

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.01.2014

+ **CO.PET. 201/2013**

M/S. COLORBAND DYESTUFF PVT. LTD. Petitioner

versus

M/S HOTZ INDUSTRIES LTD. Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Nitin S. Tambwekar, Mr Seshatalpa Sai
Bawdarv and Mr Avinash Joshi.

For the Respondent : Mr Pravir K Jain.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. This is a petition filed by the petitioner under Section 433 (e) of the Companies Act, 1956 alleging that the respondent company is unable to pay its debts as the respondent has failed and neglected to pay the invoices raised by the petitioner for the goods supplied by the petitioner to the respondent. The case of the petitioner is that the petitioner had supplied certain dyes from time to time to the respondent company who is engaged in the business of, inter alia, dying yarn for its customers. Accordingly, the petitioner is claiming that a sum of ₹5,60,562/- is due and payable by the respondent. Since the respondent was disputing that the said amount was due and payable, the petitioner sent a notice under Section 434 (1) (a)

demanding the said amount. The notice sent by the petitioner was duly replied to and the respondent has disputed that any amount is payable to the petitioner. It is in these circumstances that the petitioner has preferred the present petition.

2. There is no dispute that the petitioner supplied the goods as claimed to the respondent company. It is also admitted that the invoices raised by the respondent company were in respect of the goods that were delivered to the respondent. However, the respondent disputes that any amount is payable to the petitioner as it is contended that the dyes supplied by the petitioner were defective because of using the said dyes, the respondent was mulcted with a claim from one of its customers which was finally settled for a sum of ₹6,00,000/-. The respondent contends that the dye known as “Lumi Red B” and “Lumi Red G” which was received from the petitioner was used by the respondent for a specific job work done by the respondent for one its customer -M/s Shivalik Prints Ltd., Faridabad. It is alleged that the yarn, which was dyed by the respondent for M/s Shivalik Prints Ltd. Faridabad by using the dyes “Lumi Red B” and “Lumi Red G” supplied by the petitioner, had lost colour. It is alleged that, consequently, M/s Shivalik Prints Ltd. had raised a claim against the respondent for a sum of ₹10,38,608/- which was settled at ₹6 lakhs. The respondent claims that the respondent was entitled to recover this amount from the petitioner and had, accordingly, debited the account of the petitioner with this amount.

3. It is not disputed by the petitioner that there was some controversy with regard to the quality of goods, however, it is claimed that the concerned officers of the petitioner had visited the works of the respondent

and had addressed the complaint. It is also not disputed by the petitioner that the debit note raised by the respondent was raised on account of the amount claimed by the respondent and the petitioner had received the same at the material time. However, the petitioner states that the petitioner did not accept the debit of the said amount and the petitioner disputes that the dyes supplied were defective or not of the requisite quality. It is further contended that the yarn dyed by the respondent had lost colour on account of faulty work on their part and not on account any defect in the material supplied by the petitioner.

4. This dispute was, admittedly, raised by the respondent prior to the petitioner issuing the notice under Section 434(1)(a). The respondent has also placed documents which, *prima facie*, indicate that a claim on account of defective job work was raised by M/s Shivalik Prints Ltd. (stated to be one of the customers of the respondent) and the same had been settled by the respondent for a sum of ₹6,00,000/-.

5. The aforesaid facts clearly indicate that the debt claimed by the petitioner is not an admitted debt but is stoutly disputed by the respondent. It is settled law that the proceedings under Section 433 are not proceedings for recovery of amounts due or claimed by a creditor. Proceedings for winding up of the company are premised on the inability of a company to pay its admitted debts. These proceedings cannot be converted to proceedings for resolution of contentious issues and recourse to such proceedings under Section 433 of the Act cannot be taken either to adjudicate or resolve existing between the parties. The present case is clearly a case where a pre-existing dispute exists between the petitioner and

the respondent and, accordingly, this present petition under Section 433 is mis-conceived.

6. The learned counsel for the petitioner has stated that mere issuance of a debit note would not be sufficient to render the debt owed by the respondent to be a disputed one. In support of his contention the learned counsel for the petitioner has relied upon a decision of this court in **M/s Paharpur 3P (A Division of M/s Paharpur Cooling Towers Ltd) Vs M/s Dalmia Consumer Care Pvt Ltd: Company Petition No. 66/2006** decided on 02.07.2008. In my view the said decision is wholly inapplicable to the facts of the present case. In that case the amounts payable by the respondent to the petitioner were acknowledged. Admittedly, the income tax on the said amount had been deducted at source and there was no dispute with respect to the same. The petitioner had disputed the receipt of the debit note which was relied upon by the respondent in that case. In the given facts it was apparent that the said debit note represented a feeble attempt on the part of the respondent to dispute the debt where, in fact, no dispute existed. In these circumstances it was held that the mere issuance of debit note would not be sufficient to dispute the debt and it was held that the defence raised by the respondent was a moonshine defence. In the present case the dispute is real and not illusory. The petitioner has not been able to controvert that a claim by the customer of the respondent had been made on the respondent company. Whether the said claim has been raised on account of poor quality of work done by the respondent or whether the defects were attributable to the goods supplied by the petitioner is clearly a contentious issue which would require trial. In the facts of the case it cannot

be concluded that this defence, raised by the respondent, is a sham or a moonshine defence.

7. The learned counsel for the petitioner has also relied on the decision of this court in **M/s Grandeur Collection Vs Shahi Fashions Pvt. Ltd: Company Petition No. 475/2011** decided on 3rd September, 2013 for the purposes of explaining the difference between a credit note and a debit note. It is contended by the petitioner that in the present case there was no corresponding credit note issued by the petitioner and therefore the debit note which has been issued by the respondent could not be stated to have been accepted. It is common accounting knowledge that a debit note only represents a debit entry made by a party in the account of another party maintained in its books of account. In other words a party who decides to debit an account of another party would issue a debit note to enable the other party to pass a corresponding entry in its books. Similarly a credit note is issued if the account of the other party is credited. Both credit notes and debit notes are primary vouchers representing entries in the books of accounts. A unilateral issue of debit note would, obviously, not by itself extinguish a debt. However, a debit note would indicate that the party issuing the debit note has debited the account of the other party in its books. The debit note issued in the present case represents a claim that had been made by the respondent on account of alleged defective goods. It is not disputed that it is a contemporaneous document, which had been issued much prior to the filing of the present petition or the issuance of notice under Section 433 (1) (a). In my opinion, the decision cited by the learned counsel for the petitioner also does not further the case of the petitioner.

8. The only controversy that needs to be considered is whether the dispute raised by the respondent is a sham or a moonshine defence. This question having been answered in the negative, the present petition must fail. Accordingly, the present petition is dismissed with no orders as to costs.

9. Needless to state that the petitioner would be at liberty to initiate appropriate proceedings in accordance with law for adjudication of the disputes and recovery of the amounts claimed.

JANUARY 28, 2014
pkv

VIBHU BAKHRU, J

