
(1983) 04 KAR CK 0018
In the Karnataka High Court

State Bank of India

APPELLANT

Vs

Hegde and Golay Ltd.

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Companies Act, 1956 — Section 433 (e)
Limitation Act, 1963 — Section 18

Citation : (1988) 63 CompCas 581 : (1987) ILR (Kar) 2496

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : S.G. Sundara Swamy, for the Appellant; S. Shaker Shetty, for the Respondent

Judgement

Chandrakantraj Urs, J.—This petition u/s 433(e) of the Companies Act, 1956 (hereinafter referred to as "the Act"), by the State Bank of India, Bangalore (briefly "the bank"), is for an order of this court winding up the respondent, Hegde and Golay Ltd. (hereinafter referred to as "the company").

2. The petition was admitted on April 14, 1980. Mr. A. G. Holla, learned advocate, took notice for the respondent in court. The petitioner's counsel was directed to furnish the copy of the petition and the petition was directed to be brought up for orders on April 15, 1980. However, the company also had made an application for appointment of a provisional liquidator and it was in respect of this, the matter was required to be brought up on April 15, 1980. It was again adjourned to April 18, 1980, and on that date the company application was disposed of by an order made by me by which certain directions were given and a commissioner was appointed to make a report after verification of stocks, etc., belonging to the company. At that time, it was also argued that the newspaper advertisement of the petition should be deferred as such advertisement would result in incalculable harm to the company and the matter was likely to be settled out of court. Thereafter, by the request of one or the other of the parties, the petitions, the petition together with other company petitions connected with

this company petition came to be adjourned from time to time. It is only late in the year 1982 that the bank pressed for further progress in the petition. In the meanwhile, as directed, on May 29, 1980, the company had filed its objections to the petition. A brief reference will be made hereafter to the objections of the company.

3. After the filing of the petition in this court, the bank has filed three suits in the city civil court for recovery of the loans advanced to the company by the bank. Those three suits cover four of the loans advanced by the bank. It is in this position the respondent-company has argued vehemently for dismissal of this petition or in the alternative for an order directing that the petition should stand over till the suits are disposed of by city civil court, as that court is the proper forum for adjudication of the dispute between the company and the bank in regard to the loan transactions the company had with the bank.

4. At this stage, it will be unnecessary to set out the pleadings in detail. Most of the facts are not in dispute. Both the petition and the objection statements filed are supported by numerous annexures advancing the cause of the parties. Appropriate reference will be made to some of the documents in the course of this order.

5. The bank is the premier banking institution in the country, a body corporate constituted under the State Bank of India Act in 1955 with its central office at Bombay and having among other places a branch office at Jayachamaraja Road, Bangalore, with which branch we are mainly concerned in this petition. The bank has advanced seven loans to the company on various dates commencing from the year 1974. These loans are :

----- "SI. Head of a/c.			
Limit	sanctioned	Amount	due No.
----- Rs. Rs. 1. Cash			
credit a/c No. 1	25,00,000	24,50,000	2. Cash credit a/c No. 2
20,00,000			20,00,000
3. Cash credit a/c No. 3	18,00,000	14,01,954.89	4. Cash credit a/c
No. 4 5,00,000	5,00,000		5. Cash credit a/c No. 5
			25,00,000
6. Cash credit a/c No. 6	77,00,000	1,68,62,365.84	7. Cash credit a/c No. 7
36,47,715.36	-----	-----	2,10,00,000
			2,93,62,036.09"

6. It is asserted by the bank that in respect of the above advances, the company executed appropriate loan documents which include demand promissory notes drawn by the company in favour of B.T. Shankar Hegde and his wife, Shyla S. Hegde, both of whom are directors of the company and who in turn have personally stood guarantee to the bank for repayment of the loans of the company. This personal guarantee is assured by the mode of endorsing in favour of the bank, the promissory notes executed by the company in favour of the directors above named, thus making the bank holder in due course of the promissory notes executed by the company.

7. It suffices to state that there appears to have been some dispute between the bank and the company in regard to the manner in which the loans were disbursed and also the manner in which the loans were adjusted towards unpaid interest on earlier loans. The bank persistently demanded repayment of the loans. But the company did not make any arrangements to repay the loans. On the other hand, the company began to have its banking transactions with another bank contrary to the terms and conditions of the loans sanctioned by the bank to the company. It is, in these circumstances, a legal notice was served on the company on March 10, 1980, demanding payment of Rs, 2,90,01,748.99 inclusive of interest as on February 29, 1980, representing the totality of the claim as on that date. The company sent a reply to that notice seeking 45 days' time for sending a detailed reply on the sole ground that the chairman and managing director of the company were confined to bed and could not move about under medical advice and, therefore, could not give suitable instructions for the issue of the reply. That reply was dated March 26, 1980, and on receipt of the same, the bank sent a telegram regretting its inability to extend the time. To the telegram refusing extension of time for repayment of loan, the company sent a reply stating that it had not talked about payment, but time was desired only to give a suitable reply presumably to the notice dated March 7, 1980, served on the company on March 10, 1980. It is in that circumstance that the company on April 11, 1980, presented the petition in this court seeking an order winding up the company as it was unable to pay its debts.

8. Without going into the details of the objections, for the contentions now advanced, at this stage, it suffices to say that the sum and substance of the objection is that the company has no liability to repay the loans as the same are time-barred debts. Even if they are not considered to be time-barred debts, the company does not admit the liability on account of the injurious manner in which the loans were disbursed and compounding interest resulting in usury and as a consequence of which the company has sustained serious damage and losses by the delay in the release of working capital and, therefore, entitled to damages which when set off against the claim would result in there being to repayable loan amounts due to the bank. The company also contends that the dispute is genuine and bona fide, the settlement of which is possible only in appropriate civil proceedings and, therefore, the company court should not entertain the petition for winding-up in its discretion and should allow the matter to be settled in the appropriate civil court. The company has also stated that it is a growing concern, commercially solvent as evidenced by its balance-sheet and even without the assistance of the bank, has done well in the last two years. The bank having filed the three suits, it is but appropriate that this court under the Act should not in any event jeopardise the defence put forward by the company in those suits.

9. The bank contends the opposite. The genuineness and bona fide nature of the defence in the civil suits as well as in these proceedings are disputed. It is asserted that the debts are not time-barred having regard to the various revival

letters signed and delivered in respect of the various pronotes relating to the loans in question, the last series of them being dated December 5, 1978, while one of the promissory notes itself was dated January 25, 1978. Thus, on the date of filing the petition, that is, April 11, 1980, all the debts in question were alive and enforceable. It is further asserted that filing of the suits for recovery of some of the debts could not be a bar to pursue the remedy under the Act as the reliefs prayed for in the proceedings and the suits in the civil court are vitally different and distinct. It is also asserted that the balance-sheet of the company year after year, had disclosed its liability to the bank and that constituted sufficient acknowledgment of the debts in writing satisfying the requirements of section 18 of the Limitation Act, 1963 (corresponding to section 19 of the Indian Limitation Act of 1908).

10. It is in the light of these rival intentions that the company court has to decide whether to dismiss the petition, with liberty to approach this court after the suits in question are disposed of finally or allow it to stand over till such disposal or to continue these proceedings and order advertisement of the petition as a further step in these proceedings notwithstanding the suits filed.

11. Mr. A.K. Sen, Senior Advocate, Supreme Court, has submitted the arguments for the company. His main intentions are as follows :

(1) The complaint of the company that the bank has charged excess interest and that the bank in the disbursement of the loan and unilateral adjustment from out of the loans towards arrears of interest cannot be dismissed as vague (sic). It is a matter for evidence and, therefore, bona fide and genuine. Such a defence cannot be ruled out by the company court as untenable.

(2) That the debts in question are barred by time is a substantial question of law requiring recording of evidence and detailed arguments, and as such, the company court in its summary jurisdiction should not decide that question, but leave it to the court where that defence in the pending suits has been taken substantially. Another limb of this contention has been that any acknowledgment in writing claimed by the bank is not an acknowledgment in the eye of law binding on the company court as the signatories of the revival letters and the balance-sheets are none other than Shankar Hegde and Shyla S, Hegde who were themselves in the position of creditors being the payees named in the various promissory notes which they have endorsed securing the loans advanced by the bank.

(3) On the facts and circumstances of the case, the date of presentation of petition is not relevant for purposes of examining the bar of limitation, but the court must see whether on the date the relief is to be granted, the debts in question are barred by time or not.

(4) The company is commercially solvent and, therefore, it is not just and equitable to proceed to wind up the company even if it is found that the debt is due and payable by the company to the bank.

12. Mr. A.K. Sen, learned counsel for the company, and Mr. S. G. Sundara Swamy, learned counsel for the bank, have both relied heavily upon the plaints and the written statements in the original suits filed before the city civil court, copies of which were summoned by the respondent- company and produced by the petitioner-bank for perusal of the court. In fact, both the sides have relied upon the same by consent. In O.S. No. 7303 of 1980 filed on May 26, 1980, the petitioner has prayed for a judgment and decree against the company for the sum of Rs. 14,33,642.99 together with current interest at 15 per cent per annum with quarterly rests from date of suit till date of payment. That claim relates to promissory note dated May 4, 1977, for Rs. 18,00,000 against the pledge of machinery, item No. 3 in the cash credit account extracted in the course of this order. The suit is admittedly barred by limitation, as the last date for filing the suit in the ordinary course would have been May, 3, 1980, which date happened to fall during the summer vacation of the courts and, therefore, was presented on May 26, 1980, the date of reopening. In the written statement filed in O.S. No. 7303 of 1980, the company, first defendant therein, has stated that the loan agreement relating thereto was only a part of the single agreement for the total loan between the plaintiff-bank and the first defendant which comprise seven credit loan accounts. But, however, there is the plea that the loans were not disbursed faithfully, truly and punctually causing unnecessary delays to the company, as a result of which the company suffered sufficient loss and damage by incurring penalties demurrages and various other losses in failing to make payments for the imported machinery and equipment. Under paragraph XIX under the heading additional pleas, in the same written statement, counter-claim/set-off is indicated. In terms of para. 4 of the written statement Rs. 10 lakhs is claimed as set- off/counter-claim. In terms of para. 5 of the written statement, set- off/counter-claim is claimed at Rs. 5 lakhs. In terms of para XV and para XVI, the sum of Rs. 1.65 crores is claimed as counter-claim/set- off. Totally, those set/offs and counter-claims are indicated at Rs. 1.65 crores. However, the defendant-company has restricted its relief for counter-claim/set-off to a sum of Rs. 15 lakhs only on which a sum of Rs. 1,50,000 is payable as court-fee, but has not been paid because the prescription under the Karnataka Court-Fees and Suits Valuation Act, 1958, for payment of court-fee or set-off and counter-claim (sic) to be illegal as no service is rendered for the payment of court-fee as demanded and that the prescribed court-fee is excessive, unconscionable and extraordinary in character. On that basis, only a nominal court-fee of Rs. 100 has been paid and the balance of court- fee is undertaken to be paid, if the court holds that the balance court-fee is payable on the counter-claim.

13. O. S. No. 2069 of 1982 has been filed in the city civil court by the bank on July 9, 1982, with a prayer for a judgment and decree against the defendant-company in the sum of Rs. 20,00,000 with proportionate costs and current interest at 15 per cent. per annum with quarterly rests from date of suit till date of payment. That suit relates to item No. 5 for which a promissory note was executed as collateral security on January 14, 1976. If that date is taken into

consideration, the suit would be clearly barred by limitation. Apparently, the plaintiff-bank has relied upon the revival letter given by the managing director, Mr. Shankar Hegde, and the director, Shyla S. Hegde, dated December 5, 1978, and the balance-sheet for the period ending June 30, 1979. The revival letter is annexure 27 to the petition while the balance-sheet is additional annexure 6 produced into court along with the reply filed to the statement of objections of the respondent-company. In the last mentioned document, namely, the balance-sheet for the period ending June 30, 1979, signed on December 4, 1979, by the directors, namely, B. Shankar Hegde and Shyla S. Hegde, there is an admission of debts as due to the bank in the sum of Rs. 2,54,50,857 which includes the loan claim in the suit. The sum and substance of the written statement is again the same as in this petition with the additional plea that all the seven loans being one single transaction, the plaintiff-bank was not entitled to a decree as prayed for in the second suit, as in the earlier suit filed on April 5, 1980, the recovery sought was confined to Rs. 14,33,642.99 and, therefore, the suit was barred under Order 2, rule 2, of the Civil Procedure Code. Similarly, the plea of bar of limitation is specifically taken in para 2 of the written statement. There is yet another of misjoinder of cause of action, as the suit is based on a pronote executed on January 14, 1976, for Rs. 25 lakhs and also a promissory note executed for Rs. 20 lakhs on January 25, 1978. It is unnecessary for me to refer to the other grounds urged by the defendant-company to support its prayer for dismissal of the suit. Similarly, in the third suit, O.S. No. 2233 of 1982, filed on July 9, 1982, the prayer is for a judgment and decree against the defendants for the sum of Rs. 62,17,778.58 together with current interest thereon at 15 per cent. per annum with quarterly rests from date of suit till date of payment. The defence in regard to the last mentioned suit is more or less the same, i.e., as being hit by Order 2 of rule of the CPC as well as the suit being barred by the law of limitation. Significantly, it is only in the written statement of the first of the suits of 1980 that the plea of counter-claim is taken. In the other two suits filed in the year 1982, no plea of counter-claim is taken. The third suit aforementioned, I must state, relates to items Nos. 1 and 2 of the cash credit loans extracted earlier in the course of this order. It is needless to add that these two loans are also admitted as due in the balance-sheet for the period ending June 30, 1979.

14. This court should not at this stage go into the merits of the defence and express any opinion. If the court were to express itself, then it certainly would not only be binding on the trial court where the suits were instituted but would otherwise prejudice the trial of the suits.

15. Mr. S. G. Sundara Swamy, learned counsel, has stressed that the counter-claim though made in the sum of Rs. 1.65 crores is limited to Rs. 15 lakhs whereby the company has clearly admitted that it has relinquished its claim in regard to the balance of amount claimed by the bank towards the loans and, therefore, the company court should take into account that despite the counter-claim, a large sum is due by the company in respect of the seven cash credit

loans advanced by the company. He, therefore, contends that a mere plea of counter-claim cannot be considered as a tenable defence or plea of damages sustained on account of any lapse on the part of the bank. He has further contended that it was open to the company to stop utilising the loans sanctioned if there was any breach on the part of the bank in the disbursement of loans. Not having done that, but fully utilising the loan facilities, it would not be open to the company now to claim damages by way of defence when those damages are neither liquidated nor quantified. There is some force in the argument of Mr. Sundra Swamy. If one were to assume that this petition and the suits filed are not barred by limitation, then a plea of counter-claim and loss damages suffered by the company loses much signification as tenable having regard to the totality of the conduct of the company and its directors, namely, Shankar Hegde and Shyla S. Hegde, who are the other defendants in the suits. I am unable to find substance in the first contention that the defence is not vague but substantial and that the defence is bona fide. I have already expressed that this is not a final adjudication of the suits. That is for the appropriate court to decide. But, I have come to the above conclusion for the limited purpose of testing whether the defence put forward in this petition is such that the company court should countenance it as valid and tenable defence and bona fide in character and no more. The company court, therefore, can proceed with the winding up proceedings once it has come to the conclusion that there has not been a case made out of bona fide and tenable defence. This is the well-settled law in England as well as in India and the authorities are too many to be rectified here.

16. One should not overlook the fact that in regard to the first of the suits Mr. Sen did concede that the company would certainly be owing quite a large amount even if the counter-claim was allowed but only pleaded that having regard to the solvency of the company, the court should direct the company to pay the sum within a suitable time and manner and not to proceed to wind up the company. In other words, there is practically an admission that some money in excess of Rs. 500 is owed by the company to the bank as a debt and that in spite of demand by statutory notice, the same has not been paid. That is sufficient to give jurisdiction to this court to proceed with the winding up proceedings u/s 433(e) of the Act.

17. In the case of *Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd.*, the Supreme Court has ruled as follows (at page 131):

" Where the debt is undisputed, the court will not act upon a defence that the company has the ability to pay the debt but the company chooses not to pay that particular debt (see *A Company, In re* [1894] 2 Ch 349 ; 94 SJ 369). Where, however, there is no doubt that the company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the court will make a winding up order without requiring the creditor to quantify the debt precisely (See *Tweeds Garages Ltd. In re* [1962] 1 Ch 406 [1962] 32 Comp Cas 795 (Ch D)). The principles on which the court acts are the first that the defence

of the company is in good faith and one of substance , secondly, the defence is likely to succeed in point of law, thirdly, the company adduces prima facie proof of the facts on which the defence depends.",(underlining * is mine)

18. From the above, it is clear that where the exact amount of debt is disputed, the court could proceed to make the winding-up order without requiring the creditor to quantify the debts precisely. The said ruling is one of the more recent cases decided by our Supreme Court and in the light of that decision and in the light of the admission of a certain debt owed by the company to the bank despite the suits filed in that behalf, this court should lean in favour the bank and allow them to maintain the petition and proceed further.

19. I must, in this connection, notice one other argument of Mr. Sundara Swamy. It is that the relief claimed in the suits is distinct and different from the relief claimed in proceedings u/s 433(e) of the Act. The civil court can no more than decree the suit if the plaintiff prove his case. That decree may not be realisation in execution for various other reasons. Where in the case of a winding up order being made in proceedings under the Act, the creditor is in a position to prove his debt and stand in line for such amount as he may realise . Therefore, he contends that it is not a bar for maintaining both a civil suit for recovery of debt and also a claim for a winding- up order in separate proceedings. I think this argument should be upheld.

20. Next is the plea of limitation , Mr. Sen has definitely argued that prima facie all the claims are barred by time except the one to which I have already made a reference. It has been his argument that the suits filed being suits on pronotes, the cause of action should necessarily be from the date of the respective pronotes and not any other date. It is also his contention that the unilateral adjustment of payment of interest by the bank by adjusting their account cannot amount to part payment to give a fresh lease to a time-barred debt. He also contends that the revival letter,s regarding which there is no dispute , in themselves do not gives the right to the bank to claim the fresh lease as those revival letters were signed by Mr. Shankar Hegde and Shyla S. Hegde who are themselves the payers under the pronotes. Therefore, having a fiduciary interest in the company, they could not make a valid acknowledgment of the debt on the various dates particularly on December 5, 1978, which is the common date for the last of the series of revival letters. Similarly, he has argued that the balance-sheets as on June 30, 1979, and subsequent balance-sheets do not have any legal validity , as those balance-sheets have been signed by the managing director, Mr. Shankar Hegde, and the director, Shyla S. Hegde.

21. As a against this, Mr. Sundara Swamy contends that the law is well settled that acknowledgment of debt in balance-sheet does constitute acknowledgment in writing within the meaning of section 18 of the Limitation Act, 1963. Mr. Sundara Swamy has placed reliance on several Indian decision in support of his contention. First of them is a Division Bench ruling of the Madras High Court in the case of Rajah of Vizianagaram Vs. The Official Liquidator, Vizianagaram

Mining Company Limited, Vizagapatam, . In that case, section 19 of the Indian Limitation Act, 1908, fell for consideration in the context of a balance-sheet admitting debts. In that cases, it was held that a debt due to certain creditors included in the item relating to sundry creditors as contained in the balance-sheet of the company, the balance-sheet contained an acknowledgment to the particular creditor. Similarly, in the case of Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff, , a similar view was expressed and that was to the effect that though there was a compulsion upon the managing agents to prepare the documents under the Companies Act and the articles of association , there was no compulsion upon them to make any particular admission and the admission though made in discharge of their duty were nevertheless conscious and voluntary admissions and, as such, constitute admission of liability within the meaning of section 19 of the Indian Limitation ACT, 1908. In the case of Ambica Mills Ltd., Ahmedabad Vs. Commissioner of Income Tax Gujarat, Ahmedabad, , it was held that a debt shown in the balance-sheet of a public limited company was an acknowledgment within the meaning of section 19 of the Indian Limitation Act, 1908, and in order to be so, the balance-sheet in which such an acknowledgment was made need not be addressed to the creditor. All the above three Indian cases relied upon the judgment of Lord Birkett J. in the case of Jones v. Bellegrove properties Ltd. [1949] 1 All ER 498 . It would be useful to briefly state the facts in Jones" case. Jones was a shareholder of the company in question. He was also a creditor. He had advanced certain sums amounting to about 750 pounds between certain dates. The dates in themselves if taken note of would have precluded him from enforcing his right as a creditor in regard to those advances. But the company in the balance-sheet of subsequent years had shown certain sums as due to sundry creditors. Jones attended the general meeting at which the balance-sheet was adopted. He led parole evidence to prove that he was one of sundry creditors. On those facts, Lord Birkett J. held that the balance-sheet did constitute an acknowledgment in writing of the debt and, therefore, satisfied the requirements of law u/s 23 and 24 of the Limitation Act, 1939, of England.

22. But, Mr. Sen has disputed the correctness of the Indian decisions in following Lord Birkett"s judgment in Jones" case [1949] 1 All ER 498 (KB). He drew my attention to the decision of the privy Council in the case of Consolidated Agencies Ltd. v. Bertram Ltd. [1964] 3 All ER 282 .

23. In the aforementioned case, section 19 of the Indian Limitation Act of 1908 directly fell for consideration as that Act was applicable in Kenya. The appeal to the Privy Council arose out of the proceedings in the courts of Kenya. Lord Guest, writing the advice of the Privy Council , distinguished the decision in Jones" case [1949] 1 All ER 498 . He relied upon the passage of Lord Goddard C.J. in Jones" case when it went before the court of Appeal in England and concluded that the balance-sheet in all cases did not constitute acknowledgment of debt to the creditors to satisfy section 24(1) of the Limitation Act, 1939, of England and, therefore, the requirements of section 19 of the Indian Limitation Act which

was in pari materia with the English enactment (sic). It is needless to say that Mr. Sen has placed very strong reliance on this decision. In fact, I shall myself notice the observation of the Privy Council in Consolidated Agencies Ltd's case [1964] 3 All ER 282 (PC), that the Indian judges had misunderstood the law laid down in Jones' case [1949] 1 All ER 498 . But, fortunately, the law has been again explained in the case of Gee and Co. (Woolwich) Ltd., In re [1974] 1 All ER 1149 (Ch D). Number of English decision on this question have been examined. The following passage reads (p. 1160).

" I see nothing in the particular paragraph which amounts even to a tentative view that in English law, an acknowledgment , to be effective must be of a debt which is actually existing at the date when the acknowledgment is written. In my judgment there is nothing in the decision in Consolidated Agencies' case [1964] 3 All ER 282 (PC), which entitles me to depart from the clear current of English authority. I shall accordingly decide this case on the footing that a balance-sheet , if duly signed by the directors, is capable of being an effective acknowledgment of the state of indebtedness as at the date of the balance-sheet , and that, in an appropriate case, the cause of action will be deemed to have accrued at the date of the balance-sheet , being the date to which the signatures of the directors relate. In my judgment , the balance-sheet of the company as at December 31, 1965, signed by the directors on November 25, 1962, would have been an effective acknowledgment as at December 31, 1965, of the liability of the company so as to take the matter out of the statute, if the acknowledgment had not been made by the directors in favour of one of themselves".

Brightmand, J.

24. Has explained each of the cases and laid down the above law. The Indian judges had correctly understood the law regarding balance-sheet being an acknowledgment in writing of a debt if it was so shown therein. I am, therefore, compelled to fall in line with the foreign decisions and the Indian decisions and prima facie come to the conclusion that the present petition which undisputedly was presented within time was to enforce a liability of the company which it had acknowledged in the last balance-sheet as on June 30, 1979.

25. In fact, Mr. Sundara Swamy has drawn my attention to the subsequent balance-sheets as on June 30, 1980, and June 30, 1981, wherein the acknowledgment continues in so far as it relates to the bank but with a note to the effect that it is in dispute. The earlier balance-sheets do not contain such a note. I am, therefore, of the view that the bank has established , prima facie, that the debts are not barred by time. The company court even in its summary jurisdiction can go into this question itself without waiting for its adjudication by the civil court which may take some more years to reach its conclusion. To do so, would be an unjust act in so far as the petitioner-bank is concerned whose prayer in the petition is no more than for a winding up order and not for a decree of the exact amount due by the company to the petitioner.

26. The other limb of this argument is that the acknowledgment contained in the revival letters of April 5, 1978, and the balance-sheets having been signed by the prayers themselves invalidate the acknowledgment as they were themselves creditors of the company and stood to gain by it. Mr. Sen has relied upon the decision of a learned single judge of the Rajasthan High Court in the case of Babulal Rukmanand Vs. Official Liquidator, Bharatpur Oil Mills (Private) Ltd., Shinghal J. (as he then was) in that High Court did hold that where the balance-sheet of the company is signed by a minimum of two directors as required by law and having no fiduciary relation with the creditor, the acknowledgment of the debt is not vitiated , only because the balance-sheet is also signed by one more director having fiduciary relation with the creditor. This appears to be the position in England as well. (see Transplanters (Holding co.) Ltd., In re [1958] 1 WLR 822 . That appears to have been so held on the facts of that case. In the instant case, the peculiar facts are these Mr. and Mrs. Hegde are also the shareholders of the company, the managing director and the director respectively of the company. they have applied to the bank on behalf of the company for the cash credit loans which are not in dispute. They are also the personal guarantor for the repayment of loans to the bank by endorsing the pronotes drawn in their favour by the company by themselves as the managing director and the director and the director respectively in favour of themselves as individuals. It is admitted by Mr. Sen that no consideration passed from Mr. and Mrs. Hegde to the company . In other words, the pronotes in question as well as the revival letters and the balance- sheets have been signed by Mr. and Mrs. Hegde in their capacity as directors of the company and not as creditors. Nowhere is it stated or asserted before me that Mr. and Mrs. Hegde are creditors of the company nor was any material placed to support such a contention. I must , therefore, reject this limited argument of the respondent- company and hold that signing of the pronotes, the letters of revival and the balance-sheets do not invalidate their character as acknowledgment in writing u/s 18 of the Limitation Act, 1963, as they are not creditors of the company nor do they have any fiduciary relationship with the creditor in their individual capacity.

27. Mr. Sen has argued that the date of presentation of the petition is not relevant for purpose of examining the bar of limitation , but the court must see whether on the date the relief is to be granted, the debts in question are barred by time or not. Mr. Sundara Swamy for the bank has asserted the contrary and relied upon the decision of the Supreme Court in the case of Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, . In the said case, the Supreme Court has ruled that the validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. I have no doubt that that is the correct position in law. If one were to accept Mr. Sen's contention , the result would be disastrous to all litigants suing for return of their money or property , if a suit is filed for recovery of

money, a week before the law of limitation comes into operation taking away the right to sue, it can be said that the court cannot decree the suit a week after the presentation as on that date, the debt or the money owed had ceased to be enforceable. Therefore, this connection also must be rejected unhesitatingly.

28. The last contention is that the company is solvent and has done fairly well as evidenced by the balance-sheet for the period when this petition was pending without assistance from the bank. In that circumstance, it would not be just and equitable for this court to wind up the company or even proceed further in the matter as it stands at the preliminary stage and incalculable harm would be done to the company, if it is not allowed to stand over. It is seen from the balance-sheets produced by the company itself that its liabilities amount to nearly five crores in respect of two of the secured creditors only, namely, the bank and the karnataka State Financial Corporation . This is an enormous liability. As disclosed by the balance-sheet , at the rate the profits are being made, even the interest on these sums cannot be paid much less the capital. We do not what other creditors there are and the nature of their claims. Before this court finally makes up its mind in favour of the petitioner bank or against it in these proceedings, it has a right to investigate further in public interest . I, therefore, see no point in delaying the advertisement.

29. This court also cannot ignore its own records. For more than two years, time has been taken by the defendant-company to settle the matter out of the court. But in the end it has come up with a total denial of its liability. The bank permitting the dilatory tactics, I am compelled to remark that it has been negligent.

30. As observed in the case of Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd., , the respondent company must place sufficient material before this court in proof of the tenability of its defence in a civil suit. In this case, no such material has been placed except the plea in the written statements, which , to my mind , appear to be vague and not tenable.

31. The company court exercises a special jurisdiction and as the provision for winding up is made in public interest , the court cannot overlook it. In my opinion, public interest served outweighs the harm that may be caused to the respondent-company, if the advertisement is ordered.

32. I, therefore, direct that the petition be advertised in accordance with law. The petitioner shall cause to advertise the same in Deccan Herald of Bangalore, the Indian Express of Bangalore and the Times of India , Bombay , before April 30, 1983. The date of further hearing is fixed as June 3, 1983.

33. The office will put up all connected applications and other petitions for further orders on June 3, 1983.