

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

ORIGINAL SIDE APPEAL No.25 of 2015

Between:

E.S.R.V.Satyanarayana,

S/o K.Kali Prasad & 39 others.

... Appellants/Petitioners

And

M/s Ampro Industries Private Limited,
rep. by its Managing Director Sri M.Janardhana Rao,

Plot No.36, Paiga Colony, S.P.Road,

Secunderabad.

... Respondent/Respondent

DATE OF JUDGMENT PRONOUNCED: 12.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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| 1 | Whether Reporters of Local newspapers may | Yes/No |
| | be allowed to see the Judgments? | |
| 2 | Whether the copies of judgment may be | Yes/No |
| | marked to Law Reports/Journals | |
| 3 | Whether Their Ladyship/Lordship wish to | Yes/No |
| | see the fair copy of the Judgment? | |

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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And

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THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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ORIGINAL SIDE APPEAL No.25 of 2015

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JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent Act, is preferred against the order passed by the learned Single Judge in C.P.No.121 of 2006 dated 02.06.2014. The appellants herein are the petitioners in the Company Petition. They filed C.P.No.121 of 2006 seeking winding up of the respondent-company on the ground that it was unable to pay the debt due to the petitioners to a tune of Rs.1,18,19,976/-. The petitioners' claim for winding up was based on an order passed by the Additional Labour Court, in M.P.No.26 of 1997, i.e. an application filed under

Section 33-C (2) of the Industrial Disputes Act, 1947 claiming salary for the period from 01.12.1996 upto 31.08.1997 and, thereafter, till the date of closure; and closure compensation, gratuity and unpaid bonus. On the ground that these amounts were not paid, the petitioners issued a notice and, on the failure of the respondent to pay the amount, they invoked the jurisdiction of this Court seeking winding up of the respondent-company.

In view of the serious disputes between the parties, an order was passed on 30.07.2008 appointing a retired Judge of this Court to act as an Arbitrator. The relevant portion of the order of this Court, in C.P.No.121 of 2006 dated 30.07.2008, reads thus:-

“.....Under Section 10-A of the Industrial Disputes Act, any dispute existing or apprehended between the employer and the workmen, if both sides agree, can be resolved through the mechanism of arbitration. I consider it appropriate that the area of dispute in this particular case between the employer and the workmen is liable to be resolved through the mechanism of arbitration so that the terms, scope and width of the settlement dated 28.11.1998 can be understood and accordingly claims can be worked out for their admissibility or otherwise. Perhaps, it might even need collecting of evidence. Therefore, it is appropriate that the disputes raised in C.P.No.121 of 2006 be resolved through the process of arbitration. Depending upon the result of the arbitration proceedings, appropriate final orders can be passed in the present company petition. To provide an opportunity to both sides to lead appropriate evidence and place such material before the arbitrator so that the entire matter can be traversed and resolved, I appoint Hon'ble Sri Justice N.Sanjeeva Reddy, a retired Judge of this Court as Arbitrator. Both parties are advised to file a set of pleadings filed in C.P.No.121 of 2006 and such other material as is relevant and appropriate before the learned Arbitrator within a period of one month from today. The learned Arbitrator may thereafter appropriately regulate the procedure of conducting the proceedings and finalise the award and make it available to this Court within a period of four months thereafter.

The Registry to communicate a copy of this order directly to Hon'ble Sri Justice N.Sanjeeva Reddy, a retired Judge of this Court. The respondent is directed to pay a sum of Rs.One lakh as fee payable to the learned Arbitrator, the payment of the fee to the arbitrator would appropriately be dealt with when C.P.No.121 of 2006 is taken up by this Court later on.....”.

The learned Arbitrator passed an award. Aggrieved thereby the respondent filed a petition, under Section 34 of the Arbitration and Conciliation Act, 1996, before the II Additional Chief Judge, City Civil Court, Hyderabad to set aside the award passed by the learned Arbitrator. On the ground that a copy of the award was required to be made available to the Company Court, and on the premise that the validity of the arbitral award would be decided in the proceedings for winding up, the appellants herein filed their objections to the award before the learned Company Judge.

In the order under appeal, the learned Company Judge held that there was a *bona fide* and legitimate dispute regarding the debt allegedly due; the Company Court, following summary procedure, would not normally investigate all the facts at controversy in detail; the threat of winding up of the company cannot be used for leveraging for a higher amount than what is otherwise legitimately due; since there are disputes of complicated nature, existing between the parties, it would only be appropriate that the parties must be relegated to the ordinary process of the Civil Court for securing satisfactory resolution of all such disputes; this was not a case where winding up of the respondent-company should be ordered; on the other hand, liberty should be given to the parties to work out their remedies in accordance with law; he did not pronounce any opinion on the merits of the award in as much as an application had been filed there against; and all payments made by the respondent-company, pursuant to the award, would abide by the result in any such proceedings, and/or any other proceedings which the petitioners may raise in respect of their claims.

The learned Company Judge dismissed the Company Petition following the judgment of the Supreme Court in **IBA Health (I) Private Limited v. Info-Drive Systems Sdn. Bhd.** In **IBA Health (I) Private Limited**¹ the Supreme Court followed its earlier judgment, in **Amalgamated Commercial Traders Private Limited v. A.C.K. Krishnaswami and another**, to hold that a winding up petition was not a legitimate means of seeking to enforce payment of the debt which is *bona fide* disputed by the company; a petition presented ostensibly for a winding up order, but really to exercise pressure would be dismissed; if the debt is *bona fide* disputed, there cannot be “neglect to pay” within the meaning of Section 434 (i) (a) of the Companies Act; and if there is no neglect, the deeming provision does not come into play, and the winding up, on the ground that the company is unable to pay its debts, is not substantiated.

Sri B.G.Ravinder Reddy, learned counsel for the appellants, would submit that the learned Company Judge, having directed that the award passed by the learned Arbitrator should be made available to the Court, ought to have entertained the objections filed by the appellants and examined the validity of the award; the

direction issued by this Court, in C.P.No.121 of 2006 dated 30.07.2008, is for an arbitration under Section 10-A of the Industrial Disputes Act; an award passed under Section 10-A of the Industrial Disputes Act cannot be subjected to challenge before the Civil Court under Section 34 of the Arbitration and Conciliation Act; and the learned Company Judge ought to have entertained the challenge to the validity of the award, and decided the matter on its merits.

On the other hand Sri V.Hari Haran, learned counsel for the respondent, would contend that the learned Arbitrator was appointed with the consent of both the parties; the only remedy available to the appellants is to question the award before the Competent Civil Court; the respondent has invoked the jurisdiction of the Civil Court under Section 34 of the Arbitration and Conciliation Act questioning the validity of the said award; and the order of the learned Company Judge does not suffer from any legal infirmity warranting interference in appeal.

Both Sri B.G.Ravinder Reddy, learned counsel for the appellants, and Sri V.Hari Haran, learned counsel for the respondent, would fairly state that there is no statutory provision whereby power is conferred on the Company Court to refer the dispute, in the Company Petition, for arbitration; but, however, both parties had agreed for arbitration, and had participated in the arbitral proceedings before the learned Arbitrator

The submission of Sri B.G.Ravinder Reddy, learned counsel for the appellants, that an award passed under Section 10-A of the Industrial Disputes Act, 1947 cannot be questioned by way of a petition filed under Section 34 of the Arbitration and Conciliation Act, and the only remedy available to the parties, to question an award passed under Section 10-A of the Industrial Disputes Act, is by way of a Writ Petition before this Court under Article 226 of the Constitution of India, cannot be said to be without merit. The fact, however, remains that winding up proceedings under the Companies Act is discretionary, and in such proceedings the Company Court does not have the power to examine the validity of an award passed either under the provisions of the Arbitration and Conciliation Act or under the provisions of the Industrial Disputes Act. The jurisdiction which the Company Court

would exercise under Section 433 (e) r/w Section 434 (i) (a) of the Companies Act is confined to an examination of the question whether or not there is a *bona fide* dispute regarding the debt due, and once the Court is satisfied that there is a *bona fide* dispute, the Company Petition would be dismissed relegating the parties to the remedy of a Civil Suit.

The finding recorded by the learned Company Judge, that the dispute regarding the debt is *bona fide*, has not been seriously questioned before us. The only contention urged, on behalf of the appellants, by Sri B.G.Ravinder Reddy, is that the learned Company Judge should have examined the validity of the award, as the award was passed by the learned Arbitrator appointed by the Company Court during the course of winding up proceedings. As no such power has been explicitly conferred on him under the Companies Act, the learned Company Judge could not have examined the validity of the award in winding up proceedings. We see no error in the order of the learned Company Judge in not entertaining the objections put forth by the appellants to the validity of the award.

The Original Side Appeal fails and is, accordingly, dismissed. Needless to state that the order now passed by us would not disable the appellants from availing such other remedies as are available to them in law to question the validity of the award passed by the learned Arbitrator. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

12th August, 2015.

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