

(1962) 08 AHC CK 0014
In the Allahabad High Court
Case No : Special Appeal No. 573 of 1960

J.A. Dixit

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 24-08-1962

Acts Referred:

Companies Act, 1956 — Section 132, 133, 168, 171, 211
Limitation Act, 1908 — Section 19

Citation : AIR 1963 All 284

Hon'ble Judges : J. Sahai, J;B. Mukerji, J

Bench : Division Bench

Advocate : R.S. Pathak, K.L. Misra, R.R. Agarwal, S.N. Kakkar, H.C.P. Tripathi, V.P. Misra and A.P. Misra, for the Appellant; R.P. Dikshit, for the Respondent

Final Decision : Disposed Of

Judgement

Mukerji, J.—All the three above-mentioned appeals arise out of a single liquidation proceeding, and relate to claims preferred by creditors as against the Company -- claims which they attempted to prove before the Official Liquidator in liquidation.

2. The Jagdish Sugar Mills Limited went into liquidation upon a winding-up order having been made on the 21st February, 1958, though the application for the winding-up of the Company had been made as far back as the 17th April, 1949, by one of the share-holders of the Company Sri Madan Pal Singh. It may here be noticed that before the actual winding-up order had been made the Mills had been placed under the control of an authorised Controller under the provisions of Section 3 of the United Provinces Industrial Ordinance, 1947 (U.- P. Ordinance II of 1947). Raja Bahadur Brij Narain Singh was appointed the authorised Controller of the Company and certain agreements had been entered into with the Raja Bahadur in respect of the running of the Mills, but these expedencies do not appear to have yielded any spectacular results.

3. On the 10th November, 1953, a "Controller" appears to have been appointed

by the Central Government under the Industries Development Regulation Act of 1951. On the 21st May, 1954, however, the Central Government cancelled the aforementioned appointment- with the result that the management of the Mills reverted to the old hands.

4. Subsequently, by a notification dated July 16, 1954, Sri Mangtu Ram Jaipuria of Messrs. Jaipuria Brothers Limited of Kanpur was appointed a Controller under the provisions of the Essential Supplies (Temporary Powers) Act, 1946 (Act XXIV of 1946). The authorised Controller, Sri Mangtu Ram Jaipuria, however, ceased to function from the 8th October, 1955. The Mills in respect of which Controllers successively appear to have been appointed, were sold on the 10th November, 1955; so that thereafter there could be very little question of controlling the working and the management of the Mills.

5. On the making of the winding-up order on the 21st February, 1958, this Court appointed Sri R. P. Dikshit, who at that time, was the Joint Registrar of this Court, to be the Official Liquidator of the Company.

Appeal No. 573 of 1960.

6. This appeal was an appeal which had been preferred by J. A. Dixit, who claimed to have been appointed the General Manager of the Company on the 22nd June, 1954. on a salary of Rs. 1,200/-per mensem. He claimed his salary from the 22nd June, 1954, the date of his appointment, to November, 1955, when the Mills were sold in liquidation proceedings. He further claimed a sum of Rs. 500/- per mensem for the same period in lieu of, what he called, "other amenities" admissible to a General Manager in accordance with the past practice of the Company. He further claimed three months' salary in lieu of notice and a sum of Rs. 2,551/-for expenses which, he said, he had incurred in travelling and other incidental charges connected with such travelling. The total sum claimed by this appellant was Rs. 35,051/-. The appellant first made his claim before the Official Liquidator who turned it down and thereafter the appellant preferred an appeal to the Company Judge who also has turned down the claim, and hence this appeal before us.

7. In order to understand the points in controversy it is necessary to. state a few facts. The Jagdish Sugar Mills were managed by Managing Agents styled "Raja Bahadur Brij Narain Singh and. Company", which was a partnership firm. The concern appears to have been more or less a family concern and as such various members of the family figured in various contexts in respect of the Mills' life-history.

8. The Managing Agents were as we have said earlier, a partnership firm constituted under a partnership deed. Under Clause 10A of this deed Raja Bahadur Brij Narain Singh had the right to appoint his successor in the partnership firm. Clause 15 of the said deed entitled the Raja Bahadur to nominate his successor as Chairman of the partnership firm. By Article 91 of the Articles of Association the Chairman for the time being of the firm Raja Bahadur

Brij Narain Singh and Company, the Managing Agents of the Company, was to be the Chairman of the Board of Directors for his life, with the result that the Chairman of the partnership firm was to continue to be the Chairman for life of the Board of Directors of the Company.

9. On the 17th April, 1947, Raja Bahadur Brij Narain Singh, whom we shall hereafter refer to as the. Raja Bahadur, is alleged to have executed a deed of nomination nominating Anrudh Pratap Narain Singh as his successor both as a partner and as Chairman of the partnership firm. On the 26th September, 1949, the Raja Bahadur died, and it appears that after his death disputes arose in regard to who was entitled to manage the affairs of the Mills. These disputes appear to have brought about the misfortunes of the Mills which subsequently led to Government taking action under the Industrial Development Regulation Act and thereafter under the Essential Supplies (Temporary Powers) Act, 1946, by appointing Sri Mangtu Earn Jaipuria as an authorised controller.

10. The appellant J. A. Dixit claimed to have been appointed General Manager by Raja Anrudh Pratap Narain Singh on the 22nd June, 1954, in exercise of the powers vested in him as Chairman of the firm of the Managing Agents. The appointment of the appellant J. A. Dixit was challenged on two grounds, first, that Raja Anrudh Pratap Narain Singh had no authority to make the appointment, and secondly, that the appointment was not made bona fide. It was also contended that even if there had been in fact an appointment of the appellant, the appellant could not claim any salary inasmuch as he neither acted as General Manager, nor could he, after the authorised controller had been appointed, perform any of the functions for which he had been appointed. A plea of limitation was also raised as against the claim, for it was contended that any claims in respect of salary beyond three years would be barred.

11. We have noticed earlier, that J. A. Dixit claimed to have been appointed General Manager of the Company on the 22nd June, 1954, by Raja Anrudh Pratap Narain Singh, for the Raja Bahadur, who admittedly was the Chairman of not only the firm of Raja Bahadur Brij Narain Singh and Company but also the Chairman of the Board of Directors for life of the Company, had died on the 26th September, 1949. According to the case of appellant J. A. Dixit, the Raja Bahadur had nominated Raja Anrudh Pratap Narain Singh as his successor by a deed of nomination alleged to. have been executed on the 17th April, 1947. Under this deed of nomination Raja Anrudh Pratap Narain Singh became the Chairman of the Managing Agency firm as also the Chairman of the Board of Directors of the Jagdish Sugar Mills. On behalf of the Official Liquidator the validity of the deed of nomination was challenged.

12. Two issues were struck by the learned Company Judge touching upon this question, first, "Whether Raja Anrudh Pratap Narain Singh was appointed by Raja Brij Narain Singh as his successor, as partner and chairman in the firm of managing agents?" and secondly, "Whether Raja Anrudh Pratap Narain Singh was legally entitled to appoint a general manager?" There could be no doubt that the

firm of Raja Bahadur Brij Narain Singh and Company were the Managing Agents of the Jagdish Sugar Mills Limited. Article 91 of the Articles of Association provides:

"The Chairman for the time being of the-firm of Raja Bahadur Brij Narain Singh and Co., the Managing Agents of the Company will be the Chairman of the Board of Directors for his life...." The Raja Bahadur was the Chairman of, the firm of Raja Bahadur Brij Narain Singh and Company. the Managing Agents of the Company. Therefore, he became also the Chairman of the Company. Under Clause 10-A of the Partnership Deed under which the firm of Raja Bahadur Brij Narain Singh and Company was constituted, the Raja Bahadur, had the right to nominate his successor as a partner in the partnership firm. Under Clause 15 of the same Deed the Raja Bahadur was also entitled to nominate his successor to be the Chairman of the partnership firm. Therefore, under the Partnership Deed and the effect which this Deed had on the overall management of the Jagdish Sugar Mills Limited (in Liquidation) the Raja Bahadur could determine the future Chairman of the Managing Agency on his death, and it was the contention and claim of J. A. Dixit appellant that the Raja Bahadur had so exercised his right and that he had appointed Raja Anrudh Pratap Narain Singh to be his successor and to exercise all the rights that the Raja Bahadur could and did himself exercise.

13. The learned Company Judge directed his attention, as we have said earlier, pointedly, to deciding whether or not Raja Anrudh Pratap Narain Singh had been validly appointed by Raja Bahadur Brij Narain Singh his successor to fill the capacity of a partner and Chairman of the firm of Managing Agency. Raja Anrudh Pratap Narain Singh was examined -as a witness in the case and he claimed to have been nominated by his grandfather, the Raja Bahadur, as his successor and to be the Chairman of the Managing Agency firm. Raja Anrudh Pratap Narain Singh admitted that the nomination had been made by means of a written document. That written document, namely, the original of it, was not placed before the learned Company Judge at the time he was examined, but secondary evidence was led by the oral testimony of Raja Anrudh Pratap Narain Singh to prove his nomination on the ground that the original deed had been misplaced by him and was not traceable.

Before the learned Company Judge there was one document which was marked Ex. 10 which showed according to the learned Company Judge that two deeds of nomination had been executed by the Raja Bahadur and one of such deeds was in the custody of Sri Shyam Manohar, an Advocate of Lucknow, at any rate up to the year 1955. In the view of the learned Company Judge, no attempt having been made to summon that document from Sri Shyam Manohar, the Company Judge felt that the claimant J. A. Dixit failed to prove that the original deed of nomination had been lost. Further, the learned Company Judge was of the view that since it had been admitted in cross-examination by Raja Anrudh Pratap Narain Singh that one of Raja Bahadur's nephews Rudra Pratap Narain Singh also laid claim to be the Chairman of the Managing Agency firm, it could not be

held without better proof that Raja Anrudh Pratap Narain Singh was a validly appointed nominee of the Raja Bahadur.

14. In this Court an application was made for the summoning of a record in which, it was alleged, the original deed of nomination" was, and also for the summoning of Sri Shyam Manohar and Sri Murli Manohar Gaur, both. Advocates practising at Lucknow. The application was granted the record was summoned and was before us and both the aforementioned Advocates were examined by us. Both Sri Shyam Manohar and Sri Murli Manohar Gaur were shown a document marked a paper No. 9-A of Suit No. 7 of 1959 of the Court of Civil Judge, Deoria, which was a suit between Raja Anrudh Pratap Narain Singh and Kunwar Rudra Pratap Narain Singh, and were asked whether the document which was shown to the witnesses purported to be a Deed of nomination and whether it bore the signature of the Raja Bahadur. The witnesses, after having looked at the document aforementioned, stated that it did bear the signature of the Raja Bahadur, and the witnesses identified his signature.

This document was accepted to be a deed of nomination and it bore, according to the testimony of the witnesses mentioned above, not only the signature of the Raja Bahadur but also the signatures of the witnesses, Sri Shyam Manohar Advocate stated that the Raja Bahadur did not know any English and therefore he had explained the contents of the deed to the Raja Bahadur and that the Raja Bahadur had signed the deed after it had been read over and explained to him. After we had the evidence of the document in Court and its proof by the two witnesses mentioned above, Sri R. P. Dikshit, the Official Liquidator, more or less gave up his contention in-respect of the proof of the deed of nomination: indeed, it was more or less conceded that the nomination of Raja Anrudh Pratap Narain Singh in fact could not be challenged, but even so it was contended that even if Raja Anrudh Pratap Natain Singh had been validly nominated as Chairman of the Board of Directors and the Managing Agency, he could not on his own individual authority appoint J. A. Dixit appellant to be the General Manager of the Jagdish Sugar Mills.

It was argued that under Art. 98 of the Articles of Association,

"The management of the whole affairs of the Company, subject to the reservations of powers in favour of the Directors or the shareholders in General Meetings and subject to the control and direction of the Directors as provided in these Articles or in the Indian Companies Act, 1913, or any statutory modification thereof for the time being in force, shall be vested in the Managing Agents of the Company, who, subject to the said reservations and control, may exercise all or any of the powers of the Company which they may find expedient, necessary or convenient for carrying on the business of the Company or any part thereof". It was contended on, the strength of what was provided for in Article 98 of the Articles of Association that the appointment could only be made by the firm as a whole and not by the Chairman in his individual capacity. On behalf of the claimant J. A. Dixit reliance was placed on Section 18 of the Partnership Act

for contending that the Raja Bahadur, as a partner of the firm of the Managing Agents, which was a partnership, could make the appointment. Section 18 of the Act is in these words:

"Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm".

It was contended that in any event the Raja Bahadur had the authority as a partner to act in respect of the matter in which he acted for it was done for the purposes of carrying on the usual business of the firm, and that there was nothing in the Partnership Act which placed any restriction on the right which had been exercised by the Raja Bahadur. The learned Company Judge, in our opinion, rightly held that Raja Anrudh Pratap Narain Singh could act validly in making the appointment that he did. The question, therefore, that must be decided against the Official Liquidator is that the Raja Bahadur validly nominated Raja Anrudh Pratap Narain Singh as his successor as the Chairman of the Board of Directors and the Managing Agency and that Raja Anrudh Pratap Narain Singh in his turn validly appointed J. A. Dixit to be the General Manager, but then our deciding this question in favour of the appellant J. A. Dixit did not necessarily imply in it the finding that the appointment had been made bona fide or that that appointment clothed J, A. Dixit with the right to obtain all the remuneration that ho claimed, for the entire period of his claim.

15. We have DOW to consider, in view of what we have said just above, first, whether the appointment of Dixit was a bona fide appointment, and secondly, whether Dixit acted or even could act in the capacity in which he was appointed under the circumstances in which Company of which he was appointed the General Manager was. We shall first take up the question of the bona fides of the appointment, and in this connection we have to recapitulate a few facts already noticed.

16. On the 10th November, 1953, a Controller was appointed by the Central Government under the Industries Development Regulation Act, 1951, even though that appointment was cancelled by a subsequent order of the Central Government made on the 21st May, 1954. Subsequently, however, by a notification of the 16th July, 1954, Sri Mangtu Ram Jaipuria of Messrs. Jaipuria Brothers, Kanpur, was appointed Controller of the Jagdish Sugar Mills Limited under the provisions of the Essential Sup-plies (Temporary Powers) Act, 1946. This authorised Controller continued to function from the date of his appointment right up to the 8th October, 1955. A month later, i. e., on the 10th November, 1955, the Mills were actually sold and, therefore, after that date there was no further necessity for controlling the working or managing the Jagdish Sugar Mills Limited.

As we have noticed earlier, Dixit was appointed General Manager of the Company on the 22nd June, 1954, that is to say, between the interregnum which followed the cancellation by the Central Government of its order appointing a Controller

and the appointment of Sri Mangtu Ram Jaipuria as Controller under the provisions of the Essential Supplies (Temporary Powers) Act, for the former event took place, as we have noticed, on the 21st May, 1954, and the latter on the 16th July, 1954. The appointment of J. A. Dixit as General Manager was made just 23 days before the Jagdish Sugar Mills were again put under the control and management of an authorised Controller. In this context it would also be relevant to notice that an application for the winding up of the Company was actually pending in Court for an application had been made by one of the share-holders as far back as the 17th April, 1949. The aforementioned circumstances left very little room for the contention that the appointment of Dixit, the appellant, could really have been in pursuance of a bona fide and a genuine need to further and better the management of the impecunious Company.

17. It would not, in our judgment, be straining one's faculties too much, to think that there was a kind of tussle going on between the management, i. e., the firm of the Managing Agents entitled to manage the Jagdish Sugar Mills, on the one hand, and the Government in the public interest, on the other, to control the management of the Mills. There was nothing on the record to indicate that appellant Dixit ever assumed the role of a General Manager in respect of the Company, and indeed, looking at the situation in which the Company and its business were, there appeared very little justification for making the appointment of a General Manager. It appears that appellant Dixit made a feeble attempt to get charge of the management of the Mills but he was not successful. In this connection it should be noted that the letter of appointment which was issued to appellant Dixit on his appointment by Raja Anrudh Pratap Narain Singh specifically directed Dixit to take over charge from Sri Mangtu Ram Jaipuria, "the ex-Controller of the Mills" (the words "ex-Controller of the Mills" were used because of the earlier control of the Mills under the Industries Development Regulation) Act.

It is interesting to note that even though Dixit was unable to get charge over the management from Sri Mangtu Ram Jaipuria, he does not appear to have sought the directions of Raja Anrudh Pratap Narain Singh in regard to this matter, nor does it appear that Raja Anrudh Pratap Narain Singh ever afterwards, when he knew that the person whom he had appointed General Manager of the Jagdish Sugar Mills Ltd., could not function in that capacity, indicated his intention to let appellant Dixit continue to be the General Manager, even though he could not function as such. All this leads to one and only one conclusion, namely, that Raja Anrudh Pratap Narain Singh made the appointment of Dixit as General Manager in the interregnum following the removal of the Controller, who had been appointed under the Industries Development Regulation Act, and the appointment of Sri Mangtu Rim Jaipuria under the Essential Supplies (Temporary Powers) Act, in an endeavour, if nothing else, to cause difficulties in the way of the management of the Mills by the authorised Controller. Further, the appointing authority of Dixit does not appear to have considered the question as to whether or not under the circumstances prevailing it was either expedient or just to

appoint a General Manager on the salary, and perquisites to which the General Manager was to be entitled on his appointment. There could, in our opinion, be no two answers to the question whether the act of appointing appellant Dixit as General Manager of the Mills could be characterised as a prudent act. The appointment was, to say the least, an imprudent act. From what we have said above, it could legitimately be said that the appointment of Dixit was not a bona fide appointment;

18. Appellant Dixit did not act as General Manager on his own showing. Indeed, after the authorised Controller had come on the scene on the 16th. July, 1954, Dixit could only act in accordance with the directions issued by the authorised Controller in regard to the management relating to the undertaking called, the Jagdish Sugar Mills Limited. Our attention was not drawn by the appellant to anything which could show that the authorised Controller recognised him as a General Manager, of the undertaking or that he ever issued any directions to him in respect of the management of the undertaking. Indeed, the authorised Controller refused to recognise "the very existence of the appellant because he appears to have refused to hand over charge of the management to the appellant except under orders of the Civil Judge, as, under orders of that Court there was a Supurdar of the mills, namely one J. P. Goel, who was the Manager of Jaipurias.

19. The appellant contended that even if he did not act, as General Manager) it was due to no fault of his and so he could not be deprived of his remuneration. The position of a person who is validly appointed to an office and the bona fides of whose appointment cannot be questioned may be entitled to say that the mere fact that he could not act in the office did not disentitle him to claim the salary or the emoluments which were promised to him at his appointment, but the position of a person whose appointment itself was not bona fide and who did not act in the capacity in which he was appointed stands on a different footing and he cannot, in our opinion lawfully claim any remuneration. The appointment was valid only in so far as Raja Anrudh Pratap Narain Singh, according to our findings above, had the right or the authority to appoint a General Manager but that fact alone, as we have said earlier, did not clothe the appellant with the right to claim the sums of money that he has laid claim to. The appointment proved abortive, at any rate, in regard to the functions which the appointee was to perform. Under such circumstances it would in our opinion, be highly unjust to entertain the appellant's claim.

20. THE Official Liquidator pleaded the bar of limitation against the claim and the learned Company Judge held that a claim for salary became due at the end of each calendar month and, therefore, all salary for the months tip to and including January, 1955. would be time-barred, when the winding up order was passed, namely, on 21-2-1958, since the period of limitation for wages and salary was only three years from the time when the same became due. In our opinion, the learned Company Judge was right in his view on the question of limitation but

then we are not called upon to consider this aspect of the matter because, in our view, J. A. Dixit was entitled to no remuneration for his appointment, was neither bona fide nor did he actually act in the capacity in which it was purported by Raja Anrudh Pratap Narain Singh to appoint him.

21. We accordingly have seen no merits in this appeal.

Appeal No. 48 of 1961.

22. This is an appeal by Messrs. Madan Lal Agarwal and Brothers against the order of a learned single Judge of this Court exercising original Company jurisdiction. Messrs. Madan Lal Agarwal and Brothers claimed a sum of Rs. 70,561.24 nP. from the Jagdish Sugar Mills Ltd., (In Liquidation) as creditors of the Mills. Messrs. Madan Lal Agarwal and Brothers had been the sole selling agents of sugar produced by the Company in the years 1952 to 1953 and 1953 to 1954. Their main claim was made out of a claim for commission due on sales made during the aforementioned years. They also claimed refund of certain cash advances or deposit and also the price of certain commodities which they alleged they had supplied to the Company. A claim for interest on the aforementioned items was also made. The Official Liquidator admitted the correctness of certain items of the claim on the ground that they had been entered in the books of account of the Company. He, however, specifically repudiated the liability for four items of Rs. 427/2/-, Rs. 989712/-, Rs. 91/11/-, and Rs. 79/15/9. The Official Liquidator contended that no part of Messrs. Madan Lal Agarwal and Brothers' claim could be entertained inasmuch as all the items of the claim were outstanding for more than three years of the date of the winding up order and therefore barred by limitation.

23-24. In order to judge the merits of the rival contentions put forward it is necessary to know a few facts which led up to the claim being made in liquidation on behalf of the appellants. (After stating the facts the judgment proceeded.)

25. In the instant appeal which has arisen, as we have said earlier, out of a claim made in the liquidation proceedings, the appellants made their claim, in response to the notice published by the Official Liquidator dated the 17th October, 1958, on the 17th November, 1958, for Rs. 70,561.24 nP. The claim consisted of claims for commission, and other monies due. The main question canvassed was a question of limitation. In regard to the repudiation by the Official Liquidator of the four items of liability already mentioned by us, we need say no more than that these items were not pressed for acceptance on behalf of the appellants. The two matters in relation to the decision of the question of limitation that needed careful scrutiny were, first, what was the article of the Limitation Act that applied to the claim in question, and secondly, what was the starting point from which limitation was to be computed.

26. In order to determine as to which was to be the starting point of limitation one has to decide whether the starting point is to be the date on which the

winding-up petition was presented or the date when the winding-up order was made. This question as to the point from which limitation is to be calculated became very material in the instant case because if the starting point of limitation was taken to be the making of the winding-up order then one result would follow, while quite another result would follow if the starting point was to be the date of the presentation of the winding-up petition.

27. It was contended on behalf of the appellants that the starting point should be the presentation of the winding-up petition and not the making of the winding-up order for computing limitation. The learned Company Judge took the winding-up order as the point of time from which limitation was to be computed. The learned Company Judge in coming to that conclusion relied on the view expressed by the then Chief Justice in respect of another claim arising out of this very Company in liquidation. Mootham, C. J., relied on certain observations made by the Court of Appeal in Chancery in *In re General Rolling Stock Co.* (1872) 7 Ch A 646 and on the observations made by the Calcutta High Court in *In the matter of In Re: Chanbali Steamer Service Co., Ltd. (In Liquidation)*,

28. In (1872) 7 Ch A 646 Lord Justice James. held that the statute of limitation would be in abeyance in regard to the liabilities of a company from the date of the winding-up order. Lord justice James expressed the opinion that by taking; the view that he did

"No possible mischief or inconvenience can arise from this, for a day is fixed for creditors to come in and prove, and the Act expressly provides that any creditor who does not come in within the time named shall lose the benefit of any dividend that has been paid in the meantime. No mischief, therefore, can be done to the other creditors by reason of the delay or laches of any creditor, since if he delays beyond the proper time he must take his chance of what assets he can find for payment of his debt, not disturbing any former dividend." Although the exact position with which Lord Justice James in the aforementioned case was concerned does not specifically arise in the instant case, yet the underlying principle on which the decision was given in the abovementioned case was fully applicable to the case in hand.

29. In AIR 1959 Cal 646 Mukherji, J., of the Calcutta High Court expressed the view that on the analysis of the authorities dealing with the question of limitation the only conclusion at which he could arrive was that a claim which was already barred by limitation at the date of the winding-up order could not be entertained by the Liquidator or the Court but the claim that was not so barred at the date of the winding-up order but became barred after the date of the winding-up order could be entertained and admitted.

30. An argument was raised on behalf of the appellants that since the winding-up order related back to the date of the presentation of the petition for winding-up, limitation must be held to be suspended from that date. This argument was founded on what was provided for in Section 168 of the Indian Companies Act,

1913. The section is in these words :

"A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up."

From the words of the above section no one could, in our judgment, spell out a case of suspension of limitation from the time the application for winding-up was presented. Section 168 does not say that on the making of an order of winding-up it shall be deemed to relate back to the date of the presentation of the petition for winding-up, as was the case under the Insolvency Act.

31. Section 171 of the Companies Act, which provides for stay of suits and other legal proceedings against a company in liquidation, provides that the time from which the right of a person to proceed to recover his debts against the company in the ordinary course of procedure was to be suspended was from the time when the winding-up order had been made : the section did not provide for the suspension of the right of a claimant against a company from the date of the presentation of the winding-up petition. A creditor had the right to proceed to recover his debts from the company even while a winding-up petition was pending but no winding-up order had been made. Section 230 (5) of the Companies Act, in our view, also gave a clear indication of the fact that in respect of debts recoverable from a company ordered to be wound up compulsorily the date material for determining the question of limitation would be the date of the winding-up order.

32. Reliance was placed on *Ram Chand Puri Vs. Lahore Enamelling and Stamping Co. Ltd.*, for the contrary submission by the learned Advocate-General for the appellants. In this case it was held on the analogy of the Insolvency law that debts which were alive at the date of the presentation of the winding-up petition would not be barred. We, with great respect, have been unable to agree with the view expressed in *Ram Chand Puri's* case by the Punjab High Court.

33. We have, therefore, no hesitation in holding that any debts due from the company which were barred at the date of the making of the winding up order would be barred and not recoverable in liquidation proceedings. There was a little controversy as to whether Article 115 or Article 120 of the Limitation Act applied. There was good authority for holding that in circumstances obtaining in the instant case benefit of Article 120 could not be taken by the creditor. See *Sushil Chandra Pas v. Gauri Shankar* AIR 1917 All 466. We may here reiterate that before us there was no controversy in regard to the items other than what was claimed as commission by the appellants on the strength of a contract of sole selling agency.

34. The learned Advocate-General contended that even if some part of the claim of his clients was barred on the date when the winding-up order was made i. e., the 21st February, 1958, his clients could recover the amounts in view of the fact that there was a valid acknowledgment of those debts on behalf of the company before those debts were actually barred. There can be little doubt on the wide-

words" of Section 19 of the Indian Limitation, Act that if a creditor could prove an acknowledgment, within the terms of Section 19, then he, could have-an extension of the period from the time when the acknowledgment was made. There can also be little-, doubt that an acknowledgment on which reliance-. is placed must conform to the requirements of Section 19 of the Limitation Act. The important " things that have to be noticed in connection with applying the provisions of Section 19 of the Limitation Act are the following :-

(1) That the alleged acknowledgment has been made before the expiration of the period of limitation.

(2) That the acknowledgment is made in writing.

(3) That the acknowledgment is signed by the party or his duly authorised agent against whom the acknowledgment is to be used for obtaining a fresh period of limitation. The section has added three Explanations to it and these Explanations have to be noticed since they are of significance in determining the question :ii hand.

The first Explanation provides that an acknowledgment for the purposes of the section may be-sufficient even though the acknowledgment omitted to specify the exact nature of the right of property, or avers that the time for payment, delivery, performance or enjoyment had not yet come or was accompanied by a refusal to pay, deliver, perform or permit to enjoy or was coupled with a claim to a set-off or was addressed to a person other than the person entitled to the property or the right. The second Explanation was added to give an enlarged meaning to the word "signed" used in the section, for under the Explanation a signature by an agent duly authorised for the purpose was equated at par with the signature of the person who was under an obligation to pay the debt. The third Explanation was really not material for our purposes because it referred to saying that for the purposes of the section an application for the execution of a decree or order was to be treated as an application in respect of a right.

35. In this case the acknowledgments which were sought to be relied upon were, first, a letter which was alleged to have been signed by the Manager of the Company in reply to a demand made by the appellants in a registered letter dated the 21st August, 1955, and secondly, what was contained in the annual balance-sheets and the account-books of the Company. The learned Advocate-General, appearing on behalf of the appellants, did not challenge the findings recorded by the learned Company Judge in regard to the account-books and the letter mentioned above. The learned Company Judge held that the account-books could not be relied upon since these accounts-books had not been signed by any one, and in regard to the letter he was of the view that the letter had not been satisfactorily proved. Dalip Chand Agarwal, one of the partners of the claimant firm came into the witness box to prove that he received a letter from the Manager wherein the Manager promised to pay the dues as soon as funds were available but he did not produce the letter in question because he put out the

theory that that letter had been lost.

The learned Company Judge was not satisfied with the case of loss set up by Dalip Chand Agarwal in respect of this very vital letter, for the learned Judge rightly held that more explanation than was offered by Dalip Chand Agarwal for the loss of such an important letter by a commercial firm was required. Sheo Nath Singh who was the Manager of the Jagdish Sugar Mills Ltd., (In Liquidation) for a short period between the 19th September, 1955, and the 7th October, 1955, came into the witness-box to state that during the period he was the Manager a demand had been made by Messrs. Madan Lal Agarwal and Brothers for their dues, and that he sent a reply to that demand but beyond saying this Sheo Nath Singh did not even attempt to prove as to what his reply had been. The learned Company Judge looked at the evidence of Sheo Nath Singh with an amount of suspicion, as he says in his judgment, and therefore his evidence, inadequate as it was, could not render any assistance to the appellant to prove their case in regard to the letter.

36. We now come to consider the question as to whether the balance-sheets relied upon could provide adequate acknowledgment under the provisions of Section 19 of the Indian Limitation Act. Before a balance-sheet could be relied upon as an acknowledgment it had to be shown that the balance-sheet acknowledged a liability and that the liability had been acknowledged under the signature of a person who was a duly authorised agent of the Company.

37. The Official Liquidator conceded before the learned Company Judge that a balance-sheet signed by the authorised controller, whom the Government had put in charge of Jagdish Sugar Mills, could operate as an acknowledgment within the meaning of Section 19. He further conceded that a balance-sheet signed by the Manager of the Mills could also provide a valid acknowledgment u/s 19 provided it had been shown that the Manager had been specifically authorised to sign the balance-sheet by the authorised controller. This position was not departed from by the Official Liquidator before us,

38. In *Re Atlantic and Pacific Fibre Importing and Manufacturing Co., Ltd., Viscount Burnham v. The Company*, 1928 All ER 93 it was held on an examination of a large number of authorities that

"The balance-sheet of a company which shows the liability of the company in respect of principal and interest due on its debentures is an acknowledgment of its indebtedness to the debenture-holders, sufficient to take the case out of the scope of the statutes of limitation, even though the balance-sheet is only sent to those debenture-holders who are also share-holders in the Company. ..."

39. A similar view was taken in *Lahore Enamelling and Stamping Co. Ltd. Vs. A.K. Bhalla and Others*,

40. The only balance-sheet on which any signature had been proved was "The Balance-Sheet as at 7th October, 1955." This balance-sheet did not purport to

bear the signature of the authorised controller, but it purported to bear the signature of Sheo Nath Singh, who had been the Manager of the Jagdish Sugar Mills between the 19th September, 1955, and the 7th October, 1955. The learned Company Judge held that the appellants had failed to prove that the signature on the balance-sheet dated the 7th October, 1955, bore the signature of an agent who had been duly authorised within the meaning of Section 19 of the Limitation Act. We may, before we go on to consider whether the view of the learned Company Judge was correct in regard to the balance-sheets being relied upon as acknowledgment, state what exactly was the position taken up by the learned Advocate-General on behalf of the appellants and by the Official Liquidator before us.

The learned Advocate-General relied on the balance-sheet as at 7th October, 1955, which purported to bear the signature of Sheo Nath Singh, as a valid acknowledgment u/s 19 of the Limitation Act. The controversy before us narrowed down to a controversy on two questions only, first, whether Sheo Nath Singh had the authority, in fact, to sign the balance-sheet, and secondly, whether the balance-sheet had actually been signed on the 7th of October, 1955.

41. We shall take up the first question first, namely, whether Sheo Nath Singh had the authority, in fact, to sign the balance-sheet. Before we actually start consideration of that question we should like to inform ourselves of the contents of a balance-sheet that the law requires, their effect and validity. Section 132 of the Companies Act provides for the contents of a balance-sheet and is in these words :

"(1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the genera] nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit;"

The words of this section closely follow the wording of Section 26 (3) of the then English Act, except that this section provided for a form which the English Act did not,

42. By Section 133 of the Companies Act provision was made for the authentication of the balance-sheet. That section reads thus :

"(i) Save as provided by Sub-section (2) the balance-sheet shall -

(i) in the case of a banking company, be signed by the manager (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors;

(ii) in case of any other company, be signed by two directors or, when there are

less than two directors, by the sole director and by the manager (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less than the number of directors whose signatures are required by Sub-section (i), then the balance-sheet shall be signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of Sub-section (r).

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees."

Sub-section (3) of the aforequoted section is a clear indication of the fact that the Legislature considered that the making of a balance-sheet was a serious matter, as obviously it was, in so far as it purported to disclose to the shareholders the financial position of the company.

43. As we noticed earlier, it had been conceded before us by the Official Liquidator that a balance-sheet signed by the authorised controller could be treated as a properly authenticated balance-sheet, and consequently we are not entering into the consideration of the question as to whether or not a balance-sheet signed by an authorised controller appointed under the provisions of the Essential Supplies (Temporary Powers) Act, 1946, would be deemed to be a properly authenticated balance-sheet, particularly when the balance-sheet in question was not signed by the authorised controller. The fact that, therefore, needs scrutiny is whether Sheo Nath Singh, who, as alleged by the appellants, signed the balance-sheet, had the necessary authority to sign it, and whether an authorisation to him to sign the balance-sheet by the authorised controller could under the law be deemed to be adequate authorisation.

44. Sub-section (i) (ii) of Section 133 of the Companies Act enjoins that the balance-sheet in respect of a company other than a banking company has to be signed by two directors, or when there are less than two directors, by the sole director and by the manager, if any, of the company. Therefore, under the aforequoted provision the balance-sheet in the instant case, in order to claim that it was a properly authenticated balance-sheet under the law, had to be not only signed by the Manager, if there was one, of the company but also by not less than two directors, or when there were less than two directors, by the sole director. The question, therefore, that arises is a composite question, namely,

(a) whether the fact that the Jagdish Sugar Mills were under an authorised controller appointed under the powers conferred on the Central Government by the Essential Supplies (Temporary Powers) Act, 1946, absolved the controller of Ike responsibility cast on a director in order to properly authenticate a balance-

sheet to sign it; and

(b) whether under the powers conferred on the authorised controller by the relevant notification appointing him. authorised controller, the authorised controller could vest authority in the Manager to legally authenticate a balance-sheet?

45. Under the Essential Supplies (Temporary Powers) Act the things that could be done by the Central Government were enumerated u/s 3. The Central Government by a notification, to which we have already referred, appointed Sri Mangtu Ram Jaipuria of Messrs. Jaipuria Brothers Limited, Swadeshi House, Kanpur, to exercise in respect of the undertaking certain functions of control. These "functions of control" conferred no power or vested authority in the authorised controller to authorise the Manager to sign a balance-sheet, or for the matter of that, did not even authorise the authorised controller himself to sign a balance-sheet, as required by clause (ii) of Sub-section (i) of Section 133 of the Companies Act. Under the control order the authorised controller was empowered to issue directions (including directions to undertake essential repairs, renewals and overhauling of the machinery relating to the undertaking) as he may consider necessary, to any person having any functions of management in relation to the undertaking, so as to secure the efficient working thereof and the maximum production of sugar in the most economical manner possible.

The authorised controller also could (r) authorise the disposal of sugar according to the directions received from the Central Government, and (2) authorise the disposal of the funds of the undertaking for (a) the payment of cess on sugarcane and Central Excise Duty on sugar; (b) the payment to the growers of the price of cane including recoverable arrears thereof; (c) the payment of wages to the labour, including recoverable arrears thereof; (d) the essential expenses of the undertaking including the payment of recoverable arrears; and (e) the distribution of surplus funds after meeting the essential expenses. The controller could also issue, directions to any person having any functions of management in relation to the undertaking about the control (including the transfer for bona fide purposes connected with the running of the undertaking) of all or any of the property of the undertaking, whether movable or immovable and wherever situated. He could further issue directions to any person having any functions of management to perform any other act which may be necessary for carrying on the business of the undertaking. There were two provisos to the exercise of the power vested in the authorised controller. One was, in regard to directions to undertake any recurring liabilities, and the second was in regard to any non-recurring liabilities, but we are not concerned with those provisos in the instant case.

An analysis of the powers conferred on the authorised controller, as noticed above, would show that all that the authorised controller was authorised to do was to issue directions. He was not vested as such with the powers of a director

of a company. The fact that the authorised controller was authorised only to issue directions to persons having any functions of management in relation to the undertaking without doubt indicated that the control order contemplated the existence of persons having functions of management in regard to the undertaking, though after the promulgation of the control order their functions were subordinated to the directions issueable by the authorised controller. Keeping books of account, preparing statement of accounts and therefore preparing a balance-sheet may appropriately come under the functions of management in relation to an undertaking, but then the fact that the maintenance of account-books and the preparation of a balance-sheet were something in relation to the functions of management did not by itself vest these functions in the authorised controller under the order issued in this case by the Central Government.

The authorised controller could direct the sole director or directors and the manager to produce a balance-sheet or to sign a particular balance-sheet or give such similar directions. The authorised controller, in our judgment, could not give a direction which could be contrary to the provisions of the Indian Companies Act, unless there was a specific provision to that effect under the control order and that specific provision could be justified u/s 3 of the Essential Supplies (Temporary Powers) Act. There was no specific power conferred on the authorised controller by the relevant notification authorising him to take over the control of the Jagdish Sugar Mills and, therefore, we find it difficult to say that if the authorised controller had authorised the Manager to sign the balance-sheet then such authorisation by him could validate the balance-sheet in spite of what was provided for in Sub-section (i) (ii) of Section 133 of the Indian Companies Act.

46. The question that next falls for our consideration is whether a balance-sheet, which does not conform to the requirements of the law in regard to balance-sheets, could be taken as an acknowledgment u/s 19 of the Indian Limitation Act. The authorised controller could possibly authorise a person having the functions of management to acknowledge a liability, for he had the power to authorise the disposal of funds of the undertaking; he also had the power to direct essential expenses being incurred for the undertaking, etc., but then it was not the contention of the appellants that there was any such direction by the authorised controller to the Manager or to anyone else to acknowledge the liability of the company in regard to the claim of the appellants either directly or indirectly. The position of a balance-sheet qua its being treated as a valid acknowledgment of liability for purposes of Section 19 of the Indian Limitation Act was dependant upon the fact that the balance-sheet, had the authority of law to show a summary of the property and assets, the capital and the liabilities of the company, but a balance-sheet which had not been authenticated in accordance with the provisions of the Company law could not, we feel, have that position in law. Therefore, in order that a balance-sheet, which was not authenticated in accordance with the provisions of the Indian Companies Act,

could be treated as a proper acknowledgment u/s 19 of the Indian Limitation Act, it had to be shown that there was an acknowledgment of liability in writing and that the person who signed that acknowledgment was either the debtor himself or an agent duly authorised. Showing of an outstanding liability may amount to an acknowledgment of liability but that would not be enough for purposes of Section 19 of the Indian Limitation Act unless it was further shown that that liability was acknowledged by either the party to be bound by that acknowledgment or a person duly authorised by that party to make such an acknowledgment.

In the normal course of things the only proper persons who could authorise another person to make an acknowledgment on behalf of a company would be the directors, but we may for the purposes of this case assume that because of the powers conferred on the authorised controller the authorised controller could give a direction to somebody to acknowledge a liability on behalf of the company, but then such a direction or authorisation by the authorised controller had to be specifically made out before an acknowledgment by an agent, or the Manager in the instant case, could be relied upon. The Manager stated that he used to sign balance-sheets. He further stated that he had a general power of attorney for Jaipuria who was the authorised controller. He also said that before signing the balance-sheet he took instructions from Jaipuria to sign the balance-sheet.

Sheo Nath Singh's evidence appears to indicate that he took his stand for the authority to sign the balance-sheet on his power of attorney but he could not point to any specific power in the power of attorney. The Court was, therefore, left with his own view of the matter. No attempt had been made to corroborate the statement of Sheo Nath Singh that he had the authority of the authorised controller to sign the balance-sheet. It is, in our view, inconceivable that when there was an authorised controller functioning he would content himself by letting a balance-sheet to be signed by a manager on oral instructions and that he would not sign it himself or give written directions in regard to the signing. We find it, therefore, difficult to hold that Sheo Nath Singh had proper authority to sign the balance-sheet or acknowledge any debts.

47. The next question that was raised, which, however, becomes immaterial in the view that we have taken in regard to the authority of Sheo Nath Singh to sign the balance-sheet, was whether the balance-sheet had actually been signed on the 7th October, 1955, or before it, or after it. Before the learned Company Judge there was no evidence led on this question, but we permitted the production and examination of Mr. A. L. Talwar, who had audited the relevant accounts and the balance-sheet of the company. A scrutiny of his evidence does not satisfy us that Mr. Talwar's testimony satisfactorily establishes the fact that the relevant balance-sheet was either signed on the 7th of October, 1955, or on any date before that. We have refrained from giving this question of fact a detailed scrutiny in our judgment because, as we said earlier, that this question of fact became more or less immaterial in the view we have taken of the

authority of Sheo Nath Singh, the Manager, to acknowledge a liability on the balance-sheet on which reliance was placed.

48. For the reasons given above we are of the opinion that in this particular case the appellants were not entitled to seek an extension of the period of limitation u/s 19 of the Indian Limitation Act.

Appeal No. 38 of 1961.

49. This appeal arises out of an application made by the Official Liquidator for the expunction of a claim made by "the appellant against the Jagdish Sugar Mills Ltd., of Rs. 14,490.99 nP. which claim had actually been allowed by the Company Court on the 23rd October, 1959. The amount was claimed to have been due to the appellant as partner of Managing Agency firm which was running the Jagdish Sugar Mills. This claim was treated as within time with reference to the winding-up application which had been made on the 17th April, 1949. The Official Liquidator subsequent to the order of the learned Company Judge accepting the claim contended, when he applied for the expunction of the debt, that limitation in regard to the claim would have to be judged not in relation to the date of the winding-up application but in relation to the date of the winding-up order was the relevant date for determining the question of bar of limitation. The only point that remained for consideration in this appeal was whether any amount of the claim could be salvaged on the ground that there was a valid acknowledgment in regard to such a sum. On behalf of the appellant reliance was placed on the balance-sheet as at 30th September, 1951. It was agreed between the parties that this balance-sheet was signed on the 23rd December, 1952, and that it was signed by a person who had the authority of law to sign it. Therefore, it was agreed between the parties that the claim of the appellant, save to the extent of Rs. 4,993/10/- principal and Rs. 671/6/- interest, was barred by limitation. So that barring the total amount of Rs. 5,665/- the rest of Rs. 14,490.99 nP. was barred by limitation.

50. In the result we would allow this appeal to this extent that the appellant would be entitled to receive from the Official Liquidator towards his claim a sum of Rs. 5,665/- only: He would also be entitled to receive proportionate costs.

51. For the reasons given in respect of the three appeals, namely, Special Appeal No. 573 of 1960, Special Appeal No. 38 of 1961, and Special Appeal No. 48 of 1961, we make the following order :

52. Re : Special Appeal No. 573 of 1960--This appeal is dismissed but in view of the special circumstances of the case we make no order as to the costs of the appeal. The parties will bear their own costs.

53. Re : Special Appeal No. 38 of 1961 --We allow this appeal in part and hold that the appellant would be entitled to receive a sum of Rs. 5,665/- in all in respect of his claim with proportionate costs.

54. Re : Special Appeal No. 48 of 1961 -This appeal is dismissed but in the

circumstances of the case we direct the parties to bear their own costs of the appeal.