

(1979) 08 AP CK 0022

In the Andhra Pradesh High Court

Case No : Company Applications No's. 40 of 1978 and 16 of 1979 in Company Petition No. 11 of 1972

In Re: Arkay Chit and Commercial Trading Co. P. Ltd. (In Liquidation)

Date of Decision : 03-08-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Companies Act, 1956 — Section 458A, 543, 543(1)

Citation : (1982) 52 CompCas 174

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : R. Sreeramulu, for the Appellant; N. Seshachari, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Rao, J.—This is an application filed by the official liquidator representing M/s. Arkay Chit and Commercial Trading Company (Private) Ltd. (in liquidation), for adding the following paragraphs in Company Application No. 40 of 1978.

" (a) adding the following as para. 2A of the summons in the above C.A. No. 40 of 78, viz. :

" 2A. It is further submitted that on a scrutiny of the Hyderabad branch account books of the company, it was discovered that chit payments amounting to Rs. 54,000 (including dividend) have been paid twice to some of the persons in respect of the same chits, as detailed in annexure " D " and the respondents are liable to account for such double payment."

(b) Substituting the following, in place of the existing para. 4 of the summons, viz. :

" 4. It is, therefore, necessary that the respondents-directors may be examined and called upon to account for a total sum of Rs. 1,11,592 due to the company. "

2. The facts relevant for the purpose of this application are as follows :

An application was filed on April 6, 1972, for winding up of M/s. Arkay Chit and Commercial Trading Company (Private) Ltd., and this application was ordered and the company was directed to be wound up by order dated October 27, 1972. Thereafter, the official liquidator filed Company Application No. 40 of 1978, on October 25, 1977, u/s 543 of the Companies Act, for directing an enquiry to be made and for passing appropriate orders against the respondents to contribute to the assets of the company as and by way of compensation for retainer, misapplication, misfeasance and breach of trust. Notices have been ordered in the said application and the same is pending. While so, the official liquidator filed the present application under Order VI, Rule 17, CPC for amending Company Application No. 40 of 1978, and for inserting the two reliefs, as mentioned in Clauses (a) and (b), supra. The respondents have filed a counter-opposing the said application on the ground that it is barred by limitation and also that the amendment should not be allowed at this stage.

3. Sri N. Seshachary, the learned counsel for the respondents, contends that the order of winding up of the company was passed on October 27, 1972, and an application u/s 543 for misfeasance has to be filed within five years from the date of the order of winding up of the company as prescribed by s, 543, sub-s. (2) and that the present application having been filed on February 23, 1979, beyond the period of five years from the date of the winding-up order, is barred by limitation.

4. Shri R. Sriramulu, learned counsel appearing for the official liquidator, contended that by virtue of the provisions of Section 458A, introduced by the Amendment Act (LXV of 1960), in computing the period of limitation, 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 should be excluded ; and if that period is excluded, the application will be in time. Shri N. Seshachary, learned counsel for the respondents, contended that only one year from the date of the winding-up order can be excluded and not the period from the filing of the application for the winding-up of the company up to the date of the winding-up order. Section 458A reads as follows :

"Exclusion of certain time in computing periods of limitation.--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."

5. Under this section, in computing the period of limitation, for any suit or

application to be made 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. An application u/s 543(1) has to be filed within five years from the date of the order for winding up, or of the first appointment of the official liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer. By virtue of the provisions of Section 458A in computing the period of limitation of five years prescribed by Section 543(2) the period from the date of the commencement of the winding-up of the company to the date of the winding-up order (both inclusive) and a period of one year from the date of the winding-up order should be excluded. The winding-up proceedings commenced with the filing of the application on April 6, 1972, and the order of winding-up was made on October 27, 1972, and that period which comes to six months and 22 days should be excluded. In addition, the period of one year from October 27, 1972, to October 26, 1973, has also to be excluded. Thus, in all, one year, six months and 22 days has to be excluded in computing the period of limitation for filing the application. If so computed the last date for filing the misfeasance application u/s 543(1) in the instant case will be May 19, 1979. The present application was filed on February 23, 1979, and is, therefore, well within time and is not barred by limitation.

6. I am unable to agree with the contention of Shri N. Seshachary that only one year from the date of the winding-up order has to be excluded for an application u/s 543(2) read with Section 458A. The provisions of Section 458A are clear and both the periods, i.e., the period from the commencement of the winding-up of the company to the date of the order of winding-up and also the period of one year from the date of the order of winding-up have to be excluded in computing the period of limitation.

7. Sri N. Seshachary sought to contend that Section 458A does not apply to the instant application as it is filed under Order VI, Rule 17, CPC. But this argument is devoid of any force. The substantive relief claimed in the application by way of an amendment falls u/s 543(1). Therefore, the provisions of Section 543(2) and Section 458A are attracted to this application and as such the application is in time.

8. Various other objections were raised on merits with regard to the reliefs claimed by way of amendment ; but these are all matters for which objections can be raised, after the amendment is allowed. Accordingly, the application for amendment is allowed as prayed for. It will be open to the respondents to file an additional counter to the main Company Application No. 40 of 1978. In the circumstances of the case, there will be no order as to costs. The costs of the liquidator will come out of the estate.