ORIGINAL CIVIL.

Before Panckridge J.

In re NILPHAMARI LUXMI BANK, LTD. 1935

June 10.

Company—Insolvent bank—Scheme of composition—Sanction, when refused by court—Indian Companies Act (VII of 1913), s. 153.

The court will not sanction schemes of composition and arrangement intended to keep afloat sinking banking companies of which the assets consist of moneys lent out on mortgage, simple bonds and promissory notes, decrees of court and immovable properties but no cash.

APPLICATION by the company for sanction of the scheme of composition and arrangement which had been placed before the creditors of the company at the meeting held pursuant to the directions of the court and which seventy per cent. of the creditors had duly approved.

Susil Sen for the applicant company.

The duty of the court is to see that the majority of the creditors had acted *bona fide* and the scheme is a fair and *bona fide* one, which all reasonable business men are likely to accept. In re *Alabama, New Orleans Texas and Pacific Junction Railway Company* (1). The creditors are the best judges as to what is to their commercial advantage, and the court ought not to take a different view unless there is evidence of any material oversight by the creditors. In re *English, Scottish and Australian Chartered Bank* (2).

The compromise in this case is covered by section 153 of the Indian Companies Act and the court ought not to speculate as to the possibility of loss in the future and refuse to sanction the scheme on that ground. Similar schemes have been allowed as is shown by the forms in Palmer's Company Precedents.

The only alternative to the scheme of arrangement is winding-up. The court should not force the

(1) [1891] 1 Ch. 213, 239. (2) [1893] 3 Ch. 385.

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company into liquidation against the wishes of the majority of the creditors. Therefore, this scheme should be sanctioned.

PANCKRIDGE J. This is an application under section 153 of the Indian Companies Act to sanction a compromise or arrangement between the company and its creditors.

The company obtained leave to convene a meeting of its creditors and the scheme, which is Exhibit B to the petition, was adopted at the meeting, which was held on 26th May, last, without any dissentients.

In the petition it is stated that the objects for which the company is incorporated are to carry on all sorts of banking business, such as lending and advancing money on lands, opening of cash credit and receiving deposits from customers. The petition goes on to state that the assets of the company on 13th April, 1935 were about Rs. 52,000. The assets are said to consist principally of monies lent out on mortgage, simple bonds, promissory notes, decrees of court and immovable properties. It is significant that there is no mention of cash. The claims of the creditors are said to be about Rs. 37,000. It is then stated that owing to trade depression the company is experiencing difficulties in realising its assets and paying the creditors out of them.

The scheme provides that payments shall be made to the creditors by instalments over a period of ten years and that the company shall be managed by a joint board consisting of ten members, of whom six shall be elected by the creditors from amongst themselves and the rest by the shareholders from amongst the shareholders. The company is described to me as a going concern.

In my opinion, the application cannot be granted. It appears to me that the position is that the company has become indebted to certain people, and these creditors and the company think that the best thing to do is to postpone payment and provide for payment over

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a period during which period the company may be able to attract further depositors. As I observed, when I was summarising the petition, there is nothing to show that the company has any cash resources whatever. It is, of course, as much open to a limited company as it is to a private individual to enter into a compromise with any particular creditor. With that the Court has nothing to do. But I am certainly not going to give the sanction of the Court to a scheme which will have the effect of enabling a bank, which is to all intents and purposes insolvent, to continue carrying on business and attract new deposits which in all probability go the way of the former deposits. There are elaborate provisions for setting aside funds to meet the company's liabilities, but there is as far as I can see no guarantee at all that these provisions will be observed. I propose, quite apart from the circumstances of this particular case, to adhere to these principles in dealing with applications to sanction schemes of composition and arrangement intended to keep sinking banking companies of this sort afloat. It may be that the opinion which I have formed is an erroneous one, but my purpose is to adhere to it until I am told by an appellate tribunal that I am wrong.

This application is dismissed.

Application dismissed.

Attorneys for applicants: *Dutt & Sen.*

S. M.