IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

O.S.A.No.127 of 2020 and
C.M.P.No.6044 of 2020

M/s.Sri Krishna Smelters Pvt. Ltd.,
Rep. by Managing Director,
R.Duraisamy,
S.F.No.110/1-E, Iveli Village,
Akkampet Post, Sankagiri Durg,
Salem - 637301. ... Appellant

Vs.

M/s.AEBIAR Associates,
Rep. by its Partner
Mr.K.Ummar Naushad,
No.4, Owlia Sahib Street,
Ellis Road, Mount Road,
Chennai – 600 002. . ... Respondents

Prayer: This Original Side Appeal has been filed under Order XXXVI Rule 9 of Original Side Rules r/w Clause 15 of Letters Patent to set aside the judgment and decree dated 04.01.2019 passed in C.P.No.73 of 2010.

For Appellant : Mr.N.Baskaran

For Respondent : No Appearance for respondent
Mr.S.R.Sundar for Official Liquidator

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JUDGMENT

(Judgment of the Court was made by P.VELMURUGAN, J.)

Even though the appeal is pending from the year 2020 without any progress, still the learned counsel for the appellant seeks time to argue the appeal, which we are not inclined to grant and we decided to dispose of the appeal on merits with the available materials.

2 The respondent filed Company Petition in C.P.No.73 of 2010 under Sections 433(e) and (f), 434 (I) (a) seeking order of winding up of appellant Company. It is the case of the respondent that a sum of Rs.1.00 Crore in terms of the agreement dated 20.12.2005 was paid to the appellant through cheques, which were duly encashed by the appellant and the appellant agreed to repay the same within one year and further agreed to pay commission of Rs.200/- per ton on the total production or Rs.1 lakh per month, whichever is higher. The appellant failed to repay the amount within the stipulated time and hence another agreement was executed on 20.12.2006, wherein, the appellant agreed to pay the amount within one year and agreed to pay the commission regularly and any delay in payment of commission, the same would carry interest @ 24% per annum. On failure, the respondent issued legal notice and despite receipt of the same, no reply has been filed and hence statutory notice has been issued on 11.12.2009, for which also there was no reply. Hence the respondent filed a Company Petition seeking to wind up the appellant Company.

3 After serving notice on the Registrar of Companies, and hearing the learned counsel on either side, the learned Single Judge vide order dated 04.01.2019, allowed the Company Petition, whereby the appellant Company has been wound up and the Official Liquidator of the Madras High Court has been appointed as the provisional liquidator of the appellant Company. Aggrieved over the said order, the appellant Company is be before us with the present Original Side Appeal.

4 Mr.S.R.Sundar, learned counsel for the Official Liquidator would submit that after order of wound up of the appellant Company, the Ex-Directors of the said Company have filed assets and liabilities statement. Further the Official Liquidator received voluntary claims from the Assistant Commissioner (ST), Sankari, claiming Rs.30,44,45,134/- for TNGST & CST 2004-5 and VAT 2007-08 to 2013-14. Further there are more claims from the Government, which are all comes to the value over and above the value of the assets submitted by the Ex-Directors of the Company.

4.1 The official liquidator has also filed his report on 07.09.2020 enclosing the voluntary claims made by the Government, which itself clearly prove that there were huge dues pending to the Government, which are over and above the value of the assets given by the Ex-Directors of the appellant Company. The appellant Company has already been struck off by the Registrar of Companies vide proceedings dated 07.08.2018, which has been suppressed by the appellant Company.

5 It is the case of the respondent, who filed the Company Petition seeking winding up of the appellant Company, that a sum of Rs.1.00 Crore in term of the Agreement dated 20.12.2005 was paid to the respondent through cheques, which were duly encashed by the appellant agreeing to repay the same within one year. The appellant further agreed to pay the commission of Rs.200/- on or before 7th of succeeding month, per ton on the total production or Rs.1.00 lakh per month, whichever is higher. The appellant failed to repay the amount as agreed in the Agreement dated 20.12.2005 and hence another Agreement was executed on 20.12.2006, wherein the appellant agreed to pay the amount within one year from the date of execution of the second agreement and it was also agreed by the appellant that the monthly commission would be payable regularly and any delay in payment of commission, the same would carry interest @ 24% p.a.. But the appellant failed to pay the amount, even after the lapse of the time granted in the second agreement dated 20.12.2006. Hence the respondent caused statutory notice dated 11.12.2009 and as there was no reply, the Company Petition was filed.

6 The Company Petition is resisted by the appellant, who is the respondent in the company petition, stating that the claim of the respondent herein is barred by limitation in terms of Article 21 of the Constitution of India, which states that period of limitation would start from the date of agreement.

7 The learned Single Judge, after effecting paper publication, vide order dated 04.01.2019 allowed the Company Petition, giving a finding that the limitation would starts from the date of expiry of the agreement dated 20.12.2006, since in the agreement itself it has been clearly stated that the appellant has to repay the amount within one year from the date of agreement.

8 It is the main contention of the appellant that the petition filed by the respondent under Section 433(e) and (f), 434 (I)(a) and 439 (I)(B) of the Companies Act, 1956, for winding up of the appellant Company is barred by limitation, since the appellant failed to invoke the said provisions within a period of three years from the date of Agreement dated 20.12.2005.

9 The respondent filed a company Petition in C.P.No.73 of 2010 against the appellant on the ground that the appellant did not re-pay the due amount of loan for a sum of Rs.1,00,00,000/- (Rupees One Crore only) availed from the respondent as agreed under the Agreement dated 20.12.2005 and subsequent Agreement dated 20.12.2006.

10 It is to be noted that as per Clause 3 of the Agreement dated 20.12.2005, the appellant has to re-pay the loan within one year from the date of the Agreement and as per Clause 14 of the Agreement dated 20.12.2005, if the appellant is not able to re-pay the loan, on the date of expiry of this agreement, the respondent shall seize the stock, receivables and take possession of the assets including the assets given as collateral security to the respondent. Therefore the cause of action will arise only on the date of expiry of the agreement i.e. non-payment by the appellant even after the lapse of one year from the date of agreement and hence limitation would arise on the date of expiry of the Agreement dated 20.12.2006. The learned Single Judge has rightly rejected the contention of the appellant with regard to limitation.

11 It is seen from the report of the Official Liquidator that there were huge dues pending to the Government exchequer for a sum of Rs.30,44,45,134/- towards TNGST & CST 2004-05 and VAT 2007-08 to 2013-14, which are over and above the value of the assets given by the Ex-Directors of the appellant Company. Further the learned counsel for the official liquidator submitted that even the creditors have filed applications and the appellant did not even clear their dues. Therefor it is clear that the liability of the appellant Company comes to the value more than the value of the assets of the appellant Company.

12 Further more it is useful to refer Section 248(8) of the Companies Act, 2013, which is extracted hereunder:

> *"248(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies."*

13 Therefore Section 248(8) of the Companies Act, 2013, preserves the power of the Tribunal/Court to wind up a company, even if its name has already been struck off or removed from the official register.

14 For the foregoing reasons, even though we find no reason to interfere with the order of the learned Single Judge, assuming that the appeal is allowed and the judgment of winding up of the appellant Company is interfered with, no purpose would be served, since as per the report of the official liquidator, the liabilities of the appellant Company is over and above the value of assets it held.

15 Under such circumstances, we are not inclined to interfere with the order of the learned Single Judge, impugned in this appeal, and hence the appeal shall stand dismissed. Consequently connected miscellaneous petition is closed. No costs.

[PVJ] [KGTJ]
17.06.2026

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K.GOVINDARAJAN THILAKAVADI, J.

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