

(2004) 08 CAL CK 0064

In the Calcutta High Court

Case No : APOT 488 of 2004, ACO 146 of 2004 and CP 362 of 2004

Evergreen Plywood Industries Ltd.

APPELLANT

Vs

Circular Leasing and Resources (P.) Ltd.

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Companies Act, 1956 — Section 434(1)

Citation : (2005) 128 CompCas 701 : (2005) 59 SCL 553

Hon'ble Judges : Ajoy Nath Ray, Acting C.J.;Arun Kumar Mitra, J

Bench : Division Bench

Judgement

1. The respondent is not called upon. The appeal is intended to be preferred from an order dated 4-8-2004 receiving a winding-up petition and directing advertisements unless instalments are paid. The debt alleged was Rs. 5,00,000. Signed confirmation of account is there made on behalf of the company. The only point taken is that the statutory notice was not served at the registered office of the company.

2. We find, however, that it was attempted to be so served but the service was returned as unclaimed.

3. u/s 434(1)(a) statutory presumption shall arise only upon service at the registered office. That is true.

4. But it is nowhere stated either in the sections of the Companies Act or in the Company Court Rules that a receiving order can be passed only after proof that the company is unable to pay its debts. The discretion of the Company Court has to be used in all the facts and circumstances of the case before it. The inability of the company to pay its debts may be proved even otherwise than by reason of a statutory presumption. To show on a broad basis that the company is unable to pay its debts, advertisements have to be issued first before such a finding can be reached. Such advertisements cannot be issued without at least a strong prima facie proof of a sufficiently large amount of debt. This proof was made here. The

order under appeal is, therefore, with respect, entirely without any defect.

5. There will be an order in terms of prayer (a) of the petition. The undertakings are discharged. The appeal is treated as on the day's list. The allegations in the petition cannot be taken to be admitted. The appeal need not be made ready any further. The appeal and the application are both dismissed with costs.