

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

COMPANY PETITION NO.52 OF 2015

DATED:27-7-2015

Between:

M/s. Reliance Modern Constructions
A Partnership Firm having its registered office at
G-12, Emerald Block, Amrutha Hills,
Punjagutta, Hyderabad
Telangana
Rep. by its Partner K. Jaya Vamshi Ganesh
... Petitioner

And

M/s. JRS Sofaworld Private Limited
A company incorporated under the
Companies Act, 1956 and having its
Registered office at 16-2-705/8/9/A-Z
Peace Campus
Malakpet, Akbar Bagh, Ward-16
Hyderabad, Telangana
... Respondent

... Respondents

COUNSEL FOR THE PETITIONER: Mr. D. Narendar Naik

COUNSEL FOR THE RESPONDENT: Mr. A.V.L.S. Prakash

THE COURT MADE THE FOLLOWING:

ORDER:

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This company petition is filed for an order of winding up of the respondent for non-payment of the debt due to the petitioner.

The necessity to record the detailed facts is obviated in view of the Award passed by the Lok Adalat on 16.12.2013 based on the following terms of compromise.

1. *"There is no claim or dues from M/s. JRS Sofa World Pvt. Ltd., or its Managing Director Dr. M.G. Jeelani or its Directors or its staff members as on date.*
2. *We have refunded the interest free deposits to Dr. MG. Jeelani Managing Director and he has acknowledged the same on 16.12.2013.*
3. *We have mutually compromised on the pending court cases viz. OS 308/2009 & OS 309/2009.*
4. *We have also withdrawn all the criminal cases vide FIR No.457/2012; 581/2013.*
5. *The owners will not give any negative report intentionally to hamper the insurance claim of the tenant.*
6. *There is no ill-will as on date and this no dues certificate-cum-possession letter is signed and issued with free will and not under any influence.*
7. *Parking areas belonging to the owners M/s Reliance Modern Construction and Mrs. Suman Potuluru & Others in the cellar & stilt will be handed over on or before 28.2.2014."*

The whole premise on which the present company petition is filed is that the respondent has violated term No.7 supra by failing to handover possession of the cellar and stilt and that it had to be evicted by the Greater Hyderabad Municipal Corporation based on an order passed by this Court subsequent to the passing of the Lok Adalat Award in a writ petition. In other words, the petitioner claims that the liability of the respondent to pay rents arose on account of its not handing over the cellar and stilt portions of the demised premises as per the Lok Adalat Award, on 28.2.2014. In my opinion, the

consequences flowing on account of the alleged breach of term No.7 of the terms of the compromise cannot be adjudicated in the company petition filed under Section 433 read with Section 434 of the Companies Act, 1956. The petitioner needs not only to prove that the respondent has violated the terms of the compromise, but also establish with evidence the damage, if any, suffered by it on account of non-vacation of the premises by the respondent. Such an adjudication is possible only in a common law remedy, namely, a civil suit by the competent Civil Court. Unless the liability of the respondent is adjudicated, it cannot be said that it is indebted to the petitioner and liable for being wound up.

On the above premises, the company petition is dismissed, however, without prejudice to the right of the petitioner to approach the competent Civil Court to claim damages for the alleged illegal use and occupation of the premises by the respondent beyond 28.2.2014.

As a sequel to dismissal of the company petition, company application Nos.460 and 461 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

27-7-2015

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