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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 543 OF 2013

A.T.E.Enterprises Pvt. Ltd.	...Petitioner
VS	
Unitech Texmech Pvt. Ltd.	...Respondent.
.....	
Ms S.V.Thakkar for the Petitioner	
Mr Aditya Bapat i/b N.V.Khaladkar for the Respondent.	
.....	

**CORAM : S.C. GUPTA, J.
SEPTEMBER 29, 2015**

P.C. :

The Company Petition seeks winding up of the Respondent company on the ground of its inability to pay the debts. There is already an award passed against the Respondent company granting the Petitioner's claim which is the subject matter of the present Petition. The award is, however, under challenge before this Court in an Arbitration Petition. Learned Counsel for the Respondent submits that the Respondent has raised disputes concerning the underlying debt payable as well as the award impugned before this Court. Learned Counsel, however, offers to pay a sum of Rs.5 Lacs to the Petitioner within a period of four weeks from today.

2 The petitioning creditor's claim is in respect of commission payable to it as a sole selling agent of the Respondent company. There are disputes raised by the Respondent concerning certain invoices. These disputes form part of the Arbitration Petition which is pending before this Court. However, it does appear that even after taking into account these disputes, on which this Court expresses no opinion, there is no defence, whatsoever, as far as the sum of Rs.5 Lacs is concerned. Since the Respondent has offered to pay this amount to the Petitioner, this winding up petition can be disposed of subject to payment of this amount and directing the parties to adjudicate the Arbitration Petition for the balance claim.

3 Accordingly, the following order is passed.

- (i) The Respondent shall pay an amount of Rs.5 Lacs to the Petitioner within a period of four weeks from today;
- (ii) If this amount is not paid within the period provided for, the Petition shall stand revived and admitted without further reference to this Court. In such a case, the Petitioner is directed to advertise the Petition in two local newspapers, viz. “**Free Press Journal**” (in English) and “**Nav-Shakti**” (in Marathi) and also in Maharashtra Government Gazette with the returnable date as 23 November 2015. Any delay in publication of the advertisement in the Maharashtra Government Gazette, and any resultant inadequacy of the notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959;
- (iii) In such case, the Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards the publication charges, within a period of two weeks from the expiry of four weeks from today, with intimation to the Company Registrar. After the advertisements are issued, the balance, if any, shall be refunded to the Petitioner;
- (iv) This order is passed without prejudice to the rights and contentions of the parties in pending Arbitration Petition;
- (v) The Petition is disposed of accordingly. There shall be no order as to costs.

(**S.C.GUPTE J.)**

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.