

ORIGINAL CIVIL.

Before Mr. Justice Latham.

In re THE CARWAR COMPANY, LIMITED (IN LIQUIDATION).

1882

September 7.

Company—Winding up—Order for dissolution of company—Voluntary winding up—Winding up under supervision of Court—Official liquidator—Indian Companies Act VI. of 1882.

As a general rule a winding up of a company under supervision of the Court should be terminated in the same way as a purely voluntary winding up, *i. e.* under sections 186 and 187 of the Indian Companies Act VI of 1882.

Although, under section 195 of the Indian Companies Act VI of 1882, the Court has power to make an order dissolving a company in the course of winding up subject to its supervision, such cases must be exceptional and can only occur when the Court has deemed it proper to carry on the winding up under supervision in a manner such as clearly to approximate to a winding up by the Court. The ordinary rule is the other way, and it is reasonable that it should be so; as, generally, a winding up under supervision is not conducted under so intimate a control of the Court as to put the Court in a position to judge of the correctness of the liquidators' action and the completeness of the winding up.

So far as the Court does not interfere, a winding up under supervision remains essentially a voluntary winding up; but the Court in a winding up under supervision has full authority to interfere and to exercise to any extent the power which it might have exercised if an order had been made for winding up the company by the Court.

The words "official liquidator" in section 160 of the Indian Companies Act VI of 1882 do not include the liquidators in a winding up under supervision.

Motion for an order for the dissolution of a company wound up under supervision of the Court, refused.

MOTION for an order (under Rule 61 of the Rules framed under the Indian Companies Act X of 1866) that the Carwar Company, Limited, be dissolved from the date of the order, and that the official liquidators do deposit with the Prothonotary of the High Court the books and documents relating to the company in their possession as such official liquidators.

By a resolution passed by the shareholders of the Carwar Company, Limited, on the 4th October, 1879, it was resolved that the said company should be wound up voluntarily under the provisions of the Indian Companies Act X of 1866. W. M. Macaulay and S. L. Macnaghten were appointed liquidators, and forthwith took charge of the affairs of the company.

By an order made by the High Court on 17th November, 1879, it was ordered that the winding up of the said company should be continued subject to the supervision of the Court.

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The liquidation was subsequently proceeded with, and on the 26th July, 1882, the liquidators filed an affidavit in which they stated that the affairs of the company were then fully wound up, and they annexed a balance-sheet containing the summary of the accounts showing how the assets of the company had been dealt with. The affidavit also stated as follows:—

4. "There is now in the Hongkong and Shanghai Bank standing to the credit of our account as official liquidators of the said company a balance of Rs. 2,456-0-10 and a sum of Rs. 2-5-8 in cash in our hands, making together the sum of Rs. 2,458-6-6, as appears from the balance-sheet hereto annexed; and we are desirous to deposit thereout the sum of Rs. 635-4-10 with the Accountant General of this Honourable Court to the credit of an account to be called 'The account of the unclaimed dividends due to certain creditors of the Carwar Company, Limited (in liquidation).'

5. "Hereto annexed, and marked C, is a list of the creditors of the above named company to whom the unclaimed dividends are due and payable.

6. "We are desirous, after depositing the aforesaid sum of Rs. 635-4-10 with the Accountant General of this Honourable Court, to pay out of the balance that will remain to Messrs. Smith and Frere, the attorneys to the official liquidators, a sum of Rs. 1,450 in respect of their costs due and unpaid to them from the 6th day of April, 1882, till the company is fully wound up and dissolved, and to appropriate the sum of Rs. 371-1-8 for the costs and expenses of the establishment and for advertisement and the other incidental expenses and for office rent till 31st July, 1882, which said payments and appropriations will completely absorb the said balance; and we further say that the said sum of Rs. 1,450 is, we are informed and believe, less than the sum that would be found due to the said Messrs. Smith and Frere for costs to the close of the liquidation if the same were taxed."

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On the 27th July, 1882, the official liquidators obtained a Judge's order declaring that they had passed their final account as official liquidators, and that the affairs of the company had been completely wound up. The said Judge's order also directed that advertisements to the above effect should be published in certain specified newspapers, and it was further ordered that the official liquidators should deposit with the Accountant General the sum of Rs. 635-4-10, mentioned in the affidavit of the official liquidators, accompanied by a true copy of the list of the creditors to whom the unclaimed dividends were payable to the credit of an account to be called "The account of the unclaimed dividends due to certain creditors of the Carwar Company, Limited, in liquidation", and that the said official liquidators be at liberty, after depositing the aforesaid sum of Rs. 635-4-10 with the Accountant General as aforesaid, to pay the sum of Rs. 1,450 to Messrs. Smith and Frere in full discharge of all their attorneys' costs due to them up to the close of the liquidation, and Rs. 371-1-8 for official establishment and rent.

An affidavit was filed, stating that the directions contained in the above Judge's order had been complied with.

Russell for the official liquidators now moved for an order that the said Carwar Company, Limited, be dissolved from the date of such order, and that the official liquidators should deposit with the Prothonotary of the High Court all books and documents relating to the company in their possession as such official liquidators. He referred to Rule 61 of the Rules framed under the Indian Companies Act X of 1866.

LATHAM, J., raised the point as to whether liquidators of a company in liquidation under the supervision of the Court were in the same position as the liquidators of a company in voluntary liquidation, and whether they could apply to the Court for the order now sought for.

Russell referred to the Indian Companies Act X of 1866, sections 131, 149, 171, 164, 167, and the corresponding sections in the English Companies Act, 1862, (Stat. 25 & 26 Vic., cap. 89), sections 111, 133, 155, 148, 151.

LATHAM, J.—The application in this case is that the Court do make an order that the company be dissolved. The company is in course of voluntary winding up under the supervision of the Court; and the question for decision is, whether a company in such a position ought, for the purpose of its dissolution, to be treated as being wound up by the Court, or as being wound up voluntarily, there being no express provision in the Companies Acts for the dissolution of a company in course of voluntary winding up under supervision.

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Section 159 of the Indian Companies Act No. VI of 1882, corresponding with section 131 of the Indian Act No. X of 1866 and section 111 of the English Act of 1862, provides for the dissolution of a company being wound up by the Court. It is the last of a series of sections regulating the functions of the Court in such a winding up. Sections 186 and 187 of the Act of 1882, corresponding with sections 158 and 159 of the Act of 1866 and sections 142 and 143 of the English Act, provide for the dissolution of a company in course of voluntary liquidation. Section 195 of the Indian Act of 1882, corresponding with section 167 of the Indian Act of 1866 and section 151 of the English Act, describes the effect of an order for a winding up subject to the supervision of the Court. Lord Justice Lindley, in his work on partnership (2nd ed.), pp. 1410 and 1422, discusses the difference between a voluntary winding up and a winding up subject to supervision. The result appears to be that, so far as the Court does not interfere, a winding up under supervision remains essentially a voluntary winding up; but that the Court in a winding up under supervision has full authority to interfere and to exercise to any extent the powers which it might have exercised if an order had been made for winding up the company by the Court. In effect, a winding up under supervision may be hardly distinguishable from a purely voluntary winding up, or hardly distinguishable from a winding up by the Court.

I think that, as a general rule, a winding up under supervision should be terminated in the same manner as a purely voluntary winding up, *i.e.* under sections 186 and 187. Sections 160 and 161 of the Indian Act of 1882 appear to contemplate only cases in which there is an official liquidator, nor do I think that the term

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'official liquidator' in section 160 can be construed by the help of section 195 so as to include the liquidator in a winding up under supervision; moreover, the rules and orders made under the Indian Act of 1866 and the English Act of 1862, and especially the English rules 65 and 66, do not seem to have contemplated any winding up other than a winding up by the Court being terminated by the order of the Court.

I do not wish to lay down that the court has not power, under the words of section 195, to make an order dissolving a company in the course of winding up subject to its supervision; or that there may not be cases in which the Court will think it expedient to exercise such power. But I think such cases must be exceptional, and can only occur when the Court has deemed it proper to carry on the winding up under supervision in a manner such as closely to approximate to a winding up by the Court. The ordinary rule is, I think, the other way; and it seems reasonable that it should be so; as, generally, a winding up under supervision is not conducted under so intimate a control of the Court as to put the Court in a position to judge of the correctness of the liquidator's action and the completeness of the winding up. In the present case I do not think that any special grounds have been shown for invoking the Court's assistance; and I must refuse the motion, leaving the liquidators to proceed under sections 186 and 187.

Motion refused.

Attorneys for the company.—Messrs. *Smith and Frere.*
