

DELHI HIGH COURT

Faridabad Cold Storage

Vs.

Ammonia Supplies, (Delhi)

F.A.O. No. 44 of 1967.

(T. V. R. Tatachari, C.J., Prithvi Raj, and Yogeshwar Dayal, JJ.)

2.12.1977

JUDGEMENT

YOGESHWAR DAYAL, J.

1. This is an appeal against the order of Sri M. L. Jain, Additional District Judge. Delhi, dated 1-10-1966, accepting the claim petition filed by the Official Liquidator under Section 446 (2) of the Companies Act. The Official Liquidator in the aforesaid claim petition had prayed for recovery of Rs. 845.32 against the appellant.
2. The learned Additional District Judge granted a decree for the recovery of Rs. 504 and the return of empty cylinder in favor of the Official Liquidator and on the failure of the appellant to return the cylinder, the Official Liquidator was further held entitled, in the alternative, to the recovery of Rs. 340. The Official Liquidator was also awarded the costs of the petition
3. When the appeal came up before the Division Bench (S. N. Shankar and T. P. S. Chawla, JJ.), the learned Judges referred this appeal to the Full Bench along with Company Appeal No. 2 of 1969. That is how the present appeal has been placed before the Full Bench.
4. Ammonia Supplies Corporation (P.) Ltd. was ordered to be wound up by order dated 21-12-1962. On 1-2-1966, the present petition, out of which the appeal arises, was filed on behalf of the Official Liquidator against the appellant purporting to be under Section 446 (2) of the Companies Act. The claim, inter alia, related to (1) balance price of the gas supplied (2) rent of the empty cylinder due till 31-1-1966 and (3) return of the empty cylinder and in the alternative the price thereof.

5. The claim of the Official Liquidator was challenged on merits and on the ground that the claim petition was barred by time. The learned Additional District Judge, as stated earlier, accepted the claim petition to the extent indicated above.

6. The question of limitation was dealt with by the learned Addl. District Judge under issue No. 4. On this issue, the learned Addl. District Judge took the view:

"This being not a suit, the provisions of Indian Limitation Act have no application to the case. The law of limitation thus does not govern this claim brought under Section 446 (2) of the Indian Companies Act. I, therefore, decide this issue against the respondent."

7. On going through the bill Ex. P-1 dated 10th March, 1961 as well as the debit note Ex. P-2 coupled with the statement of ex-Director of the Company in liquidation, we have no hesitation in affirming the findings of the learned Additional District Judge on issues 1 to 3, relating to the merits of the claim.

8. The only question which survives is whether the claim petition filed by the respondent Official Liquidator under Section 446 (2) was within limitation.

9. As noticed earlier, the view of the learned Addl. District Judge was that the claim petition not being a suit, the provisions of the Limitation Act have no application. It is validity of this view which has been canvassed before us and for which reference of the appeal was made to the Full Bench.

10. It may be mentioned that no question was canvassed in this appeal on the maintainability of the claim petition as distinct from institution of a suit. The only question which was argued related to the meaning of the expression 'any claim' as occurring in Section 446 (2) (b) of the Companies Act, 1956 (hereinafter referred to as 'the Act') and whether any claim so made under the said clause was subject to any limitation under the Limitation Act, 1963. In other words the question which arises is whether the expression 'any claim' means a claim legally enforceable at law and if so whether there is any period of limitation provided for it under the Limitation Act.

11. While dealing with Company Appeal No. 2 of 1969, the Full Bench have gone through the object of the amendment which led to enactment of *inter alia* Clause (b) of Section 446 (2) of the Act. The Full Bench also took the view:-

"The very fact that in the report of the Companies Act Amendment Committee, reference was directly made to the existing provisions of Section 45-B of the Banking Companies Act goes to show that Clauses (b), (c) and (d) ought to have been interpreted in the same light in which the Supreme Court interpreted Section 45-B of the Banking Companies Act."

12. The question then arises: can it be said that the intention of the Legislature in providing remedy by way of claim petition by or against the Company in liquidation was to revive claims which were dead and stale on the date of the winding up order or merely to provide a cheaper remedy for those claims which were alive on the date of the winding up order and if so, is there any period of limitation prescribed by the Limitation Act?

13. There can be no doubt that Clause (b) of Section 446 (2) is 'machinery' provision for enforcement of claims and this remedy was provided for the first time by the Amending Act of 1960. Before the amendment of Section 446 (2) giving this remedy by way of Clause (b) to the Official Liquidator as well as to any person against the company in liquidation, there was already a provision, in Section 469 in the Act which is as under:

"469. (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or, from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court, in making such an order may -

(a) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director, managing agent, secretaries and treasurers or manager whose liability is unlimited, or to his estate, the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a

contributory from the company may be allowed to him by way of set-off against any subsequent call."

14. This provision enables the Court to make an order on any contributory on the list of contributories to pay any money due to the company. This section of the Act is analogous to the provisions of Section 186 of the Companies Act, 1913 (hereinafter referred to as 'the old Act'). This provision of the old Act came up for consideration before the Privy Council in *Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Co. Ltd.*, The Privy Council while interpreting the expression 'money due' occurring in Section 186 of the old Act. observed:

"The words 'any money due from him or from the estate of the person whom he represents to the company' in Section 186 must be confined to money due and recoverable in a suit by the company and they do not include any moneys which at the date of the application under Section 186 could not have been so recovered."

15. It will thus be noticed that under the scheme of the old Act and Section 469 of the Act which is analogous to Section 186 of the old Act, the Company Judge could pass a payment order even against a contributory only to the extent of the money due and recoverable in a suit by the Company and did not include any money which at the date of the application under Section 186 could not have been so recovered. The question then arises : Does the provision of Section 446 (2), which applies to 'any claim' refer to claims which were already barred by time on the date when the application is so filed under Section 446 (2) (b) of the Act? In this connection it is also useful to look at the provisions of Section 458-A of the Act which is reproduced for facility of reference. as under:-

"458-A. Notwithstanding anything in the Indian Limitation Act, 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."

This provision excludes the period, for purposes of computing limitation, between the date of the filing of the winding up petition and the date on which

the winding up order is made and also excludes another period of one year immediately following the date of the winding up order.

16. The provisions of Section 446 (2) of the Act may also be noticed :

"446. (1)

(2) The Court which is winding up the Company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under Section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company.

(3)

(4)"

17. It will be noticed that Clause (b) of Section 446 (2) of the Act gives to the Company Court jurisdiction to entertain or dispose of claims made by or against the company. It acts both ways. If the company can pursue its claim under this provision against the third parties, the third parties can also utilize this provision to press their claims against the company. If there is a bar of limitation for making payment order against the contributories by the Company Judge under Section 469 of the Act, can it be said that such a claim could be filed by the Official Liquidator against the contributories by taking recourse to filing a claim petition under Section 446 (2) (b) of the Act ? One of the basic principles for interpretation of Statutes is that different provisions in the Act ought to be harmoniously construed so that they do not militate against each other. Keeping this principle of construction of Statutes in view and for the purpose of avoiding anomalous situations, the expression 'any claim' occurring in Section 446 (2) (b) of the Act will have to be interpreted as a claim which is legally enforceable. We are, therefore, of the considered opinion that the expression 'any claim' in Clause (b) of Section 446 (2) of the Act means any claim enforceable at law.

18. The next question which arises is as to the date on which it is to be whether the claim was enforceable at law or not. The right to avail of the remedy by filing a claim petition, as against the suit, conferred by Clause (b) of Section 446 (2) can be availed of only in a Court which is winding up the company and therefore, it goes without saying that the right to avail of the remedy provided by the aforesaid Clause (b) will arise only after the passing of the winding up order. So long as the winding up order is not passed, no claim can be preferred under Clause (b) of Section 446 (2). Under Section 458-A, which we have already reproduced above, apart from the period between the date of the commencement of the winding up of the company and the date on which the winding up order (is made), a period of one year immediately following the winding up order is also excluded for purposes of computing the limitation. As the right to avail of the remedy provided by Clause (b) of Section 446 (2) of the Act arises only after the passing of the winding up order, the appropriate date to be seen for purposes of determining whether the claim was enforceable at law or not is the date of the winding up order. Of course, the claimant will be entitled to the full benefit of Section 458-A of the Act.

19. The Supreme Court in the case of *Kerala State Electricity Board, Trivandrum v. T. P. Kunhaliumma*,² overruled its earlier view expressed in *Town Municipal Council Athani v. Presiding Officer Labor Court, Hubli*, AIR 1969 Supreme Court 1335, and held that Article 137 of the Limitation Act, 1963 is not confined only to applications contemplated by or under the Civil P. C. but also applicable to applications made to Court under special Acts. Therefore, it will have to be held that a claim petition under Section 446 (2) (b) of the Act is covered by Article 137 of the Limitation Act, 1963. Article 137 of the Limitation Act provides as under:-

Description of suit.	Period of limitation.	Time from which period begins to run.
137. "Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues."

20. According to third column of Article 137, the period of limitation provided is three years from the date when the right to apply accrues. The right to file a claim petition under Section 446 (2) (b) for a claim enforceable at law on the date of the winding up order arises on the date when the winding up order is passed and, therefore, the period of limitation is three years from the date of the winding up order after giving full benefit to Section 458-A of the Act.

21. In view of the aforesaid decision, the finding of the learned Additional District Judge on issue No. 4 only is set aside and the claim petition under Section 446 (2) (b) of the Act is remanded to the learned Addl. District Judge for determination of issue No. 4 afresh, in the light of observations contained above.

22. The order of the learned Addl. District Judge is set aside to the extent indicated above and the parties are directed to appear before the learned Addl. District Judge on 16-1-1978.

23. Parties are left to bear their own costs, of the present appeal.

Appeal allowed in part.

Cases Referred.

1. AIR 1933 PC 63.

2. AIR 1977 Supreme Court 282