

Before S. S. Kang and Manmohan Singh Liberhan, JJ.

M/S MARUTI LIMITED (IN LIQUIDATION) AND ANOTHER,—
Petitioners.

versus

M/S PARRY AND COMPANY LIMITED, JEEVAN DEEP BUILD-
ING, 10 PARLIAMENT STREET, NEW DELHI,—*Respondents.*

Company Petition No. 82 of 1982.

4th February, 1988.

*Companies Act, 1956—Ss. 446(2), 458-A—Limitation Act, 1963—
Art. 137—Limitation preferred under S. 446(2)—Accrual of cause of
action—Commencement of period of limitation—Not from last date
of transaction but from date of winding up order—Time provided
by S. 458-A to be excluded.*

Held, that Section 446 of the Companies Act provides an additional remedy to the claimant to prefer the claim and enforce the same. Section 446(2) confers specific jurisdiction upon the Company Court to determine the claim by or against the company. This jurisdiction commences only from the date of passing of the order of liquidation. Prior to the said date, the Company Court/Judge have had no jurisdiction to determine the claim. The remedy to the claimants becomes available only on the date of making the order of liquidation. The cause of action only gives a right for enforcement of the said right. The cause of action cannot be taken back for its enforcement when the remedy was not even available. On a plain reading of Article 137 of the Limitation Act, the cause of action for the claim gives a right to a remedy through the Company Court only on the date the claimant gets a right to seek the remedy, the said date being the date of winding up order. Resultantly, the cause of action to seek the relief under section 446(2) shall be the winding up order.

(Para 12)

Held, that while computing the period of limitation of three years, period envisaged by Section 458-A of the Act has to be excluded. A plain reading of section 458-A leaves no doubt that the period spent from the date of commencement of the winding up of the Company to the date on which the winding up order is passed, both inclusive, and a period of one year immediately following the date of winding up order shall have to be excluded from the period of three years provided by Article 137 of the Limitation Act.

(Para 12)

Held, that the period of limitation for an application for claim under section 446(2) of the Act on behalf of the company, which is being wound up, shall commence from the date of winding up order and the period from the date of commencement of the winding up of the company to the date of winding up order is made, both inclusive, and a period of one year immediately following the date of winding up shall be excluded in computing the period of three years provided by Article 137 of the Limitation Act.

(Para 21)

Petition Under Section 446 of the Companies Act, 1956 read with rule 9 of the Companies (Court) Rules 1959 for recovery of a sum of Rs. 18,099 from the respondent.

The case was heard by Hon'ble Mr. Justice S. P. Goyal on July 11, 1986 and his Lordship was pleased to observe that the case involved an important question of law and should be decided by a larger Bench. The Larger Bench consisting of Hon'ble Mr. Justice S. S. Kang (as his Lordship then was) and Hon'ble Mr. Justice M. S. Liberhan disposed of the question involved,—vide order, dated 4th February, 1988 and sent back the case to the Single Judge for further proceedings. Hon'ble Mr. Justice G. R. Majithia finally decided the case on December 18, 1989.

J. S. Narang, Advocate, for the Petitioners.

Ashok Kumar Aggarwal, Advocate, for the Respondent.

JUDGMENT

M. S. Liberhan, J.

(1) The learned Single Judge has referred the following question of law after observing that the law laid down by the Full Bench of the Delhi High Court reported in *Faridabad Cold Storage and Allied Industry v. Official Liquidator Ammonia Supplies Corporation P. Ltd.* (1), has not been correctly laid :

Whether the relevant date to determine if the petition under section 446(2) of the Companies Act is barred or not would be the date on which the winding up order was passed or the date on which the petition under the said section was moved ?”

The factual matrix, raising the above question is :

(1) (1978) 48 Comp. Cas. 432.

M/s Maruti Limited (in Liquidation) and another v. M/s Parry and Company Limited, Jeevan Deep Building, 10 Parliament Street, New Delhi (M. S. Liberhan, J.)

M/s Maruti Limited was sought to be wound up by petition, dated 16th May, 1977. A provisional Liquidator was appointed on 22nd July, 1977 though final order for winding up was passed on 6th March, 1978. The Official Liquidator preferred claim petition under section 446(2) of the Companies Act (hereinafter referred to as the Act), on 28th October, 1982 against the respondent M/s Parry and Co. Ltd., contending that the last transaction took place on 14th January, 1976, and the payment in account was alleged to have been made on 14th April, 1978 by cheque after deducting certain amounts. The amounts are alleged to have been admitted on 25th June, 1979.

(3) The respondent urged; the cause of action had arisen on 14th January, 1976 when the last transaction took place, even after giving the benefit of section 458 A of the Act, the claim is barred by limitation. The limitation for preferring the claim commenced on 14th January, 1976 and hence the remedy became barred by time for its recovery even before the winding up order was passed. The cause of action having arisen, the date on which the winding up order was passed has no bearing so far as the cause of action is concerned. There is no reason to exclude the period for which the petition for winding up remained pending.

(4) The petitioner controverted the said contentions of the respondent-company and urged, since section 446(2) of the Act provides a particular remedy by conferring jurisdiction on the Company Court to determine the claim by and against the company, the limitation will commence from the date of passing of the winding up order. It was contended that there being no specific provision in the Limitation Act, which is applicable to the application under section 446(2) of the Act, it is only the residuary Article 137 which shall determine limitation for preferring claim to the Company Court. The right to seek the remedy before the Company Court only accrues when the winding up order has been passed. Before the winding up order, the Company Court/Judge have had no jurisdiction to determine the claim of either party. Section 458 A provides for exclusion of time for computing the period of limitation.

(5) In order to determine the period of limitation for seeking the remedy by preferring a claim petition under section 446(2) of the Act, the cause of action for relief has no bearing. The cause of action provides a right to claim relief. Section 446(2) provides

remedy to reference the right and Article 137 of the Limitation Act provides limitation for invoking the remedy provided by section 446(2) of the Act.

Section 446(2) of the Act reads as under :—

“446(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;

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.”

Section 458A of the Act reads as under :—

“458A. 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.”

M/s Maruti Limited (in Liquidation) and another v. M/s Parry and Company Limited, Jeevan Deep Building, 10 Parliament Street, New Delhi (M. S. Liberhan, J.)

The residuary Article 137 of the Limitation Act reads as under :—

137. Any other application for which no period of Limitation is provided elsewhere in this Division.	Three years	When the right to apply accrues.
--	-------------	----------------------------------

7. It is not disputed at the bar that the application under section 446(2) of the Act, that is, the claim by the company against the respondent shall be governed by Article 137 of the Limitation Act.

(8) While interpreting the provisions of a statute one has to keep in mind that different provisions of the Act ought to be harmoniously construed so that they do not make the other redundant. All efforts should be made to avoid anomalous situation. Endeavour should not be made to alter the material on which the statute and its provisions are woven. No attempt should be made to explain the provisions to meet a case for which no provisions have been made.

(9) It should be kept in view that the law of limitation is a procedural law, it does not bar the right but only bars the remedy. When different statutes provide two different remedies for one right, the bar of one remedy by operation of limitation would not automatically bar the other.

(10) While interpreting a statute attempt should be made to give the meanings to the words and the provisions of an Act to make it operative, and not to render it nugatory or redundant. Attempt should be made to give effect to all the provisions of the statute. The provisions of the Limitation Act which bar the remedy to enforce a right should be construed strictly in its grammatical meaning of words. No meanings by implication or inference should be attributed for giving the effect of penalising a right-holder by barring the remedy, unless and until the language of the statute so forces. On the other hand, attempt should be made to give the remedy to a litigant rather to deprive him. The benefit provided by

any exception to the limitation should be given. The law of limitation should be construed liberally in favour of providing a remedy rather than to debar it.

(11) The cause or action as understood, gives a right to the claimant to stake his claim or right against the party against whom it has arisen. The right has no meaning unless and until a remedy is provided for its enforcement. Under the ordinary civil law, the remedy provided to the company against the respondent to enforce its right/claim for money is by way of suit or in case of an agreement for arbitration, through arbitration. The remedy of suit or arbitration has been further hedged by the provisions of the Limitation Act inasmuch as the claimant can enforce the said right within limitation specifically provided by the Act. For all intents and purposes the cause of action for seeking the remedy by way of suit shall be deemed to have arisen on the day the right to enforce the said remedy has arisen, which undisputably is the last date of the transaction.

(12) Section 446 of the Act provides an additional remedy to the claimant to prefer the claim and enforce the same. Section 446(2) confers specific jurisdiction upon the Company Courts to determine the claim by or against the company. This jurisdiction commences only from the date of passing of the order of liquidation. Prior to the said date the company Court/Judge have had no jurisdiction to determine the claim. The remedy to the claimant becomes available only on the date of making the order of liquidation. The cause of action only gives a right for enforcement of the said right. The cause of action cannot be taken back for its enforcement when the remedy was not even available. On a plain reading of Article 137 of the Limitation Act, the cause of action for the claim gives a right to a remedy through the Company Court only on the date the claimant gets a right to seek the remedy, the said date being the date of winding up order. Resultantly, the cause of action to seek the relief under section 446(2) shall be the winding up order. For determining limitation, it shall be the date on which the petition under section 446(2) was moved. Three years have to be calculated from the date of winding up order within which the petition by way of claim can be preferred to the Company Court to enforce a right based on a cause of action arisen before the winding up petition had been moved or during the proceedings for winding up. The remedy sought is only by preferring a claim under section 446(2). While computing the said period of limitation of three years, period envisaged by section 458A of the Act has to be excluded. A plain reading of section 458-A leaves no doubt that the period

M/s Maruti Limited (in Liquidation) and another v. M/s Parry and Company Limited, Jeevan Deep Building, 10 Parliament Street, New Delhi (M. S. Liberhan, J.)

spent from the date of commencement of the winding up of the Company to the date on which the winding up order is passed, both inclusive, and a period of one year immediately following the date of winding up order shall have to be excluded from the period of three years provided by Article 137 of the Limitation Act.

(13) It was observed in *re-General Rolling Stock Company* (2), that the effect of winding up order is to stop the running of the Statute of limitation in Company's favour. On winding up order having been passed, the Company's supervision posts in the Court and all proceedings like a petition under section 446(2) stem up from winding up order. It has no independent existence. The only on the passing of the winding up order. Thus, the remedy of claim arises only on the winding up order.

(14) If the construction to the cause of action is put as the last date of transaction and the limitation is to commence from the said date, the remedy might become barred before it is available to the claimant, resulting in the provisions of section 446(2) becoming redundant. The said interpretation shall deprive the company of its right to prefer claim before the Company Court. It will be despoiling the right before it has arisen. No such interpretation is envisaged nor can be put. The right to move the Company Court accrues only on the winding up order. Thus, the cause of action cannot be taken back earlier to the date of the winding up order.

(15) The Full Bench judgment reported as *Faridabad Cold Storage case* (supra), laid down that the claim envisaged by section 446(2) had a different connotation than a suit. Any claim is only referable to a claim available to the company when winding up petition was preferred.

(16) It has been observed by a Division Bench of this Court, in *Ram Chand Puri v. Lahore Enamelling and Stamping Co. Ltd.* (3),

“The creditor may well take the risk to pursue his remedy in a civil court or wait for the decision of the winding up proceedings. He may well say to himself that if the

(2) 1872 VII Ch. Appeals 646.

(3) A.I.R. 1961 Punjab 84.

order of winding up is going to be made, it would be no much waste of time and money on his part to pursue a remedy in a Civil Court. The financial state of the company may be such that it may be inadvisable to pursue the ordinary remedy in a Court of law and he may well decide to await the decision of the Company Court and take his change on receiving a portion of the dividends which would be paid out to creditors.

Simply because there is no specific embargo on the filing of the civil suit after the winding up petition is presented, it does not mean that he is compelled to pursue that remedy. The company law specifically provides that once the winding up order is made, no further proceedings or suits can be filed without the leave of the Court, and because the winding up order dates back to the day when the winding up petition was filed, it can be argued quite logically that a creditor is entitled to await the final issue in the matter instead of hurrying to a court and risking his money and time in pursuing an elusive remedy.

The remedy is, no doubt, elusive because if the order is made, he cannot proceed further with that remedy, and if during the pendency of the winding up petition he obtains a decree, he cannot stand in any better circumstances. His position is no better than it was before, and that being so, there does not seem to me anything anomalous in the limitation being extended in such a way that the creditor can prove his claim if he can show that his debt was not barred on the day the application for winding up was made."

In our considered view the Full Bench judgment reported as *Faridabad Cold Storage case* (supra) has correctly interpreted the law and we are in agreement with the same. It has categorically stated that limitation for a petition under section 446(2) commences from the date of winding up order, and while calculating period of limitation time provided by section 458A of the Act has to be excluded.

(17) The learned counsel for the claimant further relied upon *Unico Trading and Chit Funds (India) P. Ltd. v. S. H. Lohati and*

M/s Maruti Limited (in Liquidation) and another v. M/s Parry and Company Limited, Jeevan Deep Building, 10 Parliament Street, New Delhi (M. S. Liberhan, J.)

others (4), and *Official Liquidator v. Best and Crompton Engineering Ltd.* (5). Though the said judgments do not cover the question referred to directly, yet these do support the contention raised by the claimant.

18. The learned counsel for the respondent has not brought to our notice any contrary view or reason for taking a different view than the view taken by the Full Bench of the Delhi High Court.

19. Section 458-A of the Act provides an exception to the limitation. It does not admit of two interpretations. The intention and logic behind the provision can be only gone into if the provision admits of two interpretations. A plain reading of section 458-A provides the exception to the limitation provided by the Limitation Act for preferring a petition to the Company Court.

20. It has been observed in *Balakrishna Savalram Pujari Waghmare and others v. Shri Dhyaneshwar Maharaj Sansthan and others*, (6), that the artificial provision of limitation does not always satisfy the test of logic or equity. The period provided by section 458-A has to be excluded while computing limitation. The cause of action shall be deemed to have arisen on the date of winding up order and further giving benefit of the period provided by section 458-A, the claim would be within limitation.

21. "In view of our above observations, we are of the considered view that the period of limitation for an application for claim under section 446(2) of the Act on behalf of the company, which is being wound up, shall commence from the date of winding up order and the period from the date of commencement of the winding up of the company to the date of winding up order is made, both inclusive, and a period of one year immediately following the date of winding up shall be excluded in computing the period of three years provided by Article 137 of the Limitation Act". Thus, the question is answered in the above terms and the case is sent back to the learned Single Judge for further proceedings.

R.N.R.

(4) (1982) 52 Comp. Cas. 340.

(5) (1982) 52 Comp. Cas. 501.

(6) AIR 1959 S.C. 798.