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Court : Orissa

Decided On : Jul-07-2006

Reported in : 102(2006)CLT580; [2007]139CompCas94(Orissa); [2007]75SCL520(NULL)

Judge : M.M. Das, J.

Acts : [Companies Act, 1956](#) - Sections 433, 434 and 434(1); Workmen's Compensation Act

Appeal No. : COPET No. 2 of 2003

Appellant : Chatterjee Construction (Engineers and Contractors)

Respondent : Versatile Construction (P) Ltd.

Advocate for Def. : S.C. Parija,; P. Behera and; M.R. Tripathy, Advs.

Advocate for Pet/Ap. : P.K. Patnaik,; R.G. Singh,; S.K. Patnaik and;

Disposition : Petition dismissed

Judgement :

M.M. Das, J.

1. This is an application under Section 433 and 434 of the [Companies Act, 1956](#) (hereinafter referred to as 'the Act') for winding up of the opp. party-company, M/s. Versatile Construction (P) Ltd. (hereinafter referred to as 'the Company').

2. It is stated in the petition that the opp. party-company entrusted the petitioner with the construction work of the multi-storied apartment in the name and style of 'Satyasai Apartment' at Lewis Road, Bhubaneswar and for this purpose, the parties entered into an agreement on 14.12.1998 containing the terms and conditions agreed to between them for execution of the above work. The petitioner claimed to have executed various works entrusted to it under the said agreement by investing huge amount of money and submitted number of bills to the opp. party-company for the works done. It is alleged in the petition that the running bills of the petitioner were not paid in time and further, the dues of the petitioner, which the opp. party-company is liable to pay, amounting to Rs. 37,27,972.71 still remains outstanding on the opp. party-company. Accordingly, the petitioner issued an Advocate's notice by registered post on 6.12.2002, which was received by the opp. party-company. The agreement between the parties has been annexed to the petition along with other documents. On the above basis, the petitioner has sought for winding up of the opp. party-company.

3. A counter affidavit has been filed by the opp. party-company disputing its liability and denying the claim of the petitioner. It has been asserted in the counter that the petitioner violated the terms of the agreement which was intimated to it by the opp. party-company by its letter dated 13.4.2000 Annexure-B. The said violation relates to non-compliance of the statutory requirements by the petitioner for which opp. party-company intimated the petitioner that in spite of repeated requests it has not complied with such requirements and required it to furnish valid labour licence, insurance as per Workmen's Compensation Act, permanent income tax account number provident fund registration number and payment receipts, wage register and muster roll. It is further alleged that he petitioner did not comply with the above requirements nor submitted the above mentioned documents with the opp. party-company. Again by latter dated 14.4.2000, under Annexure-C, the petitioner was intimated that the quality of workmanship in respect of the construction work was not as per the agreement. Under the letter in Annexure-D, the petitioner was

intimated that in spite of repeated requests and reminders, it has failed to complete the contract work within the stipulated period and subsequently, time for completion was extended upto 31.12.2000. According to the opp. party-company, the petitioner abandoned the contract work and also failed to rectify the defects and deficiencies pointed out to it during the course of execution of the work. It further appears that in reply to the Advocate's notice issued by the petitioner, the opp. party-company denying the said liability to pay the amount, issued a letter which has been annexed as Annexure-F to the counter, inter alia, stating that for the negligent act and deficiency of the petitioner, the opp. party-company had to incur expenses amounting to more than Rs. 15.00 lakhs which would be payable by the petitioner to the opp. party-company. Subsequent to the said letter, the opp. party-company by a further letter dated 20.12.2002 (Annexure-G) furnished a statement of demand to the petitioner giving therein the details of the expenses incurred by it to repair and rectify the defects and also the payments made towards the liability to workmen/suppliers/contractors which was left unpaid by the petitioner.

4. In course of hearing, Learned Counsel for the petitioner relying upon the agreement between the parties and various bills submitted to the opp. party-company contended that the claim of the petitioner being a bona fide one and the opp. party-company having not paid the dues of the petitioner, the said company is liable to be wound up.

5. Mr. S. C. Parija, Learned Counsel for the opp. party-company, per contra, submitted that the dispute raised by the opp. party-company being a bona fide dispute and the defence being a substantial one, the Court should not pass any order for winding up of the company. He further submitted that winding up of the opp. party-company would not only be in the public interest but if made, would be against the interest of the workers employed by the said company, the same being a running company.

6. Section 433(e) and relevant portion of Section 434 of the Act are quoted hereunder:

433. Circumstances in which company may be wound up by Tribunal: A company may be wound up by the Tribunal:

(a) to (d) *** **

(e) if the company is unable to pay its debts; (f) to (i) *** **

434. Company when deemed unable to pay its debts: (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 (one lakh 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.

(b) & (c) *** **

(2) The demand referred to in Clause (a) of Subsection (1) 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 it is signed by any such agent or legal adviser or by any member of the firm.

7. Mr. Parija, Learned Counsel for the opp. party-company relied upon the decision in the case of Madhusudan Gordhandas & Co. v. Madhu Woolen Industries Private Ltd. : [1972]2SCR201 and the decision in the case of Sika Qualcrete Ltd. v. The Orissa Bridge Construction Corporation Ltd. and Anr. 2005 (Supp.) OLR 412 in support of his contention that the opp. party-company has raised a bona fide dispute and its defence is a substantial one. He submitted that in view of the above position of law, the prayer for winding up of the opp. party-company should be rejected.

8. The Supreme Court in the case of Madhusudan Gordhandas & Co. (supra) has categorically held as follows:

20. Two rules are well settled. First, if the debt is bona fide disputed and the defence is a substantial one, the Court will not wind up the company. The Court has dismissed a petition for winding up where the creditor claimed a sum for goods sold to the company and the company contended that no price had been agreed upon and the sum demanded by the creditor was unreasonable. [See London and Paris Banking Corporation (1874) 19 Eq 444]. Again, a petition for winding up by a creditor who claimed payment of an agreed sum for work done for the company when the company contended that the work had not been properly was not allowed. [See Re. Brighton Club and Norfolk Hotel Co. Ltd. (1865) 35 Beav. 204].

The ratio of the aforesaid decision in the case of Madhusudan Gordhandas & Co. (supra) was followed in the case of Sika Qualcrete Ltd. (supra).

9. Facts of the present further reveal that even prior to issuance of the registered notice by the petitioner in compliance to Subsection (1) of Section 434 of the Act, the opp. party-company in various letters referred to above disputed the claim of the petitioner and demanded payment of an amount of more than Rs. 15.00 lakhs from the petitioner which can be taken to be a cross claim. Even on receiving the advocate's notice from the petitioner, the said demand was reiterated by the opp. party-company in its reply given to the said notice of the petitioner.

10. In view of the above facts as revealed from the record, an order of winding up of the opp. party-company would be a dichotomy to the settled position of law.

11. For the aforesaid reasons, I am not inclined to allow the prayer of the petitioner and pass an order for winding up of the opp. party-company.

12. The COPET is, therefore, dismissed.