

Motor Fin. (P) Ltd. (In Liquidation) Vs. Registrar of Companies and ors.

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Court : Andhra Pradesh

Decided On : Apr-21-1969

Reported in : [1970]40CompCas6(AP)

Judge : Narasimham, J.

Acts : [Companies Act, 1956](#) - Sections 553, 555 and 555(1)

Appeal No. : Company Application Nos. 53 of 1968 and 10 of 1969

Appellant : Motor Fin. (P) Ltd. (In Liquidation)

Respondent : Registrar of Companies and ors.

Advocate for Def. : Gulam Ahmed Khan and ;Mohd. Mukarramuddin, Adv. for ;Jaleel Ahmed, Adv. for Respondent No. 1 and ;J. Srinivasa Rao, Adv. for Respondent No. 3 in Application No. 53 of 1968 and Respondent No. 2 in App

Advocate for Pet/Ap. : K. Subrahmanya Reddy, Adv.

Judgement :

Narasimham, J.

1. These two applications are made for directions under Section 518 of the Companies Act (1 of 1956) (to be hereinafter referred to as ' the Act ') in the following circumstances.

2. The petitioner in both these applications is the liquidator in the members' voluntary winding up of M/s. Motor Fin. (P) Ltd. The said company went into voluntary liquidation with effect from October 1, 1967. In the course of the liquidation, the petitioner (hereinafter referred to as ' the liquidator ') realised an amount of Rs. 80,500 in respect of which directions are sought. This amount was payable to a creditor of the company, late Raja Venkata Mutyam Rao, who died on November 13, 1965. The amount which was realised, as part of the assets of the company, was invested in a scheduled bank, as required under Section 553 of the Act. Late Mutyam Rao left behind respondents Nos. 2 to 9 in Application No. 53 of 1968, his heirs-at-law. There were differences among them with regard to the division of the properties of late Mutyam Rao. By an agreement of parties their differences were referred to arbitration.

3. The arbitrators gave their award on July 11, 1968. An application was made to the District Court, Karimnagar, to pass a decree in terms of the award. The matter was pending as O.P. No. 76 of 1968 in the District Court of Karimnagar, when Company Application No. 53 of 1968 was made to this court seeking directions on September 26, 1968, and the learned counsel was taking time for production of a certified copy of the decree passed in terms of the award, but it was not filed. So, a certified copy was called for by this court which was received on February 25, 1969.

4. On receipt of the certified copy of the decree passed in terms of the award, the liquidator filed Company

Application No. 10 of 1969, seeking directions in view of the decree passed. It would appear that meanwhile the Registrar of Companies has required the liquidator to pay the moneys in question into the company's liquidation account with the Reserve Bank of India under Section 555(1)(a) of the [Companies Act, 1956](#).

5. The liquidator was in doubt whether the said moneys were covered by the said provision, and that was the main reason for his seeking directions of this court.

6. The point now before me is whether the moneys with the liquidator deposited by him in the scheduled bank to the credit of a special banking account opened by him for the company in liquidation under Section 553 of the [Companies Act, 1956](#), would be within the purview of Section 555(1)(a) of the Act. Section 555(1)(a) contemplates money in the hands of the liquidator or under his control representing 'dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared'. The Companies (Court) Rules relating to this section are Rules 335 to 338 under the heading 'Payment of unclaimed dividends and undistributed assets into the companies liquidation account in a winding-up.'

7. The learned counsel for the liquidator has contended that the provision is not attracted to the moneys, the reasons being that the moneys were not dividends which were declared and even otherwise these were not unclaimed dividends. The learned counsel has submitted that the term 'dividend' as such is not defined. It is a term used in different contexts and it does not occur in the context of the provisions of the Act and the rules thereunder applicable to solvent companies. I do not think that I need disagree with these contentions.

8. Particularly stated, the term 'dividend' occurs in the context of companies which are running as also in the context of companies in liquidation. Sections 205 - 207 deal with dividends and the manner and time of payment thereof in the context of running companies. With regard to running companies, they are declared by the company itself and are payable out of the profits of the company, whereas with regard to companies in liquidation as provided under Section 529(2), they come out of the assets of the company and are declared by the liquidator, and Rules 275 to 280 of the Companies (Court) Rules, 1959, deal with the dividends in a winding up by court. There is, therefore, much force in the contention that the term 'dividend' has to be interpreted according to the context.

9. Furthermore, specific provisions of the Act deal with the winding up of solvent companies: Sections 488, 495, 498 and 528 of the Act. It would also appear from Rule 312, Sub-rule (2) that the rules with regard to winding up by court are not made applicable to proceedings in a voluntary winding up. Rules 312 to 334 are specific rules applicable to voluntary winding up.

10. By the aforesaid discussion, I am led to the view that the application of Section 555(1)(a) must be confined to the express language of that provision and cannot be extended by analogy.

11. The further contention that the moneys do not take the character of unclaimed dividends is not without force, as these are moneys which are held by the liquidator pending settlement of differences between the heirs-at-law. No doubt, Section 555(1)(a) contemplates dividends payable to any creditor which had remained unpaid, but the rules framed under the section, referred to supra, Rules 335 to 338, occur under the heading 'Payment of unclaimed dividends', and the section and the rules should be read together.

12. The learned counsel for the Registrar has contended differently. He urges that importance has to be given to Section 555 as applicable to every mode of winding up as it occurs in Chapter V, dealing with every mode of winding up. The second contention is that Section 511 is for the guidance of all liquidators and from the scheme which is envisaged by Section 511, all moneys payable to creditors are dividends and so Section 555(1) is attracted. Section 511 of the Act provides that:

' Subject to the provisions of this Act as to preferential payments, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the

company.'

13. The section reflects the whole scheme of a winding up proceeding based on the principle that on the realisation of the assets of a company, its debts and liabilities shall, subject to preferential payments as per the provisions of Sections 520 and 530, first be paid in full, or, if that is not possible, pari passu according as the assets are sufficient or insufficient to discharge the liability, and then to distribute the surplus among the sharers pari passu. But this does not necessarily lead to the conclusion that all moneys payable to creditors are dividends, bearing in mind that the term ' dividend ' has a peculiar meaning in the context in which it is used. Section 555 contemplates dividends which were declared and which remained unpaid for six months after the date on which they were declared. The language of the section has to be interpreted as expressed in all its aspects, that is to say, the dividends payable to a creditor which were declared and which had remained unpaid for six months after the date of such declaration. The words cannot be extended by analogy, much more so when the Act has specific provisions for different types of winding up. The rules framed under the section have also to be given their meaning in conjunction with the section to which they pertain and, so understood, the references to unclaimed dividends in the rules are significant. It might well be that they mean dividends payable to a creditor which had remained unpaid because they were unclaimed for six months after the declaration of the dividends as such.

14. For these reasons, I do not consider that Section 555(1)(a) of the Act is attracted to the moneys in question.

15. Further, in this peculiar case, as per the decree of the court, the moneys have to be disbursed and it would be a needless complication to treat these moneys as moneys under Section 555(1)(a) of the Act and postpone the legitimate claims thereto.

16. As such, the liquidator might proceed with his duties as liquidator under Section 512 of the Act, with regard to the moneys in question under his control. The point raised before me is answered accordingly. The costs of these petitions will come out of the assets of the company.

17. In the view that I have taken that the liquidator could proceed under Section 512 of the Act with regard to the moneys in question under his control, specific directions as prayed for need not issue.

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