

In Re: Sonardih Coal Co., Ltd.

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Court : Allahabad

Decided On : Mar-21-1930

Reported in : AIR1930All617

Appellant : In Re: Sonardih Coal Co., Ltd.

Judgement :

Young, J.

1. This is an application of the official liquidators of the Sonardih Coal Co., Ltd. in liquidation, to place the Collector of Mirzapur upon the list of contributories in lieu of Mahant Permanand Gir, who was placed upon the list of contributories on 20th January 1928. On 22nd June 1928, a call of Re. 1-4-0 was ordered by this Court. On 6th August 1928, the contributory not having paid the amount of the call a decree was passed by this Court for the amount, namely Rs. 1,250. Execution proceedings were taken in the Munsif's Court of Mirzapur, and on 17th June 1929 Rs. 735 was collected by way of execution. This left a balance of Rs. 553-8-0, including costs of execution, due from the contributory to the official liquidators. On 24th June 1929. the estate of the contributory was taken over by the Court of Wards and on the 29th June a notice was published in the Gazette under Section 15, Court of Wards Act. In the month of August 1929 notice was given to the Collector of the existence of the claim for the balance of the call under Section 17(1), Court of Wards Act, and in the month of March 1930 the Collector has paid the balance of this call to the official liquidators.

2. The official liquidators, however, finding that the amount of the first call has not been sufficient to satisfy the debts of the company, contemplate applying to this Court to order another call upon the contributories. It is clear that as Mahant Permanand Gir is now under the Court of Wards the Collector in the ordinary course of events would represent Permanand Gir and, subject to the argument of the Government Advocate who appears for him, to which I shall allude hereafter, he ought to be in the list of contributories in place of Mahant Permanand Gir. The official liquidators have in this application applied that the list of contributories should be varied under Section 184, Companies Act, and that the name of the Collector of Mirzapur should be placed upon the list of contributories in lieu of Mahant Permanand Gir.

3. The Government Advocate, who appears for the Collector, objects to an order being made and relies upon Section 17, Court of Wards Act. That section is as follows:

On the publication of a notification under Section 15 the Collector specified in the order of assumption, or any other Collector whom the Court of Wards may appoint in this behalf, shall publish in the Gazette a notice and in the vernacular calling upon all persons having claims, including decrees for money, whether secured by mortgage or not, against the ward or his property to notify the same in writing, to such Collector within six months from the date of publication of the notice,

4. He also relies on Section 18 of the same Act which provides:

Subject to the provisions of Section 20 every claim of the nature specified in Section 17... which is not notified under Section 17, shall be deemed for all purposes... to have been duly discharged provided that if the claimant can show sufficient cause for failure to comply with the provisions of Section 17, the Collector shall receive his claim, and the claim so received shall be deemed to have been notified under Section 17.

5. The learned Government Advocate argues that this application is in the nature of a claim, that the claim has not been notified under Section 17 within six months of the publication of the notice and that, therefore, the application is barred under

Section 18, Court of Wards Act.

6. I am satisfied that the argument is based upon a misapprehension of the effect of Section 17. That Section 17 only applies to any claim existing at the date of the publication of the notice. Even at the present moment there is no claim, in my opinion, existing against Mahant Permanand Gir by the official liquidators. When a company goes into liquidation and an official liquidator is appointed, the contributories are only liable to pay up the balance of their share money then uncalled as and when the Court is satisfied that the financial condition of the company is such that a call is necessary to discharge the liabilities of the company. The shareholder is not liable to pay one farthing of the uncalled share money, until the Court has made such an order and the case then becomes a claim on the contributory. There could not then be, in my view, any claim whatever by the official liquidators against Mahant Permanand Gir until such a call has been sanctioned by the Court. On the date of the notice in the Gazette in this case the only claim then in existence was notified by the official liquidators under Section 17 to the Collector and that claim has been satisfied. If and when the official liquidators apply to this Court for an order for a call, they have to satisfy this Court that such a call is necessary. If they do satisfy the Court that such a call is necessary the Court will make an order sanctioning a call. On that date, and on that date alone, whenever it may occur the official liquidators will have a claim against Mahant Permanand Gir or any representative of his within the meaning of Section 17, Court of Wards Act. That being so, the objection of the Government Advocate on behalf of the Collector is without force. Further the notice to the Collector in the month of August 1929 was in my opinion sufficient to fix the Collector with notice that Mahant Permanand Gir was a contributory in this company in liquidation, and that therefore he might be liable for further calls. Even if, therefore, the argument of the learned Government Advocate is sound, I am of opinion that this notice would be sufficient notice of a 'claim' within the meaning of Section 17, Court of Wards Act. The official liquidators could in any event claim the benefit of the proviso to Section 18.

7. There is nothing in the Court of Wards Act which conflicts with the Companies Act in the matter of allowing this application for the varying of the list of

contributories by placing upon it the name of the Collector of Mirzapur in lieu of the name of Mahant Permanand Gir. I order, therefore, that the list of contributories be varied accordingly. This order will carry costs of Rs. 150, that being the amount of fee which I have allowed the official liquidators to pay Mr. Piare Lal Banerji, who appeared on their behalf.

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