

HIGH COURT OF CHHATTISGARH, BILASPUR**COMP No. 1 of 2016**

- Punjab National Bank A Body Corporate Constituted Under The Banking Companies (Acquisition And Transfer Of Undertakings) Act, 1970 Having Its Head Office At 7, Bhikhaji Cama Place, New Delhi - 110 607 And Inter Alia A Branch amongst others at Nehru Nagar Branch Situated At Nehru Nagar, Bhilai District Durg (Chhattisgarh)

---- **Petitioner**

Versus

- M/s Nibi Steels Limited Registered Office At Shop No. 4, Bypass Road, Barhalganj, Gorakhpur (U. P.) & Factory Situated At Plot / A, Heavy Industrial Area, Hathkhoj, Bhilai, District Durg (Chhattisgarh) Through Anyone Of Its Directors

---- **Respondent**

For Petitioner : Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

11/04/2016

1. This petition under Section 433 (e) of the Companies Act, 1956 (for short 'the Act') has been preferred for winding up of the company M/s Nibi Steels Limited on the ground that the company is unable to pay debt of Rs.3,74,35,672.60/- as on 31.3.2014 with further interest from the said date till realization.
2. It is stated that before filing this petition for winding up, a notice was served on the respondent company on 3.4.2014 to make full payment

within 60 days failing which besides other rights of the Bank as available under the law, the Bank intends to exercise any or all the powers as provided under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. Admittedly, this petition is under Section 433 (e) of the Act read with Section 434 thereof. Under Section 434 (1), a company shall be deemed to be unable to pay its debts, if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh 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 the reasonable satisfaction of the creditor. Sub-section (2) of Section 434 provides that demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.
4. In the case at hand, the petitioner has not served any legal notice informing the borrower/respondent company that in the event of failure to pay the debts, a petition for winding up shall be submitted before the

Company Court. Moreover, the registered office of the respondent company is situated at Shop No.4, Bypass Road, Barhalganj, Gorakhpur (U.P.) whereas notice (Annexure-P/4) was sent to the respondent company at Plot No.1/A, Heavy Industrial Area, Hathkhoj, Bhilai.

5. It is apt to observe that this Court being a Company Court is exercising jurisdiction under the Act, therefore, the provisions contained in the Act would apply and that being a special statute, statutory notice is required to be served in accordance with the provisions contained in the Act. It would be profitable to refer to the law laid down by the Supreme Court in the matter of **Meera Sahni Vs. Lieutenant Governor of Delhi and Others** {(2008) 9 SCC 177} wherein it is held that when the statute provides for an act to be done in a particular manner, the same has to be done in that manner only and not otherwise. Rule 28 (1) of the Companies (Court) Rules, 1959 (for short 'the Rules') refers to service on company which reads as under:-

“**28(1).** Where a petition is presented against a company, it shall be accompanied by a notice of the petition in the prescribed form together with a copy of the petition for service on the company and an envelope addressed to the company at its registered office or its principal place of business and sufficiently stamped for being sent by registered post for acknowledgment. The Registrar shall immediately on the admission of the petition send the notice together with the copy of the petition to the company by registered post....”.

6. A plain reading of the above quoted provision would make it amply clear that notice to the company has to be served either at its registered

address or principal place of business.

7. In the matter of **Alliance Credit and Investment Ltd. Vs. Khaitan Hostombe Spinel Ltd.** {(1999) 95 Com Cases 436 (All)}, it has been held in paragraphs 8, 9 and 16 thus:-

“8. As evident from the above, the object of Section 434 is to create a fiction as to when a company can be deemed to be unable to pay its debts. If the case is within the scope of the fiction, the company could be wound up. Learned counsel for the respondent-company has rightly contended that a legal fiction has to be strictly construed. It is well established that full effect is to be given to a statutory fiction and it should be carried to its logical conclusion (see *State of Bombay v. Pandurang* MANU/SC/0025/1953). In the facts of the present case at hand, it has been admitted in the petition itself that the registered office of the company is at Kanpur. It has also not been disputed that the statutory notice of demand sent by registered post was addressed to the Calcutta office of the company and it was served at the said place. The requirements of Section 434 (1)(a) that the notice has to be served at the registered office of the company has, therefore, not admittedly been complied with. The question now is what will be the effect thereof. As noticed above, the contention of the petitioner is that since it was served on the company, may it be at its branch office at Calcutta, but as the same had been replied to and also partly complied with, the requirement has been substantially fulfilled and the object of the notice has been served. It has also been contended that as the company had not raised any objection at that time but had given a reply to the notice and had made part performance thereof, it would be deemed that it has waived its objection. I am unable to agree with the submission made by the petitioner as I am of the view that the-statutory fiction has to be strictly construed and if the same has not been complied with, the petition has to be dismissed on that score as not maintainable. I am supported in this view by some direct decisions of different High Courts. In the case of *Bukhtiarpur Bihar Light Railway Company*

Ltd. v. Union of India [1954] 24 Comp Cas 507 SC, 512, the Calcutta High Court, while interpreting a similar provision in the Indian Companies Act, 1913, has observed thus:

“If a notice of demand is to operate as a valid statutory notice under Section 163(1)(i) it is to be delivered to the company at its registered office. A letter addressed to a place other than the company's registered office cannot be relied upon by the creditor for the purposes of Section 163 (1)(i).”

9. This case was referred to by a learned judge of the Calcutta High Court in *Dytron (India) Limited, In re* [1990] 69 Comp Cas 757 (ALL). In the case of *N.L. Mehta Cinema Enterprises (P.) Ltd. v. Pravinchandra P. Mehta* [1991] 70 Comp Cas 31 (SC), a Division Bench of the Bombay High Court had held that Section 434 clearly requires the notice of demand to be sent to the company at its registered office. Service of the notice at the administrative office of the company was not sufficient to raise the presumption under Section 434, therefore, the petition was liable to be dismissed. It was further laid down that the requirement contained in Section 434 has to be strictly complied with in order to raise the legal fiction. In the case of *B. Viswanathan v. Seshasayee Paper and Boards Ltd.* MANU/TN/0072/1991, where the notice under Section 434 (1)(a) of the Act was not served on the company at its registered office, but on its managing director, it was held by the Madras High Court that the notice does not conform to the mandatory requirements of the Section and, therefore, the presumption under this section as to the company's inability to pay its debts cannot be raised. Similarly, in *Kalra Iron Stores v. Faridabad Fabricators (P.) Ltd.* (No.2) [1-991] 73 Comp Cas 337 SC, it was held by the Delhi High Court that where the notice under Section 434(1)(a) of the Act was not proved to have been served at the registered office of the company, it was held that as the consequence of failure by a company to comply with the notice of demand sent under Section 434 (1)(a) of the Act are of far reaching effect leading to the presumption that the company is unable to pay its debts, the provision is required to be strictly construed and a creditor for relying upon the deemed inability of the company, to pay its debts has, to strictly comply

with the requirements of service of notice of demand in terms of Section 434 (1)(a) of the Act.

16. I, therefore, find substance in the preliminary objection raised by learned counsel for the respondent-company and hold that the winding up petition is not maintainable as the notice under Section 434(1)(a) was not served on the registered office of the company at Kanpur. However, it shall be open to the petitioner, if so advised, to serve the required notice at the registered office of the company afresh. It is made clear that the observations, if any, made in this judgment regarding the alleged debt of the petitioner have been made for the purposes of the present case and if the petitioner has to file another petition, the same shall be decided on the merits uninfluenced by the observations made in the present case. In the facts and circumstances of the case, the parties shall bear their own costs.”

8. In the matter of **Ashok Fashions Ltd. Vs. Meghdoot Acid and Chemicals** {(1998) 91 Comp Cases 655 (Guj), the Division Bench of the Gujarat High Court has held that notice of winding up petition has to be served at the registered address or at the principal place of business of the company. Non-compliance of the provisions is fatal and the Company Petition is not maintainable if such notice is not given.
9. In the case at hand, the petitioner would state that the respondent company has its registered office at Shop No.4, Bypass Road, Barhalganj, Gorakhpur (U.P.) and has factory situated at Plot No.1/A, Heavy Industrial Area, Hathkhoj, Bhilai. However, notice issued to the respondent company on 3rd April, 2014 (Annexure-P/4) was sent to the factory address and not at the registered office of the company. This notice was in fact a notice proposing to initiate proceeding under Section 13 (2) of the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002. Even if this notice is taken to be a notice requiring the respondent company to repay the debts, the fact remains that the same was not served at the registered office of the company nor there is any averment in the petition that address shown in the notice is the principal place of business of the respondent company. Thus, there is non-compliance of Section 434 (1) (a) of the Act and Rule 28 of the Rules.

10. There being non-compliance of the mandatory and statutory provisions concerning service of notice, this winding up petition is not maintainable. It deserves to be and is hereby dismissed. However, the petitioner would be at liberty to move afresh after completing all the statutory requirements as contemplated under Section 434 (1) of the Act and Rule 28 of the Rules.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve