**A.C. Goel Vs. First National Bank Ltd., Delhi**

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**Court** : Punjab and Haryana

**Decided On :** Apr-08-1960

**Reported in** : AIR1960P& H476; [1960]30CompCas317(P& H)

**Judge** : Tek Chand, J.

**Acts** : Displaced Persons (Debts Adjustment) Act, 1951 - Sections 19, 19(2), 19(6), 20, 20(1) and 441; Banking Companies Act, 1949 - Sections 45B; ;Companies Act, 1956 - Sections 441; Bank-ruptcy Act, 1869 - Sections 23

**Appeal No.** : Liquidation Misc. Appln. No. 15 of 1958

**Appellant** : A.C. Goel

**Respondent** : First National Bank Ltd., Delhi

**Judgement** :

ORDER

(1) This is an application made by Shri A. C. Goel under S. 19(2) of the Displaced Persons (Debts Adjustment) Act (Act No. LXX of 1951) for converting his 280 shares, on which 75 per cent had been paid up, into 210 fully paid up shares on the ground that the petitioner is a displaced person from West Punjab. The respondent is a banking Company which had its registered office at Lahore which, as a result of the creation of two Dominions, was shifted at first to Ambala and later on to Ludhiana in East Punjab.

On 6th of February, 1957 the petitioner serviced a registered notice on the Managing Director of the respondent-Bank requesting that his 280 shares, on which 75 per cent had been paid, may be reduced and converted into 210 fully paid-up shares as he was a displaced person from Lahore. Exhibit P.W. 1/2 is the acknowledgment receipt of the notice. This case, which was filed before the Tribunal at Delhi, has been transferred to this Court by virtue of S. 45B of the Banking Companies Act (Act No. X of 1949).

(2) An application had been made for the winding up of the Bank by North India Radhaswami Educational Society on 10th of March, 1955. While the petition for the winding up of the Bank was pending, the Reserve Bank of India, had also applied for its winding up and the Bank was ordered to be wound up on 17th of May, 1957 at the instance of the Reserve Bank. The petition presented by the Society on 10th of March, 1955 was also allowed and order for the winding up was passed on 30th of August, 1957. The contention raised by the petitioner was traversed by the Bank and the pleadings between the parties gave rise to the following issues:

1. Whether the petition is within time?

2. Whether the petition is maintainable?

3. Whether the petitioner is entitled to get his shares converted as prayed?

4. Whether the bank could make a valid call?

(3) On the first issue reference may be made to the provisions of S. 19(6) of the Displaced Persons (Debts Adjustment) Act. It provides:

'19(6) The provisions of this section shall have effect for a period of ten years from the 15th day of August, 1947, and thereafter shall cease to have effect except as respects things done or omitted to be done.'

In this case an application to the Company had been made under S. 19(2) by the petitioner on 6th of February, 1957, and that being so the benefit of the provisions of S. 19 are available to the petitioner. I have also expressed this view in the case of Bhai Mohan Singh v. Hind Iran Bank Ltd., 1958-28 Com Case 393: (AIR 1959 Punj 225). The first issue, therefore must be decided in the petitioner's favour.

(4) The second and the third issues overlap each other and may be disposed of together. According to the contentions of the Bank a petition under S. 19 is not competent as the winding up petition was presented on 10th of March, 1955, long before the date of petitioner's application to the Bank under S. 19(2). Mr. Krishan Lal Kapur, learned counsel for the Bank, has drawn my attention to the provisions of S. 441 of the Companies Act, 1956, and has argued that the winding up of a Company by the Court is to be 'deemed to commence at the time of the presentation of the petition for the winding up.'

His contention is that when construing the provisions of S. 20 of the Displaced Persons (Debts Adjustment) Act, the language of S. 441 of the Companies Act had to be borne in mind. According to him the words occurring in S. 20 'Where a Company * * * * * is being wound up' should be read to indicate the period beginning with the date of the presentation of the winding up petition. He has not drawn my attention to any authority in support of his contention. There is a clear distinction between the language employed in Section 20 by the Legislature and it materially differs from the words in Section 441 of the Companies Act.

Apart from S. 441, winding up is a process which begins after the Court passes an order for winding up. Till such order is passed, there cannot be any winding up in fact. The process of winding up is that of dissolution of the Company, and the first step which is taken in this direction is after the passing of winding up order by the Court-excluding of course the case of voluntary winding up. Section 441 has introduced a statutory fiction. The words which are of moment are:

'441. (1) ***

(2)* * the winding up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.'

The Legislature has preferred to use the words 'shall be deemed to commence'

instead of 'shall commence'. This is not without significance. These words indicate the mind of the Legislature; and what is signified is, that although the winding up of a company does not in fact commence at the time of the presentation of the petition, it nevertheless shall be taken to commence from that stage. In this context the word 'deemed', means, 'supposed', 'considered,' 'construed', 'thought', 'taken to be', or 'presumed'. The word 'deemed' refers to 'what is supposed to be', not to 'what actually is'. It rather suggests that something is being assumed as true for certain purposes though really it is not so.

(5) Cave J. in R. v. Norfolk Country Council, (1891) 60 LJ QB 379, said:

'Generally speaking, when you talk of a thing being deemed to be something, you do not mean that it is that which it is deemed to be. It is rather an admission that it is not what it is deemed to be and that, notwithstanding it is not that particular thing, nevertheless, for the purposes of the Act, it is to be deemed to be that thing.'

(6) Griffith, C. J., of the High Court of Australia in Muller v. Dalgety and Company Limited, 9 CLR 693 at page 696, said:

'The word 'deemed' *** is more commonly used for the purpose of creating **** a 'statutory fiction' *** that is, for the purpose of extending the meaning of some term to a subject-matter which it does not properly designate. When used in that sense it becomes very important to consider the purpose for which the statutory fiction is introduced.'

(7) In Re Western Canada Pulpwood Company Ltd., (1929) 4 DLR 337 (34)), Donovan, J. of Manitoba King's Bench, following a previous decision, said:

'In Mutchenbacker v. Dominion Bank, (1911) Man LR 320, it was held that the words 'shall be deemed to be' were not equivalent to 'shall be', when taken along with the rest of the contract, and the use of such a term implied that otherwise than under the conditions named the title in the property was impliedly acknowledge to be vested in the other party to the contract.'

In Hill v. East and West India Dock Co., (1884) 9 AC 448, the relevant words in S. 23 of the Bank-ruptcy Act 1869 were to the effect that a lease shall be deemed to have been surrendered on the date of the order of adjudication. Earl Cairns sitting in the House of Lords said:

'It says, 'shall be deemed to have been surrendered,' it does not say 'shall be surrendered', but there shall be a statutory fiction gone through, the result of which is that the lease shall be deemed to have been surrendered on that date.'

To similar effect were the remarks of James, L. J. in Ex parte, Walton, (1881) 50 LJ Ch 657:

'When a statute enacts that something should be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.' Earl of Halsbury L. C. in Shepheard v. Broome, (1904) AC 342 (345) said:

'I feel with Cozens-Hardly L. J. that it is a painful duty to be obliged to treat that as

fraudulent which in truth was not fraudulent; but S. 38 of the Act of 1876 (Companies Act, 1867) compels us to say that it shall be deemed to be fraudulent.

The statute, rightly or wrongly, contemplated the possibility of there being no actual fraud, and intentionally enacted that even if there were no fraud in the ordinary sense, yet if the facts established the issue of a prospectus which did not mention a contract under the circumstances contemplated by that section, and which exist in this case such prospectus should be deemed fraudulent.'

The above reference to the observations of Cozens-Hardly L. J. is from Broome v. Speak, (1903) 1 Ch 586 (628), from which the appeal had been preferred to the House of Lords. The decision of the Cout of Appeal was affirmed by the House of Lords. It is not necessary for purposes of decision of this case to go into the reasons, why as a result of statutory fiction, the draftsmen of the Companies Act had thought it proper to extend the operation of the winding up from the time of the presentation of the winding up petition, rather than, from the date of the winding up order.

(8) I may now compare the language of Section 20(1) of the Displaced Persons (Debts Adjustment) Act, 1951, with that of Section 441, Sub-section (1) of S. 20 runs as under:

'Where a Company or a co-operative society is being wound up, no displaced person or displaced bank shall be called upon, notwithstanding anything to the contrary contained in the Companies Act or in the memorandum or articles of association or the Co-operative Societies Act, to make any contribution to the assets of the company or co-operative society, as the case may be, in respect of any share held by him or it in the company or society on the 15th day of August, 1947.'

The words 'Where a Company **** is being wound up' are significant. The use of the word 'being' indicates the process towards the completed result expressed by the participle 'wound up'. If it was the intention of the Legislature to give extended meaning to the expression 'where a Company is being wound up' then appropriate language would have been used to indicate that winding up would be deemed to commence from the date of the presentation of the petition. It is always open to the Legislature to either restrict or expand the meaning of words or terms in order to give effect to the purpose of the Act.

Where the Legislature intends to give to the words an enlarged or a limited meaning, in order to avoid confusion the particular Act usually gives such an indication, either in the interpretation clause, or in the specific section itself, so that, the language may be brought into harmony with the legislative intent, but this has not been done in this case. In the absence of any indication of any such intention the phrase 'is being wound up' has to be construed in its natural--which is also the literal--sense of the words employed.

(9) The two statutes, the Displaced Persons (Debts Adjustment) Act (Act No. LXX of 1951) and the Companies Act of 1956 are not in parimateria so that they should be construed together. The Scope of the Displaced Persons (Debts Adjustment) Act is very narrow. This Act was principally made for adjustment and settlement of debts due by displaced persons. Section 19 provided relief to such persons in respect of shares held by them on 15th of August, 1947 in going concerns. Section 19(2) enabled them to convert their partly paid-up shares into smaller number of fully paid-

up shares, in respect of which calls had already been made.

Section 20, which related to concerns, which were being would up, relieved the displaced persons in so far, that not only fresh calls could not be made from them, but further, that they could not be compelled to contribute to the assets of the company or the co-operative society which was being wound up. To concerns which were not in liquidation the provisions of S. 19 applied, and to those, which were being dissolved, the provisions of S. 20 were made applicable.

The provisions of Ss. 19 and 20 of the Act do not overlap but are independent of each other being mutually exclusive. Section 19 deals with rights of displaced persons in going concerns which are functioning, and S. 20 refers to their rights in relation to companies and co-operative societies which are being liquidated or, in other words, which are 'being wound up' vide Bhai Mohan Singh's case, 1958-28 Com Cas 393: (AIR 1959 Punj 225). Thus, there is no apprehension of any conflict between the provisions of S. 20 of the Displaced Persons (Debts Adjustment) Act, and S. 441 of the Companies Act, and they operate within totally different spheres.

Section 441 embodies the provisions of S. 168 of the Indian Companies Act, 1913, with certain amplification an regard to companies which were being voluntarily wound up. It will be seen that the words used in the prior statute, that is, Indian Companies Act of 1913, have not been repeated, when enacting S. 20 of the Displaced Persons (Debts Adjustment) Act of 1951. In these circumstances the two provisions cannot be construed to have the same meaning-rather, the presumption from the use of different language is, that a change of meaning was intended. I see no conflict between S. 441 of the Companies Act of 1956 and S. 20 of the Displaced Persons (Debts Adjustment) Act. Both enactments function in their distinct and separate ambits.

(10) A reference may also be made to the doctrine of 'relation back' contained in Section 28(7) of the Provincial Insolvency Act and Section 441 of the Companies Act. This doctrine, where applicable, has to be construed strictly as it is unduly severe. Vide Lahore Enamelling and Stamping Co. Ltd., v. A. K. Bhalla, AIR 1958 Punj 341 (348). But so far as the provisions of the Displaced Persons (Debts Adjustment) Act are concerned, it has no applicability whatsoever, as there is no relation back.

(11) In my view not only the petition is within time, but it is also maintainable and the petitioner, who is a displaced person from West Punjab, is entitled to get his 280 shares, on which he has paid 75 per cent, converted into 210 fully paid-up shares. The Company, when approached by the petitioner under Section 19(2) of the Act, ought not to have refused the petitioner's request. In the absence of any cause for such a refusal. I direct the Company (now in liquidation) to convert the petitioner's 280 partly paid-up shares into 210 fully paid-up shares. The petition is allowed with costs, which are assessed at Rs. 50/-.

(12) Petition allowed.