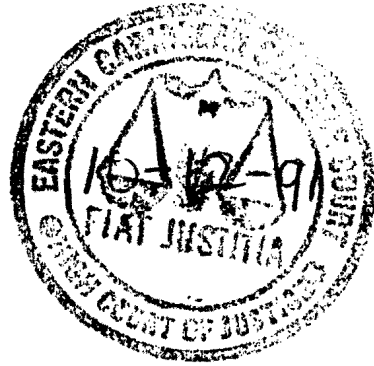


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SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1991



SUIT NO: 306/1991

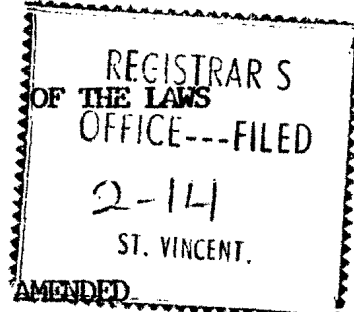
IN THE MATTER OF CARIBBEAN AND OVERSEAS TRUST BANK LIMITED

AND

IN THE MATTER OF THE INTERNATIONAL COMPANIES ACT 1982
OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF THE COMPANIES ACT 1948 S. 353 (6) AS AMENDED



Mr. Donald Browne for Petitioner
Mr. Brian Cottle for Trust Authority

FINDING:

The Petitioner, Antonia Ninoso Aragao Figueira DeFreitas, filed a petition on 4th July, 1991, praying that the name of Caribbean and Overseas Trust Bank Limited (the Company) may be restored to the Register of Companies: that the Company be granted a certificate of revival, and for such other order as the Court shall deem fit.

The Company was incorporated in May 1979 under the International Companies Act, 1976 (now the International Companies Act No. 12/1982 (The Act)).

On 18th June, 1985, the petitioner, a creditor of the Company, obtained a judgment in this Court against the Company in the sum of US \$252,447.22 with interest thereon and costs.

On 31st December, 1984, the Saint Vincent Trust Authority (The Authority) requested the Registrar of Companies (The Registrar) to cancel the company's registration by virtue of section 25(2)(c) of the Act, when the company failed to make payment of its annual licence fee on time.

/The...

The request for cancellation was acceded to in 1986, at which date the Company had paid up all arrears of licence fees to the Authority. On 17th December, 1987, an application was made to the Registrar for revival in accordance with Section 28 of the Act.

The Registrar forwarded this application to the Authority but the latter did not grant the application. Another application was made direct to the Authority on 4th December, 1989. Again the Authority declined to accede to this request.

The matter was brought to the attention of the Registrar and, on 12th July, 1990, another application for revival was made to the Authority. No response was received.

In response to a letter dated 4th October, 1990, to the Authority, a reply dated 5th October, 1990, was received refusing the application. This was followed by a letter dated 17th October, 1990, from the Board of Directors of the Authority denying the application for revival.

No reason for the refusal for revival was given in these letters and the petitioner's solicitor wrote to the Chairman of the Board of Directors on 23rd October, 1990, asking that the reason for refusal be given. No reply has been received by the solicitor.

The petitioner in the petition states that he was not aware at any time that proceedings were being taken with a view to striking the company's name from the Register of Companies, nor was he aware that any proceedings had been taken to cancel the registration and to strike the company's name from the Register until he sought to enforce the judgement in respect of sums it had deposited with the Company.

/The....

The Petitioner states that the Company is possessed of assets in various parts of the world and that it is just and equitable that the company be revived and its name restored to the Register to enable the petitioner to apply for a winding up order in order to trace the company's assets which are scattered in different parts of the world.

I accept that the petitioner is a creditor of the company to the tune of US\$252,447.22 with interest and costs thereon.

Counsel for the petitioner submitted that section 28 of the Act provides for revival of companies in certain cases, but that the instances in which revival can take place has not been specified.

Counsel argued that the Authority is a statutory authority performing a judicial function and that it must conform with the rules of natural justice. He cited De Smith Judicial Review of Administrative Action page 70 and Ridge v Baldwin (1963) 2 AER Page 108.

Further, Counsel argued, our legislation is silent on the question of restoration of Companies, and the Court must look to the United Kingdom Legislation, Section 353 (6) of the Companies Act, 1948.

Counsel for the Trust Authority contended that the Petitioner is not urging upon the Court that the petitioner was not given an opportunity to be heard, but that it merely says that reasons were not given for the refusal to restore to the Register. The Court, he submitted, must consider the application before it.

Counsel submitted that no indication is given to the Court as to whether Sec. 353 (6) of the United Kingdom Act is applicable here, and, in any event, that section enables restoration of a company in conjunction with a petition to wind up. See Cambridge Coffee Association Limited (1952) 1 AER 112.

/Counsel....

Counsel further submitted that there is not sufficient basis provided to the Court to enable the Court to grant the relief sought.

I am of the view that where our legislation is silent or makes no provision for a particular situation, the provisions of the U.K. legislation apply. This is provided for by the West Indies Associated States Supreme Court (Saint Vincent) Act, 1970 No. 8 of 1970, section 11 which reads:

"The jurisdiction vested in the High Court in Civil proceedings, and in Probate, Divorce and Matrimonial causes, shall be exercised in accordance with the Provisions of this Act and any other law in operation in Saint Vincent and rules of Court and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered for the time being in the High court of Justice in England."

The relevant section in the U.K. Companies Act is 353 (6) which is as follows:

If a company or any member or creditor thereof feels aggrieved by the Company having been struck off the register, the Court on an application made by the Company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Registrar for registration the Company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions

/as seem....

as seem just for placing the Company and all other persons in the same position as nearly as may be as if the name of the Company had not been struck off."

I consider that it is just that the company be restored to the Register of Companies, and I grant the prayer of the petition.

I order that --

- (1) the name of Carillion and Overseas Trust Bank Limited be restored to the Register of Companies.
- (2) the said Company be granted a Certificate of Revival.

I apologise for the delay in delivering the Finding. Both counsel appreciate the position, I am sure.

I gave priority to the Land Acquisition matter.



.....
Monica Joseph
Puisne Judge

17th November, 1991.