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

COMPANY PETITION NO. 562 OF 2013

M/s Lester and Dynamiks (India)	...Petitioner
VS	
M/s Megi Agro Chem Ltd.	...Respondent.

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Mr B.K.Bali a/w Sunil Vyas i/b Bali Associates for the Petitioner
Mr P.M.Jadhav for the Respondent.
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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. The debt, being the subject matter of the present Petition, arises out of a purchase order placed by the Respondent for manufacturing and supply of a polishing column and a rectification column. Under this purchase order, which was accepted by the Petitioner, the Respondent paid a total sum of Rs.9.90 Lacs as an advance/ part payment in respect of the polishing column (C-4401) and sum of Rs.10.80 Lacs as an advance / part payment in respect of the rectification column (C-4301). It is the Petitioner's case that under this purchase order, the Petitioner supplied the goods partly. The balance purchase order was cancelled by the Respondent. The Petitioner claims a total sum of Rs.27.36 Lacs towards the outstandings payable by the Respondent to the Petitioner under the purchase order. The statutory notice of the Petitioner was replied to by the Respondent through its advocate. The Respondent company has raised several disputes concerning alleged breaches of contract on the part of the Petitioner. It is the case of the Respondent that the Petitioner has violated the terms of the contract by supplying goods piecemeal instead of supplying in one lot and also not adhered to the delivery schedule. The Respondent company claims damages in the sum of

Rs.1.04 Crores on account of delay caused by reason of breaches on the part of the Petitioner. The Respondent relies upon several documents including Minutes of the Review Committee Meetings between the parties and the correspondence between them in the form of e-mails exchanged. From these documents, it appears that the Respondent's refusal to pay the amount claimed by the Petitioner is the result of its disputes in relation to the dues rather than its inability to pay the debt. The Petition itself refers to the correspondence between parties, where several disputed matters have been referred to, including the change of dimensions of the subject goods and other modifications, alterations and revisions of drawings, appropriatedness of the materials supplied by the Petitioner as also delays caused in supply of the materials. All these disputes need to be adjudicated upon before the Respondent's liability can be ascertained. The Petitioner's debt, thus, having been bona-fide disputed by the Respondent, a winding up petition on the basis of such debt is not maintainable. The Petition is, accordingly, dismissed. 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.