

IN THE HIGH COURT OF BOMBAY AT GOA.

COMPANY APPLICATION NO. 87-O OF 2002.

Official Liquidator,
High Court of Bombay,
Panaji.

... Applicant.

Versus

1. Lenny Da Costa,
S-1, Computer Time,
Souza Towers, 2nd
Floor, Municipal Garden,
Panaji.
2. Milind Chodankar (deceased),
3. Virupaksha Betageril,
Small Pednem,
Mapusa.

... Respondents.

Miss A. Razak, Advocate for the Applicant.

Mr. A. Kansar, Advocate for the Respondents.

Coram : P.V. HARDAS, J.

Date : 29th August 2003.

ORAL ORDER.

This is an application filed by the applicant seeking condonation of delay in filing a claim against the legal heirs of deceased respondent no. 2.

2. By Order, dated 13th October 1998, this Court had ordered the winding up of Bharatiya Development Finance Limited and the Official Liquidator attached to this Court was appointed as the Official Liquidator of the Company. This Court had also accorded sanction to the Official Liquidator to file claims under Section 446 of the Companies Act, 1956 for realization of the debts due to the Company which was wound up. Pursuant to the

sanction accorded to the Official Liquidator, the Official Liquidator filed claim bearing Application No. COAP 81-O/2001, against respondent no. 1 and respondents 2 and 3 as sureties. Since the respondent no. 1, despite service, was absent, this Court by its Order, dated 19th October 2001, passed an ex parte decree against the respondent no. 1. During the pendency of the proceedings against respondent no. 2, it transpired that respondent no. 2 had expired on 26th February 1998, that is, before the filing of the claim application. The claim application, therefore, was filed against the legal heirs of respondent no. 2 accompanied by this application seeking condonation of delay in filing the claim application against the legal heirs of deceased respondent no. 2. Notice of this application was served on the legal heirs of deceased respondent no. 2, who are represented by Advocate Mr. Kansar. In the reply which is filed on behalf of the heirs of deceased respondent no. 2, it is stated that the claim of the applicant against the heirs of deceased respondent no. 2 is barred by limitation.

3. Miss Razak, the learned counsel appearing on behalf of the applicant, has sought to place reliance on Section 458-A of the Companies Act. Section 458-A of the Companies Act excludes the period during which the Company was being wound up by the Court, that is, the

period from the date of the commencement of the winding up till the Order of winding up is made and it further gives an additional period of one year immediately following the date of winding up. Thus, under Section 458-A of the Companies Act, a legally enforceable claim, which could have been made by the company on the date of the commencement of the winding up, could be filed within one year of the Order of winding up of the company. The respondent no. 2 is stated to have expired on 16th February 1998, that is, during the pendency of the winding up proceedings. The claim against the heirs could have been filed by the Official Liquidator within a year of the Order, dated 13th October 1998, by which the company was wound up. The claim was filed against respondent no. 2, but, since he was deceased, the claim was filed against a dead person. The claim against the legal heirs of the deceased respondent no. 2 has been filed in this Court on 17th December 2002. The said claim against the heirs of the deceased respondent no. 2 is, therefore, hopelessly barred by limitation.

4. The Apex Court in **Karnataka Steel & Wire Products and others v. Kohinoor Rolling Shutters & Engg. Works and others**, (2003) 1 S.C.C. 76 has held:-

" The legislature, by way of an amendment, brought into force the provisions of Section 458-A, so that

an official liquidator, who is supposed to be in custody of the assets and liabilities of the company, would be able to file a claim on behalf of the company, which was legally enforceable on the date of the winding up, after excluding the period, indicated under Section 458-A, so that the company or its shareholders will not suffer any loss. But by no stretch of imagination, the said provisions contained in Section 458-A can be construed to mean that even a barred debt or a claim which was not enforceable on the date of the winding up, would stand revived, once a winding-up application is filed and order is made by virtue of Section 458-A."

5. The claim as against the heirs of the deceased respondent no. 2 ought to have been filed within one year of the winding up Order. The claim as filed is hopelessly barred by limitation and the provisions of Section 458-A of the Companies Act cannot be pressed into aid by the applicant. The provisions of Section 5 of the Limitation Act also cannot be extended to condone the delay in filing a claim which is beyond limitation.

6. For the aforesaid reasons, therefore, the claim filed by the applicant against the heirs of the deceased respondent no. 2 being barred by limitation, Company Application seeking to condone the delay is dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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