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"But we've done the work!" Getting paid and State Bank of India v Mallya [2021]

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Overview



- *State Bank of India v Dr Vijay Mallya* [2021] EWHC 1740
- Decision of Miles J – 26th May 2021
- Appeal from decision of Deputy ICC Barnett – 8th Feb 2021
- Principal issue – validation order for costs of proceedings in India

Facts



- Rs = banks and judgment creditors
- Owed around £1.05bn under Indian judgment
- 2013 proceedings commenced in India
- 19 Jan 2017 – judgment in India
- 24 Nov 2017 – registered in England
- 11 Sept 2018 – bankruptcy petition issued

Legal framework

- Section 284 Insolvency Act 1986:

“(1) Where a person is made bankrupt, any disposition of property made by that person in the period to which this section applies is **void** except to the extent that it is or was **made with the consent of the court, or is or was subsequently ratified by the court.**”

- Sub-section (3) – applies from date of presentation of petition



Legal framework

- Leading authority *Express Electrical Distributors Ltd v Beavis* [2016] EWCA Civ 765
- Insolvency Practice Direction, paragraph 12.8
- Cases concerning payment of costs of debtors defending bankruptcy petitions: *Re Sinclair* [1885], *Rio Properties v Al-Midani* [2003] BPIR 128
- *National Westminster Bank v Lucas* [2013] EWHC 770 (Ch)

Error of principle?

- Yes
- Judge wrong to hold that court lacked power to validate as matter of principle

Error of discretion?

- No
- Insufficient breakdown of costs
- Banks had repeatedly asked for further information

Edwards v Aurora Leasing Limited and another



- Citation: *[2021] EWHC 96 (Ch)*
- Judge: ICC Judge Prentis
- Date: 20th January 2021
- The Issue: The High Court considered how to interpret the meaning of value in section 284(4)(a) of the Insolvency Act 1986.

The Brief Facts

- The Bankrupt had been a dentist.
- Following the presentation of the Bankruptcy Petition, the Bankrupt made payments to Aurora Leasing Limited and Howard de Walden Estates Limited, and this resulted in the Trustee-in-Bankruptcy applying to void the payments under section 284 of the 1986 Insolvency Act (“IA 1986”).
- Wasu Medical Centre, a partnership in which the bankrupt had not been a partner, entered into a leasing agreement with Aurora Leasing Limited which the bankrupt had guaranteed and in respect of which he had paid an initial sum of just under £28,000.
- Howard de Walden Estates Limited had leased premises to Wasu Property Limited, of which the bankrupt was a director, under the terms of which he had made payments of some £80,000, largely via an agent.
- Both payments were made after the presentation of the bankruptcy petition.
- The Trustee-in-Bankruptcy applied under section 284 Insolvency Act 1986 for restitution on the footing that the payments were void dispositions.
- The Respondents resisted the application, relying on section 284(4)(a) IA 1986.

Section 284 IA 1986 (extract)

- **284 Restrictions on dispositions of property.**
- (1) Where a person is made bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.
- (2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.

Section 284 IA 1986 (continued)

- (3) This section applies to the period beginning with the day of the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition and ending with the vesting, under Chapter IV of this Part, of the bankrupt's estate in a trustee.
- (4) The preceding provisions of this section do not give a remedy against any person—
- (a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the bankruptcy application had been made or (as the case may be) that the bankruptcy petition had been presented, or
- (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

The decision

- The court considered that it should interpret sub-section 284(4)(a) IA 1986 on its own terms without reference to the corporate equivalent (section 127 IA 1986), citing substantial differences between the two sections' terms and related case authorities.
- The court identified the two main strands of the statutory purpose of section 284(4)(a): to preserve estate assets and to preserve their proper distribution amongst creditors (the latter informing the courts' approach to validation applications). The court considered that it is a protective section, designed to avoid unfairness.
- The court considered section 284(4)(a) IA 1986 which provides an exception to the general rule and covers any property or payment which a person received before the commencement of the bankruptcy in good faith, for value and without notice that the bankruptcy petition had been presented.
- The Trustee-in-Bankruptcy argued that the Respondents fell short of this exception under section 284(4)(a) because there was a requirement that "*value*" must be provided directly to the bankrupt or the bankrupt's estate, rather than being provided to a third party.

The decision (continued)



- There was no issue between the parties as to the good faith of the Respondents' dealings with the Bankrupt, nor was it contended that either knew of the existence of the Petition on which the Bankruptcy Order was made.
- That meant, as ICC Judge Prentis observed, that the case centred on the meaning of just one word in section 284(4)(a), "*value*."



The decision (continued)

- The Trustee’s case, founded on section 339(3)(c) and the principles applicable to validating or ratifying a transaction that would otherwise be void, was that “*value*” had to mean direct value received by the Bankrupt or, in the alternative, value from the Bankrupt’s point of view.
- The Respondents, on the other hand, contended that “*value*” meant what it said and submitted that section 284(4) was a shield for innocent third parties.
- The judge decided “*to take section 284 on its own terms.*”

The decision (continued)

- Paragraph 59 of the judgment:

“In line with the views of Millett LJ in re Dennis and Vinelott J in re Palmer which I italicised above, it is clear from its context that section 284(4)(a) is a protective section designed to avoid unfairness. It is not an exception to the principles which must therefore be given restricted ambit, but a defence which is part of the principles. It can therefore be construed in accordance with its terms.”

The decision (continued)



- Paragraph 60 of the judgment:

“As a defence, it bears obvious resemblance to that of equity’s darling, the bona fide purchaser of the legal estate for value without notice. It is, though, wider, as not distinguishing between disposition of a legal and disposition of an equitable estate.”

The rationale

- Noting that the Act did not qualify the word “*value*” or contain “*any explicit requirement that the value be received by the estate rather than a third party*” and drawing on dicta of Lords Sumption and Neuberger in *Akers v Samba Financial Group* as to the equitable considerations protecting transferees acquiring in good faith and without notice, the judge dismissed the Trustee’s claims against both Respondents.
- In this case, Aurora Leasing Limited provided the value of dental equipment and Howard de Walden Estates Limited provided value of property letting; both consequences intended by the Bankrupt when making the payments.
- Importantly, as noted above and in the judgment, at the time the payments were received, neither of the Respondents had knowledge of the bankruptcy petition.