

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

Co.Appeal.No.4 of 2003

AGAINST THE ORDER/JUDGMENT IN C.C.25/1994 IN Co.Pet 57/1989 OF
HIGH COURT OF KERALA DATED 02-03-2001

APPELLANTS : RESPONDENTS 2, 3, 6 & 8 :-

1. O.A.ANTONY,
S/O.OLAPURATH HOUSE,
MATHILAKAM.P.O.,
TRICHUR DISTRICT.
2. FATHIMA HABEEB,
W/O.P.K.M.HABEEB,
MANAPPATT HOUSE,
ERIYAD.P.O.,
KODUNGALLUR.
3. T.J.VARGHESE,
THAHNISSEKARAN HOUSE,
AJANTHA PRESS,
IRINJALAKUDA.P.O.
4. LEELA.P.NARAYANAN,
VADAKKINIYEDATH MANA,
OLLUR.P.O.

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENTS : CLAIMANT & RESPONDENTS 1, 4, 5 & 10 TO 20 :-

1. CHANDNI CHITS PVT.LTD (IN LIQUIDATION) REPRESENTED BY
OFFICIAL LIQUIDATOR, HIGH COURT OF KERALA, ERNAKULAM.

Co.Appeal.No.4 of 2003

- * 2. CHANDNI FINANCIERS,
 A PARTNERSHIP FIRM ORIGINALLY HAVING
 ITS PLACE OF BUSINESS AT KODUNGALLUR, NOW DEFUNCT.
3. M.P.JOSEPH,
 MADATHIPARAMBIL HOUSE,
 PADIYOOR.P.O.,
 THRISSUR DT.
4. ROSY JOY W/O.MANAKKAL JOY,
 KOTTAPURAM.P.O., KODUNGALLUR.
5. ABDUL SALAM,
 PADYATH KARIKIDAKAVALLIL,
 EDAVILANGU.P.O., (NEAR KOCHAINIKKAL PALLI),
 KODUNGALLUR.
6. PAUL D.ALMEDA,
 THAIPARAMBIL HOUSE,
 PADIYOOR P.O., THRISSUR DT.
7. CLARA, W/O.LATE SRI.K.P.DEVASSY,
 H.No.6/60, KODIYAPPADAN HOUSE,
 ASHTAMICHIRA.P.O., TRICHUR DISTRICT.
8. PAULY S/O.LATE SRI.K.P.DEVASSY, -DO- -DO-
9. BEENA D/O.LATE SRI.K.P.DEVASSY, -DO- -DO-
10. KOUSALYA, W/O.LATE K.R.CHATHUNNY,
 VALSALAM, EDAVILANGU.P.O.,
 KODUNGALLUR, TRICHUR DISTRICT.
11. VALSAN S/O.LATE K.R.CHATHUNNY,
 VALSALAM, EDAVILANGU.P.O.,
 KODUNGALLUR, TRICHUR DISTRICT.
 TEMPORARY ADDRESS: ROYAL AVENUE,
 1ST LANE, CHEROOR ROAD,
 CHEMBUKAVU, THRISSUR.
12. PREMAVATHY, D/O.LATE CHATHUNNY,
 W/O.DR.A.N.RADHAKRISHNAN,
 SREE RAMAKRISHNA ASHRAM ROAD,
 POONKUNNAM, TRICHUR-2.
13. RATNAVALLY,
 D/O.LATE CHATHUNNY,
 W/O.DR.P.K.SUKUMARAN,
 SANKARA IYER ROAD, POOTHOLE,
 TRICHUR-4.

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14. SHYLAJA,
D/O.LATE CHATHUNNY,
W/O.DR.O.A.RAMANATHAN,
'SREE NAGAR',
NEAR NSS HIGH SCHOOL,
WEST FORT, TRICHUR.
15. MINI, D/O.LATE CHATHUNNY,
W/O.DR.K.K.BHASKARAN,
KAUSTHUBHAM, EDAKKUNNI,
NEAR SSI DISPENSARY, OLLUR, TRICHUR.

BY ADV. SRI.K.MONI

* (RESPONDENTS 2 TO 15 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DTD. 1.4.08 IN I.A.879/08.)

THIS COMPANY APPEAL HAVING BEEN FINALLY HEARD ON 7-12-2015, ALONG WITH COA.5/2003, COA. 6/2003, COA. 9/2003, COA. 15/2003, COA. 19/2003, COA. 25/2003, MFA. 376/2003 & MFA. 470/2003, THE COURT ON 23-12-2015 DELIVERED THE FOLLOWING:

"CR"

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

Co.A.Nos.4, 5, 6, 9, 15, 19, 25 of 2003

&

M.F.A.Nos.376 & 470 of 2003

Dated this the 23rd day of December, 2015

JUDGMENT

Anil K.Narendran, J.

These appeals arise out of a common judgment dated 2.3.2001 of the learned Company Judge of this Court in C.C.Nos.25/1994, 15/1994, 23/1994, 27/1994, 26/1994, 22/1994, 24/1994 and 2/1994 respectively in C.P.No.57/1989. Since the issues raised are common we propose to dispose of these appeals by a common judgment.

2. The appellants in these appeals are the respondents in C.C.Nos.25/1994, 15/1994, 23/1994, 27/1994, 26/1994, 22/1994, 24/1994 and 2/1994 filed in C.P.No.57/1989. By order dated 4.4.1990 in C.P.No.57/1989 of the learned Company Judge M/s.Chandini Chits Private Ltd., a Company registered under the Companies Act, 1956 (hereinafter referred to as 'the Act') was ordered to be wound up and the Official Liquidator attached to this Court was appointed as the Liquidator of the Company. The

winding up proceedings in C.P.No.57/1989 commenced on 16.10.1989, the date on which the said Company Petition was filed before this Court. The order of winding up was passed on 4.4.1990. Thereafter, the Official Liquidator filed claims before the Company Court under clause (b) of sub-section (2) of Section 446 of the Act.

3. The appellants in these appeals, who were respondents in those claims filed written statement contending, inter alia, that the claims are barred by limitation. However, the learned Company Judge by a common judgment dated 2.3.2001 rejected the said contention, relying on the judgment of a Full Bench of this Court in **Ulahannan v. Wandoor Jupiter Chits (P) Ltd. (1988 (2) KLT 636)**, and decreed the claims in part together with interest at the rate of 12% per annum from the respective due dates till realisation, from the assets of the firm M/s. Chandini Financiers, the 2nd respondent in these appeals, from the appellants and others who were arrayed as respondents in the Company Claim as its Partners, and also from the assets of the deceased respondents in the hand of their legal representatives. The said common judgment

of the learned Company Judge dated 2.3.2001 is under challenge in these appeals.

4. We heard the arguments of Sri.K.G.Balasubramanian, the learned counsel for the appellants and also Sri.K.Moni, the learned Counsel for the Official Liquidator.

5. The main issue that arises for consideration in these appeals is as to whether the claims filed by the Official Liquidator under clause (b) of sub-section (2) of Section 446 of the Act are barred by limitation.

6. Sri.K.G.Balasubramanian, the learned counsel for the appellants would contend that, the claims filed by the Official Liquidator are hopelessly barred by limitation, even after reckoning the extended period prescribed under Section 458A of the Act.

7. Per contra, Sri.K.Moni, the learned Counsel for the Official Liquidator would contend that, if the periods prescribed under Section 458A of the Act are reckoned along with the normal period of limitation prescribed under Article 137 of the Limitation Act, 1963 the claims are not barred by limitation. To buttress this

argument, reliance is placed on the judgment of the Full Bench of this Court in Ulahannan's case (*supra*).

8. As we have already noticed, the winding up proceedings in C.P.No.57/1989 commenced on 16.10.1989, the date of which the said Company Petition was filed before this Court. An order of winding up was passed on 4.4.1990 and the Official Liquidator attached to this Court was appointed as Liquidator of the Company. During the course of winding up, the Official Liquidator filed C.C.No.25/1994 on 24.8.1994, C.C.No.15/1994 on 12.8.1994, C.C.No.23/1994 on 24.8.1994, C.C.No.27/1994 on 24.8.1994, C.C.No.26/1994 on 24.8.1994, C.C.No.22/1994 on 24.8.1994, C.C.No.24/1994 on 24.8.1994 and C.C.No.2/1994 on 3.6.1994.

9. Sub-section (1) of Section 446 of the Act states that, when a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the

Court may impose. Sub-section (1) of Section 446 of the Act, therefore, relates to proceedings against the company and provides for stay of proceedings already pending on the date of the winding up order or on the date of appointment of the provisional liquidator. It also bars the commencement of any proceeding after the said date against the company without the leave of the Court.

10. Sub-section (2) of Section 446 of the Act, which was introduced by the Companies (Amendment) Act, 1960 states further that, the Court 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; and (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; whether such suit or proceeding has been instituted, or is instituted, or such claim or

question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960). Sub-section (2) of Section 446 of the Act, therefore, confers jurisdiction on the Court which is winding up the company to deal with suits, proceedings or claims by or against the company as well as applications under Section 391 of the Act and the question of priorities.

11. The object of sub-section (2) of Section 446 of the Act is to save the company in liquidation from long drawn out and expensive litigation and to accelerate the disposal of the winding up proceedings. In **Sudarsan Chits (I) Ltd. v. G. Sukumaran Pillai (1984 (4) SCC 657)** the Apex Court observed that, sub-section (2) of Section 446 specifies the contours of the jurisdiction of the Court which is winding up the company. It confers special jurisdiction on the Court which is winding up the company to do things that are set out in the various sub-clauses, notwithstanding anything contained in any other law for the time being in force.

Sub-section (2) of Section 446 of the Act thus confer special jurisdiction on the Court winding up the company, which otherwise it may not have enjoyed.

12. A claim filed by the Official Liquidator under sub-section (2) of Section 446 of the Act is governed by Article 137 of the Limitation Act, 1963 and the right to file a claim under the said sub-section, in respect of a claim enforceable at law on the date of the winding up order, arises on the date on which the winding up order is passed. Article 137 of the Limitation Act reads thus;

Article	Description of Application	Period of limitation	Time from which the 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

The period of limitation of three years would, therefore, be from the date of the winding up order.

13. Section 458A of the Act, inserted by the Companies (Amendment) Act, 1960 deals with exclusion of certain time in computing the periods of limitation. As per Section 458A of the Act, 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.

14. The effect of Section 458A of the Act is that, in respect of a legally enforceable claim, which could have been made by the company on the date on which the application for winding up is made, the period of limitation will not run against the company from the date of commencement of the winding up proceedings, i.e., from the date on which the application for winding up is made, till the date on which the winding up order is made (both inclusive). Such a claim could be filed by the Official Liquidator by taking the benefit of one year period immediately following the date of the winding up order, as provided under Section 458A of

the Act and the three years period provided under Article 137 of the Limitation Act. Therefore, in respect of a legally enforceable claim, which could have been made by the company on the date on which the application for winding up is made, the Official Liquidator could file claim within a period of four years from the date on which the winding up order is made.

15. In **Faridabad Cold Storage & Allied Industry v. Official Liquidator of Ammonia Supplies Corpn. (P) Ltd. (1978 (48) CC 432)** the question that came up for consideration before a Full Bench of the Delhi High Court was as to what is the period of limitation for a claim filed under sub-section (2) of Section 446 of the Act and what is the starting point of the said period of limitation. The Full Bench held that, any such application in respect of a claim filed under sub-section (2) of Section 446 of the 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 Full Bench held further that, the right to file a claim under sub-section (2) of Section 446

of the Act, 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 458A of the Act.

16. Following the principle laid down by the Full Bench in Faridabad Cold Storages case (supra), a learned Judge of the Delhi High Court in **Official Liquidator of Liberty Finance Pvt. Ltd (in liquidation) v. Radha Mohan and others (1979 (49) CC 287)** 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) of the Act do not enable the Official Liquidator to file or receive claims which had been quietened by lapse of time. The Court held further that, 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 Article 137 of the Limitation Act. The Court observed that, reading Section 458A of the 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.

17. In **Karnataka Steel and Wire Products v. Kohinoor Rolling Shutters and Engg. Works (2003 (1) SCC 76)** the Apex Court, after referring to the judgment of the Delhi High Court in Liberty Finances case (supra), held that Section 458A of the Act 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 could have been made by the company on the date on which the applications for winding up is made, could be filed by the Official Liquidator by taking the benefit of Section 458A of the 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 Apex Court held further that, by no stretch of imagination, the provisions contained in Section 458A can be construed to mean that even a barred debt 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 458A of the Companies Act. Para.4 of the judgment reads thus;

"4. On a plain reading of the provisions contained in Section 458A 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 applications for winding up is made, could be filed by the Official Liquidator by taking the benefit of Section 458A 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

458A, 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, indicated under Section 458A 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 458A can be construed to mean that even a barred debt 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 458A of the Companies Act.”

18. In **Ajay G. Podar v. Official Liquidator of J.S. & W.M. (2008 (14) SCC 17)** the Apex Court, in the context of misfeasance proceedings filed by the Official Liquidator under Section 543 of the Companies Act held that, Section 458A of the Act is intended to extend the limitation period for the benefit of the company (in liquidation) and the Official Liquidator appointed to carry on its winding up process by collecting the assets and distributing the same among those entitled to the same. The underlying object in extending the limitation is to enable the Official Liquidator to take charge of the affairs of the company, to

examine the records, account books, to study the annual statements and accordingly proceed to recover and collect the assets. The Official Liquidator has also to find resources for conducting the proceedings. Para.20 of the judgment reads thus;

"20. Section 458A of the Companies Act is intended to extend the limitation period for the benefit of the company (in liquidation) and the O.L. appointed to carry on its winding up process by collecting the assets and distributing the same among those entitled to the same. The underlying object in extending the limitation is to enable the O.L. to take charge of the affairs of the company, to examine the records, account books, to study the annual statements and accordingly proceed to recover and collect the assets. He has also to find resources for conducting the proceedings. The proceedings initiated by him by way of judge's summons or suit for enforcement of the recoveries, cannot but be on behalf of the company having regard to his source of authority, viz., the provisions of the Companies Act and the statutory obligation in discharge of which he has to act in this behalf. The said Act does not contemplate his acting in the matter of recoveries excepting as O.L. and excepting on behalf of the company."

19. In the case on hand, the winding up proceedings against the company in liquidation commenced on 16.10.1989, the date on

which C.P.No.57/1989 was filed before this Court and the order of winding up was passed on 4.4.1990. In view of the provisions under Section 458A of the Act, in respect of a legally enforceable claim, which could have been made by the company on the date on which the application for winding up is made, the period of limitation will not run against the company for the period from 16.10.1989 till 4.4.1990. Such a claim could be filed by the Official Liquidator by taking the benefit of one year period immediately following the date of the winding up order, as provided under Section 458A of the Act and the three years period provided under Article 137 of the Limitation Act, i.e., within a period of four years from the date of winding up order. Since the order of winding up in C.P.No.57/1989 was passed on 4.4.1990, the Official Liquidator could have filed claims before 4.4.1994. However, the Official Liquidator filed C.C.No.25/1994 on 24.8.1994, C.C.No.15/1994 on 12.8.1994, C.C.No.23/1994 on 24.8.1994, C.C.No.27/1994 on 24.8.1994, C.C.No.26/1994 on 24.8.1994, C.C.No.22/1994 on 24.8.1994, C.C.No.24/1994 on 24.8.1994 and C.C.No.2/1994 on

3.6.1994. Since the claims filed by the Official Liquidator were beyond a period of four years from the date of winding up order, such claims are barred by limitation, in the light of law laid down by the Apex Court in Karnataka Steel and Wire Product's case (supra).

20. It is relying on the judgment of a Full Bench of this Court in **Ulahannan Vs. Wandoor Jupiter Chits (P) Ltd. (1988 (2) KLT 636)** the learned Company Judge decreed the claims in part. In Ulahannan's case (supra), the winding up proceedings against M/s. Wandoor Jupiter Chits (P) Ltd. commenced on 1.10.1973 by filing C.P.No.17/1973 and the winding up order was passed on 20.12.1973. The Official Liquidator filed claims under Section 446(2)(b) of the Act on 28.2.1978. There was no dispute that the claims were alive on the date of the winding up order. But, the claims were filed beyond a period of four years from the date of winding up order. The appellants contended that the exclusion of time for the purpose of limitation under Section 458A of the Act cannot relate to any period prior to the winding up order. After

referring to the decisions in Faridabad Cold Storages case (supra), Liberty Finances case (supra), etc., the Full Bench of this Court held that, as per Section 458A of the Act, in respect of any suit or application in the name and on behalf of a company in liquidation, 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 and a further period of one year are to be excluded in computing the period of limitation. Both the periods referred to above are to be excluded in computing the period of limitation and there is nothing in Section 458A to restrict its application to the one year period after the winding up order has been passed, in cases where the claim does not get barred during the pendency of the winding up application. On the above reasoning, the Full Bench held that the respective claims involved in those appeals, which were filed by the Official Liquidator beyond a period of four years from the date of winding up order are not barred by limitation. In view of the law laid down by the Apex Court in Karnataka Steel and Wire Products case (supra), the law laid down by the Full Bench of this Court in

Ulahannan's case (supra) is not good law.

21. In view of the law laid down by the Apex Court in Karnataka Steel and Wire Products case (supra), in respect of a legally enforceable claim, which could have been made by the company on the date on which the application for winding up is made, the Official Liquidator could file claim within a period of four years from the date of winding up order, by taking the benefit of one year period immediately following the date of the winding up order, as provided under Section 458A of the Act and the three years period provided under Article 137 of the Limitation Act. In that view of the matter, all the claims filed by the Official Liquidator which are involved in these appeals are barred by limitation, since such claims were filed beyond a period of four years from 4.4.1990, the date of winding up order.

In the result, the judgment and decree of the learned Company Judge dated 2.3.2001 in C.C.Nos.25/1994, 15/1994, 23/1994, 27/1994, 26/1994, 22/1994, 24/1994 and 2/1994 is set aside and those claims are dismissed as barred by limitation.

The appeals are allowed accordingly. No order as to costs.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj

True copy

P.A.to Judge