THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY APPLICATION No. 1168 OF 2015
IN
COMPANY PETITION No. 189 OF 2013

O R D E R :

Company Application No. 1168 of 2015 has been filed to reopen Company Petition No. 189 of 2013 which was disposed of on 16.04.2014.

The Company Petition was filed under Section 433 (e) read with Section 434 (1)(e) and 439 (1)(b) of the Companies Act, 1956 seeking winding up of the respondent company M/s L.N. Industries India Limited, for its inability to clear the debt to a tune of Rs.1.15 crores alleged to have been lent as corporate loan in 2008. As afore-stated, the said Petition came to be disposed of by the order dated 16.04.2014, in terms of the joint memo filed by both the parties, wherein they had reduced the terms and conditions of the compromise entered into between them into writing. The respondent company had agreed to pay a sum of Rs. 1.20 crores on or before 30.06.2014 and for the said purpose, agreed to execute an agreement of sale in favour of the petitioner for a land admeasuring 2000 square yards situated at Survey No. 593 of Ghanpur Village, Patancheru Mandal, Medak District, out of the land which is under development as residential plots.

Now this Application has been taken out on 13.07.2015 alleging that the respondent had failed to adhere to the terms of the joint memo dated 10.04.2014 and hence, in terms of clause (6) thereof, the petitioner seeks revival of the Company Petition.

Here it is to be noted that the Company Petition was filed invoking the provisions of the Companies Act, 1956, but however, the said Act stands repealed by Act 18 of 2013, in terms of Section 465. It is also to be noted that Section 465 of the 2013 Act had saved the Company Petitions filed under the provisions of the Companies Act, 1956 and which are pending before the High Court till such time the Company Law Tribunal is constituted and till such time the notification is issued by the Central Government, under Section 434. In terms of Section 434 (1)(c) of the 2013 Act, the Central Government had notified the Companies (Transfer of Pending Proceedings) Rules, 2016, to be given effect from 15.12.2016, in GSR No. 71119E, dated 07.12.2016. Rule 5 thereof reads as under:

> "**5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts:** (1) All petitions relating to winding up under clause (e) of Section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of Section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under Sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:
>
> Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under Sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.
>
> (2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings, for winding up initiated under the Act, pursuant to Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act."

In the light of Rule 5, the jurisdiction to adjudicate winding up petition, where notices have not been served on the respondents, vests with the Company Law Tribunal.

In the case on hand, the Company Petition came to be disposed off in 2014 itself. In other words, the Company Petition is not pending as on the date of the notification and only an Application seeking to reopen the said Company Petition is pending. Now what the petitioner seeks to enforce is the compromise memo under which it was given liberty to reopen the Company Petition. In normal circumstances, the Company Application would have been considered on merits and might have also been ordered in view of the liberty granted to the petitioner while disposing of the Company Petition. However, allowing the Application would virtually result in entertaining a fresh Company Petition. Inasmuch as the jurisdiction to entertain the Company Petitions does not vest with this Court, after issuance of the notification in terms of Section 437 of the 2013 Act, hence, the Company Application does not deserve any consideration.

The Company Application is therefore, dismissed, but however, leaving it open to the petitioner to work out the remedies as available in law, to enforce the joint memorandum of compromise dated 10.04.2014.

CHALLA KODANDA RAM, J

23rd October, 2018

ksld