

Mukti Lal Agarwala vs Trustees Of The Provident Fund Ofthe Tin ... on 14 February, 1956

Equivalent citations: 1956 AIR 336, 1956 SCR 100

Bench: Vivian Bose, Syed Jaffer Imam

PETITIONER:

MUKTI LAL AGARWALA

Vs.

RESPONDENT:

TRUSTEES OF THE PROVIDENT FUND OFTHE TIN PLATE CO. OF INDIA

DATE OF JUDGMENT:

14/02/1956

BENCH:

AIYAR, N. CHANDRASEKHARA

BENCH:

AIYAR, N. CHANDRASEKHARA

BOSE, VIVIAN

IMAM, SYED JAFFER

CITATION:

1956 AIR 336

1956 SCR 100

ACT:

Provincial Insolvency Act, 1920 (V of 1920), s. 4-Insolvency of employees of a company-Having certain amounts standing to their credit in the Provident Fund of the said company-Whether the said amounts were the properties of the insolvents over which they had disposing power and were thus available for distribution amongst the creditors-Provident Fund-Rules-Construction-Word "Property" in the Insolvency Act-Meaning of.

HEADNOTE:

The six employees in the Tin Plate Co. of India Ltd. were adjudged insolvents. They were members in a Provident Fund of the said company, having certain amounts standing to their credit in the Fund.

The appellants creditor of the said employees-filed applications under s. 4 of the Insolvency Act against the company and Trustees of the Fund for orders that amounts standing to the credit of the insolvents in the Provident Fund account

were their properties and had vested in the court and were available for distribution amongst the creditors and therefore should be brought into court.

The respondent pleaded in answer that the amount standing to the credit of each insolvent in the Provident Fund represented the contributions of the company and of the employees and that the corpus was a trust fund in the hands of the trustees of the fund; so they were not properties of the insolvents over which they had a disposing power and that they were not debts due to the insolvents. It was said that according to the rules governing the Provident Fund the monies become payable to the employee or any other member of his family only on the happening of certain contingencies such as retirement, discharge, dismissal or death and that till then no right accrued to the insolvent. It was further urged that the trustees could not be removed from the custody and control of the fund by the Official Receiver.

On a construction of the Rules of the Provident Fund, the Insolvency Court held in favour of the creditor. On appeal, the High Court held that under the rules of the Fund, the insolvents had no present disposing power over the monies standing to their credit and that the Fund had vested in the Trustee. On appeal to the Supreme Court:

Held that it is reasonably clear from these rules that a subscriber

has a present interest in the Fund though the moneys may become payable to him, or his nominee or heirs only in the future. Even where there is a declaration about the nominee who is to receive payment after the subscriber's death, the fund would still be the property of the subscriber in the hands of the nominee for the satisfaction of his debts, as there is no present gift to take effect immediately.

It could not be maintained that the subscribers had no right, title or interest in the fund or that such interest as they may possess was dependent upon a possible contingency which may or may not occur. The amount standing to the credit of a subscriber even if payable in future would be a debt due by the company to him within the meaning of s. 60 of the Code and hence liable to attachment and sale.

A person cannot enter into any arrangement or agreement by which his own title will cease in the event of bankruptcy for it would then be a fraud perpetrated on the Insolvency Law.

The liability of the estate to be attached by creditors on a bankruptcy or judgment is an incident of the estate, and no attempt to deprive it of that incident by direct prohibition would be valid.

Notwithstanding the rules of the Fund in the present case, the subscribers have an interest in the moneys which can vest in the Official Receiver on their adjudication.

The word "property" in the Insolvency Act is used in the widest possible sense which includes even property which may

belong to or is vested in another but over which the insolvent has a disposing power which he may exercise for his own benefit; and this part of the definition has reference obviously to powers of appointment and the power of a Hindu father who is the managing member of a joint family. The fact that on the date of the adjudication the insolvent could not transfer the property does not militate against the view that he has a vested interest in the same.

Banchharam Mojumdar v. Adyanath Bhattacharjee, ([1909] I.L.R. 36 Cal. 936), Dugdale v. Dugdale ([1888] 38 Ch. D. 176), Ex parte Dever. In re Suse and Sibeth ([1887] 18 Q.B.D. 660), Hudson v. Gribble ([1903] 1 K.B. 517), D. Palaiya v. T. P. Sen and another (A.I.R. 1935 Pat. 211), Secretary, Burma Oil Subsidiary Provident Fund (India) Ltd. v. Dadibhar Singh (A.I.R. 1941 Rang. 256), Gajraj Sheokarandas v. Sir Hukamchand Sarupchand and another (A.I.R. 1939 Bom. 90). Anandrao alias Adkoba s/o Risaram-ji v. Vishwanath Watuji Kalar and others, (A.I.R. 1944 Nag. 144), Ismail Jokaria & Co. v. Burmah Shell Provident Trust Ltd. (A.I.R. 1942 Sind 47), Bishwa Nath Sao v. The Official Receiver ([1936] I.L.R. 16 Pat. 60), and Sat Narain v. Behari Lal and Others ([1924] 52 I.A. 22), referred to.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION: Civil Appeals Nos. 123 to 127 and 135 of 1953.

On appeal from the judgment and decree dated the 12th May 1950 of the Patna High Court in Appeal from Original Orders Nos. 266, 267, 268, 271, 274 and 280 of 1948 arising out of the Order dated the 26th June 1948 of the Court of the District Judge, Purulia in Insolvency Cases Nos. 1/44, 13/46, 12/46, 10/46 and 44/41, respectively. S. C. Isaacs (P. K. Chatterjee, with him) for the appellant.

Bhabananda Mukherji, S. N. Mukherji and B. N. Ghose, for the respondents.

1956. February 14. The Judgment of the Court was delivered by CHANDRASEKHARA AIYAR J.-These appeals are by a creditor of six employees in the Tin Plate Co. of India Ltd. who had been adjudged insolvents. The employees are members in a Provident Fund of the Tin Plate Co. and there were amounts standing to their credit in the said Fund.

The creditor, Mukti Lal Agarwala, filed applications under section 4 of the Insolvency Act for orders that the amounts standing to the credit of the insolvents in the Provident Fund account were their properties and had vested in the court and were available for distribution amongst the creditors. He sought a direction that the monies may be brought into Court. The petitions were directed primarily against the Tin Plate Co. Ltd. and the Trustees of the Provident Fund. They pleaded in answer that the amount standing to the credit of each insolvent in the Provident Fund represented the

contributions of the Company and of the employees and that the corpus was a trust fund in the hands of the trustees of the fund; so they were not properties of the insolvents over which they had a disposing power and that they were not debts due to the insolvents. It was said that according to the rules governing the Provident Fund the monies become payable to the employee or any other member of his family only on the happening of certain contingencies' such as retirement, discharge, dismissal or death and that till then no right accrued to the insolvent. It was further urged that the trustees could not be removed from the custody and control of the fund by the Official Receiver.

The Insolvency Court, which was the court of the District Judge at Purulia, heard the petitions and found on a construction of the rules of the Provident Fund that the monies standing to the credit of A & C accounts in the name of each insolvent was his property over which he had a disposing power and hence they were available for distribution among the creditors under the Insolvency Act. The trustees of the Fund and the Tin Plate Co. carried the matter on appeal to the High Court at Patna and they were successful. The learned Judges (V. Ramaswami and Sarjoo Prasad, JJ.) held that under the rules governing the Fund the insolvents had no present disposing power over the monies standing to their credit and that the Fund was really vested in the trustees.

As the amount involved in the several petitions taken together was over Rs. 20,000, the High Court granted leave to the creditors to appeal to this court.

The main contentions urged by Mr. Isaacs on behalf of the appellants were three in number:-

- (a) The monies standing to the credit of each insolvent in the Provident Fund are his property, though payable at a future date and the question of present disposing power arises only for bringing within the scope of the definition what may not otherwise be regarded as "property".
- (b) Though the Provident Fund rules speak of a trust Fund and trustees, in reality, there was no transfer of ownership by the employees in favour of the trustees and that there is no trust as such.
- (c) In any event, even on the footing that a trust was created over the Fund, the beneficial interest continues in the employees and this interest would vest in the Official Receiver for the benefit of the creditors in insolvency.

We have to examine the soundness of these contentions.

The Provident Fund was started on the 1st January, 1929. The rules and regulations of this Fund are found in the deed of trust dated the 15th July, 1930, marked as Exhibit 1. These rules, as amended from time to time in certain respects by supplementary deeds, are given in the appendix to this judgment.

On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the court or in a Receiver and shall become divisible among the creditors. (Section 28 (2) of the

Provincial Insolvency Act). The property of the insolvent for the purposes of vesting shall not include any property which is exempted by the Code of Civil Procedure, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree (section 28(5)). Section 2(d) of the Act states: " 'Property' includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit". A person has a disposing power over property which he may exercise for his own benefit, such as a power of appointment conferred on him under a will or a settlement, or the power of a Hindu father who is the manager of a joint Hindu family to sell the shares of his sons in the family property in discharge of their pious obligation to pay off his debts. In clause (b) of sub-section (2) of section 38 of the English Bankruptcy Act, 1914, this power is specified in these words:-

"The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice;".

All that we have to find out is whether the amounts standing to the credit of the several subscribers in the fund who have been adjudged insolvents are divisible among their creditors. If so, they would vest in the court or the Official Receiver and would become available for distribution. Whether they have any present interest in the monies is the primary question that falls to be considered.

Section 60 of the Civil Procedure Code sets out what property is liable to attachment and sale and what items are not. The first part of section 60 runs in these terms:

"The following property is liable to attachment and sale in execution of a decree namely, lands, houses, or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf".

The exempted items do not apply. Clause (k) deals with funds governed by the Provident Fund Act. Reference has, however, been made to clause (m) which speaks of "an expectancy of succession by survivorship or other merely contingent or possible right or interest". Let us now advert to the relevant rules of the Fund. The object of the Fund as set out in rule 2 is to accumulate for the benefit of the Company's employees who have joined the Fund certain sums as a future provision for them and for their families. Under rule 3, any employee, who has completed one year's service with the Company, shall be eligible for membership. Rule 4 provides for a declaration as regards the disposition of the Fund in the event of death. This declaration can be cancelled and changed. Rule 5 provides that if the declaration becomes obsolete, the trustees could decide who were to be recognized as the next- of-kin and that payment by them to such person will be an absolute discharge. Every member shall be allowed to contribute any sum not exceeding one-twelfth of his or

her earnings and such amounts would be credited in the name of each member in an account called 'A' Account (Rule 6). At the end of each year, an amount equal to the contribution by the member shall be paid by the Company and credited to another account to be opened in the name of the member and to be denominated his or her 'B' Account. An increased contribution by the Company in certain events at particular specified rates is contemplated by rule 7(B). This further sum will go into a 'C' account to be opened in the name -of each member. Rule 8 provides that the moneys of the Fund shall be invested by the Trustees in accordance with the provisions from time to time in force under the Indian Income-tax (Provident Funds Relief) Act, 1929. Every year the A, B and C Accounts are to be made up including the income from the investments according to certain calculations.

Then come the important rules 10, 11, 12, 13, 15, 16, 17 &

18. Though the Fund is intended as a future provision for the employees and their families, the membership is purely voluntary and arises on an application to the Company, the trustees having nothing to do with the admission. It is only the management of the Fund and the control of its funds which vests in the trustees under rule 1. There is no transfer of the ownership of the Fund. The contributions made by the members are not compulsory in their nature. The monies of the Fund may, no doubt, be invested by the trustees, but the subscriber does not divest himself or herself of control over the Fund in certain respects. He or she can declare to whom the monies are to be paid in the event of his or her death. This declaration can be changed at any time. If the service terminates after fifteen years, the subscriber can get the full amount in the A,B & C Accounts. If he or she retires with the Company's consent before completion of fifteen years' service, he or she can get the amounts standing in A & C Accounts together with a portion in B account. Dismissal, or misconduct, or resignation without the Company's consent before completion of the 15 years would still entitle the subscriber to the payment of the moneys in A & C Accounts. The provision in rule 16 that on the death of any member, the amount will be paid to the next-of-kin, of course proceeds on the same footing that the property belongs to the subscriber. , Whether the provisions that in the event of the declaration becoming obsolete, or a member becoming insane or demented, the moneys can be paid at the absolute discretion of the trustees to whomsoever they determine to be the next-of-kin, or hold to be a proper and suitable person to receive payment, are valid is not a question that arises in these appeals.

Retirement or death is not a mere possibility. It is a contingency that is sure to happen, sooner or later. Dismissal for misconduct or resignation without consent before 15 years' service will secure earlier payment. (Rule

11).

It is reasonably clear from these rules that a subscriber has a present interest in the Fund though the moneys may become payable to him, or his nominee or heirs only in the future. Even where there is a declaration about the nominee who is to receive payment after the subscriber's death, the fund would still be the property of the subscriber in the hands of the nominee for the satisfaction of his debts, as there is no present gift to take effect immediately. It is not easy to see how it could be

maintained that the subscribers have no right, title or interest in the fund, or that such interest as they may possess is dependent upon a possible contingency which may or may not occur. The amount standing to the credit of a subscriber even if payable in future would be a debt due by the Company to him within the meaning of section 60 of the Code and hence liable to attachment and sale. See *Banchharam Majumdar v. Adyanath Bhattacharjee*(1).

Rule 17, which provides that on the adjudication of the debtor as an insolvent the amounts standing to his credit in the Fund shall be liable to be forfeited (1) [1909] I.L.R. 36 Cal 936.

to the Fund, was strongly relied upon by the respondents. But such a condition or agreement is invalid. A man may give (in India only by will) property or its income to a donee with a condition that the donee's interest will cease on bankruptcy and the property will in that event go to another; if insolvency supervenes, the property will not vest in the Official Receiver. If there is no gift over on the cesser of the donee's interest, the property will revert to the donee and will vest in the Official Receiver on the donee's insolvency. But a person cannot enter into any arrangement or agreement by which his own title will cease in the event of bankruptcy, for it would then be a fraud perpetrated on the Insolvency Law. This principle has been enunciated in an early English case *Wilson v. Greenwood*(1) in the following words and adopted in later cases too:

"The general distinction seems to be, that the owner of property may, on alienation, qualify the interest of his alienee, by a condition to take effect on bankruptcy; but cannot, by contract or otherwise, qualify his own interest by a like condition, determining or controlling it in the event of his own bankruptcy, to the disappointment or delay of his creditors".

In *Re Dugdale*(2) we find the following observations of Kay, J.-

"The liability of the estate to be attached by creditors on a bankruptcy or judgment is an incident of the estate, and no attempt to deprive it of that incident by direct prohibition would be valid. If a testator, after giving an estate in fee simple to A, were to declare that such estate should not be subject to the bankruptcy laws, that would clearly be inoperative. I apprehend that this is the test. An incident of the estate given which cannot be directly taken away or prevented by the donor cannot be taken away indirectly by a condition which would cause the estate to revert to the donor, or by a conditional limitation or executory devise which would (1) [1818] 86 E.R. 469, 476; 1 Swans. 471, 485. (2) (1888) 38 Ch. 1. 176, 182.

cause it to shift to another person".

The proposition is thus stated in *Williams on Bankruptcy*(1) at page 293: "But the owner of property cannot, by contract or otherwise, qualify his own interest by a condition determining or controlling it in the event of his own bankruptcy to the prejudice of his creditors". It appears to us to be unnecessary to refer to all the decisions cited and relied upon in the course of the arguments on either side. A few cases may, however, be dealt with. The English decisions relied upon by the

learned counsel for the appellant do not furnish much guidance. Ex part Dever. In re Suse and Sibeth(2) was a case of what is obviously a contingent interest dependent upon a mere possibility. The decision in Hudson v. Gribble(3) dealt with a different question altogether. Under a scheme framed by the Municipal Corporation, persons in its service were to contribute to a Fund for the encouragement of thrift among their officers and servants a certain percentage of their salaries to be deducted from time to time from those salaries. Were they exempt from payment of income-tax under the first rule of section 146 of the Income-Tax Act, 1842, was answered in the negative. The point was whether they were exempt because they were "sums payable or chargeable on the salaries by virtue of any Act of Parliament where the same have been really and bona fide paid and borne by the party to be charged". It is true that Lord Justice Vaughan Williams says at page 525 that the sums contributed never ceased to be the property of the persons from whose salaries or wages they were deducted; and Lord Justice Stirling observes at page 528 "It is obvious that, though the amounts so deducted are not immediately paid to the person employed, they remain his property to a great extent". Both of them refer to the fact that the subscribers were entitled to get back their contributions upon retiring from the service. But they were dealing with particular words employed in an Act of Parliament (1) 16th Edition. (2) [1887] 18 Q.B.D. 660. (3) [1903] 1 K.B. 517, and the rules made under a Corporation Act. General observations of the kind should not be extracted from the context in which they were used and applied to other facts and different language.

Coming to the Indian decisions, D. Palaiya v. T. P. Sen and another(1) is a case where the rules of a provident fund created by the Tata Steel Company were similar to the rules we have before us but the forfeiture clause was construed as applying only to the portion of the amount at the credit of members' account contributed by the company and it was read to mean that it was inapplicable to the subscribers' own contributions. Secretary, Burma Oil Subsidiary Provident Fund (India) Ltd. v. Dadibhar Singh(2) which held against the vesting proceeded upon the footing that there was a trust created in favour of the trustees. Even if so, what was to happen to the beneficial interest was not dealt with. The relevant observations are:

"The forfeiture does not vest the money in the trustees, the money having already vested in them. The money cannot be attached as a 'debt' due to the judgment-debtor, because the word 'debt' as used in S. 60 and in O. 21, R. 46, Civil Procedure Code means an actually existing debt that is a perfected and absolute debt, not merely a sum of money which may or may not become payable at some future time or the payment of which depends upon contingencies which may or may not happen".

The decision of Beaumont, C. J. and Rangnekar, J. in Gajraj Sheokarandas v. Sir Hukamchand Sarupchand and another(1) does not apply because in that case there was a clause in the articles providing that all moneys received by the East India Cotton Association from its members would be under the absolute control of the Association and could be used by it as if the moneys belonged to it absolutely. Further the deposit was also subject to certain liens. Subject to the liability to forfeiture and to the satisfaction of the liens, the deposit with interest was repayable to (1) A.I.R. 1935 Pat. 211. (2) A.I.R. 1941 Rang. 256, 259. (3) A.I.R. 1939 Bom.90.

the member on his ceasing from any cause to be a member. The facts were, therefore, very different. Anandrao alias Adkoba s/o Risaramji v. Vishwanath Watuji Kalar and others⁽¹⁾ is again a case where the money ceased to belong to the employee and the title was in the trustees. Referring to a Karachi case reported in Ismail Jakaria & Co. v. Burmah-Shell Provident Trust Ltd.⁽²⁾, Bose, J. distinguished it on the ground that there the money was not vested in the trustees but was only handed over to them for the purposes of management, which was not the case before him.

The learned counsel for the respondents strongly relied on Bishwa Nath Sao v. The Official Receiver⁽³⁾ and argued that there can be no property within the meaning of the Insolvency Act unless the insolvent had a present absolute power of disposal over the same but the decision which is that of a Full Bench and which interpreted the decision of the Privy Council in Sat Narain v. Behari Lal⁽⁴⁾ does not support any such position- all that was held was that on the insolvency of a father, his power to sell the shares of his sons in the joint family property to discharge the pious obligation vests in the Official Receiver, though the shares themselves do not so vest.

Sufficient has been stated above to show that notwithstanding the rules of the Fund in the present case, the subscribers have an interest in the moneys which can vest in the Official Receiver on their adjudication. Even if we regard the deed creating the fund as a trust deed, notwithstanding that, no ownership has been transferred to the trustees and all that they have got is the right of the management and control, the subscribers, who joined the fund have undoubtedly got a beneficial interest which will vest in the Official Receiver as property liable to attachment and sale under section 60 which uses the language "whether the same be held in the name of the judgment-debtor or by another person in interest for him or in his behalf". (1) A.I.R. 1944 Nag. 144.

(3) [1937] I.L.R. 16 Patna 60.

(2) A.I.R. 1942 Sind 47.

(4) [1924] L.R. 52 I.A. 22, The learned Judges of the High Court held that the 'property' mentioned in the Insolvency Act must be such that the insolvent has an absolute and unconditional present disposing power over the same. With great respect, this, however, does not seem to be a correct interpretation. The word 'property' is used in the widest possible sense which includes even property which may belong to or is vested in another but over which the insolvent has a disposing power which he may exercise for his own benefit; and as pointed out already, this part of the definition has reference obviously to powers of appointment and the power of a Hindu father who is the managing member of a joint family. The fact that on the date of the adjudication the insolvent could not transfer the property does not militate against the view that he has a vested interest in the same. Reference was made to section 56(3) of the Provincial Insolvency Act which provides that "Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is from the possession or custody thereof: Provided that nothing in this section shall be deemed to authorise the court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove".

This has no relevancy to the point at issue. Whenever possession and custody could be taken by the Receiver, the person in whose possession and custody the property is can be evicted. If possession or custody could not be taken, still the right of the insolvent will vest in the Official Receiver.

Mention has been made of three accounts in the Fund called A, B and C; the first represents monies contributed by the subscriber, the second consists of monies paid by the Company and the third represents what may be roughly described as bonus which represents deferred wages. The learned counsel for the appellant confined the relief he wanted to the amounts standing to the credit of each subscriber in his A and C Accounts and conceded that the B Account monies would stand on a different footing. In fact, even in the Insolvency Court the creditor concerned himself only with the A & C Accounts.

Mr. Isaacs contended at first that he was entitled to an order that the monies in the A & C Accounts should be brought to the Insolvency Court but later he abandoned this contention. For the respondents, it was urged that under section 10 of the Employees' Provident Funds Act, 1952, which came into force after these proceedings were instituted, there could be no attachment. This again is a question which is outside the scope of the present proceedings. Once it is held that the right, title and interest of the insolvents in the A & C Accounts with the Fund vest in the Official Receiver, it is for him under the directions of the Insolvency Court to take steps to realize the same, in whatever manner the law allows him to do. The learned counsel for the respondents handed to us a paper showing which of the respondents was still in service and which have been discharged, their dates of appointments and of joining the posts. Mohibulla, Anjab Alli and Hasimulla, respondents insolvents in Civil Appeal No. 124, Civil Appeal No. 127 and Civil Appeal No. 126, have been shown as discharged from service. A.M. Joseph, Rasid Alli alias Tasim Alli, and Baldev Singh, respondents in Civil Appeals 135, 125 and 123, joined the Fund in 1933, 1932 and 1936 respectively and are still in service. In the result, the appeals are partly allowed and there will be a declaration that the right, title and interest of the above mentioned insolvents in the moneys standing to their credit in A & C Accounts respectively will vest in the Official Receiver. In other respects the appeals will stand dismissed. The Tin Plate Co. which is the respondent No. 2, will pay to the appellant his costs here and in the High Court. But the costs in this Court will be limited only to one set.

APPENDIX.

This Indenture made the fifteenth day of July, one thousand nine hundred and thirty BETWEEN THE TINPLATE COMPANY OF INDIA LIMITED a Joint Stock Company with Limited Liability duly incorporated under the Indian Companies Act and having its Registered Office at No. 4, Bankshall Street in the City of Calcutta (hereinafter called "the Company" of the first part HARRY DOUGHLAS TOWNEND CHARLES ROLAND HATFIELD AND JAMES PERCY AINSCOUGH all of No. 4, Bankshall Street aforesaid Merchants (hereinafter called the "the Trustees" which expression shall mean and include the said Harry Douglas Townend Charles Roland Hatfield and James Percy Anscough or other the -"-Trustees of the fund herein mentioned for the time being appointed as hereinafter mentioned) of the Second Part and the PERSONS whose names appear in the Schedule hereto or who may by separate writings agree to become parties hereto and bound hereby of the third part WHEREAS the Company has decided to start as from the first day of January one

thousand nine hundred and twenty-nine a Provident Fund for the benefit of the employees of the Company (hereinafter called "the said fund") and has accepted contributions from the employees from the first January, one thousand nine hundred and twenty-nine and for the management and regulations of such fund has framed rules and 'regulations NOW THIS INDENTURE WITNESSETH and it is hereby agreed between the parties hereto that the said Fund shall be governed by the following rules and regulations:

Rules and Regulations

1. The Fund shall be called "THE PROVIDENT FUND OF THE TIN PLATE COMPANY OF INDIA LIMITED". The management of the Fund and the control of its funds shall be vested in the Trustees who will undertake such management without remuneration.
2. The object of the Fund is to accumulate for the benefit of the Company's Employees who have joined the Fund certain sums as a future provision for them and for their families.
3. All employees of the Company (excepting only such covenanted employees on the higher grades of pay as may be excluded by the Trustees at their discretion) upon completion of one year's services with the Company shall be eligible for membership of the Fund. Applications to join the Fund shall be in writing to the Company in a specified form and written notification shall be given by the Company to applicants of their inclusion as members.
4. Every application for membership shall be accompanied by a declaration in a specified form signed by the applicant in the presence of two witnesses who shall not be in any way related to the applicant. Such declaration shall set forth the disposition in the event of his or her death while a member of the Fund of the money which shall be standing to the applicant's credit in the Fund. Should a member at any time desire to cancel his or her form of declaration be or she may do so by submitting to the Company a revised or substituted form in writing duly signed and witnessed in the same manner as in the case of the original form which should specifically cancel and annul all previous forms of declaration deposited by the member with the Fund.
5. In the event of the declaration as made under rule 4 having become obsolete full discretion shall rest with the Trustees as to the disposition of any sums standing to the credit of a member on his or her decease and no person or persons shall be recognised as having any claims thereto save and except such as shall be ascertained by the Trustees or their delegate duly appointed to make enquiry in that be-

half upon satisfactory evidence adduced as to which the Trustees or their delegate appointed to conduct the enquiry shall be sole judge to be the next-of-kin of the deceased member and payment by the Trustees the moneys representing his or her share in the fund to the persons or person so

ascertained shall operate as an absolute discharge to the Trustees from all liability there for to all persons whomsoever.

6. Each member shall be allowed to contribute a definite proportion not exceeding one-twelfth of his or her earnings during any one year which shall be deducted from his or her earnings in monthly or weekly instalments. Contributions as above shall be credited to an account to be opened in the name of each member to be denominated his or her 'A' Account.

For the purpose of this fund, earnings shall be deemed to mean solely the monthly or weekly sum paid to the Employee for wages excluding from the purview of such term all accretions thereto and perquisites in the way of acting allowance commissions bonus payments overtime messing housing allowance lodging money travelling expenses and all such similar payments.

7.(a) On or as at the thirty first December in each year a sum equal to the amount contributed by each member to his or her 'A' account during that year shall be credited by the company to another account to be opened in the name of each member and to be denominated his or her 'B' Account. The Company reserves to itself liberty to make such further contributions as may be requisite for the purposes of Rule 14 below.

(b) If the net dividend paid by the Company on its ordinary share capital in respect of any financial year shall be at a rate of not less than seven and a half per cent on such ordinary share capital a further sum calculated as hereinafter set out shall be paid by the Company. Unless the Company shall decide that such further sum shall be paid into a separate Fund or otherwise than into this Fund such further sum shall be paid into this Fund to another account to be opened in the name of each person who shall have been a member on the thirty-first day of December in the said financial year and to be denominated his or her 'C' account. The amount of such further sum shall depend upon the rate of such net dividend and shall be ascertained according to the following scale:-

Rate of net dividend paid Amount of the further sum as aforesaid. sum payable.

Not less than 7-1/2% and not One week's wages. exceeding 8-3/4% Exceeding 8-3/4 but not ex- Two week's wages. ceeding 11-1/4% Exceeding 11-1/4 but not Three weeeek's wages. exceeding 13 3/4% Exceeding 13 3/4% but not Four week's wages. exceeding 16-1/4% Exceeding 16-1/4% but not Five week's wages. exceeding 18 1/2% Exceeding 18-3/4% but not Six week's wages. exceeding 21 1/2% For each additional 2-1/2% An additional week's wages.

For the purpose of this clause one week's wages 'shall mean in the case of a worker in receipt of daily wages six times his daily rate of pay at the thirty first day of December in such financial year as aforesaid and in the case of a worker in receipt of monthly pay one fifty-second part of twelve times his monthly rate of pay at the thirty-first day of December in such financial year".

"Provided always that if at any time the Company's Ordinary share capital shall be increased by capitalisation of any of its undistributed profits (not including profits arising from a revaluation of assets, from the sale of assets or from the sale of shares at a premium) or reduced, then the rate of net dividend paid by the Company in respect of any financial year after the coming into force of any such increase or reduction shall for the purposes of this clause be deemed to be the rate of net dividend actually so paid by the company altered in the ratio which the nominal value of the Company's paid up capital at the end of such financial year (excluding therefrom all portions of such capital which represent capitalised profits derived from revaluation of assets sale of assets or issue of shares at a premium) shall bear to the value which it would have had if such increase or increases or reduction or reductions of capital as shall come into effect after the first day of January one thousand nine hundred and thirty eight had never taken place".

"The payment into each member's 'C' Account in accordance with the above provisions shall be made as soon as conveniently may be after the holding of the annual Ordinary General Meeting of the Company at which such net dividend as aforesaid is finally declared and ascertained".

8. The moneys of the Fund shall be invested by the Trustees in accordance with the provisions from time to time in force under the Indian Income-tax (Provident Funds Relief) Act, 1929.

9. (1) (a) On or as soon as may be after the thirty first day of December in each year the Trustees shall determine the amount standing to the credit of each member in his 'A', B and C accounts on that date and for that purpose a general account shall be taken of the assets of the fund and of the receipts payments dealings and transactions in connection therewith during the calendar year terminating on such thirty first day of December (hereinafter referred to as the period of account).

(b) Each such general account shall comprise three revenue Accounts to be known as the 'A' Revenue Account, the 'B' Revenue Account and the 'C' Revenue Account respectively. The 'A' Revenue Account shall be credited with all income accrued or profits realised during the period of account in respect of the investments representing moneys lying to the credit of the 'A' accounts and the appreciation (if any) of such investments during the period of account. The 'A' Revenue Account shall be debited with all losses (if any) in respect of depreciation of such investments and all sums paid during the period of account in respect of interest on contributions to retiring members or the representatives of deceased members as herein before provided. The 'B' Revenue Account shall be credited with all forfeits and all income accrued or profit realised during the period of account in respect of the investments representing moneys lying to the credit of the 'B' Accounts and the appreciation (if any) of such investments during the period of account. The 'B' Revenue account shall be debited with all losses (if any) in respect of depreciation of such investments and all expenses of the Fund. The 'C' Revenue Account shall be credited with all income accrued or profit realised during the period of account in respect of the investments representing moneys lying to the credit of the 'C' Accounts of the members, the appreciation (if any) of such investments during the said period and all interest received by the Trustees or., withdrawals made under Rule 18 hereof.

The "C" Revenue Account shall be debited with all losses (if any) in respect of depreciation of such investment as last aforesaid.

(c) The balance of the "A", "B" and "C" Revenue Accounts respectively shall be appropriated to the "A", "B" and "C" accounts of the members in each case in proportion to the amounts standing to the credit of their respective "A", "B" and "C" accounts at the close of the period of accounts provided always that for the purpose of such appropriation the Trustees may if they think fit disregard any sum standing to the credit of any member in his "A" "B" or the "C" Revenue Account not exceeding on(rupee and may carry forward to the next period of account any part of the balance of the "A" revenue account, the "B" revenue account or the "C" Revenue account which will not suffice to pay a complete one half percent on the total amount standing to the "B" or "C" accounts as the case credit of the "A", may be of all the members. Provided also that in ascertaining the amount at credit of a member's "C" account for the purpose of calculating the proportions herein mentioned there shall be deducted from such "C" Account only those sums withdrawn under the provisions of Rule 18 hereof on which interest is not payable by him to the Fund.

(d) For the purpose of such Revenue Account the Trustees shall value the investments and securities of the Fund, and if the same shall in their opinion, which shall be final and conclusive, have appreciated or depreciated since the date of purchase, or if a general account shall have been taken subsequent to the date of purchase then since the date of the last preceding general account the amount of such appreciation or depreciation shall be credited or debited to such revenue account as though the same were a realised profit or loss as the case may be.

(2) Notwithstanding the terms of Rule 9(1) the Trustees shall have the right should they in their uncontrolled discretion deem it necessary in the interests of the members as a whole to take out a general account of the assets of the fund as at any date in any year other than or in addition to the thirty first day of December and Members "A", "B" and "C" accounts shall be adjusted accordingly. (3) In the case of the taking of a general account under rule 9(2) the words "the period of account" used throughout these rules shall mean and refer to (where the context shall admit) the period whereof such general account of the assets of the fund was taken under rule 9(2).

10. On retirement of any member with the consent of the General Manager of the Company before completion of more than fifteen years service with the company he or she shall be paid the entirety of the amount then standing to the credit of his or her "A" and "C" account together with one-fifteenth of the moneys standing to the credit of his or her "B" account for such completed years service.

11. If any member before completion of fifteen years service with the company shall be dismissed for misconduct or shall resign therefrom without the consent of the General Manager he or she shall be paid only the amount then standing to his or her credit in "A" account and "C"

Account.

12. The residue of any moneys standing to the credit of a member's "B" account after payment of the moneys payable to him or her there out under Rule 10 and the entirety thereof if he or she shall be dismissed or resign in the circumstances as mentioned in rule 11 shall be forfeited to the Fund and carried to the "B" Revenue Account to be dealt with under Rule 9 (1)

13. Upon termination by any means of a member's service if more than fifteen years thereof shall then have been completed he or she shall be paid the entirety of the amount then standing to the credit of his or her "B" and "C" account.

For the computation of length of service under the foregoing rules continuous service only shall be reckoned as from the date or last date on which the employee entered or re-entered service.

14. If in consequence of depreciation of securities the amount as received by a member or his or her representatives in respect of his or her "A" account under the last preceding rules shall fall short of the total of the contributions as made thereto the company may make an additional and contingent contribution to the fund to the amount of the deficiency for payment thereof to the member.

15. If it shall be proved to the satisfaction of any of the trustees that any member has become insane or otherwise incapacitated from exercising proper control over his affairs they make payment out of the moneys standing to his or her credit in the Fund and at such time or times to such person or persons on his or her account as they may in their absolute discretion think expedient. The above provisions for payment shall not apply to moneys forfeited under Rule 17 which shall be dealt with by the Trustees at their absolute discretion thereunder.

16. On the death of any member while still in the service of the Company the sum standing to his or her credit in "A", "B" and "C" accounts shall be paid to the person or persons named in the declaration form signed under Rule 4 or failing such declaration to the person or persons who shall be ascertained to be next-of-kin under the provisions of Rule

5.

17. No member of the Fund shall have any claim on the moneys standing to his or her credit therein otherwise than in accordance with the provisions of these rules and no person or persons other than a member save and except such as shall be nominated in the declaration under the provisions of Rule 4 or shall be ascertained to be the member's next-of-kin under Rule 5 shall have any claim thereto in any right whatsoever. Any assignment by a member of the moneys which would otherwise be payable to him or her under these rules whether absolute or by way of charge shall be wholly void and in the event of any member executing any such assignment or being adjudicated insolvent or if any order shall be served upon the Trustees of the Company for payment of the moneys standing to his or her credit to any person under any attachment or -other process of any Court the said moneys shall at the time when they would have otherwise become payable to the member but for such assignment insolvency or attachment be liable to be forfeited to the FUND PROVIDED ALWAYS that the Trustees shall at their absolute discretion and without any legal obligation so to do pay and apply the same for the benefit of the member or his or her dependents and relatives.

18. Withdrawals by members of the money standing to their credit with the Fund shall not be allowed by the Trustees except that withdrawals from the amount standing to the credit of a member's 'C' account may be allowed on the special grounds to -the extent and subject to the conditions laid down by the Indian Income-Tax Act and the Rules made thereunder in that behalf as in force from time to time.

19. There shall be not less than three Trustees of the said Fund.

20. If and whenever any Trustees shall die resign or become incapable of acting or shall permanently leave India one or more persons in his place shall be appointed by the Company as such Trustees.

21. No copy shall be furnished to any member of his or her account but member may have inspection thereof in the Books of the Fund at all reasonable times.

22. These Rules may from time to time be altered and amended and other Rules and Regulations may be added or substituted for the management and working of the Fund in every case by the Company and the Trustees and with out reference to the parties hereto of the third part, provided always that should such addition or alteration curtail the rights or increase the obligations of the members of the Fund any member shall be entitled to withdraw from and at his or her own request in writing to the Fund, cease to be a member of the Fund in which case he or she shall be paid the money standing to his or her credit in the Fund (provided that the same shall not have become forfeited under Rule 17) or such portion thereof as he or she would have been entitled to if he or she had then retired from the service of the Company with the consent of the General Manager of the Company.

Any such alteration or amendment shall, be notified in writing to the parties responsible for according recognition to the Fund under the provisions of the Indian Income-Tax (Provident Fund Relief) Act, 1929.

23. The Company may at any time in its discretion dissolve or terminate the Fund and shall in such case carry out the winding up of the Fund and the members of the Fund shall receive all the moneys standing to their credit provided they shall not then have become forfeited under Rule 17 'A', 'B' and 'C'.

24. Any payment made in accordance with the Rules of the Fund to the member, his nominee or next of kin as ascertained or to any person or persons other than the foregoing shall operate as a full and efficient discharge of all liability of the Fund in respect thereof 25 These Rules and Regulations shall come into force with effect from the 1st day of January, 1929.