(1981) 08 MAD CK 0055

In the Madras High Court

Case No : Company Application No. 2510 of 1979 in Company Petition No. 68 of 1974

Official Liquidator APPELLANT

Vs

Best and Crompton Engineering Ltd. RESPONDENT

Date of Decision : 07-08-1981

Acts Referred:
Companies Act, 1956 — Section 458A

Citation : (1981) 51 CompCas 501

Hon'ble Judges : P. Shanmugham, J

Bench : Single Bench

Advocate : B. Vijayalakshmi, for the Appellant; N. Varadarajan, for the Respondent

Judgement

Shanmukham, J.—The only plea raised by the respondent to the application by the official liquidator for the recovery to Rs. 9,901 is that the claim is barred by limitation.

2. The amount became due in respect of dealings between the company (in liquidation) and the respondent. The last payment was by cheque dated 11th September, 1974. As the cheque was honoured, it is conceded by the official liquidator that the last payment should be deemed to have been made on 11th September, 1974. The other relevant dates are given below : Date of presentation of winding-up petition 10th July, 1974. Date of winding-up order 8th August, 1975. The relevant provision is s. 458A of the Companies Act, which is as follows :

"Notwithstanding anything in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being would up by the court, the period from the date of commencement of the winding-up of the company to the date on which the winding-up order is made (both inclusive) and a period of one year immediately following the date of winding-up order shall be excluded."

3. According to the provisions, the period of limitation in respect of any suit or application not only in the name of, but also on behalf of, the company is the usual period prescribed under the Limitation Act plus the period from the date of commencement of the winding-up of the company to the date of the winding-up order (both inclusive) and also a period of one year immediately following the date of the winding-up order. That is the plain meaning of the said section. It is the aggregate of the two periods - (i) the period from the date of commencing of the winding-up proceeding to the date of the order of the winding-up, and (ii) one year immediately following such date of order of winding-up, that shall be excluded in reckoning the period of limitation. Therefore, I am unable to agree with Mr. Varadarajan, learned counsel for the respondent, that the extended period had to be limited to the one year, after 8th August, 1975. It is relevant to notice that the section unequivocally indicates that such exclusion of the aggregate of the two periods referred to therein is of universal application and that the said provision does not contemplate any qualification or exception to such calculation.

4. It is not in dispute that if the aggregate of both the periods is taken, the claim is in time.

5. Before concluding, it is necessary to point out that though the claim is presented in the form of an application, it is really a plaint and that, therefore, such application shall contain as in the case of a plaint all material necessary to sustain the claim as also the particulars regarding the claim being in time, particularly when an extended period of limitation is relied on by the applicant.

6. In the result, there will be a decree in favour of the official liquidator as against the respondent for Rs. 9,901, as prayed for with costs.