

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+ COMPANY PETITION No.272 of 2014

%23.06.2015

M/s. Reliance Capital Ltd., Mumbai

...Petitioner

Vs.

\$ Vijay Mining & Infra Corp Private Limited, Kadapa

...Respondent

! Counsel for the petitioner: Mr.S.Avinash Reddy
for Mr.N.Harinath

Counsel for the respondent: Mr.D.Narendra Naik

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? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
COMPANY PETITION No.272 of 2014

-
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Between:

M/s. Reliance Capital Ltd., Mumbai

...Petitioner

And

Vijay Mining & Infra Corp Private Limited, Kadapa

...Respondent

Counsel for the petitioner: Mr.S.Avinash Reddy
for Mr.N.Harinath

Counsel for the respondent: Mr.D.Narendra Naik

The Court made the following:

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ORDER:

This company petition is filed under Sections 433(e), 434 (1) (a) and 439(1)(b) of the Companies Act, 1956 (for short 'the Act') for an order to wind up the respondent company for non-payment of the debt allegedly due to the petitioner.

I have heard Mr.S.Avinash Reddy, learned counsel representing Mr.N.Harinath, learned counsel for the petitioner and Mr.D.Narendra Naik, learned counsel for the respondent.

The necessity of referring to the facts in detail is obviated for the reason that this Court finds force in the objection raised by the learned counsel for the respondent on the maintainability of the company petition under the aforementioned provisions.

It is the pleaded case of the petitioner that the respondent failed to pay the debt due to it and therefore, the former is liable for non-payment of the debt.

Section 433 (e) of the Act reads as under:

“433. A company may be wound up by the Court –

(a)...

(b)...

(c)...

(d)...

(e) if the company is unable to pay its debts;”

Section 434(1)(a) of the Act reads as under:

“434 (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 five hundred 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 be reasonable satisfaction of the creditor;”

The learned counsel for the respondent submitted that the statutory notice was served on the respondent at its administrative office address instead of at its registered office address, which is shown in the company petition. The learned counsel for the petitioner does not dispute this fact. He has, however, sought to justify service of statutory notice on the address of the respondent’s administrative office on the ground that in the agreement, dated 21.11.2011, the same address was mentioned by the respondent. As rightly submitted by the learned counsel for the respondent, a winding up petition under Section 433(e) of the Act read with Section 434 (1) (a) of the Act can be maintained only if the two requirements of the latter provision are satisfied, viz., (1) service of statutory notice on the respondent company at its registered office address and (2) non-payment of the alleged debt by the respondent at least for a period of 21 days after receipt of such notice. In view of the admitted fact that no such notice on the registered office address of the respondent has been served, the petitioner failed to satisfy the provisions of Section 434 (1)(a) of the Act. The company petition is, therefore, liable to be dismissed without dealing with the merits of the contentions raised by both the parties.

The Company Petition is accordingly dismissed, however, with liberty to the petitioner to serve a notice on the registered office address of the respondent company and file a fresh company petition, if the respondent fails to pay the debt claimed by it, as required under Section 434 (1) (a) of the Act.

As a sequel to dismissal of the Company Petition, Comp.A.Nos.1550, 1551 and 1552 of 2014 shall stand dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

23rd June, 2015

Note: L.R. copies to be marked.

(B/o)

GHN