IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Original Jurisdiction)

TUESDY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND THIRTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

COMPANY PETITION No.215 of 2013

Between

Dr. M. Sanjeeva Rao.

...PETITIONER

AND

M/s. Leo Meridian Infrastructure Projects & Hotels Ltd, Hyderabad.

...RESPONDENT

Counsel for the Petitioner: MR. SAMA SANDEEP REDDY

Counsel for the Respondent: MR. SRINIVASA RAO BODDULURI

The Court made the following:
ORDER:

This company petition is filed under Section 433(e) of the Companies Act, 1956 (for short 'the Act') seeking winding up of the respondent company.

2. The allegations in the company petition are that the petitioner is a former employee of the respondent company. It is stated that the petitioner had previously worked with Nagarjuna Construction Company as Joint General Manager – Human Resources and was drawing a salary of Rs.16 Lakhs per annum. It is further stated that on 03.05.2010, he was interviewed

by the Managing Director of the respondent company and was selected for the post of Vice President-Human Resources and that on mutual negotiations, the respondent company agreed to pay a salary of Rs.9,50,000/- per annum divided into 12 monthly installments of Rs.79,167/- and Rs.8 Lakhs per annum as Cost-to-Company (CTC) divided into four quarterly installments of Rs.2 Lakhs each. A Letter, Annexure-P3, dated 09.06.2010 is stated to have been issued to the petitioner by the CMD of the respondent company confirming that besides regular salary, petitioner would be paid Rs.8 Lakhs CTC per annum, as above. Annexure P4, dated 10.06.2010, is the order of appointment containing the terms and conditions wherein it is mentioned that the petitioner will be paid monthly gross salary of Rs.79,167/- subject to statutory deductions as per law.

3. Petitioner states that he, accordingly, joined the respondent company and worked in the said post from 10.06.2011. Petitioner claims that on account of his hard work and responsibility discharged towards Integrated Management Systems, he was given a further position as Management Representative for Implementation and Certification Process of internal management systems under letter of the respondent company dated 01.09.2010. While the petitioner claims that he received the monthly gross salary, the CTC promised to him was not paid by the respondent company and it is stated that on account of the petitioner's work three ISO certificates were awarded to the respondent company. But since the CTC was not paid, the petitioner resigned under Annexure-P9 dated 16.06.2011, citing health grounds and requested settlements of accounts. The said letter was followed by petitioner's further letter dated 08.10.2011, Annexure –P10, stating that the petitioner was relieved from service on 24.06.2011 and requested for settlement of salary and settlement of accounts.

4. It is further alleged that since there was no response from the respondent company, petitioner sent a legal notice under Section 434 of the Act, Annexure-P11, dated 17.12.2011 specifically alleging that CTC having

remained unpaid, the respondent company has not responded to any of the demands and hence, the entire amount with interest at 24% per annum was demanded. The said notice was replied to by the respondent company under reply notice, Annexure-P12, dated 09.01.2012 denying that any additional remuneration than the gross salary was ever agreed to be paid to the petitioner.

The respondent company, therefore, denied that any CTC of Rs.8 Lakhs or any amount towards petrol charges is payable and that since the petitioner was paid till he worked i.e. 24.06.2011, no amount is said to be due and payable. In view of the said reply, this company petition is filed.

5. The respondent filed a counter reiterating that the respondent company never agreed to pay Rs.8 Lakhs towards CTC and their letter dated 09.06.2010, Annexure-P3, is stated to be fabricated, taking advantage of the role of the petitioner in the Human Resource Department. The respondent company also denied that there is any default in payment of salary due to the petitioner and asserted that no additional CTC or emoluments were promised to the petitioner. It was also stated in para 14 of the counter that the allegation that the respondent company was unable to pay debts was incorrect and in fact, the respondent is a growing concern and hence, winding up petition was opposed.

6. Petitioner filed a reply reiterating that he was getting Rs.16,88,000/- per annum in Nagarjuna Construction Company where he was earlier working before joining the respondent company.

The documents in support of the same was filed as Annexure-P13 and it was contended that it was incomprehensible that petitioner would work in the respondent company at half the salary than what he was getting from the previous employer.

7. This company petition has been heard at the stage of admission with the consent of both the learned counsel.

8. Learned counsel for the petitioner placed strong reliance upon the circumstance that the petitioner was getting more than
Rs.16 Lakhs in the previous employment and in normal course, would never have agreed to join the respondent company at only Rs.9,50,000/- per annum. The other circumstance relied upon by the learned counsel is the letter Annexure-P3 dated 09.06.2010 signed by the CMD under his rubber stamp wherein the CTC was promised to the petitioner to the tune of Rs.8 Lakhs. Learned counsel, therefore, submits that though in the appointment order Annexure-P4 dated 10.06.2010 gross monthly salary of Rs.79,167/- is mentioned,
the same is explained on the ground that other persons in the management need not know the actual amount receivable by the petitioner, as per the desire of the management of the respondent company. Learned counsel, therefore, submits that this properly explains non-mentioning of Rs.8 Lakhs CTC in the order of appointment and the said claim of the petitioner is supported by Annexure-P3.

9. Learned counsel also submits on the basis of the decision of the Supreme Court in **IBA HEALTH (I) PVT. LTD. v. INFO-DRIVE SYSTEMS SDN. BHD.**[1] (paras 21 and 22) that once the liability to pay is established, *prima facie*, the financial position of the company does not stand alone as a defence in a winding up petition. A decision of this Court in **P.L. SHIPPING & LOGISTICS PRIVATE LTD. v. A.GA. PUBLICATION LTD.**[2] which followed the aforesaid decision of the Supreme Court, is relied upon, particularly, paras 32 and 33 thereof. Another decision of this Court in **B.S. DEMOGRAY v. VIF AIRWAYS LTD.**[3] is relied upon in support of the proposition that an employee, whose dues are not settled by the company, would also stand in the shoes of a creditor and would be entitled to present and prosecute a petition for winding up under Section 433(e) of the Act as

debt includes a claim of the employee against the employer. A Division Bench judgment of this Court in **M. SURYANARAYANA v. STILES INDIA LIMITED**[4] is also relied upon to substantiate that salary dues recoverable from the respondent company is a debt for which a petition for winding up is maintainable.

10. Respondent counsel, on the other hand, submits that a demand for CTC of Rs.8 Lakhs made by the petitioner is clearly an after thought inasmuch as the letter of resignation, Annexure-P9, did not make any such claim. The second letter, Annexure-P10, dated 08.10.2011 also does not specifically refer to the CTC of Rs.8 Lakhs and as such, for the first time, in the legal notice, Annexure-P11, dated 17.12.2011 when the petitioner made such a claim, the same was emphatically denied in the reply notice, Annexure-P12 dated 09.01.2012. Learned counsel, therefore, submits that the very basis of the claim of the petitioner having not established, it cannot be said that the petitioner is a debtor so far as the respondent company is concerned. Consequently, the presentation and prosecution of this winding up petition is only pressure tactics adopted by the petitioner. Reliance is also placed upon by the learned counsel on a decision of the Supreme Court in **MEDIQUIP SYSTEMS (P) LTD. v. PROXIMA MEDICAL SYSTEM GMBH**[5] for the proposition that for exercising discretion under Section 433(e) of the Act, the petitioner must establish that there is a debt due and that the company is unable to pay the same and that the machinery for winding up will not allowed to be used merely as a means for realizing the debts due from the company though the debt is bonafide disputed and the defence is substantial.

11. In the facts and circumstances of the case, therefore, it has to be considered whether the petitioner has, *prima facie*, established the debt and if so, whether the said debt is disputed bonafide by the respondent company.

12. The petitioner's employment with the respondent company commences with the letter of appointment, Annexure-P4, dated 10.06.2010, which contains various terms and conditions including the remuneration payable to the petitioner, which is Rs.79,167/- monthly gross salary. There is no controversy with regard to the payment of the said amount and no debt is claimed with regard to the said remuneration. Petitioner's claim for CTC of Rs.8 Lakhs, however, arises with reference to letter, allegedly, issued by the CMD on 09.06.2010, Annexure-P3, which is a day earlier to the letter of appointment issued to the petitioner. There is no material to substantiate the said claim of the petitioner on the basis of Annexure-P3 and the letter of resignation of the petitioner, Annexure-P9, dated 16.06.2011 does not refer to any pending claim except generally requesting for settlement of account. Thereafter, there is no correspondence between the parties for over two months till the petitioner sent further letter, Annexure-P10, dated 08.10.2011 wherein also there is a general reference in para 11 of the letter but no specific claim for CTC of Rs.8 Lakhs and assuming that the petitioner made a claim for the said CTC under Annexure-P10 dated 08.10.2011, that would be almost four months after his relief from the respondent company as per his resignation letter dated 16.06.2011. Thus, the petitioner having worked with the respondent company from 10.06.2010 up to 24.06.2011 i.e. over a year's time, there is no correspondence where he demanded disbursement of said CTC in quarterly installments of Rs.2 Lakhs each, as alleged in the petition.

13. On the facts and examining the averments in the company petition from the point of view of, *prima facie*, establishment of debt required for the purpose of maintaining this winding up petition,
I am unable to find any material in support of the petition.

14. Though an employee's unpaid salary falls within the definition of debt, on the basis of material produced by the petitioner, I am unable to find any material to substantiate the petitioner's claim with respect to the said CTC of

Rs.8 Lakhs. The ratio of the decision of the Supreme Court in **IBA HEALTH (I) PVT. LTD.'s** case (1supra) would not assist the petitioner inasmuch as existence of a debt itself is not established to the satisfaction of the Court. Moreover, a specific claim made by the petitioner in that respect in the statutory notice under Section 434 of the Act in Annexure-P11 was denied by the respondent company in their reply notice dated 09.01.2012. Though the claim of the petitioner is squarely based upon the letter of CMD dated 09.06.2010, Annexure-P3, since the said letter is seriously disputed by the respondent,

it cannot be taken into consideration for the purpose of arriving at a conclusion of a debt in favour of the petitioner.

15. Learned counsel for the respondent, during the hearing, also filed annual report of the respondent company, which contains balance sheet as on 31.03.2013. The current and non-current assets therein show substantial assets of about Rs.11,902,987,698/- and the profit after tax is shown to be Rs.72,54,95,862/-.

16. Keeping in view the financial position of the respondent company, it would be highly unjust to direct winding up of the respondent company when the petitioner has, *prima facie*, failed to establish the debt claimed.

` The company petition is accordingly dismissed at the stage of admission. However, petitioner is at liberty to approach the competent civil Court and establish the debt, as claimed by him. It is also made clear that the observations made hereinabove are only for the purpose of and from the stand point of considering the maintainability of the company petition under Section 433(e) of the Act and the civil Court shall not be influenced by any of the said observations while entertaining the petition, if any, filed by the petitioner. As a sequel, the miscellaneous applications, if any, shall stand disposed of as infructuous. However, there shall be no order as to costs.

VILAS V. AFZULPURKAR, J

December 31, 2013
DSK

[1] (2010) 10 SCC 553

[2] (2012) 173 CompCas 55 (AP)

[3] (1998) 94 CompCas 291 (AP)

[4] (2003) 116 CompCas 448 (AP)

[5] (2005) 7 SCC 42