator or contributory or a creditor to apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. It was contended on behalf of the respondents before the learned Judge that apart from Section 235 of the Act which according to them, applies directly even to the case of a voluntary winding up, at least by virtue of Section 216 of the Act, the power of the Court to initiate the present proceedings u/s 235 even in the case of a company which was wound up voluntarily is attracted by the above section.

5. Part V of the Companies Act relates to "winding up" and there are three modes indicated in Section 155 of the Act of winding up of a company.

The winding up may be by the Court or voluntary or subject to the supervision of the Court. Clause (2) of Section 155 provides that:

The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up" of a company in any of these modes.

The group of sections beginning with Sections 162 to 198 relate to winding up by Courts. Sections 203 to 220 relate to voluntary winding up.

Sections 221 to 226 relate to winding up subject to supervision ""of the Court. Then follow the group of sections under the heading of ""supplemental

provisions"" and it is in this group that section ""235 of the Act occurs. These supplemental provisions, it would be seen from a perusal of the

sections, apply to all cases of winding up unless there something in the subject or context to"" exclude the applicability of a particular section.

Section 235 begins by stating:

Where in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company etc.

The learned advocate for the appellant wants the Court to read after the word ""where "" and before the words "" in the course of winding up of a

company the words "" the Court "" and in that event the section would read as "" where the Court in the course of winding up a company."" By so

reading the learned advocate wants to restrict the applicability of the section to the only case of winding up of a company by an order of Court. I

am, however, unable to read into the section words which are not there. The expression "" in the course of winding up a company "" refers to all the

three modes in which a company can be wound up, and therefore the course of winding up a company might have arisen by any of the modes

indicated in Section 155 of the Act. The same section (Section 235) uses the word "" liquidator,"" whereas in the group of sections relating to

winding up by Court, reference was made to official liquidator appointed u/s 175 of the Act and Section 177 of the Act directs that the Official

Liquidator should be described by the style of Official Liquidator of a particular company in respect of which he is appointed and not by his

individual name. The official liquidator derives his appointment from the Court, whereas the liquidator appointed in the case of a voluntary winding

up derives his authority from the shareholders. The word "" liquidator "" in Section 235 is used in a comprehensive sense so as to take in not only the

Official Liquidator but also other liquidators such as a liquidator appointed in voluntary winding up. There is no reason, nor is there any indication

of a contrary intention either in the language of the section (Section 235) or in the scheme of the Act to exclude its applicability to the case of a company which was wound up voluntarily. Clause (2) of Section 155 expressly makes the provisions relating to winding up of a company applicable to winding up of a company in, any of the three modes indicated in Clause (1) unless there is a contrary intention. In the absence of a contrary intention in the section, it is difficult to accept the contention urged on behalf of the appellant that the scope of the section should be restricted to the case of winding up of a company by a Court. My examination of the scheme of the Act and also the language of the section without reference to any precedent or authority has led me to the conclusion that the language of Section 235 is general and applies to all the three modes of winding up of a company contemplated by Section 155 of the Act. This is also the opinion of text writers, Palmer's Company Law, page 453, (18th edition), dealing with Section 276 which corresponds to Section 235, of the Indian Act, Palmer's Company Precedents, Vol. 2, pages 782 and 800, and Lindley, page 941 referring to the decision in Ranee's case 6 Chancery Appeal, 104.

6. It is therefore unnecessary for me to refer to the contention that even apart from the language of Section 235, the power of the Court to initiate misfeasance proceedings even in the case of voluntary liquidation either against the managing director or a liquidator can be enforced by applying Section 216 of the Act. In my view, therefore, the Court has ample jurisdiction to entertain the present application and the appeal therefore should be dismissed with costs of the first respondent.

Viswanatha Sastri, J.

7. The facts of the case and the relevant statutory provisions have all been seated in the judgment of my learned brother just now delivered and it is unnecessary for me to refer to them again. Mr. N. Suryanarayana, the learned Counsel for the respondent, took a preliminary objection that no appeal lay against the order of Bell, J. Section 202 of the Companies Act makes an order or decision given in the matter of the winding up of a company by the Court appealable in the same manner and subject to the same conditions in and subject to which appeals, may be had from any order or the decision of the same Court in cases within its ordinary jurisdiction.

The argument of Mr. Suryanarayana is that on a proper construction of this section, no appeal would lie from an order of a single Judge of this Court made for the winding up of a company unless the order appealed from is a "judgment" within the meaning of Clause 15 of the Letters Patent. The contention of the learned advocate for the appellant on the other hand is that there is a right of appeal against all orders which decide a dispute between parties in the course of the winding up of a company and that the words "appeals shall be had in the same manner, etc., etc." in Section 202 merely regulate the procedure to be followed in the presentation and hearing of the appeals, e.g. the time within which the appeal should be filed, the necessary papers to be filed with the appeal, the Court-fee payable and soon. The decision in *Mulk Raj v. Official Liquidator, Peoples Bank* AIR (1938) Lah. 659 which considered the previous decisions of the Lahore High Court supports the contention of the appellant. There being no right of appeal unless expressly given by statute, the terms of Section 202 of the Companies Act must be examined to find in what cases a right of appeal is given. Under that section, the right of appeal is to be had in the same manner and subject to the same conditions as from orders of this Court in the exercise of its ordinary jurisdiction, Unless therefore, an order of a single judge of this Court in the course of the winding up amounts to a "judgment" within the meaning of Clause 15 of the Letters Patent it is reasonable to contend that an appeal would not lie against his order to this Court. It may be that the word "manner" occurring in Section 202 of the Companies Act is capable of the interpretation that it relates merely to the procedure to be followed in the preferring and hearing of appeals as held by the Lahore High Court. But there are the additional words "subject to the same conditions in and subject to which appeals may be had" in Section 202 to which also effect must be given. They do not give a general right of appeal but only a limited right of appeal under the conditions specified in the section. It was for this reason that the Calcutta; High Court in *Madan Gopal Daga v. Sachindra Nath Sen* ILR (1927) Cal. 262 in construing Section 202; held that so far as Chartered High Courts were concerned, an order made in the winding up of a company, in order to be appealable, must be a "judgment" within Clause 15 of the Letters Patent. Though this

view was generally affirmed, by Rankin, C.J., in *Levy Bros. & Knowles, Ltd. v. Subodh Kumar Day* (1927) 31 C.W.N. 894 still, in the course of his judgment, the learned Judge expressed the view that any order which deprived the appellant of a substantial and important right, though it might not come strictly within the definition of "judgment" in Clause 15 of the Letters Patent was yet appealable. I am unable to reconcile the different parts of the judgment in this case. Either Section 202 of the Companies Act incorporates the limitation on appeal ability contained in Clause 15 of the Letters Patent or it does not. There is no tertium quid. If the view of the Calcutta High Court in *Madan Gopal Daga v. Sachindra Nath Sen* ILR (1927) Cal. 262 is to be followed, then the question arises whether the order now under appeal which merely directs an enquiry into the conduct of the director and liquidator u/s 235 of the Companies Act is a "judgment" within the meaning of Clause 15 of the Letters Patent. Having regard to the exposition of the meaning of the word judgment contained in the decision of this Court in *Tuljaram v. Alagappa Chettiar* (1910) 21 M.L.J. 1 : ILR 35 it would be difficult to hold that the order in question which does not terminate or put an end to any proceeding before the learned Judge of this Court is a "judgment" and therefore appealable. I, however, find that in a decision of a Bench of this Court in *Chokkalingam Chettiar Vs. In Re: The Nagarathar National Bank (in liquidation)*, it has been held, relying on the opinion of Messrs. Sircar and Sen, that an order u/s 196 of the Companies Act directing the public examination of directors is appealable u/s 202 of the Companies Act. The case, no doubt, related to an appeal against an order of a District Judge in the course of the winding up of a company and there is no discussion of the question. As my learned brother has indicated, it is not necessary on this occasion to express a final opinion on the question whether an order of the kind with which we are now concerned is appealable as a "judgment within the meaning of Clause 15 of the Letters Patent. I agree with him that the appeal must fail on the merits.

8. The argument of the appellant's counsel is that Section 235 of the Companies Act has reference only to a winding up by the Court and has no application to a voluntary liquidation. Section 235 is part of a fasciculus of sections headed "Supplementary provisions" beginning with Section

227. An examination of Section 227 and the provisions following it would show that they apply both to a voluntary winding up and a winding up by or subject to the supervision of the Court. The object of Section 235 is to facilitate recovery by the liquidator of the assets of"" the Company improperly dealt with or retained by the directors or other officers or in respect of which they have become liable to account by reason of any misfeasance or breach of trust. In order to avoid expenditure by way of Court-fees and also to minimise the delay likely to occur if regular suits were instituted, Section 235 provides a cheap and expeditious remedy for realisation of the assets of a Company, under liquidation. I see nothing either in the language of the section or the reason of the rule that makes it inapplicable to a case of a voluntary liquidation. The words of Section 235 are perfectly general and apply to a voluntary liquidation.

9. The further contention of the appellant's counsel is that Section 216 governs: the powers of the Court in the course of a voluntary liquidation and that section confers only a very limited power on the liquidator or contributory, namely, "" the power of enforcing calls, staying of proceedings, or any other matter,"" the other matter being, according to the learned advocate, ejusdem generis with the previously, enumerated topics. Therefore, it is argued that the present application by a shareholder for the examination of the director and liquidator on a misfeasance application is not maintainable. I cannot agree with this contention. Having regard to the specific mention in Section 216 of such wholly and dissimilar topics as enforcing calls and staying of proceedings, it would be, in my opinion, a misapplication of"" the doctrine of ejusdem generis to hold that the words any other matter"" following the specified categories refer only to matters similar in their nature to the enumerated topics. The enumerated topics do not belong to the same genus. The circumstance that the general words follow two specified topics of a distinct and dissimilar nature in no way derogates from the general application of the general-words in the section. No case has been cited, to us in which it has been held that misfeasance proceedings could not be ordered against directors and liquidators in the course of a voluntary liquidation. The decision in Muzqffar Hussain v. Hakim Rai AIR (1947) Lah. 283 relied on by the learned advocate for the appellant merely held that in a voluntary winding up, the extraordinary

powers of the Court to, order the public examination of a director or other officer of the company under-section 196 of the Companies Act could

not be invoked by the voluntary liquidator and it is only the Official Liquidator that could apply u/s 196. The actual decision in the case has no

bearing on the point now under consideration. There is no doubt an observation of Mahajan, J., in the course of the judgment with reference to the

interpretation of Section 216 in these terms:

As I read the Section 216 in plain terms, by it powers have been given to the Court at the instance of a voluntary liquidator to enforce calls, stay

proceedings or help him in any other matter, which can only mean matters similar to the enforcing of calls, etc. These words can only be read

ejusdem generis with the enforcing of calls, and the matters following it.

The analysis of the provisions of the Act made by my learned brother in the course of his judgment clearly shows that there is no justification for

controlling or limiting the operation of Section 235 by reference to the provisions of Section 216.

10. Though no Indian decision deciding the point now under consideration has; been cited to us, text books of authority in England have answered

the question in favour of the respondent as my learned brother has shown in his judgment. See also in *In re Home and Colonial Insurance Co.*

(1930) 1 Ch. 102.

11. I agree, therefore, that this appeal fails and should be dismissed with costs of the first respondent.