IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Original Jurisdiction)

In the matter of the Companies Act, 1956
and
In the matter of M/S APPLETREE CHITS INDIA (P) LTD (IN LIQN.)

C.C NO. 1384/2023 in Co.Pet. No.2/2014

Before
THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

Thursday, the 13th day of August 2026 / 22nd Sravana, 1948

CLAIMANT:

M/S APPLETREE CHITS INDIA (P) LTD (IN LIQN.)
REPRESENTED BY THE OFFICIAL LIQUIDATOR, HIGH COURT OF KERALA, ERNAKULAM.

RESPONDENT:

SMT.MINY ZACHARIAH, EDDVAZHIKKAL (H), MALLOOSSERY P.O., PULLARIKUNNU, KOTTAYAM, PIN - 686 041.

Company Claim under Section 446 read with Section 458A of the Companies Act, 1956 filed by the applicant above named praying that this Hon'ble Court be pleased to pass orders under Section 446 of the Companies Act, 1956 for recovery of the amount of ₹62,548/- from the Respondent, herein personally and from her other assets with future interest at 12% per annum on the Principle amount of ₹28,750/- from 14.08.2013 till the date of the payment order and thereafter at 12% per annum from the date of payment order till the date payment and costs.

This Claim coming on for orders on this day upon hearing Smt.S.Jasmine, Standing Counsel for the Official Liquidator and M/s. Johnson Gomez, Arun Johny, Sanjith Johnson, Abin Jacob Mathew, Deebu R. & Shimon Kuruvilla Thomas, Advocates for the respondent, the Court passed the following:-

"C.R."

HARISANKAR V. MENON, J.

Company Claim No.1384 of 2023 in C.P.No.2 of 2014

Dated this the 13th day of August, 2026

O R D E R

This Company Claim is instituted by the Official Liquidator seeking to realise an amount of Rs.62,548/- inclusive of interest allegedly payable by the respondent to the company under liquidation. The respondent has filed a counter affidavit dated 23.04.2026, denying the liability sought to be enforced as well as contending that the demand is barred by limitation.

2. In view of the preliminary objection as regards limitation raised by the respondent, I have heard Smt. Jasmine, the learned Standing Counsel for the Official Liquidator, as well as Sri.Arun Johny, the learned counsel for the respondent.

3. According to the learned counsel for the respondent, the alleged default occurred on 14.08.2013 and therefore, with reference to the provisions of Article 137 of the Limitation Act, 1963, steps ought to have been taken within a period of three

years. With reference to the commencement of the winding up proceedings on 10.02.2014, he would state that the proceedings were kept on hold till the winding up was ordered by the Company Court on 08.11.2019 with reference to the statutory exclusion under Section 458A of the Companies Act, 1956 (for short, the "Act"). Therefore, according to him, the Company Claim ought to have been presented within the remaining period of three years after excluding the period between 10.02.2014 and 08.11.2019 and also reckoning an additional one-year grace period provided under Section 458A, which would come to an end by 12.05.2023. Therefore, the learned counsel states that the Company Claim, presented only on 05.09.2023, is barred by limitation. He also sought to rely on the judgment of the Apex Court in **Karnataka Steel and Wire Products and Ors. V. Kohinoor Rolling Shutters and Eng. Works and Ors. [(2003) 1 SCC 76]**, in this regard.

4. *Per contra*, Smt.Jasmine, the learned Standing Counsel for the Official Liquidator would state that right to sue as far as the Official Liquidator has arisen only on the winding up being ordered by the Company Court on 08.11.2019 and hence, the Official

Liquidator is entitled to file the application within a period of 4 years (3 years under Article 137 of the Limitation Act plus one year grace period under Section 458A of the Companies Act) which would only end by 07.11.2023. Hence, according to her, the claim presented on 05.09.2023 is within the limitation period. She sought to rely on the Full Bench judgment of this Court in **Ulahannan v. Wandoor Jupiter Chits (P) Ltd. [1998 (2) KLT 636 (F.B.)]**.

5. I have considered the rival contentions as well as the connected records.

6. There is no dispute that, with reference to Article 137 of the Limitation Act, an application thereunder requires to be presented within a period of three years with reference to the date on which the "right to apply" arises. It is with reference to this, that the learned counsel for the respondent states that the period of limitation is required to be counted from the date of default, 14.08.2013, subject to exclusion prescribed under Section 458A of the Act.

7. However, the question arises as to when the Official Liquidator becomes entitled to present an application. It is not in dispute that under Section 446 of the Act, it is only when the

winding-up order has been made, or the Official Liquidator has been appointed as the provisional liquidator, that he can commence the proceedings with the leave of the Tribunal/Court. Therefore, it is only when the Tribunal/Court passes an order of winding up that the Official Liquidator can institute the claim. In the case at hand, the winding-up order was passed on 08.11.2019. Therefore, it is with reference to that date that the Official Liquidator seeks to present the Company Claim.

8. The judgment of the Apex Court in **Kohinoor Rolling Shutters** (*supra*) considered a question as to whether a claim, which was barred on the date the application for winding up was filed, stands revived on account of an order of the Court in the winding up proceedings. A Full Bench of the Karnataka High Court held that Section 458A of the Act did not confer a fresh cause of action and, therefore, if the time for the claim was already barred, merely because an Official Liquidator is appointed, the claim does not get revived. It was in these circumstances that the matter was considered by the Apex Court. The Apex Court, considering the afore situation, held that the provisions under Section 458A, cannot be construed as even a time-barred debt, as on the date of the

winding up, would stand revived on account of winding up application/an order made thereon. The Apex Court further held that with respect to a legally enforceable claim which could have been made by the Company in question on the date on which the application for winding up is made, the Official Liquidator is entitled to lodge the claim "within a period of four years from the date of the winding up of the company" by resorting to the provisions of Section 458A of the Act, including the three year period under Article 137 of the Limitation Act.

9. A Division Bench of this Court in **Antony v. Chandni Chits Pvt. Ltd. [2016 (1) KLT 371]**, considered an identical situation like the one in the case at hand, also with reference to the principles laid down by the Apex Court in **Karnataka Steel and Wire Products and Ors.** (*supra*). In that case, the winding-up proceedings commenced on 16.10.1989, and the order for winding up was passed on 04.04.1990. Later, the Official Liquidator instituted claims before the Company Court under Section 446(2) of the Companies Act. The Company Court sought to reject the contention regarding limitation raised by the respondents therein. Against the afore, an appeal was presented, which came up for

consideration before the Division Bench. The Division Bench of this Court, with specific reference to the provisions of Section 446, held that the provisions under sub-section (1) thereto bars the commencement of any proceedings after the winding-up order is made, without the leave of the Company Court. With reference to the provisions of Article 137 of the Limitation Act, the Division Bench found as under:

> "12. A claim filed by the Official Liquidator under sub-section (2) of S.446 of the Act is governed by Article 137 of the Limitation Act, 1963, and the right to file a claim under the said sub-section, in respect of a claim enforceable at law on the date of the winding up order, arises on the date on which the winding up order is passed. Article 137 of the Limitation Act reads thus;

Article	Description of Application	Period of limitation	Time from which the period begins to run
137	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues

> The period of limitation of three years would, therefore, be from the date of the winding up order."

Again, with reference to the provisions under Section 458A, the Division Bench found as under:

> "13. Section 458A of the Act, inserted by the Companies (Amendment) Act, 1960 deals with exclusion of certain time

in computing the periods of limitation. As per Section 458A of the Act, notwithstanding anything in the Indian Limitation Act, 1908 (9 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 wound 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 the winding up order shall be excluded.

14. The effect of S.458A of the Act is that, in respect of a legally enforceable claim, which could have been made by the company on the date on which the application for winding up is made, the period of limitation will not run against the company from the date of commencement of the winding up proceedings, i.e., from the date on which the application for winding up is made, till the date on which the winding up order is made (both inclusive). <u>Such a claim could be filed by the Official Liquidator by taking the benefit of one year period immediately following the date of the winding up order, as provided under S.458A of the Act and the three years period provided under Article 137 of the Limitation Act. Therefore, in respect of a legally enforceable claim, which could have been made by the company on the date on which the application for winding up is made, the Official Liquidator could file claim within a period of four years from the date on which the winding up order is made</u>."

(Underlining supplied)

After finding so, the Division Bench noticed that since the order of winding up was passed on 04.04.1990, the claim could be filed on or before 04.04.1994. However, since in that case the claims were filed beyond the said date, the Division Bench allowed the appeals, setting aside the judgment and decree of the Company Court.

10. Applying the afore principles to the facts of the present case, admittedly, the winding up order was passed on 08.11.2019 and therefore, the Official Liquidator is entitled to the three-year period prescribed under Article 137 of the Limitation Act, and the additional one year period under Section 458A of the Act for lodging the Company Claim. Since the claim is presented within the afore period, I am of the opinion that there is no limitation as contended. Hence, the preliminary objection raised by the respondent as above is rejected.

Post the Company Claim for further consideration on 08.09.2026.

Sd/-

HARISANKAR V. MENON, JUDGE

ln