
(2003) 06 AP CK 0001
In the Andhra Pradesh High Court
Case No : OSA No. 1 of 2003

A. Rama Goud

APPELLANT

Vs

Omnitrode Aditya Electrodes Private Limited and Others

RESPONDENT

Date of Decision : 09-06-2003

Acts Referred:

Companies Act, 1956 — Section 483

Citation : (2003) 4 ALD 278 : (2003) 4 ALT 669 : (2004) 118 CompCas 154 : (2003) 47 SCL 775

Hon'ble Judges : Devinder Gupta, C.J.;A. Gopal Reddy, J

Bench : Division Bench

Advocate : V. Raja Gopal Reddy, for the Appellant; M. Anil Kumar and Deepak Bhattacharjee, D. Sesharajyam, C. Pratap Kumar and P.R. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, C.J.—Heard. Challenge in this appeal is to the order passed by the learned Company Judge dated 3-1-2003 ordering winding up of company viz., M/s. Omnitrode Aditya Electrodes Private Limited.

2. Reliance has been placed on the decision of the Calcutta High Court in Eastern Paper Mills Ltd v. Board for Industrial and Financial Reconstruction and Ors., (2001) 3 Comp LJ 106, wherein it is held that the opinion forwarded by the Board for Industrial and Financial Reconstruction that it is just and equitable to wind-up the industrial company is not conclusive. Such opinion can only form basis for proceedings to be continued against sick industrial company for purposes of winding up. Further proceedings ought to be conducted by Company Court in accordance with the Companies Act and Company (Court) Rules to determine whether it is just and equitable to wind-up such company, which procedure has not been followed and there is no adjudication by the learned Company Judge that it is just and equitable to wind-up such company.

3. We have gone through the order passed by the learned Company Judge. By

the impugned order the learned Company Judge did not follow the Company (Court) Rules in order to determine whether it is just and equitable to wind up the company. After receipt of the opinion of the Board for Industrial and Financial Reconstruction, notices were issued, but, further adjudication has not taken place. While disposing of miscellaneous application the learned Company Judge also proceeded to dispose of the Company Petition by ordering winding up which is contrary to the provisions of the Companies Act and the Company (Court) Rules and the observations in Eastern Paper Mills Limited's case (*supra*).

4. In view of the above, appeal is allowed. Impugned order insofar as it has ordered winding up of the company is set aside and the learned Company Judge will proceed in accordance with law and determine whether it is just and equitable to wind-up the company.