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In Re: the Vysya Bank Ltd.

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Court : Mumbai

Decided On : Aug-22-1991

Reported in : 1992(2)BomCR176; (1991)93BOMLR500

Judge : A.A. Cazi, J.

Acts : Companies Act, 1956 - Sections 434 and 434(1)

Appeal No. : Company Petition No. 370 of 1990

Appellant : In Re: the Vysya Bank Ltd.

Advocate for Def. : N.G. Thakkar and ; Z.A. Jariwalla, Advs., i/b., Thakore Jariwalla & Associates

Advocate for Pet/Ap. : S.N. Shah, Adv., i/b., Ambubhai & Diwanji

Disposition : Petition dismissed

Judgement :

A.A. Cazi, J.

1. This is a petition under sections 433, 434 and 439 of the Companies Act, 1956 for winding up of the Company Randhir Steel & Alloys (P) Limited which has its registered officer at 30/21, Jambulwadi 1st Floor, Kalbadevi Road, Bombay-400 002. It is undisputed that unless the petitioners show that the petitioners have

complied with the provisions of Clause (a) of sub-section (1) of section 434 of the Companies Act, they will not succeed in this petition. The relevant portion of section 434(1)(a) reads as follows :

'434(1) A company shall be deemed to be unable to pay its debts -

(a) 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 its 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.'

Now in the present case, the petitioners sent the notice by Registered Post to the company's registered office but it was returned back to the petitioners undelivered and unserved. Thereafter the petitioners sent the notice to the company at 89/19, Ramesh Bhawan, 1st Floor, Tamba Kanta, Bombay-400 003. It is on this basis that it is claimed on behalf of the petitioners that they have complied with the provisions of section 434(1)(a) of the Companies Act. I do not agree. The provisions of section 434(1)(a) have already been reproduced above. The demand in question has to be served on the company and what amounts to serving on the company has laid down in the said Clause (a) of sub-section (1) of section 434 itself by stating 'by causing it to be delivered at its registered office'. Admittedly, the demand was not delivered at the registered office of the company.

2. Mr. Shah, on behalf of the petitioners, submits that in the present case the company did not have any functioning office at the place shown as its registered office inasmuch as that place has remained closed. However, section 434 of the Companies Act does not require that there should by any functioning office. All what that section says is that the demand should be delivered at the registered office of the company. That has not been done.

3. Mr. Shah submitted that the provisions of section 434 are there for the benefit of the company and the company can waive that benefit. He points out the analogy of section 527 of the Bombay Municipal Corporation Act in regard to which it has

been held that the Municipal Corporation can waive the notice. Now, as regards the said section 527 there should be a cause of action independent of section 527 and 'waiver' means that a suit on that cause can be filed without notice under section 527. In our case the liability or deemed inability of the company to pay its debts arises by compliance of the requirements laid down in the above extracted portion of section 434 and that is the basis of this company petition, and therefore there is no question of waiver.

4. Mr. Shah submitted that the waiver is not in respect of the demand itself being made but in respect of the place where that demand can be made and for this purpose he draws my attention to page 32 of the petition where there is a letter from the company which shows : 'Add. for Corres. 89/19, Ramesh Bhawan, 1st Floor, Tamba Kanta, Bombay-400 003.' Now, as stated above, the fulfilment of the requirements of section 434 is the basis of this petition. To say that there is waiver of section 434 or of any of its requirements would be to say that the bar provided by section 434 or by any of its requirements stands removed. Such a waiver cannot be contemplated for the present petition. The company may be carrying on its ordinary correspondence from the Tamba Kanta address but that does not mean that the provisions of section 434(1)(a) of the said Act can be read as complied with if the demand is made on the company at the Tamba Kanta address.

5. Mr. Shah urged that since the company did not have a 'functioning office' at the place shown as its registered office, if would mean that the company, in fact, did not have a registered office at the place shown as its registered office. He relied upon 1870 Law Reports 390 in (re Fortune Copper Mining Company), where there was no office as the premises mentioned at that place had been demolished. Now, in the instant case, the premises where the registered office of the company is shown are existing and it is not a case where there is no existence of the premises itself. I do not see why, when the place exists, delivery cannot be effected. Mr. Shah submitted that deliver cannot be made unless there is someone to take the delivery. Now section 434 does not speak of 'delivered to' but it speaks of 'delivered at'. It was possible for the petitioners to serve the demand in the manner provided in section 434(1)(a) at the registered office of the company. As that has

not been done, this petition has to be dismissed.

6. Accordingly the petition is dismissed.

No order as to costs.

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