

(2006) 11 JH CK 0043
In the Jharkhand High Court

Mangalam Minerals and Chemicals Pvt. Ltd.	APPELLANT
Vs	
Anjaneya Ispat Ltd.	RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 434, 439A

Citation : (2007) 1 JCR 457

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In the instant application u/s 439(A) of Indian Companies Act, 1956, the petitioner claiming himself to be the creditor prayed for winding up of the respondent-Company on the ground of nonpayment of dues. The petitioner-M/s. Mangalam Minerals and Chemicals Pvt. Ltd. is a limited company registered under the Indian Companies Act and carries on. business of supply of coal and coke. The petitioner's case is that the respondent-Company M/s. Anjaneya Ispat Ltd., Adityapur, Jamshedpur, accepted the offer of the petitioner-Company to purchase coke through its associates having its work at Dhanbad. It is alleged that the respondent-Company placed various purchase orders upon the petitioner-Company from time-to-time and the petitioner agreed to supply coal/coke at the rate mentioned in the purchase order and shipment of coal/coke was arranged by the petitioner-Company through M/s. G.N. Coke Manufacturing Co. (P) Ltd., Merah, Chirkunda, Dhanbad. It is alleged that during the period 23.12.2002 to 25.7.2003, huge quantity of coal was supplied to the respondent-Company, but the respondent failed to make any payment and thereafter, the petitioner-Company stopped supply of further coal/coke. It is also alleged that the petitioner-Company deposited Rs. 10 lacs with the respondent-Company and the latter agreed to pay 12% interest on the deposited amount to the petitioner-Company which it failed to pay. The petitioner-Company, thereafter, gave notice u/s 434 of the Indian Companies Act, 1956 demanding a sum of Rs. 2,07,69,236.60 (Rupees Two Crore Seven Lakhs Sixty Nine Thousand, Two

Hundred Thirty Six and sixty paise only) together with interest from the respondent-Company. In spite of the notices, the respondent-Company failed to make any payment. Consequently, the instant application has been filed u/s 439(A) of the Indian Companies Act, 1956 for binding up of the respondent-Company.

2. The respondent-Company filed counter affidavit controverting all the allegations made in the application. The respondent's case is that one of the Directors of the petitioner-Company, namely, Gajraj Kumar Jain along with Arihat Jain and Sri Gopal Agarwal approached the respondent-Company and induced them to set a Coke Oven plant. For the purpose of that, they requested to share the technical know-how on the condition that they should be inducted as Directors of the respondent-Company and being induced thereby on false assurance and promise, the respondent-Company by way of Memorandum of Understanding inducted Gajraj Kumar Jain, Arihat Jain and Sri Gopal Agarwal in the Board of Directors. After getting inducted as Directors, they started taking control of the commercial activities of the Company and in furtherance of their dishonest intention, they had unilaterally got L.C. Account of Rs. Sixteen lacs opened from the account of the respondent-Company in the State Bank of India, Adityapur branch. Besides other facts, it is stated that the respondent-Company had issued only one purchase order on 13.12.2002 in respect of supply of coal and against the said supply, the respondent-Company had already made entire payment to the petitioner-Company. The respondent's further case is that for the fraud and mischief, so committed by the Directors of the petitioner-Company, one of the Directors of the respondent-Company, namely, Uday Singh has already instituted a criminal case being C.P. Case No. 85 of 2003 which is pending in the Court of Chief Judicial Magistrate, Saraikela-Kharsawan. It is alleged by the respondent that certain forged purchase order has been created by the Directors of the petitioner-Company whereby they purported to have amended the original purchase order. Besides that, the Director of petitioner-Company fraudulently created certain documents so as to cause a wrongful loss to the respondent-Company. The respondent-Company have categorically denied and disputed the allegation of any dues. It is stated that as against the only one purchase order, the respondent-Company has already made the entire payment for the coke, so supplied by the petitioner-Company.

3. Although in the winding up petition the petitioner has prayed for winding up of the respondent-company on the ground that there are huge amount of dues lying against the respondent and in spite of service of notice the respondent, company is not in a position to clear its debt but there is no clear admission by the respondents that they are liable to pay the alleged dues to the petitioner. On the contrary from the pleadings of the parties it appears that there are serious dispute between the petitioner-company and the respondent-company and a criminal case is also pending.

4. In my view, therefore, unless there is a debt due and the company is unable

to pay the same, no order for winding up of the company can be passed. Recently in the case Mediquip Systems Pvt. Ltd. Vs. Proxima Medical System GMBH, the Supreme Court, while considering a case for winding up of the company, held:

In our opinion, the High Court has failed to appreciate that there is a bona fide dispute concerning US S 11,000, . While the learned Single Judge has held that the dispute concerning US S.5000 is a bona fide dispute, he has erred in not holding that the dispute concerning US S 11,000 also is bona fide. The High Court, on the one hand, has held that the Company has admitted in no uncertain terms that US S 11,000 should be repatriated to the remitter, on the other hand, the learned Judge failed to appreciate that the petitioning creditor in the instant case was not the remitter and was not entitled to the said sum of US S 11,000. It is not in dispute and as admitted by the respondent petitioning creditor that the remitter of the sum of US S 11,000 was one M/S Pameda Medizinische Systems and not the petitioning creditor and that because of the discrepancy in the name of the remitter, Reserve Bank of India had initially withheld permission. In our view, a prima facie case has been made out by the appellant for not remitting the Indian amount equivalent of US S 11,000 as admittedly the petitioning creditor was not the remitter and cannot have any claim in respect of US S 11,000. In our opinion, the learned Judges of the High Court have erred in directing the Company to deposit a sum of Rs. 4,69,480 with the Register, Original Side of the High Court at Calcutta. The question of the Company depositing the same with the Registrar, Original Side, did not and could not arise since the petitioning creditor was not the remitter. A reading of the order of the High Court would show that the learned Judges themselves had doubt regarding lawful entitlement of the petitioning creditor and erred in directing the appellant Company to deposit the amount and in default directing admission of the winding up petition.

We have carefully perused the order. There is no clear cut finding by the learned Single Judge that a debt is prima facie due and payable by the Company to the petitioning creditor. In our opinion, the impugned orders have been passed in a purported exercise of jurisdiction not vested with the court sitting in the Company Court for an application for winding up of the Company, the Company court had no jurisdiction to direct the Company to deposit the amount payable to a third party or to a party other than the petitioning creditor.

5. In the facts and circumstances of the case I find no justification whatsoever for entertaining the application and for passing an order of winding up of the respondent-company. This Company Petition is, accordingly, dismissed.