

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment:13.07.2012*

+ **CO.PET. 281/2007**

M/S. NEW INDIA COLOUR CO. LTD. Petitioner
Through Ms. Kajal Chandra, Adv.

versus

M/S. ORION PROCESSORS PVT. LTD. Respondent
Through Mr. Praveen Kumar Aggarwal,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 M/s New India Colour Company Ltd. (hereinafter referred to as the 'petitioner') seeks winding up of M/s Orion Processors Pvt. Ltd. (hereinafter referred to as the respondent) under Sections 433 (e), 434 and 439 of the Indian Companies Act,1956.

2 The case of the petitioner is that the respondent had approached the petitioner for supply of dyes and chemicals which were accordingly supplied against invoices; copies of the invoices and C-forms have been

annexed along with the petition. Relevant would it be to state that initially a petition had been filed by the petitioner which had been allowed to be amended by a subsequent order dated 09.12.2010. This amendment application had been opposed by the respondent. The Court had recorded that the merits of the contentions raised in the amendment application will be examined at the time of arguments on the main petition.

3 The averments in the amended petition relate to transactions which had been effected in the year 2003-2006 against goods supplied; invoices for a sum of Rs.1,07,615.98 were raised; contention was that it was a continuous, mutual, open and a current account; copy of the statement of account had been annexed along with the amended petition as Annexure 3-A; the earlier statement of account annexed along with unamended petition is Annexure -3. Further contention of the petitioner was that the inspite of repeated demands and pursuant to the legal notice dated 07.06.2007 (duly served upon the respondent) a sum of Rs.12,82,952.14 along with 18% interest was due and payable by the respondent; since the amount has not been paid, the present winding up petition had been filed.

4 Reply filed to the petition has been perused; so also the reply to the legal notice. The contention of the respondent is that the parties had dealings with one another only up to 2002; thereafter no commercial transaction took place between the parties due to bad quality of the dyes and chemicals supplied by the petitioner. On 30.7.2004, the petitioner sent 6 samples of dyes of 1 Kg each with a request that if the samples were up to the mark, a bulk order would be placed; considering the old business relations, C-Form was issued; samples were however not up to the mark. The petitioner approached the respondent on 30.5.2006 praying for one more chance to be given to him and to improve his products, he was permitted to give fresh samples which also not being up to the mark were rejected and as such the question of any liability by the respondent in favour of the petitioner does not arise. This reply has specifically averred that the last business transaction took place between the parties on 10.05.2003; no orders were placed thereafter; the transaction of 30.7.2004 and 30.5.2006 was only on a trial basis; the contention of the respondent all along being that these two samples which were sent in the year 2004 and 2006 respectively did not lead to any business dealing between the parties as the samples were not

satisfactory.

5 Learned counsel for the respondent points out that there are glaring discrepancies between Annexure-3 and Annexure 3-A which have been filed by the petitioner i.e. the statement of his ledger account filed with un-amended petition and the ledger account which has been filed along with the amended petition. These two documents have been reflected at pages 14 and 117 of the paper book. The first document commences from 31.03.2000 with an opening balance of Rs.13,45,260.56; two amounts of Rs.14,004/- and Rs. 3,956/- dated 30.07.2004 and 15.04.2006 have been reflected in this document. In the second document (Annexure 3-A), the transactions start from 16.04.2001 and the opening balance is Rs.12,75,260.56 which figures do not match with the figures in Annexure 3. After 30.6.2003, the two solitary transactions of 30.07.2004 (in the sum of Rs.14,004/-) and 15.04.2006 (in the sum of Rs.3,956/-) clearly support the submission of the respondent that they were trial dealings between the two companies; first transaction of 30.07.2004 was supply of 5 Kg of dye for Rs.1404/-; and thereafter almost two years later i.e. on 15.04.2006 there was another supply of 30 Kg of dye in the sum of Rs.3,956/-. All other

transactions between the two companies relate to much larger amounts; this is reflected in the ledger book of the petitioner company itself; and is also evident from the invoices/bills filed by the petitioner company which relate to transactions in the sum of Rs.42,487/-, Rs.38,243.80, Rs.9,662.80, Rs.29,922.40, Rs.39,188.80, Rs.6,772.80, Rs.22,355.40 and Rs.8,804.64. The ledger accounts are even otherwise un-audited accounts and as noted supra have glaring discrepancies in Annexure 3 (page14) and Annexure 3A (at page 117 of the paper book). These documents are suspect.

6 Even presuming the statement of account to be correct after May, 2003 there is one transaction of 30.07.2004 wherein a bill of Rs.14,004/- is raised; this was for 5 Kg of dye (as is evident from the bill); the second transaction dated 15.04.2006 which is after two years is for another meager amount of Rs.3,956/-; both these small amounts depicted in these two later transactions clearly evidence the fact that were these only samples which had been supplied to evaluate whether the said samples of the petitioner had improved over a period of time but not having done so, the said samples were rejected; thus there was no liability owed by the respondent to the petitioner. Transactions in other

bills/invoices relate to 150-200 Kg quantities.

7 Legal notice issued by the petitioner to the respondent is also a relevant document; this is dated 07.06.2007; in this legal notice the petitioner is harping on transactions which took place between 2000-2002 and this is clear from para 4 (internal page 2 of the notice) wherein it states that up to March, 2002 there was a transaction where a sum of Rs.13,03,390.46 was due; there is no reference to any subsequent dealings with the respondent; notice straightway goes to amounts payable up to March, 2007; this notice is conspicuously silent on intervening dealings between the parties after 2002; the first petition had also been filed without reference to any dealings of the year 2004 and 2006; the amended petition had made a reference to this; notice is however conspicuously silent on this point; if the petitioner had business dealings with the respondent up to 2006 as is the plea now sought to be set up; he should have averred this fact in the legal notice which he did not; case of the petitioner clearly becomes suspicious; the legal notice is in fact the very basis of a winding up petition.

8 Courts have time and again held that if a dispute is raised by the respondent which is bonafide and cannot be termed as either

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‘moonshine’ or ‘illusory’, it would not lie within the jurisdiction of the Company Court to entertain a winding up petition. A dispute of a civil nature would not be encompassed within the provisions of Section 433 of the Companies Act.

9 The Supreme Court in M/s IBA Health (I) P. Ltd. Vs. M/s Info-Drive Systems SDN. BHD. reported in (2010) 10 SCC 553 has held that “the Company Court is expected to ascertain that the company’s refusal is supported by a reasonable cause or a bonafide dispute in which the dispute can only be adjudicated by a trial in a civil court.” (See ‘para 31’).

10 Present claim is clearly time barred. Under Article 14 Schedule 1 of the Limitation Act, a period of limitation for three years is prescribed for the price of goods sold and delivered where no fixed period of credit is agreed upon; limitation has to commence from the date of delivery of the goods. Article 1 would be applicable only for the balance due on a mutual, open and current account in which case, the limitation would commence in terms of Article 1 of the Limitation Act. Conspicuously the first petition did not speak of the parties having a running account; this was averred only in the amended petition. The petitioner has failed

to show that there was a mutual, open and current account where there were reciprocal demands made by the parties after May, 2003. Petition has been filed in November, 2007. It is time barred.

11 Petition being without merit, it is accordingly dismissed with cost of Rs. 25,000/- .

INDERMEET KAUR, J

JULY 13, 2012

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