

Oriental Bank of Commerce Ltd.

Vs

Shri Harcharan Das Loomba

Civil Appeal No. 300 of 1961

(P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah JJ)

05.03.1963

JUDGMENT

SHAH J. -

The Oriental Bank of Commerce Ltd. was incorporated in February 1943 under the Indian Companies Act, 1913. The Bank had its registered office at Delhi and it opened branches in Lahore and in other towns which are now in Pakistan. The capital of the Bank was divided into 5,97,584 ordinary shares of Rs. 10/- each, and 24,200 B class ordinary shares of Re. 1/- each. The paid-up capital of the Bank as on December 31, 1946 was approximately Rs. 23 lakhs. On account of disturbances which followed in the wake of the setting up of the Dominions of India and Pakistan, the Bank lost a substantial part of its assets in the territory now called West Pakistan and was unable to recall its advances. By 1950 the accumulated losses of the Bank amounted to Rs. 10,57,850/-.

In December 1950, the Directors of the Bank made a call of Rs. 2/8- per share on its ordinary shareholders. They also resolved to reduce the capital of the Bank and for that purpose an extraordinary General Meeting of the Bank was convened on November 29, 1951 and special resolutions were passed reducing the issued and subscribed capital of the Bank to Rs. 4,56,137 ordinary shares of Rs. 5/- each and 24,200 B-class ordinary shares of annas 8 each. This reduction was to be effected by cancelling the paid-up capital to the extent of Rs. 5/- on each ordinary share and annas 8 on each 'B' class ordinary share. Before the special resolution was passed the Parliament enacted the Displaced Persons (Debts Adjustment) Act, 70 of 1951. That Act defines 'displaced person' by s. 2(10) as meaning "any person who on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the first day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, x x x x x." Diverse provisions were made by the Act to ameliorate the condition of displaced persons. The Act provided for adjustment of debts, secured and unsecured, relief from liability to pay calls on shares in companies and enacted provision for revision of decrees and settlements, apportionment of joint debts, cesser of accrual of interest, exemption from arrest and attachment of property, scaling down of debts and extension of the period of limitation in certain classes of actions. Power to set up Tribunals having authority to exercise jurisdiction under the Act was also conferred by the State Government.

Pursuant to the resolution passed by the Bank at an extraordinary General Meeting on November 29, 1951 an application was submitted before the District Judge, Delhi exercising powers of the

Company Judge for an order under ss. 55, 56 and 57 of the Indian Companies Act, 1913 for reduction of the share capital of the Bank. This application was opposed by two shareholders who contended that the Bank was merely trying to circumvent the provisions of the Displaced Persons (Debts Adjustment) Act, 70 of 1951 by resolving to reduce the capital. At the hearing of the application counsel for the Bank proposed that the Bank would accept, without any payment, surrender of ordinary shares of Rs. 10/- each, on which Rs. 5/- had been paid up, by any person entitled to relief under s. 19 of the Displaced Persons (Debts Adjustment) Act, so as to relieve him from further liability to pay the call of Rs. 2/8/- per share made by the Bank and all future calls. This condition was accepted by the shareholders who appeared at the hearing. The Company Judge allowed the petition and confirmed the resolution reducing the share capital on the terms and conditions relating to surrender accepted by the Bank and directed that notice be given under s. 61 of the Indian Companies Act, offering to all persons intending to avail themselves of the option of surrender an opportunity to apply in that behalf to the Bank within two weeks of the publication of the notice.

The respondent Harcharan Das Loomba was a holder, since 1944, of 500 ordinary shares of the face value of Rs. 10/- each on which Rs. 5/- were paid. The respondent was a displaced person within the meaning of Act 70 of 1951 but he did not appear at the hearing of the petition for reduction of capital, nor did he avail himself of the option to surrender the shares given under the order of the Company Judge. On January 7, 1954 he applied to the Bank under s. 19(2) of Act 70 of 1951 to convert his holding of 500 ordinary shares into 250 fully paid-up shares. By its letter dated January 16, 1954 the Bank declined to carry out the requisition. The respondent then petitioned the Tribunal under s. 19(4) of the Displaced Persons (Debts Adjustment) Act for an order directing the Bank to convert 500 partly paid-up shares held by him into 250 fully paid-up shares. The petition was resisted by the Bank, inter alia, on the grounds that the order of the Company Judge sanctioning reduction of capital and granting facility for surrender their holding to shareholders entitled to apply under s. 19(2) of the Act was conclusive and binding upon all shareholders and the respondent having failed to avail himself of the option given by the order was not entitled to enforce his rights under s. 19(2). The Bank also submitted that the right conferred by s. 19(4) of Act 70 of 1951 was not absolute and that there were good grounds for not complying with the requisition under s. 19(2), in that at the date of the special resolution for reduction of capital there being practically no assets with the Bank on which a fresh credit structure could be built, funds had to be raised by making calls and by issuing fresh capital and the claim for conversion of partly paid-up shares into fully paid-up shares was neither fair nor equitable to the shareholders who had already paid the call or had subscribed to the new shares.

In the view of the Tribunal losses suffered by the Bank and doubtful debts had been accumulating for a long time, but the Bank resorted to the scheme of capital reduction after Act 70 of 1951 was enacted, only with a view to deprive the displaced shareholders of the benefit under the provisions of s. 19 of the Act. This view of the Tribunal was affirmed in appeal by Khosla J. of the Punjab High Court, and also by a Division Bench in an appeal under cl. 10 of the Letters Patent. With special leave, the Bank has appealed to this Court.

The respondent's claim that he is a displaced person within the meaning of s. 2(10) of the Displaced Persons (Debts Adjustment) Act, 70 of 1951 is not disputed. The material clauses of s. 19 on the true effect of which the right claimed by the respondent has to be adjudicated, read as follows :

##(1) x x x x##

(2) Notwithstanding anything contained in the Companies Act, or in the memorandum or articles of association, or the Co-operative Societies Act, it shall be lawful for a displaced person or a displaced bank to apply to the company or the co-operative society, as the case may be, for the conversion of any partly paid-up shares held by him or it in the company or society into such smaller number of fully paid-up shares as the society or company may have issued and in respect of which calls have already been made.

#(3) x x x##

(4) If the company or the co-operative society refuses to comply with any such request as is contained in an application under sub-section (2), the Tribunal may, on application made to it in this behalf and if satisfied that there is no cause for such refusal, issue a direction to the company or the co-operative society accordingly, and the company or society shall be bound to comply therewith and every such direction shall take effect from the date thereof.

(5) Save as otherwise provided in this section, nothing contained herein shall affect the validity of any action taken by the company or its board of directors in pursuance of the provisions of the Companies Act or of the memorandum or articles of association relating to the company.

#(6) x x x"##

By cl. (1) a displaced person is not liable to pay any interest on unpaid calls in respect of his shares nor is his holding liable to be forfeited, notwithstanding anything to the contrary contained in the Companies Act or in the memorandum or articles of association. Clause (2) grants to a shareholder of a company who is a displaced person the privilege of applying to the company for conversion of any partly paid-up shares held by him into fully paid-up shares and in respect of which a call has been made. The Tribunal constituted under the Act is invested by cl. (4) with power to order any company to comply with a requisition under sub-s. (2), if it is satisfied that there is no cause for such refusal to comply with the requisition to convert partly paid-up shares into fully paid-up shares. The expression "no cause for such refusal" within the meaning of cl. (4) must mean no good cause for refusal. Therefore when an application is filed by a shareholder for an order directing the company to grant conversion of partly paid-up shares into fully paid-up shares and the company sets up some cause declining to carry out the conversion, the Tribunal is authorised to adjudicate whether the cause set up by the company is a cause reasonably justifying refusal to comply with the requisition.

The respondent had called upon the Bank under s. 19(2) to convert his partly paid-up shares into fully paid-up shares, but the Bank declined to comply with the requisition. The first question falling to be determined is whether the order of the Company Judge in the petition filed by the Bank under ss. 55, 56 and 57 of the Indian Companies Act for sanctioning reduction of capital is conclusive and binding upon the respondent so as to deprive him of his right to claim that his partly paid-up shares be converted into fully paid-up shares. The order of the Court under s. 60 of the Companies Act, 1913, sanctioning reduction would normally be binding upon all shareholders. But it must be noticed that s. 3 of Act 70 of 1951 invests, save as expressly provided in that Act, the provisions of the Act and of the rules and orders made thereunder with overriding effect notwithstanding anything contained in any other law for the time being in force or in any decree or order of a court, or in any

contract between the parties. By s. 55 of the Indian Companies Act, 1913, a company limited by shares, if so authorised by its articles, may by special resolution sanctioned by the Court reduce its share capital, and the Court is authorised to make an order confirming the reduction on such terms and conditions as it thinks fit. The Company Judge did make an order sanctioning reduction of the capital on conditions relating to conversion of the share holding of displaced persons, but the order could not deprive a displaced person of the special statutory right granted under s. 19 of the Displaced Persons (Debts Adjustment) Act 70 of 1951. The Act has conferred a special right upon displaced persons to claim that their partly paid share holding be converted into fully paid shares : and this right may cease to be exercisable only if the Tribunal is satisfied that there is good cause for refusing conversion. It is not the refusal by the company to comply with the requisition, but the adjudication by the Tribunal which deprives the displaced person of his right to have his shares converted.

Before the Company Judge validity of the resolution for reduction of capital was challenged on the ground that it was passed with a view to deprive the displaced persons of their right under s. 19, and it may be assumed that the Company Judge having regard to the reasons recorded by him rejected that contention. But the order does not operate as *res judicata*, for the jurisdiction to decide whether there is good ground for refusing to grant the requisition for conversion by a displaced person is vested exclusively in the Tribunal and in no other body. It was open to any displaced person to avail himself of the option given by the order of the Company Judge : if he elected to avail himself of the option he would be bound by his election. But a displaced person was not obliged to avail himself of the option, and if he did not, his right to call upon the Bank to grant him conversion was not affected by the order of the company Judge. The order of the Company Judge did not and could not amount to a decision binding all displaced shareholders. If a displaced person does not desire to avail himself of the option he will be entitled thereafter to apply under cl. (4) of s. 19. The order passed by the Company Judge remains valid and binding but subject to such orders as the Tribunal may make in respect of any individual shareholder who makes an application under sub-s. (4) of s. 19. That is clear from the terms of cl. (5) which ensures the validity of the action taken by the Company or its board of directors in pursuance of the provisions of the Companies Act or of the memorandum or articles of association relating to the company, save as otherwise provided in s. 19. We agree therefore with the view of the Courts below that the Tribunal did not lose its jurisdiction to adjudicate upon the petition filed by the respondent, merely because the Company Judge had given him and others similarly placed, an option which they could but were not obliged to elect.

The second question which falls to be determined is whether the case shown by the Bank for refusing to convert the holding of the respondent into fully paid-up shares was good or sufficient. The Tribunal held that the resolution for reduction of capital was passed *mala fide* and with a view to deprive the displaced persons of their right to claim conversion of their partly paid-up shares. The Tribunal pointed out that even though the financial condition of the Bank was precarious for many years, the scheme of reduction of capital was only evolved after the Parliament enacted Act 70 of 1951 as an expedient to nullify the statutory right of displaced shareholders. The High Court also held that all the assets of the Bank had not disappeared and in any event absence of assets was by itself not a sufficient ground for depriving a displaced person of his statutory right. The finding of the Tribunal which was confirmed by the High Court establishes that the cause set up by the Bank was not genuine; the resolution for reduction of capital was a device to which resort was had for nullifying the statutory protection granted to displaced persons. That conclusion is supported by evidence, and ought according to the practice of this Court, be regarded as binding. There was no other ground set up in support of the refusal by the Bank.

The order directing the Bank to convert the shares of the respondent into fully paid-up shares must therefore be confirmed, because no good cause has been shown by the Bank for declining to convert the partly paid shares. This appeal must fail and is dismissed with costs.

Appeal dismissed.

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