

ORIGINAL CIVIL.

1934

Jan. 22.

Before Buckland J.*In re* BRAHMANBARIA LOAN CO., LTD.

*Company—General meeting, Calling of—Balance-sheet, Preparation of—
Indian Companies Act (VII of 1913), s. 76.*

Section 76 of the Indian Companies Act is not intended to enable the Court to make an order, which will excuse persons, responsible for failure to call a general meeting, from the consequences of their omission.

The terms of section 76 of the Indian Companies Act are mandatory and make no reference to the balance sheet, the preparation of which has nothing to do with the matter.

APPLICATION by a member.

The facts of the case appear fully from the judgment.

S. K. Dutt for the applicant. The same period has been allowed under the Act for the preparation of the balance-sheet and calling of the general meeting. *Vide* sections 131(1) and 76. Further, the balance-sheet has to be placed before the general meeting, under Article 108 of Schedule I to the Act. Therefore, in the circumstances of this case, the general meeting should be directed to be called as prayed for.

BUCKLAND J. This is an application, made under section 76 of the Indian Companies Act, 1913, for an order that the Court do direct the calling of a general meeting of the company.

The grounds for the application are a petition verified by the affidavit of Gobindalal Datta, who is described as a member of the board of directors of the company. In his petition, he states that the last balance-sheet of the company up to 31st March, 1932, was adopted at its general meeting held on the 30th September in the same year. That, it appears, is

the date when the last general meeting of the company was held. The section provides that—

A general meeting of every company shall be held once at the least in every year, and not more than 15 months after the holding of the last preceding general meeting.

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In the event of default, the company and every officer of the company, who is knowingly a party to the default, is liable to a fine. It is clear that the section has not been complied with, as more than 15 months have elapsed since the last general meeting was held.

The petition also states that, on 6th March, 1933, criminal proceedings were instituted by the company against its former secretary, in which proceedings certain books of the company were exhibited and remained in court, as the result of which the accounts of the company could not be audited and the balance-sheet for the year ending the 31st March, 1933, could not be prepared, and that "in consequence thereof no "annual general meeting for the adoption of any "balance-sheet for the said year could be held as yet". It is then stated that the criminal proceedings terminated on the 11th December, 1933, with the conviction of the former secretary, who, however, has filed an appeal against his conviction in the court of the District Judge of Tippera, which appeal is not likely to be disposed of until the end of next month, and that, until the appeal has been disposed of, the books will not be returned to the company, and the auditor then will require about two months to audit the accounts of the company. In these circumstances, the Court is asked to make an order directing the calling of a general meeting of the company "within" the 31st May, 1934.

In my opinion, this application is entirely misconceived. The object of the section is to enable a member of a company, where there has been default on the part of those whose duty it is to summon the meeting, to apply to the court to direct the calling of a meeting. It is not, as is undisguisedly said by

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learned counsel, who appears on behalf of the applicant, is the object of this application, intended to enable the court to make an order which will excuse the persons responsible from the consequences of their omission. What the petition says with regard to the balance-sheet, upon which learned counsel has laid considerable stress, has nothing to do with the matter. Possibly, the general meeting, which should have been called, is one before which the balance-sheet should have been placed, but section 76 makes no reference to the balance-sheet and its terms are mandatory.

I have enquired as to the genesis of this application and have been informed that, in cases where persons have rendered themselves liable to a penalty, it is the Registrar of joint stock companies who initiates the proceedings, and that the Registrar was approached in relation to this matter and said that he would stay his hands for three weeks in order to enable an application to be made under this section. If this information is correct, the Registrar has taken an erroneous view of the object of the section, as there is nothing in the section which would excuse the persons liable for the default even if an order were made as desired. Take a case for which the section is obviously intended to provide, namely, where the directors, for reasons of their own, or it may be negligently or in furtherance of fraudulent dealing, fail to call a general meeting, and a shareholder considers it his business to take action under the section. In such case, could it be said that the persons responsible were to escape the consequences of their omission to call a general meeting? Certainly not. The fact that a director makes the application makes no difference. On the contrary, I conceive that it is possible that he could have taken steps to have the meeting convened. He can only apply *qua* member of the company, and, even were I to make the order, he might still be liable to a fine under the section. I need hardly say that I am not prejudging any proceedings that may hereafter be

instituted under the section and, in this connection, I desire to add that it would be extremely unsatisfactory on an *ex parte* application, such as this is, to excuse any officer of the company from the consequences of his omission. The order is one which may be made *ex parte*, but it may be that there are other matters to be considered which do not find a place in a petition and exculpation would not be justified. If proceedings are instituted and if there are sufficient grounds for not having complied with the mandatory provisions of the section, I apprehend that they will furnish a defence and the person or persons charged will be acquitted, but this, in my judgment, is not the time or place at which either directly or indirectly to adjudicate on the point. The application will be dismissed.

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Application refused.

Attorney for applicant: *Jogendra Krishna Dutt.*

S.M.