

HIGH COURT OF CHHATTISGARH, BILASPUR**COMP No. 2 of 2016**

- Shivalik Power & Steel Pvt Ltd (A Private Company Registered Under The Indian Companies Act, 1956, Having Registered Office At C-33, 3rd Floor, Ashoka Millenium, Ring Road No. 01, Raipur, Raipur District Chhattisgarh State. (Through Its Authorized Signatory Shri Kansari Nayak, S/o Shi Sashi Bhusan Nayak, Aged About 38 Years, R/o Ekta Nagar, Gudiyaari, Raipur, District Raipur, C G State Working As Sr. Of The Company And Duly Authorized By The Board Of Directors Of The Petitioner Company).

---- Petitioner**Versus**

1. Raghavendra Prestick Products Pvt. Ltd. Through Its Director Shri Somnath Patil, 1st Floor, Amarchand Sharma Complex, Sardar Patel Road, Secunderabad, Telengana State Pin 500003
2. Shri Somnath Patil, Managing Director, Raghavendra Prestick Products Pvt Ltd., 1st Floor Amarchand Sharma Complex, Sardar Patel Road, Secunderabad, Telegana State Pin 500003
3. Shiv Sanjiv Patil Director, Raghavendra Prestick Products Pvt. Ltd. 1st Floor Amarchand Sharma Complex, Sardar Patel Road, Secunderabad, Telegana State Pin 500003

---- Respondent

For Petitioner : Shri K.R. Nair, 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 respondent

company on the ground that the respondent company is unable to pay debt of Rs.10 lakhs.

2. Notice sent to the respondents has been served, however, no-one appears for the respondent company. In order to proceed to advertise the petition in the Official Gazette and in national English and regional Hindi newspapers, this Court examined the matter as to whether there is sufficient compliance of the provisions contained in Section 434 (1) of the Act. The said provision prescribes that before presenting a petition for winding up, the petitioner company must serve 21 days notice on the registered office of the respondent company and upon failure of the company to repay the debts, petition under Section 433 (e) can be preferred.
3. In the case at hand, the petitioner has sent notice dated 10.2.2015 at the registered office of the respondent company. Although a statement has been made at the Bar that notice (Annexure-P/4) has been sent on registered office of the respondent company, however, there is no proof of the fact that the said address is the registered office of the respondent company.
4. More importantly, notice (Annexure-P/4) has provided only one week time to the respondent company to make payment and thereafter this petition has been preferred. Thus, the petitioner has not served 21 days statutory notice to the respondents before filing this Company Petition.

5. Since the provision contained in Section 434 requires clear 21 days notice to be given requiring the Company to pay the outstanding debt, a petition filed without serving notice for 21 days does not satisfy the mandatory requirement of Section 434 (1)(a). Therefore, this petition is not maintainable and it is accordingly dismissed.
6. However, since the petition is not dismissed on merits, the petitioner would be at liberty to move afresh after serving statutory notice to the respondent company in accordance with Section 434 (1)(a) of the Act.

Sd/-
Judge
(Prashant Kumar Mishra)

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