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

COMPANY PETITION NO. 824 OF 2014

In the matter of Sections 433(e) and 434 of the Companies Act I of 1956;

And

In the matter of Hindustan Dorr-Oliver Limited a Limited Company incorporated under the provisions of the Companies Act I of 1956 and having its Registered Office at Dorr-Oliver House, Chakala, Andheri (East), Mumbai – 400 099.

M/s Poonam Enterprises ...Petitioner

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Mr D.H.Mehta i/b Nalin M Shah for the Petitioner
Ms Shilpa Kapil for the Respondent.

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CORAM : S.C. GUPTE, J.

SEPTEMBER 14, 2015

P.C. :

The Company Petition seeks winding up of the Respondent company on the ground of its inability to pay the debts. The debt forming part of the Petition is claimed to have arisen out of sales of goods, which are covered by thirty four invoices described in the Petition. These invoices, which date from 15 December 2011 upto 26 March 2013, are of an aggregate value of Rs.12.46 crores. It is the Petitioner's case in the Petition that this amount is not paid by the Respondent company.

2 In reply, it is pointed out by the Respondent that all thirty four invoices have been duly paid by the Respondent. A reconciliation statement in respect of these invoices has been annexed to the reply. This statement shows that thirty four invoices referred to by the Petitioner have all been paid by various

modes of payment including through bill discount facility, cheques drawn in favour of, and debit notes issued to, the Petitioner.

3 When this was pointed out in the reply, the Petitioner has come up with an altogether new case in its rejoinder. It is now alleged by the Petitioner that an amount of Rs.12.46 Crores, which is said to be due and payable by the Respondent to the Petitioner, arises upon differences in bill amounts respectively in the records of the Respondent and the Petitioner. The total outstanding of Rs.12.46 crores is arrived at by taking into account (i) bills not taken in the Respondent's books, which are set out in Exh E-2 of the rejoinder; (ii) bills taken in the books of the Respondent company but at a lesser value, which are reflected in annexure E-1 to the rejoinder; and (iii) net other differences in extra debits / credits in the books of the Respondent. These three items respectively account for about Rs.8 crores, Rs.4.40 crores and Rs.6.12 lacs. If one has regard to the alleged bills not taken in the Respondent's books or bills taken but at a lesser value, what emerges is that major part of the dues are on account of various bills dating from 1 April 2008 to 8 January 2013 said to be either not included in Respondent's books or included but at a lesser value. These bills are clearly different from the thirty four invoices on which the Petitioner's claim in the Petition is based. Many of these invoices, which form part of Exhs E-1, E-2 and E-3, even appear to be clearly barred by the law of limitation.

4 Not only this, but the so called certificate of the Chartered Accountant which is annexed to the Petitioner's rejoinder presents a yet another different story. The Chartered Accountant's certificate indicates that a sum of Rs.12.46 Crores is purportedly due and payable by the Respondent to the Petitioner, not as a result of bills not taken into account or bills taken into account but at a lesser value and other dues in extra debits/ credits as per Exh E-3 to the rejoinder, but as a result of dealings between parties from year 2004-05 and till 2012-13. When each year's payable amount is compared with what is received by the Petitioner and net outstanding balance of the previous year is carried forward at the end of this eight years' period, an amount of Rs.12.46 crores is said to be due and payable by the Respondent to the Petitioner.

5 Learned Counsel for the Petitioner submits that the Respondent not having indicated the debts to which the payments made by it were to be applied, it is for the Petitioner to appropriate the payments in accordance with Section 60 of the Contract Act. There is no gainsaying of the proposition of law but the difficulty here is that the Petitioner itself appears to have actually appropriated these payments towards the disputed thirty four invoices and has actually been claiming that what is outstanding is not the disputed invoices as indicated originally in the Petition but the bills not taken into account, bills taken into account but for lesser value and other miscellaneous debits/ credits as indicated in Exhibit 'E-3' or the net result of dealings between parties from 2004-05 to 2012-13 as indicated in Exhibits 'C' and 'D'. That means the Petitioner's case now before the Court is that it is these latter bills, which are due and payable and not the originally claimed thirty four bills. So much for the Petitioner's own appropriation.

6 As the Petitioner's record itself indicates, far from there being any certainly as to how the Petitioner's claim has arisen, there have been at least three different cases placed by the Petitioner itself before the Court in justification of its claim, each of which is disputed by the Respondent. The Respondent's non-payment appears to be a result of these disputes rather than its inability to pay.

7 The Company Petition, in the premises, is dismissed. There shall be no order as to costs.

8 It is clarified that the observations made above on the merits of the disputes including the question of limitation are for the purposes of determination of the question before this Court, namely, whether or not there are bona-fide disputes between the parties.

9 Since the Respondent in its reply has admitted that an amount of Rs.15.22 lacs is due and payable by the Respondent to the Petitioner, learned Counsel for the Respondent graciously accepts that this amount shall be paid to

the Petitioner within a period of eight weeks from today. If the amount is not paid within the stipulated period, the Petition shall be admitted without any further reference to the Court. The Petition shall in that case be placed on board for fixing a returnable date and also issuing directions concerning advertisement of the Petition.

(S.C.GUPTE J.)

CERTIFICATE

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