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Vsl India Private Limited Represented by Its Authorised Signatory P. Sundar Vs. V. Manickam Engineers (P) Ltd.

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Court : Chennai

Decided On : Jan-27-2010

Judge : M. Chockalilngam and; T. Raja, JJ.

Acts : Companies Act - Section 434

Appeal No. : OSA No. 26 of 2010

Appellant : Vsl India Private Limited Represented by Its Authorised Signatory P. Sundar

Respondent : V. Manickam Engineers (P) Ltd.

Advocate for Def. : V. Ayyadurai, Adv.

Advocate for Pet/Ap. : S. Satish, Adv.

Disposition : Appeal dismissed

Judgement :

M. Chockalilngam, J.

1. This intracourt appeal challenges an order of the learned Single Judge of this Court dismissing a petition for winding up of the respondent company in C.P. No.

78 of 2009.

2. The Court heard the learned Counsel for the appellant and also for the respondent.

3. The case of the appellant before the Company Court and equally here also is that the appellant was entrusted with the work by the respondent; that the same was accordingly done; that notices were sent calling for the balance amounts; that the earliest notice was sent on 31.1.2006; that thereafter, though part payments were made, the balance amounts were not settled; that under such circumstances, a notice was issued under Section 434 of the Companies Act which brought forth a reply; that the appellant approached the Company Court since the admitted liability was not met, and hence the circumstances warrant for winding up of the respondent company.

4. The petition was resisted by the respondent stating that the liability was neither settled nor payable; that there was a detailed reply wherein all the reasons were mentioned which would clearly indicate that no notice under Section 434 of the Companies Act could be given; that under the circumstances, the appellant's claim was not at all sustainable, and hence the petition was to be dismissed.

5. The learned Single Judge of the Company Court after hearing the submissions made, took the view that the petition for winding up did not carry any merit whatsoever and hence dismissed the same. Under the circumstances, this appeal has arisen before this Court.

6. Advancing arguments on behalf of the appellant, the learned Counsel would submit that the work was undertaken by the appellant as entrusted by the respondent which was an admitted fact; that a notice was issued at the earliest wherein the balance of Rs. 13,05,002/- was actually mentioned; that out of the same, two payments were made on 7.12.2004 and 21.7.2005 namely Rs. 1 lakh and Rs. 5 lakhs respectively; that the remaining balance was actually payable; that a notice was actually given by the appellant seeking for the balance amount, and the same was replied that it would be settled; that apart from that, there was a request on the side of the respondent to return the bank guarantee for a sum of

Rs. 10 lakhs; that the same was also returned; but, the balance was not settled; that under such circumstances, there arose a necessity for issuing a notice under Section 434 of the Companies Act calling for the admitted balance which was not paid; that it was a case where it would clearly indicate that the respondent company was not solvent; that under such circumstances, it was a fit case for ordering winding up; but the learned Single Judge has taken an erroneous view, and under the circumstances, the order of the learned Single Judge has got to be set aside and an order of winding up be issued.

7. The learned Counsel appearing for the respondent made his earnest attempt of and put forth the reasons for sustaining the order of the Company Court.

8. The Court paid its anxious consideration on the submissions made and looked into the available materials.

9. It is not in controversy that the respondent entrusted some work with the appellant, and the same was also done. The learned Counsel for the appellant though repeatedly put forth his submission as if there was an admitted liability, this Court is unable to notice anywhere the admission made by the respondent, but it is found to be contrary. On the first instance, when a communication was made indicating the balance, there was a reply which reads as follows:

We take this opportunity to thank you for the good work done by you in this project. The balance amount due to you will be worked out and communicated.

Hence it would be quite clear that there was an indication made by the respondent that though the balance was to be made, it was to be worked out and communicated. The same would clearly indicate further that it was an unascertained sum, and at no stretch of imagination, it could be taken as an admitted balance. Nowhere in any one of the communications subsequently followed, at any point of time the respondent has admitted the balance. That apart, a notice was given under Section 434 of the Companies Act, for the first time. The same was given stating 'without prejudice'. There was a reply given by the respondent stating that not only the liability was disputed, but also it was time barred. In the absence of unascertained liability which was to be worked out by the

parties and also in view of the adding circumstance that there was no admission made by the respondent anywhere in any one of the communications, no question of winding up of the respondent company would arise. It is repeatedly held in catena of decisions by the Apex Court and this Court that the winding up process cannot be taken as a device for recovery of money as regards the transactions between the parties. Merely because there was a notice under Section 434 of the Companies Act, it would not lead to an order of winding up to be made.

10. For the reasons stated above, this Court is of the view that the learned Single Judge was perfectly correct in dismissing the petition. It is also further made clear while dismissing the petition for winding up that it is open to the appellant to work out his remedies if advised so and if allowed in law. Accordingly, this original side appeal is dismissed confirming the order of the learned Single Judge. The parties are directed to bear their own costs.

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