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Parveen Industries Vs. Lloyd Electric and Engineering Limited

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Court : Rajasthan

Decided On : Mar-22-2005

Reported in : IV(2005)BC265

Judge : S.K. Keshote, J.

Acts : Companies Act, 1956 - Sections 433 and 434

Appeal No. : S.B. Company Petition No. 10 of 2004

Appellant : Parveen Industries

Respondent : Lloyd Electric and Engineering Limited

Advocate for Def. : S. Kasliwal, Adv.

Advocate for Pet/Ap. : Rajeev Surana, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Keshote, J.

1. This is the petition under Sections 433 and 434 of the Companies Act, 1956 (for short, 'the Act, 1956') by the petitioner M/s. Parveen Industries, a partnership firm having its registered office at 26, I.D.C. Mehrauli Road, Gurgaon, Haryana, for winding up of the respondent Company M/s. Lloyd Electric and Engineering

Limited, a Company incorporated under the Act, 1956, having its Registered Office at A 146 (B and C) RIICO Industrial Area, Bhiwadi, Rajasthan.

2. The case of the petitioner is that the respondent Company is indebted to it of a sum of Rs. 5,21,754.49 p. towards the principal amount since June, 2003 along with the interest at the rate of 18% per annum from June, 2003 on the said principal amount, pursuant to the alleged purchase order No. BWD/2K1/54 dated 22.12.2001. The respondent Company is alleged to have placed an order for supply of goods of description as given out in para No. 7 of the petition. It is stated that pursuant to the aforesaid purchase order the petitioner supplied to the respondent Company the Weight Rubber Parts as per the specification mentioned by it. This supply is stated to have been made from time-to-time covering the period from 5th of April to 25th of April, 2003 for a sum of Rs. 70,031.52 p.

3. The grievance of the petitioner is that the respondent Company, in spite of the goods delivered thereto, has failed and neglected to make the payment. It is alleged that the respondent Company without any good cause either in the contract or in law withheld the payment of the amount of the petitioner. The petitioner alleged to have made several oral as well as written requests to the respondent Company for payment of the amount due but it is evading the payment thereof. The petitioner sent a letter dated 4th of August, 2003 to the respondent Company. The petitioner sent another letter dated 11th of August, 2003 to the respondent which was followed by another letter dated 13th of September, 2003 and thereafter the notice under Section 433 of the Act, 1956 (Annexure-8).

4. Reply to the notice has been given by the respondent Company.

5. The petitioner in para No. 12 of the petition admitted that the respondent Company has raised a dispute that the goods supplied to it are not according to its specification. The dispute appears to have been raised before 11th of August, 2003. In reply to the statutory notice sent by the petitioner, the respondent Company has raised a categorical dispute. Thus, the question is whether the dispute raised by the petitioner is bona fide or not, Prom the contents of the reply to the notice I am satisfied that the dispute raised by the respondent is bona fide one, Much emphasis has been led by the learned Counsel for the petitioner on

some reports of laboratories but that are not of much help at the stage to the petitioner as the some have seriously been disputed.

6. It is a developing tendency amongst the litigants of this category to treat this winding up jurisdiction of the Court as if it is a forum for recovery of the disputed amounts. Under the threat of the winding up of the company, attempts are made to recover the amount in dispute. The respondent Company appears to have a running unit and in case winding up order is passed, it may adversely affect to large number of its employees. On the otherside, the petitioner is not going to suffer any way. In case what it is stated is correct, the petitioner has effective remedy of civil suit for recovery of the amount. The winding up petition against the company having running Unit has been filed and it appears to be a motivated one so as to recover the dues at the threat of winding up thereof and that too without paying Court fees. This conduct of the petitioner is very irrelevant. It is not gainsaying that the petitioner will not be rendered remediless in case the winding up petition is not entertained.

7. As a result of the aforesaid discussion the winding up petition fails and the same is dismissed.

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