IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 324 OF 2012

Ms.Unique Tooling Solution Pvt.Ltd. …Petitioner
vs.
Shree Ganesh Forging Ltd. ....Respondent

Mr.Uday Warunjikar with Mr.Akshay Deshmukh for Petitioner.
Dr.Birendra Saraf with Mr.Rajeev Carvalho with Mr.Pankaj Uttaradhi i/b.
Ms.Sabeena Mahadik for Respondent.

CORAM : S.C. GUPTE, J.

24 AUGUST 2015

P.C. :

The petition seeks winding up of the Respondent company for its inability to pay debts. The debt alleged to be due to Petitioner arises out of a contract for sale of goods. It is claimed that a sum of about Rs.60.12 lacs from out of the price of goods sold and delivered is not paid by the Respondent, despite service of a statutory notice.

2. The factum of sale of goods is not disputed by the Respondent. What is disputed is the liability to pay. The case of the Respondent is that the goods were defective; that this was brought to the notice of the Petitioner even before the statutory demand notice was sent by it. There is some material on record that the quality of goods supplied was contemporaneously disputed by the Respondent. There are letters along with test reports on record which suggest that there were defects with some of the goods supplied. Then there are also minutes of meeting on record about some other goods in the case of which corrections were necessary. It is submitted by the Respondent in its reply that as a result of unsatisfactory performance, the Respondent was unable to use some of the goods and compelled to order similar toolings from other suppliers, which resulted in delays in production of final product, resulting in cases of cancellation of orders by the Respondent's clients. The Respondent claims to have issued

debit notes aggregating to Rs.57.12 lacs in this behalf to the Petitioner.

3. Mr.Warunjikar, learned Counsel for the Petitioner, relies on the original response of the Respondent, when the first advocate's notice was sent by the former to the latter. In its first response, the Respondent had simply claimed that the outstandings demanded by the Petitioner did not tally with the balance as per the Respondent's books of account. Secondly, it is submitted by Mr.Warunjikar that merely because certain particular deliveries are disputed in terms of quality, the whole list of outstandings setting out the invoices and particulars of deliveries, produced by the Petitioner, cannot be said to be comprising of a disputed debt. He submits that even if particular goods, which are said to be defective, are left out, one would still find a large debt, which cannot be contested.

4. It does appear from the documents on record that there is a dispute about some of the deliveries, though there is a substantial debt which appears to be due and payable. It is difficult at this stage, and on a winding up petition, to come to any definitive finding about the uncontested debt, though it is substantial and certainly much above the statutory threshold. Dr.Saraf, learned Counsel for the Respondent, offers to deposit a sum of Rs.25 lacs to prove his client's bona fides. The offer seems to be reasonable. If this amount is deposited, it can be safely inferred that non-payment of the debt is not a result of the Respondent's inability to pay, but a bona fide dispute concerning its liability to pay.

5. In the premises, the following order is passed :

(i) The Respondent shall deposit a sum of Rs.25 lacs with the Prothonotary & Senior Master of this Court within a period of six weeks from today;

(ii) On deposit of this amount, the Respondent company shall forthwith inform the Petitioner as well as their Advocate about such deposit;

(iii) Within three weeks from the date of deposit of the amount of Rs.25 lacs by the Respondent, the Petitioner shall file a suit before the appropriate court pertaining to the subject matter of this petition. The Petitioner shall also inform the Advocate of the Respondent and forward a complete copy of the plaint in the suit to the Respondent company;

(iv) Upon filing of the suit before the appropriate court, the Prothonotary & Senior Master shall forward the amount of Rs.25 lacs deposited with him to the Registrar of the Court in which the suit is filed. The Registrar shall transfer the amount to the suit account of the Plaintiff and invest the same in a Nationalist Bank initially for a period of one year and thereafter to be renewed from time to time until further orders in the suit. The direction to invest the amount shall, however, be subject to any ad-interim / interim orders passed by the court in which the suit is filed by the Petitioner;

(v) The Petitioner shall be at liberty to take out appropriate proceedings seeking ad-interim / interim reliefs in the suit, which will be decided on their own merits;

(vi) All contentions of the parties on merits are kept open;

(vii) In the event, the Respondent company fails to deposit the amount of Rs.25 lacs within a period of six weeks from today, the company petition shall stand revived and admitted without reference to the Court. The company petition shall be made returnable within six weeks from the date of default and shall be advertised in two local newspapers, i.e. Free Press Journal (English) and Maharashtra Times (Mumbai) and in the Maharashtra Government Gazette;

(viii) Upon such default, the Petitioner shall, within two weeks from the date of the default, deposit with the Prothonotary & Senior Master of this Court a sum of Rs.10,000/- (Rupees Ten Thousand) towards publication charges, failing which the company petition shall stand dismissed for want of prosecution;

(ix) The company petition is, accordingly, disposed of with no orders as to costs.

(S.C. Gupte, J.)