(1998) 01 GUJ CK 0020

In the Gujarat High Court

Case No : Company Application No. 62 of 1978 in Company Petition No. 7 of 1976

Official Liquidator, Patidar Benefit P. Ltd.	APPELLANT
Vs	
Chandrakant D. Thakker	RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:
Companies Act, 1956 — Section 433, 446(2), 458A

Citation : (2001) 104 CompCas 76

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : D.S. Nanavati, for the Appellant; P.B. Majmudar, for the Respondent

Judgement

S.D. Pandit, J.—This application is filed by the official liquidator in Company Petition No. 7 of 1976. Company Petition No. 7 of 1976 was filed against the company Patidar Benefit Pvt. Ltd. u/s 433 of the Companies Act, 1956, for winding up of the said company. This court by its order dated April 4, 1976, has passed the order u/s 433 of the Act and the said company has been wound up and the official liquidator attached to this court was appointed as official liquidator of the winding up company.

2. The official liquidator has filed this application u/s 446(2) of the Companies Act, seeking an order-cum-decree against the respondent. It is the claim of the official liquidator that by application dated October 8, 1971, respondent No. 1 had sought a loan of Rs. 6,000 and by another application dated August 19, 1972, has sought further loan of Rs. 16,000 and that those loans were sanctioned and paid to him and he was to return the said loan with interest at the rate of 15 per cent. per annum. It is further the claim of the official liquidator that by letter dated September 10, 1976, he called upon respondent No. 1 to repay the said amount and as he failed to pay the same, the present application is filed in which an order-cum-decree for a total amount of Rs. 30,567.50 is sought.

3. Respondent No. 1 has contested the claim of the official liquidator by filing written statement. The first contention raised by the respondent is that the claim to get the money decree was barred by the law of limitation and consequently on that ground alone the application deserves to be rejected. It is contended that when the claim to get back the amount of loan was barred by law of limitation even prior to the date of issuing notice by the official liquidator, the present application could not be entertained. It is further contended by him that the loan amount of Rs. 6,000 was paid to his son Kamal Thakkar and at the time of the said transaction, he was a minor and that he is not concerned with the said loan as the said transaction was entered into by the wound up company with the minor. The said transaction is illegal and no liability could be fastened on the same. He further raised the same contention as regards the claim for the amount of Rs. 16,000. Thus, he contended that he was not a party to any loan transaction with the wound up company and in these circumstances, he is not liable to pay any amount.

4. The matter came up for final hearing today. The official liquidator has not produced any documents in support of his claim in this application, therefore, I have to proceed with the matter on the basis of the averments made in the application.

5. As per the averments made by the official liquidator in the application, it is quite clear that the first loan of Rs. 6,000 was paid on October 8, 1971, whereas the second loan was paid on August 19, 1972. The original company petition being Company Petition No. 7 of 1976, in which the order of winding up of the company is passed. From the record of this proceedings, it is not possible to know the exact date of the filing of the said Company Petition No. 7 of 1976, but any way, even assuming in favour of the applicant, it could be held at the most that the said company petition was filed in the first week of January, 1976. But when the said company petition was filed the claims for getting back loan advanced by the company were barred by the law of limitation. More than three years had elapsed since the date of the advancing of the loan by the original company, when the original Company Petition No. 7 of 1976 was filed. It is settled law that even a petition for winding up of a company could not be filed on the basis of a debt which is become barred by law of limitation. Therefore, when the original loan had become time barred when the original petition for winding up was filed giving all benefit of the period from the date of the filing of the petition till the date of the passing of the order of winding up to the present applicant will be of no benefit. If the provisions of section 458A are taken into consideration, then besides, giving the benefit of period running between the date of the presentation of winding up petition and the date of the passing of the order of winding up of the company, an additional one year could be granted for counting the period of limitation. The order of winding up has been passed on April 4, 1976, and this application is filed by the official liquidator on March 15, 1978. Thus, official liquidator has not filed this application within the period of one year from the date of passing of the order of winding up for getting the

benefit of the provisions of section 458A of the Companies Act.

6. Therefore, in view of all the above considerations, even giving all the benefits of counting the period of limitation in favour of the official liquidator, it is quite obvious that on the date when this application was filed, the claim for getting the order-cum-decree could not be entertained as the same was already barred by the law of limitation and, therefore, on this count alone, the present application deserves to be rejected. The said claim is barred by the law of limitation as provided by article 137 of the Limitation Act, 1963. I am supported to this view of mine by the decision of the Full Bench of the Delhi High Court in the case of R. C. Abrol and Co. (P.) Ltd. (In Liquidation) v. A. R. Chadha and Co. [1979] 49 Comp Cas 77 and the judgment of the single judge of Hind Chit Fund (P.) Ltd. (In Liquidation) v. Gian Chand [1974] 44 Comp Cas 329 (Punj). Thus, this application stands rejected, but in the circumstances of the case, no order as to costs.

