

IN THE HIGH COURT OF JUDICATURE AT PATNA
Company Appeal (DB) No.2 of 2017

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1. Chinnamastika Estate (P) Ltd. , Mannas Marg, North S.K. Puri, P.S. - Krishnapuri, Patna - 800001, At present at its Administrative Office, Maa Ambika Complex, Mahavir Path, P.S. - Shastri Nagar, Patel Nagar, Patna.
 2. Ranjeet Kumar Mishra Son of Late Khur Khur Mishra resident of 305, Karpura Pratibha Palace, Gandhi Path, Nehru Nagar, P.S. - Patliputra, Patna, At present 201, Gargi Complex, Adarsh Path, Patel Nagar, Patna.

... .. Appellant/s

Versus

Dularchand Mukhiya Son of Late Chalitar Mukhiya Village - Nawdega, P.S. - Biraul, P.O. - Balha, District - Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjay Singh, Advocate Mr. Praveen Kumar, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-02-2018

Challenging the order dated 2.11.2017 passed by the Company Court in Company Petition No.10 of 2011, this appeal has been filed under Section 483 of the Companies Act, 1956 aggrieved by the order directing for winding up of the petitioners' company.

Respondent initiated the proceedings for winding up of the Company and it is seen that despite individual notice and publication of the notice in Newspapers, when non appeared to



challenge the prayer made in the winding up petition, the learned Writ Court passed the impugned order on 2.11.2017 which reads as under:

“Despite individual notice and also notice was issued in the Form 48 in two daily newspaper publications from Patna in English ‘Times of India’ and in Hindi ‘Prabhat Khabar’ the respondents have not turned up before this Court. The paper publication has been filed by the petitioner. Dular Chand Mukhiya.

In such view of the matter, a winding order is passed and the Registrar General is directed to draw a formal order in Form 52 as provided under Rule 111 of the Company (Courts) Rules, 1959 and it may be sent to the Office Liquidator, then it will be advertised and the Official Liquidator will take charge of assets, books, papers and accounts of the Company.”

Even though various grounds are raised in this appeal, having learned counsel for the parties, we are of the considered view that even if after service of notice, none appeared to challenge the winding up petition, the Company Court was duty-bound to cause an enquiry with regard to the allegation made in the company petition, the defaults pointed out, cause an enquiry into the same and thereafter on merit it has to pass an order of winding up after evaluating the claim of the company petitioner as made out in the company petition. Merely because in spite of service of notice none appeared, the Company Court could not have directed



for winding up without causing an enquiry with regard to the merits of the allegation made in the company petition.

That being so, we are of the considered view that the order of winding up in the manner done cannot be sustained. This appeal has to be allowed and the matter remanded back to the statutory authority to proceed afresh in accordance to the law.

Accordingly, we allow this appeal, quash the order dated 2.11.2017 passed in Company Petition No.10 of 2011, restore Company Petition No.10 of 2011 to its original file and request the learned Company Court to proceed with the matter in accordance to law.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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