

GAHC010013532013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Co.Pet./15/2013

PRASANTA KR. GOGOI
S/O- LT. PRASAD CH. GOGOI, R/O- ASHIRVAD APARTMENT, MATHURA
DWARKA NAGAR, GHY- 5, KAMRUP M, ASSAM.

VERSUS

TRANS VIRTUAL PVT. LTD. TVPL
A PVT. LTD. COMPANY DULY INCORPORATED UNDER THE COMPANIES
ACT, 1956, HAVING ITS REGISTERED OFFICE AT 18 EAST LANE,
SUNDARPUR, R.G. BARUAH ROAD, GHY- 5, IN THE DIST. OF KAMRUP M,
ASSAM.

Advocate for the Petitioner : MR.R M DAS

Advocate for the Respondent : MR.P P DUTTA

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 05/10/2023

Heard Mr. S. Kataki, learned counsel for the petitioner. Also heard Mr. P.P. Dutta, learned counsel appearing for the respondent.

This petition has been filed under section 433 read with sections 434 and 439 of the

Companies Act, 1956, praying for an order for winding up of the respondent company on the ground that the respondent is unable to pay its debt.

The fact of the case, in a nutshell, are that the petitioner herein, is engaged in the business of supply of Guyed Mast along with Accessories and in providing manpower for System Integration and Installation & Commissioning of Telecommunication Equipments. The respondent company had issued a purchase order dated 01/08/2008 in favour of the petitioner for supply of certain items. Upon receipt of the order, the petitioner had executed the purchase order dated 01/08/2008 and completed the entire supply to the satisfaction of the respondent, whereafter, bills for total amount of Rs. 54,65,721/- was raised, which was also duly received by the respondent company. After receiving the bill, the respondent had made payment of an amount of Rs. 32,16,700, thus leaving a balance amount of Rs. 22,49,021/- as due and payable to the petitioner.

When the respondent company started neglecting to pay the balance amount despite the repeated requests made by the petitioner, a situation had arisen when the petitioner began to aggressively pursue his claim. At that stage, an agreement dated 22/03/2011 was entered into by and between the parties whereby, the respondent had agreed to pay a sum of Rs, 17, 79,672/- to the petitioner out of the balance amount of Rs. 22,49,021/-, after deducting a sum of Rs. 4,39,350/- on account of VAT. Accordingly, the respondent had paid a sum of Rs. 8,50,000/- to the petitioner after deduction of VAT. Notwithstanding the same, the balance amount of Rs. 8,92,269/- was lying unpaid by the respondent company. Since the respondent had failed to pay the aforesaid dues, the petitioner was compelled to approach this Court by filing the instant petition seeking an order for winding up of the Company.

From the pleadings brought on record, it is evident that the core dispute between the parties is pertaining to the sum of Rs. 4,39,350/- which, the respondent proposes to deduct from the unpaid dues of the petitioner on the ground that the same was VAT component. Taking note of the

contentious issues involved in this petition, this Court had passed order dated 07/03/2019, requiring the Sales Tax Department to examine the matter and submit a report. Accordingly, the Superintendent of Taxes, Unit-C, Guwahati, had conducted an enquiry into the matter and submitted report dated 10/04/2019 before the Commissioner of Taxes, Kar Bhawan, Guwahati, which report was brought on record of this case by the Joint Commissioner of Taxes by filing affidavit dated 29/08/2019. A perusal of the report *prima facie* indicates that the VAT component was not applicable in case of the petitioner, who is a unregistered dealer and, therefore, the question of deducting the amount of Rs. 4,39,350/- from the bills of the petitioner as VAT component did not arise at all. Moreover, the respondent had apparently not deposited such tax amount in the exchequer.

Be that as it may, today, when the matter was called up for final hearing, Mr. S. Kataki, learned counsel for the petitioner submits that during the pendency of this petition, the admitted dues of the petitioner to the tune of Rs. 3,02,959.25 has been paid to his client and, therefore, the only dispute which now arises for adjudication is as to whether, the respondent was justified in deducting the sum of Rs. 4,39,350/- as VAT component. Mr. Kataki submits that in view of the stand taken by the Sales Tax Department that no such amount was deposited by the respondent in the Government Exchequer, the matter would have to be pursued at the departmental level. Therefore, this petition be closed by granting liberty to the petitioner to pursue appropriate remedy.

Responding to the above, Mr. Dutta, learned counsel for the respondent submits that no order of winding up of a company can be passed when there are disputed question of facts relating to the claims and counter claims of the parties. Since the agreement dated 22/03/2011, entered into by and between the parties contain an arbitration agreement, therefore, the dispute in this matter is required to be resolved by referring the matter to arbitration.

Mr. Kataki has also fairly submitted that in view of the subsequent developments, he has instruction not to pursue the prayer for winding up of the respondent company any further. However,

the learned counsel for the petitioner seeks liberty for his client, to pursue all legal remedy, as may be permissible, under the law for realization of his dues under the contract, including filing necessary application before the Tax authorities for refund of the amount.

Taking note of the submission made at the Bar, this Company Petition stands disposed of by granting leave to the petitioner to pursue appropriate legal remedy, including arbitration proceeding as well as filing proper application before the Sales Tax Department, Assam for enforcement of his claim pertaining to the disputed amount.

Company Petition stands closed.

JUDGE

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Comparing Assistant