APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee and Fletcher JJ.

1920

Feb. 12.

MURALIDHAR ROY

v.

THE BENGAL STEAMSHIP COMPANY, LTD.*

Company—Winding up—Power of the Court—Suspension of business—Deadlock—Dissension among the Directors—Substratum of the Company—Just and equitable cause—Indian Companies Act (VII of 1913), s. 162 (iii).

Where there has been a suspension of business of a company incorporated under the Indian Companies Act, the power of the Court to wind up the company will be exercised only when there is a fair indication that there is no intention to carry on the business; if the suspension is satisfactorily accounted for and appears to be due to temporary causes, the order may be refused.

Re The Metropolitan Railway Warehousing Company, Ld. (1), *In re Middlesborough Assembly Rooms Company* (2) and *In re Capital Fire Insurance Association* (3) referred to.

Where there are ample indications that it is possible to carry on the business of the company, it is not possible to hold that there is a complete deadlock which must be got rid of by compulsory winding up. The Act creates as between shareholders a domestic tribunal and unless a clear case is made out, the Court will be slow to withdraw from it the decision whether the company's business shall or shall not be carried on.

In re Yenilje Tobacco Company, Ld. (4) and *In re The Newbridge Sanitary Steam Laundry, Ld.* (5) referred to.

Where the objects of a company as set out in the Memorandum of Association can be fulfilled in other ways or by the employment of other agencies, it cannot be rightly held that the substratum was gone, and the Court will not grant an application for winding up.

* Appeal from Original Civil No. 49 of 1919 in suit No.

(1) (1867) 17 L. T. 108.
(2) (1880) 14 Ch. D. 104.
(3) (1882) 21 Ch. D. 209.
(4) [1916] 2 Ch. 426.
(5) [1917] 1 I. R. 67.

In re Haven Gold Mining Co. (1) and *In re German Date Coffee Co.* (2) referred to.

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APPEAL by Muralidhar Roy, the petitioner, from the judgment of Greaves J.

The Bengal Steamship Company, Ld., was duly incorporated in Calcutta under the provisions of the Indian Companies Act as a Joint-Stock Company with limited liability having its head office in Calcutta. Under the Articles of Association Muralidhar Roy, Haladhar Roy and Sasadhar Roy, partners of the firm of Messrs. Muralidhar Roy and Brothers, were appointed Managing Agents of the said company, which was constituted to carry on business as carriers by river and had a fleet of two flats and a steamer, constructed for the river for towing the flats. The objects of the company as stated in the Memorandum of Association were *inter alia* "to purchase, charter, hire, build, or "otherwise acquire steam or other ships or vessels "with all equipments and furniture and to employ "the same in the conveyance of passengers, mails, "live-stock, grain and other agricultural produce and "treasure and also of goods and merchandise of every "description, and specie on the principal rivers of "India and Burmah with their tributaries, and also to "run vessels to sea, to any port or ports whatsoever, "whether inland or seaboard, and to take vessels, flats, "barges and other craft in tow of its vessels, as the "company, may from time to time determine and to "acquire postal subsidies and enter into mail or other "contracts." The company started business in August, 1909. In October, 1916, the Government purchased, paid for and took over both the flats from the company and in consequence of this the business of the company was stopped, as there was no flat for

(1) (1882) 20 Ch. D. 151. (2) (1882) 20 Ch. D. 169.

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carrying the goods. At a generel meeting of the company held on the 17th December, 1916, a resolution was passed to sell the steamer which, however, was not sold. Subsequently, in April, 1917, the steamer of the company was also acquired by the Government, but on the 20th October, 1917, it was returned to the company. On the 1st November, 1918, the firm of Muralidhar Roy and Brothers was dissolved. On the 25th November, 1918, Muralidhar Roy filed a petition for the liquidation of the company on the grounds that the company could not carry on business owing to the fact that the firm of managing agents had been dissolved; that the Board of Directors could not meet together to transact business on account of dissensions among the Directors; and that the business of the company could not be carried on at a profit. On the matter coming on for hearing, Mr. Justice Greaves dismissed the petition. The petitioner, thereupon, appealed.

Mr. S. R. Das (with him *Mr. S. C. Bose*), for the appellant. Though there were others interested in the company, Muralidhar Roy and his brothers were really the promoters of it. The assets they had were not sufficient for them to carry on the business for which the company was started. In consequence of the flats having been acquired by Government during the war the business of the company had come to a standstill. Then owing to serious dissensions between the appellant and his brothers and the dissolution of partnership in their firm of managing agents, there was no possibility of any agreement being arrived at for the purpose of conducting the business of the company. On the principle laid down in *In re Yenidje Tobacco Company, Ld.* (1) it was just and

(1) [1916] 2 Ch. 426.

equitable that the company should be wound up. Finally the substratum of the company was gone. The object for which it was started was at an end. It was unable to exist as there were no flats belonging to the company to carry on its business and there were no means of obtaining other flats to do its work. Having regard to all these circumstances the Court should direct the winding up of the company.

Mr. Langford James and *Mr. I. B. Sen*, for the respondent company.

The Advocate-General (*Mr. T. C. P. Gibbons, K.C.*) and *Mr. B. C. Ghose*, for the respondent Haladhar Roy.

The respondents were not called upon.

MOOKERJEE J. We are invited in this appeal to consider the propriety of an order dismissing a petition for the winding up of a company incorporated under the Indian Companies Act, 1913. The facts are fully set out in the judgment of Mr. Justice Greaves and we need not recapitulate them.

The application is supported here on three grounds, namely, first, that the company has suspended its business for a whole year; secondly, that there has been a deadlock; and thirdly, that the substratum is gone. The first of these grounds falls within the third clause of section 162, and the second and third are comprised in the sixth clause which provides for the winding up of a company if the Court is of opinion that it is just and equitable that the company should be wound up.

As regards the first of these grounds, Mr. Justice Greaves has pointed out that the matter rests entirely in the discretion of the Court, as is clear from the decisions in *In Re the Metropolitan Railway Warehousing Company, Ltd.*, (1), *In re Middlesborough*

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Assembly Rooms Company (1), and *In re Capital Fire Insurance Association* (2). The power will be exercised only when there is a fair indication that there is no intention to carry on the business; if the suspension is satisfactorily accounted for and appears to be due to temporary causes, the order may be refused. Now, in the present case, if it be conceded that the business has been suspended for a whole year, the suspension is due to very exceptional circumstances. To carry on their business, the company employed a steamer and two flats. The flats were acquired by Government during the war and the company have not yet been able to replace them in view of the rise in prices. Consequently, the suspension of business for a whole year is satisfactorily accounted for, and does not furnish an indication that there is no intention to carry on the business. In our opinion, no ground has been made out to justify the winding up of the company on the ground mentioned in section 162 (*iii*).

As regards the second ground, it is contended that the proceedings of the meetings of the company furnish ample indication that there is a complete deadlock. The chief promoters of the company are three brothers, Muralidhar Roy, Sasadhar Roy and Haladhar Roy. These three formed themselves into a firm which became the Managing Agents of the Company. Subsequently, there was disagreement amongst the brothers and the firm was dissolved with effect from the 1st November, 1918. There is no room for doubt that there are acute differences amongst the brothers, and the proceedings disclose much bitterness of feeling. In view of these circumstances, reliance is placed on behalf of the appellant upon the decision of the Court of Appeal in *In re Yenidje*

(1) (1880) 14 Ch. D. 104. (2) (1882) 21 Ch. D. 209.

Tobacco Company, Ltd., (1). In that case, no doubt, the Master of the Rolls (Lord Cozens Hardy) pointed out that the two directors were not on speaking terms, that the so-called meeting of the Board of Directors had been almost a farce or a comedy, that the directors would not speak to each other on the Board and that some third person had to convey communications between them which ought to go directly from one to the other. But the circumstances of that case were very peculiar and the real reason for the decision of the Court of Appeal was that there was no way to put an end to the state of things which existed, except by means of a compulsory order. Warrington, L. J. laid stress on the fact that there were only two persons interested, that there were no shareholders other than those two, and that there were no means of overruling, by the action of a general meeting of shareholders, the trouble which was occasioned by the quarrels of the two directors and shareholders; in such circumstances the company should be wound up, if there existed such a ground as would be sufficient for the dissolution of a private partnership at the suit of one of the partners against the other. The same principle was applied in *In re The Newbridge Sanitary Steam Laundry Company* (2) and an order for compulsory winding up was made on the ground that in the situation which had arisen, such winding-up order afforded the only means of enabling justice to be done to the petitioners. In the case before us, the circumstances are, however, of an entirely different description. No doubt, the firm of Managing Agents composed of three members, was dissolved on the 31st October, 1918; but since then, at extraordinary general meetings, steps have been taken to appoint new Managing Agents. We need not express an

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opinion as to the propriety or legality of the proceedings taken; but it is sufficient for our present purpose that there are ample indications that it is possible to carry on the business of the company. In such circumstances, it is not possible for us to hold that there is a complete deadlock which must be got rid of by compulsory winding up: the Act creates as between the shareholders a domestic tribunal, and, unless a clear case is made out, the Court will be slow to withdraw from it the decision whether the company's business shall or shall not be carried on. In our opinion, the second ground urged in support of a winding-up order has not been established.

As regards the third ground, it is urged that the whole substratum of the business has become impossible. Mr. Justice Greaves has pointed out that there is really no foundation for this contention. The objects of the company, as stated in the Memorandum of Association, are, *inter alia*, "to purchase, charter, "hire, build, or otherwise acquire steam or other "ships or vessels with all equipments and furniture "and to employ the same in the conveyance of "passengers, mails, live-stock, grain and other agricul-"tural produce and treasure and also of goods and "merchandise of every description, and specie on the "principal rivers of India and Burmah with their "tributaries, and also to run vessels to sea, to any "port or ports whatsoever, whether inland or sea-"board and to take vessels, flats, barges and other "crafts in tow of its vessels, as the company may from "time to time determine, and to acquire postal subsi-"dies and enter into mail or other contracts." No doubt, the business has hitherto been carried on with one steamer and two flats, and the flats have been taken up by Government. But, that does not prove that the objects of the company, as set out in

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the memorandum, cannot be fulfilled in other ways or by the employment of other agencies. The principle of substratum gone clearly cannot be applied to a case of this description. Two illustrations of that class of cases will be found in *In re Haven Gold Mining Company* (1) and *In re German Date Coffee Co.* (2). In the first case, the principal and substantial object of the company was to acquire a particular gold mine in New Zealand, and the title to the gold mine altogether failed. In the second case, the object was to manufacture from dates a substitute for coffee under a German Patent; but the German Patent was not and could not be obtained. In such cases, it could be rightly held that the substratum was gone, notwithstanding that the Memorandum of Association contained general objects, and it might be justly ruled that a majority could not hold a minority to the speculative continuation of a scheme which had proved futile. That doctrine has plainly no application here. We are consequently of opinion that there is really no foundation for the application which has been rightly dismissed.

The appeal is accordingly dismissed with costs—one set of costs to the company and one set to the opposing shareholders.

FLETCHER J. I agree.

O. M. *Appeal dismissed.*

Attorney for the appellant: *Charu Chandra Bose.*

Attorneys for the respondents: *Chatterjee & Co.*, *Abhash Chandra Ghose* and *T. B. Roy.*

(1) (1882) 20 Ch. D. 151. (2) (1882) 20 Ch. D. 169.