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Parashuram D.S. v. The Tata Industries Bank (AIR 1928 PC 180)

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ABSTRACT

This case was filed as an appeal (No. 91 of 1926) against the judgment of High Court of Judicature at Bombay, confirming a decree of the same High Court (Pratt, J.), on its Original Side, dismissing the suit of the Plaintiffs. The case was presented before a three-Judge bench comprising of Lord Shaw, Blanesburgh and Salvesen. The case was decided on the 8th May 1928. The alternate citation for the present matter is AIR 1928 PC 180.

I. FACTS

The Tata Industrial Bank having fallen into difficulties, a provisional agreement was entered into on the 5th of July 1923 between H.F. Commissariat on behalf of the Tata Bank on the one hand and the Central Bank on the other by which it was stipulated that the Tata Bank should transfer and the Central Bank take over the assets of the Tata Bank under a certain scheme as to the adjustment of the rights of the shareholders of the two Banks.

The principal provision in the scheme was that besides discharging all the liabilities of the Tata Bank, the Central Bank would allot to or to the nominees of each of the shareholders of the Tata Bank one share of Rs. 50 (paid up to the extent of Rs. 25) in respect of every two shares of Rs. 75 each held by him in the Tata Bank upon which Rs. 22-8 as had been paid up. Both the Banks had their registered offices in Bombay and were governed by the Indian Companies Act of 1913.[2]

On 5th July 1923 a notice was sent out to each of the shareholders of the Tata Bank convening two extraordinary general meetings of that Bank to be held on the 19th July and 6th August 1923 to pass and confirm as a special resolution a resolution in the following terms: — "That it is expedient to effect an amalgamation of this Company with the Central Bank of India, Limited and that with a view thereto this Company; be wound up voluntarily and that the conditional agreement submitted to this meeting be and the same is hereby approved and that the liquidators are and they are hereby authorized according to sec. 213 of the Indian

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[2] Parashuram Dattaram Shamdasani v. The Tata Industrial Bank, Limited AIR 1928 PC 180.

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Companies Act, 1913, to adopt the said agreement and carry the same into effect, with such, if any, modifications as the said liquidators may think expedient," and to appoint liquidators at the second of the said meetings.

The notice was accompanied by an explanatory circular signed by the Acting General Manager by order of the Board of the Tata Bank which after explaining the share consideration payable under the agreement, set forth a joint certificate by the auditors of the two Banks as to their financial position which was to the effect that two shares of the Tata Bank were equal to one of the Central. The circular went on to explain the effect of the amalgamation, invited inspection of the agreement and closed with a full reference to the right of dissentients under sec. 213 of the Indian Companies Act.

The first extraordinary meeting duly passed the extraordinary resolution and the second extraordinary meeting confirmed it as a special resolution and appointed liquidators, to work "under the supervision" of the Directors of the two Banks, the Tata Directors to exercise their powers only in respect of the carrying out the terms of the agreement. The conditional agreement was then duly confirmed by a supplemental agreement and thus became binding on both the Banks.[3]

Among the three shareholders who objected to the amalgamation were the Plaintiffs. Leave was refused to them to sue on behalf of all the share-holders and they then brought a personal suit for a declaration that the amalgamation was invalid since it was beyond the authority of either of the Banks, regard being had to their Memoranda and Articles of Association, that proceedings of the extraordinary meetings were null and void because of irregularities in the procedure and insufficiency of the notice and that the scheme of amalgamation was inequitable and unfair. They also claimed consequential reliefs such as the appointment of a Receiver and the restraining of the Central Bank from dealing with the assets of the Tata Bank.

Among the object clauses of the two Banks were the following: —

The Tata Bank: — "To acquire and undertake the whole or any part of the business, *property and liabilities* of any person or company carrying on any business which the Company is authorized to carry on or possessed of property suitable for this Company."

"To sell or dispose of the undertaking of the Company or *any part thereof* for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of the

[3] Definition of Supplemental Agreement, *available at:* https://www.lawinsider.com/dictionary/supplemental-agreement

Company."

The Central Bank: — "To acquire and undertake the whole or any part of the *banking and discount* business of any person or company carrying on any business which this Company is authorized to carry on *or to amalgamate the Company's business with that of any such person or Company*."

"To sell or dispose of the entire undertaking of the Company, *but not a part of it only*, for such consideration as the Company may think fit and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of the Company."

The italicized portions are the ones which portions illustrate the difference between the clauses adopted by the two Banks

II. ISSUES

1. Whether the scheme of amalgamation was ultra vires – The first contention raised by the appellants in the present matter were concerning the scheme of amalgamation of Tata Bank.
2. Whether the scheme is one authorized by sec. 213 of the Indian Companies Act – The other contention raised by the appellants is that the scheme of amalgamation was one which was ordered under the provision of section 213 of the Companies Act, 1913.
3. Whether all material facts were contained in the petition after the amendment was found in the notice or not – Another contention by the state was that not all material facts were presented in the notice and thus, it was alleged that compliance with Section 173 of the Companies Act. 1913 was not done.
4. Whether the Appellant should have been permitted by the trial Judge to introduce by amendment into his pleadings alleging gross fraud against the Directors of the Tata Bank – The last contention which was raised in the court was regarding, whether the appellant should have been permitted by the trial court to introduce amendments in his pleadings. Here, the court has adopted the stand of not deliberating further on this issue.

III. RULES

Section 213 of the Indian Companies Act, 1913 (Section 494 of the Companies Act, 1956)

1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.
2) For this section the presentation of a petition for winding up in the case of a winding-u by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up shall be deemed to correspond with the act of insolvency in the case of an individual.
3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Section 173 of the Companies Act, 1913 –

The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings concerning the winding-up ought to have stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.[4]

IV. ANALYSIS

It has been contended in the present matter that the notice and the circular contained sufficient information and were not questionable in any way. Thus, so far as the Tata Bank was concerned, the scheme depended for its validity not on the constitution of that Bank but solely on Section 213 of the Indian Companies Act. For that purpose, the memorandum and articles of association of the Bank were submitted by him to rigid scrutiny to show that such a scheme as that here resolved upon was not thereby authorized. Concerning this part of the Appellant's argument, it is enough to say that the scheme does not depend for its validity upon the constitution of the Tata Bank, it rests solely upon the statute.[5] The other question was raised on this issue, as so far as the Tata Bank is concerned, which was whether the scheme is one authorized by Section 213 of the Indian Companies Act. The lordship's view upon this question was that there can be no doubt that the scheme was in fact, one which was authorized by section 213 of the Companies Act, 1913.[6]

[4] § 213 of the Comp. Act (VII of 1913).
[5] § 173 of Comp. Act (VII of 1913).
[6] S.2(28) of the Companies Act, 1956 defines "memorandum" as "memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies' law or this Act".

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On the other hand, the Central Bank as purchasers were not proceeding under Sec. 213, the issue whether the amalgamation was binding upon them depended upon whether they were, by their constitution, empowered to make such an acquisition as they did.[7]

Given the financial position of the two Banks, namely, that two shares of the Tata Bank were equal to one of that of Central Bank, in any fair arrangement the net value of the assets transferred to the Central Bank would have to exceed the amount credited as the paid tip on the shares by way of consideration to the Tata Bank share-holders. The latter, besides retaining their proportionate interest in the assets they brought in, was acquiring an interest in like proportion in the original assets of the Central Bank and it was necessary to protect the reserve fund of the latter. That is such an action, the claims of the Appellant, in order to be valid, must lie in respect of some right, strictly personal to themselves and must not relate to any matter within the cognizance of the assenting majority of the shareholders unless the latter could be proved to have, acted fraudulently, tyrannically or arbitrarily. As against the Central Bank, the claims of the appellants could not extend beyond those that the Tata Bank itself would be competent to put forward if they were appellants.7 It was held that in voluntary liquidation, the liquidator must not, by the resolution appointing him, be restricted in the exercise of his statutory duties. The form of the liquidators' appointment in the present case, required them to work under the supervision of Directors, which was highly objectionable and must not be used in any case.[8]

The other contention on behalf of the State was that the notice did not contain all the materials and did not comply with section 173 of the Companies Act in particular. It was said that allegations contained in the petition by way of the amendment are not to be found in the notice and therefore the notice did not contain all material facts. In the case, the Judicial Committee said that a shareholder who by his conduct shows that he knew the real effect of work to be transacted at the meeting could not complain of the notice on the ground of insufficiency. Counsel for the petitioner in the present case contended that the shareholders have not complained and on the contrary, the shareholders have consented to the course of action. In the present case, the material facts were given and if all the details of particulars were not set out there would be no vice in the notice.[9]

[7] Ram, Judicial approach to Merger and Amalgamation, Chap. 6 (2017) *available at*, https://shodhganga.inflibnet.ac.in/bitstream/10603/172512/11/11_chapter%206.pdf
[8] Supra, note 1
[9] Analysis on section 173 – Meetings of the Board, *available at:* h ttp://corporatelawreporter.com/companies_act/section-173- of-companies-act-2013-meetings-of-board/

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V. DECISION OF THE COURT

In the present case of Parashuram Dattaram Shamdasani v. The Tata Industrial Bank, Limited the court that the plaintiff had no legitimate grievance and that the appeal was dismissed. The appellant was very insistent that even if his appeal were not acceptable some special indulgence should be extended to him in the matter of costs, especially having regard to the form of the resolution appointing the liquidators to which attention has just been called. The appellant, however, did not indicate any readiness on his part to discontinue this extensive litigation in which he has for so long been engaged. The whole subject of the appeal was highly technical, the appellant's knowledge of the law applicable was extensive if not always well-directed, and his statement of his position in a language not his own was remarkably clear. Their Lordships cannot but regret that so much industry had not been reserved for a less barren controversy. On the whole case, their Lordships will humbly advise His Majesty that the appeal should be dismissed.[10]

VI. CONCLUSION:

In the present matter the bank, Tata Industrial Bank decided to amalgamate with the Central Bank of India Ltd. and an agreement of amalgamation was entered into. A meeting of the shareholders was called for approving the scheme. The appellant who had in the past adopted a hostile attitude towards the bank, which was known to the shareholders, opposed the scheme. On a poll being demanded, there were 5,25,249 votes in favour of the resolution, while only 369 votes were cast against, and out of these 369 votes 100 votes being of the appellant and 10 of his brothers. The appellant and his brother filed a suit challenging the resolution. The appellant's suit and appeal were dismissed and he filed an appeal to the Privy Council which too failed. The Privy Council observed that the fact that the action was personal to the appellant was unfortunate for him as he knew before the first meeting everything about the scheme that was to be known and that he had written letters to the shareholders and no possible complaint of the notice or circular on the ground of insufficiency was, therefore, open to him. On a perusal of notice, their Lordships concluded that it was no way questionable.[11] Another of the appellant's complaint was that he was denied a hearing at the general meeting.[12]

The court held that on the evidence it appeared that "there was no organised opposition; there was a very clearly expressed indication by the shareholders that they did not desire further to

[10] Supra, note 1
[11] Mergers and Amalgamation, *available at:* https://taxguru.in/company-law/merger-amalgamation-companies-act-2013.html
[12] Supra, *note* 1.

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hear the appellant, and what happened was that the appellant desisted from any further effort to make himself heard because even he realised that no further speech from him would be of any avail."

It is submitted concerning the proceedings at the second meeting, the criticism made by the Appellant before the Board was that the election of liquidators should have been made to depend on the result of a poll taken but not announced, and should, not have been made as to the effect of a compromise agreed to by all the shareholders present other than the Appellants. There might have been more substance in this object if it did not appear from the minutes of the meeting that the Appellant himself opposed the resolution on which the poll was taken. Having himself opposed it; he has no individual cause of complaint that the resolution was not in the event accepted. There is, however, an objection to the appointment of the liquidators more serious than that taken by the Appellant. The resolution appointing them has already been set forth and it is, as will be seen, a resolution under which in terms they become merely ministerial officers required to have regard to the supervision of the Directors of the two Companies in discharging their duties. In the present case, two of the liquidators so appointed were removed from office by the Court in **Kaikhuahru Ntisscrwanji v. Tata Industrial Bank, Limited** [13] for the reason that against the will of their co-liquidators and the Directors they desired to inspect the books and inquire into the transactions of the Bank.[14] Their Lordships think it right to say that a form of the appointment which was relied upon even as partly instructing such a result is much to be deprecated. They hope that it has not been generally followed in India, and they think that the form should never again be used

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[13] (1924) I.L.R. 48 Bom. 471
[14] Supra, *note* 1.

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