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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CO.PET. 145/2012

SBI STAFF CO-OPERATIVE SALARY EARNERS CREDIT
SOCIETY LTD. Petitioner

Through: Mr.Sandeep Gupta, Advocate.

Versus

JVG INDUSTRIES LTD. Respondent

Through: Mr. Ashutosh Dubey, Advocate for
Golden Gate Industries Ltd.
Mr. Deepak Khosla and Mr.Manjit
Singh Ahluwalia, Advocate for Ex.-
CMD of Respondent, Mr. V.K.
Sharma.
Mr.Rajiv Bahl, Advocate for Official
Liquidator.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ORDER

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02.05.2016

This petition under Section 439 of the Companies Act, 1956, has been moved by SBI Staff Cooperative Salary Earners Credit Society Ltd. seeking winding up of the respondent, JVG Industries Ltd., with a prayer that on 10th April, 2012, notice was issued to the respondent by this Court, returnable on 16th April, 2012. On 16th April, 2012, since there was no appearance on behalf of the respondent, the petition was admitted and citations were also directed to be published. In addition, following directions were also passed.

“It is clarified that claims, if any, filed by the petitioner as well as by other similarly situated applicants shall be entertained and adjudicated upon by the Committee already appointed by this Court in the JVG Finance Limited matter.

The Official Liquidator is directed to file a fresh status report before the next date of hearing.

List the matter for further adjudication on 10th September, 2012.”

This order was impeached by the respondent in Company Appeal No.61/2012, which came to be disposed of on 13th July, 2012, *inter alia*, with the order that:-

“.....more appropriate actions would be to move an application before the learned Company Judge for recall of the order dated 16th April, 2012. Such an application shall be moved within a period of one week. Since the Appellant is depositing a sum of Rs.6,50,000/-, the order dated 16th April, 2012 shall remain stayed till the disposal of the application to be filed by the Appellant. The Appeal is disposed of.”

Thereafter, the respondent is stated to have moved a CA No.1444/2012 and on 04th March, 2013, the aforesaid orders passed by this Court on 16th April, 2012, were recalled.

The reply and the rejoinder have been filed.

It is, *inter alia*, the case of the respondent that the statutory notice in

terms of Section 434 (1) (a) of the Companies Act, 1956, has, admittedly, not been issued to the company, and therefore, there was no question of instituting the instant proceedings. He submits that without issuance of the said notice it is not open to this Court to exercise jurisdiction in the matter. He further states that during the pendency of these proceedings, the respondent company has changed its name to 'Golden Gate Industries Limited'.

Mr. Deepak Khosla, Advocate, appearing on behalf of Mr. V.K. Sharma, Ex-Chairman and Managing Director of the JVG Industries Limited, submits that this change of name has been effected in a fraudulent manner to defeat the rights and interests of his client, and also to divert the assets of the company.

However, Mr. Ashutosh Dubey, Advocate, who appears for 'Golden Gate Industries Ltd.', states that all changes have been carried out in accordance with law.

Admittedly, notice of winding up was neither issued nor served on the respondent company. Under the circumstances and without going into any other aspect of the matter, either on merits or with regard to the aforesaid change in the name of the company, it is obvious that the petition is not properly founded. Consequently, it deserves to be dismissed on the sole ground of non-issuance of the notice of demand in terms of Section 434 (1) (a) of the Companies Act, 1956.

The petition is accordingly dismissed while leaving it open to the petitioner to take any other steps that may be available to it in law with regard to any grievance that it may have.

CA Nos.1524/2012 & 359/2014

Since the main petition has been dismissed, these applications do not survive and the same are also dismissed as such.

SUDERSHAN KUMAR MISRA, J.

MAY 02, 2016

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