

ORIGINAL CIVIL.

Before Lord-Williams J.

1940

May 6.

In re LIGHT OF ASIA INSURANCE CO., LTD.*

Company—*Voluntary winding up—Practice—Irregularity—Indian Companies Act (VII of 1913), ss. 207, 209.*

In a creditor's voluntary winding-up, no meeting of creditors, as required by s. 209A of the Indian Companies Act, had been held. Upon the liquidator appointed by the company for the purposes of winding-up and reconstruction, proposing to hold a meeting of creditors, certain policy-holders objected and applied to Court for removal of the liquidator and for directions to convene a meeting of creditors to consider the advisability of winding-up or reconstruction of the company.

Held that the course to adopt in such circumstance is to direct the holding of a meeting of creditors within three weeks, for which the following procedure is to be followed :—

(a) Notices of the meeting to be sent by post to the creditors forthwith and to be advertised in the manner specified in s. 206(I).

(b) The directors to cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before such meeting.

(c) The directors of the company to appoint one of their number to preside at such meeting.

(d) The creditors to consider questions dealt with in ss. 209 B to H.

APPLICATION by policy-holders.

On February 3, 1940, the Company by special resolution went into voluntary winding-up and appointed a liquidator for the purpose of winding-up and reconstruction as a mutual insurance company. The liquidator called a meeting of creditors under s. 209C. The petitioners objected to such meeting being held and in fact had their objection noted at the proposed meeting which was held. The petitioners thereafter applied *inter alia* for the removal of the liquidator and for directions for convening a meeting of creditors as stated above.

B. C. Deb for the petitioners. The procedure adopted in this case was totally irregular. The

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creditors should have an opportunity to consider the advisability of winding-up or reconstruction. In the absence of a declaration of solvency under s. 207(1) the special resolution is bad.

B. C. Ghose and *S. P. Chowdhury* for the Company and the voluntary liquidator. The effect of non-compliance with s. 207 (1) cannot render the resolution for winding-up void. Upon the passing of the resolution the voluntary winding-up was complete. *Vide* ss. 203(2), 204. It cannot now be impugned.

Further, non-compliance with the provisions of s. 209A. does not invalidate the proceedings. In any event, the liquidator is not responsible for this irregularity. The Court has power to confirm the appointment and it is open to the liquidator to proceed in terms of ss. 209C to H.

LORT-WILLIAMS J. Under s. 203 of the Indian Companies Act a company may be wound up voluntarily if the company resolves by special resolution that the company be wound up voluntarily.

Section 207 provides that where it is proposed to wind up a company voluntarily and a declaration has been made and delivered in accordance with the section it is referred to in the Act as a "members' voluntary winding up," but where no such declaration has been made it is referred to as a "creditors' voluntary winding up."

Section 209 and ss. 209A to H make provision for the procedure to be followed in a "creditors' voluntary winding up."

Section 209A provides that the company shall call a meeting of the creditors of the company for the day or the day next following the day on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of such meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

Owing to an oversight in the present winding-up, the provisions of s. 209 and ss. 209A to H have not been followed.

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Section 209A (6) provides that, in case of such default, the company, directors or director, and every officer of the company shall be liable to fines. But no specific provision is made with regard to what is to happen to the winding-up in such circumstances.

Under the analogous section of the English Companies Act (1929), according to a note in the Hailsham edition of Halsbury's Laws of England, at page 761 :—

Where such oversight has occurred, in some cases applications have been made to the Court for confirmation of the appointment of a liquidator appointed by the company, and orders have been made on such applications, subject to the creditors' approval of the liquidator so appointed, as expressed either by a meeting thereof or by notice in writing.

I think that the best course to adopt now will be to order that a meeting of the creditors shall be held on Monday, May 27, 1940, and that notices of the meeting shall be sent by post to the creditors forthwith, and the company shall cause notice of the meeting of the creditors to be advertised in the manner specified in s. 206(1) for the publication of a notice under that sub-section, and the directors of the company shall cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before such meeting of creditors, and the directors of the company shall appoint one of their number to preside at the said meeting.

At such meeting the creditors will consider the question of nomination of a liquidator under the provisions of s. 209B, and the appointment of a committee of inspection under s. 209C, and other questions dealt with in ss. 209D to H.

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On the present liquidator appointed by the company undertaking not to proceed with the winding-up pending the decisions to be made at the creditors' meeting, except to receive premiums which are to be paid into the company's account with Lloyds Bank forthwith, no further order is made at present with regard to the winding-up.

The liquidator will be allowed to draw from the assets of the company and pay to the directors a sum sufficient to enable them to carry out these directions.

This application is adjourned for a month.

Attorneys for petitioners: *H. C. Banerjee & Co.*

Attorneys for the company: *H. N. Datta & Co.*

S. M.