

IN THE HIGH COURT OF SINDH, KARACHI

J. C. M. No. 43 of 2010

[First Islamic Modaraba V. Dawood Capital Management Limited & another]

Present: Mr. Justice Muhammad Osman Ali Hadi

Date of hearing: 26.11.2025.

Date of decision: 26.11.2025.

The Petitioner through M/s. Taha Abdus Samad and Ms. Vera Awais, Advocates.

The Respondent No.1 through Ms. Alizeh Bashir, Advocate.

ORDER

Muhammad Osman Ali Hadi, J: This Petition has been filed under Section 305 of the Companies Ordinance, 1984, whereby the Petitioner sought winding-up of Respondent No.1.

2. The Petitioner states that a Musharika Finance Facility (“Finance Facility”) in the sum of Rs.20,000,000 (Rupees Twenty Million Only) was availed by Respondent No.1 from the Petitioner through an Investment Agreement dated 17.03.2005, for an initial period of 92 days.

3. That as per the Petitioner, Respondent No.1 defaulted on the said return payments, and did not repay any sum of monies. Learned Counsel submits that repeated reminders dated 15.07.2005, 10.08.2005, 29.08.2005 and 23.12.2005 were sent to the Respondent No. 1, however to no avail.

4. Learned Counsel for the Petitioner states that eventually they served Respondent No.1 with a legal notice dated 01.07.2010 seeking repayment, which Counsel contends was a fulfillment of the requirement under section 306 of the Companies Ordinance 1984 (“1984 Ordinance”).¹

¹ Said notice is available at Page-35 (Annexure-H) of the File. It is pertinent to note the 1984 Ordinance was the statute *de jure* at such time.

5. Learned Counsel for the Petitioner next referred to a letter dated 07.01.2006, which, as per Counsel, shows a sign of admission of default on the part of Respondent No.1.

6. When this matter was taken up for hearing, Counsel for the Petitioner was (yet again) confronted with the issue of limitation, since the alleged default pertains to the year 2005, whereas the instant Petition was filed in October 2010, and therefore the instant Petition appears time barred.²

7. Learned Counsel for the Petitioner has contended that the Notice (for demand of repayment) required under section 306 of the 1984 Ordinance was made / sent in the year 2010, and that limitation would run from such point. Counsel was asked as to whether the trappings of article 181 of the Limitation Act 1908, which serves as a residual clause providing a three (3) year limitation period to bring forth a claim (when no other period for limitation was specified), and (at least *prima facie*) appears applicable to the matter at hand, were applicable? To which he responded that article 181 would not be applicable. He further contended that the limitation act would not be applicable *stricto sensu* to matters falling within the Company Jurisdiction. He relied upon two judgments in support of this contention, being (unreported) JCM No.12/2025, and 2003 CLD 1075.

8. The learned Counsel has further placed reliance upon section 3 of the Limitation Act 1908, in which he emphasizes that the words '*wound up*' relating to companies is used in the said Section, and as per the said Section the applicability of limitation commences from when a claimant first asserts his claim (as per learned Counsel). He contended that since the Petitioner first made their claim against Respondent No. 1 in the year 2010, limitation should be taken to run from such time.

² Previously on 19.10.2018, 28.01.2020 and 22.10.2025, the learned Counsel for the Petitioner sought time from this Court to prepare and address this issue of limitation

9. Counsel then submitted that he has placed the balance sheet of Respondent No.1 / Company on record ³, which he states shows the Company's insolvency, and therefore Respondent No. 1 is liable to be wound-up. He concluded by submitting that he has continual ongoing claims against Respondent No.1 which runs in perpetuity (until realization of the funds), and therefore, they were able to file the instant Petition, which he reiterated has been done within the available period of limitation.

10. Learned Counsel for the Respondent No.1, whilst rebutting the Petitioner's claims, has firstly contended that the instant matter relates to a Finance Facility, and therefore ought to have been filed before the appropriate Court having banking jurisdiction for adjudication thereof. She next submitted that since the matter pertains to a financial transaction, the Financial Institutions (Recovery of Finances) Ordinance 2001 ("**2001 Ordinance**") would be applicable, and under section 24 of the said 2001 Ordinance, the provisions of the Limitation Act 1908 remain applicable. Accordingly, she submits that the instant matter falls under article 181 of the Limitation Act, for which a period of 03 years has been provided to file for a claim, which was not done by the Petitioner and therefore the instant Petition is grossly time barred. She has relied on judgment reported in 2014 CLD 1567, which she states clearly establishes that if a claim for debt is itself time barred, then any notice issued subsequently would be of no relevance, and could not enlarge the period of limitation provided. In conclusion, she avers that the Petitioner has been unable to establish any cogent ground for their delay in seeking their alleged claim, and she prays that the instant Petition may be dismissed as it is hopelessly time barred.

11. I have heard the learned Counsel and with their able assistance have gone through the documents available on File. The succinct facts are that it appears a Finance Facility was availed by Respondent No.1, and expired on 17.06.2005, which remains

³ Available at Pages-45 and 47 of the File.

unpaid by Respondent No. 1. The instant Petition was filed on 08.10.2010, which was over five (5) years post the date of recovery.

12. Learned Counsel for the Petitioner had argued that article 181 of the Limitation Act 1908 was not applicable for matters falling within Section 305 of the Companies Ordinance 1984. When he was confronted as to which period of limitation would then be applicable (if article 181 was not)? He was unable to provide any cogent response. His generic assertion (without any justification) that article 181 simply does not apply, cannot be considered. If such arguments were to be accepted, same would have the effect of negating statutory provisions and upsetting the laws of limitation.

13. The case law relied upon by the Petitioner also do not come to their aid, as the same are based on entirely different sets of facts, law and circumstances. They hold no relevance to the matter-at-hand. In any event, none of the said case law establish any kind of extension in limitation for matters of recovery, so I fail to see their relevance.

14. The contention by the Petitioner that their Notice dated 01.07.2010 under Section 306 of the Companies Ordinance 1984 should be used as the yardstick for when the limitation period is to commence, also is unfounded. It is settled law that when the time for recovery of a debt is itself time barred, any notice subsequent thereof would be of no effect. The judgment relied upon by the learned Counsel for the Respondent No.1 has clearly enunciated this principle, the relevant portion of which reads⁴:

“10. The question that requires consideration is whether a valid notice under section 306 can be issued to a company in respect of a debt that, on the date of the notice, is time barred? Can a company be deemed unable to pay its debts on the basis of such a notice? This leads to the more general question: can a company be ordered to be wound up on a debt that is time barred as on the date of the presentation of the winding up petition? what of a debt that is not time barred when the notice under section 306 is issued, but becomes barred by limitation by the time the petition for winding up

⁴ 2014 CLD 1567 [South Asia Geophysical Services (SAGeo) through General Manager V. New Horizon Exploration and Production Limitation (NHEPL)].

is presented? To these questions, the answer appears to be that a notice under section 306 cannot be validly issued on a time barred debt and therefore a company cannot, on such debt, be deemed unable to pay its debts. Furthermore, the debt must be within the period of limitation when the petition for winding up is presented, and if not, the company cannot be wound up on such a debt. It therefore necessarily follows that if a debt is not time barred when a notice under section 306 is issued, thereby triggering the deeming provision of that section, but the debt is so barred by the time the petition is presented, the company still cannot be wound up on the ground that it is unable to pay its debts.” (emphasis supplied).

15. Furthermore, section 306 of the Company’s Ordinance 1984, in itself provides that where such a Notice is sent, the Company has thirty (30) days within which to settle such claim, after which a creditor may proceed towards the recovery process. Even in this regard, as per the Petitioner’s own submission, the Notice was sent by the Petitioner to Respondent No. 1 on 01.07.2010, whereas the Petition was filed in October, 2010, i.e., 03 months post issuance of the Notice. This negligence of approaching the Court three months post sending of their notice also remains unexplained, and shows a pattern of lethargy on part of the Petitioner.

16. The delay on part of the Petitioner cannot be lightly considered. Limitation is not a mere technicality that can be casually overlooked in a thoughtless manner. The established legal maxim “*vigilantibus non dormientibus jura subveniunt*”, meaning law is for the vigilant - not the indolent, is well settled in our jurisprudence.

17. In a recent case, *Akhtar Nasir Ahmad v Province of Punjab*,⁵ the Hon’ble Apex Court, whilst discussing the above maxim and principles of limitation, opined:

“11. The law of limitation is founded on the principle of "Vigilantibus non dormientibus jura subveniunt" meaning "the law assists the vigilant, not those who sleep on their rights." This principle forms a cornerstone of justice, reinforcing that the law favors those who act promptly and diligently. It emphasizes that individuals must be active in asserting their rights and

⁵ PLD 2024 SC 1268

those who fail to do so within a reasonable time should not expect the courts to intervene in their favor.

12. Law of limitation is not just a technical formality but a crucial component of a well-functioning legal system. It provides a framework that ensures legal matters are addressed promptly, preventing evidence from being lost, memories from fading, and facts from becoming distorted over time. Furthermore, it protects potential defendants from being subjected to claims long after they could reasonably expect such challenges, fostering certainty and finality in legal matters. By requiring claimants to act within a specific period, the law promotes diligence and responsibility in the pursuit of legal remedies. Those who neglect to assert their rights, as in this case, effectively forfeit their ability to challenge matters that could have been addressed much earlier.”

18. It appears obvious the Petitioner has approached the Court’s belatedly, and using the guise of seeking winding-up, in an effort to defeat limitation. Such action cannot be condoned, as they would have the impact of upsetting settled and binding law.

19. In conclusion thereof, and for the reasons aforementioned, I have found that the instant Petition is barred under the law of limitation, and the Petitioner has remained unable to provide any ground to explain or satisfy such delay on their part in seeking recovery. Therefore, there remains no reason to further deliberate upon the merits / demerits of the matter. Accordingly, the instant Petition is hereby dismissed.

20. Lastly, I would like to extend my gratitude to all the Counsel present, who have conducted themselves in a very professional and able manner whilst assisting the Court.

J U D G E