

relating to rendition of accounts on the death of one of the partners. In view of Section 17 of the Limitation Act (Old) it was observed that the right to institute the suit must accrue after the death of the person concerned and not because of his death. The death must not in any way affect the right to sue and must not give rise to the cause of action. An administrator, if may be noticed, claimed exemption under S. 17 of the Limitation Act (Old) and it was held that by his appointment he was capable of instituting the suit. The ratio of this decision is also not applicable to the case in hand. The opinion of the lower Appellate Court that the provisions of Section 16 are not attracted to the present case is correct.

(5) In view of the position aforesaid, I find no merit in this appeal and the same is hereby dismissed. There will be, however, no order as to costs.

P.C.G.

Before G. R. Majithia, J.

DAULAT RAM, S/O SHRI BHOLA NATH AND
OTHERS,—Petitioners.
versus

THE SUTLEJ FINANCE PVT. LTD., SUTLEJ MARKET, G.T. ROAD,
JALANDHAR, THROUGH ITS MANAGING
DIRECTOR,—Respondent.

Amended Company Petition No. 86 of 1985.

May 24, 1989.

Companies Act (I of 1956)—Sections 433, 434 and 439—Petition for winding up—Company bona-fide disputed debt—Amount claimed, barred by limitation—Competency of winding up petition.

Held, that the machinery for winding up cannot be allowed to be utilised as a means for realising debts due from the company. If the debt was *bona fide* disputed, there cannot be neglect to pay within the meaning of section 434(1) (a) of the Act. The Principles on which the Company Court acts are : (1) that the defence of the Company is in good faith and one of substance; (2) the defence is likely to succeed in point of law and (3) the company produced *prima facie* proof of the facts on which defence depends. The claim is *prima facie* barred by time. The respondent-company has succeeded in

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proving that their defence is in good faith and likely to succeed in point of law. The winding up petition is thus not competent and is dismissed.

(Paras 5 and 6)

Amended Petition Under Section 433, 434 and 439 of the Companies Act, 1956 praying that :—

- (a) *that the said The Sutlej Finance (P) Ltd. be wound-up by this Hon'ble Court under its supervision and under the provisions of the Companies Act, 1956 insolvent to pay its admitted debts and liabilities.*
- (b) *the petitioner submit further that under the circumstances, it is just and equitable that the Company should be wound up. Such other order as may be deemed necessary and fit may also be passed.*

S. N. Sharma, Advocate, for the Petitioners.

N. K. Sodhi, Senior Advocate with R. N. Raina, Advocates, for the Respondent.

ORDER

(1) This is an application under section 439 read with sections 433 and 434 of the Companies Act (for short "the Act") for winding up of the respondent-Company.

(2) C.P. 86 of 1985 was originally filed by some of the creditors of the company. By order dated September 11, 1986, the company petition was ordered to be advertised and the order was duly complied with. On September 3, 1987, the counsel for the petitioners admitted that the entire claim of the petitioners had been paid to them. On August 11, 1988, the counsel for the petitioners made a statement that he did not want to prosecute the petition on behalf of the petitioners since they had entered into a settlement and had received the entire amount due to them. C.A. 101 of 1987 in C.P. 86 of 1985 was moved by some of the creditors for substitution as petitioners. The application was allowed and the counsel for the petitioners was directed to file an amended petition. It is the amended petition on behalf of the fresh creditors allowed to be substituted which is being disposed of.

(3) In the petition, it is stated that the petitioners deposited various amounts with the respondent-Company against receipts, details of which are as under :—

S. No.	Name	Receipt No. & Date	Amount deposited	Rate of Interest
			Rs.	P. A.
1.	Daulat Ram	4995/79 dated 13-8-79	500	12%
2.	Daulat Ram	005032/79 dated 24-10-79	350	12%
3.	Daulat Ram	005043/79 dated 28-11-79	3,200	12%
4.	Daulat Ram	005344/80 dated 2-8-80	350	12%
5.	Daulat Ram & Smt. Amrit Kaur	005171/80 dated 12-3-80	3,000	12%
6.	Smt. Usha Saini	005300/80 dated 2-7-80	5,250	12%
7.	Mrs. Usha Pabla	004278/77 dated 9-8-77	5,000	12%
8.	Avinash Chander & Mukh Chander	005433/80 dated 29-11-80	2,000	12%
9.	Smt. Amrit Kaur	005414/80 dated 31-12-80	2,000	12%
10.	Smt. Amrit Kaur	005414/80 dated 31-3-80	4,000	12%
11.	Miss Chander Kiran	005210/80 dated 31-10-80	4,000	12%
12.	Tara Singh	004276/77 dated 9-8-77	5,500	12%
13.	Smt. Bimla Saini	005378/80 dated 22-9-80	2,138	12%
14.	Jagdish Singh Saini	005005/79 dated 5-5-79	3,140	12%
Total Rs.			38,926	

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(4) The amount was not paid when demanded. The respondent-company has defaulted in making payment of the sum due. The respondent-company admitted that the amounts were deposited by the petitioners. Payment of interest to some of the creditors on their deposits was also admitted, but this was before October 1, 1982. On December 31, 1982, the petitioners came to the company's office, abused the Managing Director of the respondent-company and demanded immediate payment. After December 31, 1982, the petitioners did not approach the respondent-company. It was pleaded that their claim had become barred by time. It was also pleaded that the petitioners did not serve the statutory notice under section 434 of the Act before filing the petition.

(5) It is well-settled that the machinery for winding up cannot be allowed to be utilized as a means for realising debts due from the company. If the debt was *bona fide* disputed, there cannot be neglect to pay within the meaning of section 434 (1) (a) of the Act. The principles on which the Company Court acts are: (1) that the defence of the company is in good faith and one of substance; (2) the defence is likely to succeed in point of law and (2) the company produced *prima facie* proof of the facts on which defence depends. In the instant case, the respondent-company has succeeded in proving that their defence is in good faith and one of substance. It was held in *Chemical Enterprises and another v. Kalpanalok Ltd. and others* (1), that the creditors who had not served any statutory notice were not entitled to continue the petition. No contrary authority has been brought to my notice by the learned counsel for the petitioners. On the question of limitation, the learned counsel for the respondent submitted that the deposit was for a term of six months bearing interest at the rate of 12 per cent per annum. The limitation to effect the recovery will start after the expiry of six months and not from the date when the payment is made. In support of his submission, he relied on *Kanshinath Sankarappa Wani v. New Akot Cotton Ginning and Pressing Co. Ltd.*, (2) and more particularly the following observations made therein :--

“The only question which arises for our consideration in this appeal is whether the applicant's suit was barred by

(1) (1984) 55 Company cases 552.

(2) A.I.R. 1958 S.C. 437.

limitation. The appellant, in the first instance, relied upon the deposit receipt which was passed by the company in his favour on January 15, 1940. This receipt (Ex. P. 1) evidenced a deposit of Rs. 79,519.12.9 for 12 months from August 1, 1939 to July 31, 1940, and the amount at the foot thereof became due and payable by the respondent to him on July 31, 1940. The appellant, however, sought to extend the commencement of the period of limitation to May 17, 1941, on the ground that the money, the subject-matter of that deposit receipt, were payable to him on demand, that such demand was made by him on May 17, 1941, and that, therefore, that was the date for the commencement of the period of limitation. No express agreement in this behalf could be proved by him nor could an agreement be implied from the course of dealings between him and the company for the period of 25 years during which the dealings continued between the parties. As a matter of fact, such an agreement, either express or implied was negatived by the very terms of the deposit receipt which, apart from mentioning that the monies were received by the company as deposit for 12 months from August 1, 1939, to July 31, 1940, contained on the reverse a note that interest would cease on due date. This was sufficient to establish that the amount due at the foot of the deposit receipt became due and payable on the due date mentioned therein and that there was no question of the amount being payable at any time thereafter on demand being made in this behalf by the creditor."

(6) The ratio of the above authority is fully applicable to the facts of the instant case. The claim is *prima facie* barred by time. The respondent-company has succeeded in proving that their defence is in good faith and likely to succeed in point of law.

(7) The petition is accordingly dismissed. The petitioners can enforce the remedy by way of a suit.

S.C.K.