

Re Shahi Tandoori Restaurant Ltd; Brown (liquidator of Shahi Tandoori Restaurant Ltd) v Bashir and another

[\[2021\] EWHC 337 \(Ch\)](#), [\[2021\] All ER \(D\) 31 \(Mar\)](#)

Insolvency – Directors. The liquidator of a company was granted a declaration that transactions in the sum of £771,918 comprising of monies belonging to the company retained for the benefit of the respondents (two directors of the company during the course of trading) had been illicitly removed by the respondents. The Chancery Division ordered the taking of an account with the help of the respondents.

Catchwords

Insolvency — Directors — Removal of money

Background

The applicant, the liquidator of a restaurant (the company), applied for a declaration that transactions in the sum of £771,918 comprising of monies belonging to the company retained for the benefit of the respondents (two directors of the company during the course of trading) constituted misfeasance within the meaning of s 212 of the Insolvency Act 1986 (IA 1986). Further, that the company was entitled to the total sum under IA 1986 s 234(2) together with an order that the respondents make good the amount.

Issues and decisions

Whether the sums represented cash removed by the respondents from the company over the course of its trading without being accounted for in the books in breach of ss 171 and 172 of the Companies Act 2006 (CA 2006).

On the facts, the court was satisfied that there had been an illicit removal of cash from the company by the respondents from the commencement of trade until 31 July 2013. Such removals had been outside the proper use of the company's money, and could never have been considered in its best interests, solvent or not (see [81], [90], [95], [96] of the judgment).

The natural relief was for the taking of an account (see [114] of the judgment).

If the respondents refused to co-operate in the taking of account, the court might be constrained to arrive at the best figure it could in the circumstances (see [116] of the judgment).

Hellard v Carvalho; *In the Matter of HLC Environmental Projects Ltd (in liq)* [2013] EWHC 2876 (Ch) considered; *Burke v Morrison*; *Idessa Ltd, Re* [2011] EWHC 804 (Ch) considered; *Toone and another v Robbins and another* [2018] EWHC 569 (Ch) considered.

Tara Psaila, Barrister.

Judgment date

26 February 2021

Judge

Insolvency and Companies Court Judge Prentis

Representation

Faith Julian (instructed by Charles Russell Speechlys LLP) for the Applicant.

Lynette Calder (instructed by Rainer Hughes) for the First Respondent.

Dale Timson (instructed by Rainer Hughes) for the Second Respondent.

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