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**(2006) 10 KAR CK 0051**

**In the Karnataka High Court**

**Case No :** Company Application No. 2183 of 2000 in Company Petition No. 43 of 1992

Karnataka Leasing and Commercial Corpn. Ltd. (In Liquidation)

APPELLANT

Vs

N.R. Kini

RESPONDENT

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**Date of Decision :** 31-10-2006

**Acts Referred:**

Companies Act, 1956 — Section 446 (2) (b), 458 A  
Company Court Rules, 1959 — Rule 9

**Citation :** (2006) 10 KAR CK 0051

**Hon'ble Judges :** V.G. Sabhahit, J

**Bench :** Single Bench

**Advocate :** Deepak, for the Appellant; S.R. Sreeprasad, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

V.G. Sabhahit, J.—This application has been filed u/s 446(2)(b) of the Companies Act, 1956 (hereinafter called the "Act") read with Rule 9 of the Company (Court) Rules, 1959, seeking for recovery of Rs. 5,29,947 together with contractual rate of interest at 21 per cent per annum monthly compounded from 1-9-1996 till the date of payment and for costs.

2. It is averred in the application that the applicant-company is ordered to be wound up by order dated 29/31-10-1996 passed by this Court in Company Petition No. 43/1992. The respondent herein was having commercial dealing with the applicant-company and he was granted loan of Rs. 1,60,020 and he has executed the promissory note on 20-7-1989 agreeing to repay the said amount along with interest at 21 per cent per annum and the said amount has not been repaid and wherefore, the application for recovery of the amount.

3. The respondent has filed objections statement denying the averments made in the application and contending that the application is barred by time as it is filed beyond the period of limitation.

4. Rejoinder is filed by the Official Liquidator stating that the application filed is within time.

5. The matter was posted for evidence. PW1 was examined on behalf of the applicant and Exs. P1 to P4 were got marked. On behalf of the respondent, the respondent is examined as RW1.

6. I have heard the learned Counsel appearing for the Official Liquidator and the learned Counsel appearing for the respondent. Having regard to the contentions urged, the points that arise for determination are:

1. Whether the application is barred by time?

2. Whether the applicant has proved that the respondent is liable to pay Rs. 5,29,947 with interest at 21 percent per annum from 1-9-1996 to the date of payment, as sought for in the application?

3. What order?

I answer the above points for determination as follows:

Point No. 1 : in the affirmative Point No. 2 : in the negative Point No. 3 : as per the final order for the following:

Reasons

7. Point No. 1 : It is contended by the learned Counsel appearing for the respondent that the application filed is barred by time as the promissory note is dated 20-7-1989. It is averred in the objections statement that the period of limitation prescribed under Article 19 of the Limitation Act for filing the claim application is three years and the said period commences from the date of execution of the promissory note i.e., 20-7-1989 and as per the documents furnished by the Official Liquidator, Company petition was filed on 16-6-1992, by which time, 2 years 10 months and 26 days had already expired and only 34 days were left for filing the application for recovery of the amount in case of the promissory note dated 20-7-1989, whereas, the application is filed belatedly on 30-10-2000. In view of the provisions of Section 458A of the Act which stipulates that 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 and a period of one year immediately following the date of the winding up is to be excluded and if the said period is excluded, the claim application should have been filed on or before 4-12-1997. But, the application is filed on 30-10-2000 and wherefore, the application is barred by lime. In support of his contention, learned Counsel appearing for the respondent has relied upon the Full Bench decision of this Court in Karnataka Steel and Wire Products Ltd. (In Liquidation) Vs. Kohinoor Rolling Shutters and Engineering Works (P.) Ltd., which has been

confirmed by the Hon"ble Supreme Court, and it is observed by the Full Bench of this Court as follows:

The correct period of limitation for claims made u/s 446(2)(b) of the Companies Act, is the relevant Article in the Limitation Act, 1963, as applicable to the nature of the claims. Whether the claim is enforceable or not is to be determined with reference to the relevant article in the Limitation Act, as applicable to the nature of the claim and not with reference to the form by which the claim is enforced or by or through whom it is enforced. In a given case, if the claim does not fall under any one of the relevant articles in the Schedule to the Limitation Act, the residuary Article 137 will be applicable. The expression when the right to apply accrues has to be decided with reference to the right of the Company and the nature of the claim. In other words, as to when the right to recover the claim accrued to the company, and not on the basis that the right to apply accrues only on the date the winding up order is passed or the Official Liquidator is appointed as Provisional Liquidator as the Liquidator enforces the claim of the company. In computing the period of limitation, for claims to be made u/s 446(2)(b) of the Act, firstly, the applicability of the relevant article with reference to the nature of the claim, has to be decided and then the question as to whether such period of limitation had or had not expired on the date the petition for winding up was filed or the winding up proceeding commenced has to be determined. In the event it is found that as per the period of limitation prescribed by the relevant article applicable to the claim, the period of limitation had not expired on the date the winding up proceeding commenced, to that period of limitation, the two periods described in Section 458A of the Act, are to be added and the question as to whether on the date the application filed u/s 446(2)(b) of the Act was within time or not, has to be determined. In other words, in the period computed from the date the limitation commenced as per the relevant Article in the Schedule to the Limitation Act till the date of the filing of the Application u/s 446(2)(b) of the Act, the two periods stated in Section 458A of the Act are to be executed.

It is clear from the observations made in the said decision that in view of the provisions of Section 458A of the Act, what is to be excluded in computing the period of limitation is the period taken from the date of filing of the winding up petition to the date of passing of the order and one year thereafter. In the present case, admittedly, promissory note - Ex.P6 was executed on 20-7-1989. When the petition for winding up in Company petition No. 43/1992 was filed on 16-6-1992, 2 years 10 months and 26 days had already expired from the date of execution of the promissory note. The winding up order was passed on 29/31-10-1996 in Company petition No. 43/1992. The period that has to be excluded while computing the period of limitation in filing the claim application would be the period from the date of filing of the winding up petition to the date of winding up order and one year thereafter. Even if the period from the date of passing of the winding up order i.e., 29/31-10-1996 and one year thereafter, that is up to 31-10-1997 is excluded, the application ought to have been filed within 26 days from 31-10-1997. However, the claim application is filed on 30-10-2000

and wherefore, the application is clearly barred by time. It is submitted by the learned Counsel appearing for the Official Liquidator that payment was made by the respondent on 31-8-1996. However, the said contention cannot be accepted as the acknowledgement would extend the period of limitation only if the acknowledgement is taken before the expiry of the period of limitation and in the present case, the alleged acknowledgement was beyond the period of limitation and would not extend the period of limitation. Further, it is also clear that the said entry in the ledger has not been proved in accordance with law and accordingly, I answer the point No. 1 for determination in the affirmative by holding that the application filed is barred by time. In view of my finding on point No. 1 for determination in the affirmative, it is clear that the applicant is not entitled to recover the amount as sought for and accordingly, I answer point No. 2 in the negative and hold that the application is liable to be dismissed as barred by time and the applicant is not entitled to any decree and pass the following Order:

The Company application is dismissed as barred by time.