

(1958) 01 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 96 of 1955

Lahore Enamelling and Stamping Co. Ltd.	APPELLANT
Vs	
A.K. Bhalla and Others	RESPONDENT

Date of Decision : 08-01-1958

Acts Referred:

Companies Act, 1913 — Section 168, 169, 171, 227(2)
Companies Act, 1956 — Section 442, 446
Limitation Act, 1908 — Section 19, 9

Citation : AIR 1958 P&H 341

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : Bhagirath Dass, in person, for the Appellant; B.R. Tuli and Roop Chand, for the Respondent

Judgement

Tek Chand, J.—This is a petition made by the Official Liquidator under Rules 96 and 97 of the Company Rules framed by this Court, praying for the settlement of list of creditors attached with the petition. The creditors, in pursuance of the advertisement issued by the Official Liquidator, filed their claims which were considered by him.

Certain claims of the creditors were partly accepted and partly rejected by the Official Liquidator and their list is annexure "C" attached with the petition. Annexure "D" contains list of claimants whose claims were rejected in entirety by him. By this judgment, I propose to dispose of the cases of six claimants who have some common features. These claimants are:

- (1) Shri A.K. Bhalla.
- (2) His wife Shrimati Yash Kumari Bhalla;
- (3) Shri Bhagwan Das,
- (4) Dr. Tara Chand.

(5) Messrs. J.C. Bhalla and Co; and

(6) Messrs. Ram Chand Puri and Sons.

2. Shri A.K. Bhalla claimed an amount of Rs. 55,133/15/. The Official Liquidator allowed the claim to the extent of Rs. 17,161/2/9 and did not admit the claim for the balance, i.e. Rs. 37,972/12/3, and the reason urged was that the claim was time barred and unproved.

3. The claim of Shrimati Yash Kumari Bhalla was for Rs. 11,081/715/- and it was rejected in entirety on the ground that it was barred by limitation.

4. The total claim of Shri Bhagwan Das was for Rs. 68,500/-. The Official Liquidator allowed the claim to the extent of Rs. 9,616/10/9 and rejected the claim to the extent of Rs. 58,883/ 5/3, on the ground that it was time barred and unproved.

5. Dr. Tara Chand claimed an amount of Rs. 7,588/6/- and this claim was rejected for want of proof.

6. Messrs. J.C. Bhalla and Company claimed a sum of Rs. 1,666/- on account of audit fee and this claim was rejected to the extent of Rs. 1,631/- on the grounds that it was time barred and unproved.

7. Messrs. Ram Chand Puri and Sons claimed a sum of Rs. 2,359/7/9 and it was also rejected on the grounds that it was time barred and unproved.

8. In the case of first five claimants, the following issue was framed on 20-4-1956, by Dulat, J.

"What is the proper amount due from the Company to the claimants?"

9. In the case of Messrs. Ram Chand Puri and Sons, Palshaw, J. on 10-8-1956, framed the undernoted issue:

"Whether the sum of Rs. 2,359/7/9 is due to the claimant from the Company?"

10. Mr. B.R. Tuli, learned counsel for the claimants respondents, has raised three contentions. In the first place, he contends that the claims had been wrongly rejected on the ground that they were barred by limitation. He argued that the material date for determining whether the period of limitation had expired, was the date when petition for winding up was made and not when the winding up order was passed.

In this case the petition for winding up was made on 21-4-1952 by Shri A.K. Bhalla, and the winding up order was passed on 23-9-1953. According to the Official Liquidator, the claimant had to show that his claim was within limitation on the date of winding up order. The contention on behalf of the claimants is that if the claim was within limitation on 21-4-1952 when the petition for winding up was presented, the claim cannot be rejected as time barred. This is the main controversy before me.

11. Another point urged before me is that in the case of first four claimants, the period of limitation is extended in view of the provisions of Section 19 of the Indian Limitation Act as their claims had been duly acknowledged by the Company in the balance sheet, Exhibit P. W. 3/1.

12. On the first point as to the material date for purposes of limitation, my attention has been drawn by Mr. Tuli to the provisions of Sections 168, 171, and 227 of the Indian Companies Act (No. VII of 1913). Section 168 lays down that a winding up of the company by the Court shall be deemed, to commence at the time of the presentation of the petition for the winding up.

We are not concerned in this case with the provisions of Section 204, according to which a voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntarily winding up. According to Section 168 although the winding up order may be passed at a much later date after the presentation of the petition, the winding up relates back to the date of the institution of the petition.

Under Section 227(2), in the case of a winding up by or subject to the supervision of the Court, every disposition of the property "including actionable claims" of the company, and every transfer of shares or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

The *raison-d'être* of these provisions is to prevent disposition of the property of the company made after presentation of the petition for compulsory winding up, without permission of the Court, with a view to avoid fraudulent preferences and to prevent other abuses attendant on transfer of assets of the company in contemplation of its liquidation.

The question before me is, whether the principle u/s 168 as to relating back, can be extended to period of limitation prescribed for filing suits, appeals, etc. On behalf of the creditors of the company it is contended that Section 168 affects the running of the period of limitation so that, even in those cases where the period of limitation has run out, after the presentation of the petition, but before the passing of the winding up order, the claim must be deemed to be within limitation.

13. Section 171 provides that when a winding up order has been made or a provisional liquidator has been appointed, no suit or other legal proceedings shall be proceeded with, or commenced, against the company except by leave of the Court, and subject to such terms as the Court may impose.

Mr. Tuli wants me to substitute for the words in Section 171, "When a winding up order has been made", the words "When the petition for the winding up has been presented." He contends that I should do so in view of the provisions of Section 168. He could not refer me to any direct authority in which the provisions of Section 168 might have been given such a wide interpretation.

14. Section 171 as it stood before the passing of the Companies (Amendment) Act, 1936, did not include the words "or a provisional liquidator has been appointed". The object of appointment of provisional liquidator is the protection of the property of the company and prevention of fraudulent preferences, and in such an eventuality, after the amendment of 1936, suits or other legal proceedings could not be commenced or continued without the leave of the Court.

It was open to the legislature while making the amendment not to confine the provisions of Section 171 to cases where a provisional liquidator had been appointed, but to go further and impose the like restriction to all suits or other legal proceedings instituted or continued, after the presentation of the petition for the winding up.

The legislature in its wisdom did not choose to extend the operation of Section 171 to all suits and other legal proceedings filed or pending after the date of the winding up petition.

15. The stay contemplated by Section 171, of suits and other legal proceedings, is of a peremptory nature. u/s 169 the Court had a discretionary power to restrain proceedings against the company during the interval between the presentation of the petition for winding up of a company and making of an order for its winding up.

Sections 169 and 171 deal with separate stages. Section 169 refers to the powers of the Court during the period between the presentation of the petition and the passing of an order for the winding up of a company. Institution of suits against a company after the presentation of the petition is within contemplation of Section 169.

The second stage is reached when a winding up order has been made, in which case there is a statutory bar against commencement or proceeding with a suit or other legal proceedings. The two provisions, i.e., Sections 169 and 171 clearly demarcate the line separating the two stages. It is true that u/s 168, winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for the winding up, though that is not the date of making of a winding up order.

The retrospective commencement of winding up and the making of winding up order are separate and distinct matters. At the time of the presentation of the petition for winding up there is no bar against the presentation of a plaint or institution of other proceedings against the company, though in the event of the passing of the winding up order, the winding up is deemed to have commenced from the earlier date.

The terminus a quo for purposes of a statutory bar u/s 171 against commencing and continuing legal proceedings dates from the winding up order. A creditor can take legal proceedings against a company after the petition is presented, and if the petition is dismissed and no winding up order is made, then the Suit or other

legal proceedings will go on unhindered by the provisions of the Indian Companies Act.

The bar comes only when a winding up order has been made. A creditor will be incurring risk if he were to speculate on the success of the winding up petition and allow the suit to become barred by efflux of time, hoping that the winding up order would be made. If his expectation turns out to be erroneous, the presentation of a petition can be no protection against the effects of the bar of limitation.

It seems to be logical, that in the absence of any specific provisions, the determination of period of limitation cannot depend upon an extraneous circumstance, whether the winding up order is going to be passed on a petition, or on the doubtful fact, whether the petition is going to be pursued or withdrawn,

16. From the reading of the relevant sections referred to above, I cannot hold that Section 168 controls the bar of limitation with respect to suits and other proceedings against a company. Section 168 was intended for avoiding disposition of the property of the company made after the presentation of the petition for compulsory winding up, lest a creditor may be preferred against another or for preventing a scramble which would not be unlikely, when the fact, that a winding up petition had been presented, had become known to the persons interested, either as shareholders, or, as creditors of the company,

17. I have to gather the meaning and intention of the statutory provisions firstly from the plain and unambiguous words used therein. It is needless for a Court to scan the wisdom or the policy of the statute, where the meaning of the words used admit of no ambiguity. In the words of Warrington L. J. in *Barrell v. Fordree* 1932 ACJ 676

"the safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.""

18. Another important rule of construction was stated by Bayley J. in the *King v. Ramsgate (Inhabitants)*. (1827) 6 BC 712: 108 ER 613 in the following words;

"It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed."

19. According to their plain meaning, the words occurring in Section 171 of the Indian Companies Act, no suit or other legal proceedings shall be proceeded with or commenced against the company, when a winding up order has been made or a provisional liquidator has been appointed, except by leave of the Court.

For purposes of this case the material time for staying suits etc. is the winding up order. I cannot read in the words "when a winding up order has been made" the words "when a petition for winding up is made." The principle governing

limitation as embodied in Section 9 of the Indian Limitation Act is that when once limitation has commenced to run, it will continue to do so unless it is stopped by virtue of any express statutory provisions.

When once the period of limitation has begun to run there can be no suspension of time except under the provisions specifically recognising exclusion or deduction. There is no principle of law outside the Limitation Act under which limitation can be suspended and exemptions, which are not provided by the statute cannot be assumed either on grounds of hardship or of reasonableness.

The plaintiffs in a case like the present suffer from no disability or the want of legal qualification to sue so long as the winding up order u/s 171 of the Indian Companies Act is not made. I cannot persuade myself to the view that for purposes of suspension or exclusion of limitation, Section 171 of the Indian Companies Act is in any way governed by Section 168.

20. In *Hem Raj v. Krishan Lal* AIR 1928 Lah 361 an analogous matter came up before the Full Bench. The question for consideration was whether Section 53 of the Provincial Insolvency Act, 1920 was controlled by Section 28(7), and the reference was answered in the negative. Section 53 makes voidable as against the receiver any transfer of property if the transferor is adjudged insolvent within two years after the date of the transfer.

Such a transfer is liable to be annulled by the Court. According to Section 28(7) of the same Act, an order of adjudication shall relate back, and take effect from, the date of the presentation of the petition on which it is made. This provision is similar to Section 168 of the Indian Companies Act. The question referred to the Full Bench was:

"Can a transfer of property of the description given in Section 53, Provincial Insolvency Act, 1940, made, by an insolvent more than two years before the date of the order of adjudication but within two years of the date of the presentation of the petition for insolvency be annulled by the Court under that section?"

The above question was answered by the Full Bench in the negative. Shadi Lal, C. J. observed:

"The language of the section (Section 53), if interpreted literally, without any reference to any other provision of the Statute furnishes only one answer, namely, the terminus for counting the period of two years is the date of the order of adjudication; and, if the transfer was not made within two years prior to the date of that order, it would be immune from attack under that section".

21. Regarding the doctrine of relation back which is embodied in Sub-section (7) of Section 27 Shadi Lal, C. J. thought that it was not intended to be a universal rule governing and controlling all the provisions of the statute. Tek Chand J., expressed the view that the doctrine of relation back should not be extended and construed narrowly and cited with approval the observations of Lord Mansfield in

Coles v. F. Wright (1811) 4 Taunt 198: 128 ER 305 to the following effect:

"the doctrine of the relation of the act of bankruptcy is in all cases extremely hard, and in many, shocking, and it is not to be carried further than we are compelled to carry It".

22. In Magandas Bhukandas Vs. Bhalchandra Ramrao, the words "the date of the order of adjudication" occurring in Section 78(2) of the Provincial Insolvency Act, 1920, came up for interpretation with reference to Section 38(7). Gajendragadkar J. thought that it would be unreasonable to give effect to the legal fiction introduced by Section 28(7) in considering the question of exclusion of time u/s 78(2). It was observed:

"In dealing with this question, it is necessary to remember that Sub-section (7) of Section 28 introduces a legal fiction and gives effect to the order of adjudication in a somewhat artificial manner. Indeed, the marginal note of Section 28 shows that the section deals with the effect of an order of adjudication. Undoubtedly, when an order of adjudication has been made, for several purposes mentioned in the Provincial Insolvency Act the order must be deemed to relate back and must be held to take effect from the date of presentation of the petition on which it is made. But the question which we have to decide is whether this same doctrine of relation back must necessarily be invoked in construing the words used in Section 78(2).

Looking at the words of Sub-section (2) of Section 78, it seems to me fairly clear that what is intended as the first starting point is not the order of adjudication as such, but the date of the order of adjudication. The section in terms speaks of the date of the order of adjudication as well as the date of the order of annulment. Whatever may be the legal effect of the order of adjudication under the insolvency law, it seems to me somewhat difficult to accede to the argument that the doctrine of relation back should govern the construction of the words "the date of the order of adjudication".

The order of adjudication bears a date and it is to that date that Section 78(2) makes a direct and specific reference. In my opinion, it would be difficult to give effect to the doctrine of relation back in interpreting the expression "the date of the order of adjudication."

* * * * The Insolvency Act did not impose an absolute prohibition against a creditor suing his debtor or applying in execution against him during the pendency of the Insolvency proceedings.

The provisions of the Insolvency Act merely required that he should obtain the leave of the Court before taking any such steps. Since the Insolvency Act contained no provision for the exclusion of time taken by insolvency proceedings and there was nothing in the Limitation Act which dealt with such cases or provided for exclusion of time on the ground of the pendency of the insolvency proceedings, the general rule invariably applied in the case of all claims by

creditors against their debtors that if the period of limitation once begins to run, it continues to run in spite of the pendency of the insolvency proceedings."

23. Reference may also be made to *Baranashi Koer Vs. Bhabadeb Chatterjee*, *Sivasubramania Pillai v. Theethiappa Pillai* ILR 47 Mad 120 : AIR 1924 Mad 163; *Machanjeeri Ahmed v. K. Govinda Prabhu* AIR 1928 Mad 977 ; *Babu Lal Sahu Vs. Krishna Prashad, Ex Parte Ross*, in the matter of *Coles* (1825) 2 GJ 46 and on appeal (1825) 2 Gd J 330 and *Benzon*, *In re: Bower v. Chetwyad* (1914) 2 Ch 68 for the proposition that if the statute once begins to run it continues to run whatever happens and the doctrine of relation back cannot suspend or extend the period of limitation.

24. It is true that the cases referred to above arose under Insolvency Law and not under the law pertaining to companies, but the similarity in the relative provisions cannot be overlooked. Section 28(7) of the Provincial Insolvency Act is similar to Section 168 of the Indian Companies Act and Section 28(2) of the former Act embodies the same principle as is contained in Section 171 of the latter Act. Section 229 of the Indian Companies Act makes it abundantly clear that in winding up of, an insolvent company, same rules prevail as are in force for the time being under the Law of Insolvency. The rulings cited above (which?) enunciate the restricted scope of the applicability of the doctrine of relation back vis-a-vis the Law of limitation are in *pari materia* and applicable to a case like this under the Indian Companies Act.

25. *In re: General Rolling Stock Co.* (1872)7 ChA 646 is an authority for the proposition that the Law of limitation ceases to run as from the winding up order. So that a creditor, whose claim is not then barred, will not be barred by subsequent delay. Reference may also be made to *In re: Fleetwood and District Electric Light and Power Syndicate* (1915) 1 ChD 486 . The English rule is -- and in this matter our law is no different -- :

"The assets are to be applied in payment of liabilities subsisting at the time of the winding up order; after the order is made the Statutes of Limitations do not run. But, of course, a debt barred at the date of the order cannot be proved." (Vide Buckley on the Companies Acts, Twelfth Edition, page 634)."

26. Mr. Tuli, learned counsel for the respondents, has relied upon a Full Bench decision of the Allahabad High Court in *The Upper India Rice Mills Ltd. Vs. The Jaunpur Sugar Factory Ltd.*, In the judgment of Walsh, Ag. C. J., and Bannerji J., it was stated:

"The rule is that the liquidator of a company which is in liquidation being a trustee for the creditors, time does not run after an order, or resolution, for winding up. The date for testing the liability is the commencement of the winding up."

27. Mr. Bhagirath Das relies upon the first sentence and Mr. Tuli on the second

sentence. It is not clearly stated in the judgment whether the words ""the commencement of the winding up" have been used with reference to Section 168 of the Indian Companies Act. The judgment as it runs gives no guidance in determining the question in issue before me.

28. In the same volume at p. 426 there is a judgment of a Single Bench in Union Indian Sugar Mills Co. Ltd. Vs. Brij Lal Jagannath, and Mr. Tuli drew my attention to certain remarks at p. 429 to the effect that having regard to the provisions of Section 168 of the Indian Companies Act, the company should be deemed to have been adjudged insolvent with effect from the date when the application for winding up was made, but in that case no question regarding limitation was involved. There are no remarks made in the judgment which, in my opinion, can be deemed to apply to facts as in this case.

29. Mr. Tuli has also drawn my attention to *Tulsidas Jusraj Parekh v. Industrial Bank of Western India* AIR 1931 Bom 2; *In re: W.W. Duncan & Co.* (1905) 1 Ch 307 ; and *In re: The Agricultural Wholesale Society, Ltd.* (1929) 2 Ch 26.

In none of these cases, was the question in issue before me examined and no question of limitation being affected by the doctrine of relation back arose in those cases. I cannot regard these decisions as authorities giving any clue to the solution of the problem arising in this case. He also cited an authority of the Privy Council reported in AIR 1932 240 (Privy Council) which was a judgment from Allahabad High Court. Their Lordships referred to the following passage from the judgment under appeal before them:

"If any claim happens to be within limitation when the winding up commenced, there would be no further application of the rule of limitation."

From the judgment it does not appear whether 29-1-1926, which was the date of commencement of the winding up in that case, was the date of winding up petition or of the winding up order.

The use of the words "commencement of the winding up" does not necessarily mean the period starting from the date of the presentation of the petition. In the absence of any details of facts of that case, it is not possible for me to hold that the proposition, which is being contended for by the learned counsel for the respondents, was in fact before their Lordships of the Privy Council and whether that was upheld.

30. The doctrine of relation back is restricted in scope and cannot be extended for all purposes. In particular, it will not be correct to extend it, so as to interfere with the law of limitation and especially with the rule embodied in Section 9 of the Indian Limitation Act. Moreover, if the scope of the doctrine of relation back is widened that will introduce considerable uncertainty regarding the termination of the period of limitation.

If the view contended for by the respondents is correct, and Section 171 is to be read along with Section 168, before a Court can determine, whether the suit is

time barred on a date after the presentation of the petition, it shall have to wait for such time till the Court passes an order of winding up or dismisses the petition.

31. After giving my careful thought to the respective arguments of the learned counsel, I am of the view that for purposes of limitation the material date is the date of the winding up order. If the claim had become time barred after the presentation of the petition for winding up but before the passing of the winding up order, the claim would become time barred and the party would not be able to avail of the provisions of Section 171, for extending the period of limitation.

32. I may now take up the second point urged by Mr. Tuli based on Section 19 of the Indian Limitation Act. His contention is that Exhibit P. W. 3/1, copy of the balancesheet as on 31-12-1950, contains an acknowledgment on the part of the Company of liability in respect of the claims of his clients. The individual claims may be examined at this stage.

33. Shri A.K. Bhalla was the technical expert of the Company and he had claimed a sum of Rs. 55,133/15/- on account of the arrears of his salary, T. A. etc. The Official Liquidator allowed Rs. 17,161/2/9, but did not admit the claim for the balance. Thus Rs. 37,972/12/3 were not admitted. According to the balance sheet mentioned above, a sum of Rs. 36, 695/4/9 is admitted to be due to the technical expert and he is no other than Shri A.K. Bhalla.

In this case, adding the amount allowed by the Official Liquidator and the amount acknowledged to be due in the balance sheet for the year ending 31-12-1950, the total claim comes to Rs. 53,856/7/6. Out of this amount, a sum of Rs. 3,250/- has to be deducted on account of salary from 23-9-1950 up to 31-12-1950, which by error was calculated twice.

The remaining sum of Rs. 50,606/7/6 has, therefore, been established to be due to Mr. A.K. Bhalla, and in view of the acknowledgment in the balance sheet, this claim is also found to be within time. Mr. Bhagirath Das has admitted in Court that the sum of Rs. 50,606/7/6 is thus proved to be due to Shri A.K. Bhalla. I, therefore, allow the objection of Shri A.K. Bhalla and hold that, besides the amount of Rs. 17,161/2/9 already allowed by the Official Liquidator, Shri A.K. Bhalla has proved that a further sum of Rs. 33,445/4/9 is validly due to him.

34. Shrimati Yash Kumari Bhalla, wife of Shri A.K. Bhalla, had claimed a sum of Rs. 11,081/15/- which was rejected by the Official Liquidator in entirety on the ground that it was time barred. In the balance sheet of the Company for the year ending 31-12-1950, it is stated that a sum of Rs. 1,22,099/10/9 is due from the company on account of unsecured loans.

This amount undeniably includes the sum of Rs. 9,340/4/- due to Shrimati Yash Kumari Bhalla. Adding a sum of Rs. 760/4/- on account of interest due to her up to 21-4-1952, the date of the petition for winding up, she is entitled to RS. 10,100/8. Mr. Bhagirath Das has admitted before me the correctness and the

legality of the above sum being due to her. I, therefore, allow her claim to the extent of Rs. 10,100/8/-as duly proved.

35. Shri Bhagwan Das, who was the Managing Director of the Company, had claimed a sum of Rs. 68,500/-, out of which Rs. 9,616/10/9 was allowed by the Official Liquidator and he rejected the claim for the balance of Rs. 58,883/5/4 on the ground that this amount was time barred and not proved. According to the balance sheet, Exhibit P. W. 3/1, under the heading, "Other Liabilities" there is shown a sum of Rs. 52,355/2/9 as due to the Managing Director, who is no other person than Shri Bhagwan Das.

Including the amount admitted by the Official Liquidator, the total claim of Shri Bhagwan Das comes to Rs. 61,971/13/6 and deducting the amount of Rs. 1,625/- on account of remuneration calculated twice for the period from 23-9-1950, upto 31-12-1950, the sum that is admitted by Shri Bhagirath Das to be due to him comes to Rs. 60,346/13/6, and to this extent I allow his claim.

36. Dr. Tara Chand is one of the unsecured creditors and the balance sheet, Exhibit P. W. 3/1, shows that a sum of Rs. 1,22,099/10/9 is due from the Company as unsecured loans. According to Exhibit P. 1, which is a list of loan account as on 31-12-1950, Dr. Tara Chand is a creditor in two sums of Rs. 5,670/11/- and Rs. 5,735/1/-, the total of which comes to Rs. 11,405/12/-. In April, 1952, Dr. Tara Chand received, from the Company a sum of Rs. 5,388/8/-. Shri Bhagirath Das has admitted in Court that on 31-3-1952, a sum of Rs. 12,271/8/- was due to Dr. Tara Chand on account of principal (Rs. 11,405/12/- as on 31-12-1950), and interest added thereto from 1-1-1951, to 31-4-1952 (Rs. 865/12/-). Out of this amount, he was paid Rs. 5,388/8/- in April 1952, leaving a balance of Rs. 6,883/- as due to him at the time the petition for winding up was filed. I, therefore, allow the claim of Dr. Tara Chand to the extent of Rs. 6,883/-.

37. All the claims mentioned above are acknowledged in the balance sheet for the year ending 31-12-1950. In two cases the specific amounts are shown to be due to the Managing Director (Shri Bhagwan Das) and to technical expert (Shri A.K. Bhalla). Loans due to unsecured creditors are stated to be Rs. 1,22,099/10/9.

There is evidence on the record to show that the above amount includes sums due to Shrimati Yash Kumari Bhalla and Dr. Tara Chand, vide Exhibit P. 1. All these entries constitute an acknowledgment of the debts due to the claimants within the meaning of Section 19 of the Indian Limitation Act.

Debts due to creditors not mentioned by, name but included in the item relating to "Loans (unsecured)" or as due to "Sundry Creditors" mentioned in the balance sheet amount to an acknowledgment within the provisions of Section 19 of the Indian Limitation Act, so as to extend the period of Limitation with effect from the date of the signing of the acknowledgment. For this proposition, reference may be made to *Rajah of Vizianagaram Vs. The Official Liquidator, Vizianagaram*

Mining Company Limited, Vizagapatam, and Jones v. Bellegrove Properties, Ltd. (1949) 1 ALLER 498. The facts of the last case were that in 1936 the plaintiff had lent a sum of ₹1,807 to the defendant company in which he was a shareholder. At the annual general meeting of the company in December, 1946, the plaintiff was handed by a director the accounts of the company, signed by the accountants and two directors, which included the balance sheets for the years 1939 to 1945, in each of which was the entry: "Sundry creditors ₹7,638 8s. lod."

It was held by the King's Bench Division that parol evidence was admissible to show that the sum mentioned in the entry included the debt due to the plaintiff; and further that the entry, thus explained, constituted an acknowledgment of the debt due to the plaintiff within the meaning of the Limitation Act, 1939, Sections 28(4) and 24(1).

38. Messrs J.C. Bhalla & Company were the Auditors of the Company from 1947 to 1951 and had claimed on account of their audit fee a sum of Rs. 1,666/- but the Official Liquidator allowed it to the extent of Rs. 35/-, leaving a balance of Rs. 1,631/- which was rejected. Mr. Bhagirath Das has admitted before me that a sum of Rs. 1,666/- is due to them and their claim to that extent was also admitted by him to be within limitation.

39. I may now take up the case of Ram Chand Puri and Sons. This concern claimed a sum of Rs. 2,359/7/9 on account of coal supplied to the Company from time to time. This claim was rejected by the Official Liquidator on the ground that it was neither proved nor was it within limitation. The claimant has produced several documents, including Exhibit P.1, which is a statement of account maintained by him. The last entry was of 20-8-1949, showing a balance of Rs. 2,359/7/9 as due to him. P. W. 1 Shri Kundan Lal stated that he had been maintaining the accounts of Messrs. Ram Chand Puri and Sons and that Exhibit P. 1 was a certified copy of the account. Shri Ram Chand appeared himself as P. W. 2 and stated that accounts produced by him were correct and that the company owed him a sum of Rs. 2,359/7/9.

He also produced copies of letters sent by him to the Company claiming the above amount (vide, among others, letters Exhibits P. 56 dated 8-11-1951, and P. 57 dated 22-9-1951). I am satisfied from the oral and documentary evidence produced on the record that the sum claimed was due to Ram Chand and Sons. There is no evidence in rebuttal.

I am satisfied as to the genuineness and correctness of the claim. But this claim became time barred on the date of the passing of the winding up order, 23-9-1953, though it was within time on the date of the presentation of the application for winding up of the Company, 24-4-1952. In an earlier part of this judgment, I have expressed the view that the material date for determining whether claim is within limitation is the date of the order of the winding up and not the date of the presentation of the petition for winding up. The claim of Messrs. Ram Chand Puri and Sons is, therefore, rejected on the ground that it

was time barred. There will be no order as to costs.