

## **INSOLVENCY OF THE LEYTE ASPHALT & MINERAL OIL CO., LTD., INSOLVENT DEBTOR. THE LEYTE ASPHALT & MINERAL OIL CO., LTD., APPELLEE, VS. BLOCK, JOHNSTON & GREENBAUM, CREDITORS AND AP...**

*G.R. No. 29755. December 14, 1928*

Ponente: ROMUALDEZ, J.

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### **ROMUALDEZ, J.:**

On January 28, 1928, the attorneys who are now appellants, filed a motion in the Court of First Instance of Cebu praying for the dismissal of these insolvency proceedings, with costs against the attorney who instituted them, or against his client for contempt of the court having jurisdiction over the receivership, and for contempt of said court of Cebu for not having informed the latter of the existence of such case in which the receivership had been decreed, and that the order of January 23, 1928 be vacated.

Said order of January 23, 1923 was issued by the Court of First Instance of Cebu ordering the suspension of payments to the applicant, the Leyte Asphalt and Mineral Oil Co., Ltd., and enjoining the latter from transferring its property or any part thereof to any person, firm or corporation; and setting the 16th of February of 1928, at 10 a. m. at the office of the clerk of the Court of First Instance of Cebu as the time and place for the election of the proper assignee, and summoning the applicant's creditors to such election.

Objection was made to said petition of the appellant attorneys by the Leyte Asphalt and Mineral Oil Co., Ltd., through its attorney. And after hearing the motion the Court of First Instance of Cebu denied it by an order of March 5, 1928.

The attorneys appealing from said adverse order assign the following errors as committed by the lower court:

"1. In holding itself with jurisdiction to proceed with this insolvency proceeding and in not dismissing it.

"2. In not holding that the insolvent corporation is precluded from invoking the provisions of the Insolvency Law, Act No. 1956.

"3. In holding that section 52 of the Insolvency Law does not prohibit the discharge of an insolvent corporation of the type of the applicant herein, and in declaring such provisions to apply only to banking corporations and those as to which there are special provisions of law for their liquidation in case of insolvency.

"4. In holding that said court, in taking cognizance of the insolvency case is of a higher jurisdiction than any other court.

"5. In denying the motion of January 28, 1928, by its orders of March 5, 1928, and March 24, 1928."

The fundamental question raised here is whether Judge Jose de la Rama, presiding over Branch II, had jurisdiction to take cognizance of the insolvency of the Leyte Asphalt and Mineral Oil Co., Ltd., under the Insolvency Law, Act No. 1956, there being pending before Judge Guillerrzo Pablo presiding over Branch III, a certain receivership

proceeding, under section 176 of Act No. 190, to which the said Leyte Asphalt and Mineral Oil Co., Ltd., had agreed.

Act No. 190 or the Law of Civil Procedure is general in character, while the Insolvency Law, Act No. 1956 is a special law and the rule is that on a specific matter the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. (Art. 16, Civil Code.)

Section 176 of the Code of Civil Procedure is not so conclusive and complete with respect to insolvency cases, as the provisions of the Insolvency Law, whose proceedings are final as to the disposition of the credits, which does not take place in receivership proceedings. Consequently, the court below did not err in assuming jurisdiction of the present proceeding and in not dismissing it.

With respect to the acts of the Board of Directors of the Leyte Asphalt and Mineral Oil Co., Ltd., since this corporation is subject to the receivership proceeding, we do not think them illegal because the appointment of a receiver does not dissolve the corporation, nor bar the exercise of its corporate rights. (Teal Motor Co. and Teal vs. Court of First Instance of Manila, 51 Phil., 549.)

The estoppel invoked by the appellants under section 333, paragraph 1, of the Code of Civil Procedure cannot be held applicable to the appellee corporation in this case. No absolute inconsistency or irreconcilable conflict exists between the consent given by said corporation to the appointment of a receiver and the application to have itself declared insolvent.

The fact that under section 52 of the Insolvency Law the appellee corporation cannot obtain its discharge, is not a bar to this insolvency proceeding pursuing its course for the reasons stated. The error, if error it be, of the trial court in holding that the prohibition contained in section 52 of this Insolvency Law against discharging a corporation is applicable only to banking corporations and those as to which there are special provisions for their liquidation in case of insolvency, is not prejudicial to the appellants in our opinion.

Whether a receivership proceeding is speedier and more economical than an insolvency proceeding is a point which we deem does not affect the fundamental solution of the question raised in this case. Furthermore, we find the insolvency proceeding in the present case more definite and hence more beneficial and hereby uphold it.

The order appealed from is hereby affirmed with the costs of this instance against the appellants. So ordered.

Street, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

Johnson, J., reserves his vote.

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