

In Re: Jaya Computers and Software Ltd.

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Court : Kolkata

Decided On : Jun-29-2004

Reported in : [2005]57SCL244(Cal)

Judge : Ashim Kumar Banerjee, J.

Acts : [Companies Act, 1956](#) - Sections 433, 434 and 439

Appeal No. : Company Petition No. 55 of 2004

Appellant : In Re: Jaya Computers and Software Ltd.

Judgement :

Ashim Kumar Banerjee, J.

1. One Ranjan Goenka of the company above named and one Amarjot Singh Lamba, the petitioner No. 2 were close friends. The parties have entered into a memorandum of understanding on February 13, 2001 to the effect that the petitioners would supply software device to the company and the company in turn will pay a sum of Rs. 25 lakhs in cash and Rs. 25 lakhs by way of allotment of shares in the company above named. According to the petitioner a sum of Rs. 2.74 lakhs was paid in a phased manner leaving a balance sum of Rs. 22.26 lakhs. According to the petitioner, the shares have not been allotted. The first statutory notice of demand was issued on August 6, 2002. The same was replied to by the company through its advocate-on-record on August 28, 2002 wherein the

company for the first time raised various disputes with regard to the working of the arrangement as stipulated in the memorandum of understanding. According to the company, the software was not complete and there had been breaches on the part of the petitioners in working out the memorandum of understanding. A further statutory notice of demand was given on October 8, 2003 which was also replied to by the advocate for the company in the identical manner. The third statutory notice of demand dated December 18, 2003 has also been replied to.

2. Mr. A. Mitra, learned advocate appearing for the petitioner submits that the company - in accordance with the memorandum of understanding was obliged to make payment of the balance sum of Rs. 22.26 lakhs which they defaulted. Hence, the petitioners are entitled to have an order of admission. Although the petitioning creditors made a claim on account of share value being Rs. 25 lakhs, Mr. Mitra in his usual fairness does not seriously insist on the said claim and prays for leave to take appropriate steps, in that regard.

3. Mr. M.C. Ghosh, learned advocate appearing for the company submits that when the agreement stipulated for payment of Rs. 25 lakhs as instalment the company accepted meagre amounts of Rs. 10,000 to Rs. 15,000 as instalments. The said fact would suggest that the petitioners knew of their shortcomings. According to Mr. Ghosh, the software was never complete. When the petitioner No. 2 went abroad and his wife was entrusted with the job but she also went abroad. According to Mr. Ghosh, whatever earnings the company had out of the said incomplete software, they made payments to the petitioners. According to him a sum of Rs. 5 lakhs has been paid. Since the said software did not fetch any further amount from the market because of the indifferent attitude taken by the petitioners, it was not possible for the company to make payment of the balance sum. According to him, the said software is of no use as of date and the petitioners are free to take it back after reimbursing the loss and damage suffered by the company.

4. Software device is a highly precision product and the parties keeping their eyes wide open entered into an agreement. The company agreed to pay a sum of Rs. 50 lakhs as value thereof. The company also agreed to pay Rs. 25 lakhs in cash

and Rs. 25 lakhs by way of allotment of shares. In case there had been breaches on the part of the petitioners the company could assert their right under the agreement. They could have asked the petitioners to perform their part of the job under the agreement. The company did not do so. It is true that the petitioners for the first time demanded the sum by advocate's letter and the company for the first time reacted to the same by raising various disputes.

5. However, since from the submissions of the learned counsel appearing for the company it appears that the company is not in a position to make payment of the aforesaid sum, no fruitful purpose would be served by keeping the existence of this company alive. In my view, the petitioners have been able to establish a prima facie case warranting admission of this winding up petition.

6. The winding up petition is thus admitted. There would be an advertisement once in 'Bartaman' and once in 'The Statesman'. Publication in the Calcutta Gazette is dispensed with. The winding up petition is made returnable on August 16, 2004.

7. The petitioners are, however, directed not to publish advertisement for a period of two weeks from date.

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