

(1996) 03 PAT CK 0027

In the Patna High Court

Case No : Company Petition No. 7 of 1995

BOC India Limited

APPELLANT

Vs

Zinc Products and Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Citation : (1996) 03 PAT CK 0027

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This is an application for winding up of the company, namely, Zinc Products and Company Private Limited, under Sections 433 (e), (f), 434 and 439 of the Companies Act, 1956. The company has challenged the maintainability of the application on the ground that it has been filed through Vinod Singh, area sales manager of the petitioner-company who is not properly authorised for the purpose and, therefore, the application is fit to be summarily rejected. The petitioner has filed a rejoinder to the affidavit filed in opposition to the winding-up petition. Counsel for the parties have made submissions on the point of maintainability.

2. On behalf of the petitioner reliance is placed on the power of attorney executed in favour of Sri S. S. Prasad, managing director and Sri S. Chatterjee, Vice-President Finance, pursuant to the resolution of the board of directors, and the delegation of power by the said Sri S. Chatterjee in favour of Sri Vinod Singh. The said two documents have been marked annexures 8 and 7, respectively, to the rejoinder-affidavit.

3. Annexure 8 no doubt purports to authorise Sri Vinod Singh, area sales manager of the company, to present a petition for winding-up of Zinc Products and Company Private Limited in the Hon"ble Patna High Court and in connection therewith to make, sign, execute, swear affirm, present and file all the applications, petitions, affidavits, etc., and to represent the company in all the matters relating to the above case. But from the various clauses of the power of attorney (annexure 7) it does not appear that Sri S. Chatterjee was authorised to

delegate any authority for presenting a winding-up petition. There cannot be any doubt, on general principles, that a delegatee can delegate only such powers and authority which are vested in him provided further that he is also authorised to make delegation of the authority.

4. In the instant case, however, it is not necessary to go into the general principles of law. The provisions of the Companies Act provide a complete answer to the question. It is well settled by reasons of the provision of section 291 of the Companies Act, that except otherwise expressly provided, it is the board of directors which is entitled to exercise all the powers of the company ; individual directors have only such powers as are vested in them by the memorandum and articles of association. In *Nibro Ltd. Vs. National Insurance Co. Ltd.*, , it has been held that although ordinarily the court ought not to unsuit a person on account of technicalities, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finance of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Such a power can be conferred by the board of directors only by passing a resolution in that regard.

5. It is not in dispute that the board of directors has not passed any resolution authorising Sri Vinod Singh to present the application for winding-up.

6. In that view of the matter the present application cannot be said to be maintainable. Mr. Subhro Sanyal, learned counsel for the petitioner, attempted to go into the merits of the claim. He submitted that the opposite party having issued cheques with respect to the amount of debt, which ultimately bounced, it must be deemed to have admitted the claim. Therefore, this court should not go into the technicalities and reject the application on the abovesaid ground. I regret, in view of the fact that the application for winding-up itself is not maintainable and is fit to be summarily rejected, it is not possible to examine the merits of the claim. The defect in the application goes to the root of the matter and is not curable. As the Delhi High Court has held in the above-mentioned case even a subsequent authorisation/ratification by the board of directors cannot cure the defect.

7. For the reasons stated above, I hold that the winding-up application is not maintainable which is accordingly dismissed.