
(1995) 03 OHC CK 0033
In the Orissa High Court
Case No : Company Act Case No. 11 of 1994

Kalpana Trading

APPELLANT

Vs

N.C.L. Industries Ltd.

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Companies Act, 1956 — Section 10(3)

Citation : AIR 1995 Ori 287 : (1996) 85 CompCas 946

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : B.P. Das, B Pr. Das, S. Das and D.N. Mohanty, for the Appellant;

Judgement

Pasayat, J.—This is an application for winding up of M/s. N.C.L. Industries Ltd. (hereinafter referred to as the "company") in terms of Sections 434 and 439 of the Companies Act, 1956 (in short, the "Act"), on the ground that it is unable to pay its debts. Petition has been styled as "creditors" application" in order to invoke powers under Sections 434 and 439 of the Act.

2. Section 434 of the Act envisages the situations in which a company shall be deemed to be unable to pay its debts. Section 433 enumerates the circumstances in which a company would be wound up by the Court. One of the circumstances is if company is unable to pay its debts. In terms of Section 434 of the Act, a company shall be deemed to be unable to pay its debts if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at the registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor, Demand referred to in Clause(a) of Sub-section (1) of Section 434 shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such

agent or legal adviser or by any member of the firm. Petitioner's case is that notwithstanding several letters by registered post, the company has failed to pay the amount which according to it is due.

3. It is not necessary to deal with the question whether there has been any demand or inability of the company to pay its debts, in view of the fact that this Court has no jurisdiction to entertain the application. Section 10 of the Act deals with jurisdiction of Courts. The said provision reads as follows :

"Section 10. Jurisdiction of Courts.- (1) The Court having jurisdiction under this Act shall be-

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of Sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred-

(a) in respect of companies generally, by Sections 237, 291, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees by Part VII (Sections 425 to 560) and the other provisions of this Act relating to the winding-up of companies.

(3) For the purposes of jurisdiction to wind-up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up."

Sub-section (1) provides that for the purposes of jurisdiction to wind-up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up. The Court having jurisdiction under the Act is High Court having jurisdiction in relation to the place at which registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Courts subordinate to High Court in pursuance of sub-section (2). Except to the extent to which any jurisdiction is expressly conferred on the District Court either by the Act or by the Central Government by notification in the Official Gazette, all residuary jurisdiction under the Act is vested only in the High Courts. In the

petition itself, it has been accepted that registered office of the company is at Hyderabad. In that view of the matter, this Court has no jurisdiction to deal with this application.

The application is accordingly not entertained.