

**Appellant Vs. Respondent**

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**Court :** Kolkata

**Decided On :** Jan-30-2014

**Judge :** Nadira Patherya

**Appellant :** Appellant

**Respondent :** Respondent

**Judgement :**

ORDER

SHEET CP No.594 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : JESSOP & Co.LTD.-ANDSr.RAVI SANKAR SINGH BEFORE: The Hon'ble JUSTICE PATHERYA Date : 30th January, 2014.

Mr.Mukti Ghosh, Adv.Mr.Asish Kr.

Mukherjee, Adv.for the petitioner Mr.Nirmalya Dasgupta, Adv.for the company The Court : This winding up application has been filed after issuance of statutory notice under Section 434 of 1956 Act.

A point of demurer has been raised on behalf of the company that Section 434(1)(a) contemplates that a company shall be deemed to be unable to pay its debts only when a demand has been served on the company and delivered at its registered office by registered post.

In the instant case the registered office of the company is at 21 & 22, Jessore Road and the delivery has been made at 21 & 28, Jessore Road.

Therefore there is non-compliance of the statutory requirement of 434 (1)(a) and the application be dismissed.

Some of the claims of the petitioning creditor are also barred by laws of limitation.

Therefore the claims barred cannot also be entertained and no order can be passed in respect thereof.

Reliance is placed on AIR1954 Calcutta 499 and the order passed in C.P.591 of 2011 on 5th February, 2013.

In opposing the point of demurer taken, counsel on behalf of the petitioning creditor submits that the notice under Section 434 has been received at 21 & 28, Jessore Road, Kolkata.

The mention of 28 is a mistake on the part of his advocate and as the company has received the said notice, the same is valid in the eye of law.

In fact the stamp of the company will also be found on the acknowledgement due card evidencing receipt so also receipt will be evident from the track record of India Post wherein delivery to the company has been shown.

Reliance is placed on 104 Company Cases 596, 139 Company Cases 107 and 128 Company Cases 701.

The claims which are supposedly barred by laws of limitation be considered by Court and all other claims which are within the period of limitation be adjudicated upon and orders passed accordingly.

Having considered the submissions of the parties and from the record of the ROC it appears that Jessop & Co. has its registered office at 21 & 22, Jessore Road, Kolkata-28, P.S.Dum Dum, West Bengal, India on and from 31st March, 1999.

The statutory notice issued is dated 28th January, 2013 and has been addressed to the company at 21 & 22, Jessore Road, Kolkata-28.

This is not the address of the registered office of the company.

Section 434(1)(a) of the 1956 Act postulates that upon delivery of notice if the payment is not secured it will amount to inability on the part of the company to pay its debts and for such purposes contemplates a demand notice being issued under Section 434 (1)(a) by a creditor which demand notice is to be served on the company by causing delivery at its registered office by registered post.

There is no mention of receipt by the company.

All that is required is that delivery must be made at the registered office.

The registered office in the instant case is admittedly not 21 & 28, Jessore Road, Kolkata-28 but 21 & 22, Jessore Road, Kolkata.

Therefore the statutory notice issued is not in accordance with the provisions of Section 434 (1)(a) of the 1956 Act.

This issue came up for consideration in the case of Bukhtiarpur Bihar Light Railway Co.LTD.versus Union of India & Anr.

reported in AIR1954 Calcutta 499 wherein the counsel appearing on behalf of the company did not lay much stress on the issue of service of statutory notice but the Division Bench thought it fit to consider the said issue and in deciding it held that delivery at the registered office of the company was a requirement of service.

This decision was followed in C.P.591 of 2011 and an order was passed on 5th February, 2013.

Therefore the case of Bukhtiarpur Bihar Light Railway has been accepted as good law even in 2013.

104 Company Cases 596 relied on by counsel for the petitioning creditor has decided the said issue on the basis of the word receipt which finds no mention in

Section 434 (1)(a). Even if delivery is to be considered as receipt the same must be at the registered office of the company.

This assumes importance as in case of no reply being given a presumption arises against the company of its inability to meet the demand and make payment of the debt.

This presumption therefore in the absence of delivery to the registered office would be without any basis and foundation and therefore the decision reported in 104 Company Cases 596 will not apply.

For the same reason 139 Company Cases 109 especially in view of the decision delivered on 5th February, 2013 in C.P.591 of 2011 is also not applicable to the instant case.

In view of the aforesaid as the statutory notice has not been delivered at the registered office of the company, this application merits no order and accordingly is dismissed.

It is made clear that it is only for nonservice of the statutory notice that this order has been passed.

The merit of the case has not been considered.

On the prayer of counsel for the petitioning creditor leave is sought to initiate proceedings in accordance with law.

Accordingly, the order passed this day will not prevent the petitioning creditor from seeking remedies in accordance with law.

All parties to act on a signed photocopy of this order on the usual undertakings.

(PATHERYA, J.) TR/

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