

SUPREME COURT OF INDIA

K. S. and W. Products

Vs.

Kohinoor Rolling Shutters and Engg. Works

C.A.Nos.9464-9467 of 1995

(G. B. Pattanaik CJI. and S. B. Sinha J.)

12.11.2002

JUDGEMENT

Pattanaik, CJI.,

1. These appeals, directed against the Full Bench decision of the Karnataka High Court, raise a common question as to whether on account of Section 458-A of the Companies Act, which was inserted by the *Companies (Amendment) Act, 1960*, the period of limitation for filing any suit or application gets extended, and if so, whether a claim which was barred on the date, the application for winding up was filed, stands revived on account of an order of the Court in the winding up proceedings.

“In the impugned judgment, the Full Bench of the Karnataka High Court has recorded its conclusion that the provisions contained in Section 458-A of the Companies Act does not confer a fresh cause of action and, therefore, if the time for the claim is already barred under the relevant provisions of the Limitation Act, then the appointment of official liquidator on an application being filed for winding up of the company, would not revive the barred date. It appears that the aforesaid view of the Karnataka High Court is in agreement with the decision of the Madras High Court in 63 Company Cases 749 and is in variance with the two Full Bench decisions, one of Delhi High Court in AIR 1978 Delhi 158 and the other of Kerala High Court in AIR 1989 Ker 41. In the absence of any authoritative pronouncement of this Court on the question, it would, therefore, be necessary to examine the different views expressed by different High Courts as well as the relevant provisions of the Companies Act, and to find out which view is correct.”

2. Under the provisions of the Companies Act, a winding up proceeding commences by presentation of a petition as provided under sub-section (1) of Section 441 of the said Act and at any time, after the presentation of a winding up petition, the Court may appoint the official liquidator. Under Section 446 of the Act, once an official liquidator is appointed, then all legal proceedings against the company can be proceeded with only with the leave of the Company Judge and subject to such terms as the Company Court imposes. Under sub-

section (2) of Section 446, it is the winding up Court which gets the jurisdiction to entertain any suit or proceeding by or against the company as well as any claim made by or against the company. Section 458-A merely excludes the time in computing the period of limitation for any claim. The aforesaid section is extracted hereinbelow in extenso for better appreciation of point in issue : :1978 Tax LR 2000

"Section 458-A. Notwithstanding anything in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded."

In the case of *Faridabad Cold Storage and Allied Industry v. Official Liquidator of Ammonia Supplies Corpn. (P) Ltd.*¹, the question for consideration was as to what is the period of limitation for a claim filed under Section 446(2) of the Companies Act and what is the starting point of the said period of limitation. It was held by the Full Bench of Delhi High Court that any such application in respect of a claim filed under Section 446(2) of the Companies Act is covered by the residuary article under Article 137 of the Limitation Act and the period of limitation is three years from the date when the right to apply accrues. The Court further held that the right to file a claim petition under Section 446(2) in respect of a claim enforceable at law on the date of the winding up order, arises on the date the winding up order is passed. The period of limitation of three years would, therefore, be from the date of the winding up order, after giving full effect to the provisions of, and the benefit of Section 458-A of the Companies Act. The point in issue in case in hand is something different than the point that arose for consideration and was decided by the Delhi High Court. The other Judgment of the Delhi High Court in the case of *R. C. Abrol and Co. Pvt. Ltd. v. A. R. Chaddha and Co.*², the question for consideration was whether for an application under Section 446(2)(b) of the Companies Act, the provisions of Art. 137 of the Limitation Act would apply or not and the High Court answered the same in the affirmative. That is not the dispute in the case in hand inasmuch as there is no dispute about the applicability of Art. 137 of the Limitation Act to an application filed for enforcement under S. 446(2)(b) of the Companies Act. So far as the Judgment of Kerala High Court is concerned, in the case of *K.P. Ulahannan and others v. The Wandoor Jupiter Chits (P) Ltd.*, the question for consideration was whether the time prescribed under Section 458-A of the Companies Act would be excluded for computing the period of limitation for a claim petition being filed under Section 446(2)(b) of the Companies Act read with Article 137 of the Limitation Act. In the aforesaid case, the Full Bench of Kerala High Court came to hold that the starting point of limitation for claim under Section 446(2)(b) is the date on which the winding up order is passed or a provisional liquidator is appointed and Art. 137 of the Limitation Act applies to such proceedings. It further held that the effect of S. 458-A of the Companies Act is that the period from the date of commencement of winding

up of the company to the date on which the winding up order is made and a further period of one year are to be excluded in computing the period of limitation. But where a claim which was barred on the date and winding up petition is filed, would revive on account of Section 458-A of the Companies Act was never raised or considered in the aforesaid case. In a latter decision of the Delhi High Court however in the case *Liberty Finance Pvt. Ltd. (In liquidation) v. Pandit Radha Mohan and others*³ Ranganathan, J. as he then was, considered the question, which is the subject matter of consideration in the case in hand and held that the expression "any claim" occurring in Section 446(2)(b) of the Companies Act means, a claim which is legally enforceable and, therefore, a claim which had become time barred on the date of presentation of the winding up petition cannot be described as a legally enforceable claim and the provisions of Section 446(2)(b) do not enable the official liquidator to file or receive claims which had been quietened by the lapse of time. Where there is an enforceable claim as on the date of the winding up petition, the official liquidator can make an application under Section 446(2) and such an application will attract the provisions of Art. 137 of the Limitation Act. It was further held that reading Section 458-A of the Companies Act and Article 137 of the Limitation Act together, such an application by the official liquidator should be filed within a period of four years from the date of the winding up order. To the same effect is the Judgment of the Punjab and Haryana High Court in the case of *Maruti Limited (In Liquidation) and another v. Parry and Company Ltd.*⁴.

3. On a plain reading of the provisions contained in Section 458-A of the Companies Act, it is crystal clear that the aforesaid provision merely excludes the period, during which a company was being wound up by the Court from the date of the commencement of the winding up till the order of winding up is made and an additional period of one year immediately following the date of the winding up. In other words, in respect of a legally enforceable claim, which claim could have been made by the company on the date on which the application for winding up is made, could be filed by the official liquidator by taking the benefit of Section 458-A of the Companies Act and getting the period of four years to be excluded from the period of three years, as provided under Article 137 of the Limitation Act. The Legislature, by way of an amendment, brought into force the provisions of Section 358-A, so that an official liquidator, who is supposed to be in custody of the assets and liability of the company, would be able to file a claim on behalf of the company, which was legally enforceable on the date of the winding up, after excluding the period, indicating under Section 458-A of the Companies Act, so that the company or its shareholders will not suffer any loss. But by no stretch of imagination, the said provisions contained in Section 458-A can be construed to mean that even a barred date or a claim which was not enforceable on the date of the winding up, would stand revived, once a winding up application is filed and order is made by virtue of Section 458-A of the Companies Act. We, therefore, affirm the view taken by the Karnataka High Court under the impugned Judgment and dismiss these appeals. There will be no orders as to costs. Appeals dismissed.

¹AIR 1978 Delhi 158

²AIR 1978 Delhi 167

³1979 Co. Cases Vol 49-287

⁴1989 Company Cases Vol. 66-309