IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 322 OF 2012

Mr.Farrokh Behram Chesan & Ors. …Petitioners
vs.
M/s.Nat Steel Equipment Pvt.Ltd. ....Respondent

Ms.Deepti Panda with Ms.Kainaz Irani i/b. Mr.Dinesh Sehgal for Petitioners.
Ms.Amita Castellino with Mr.Siddharth Chandrashekhar with Ms.Farheen Sheikh and Mr.Suresh Chandrashekhar and Ms.Lishu Fen i/b. Ms.Lishu Fen for Respondent.

CORAM : S.C. GUPTE, J.

13 AUGUST 2015

P.C. :

This company petition is jointly filed by 60 Petitioners, all of whom claim to be ex-employees of the Respondent company, having claims for arrears of salary, perquisites and other dues arising in the course of their employment with the Respondent company. A total sum of Rs.1,07,00,729/- is claimed to be due and payable by the company to the Petitioners in this behalf.

2. The Petitioners have submitted a tabular presentation of the total dues to be received from the company by each of the Petitioners. The particulars show their respective dates of joining and resignation, their respective salaries at the time of resignation, the length of their service years, pending salary dues, bonus / ex-gratia payments, leave salary dues and gratuity payable to them. The Petitioners issued a statutory notice demanding their dues through their Advocate's letter dated 7 April 2012. It is the Petitioners' case that in its reply to the statutory notice, the Respondent company has not contested the Petitioners' claim on merits, but simply claimed that valuable data and records pertaining to the employment of the Petitioners was taken away or stolen from the company's premises and that in the absence of such data and record, the company was unable to verify the allegations and deal with the claims. The company, in other

words, has neither paid the debt claimed by the Petitioners nor disputed the liability on merits, in response to the statutory notice. The Petitioners, in the premises, present this company petition for winding up of the Respondent company on the ground of its deemed inability to pay in accordance with Sections 433 and 434 of the Companies Act, 1956.

3. In reply, the Respondent has raised some objections to the maintenability of the petition. It is submitted, firstly, that a joint petition by individual creditors, each having a distinct debt and cause of action against the company, is not maintenable. There is no merit in this submission. It is clear even from a bare reading of Section 439 of the Act that a petition for winding up can be filed by any creditor or creditors. The cause of action in a winding up petition is not existence of the creditor's debt, but inability of the company to pay. This cause of action is common to all creditors joining the petition. The second preliminary objection is on account of the nature of the debt. It is claimed by Ms.Castellino for the Respondent that workmen's dues cannot form the basis of a winding up petition. She relies on a judgment of a learned Single Judge of this Court in **Mumbai Labour Union vs. Indo French Time Industries Ltd.**[1] That judgment has since been overruled by a Division Bench of this Court in the case of **Khandelwal Tube Mill Kamgar Sangh, Kanchan vs. Government of Maharashtra**[2] The Division Bench has held that a workman, who is a creditor in terms of Section 439 (b) of the Companies Act, is entitled to present a petition for winding up. There is, thus, no merit in this contention either.

4. On merits of the debt, it is submitted by the Respondent that the Managing Director of the Respondent company had entrusted the affairs of the company to his son Zoru, who misused the position, siphoned off huge funds of the company and with the help of the Petitioners, who are ex-employees of the company, took away valuable data and information of the company. It is submitted that the ex-employees of the company have joined hands with Zoru and have raised these claims and applied for winding up of the company for an

1 **2002(Supp.) Bom.C.R. 936**

2 **2006-II-LLJ Bombay 331**

ulterior purpose. The allegations made against the Petitioners in the reply of the Respondent appear to be decisively vague. They are mostly generalisations without any specific acts alleged on the part of the Petitioners. There are, however, a few individual allegations and issues have been joined with individual claims of some of the Petitioners. Whilst the dispute sought to be raised concerning the amount of bonus claimed by the Petitioners is decidedly vague (out of 60 Petitioners, “some” have been alleged as falsely claiming bonus), in respect of Petitioner Nos.6, 29 to 34, 35 to 42, 45 to 49 and 50 to 60, there are some statements, albeit generally made, about particular claims, such as bonus, house rent allowance, leave and gratuity, which are contested by the Respondent. It is also a matter of fact that these dues have been claimed by the Petitioners also before the Commissioner of Labour in a pending application.

5. Be that as it may, it clearly emerges from the material on record before the Court that whilst there could be some legitimate dispute about some of the items claimed by the individual Petitioners and forming part of their dues as indicated in Exhibit-G to the petition, some of the dues appear to be clearly uncontested. Whilst it is difficult for this Court to determine uncontested dues in a company petition, such as this, it clearly transpires that a large amount is due collectively to the Petitioners, who are admittedly ex-employees of the Respondent company. When it was made clear to the Respondent company that even if the company were to demonstrate that a part of the debt claimed in the petition was disputed, the company would have to deposit a substantial amount before this Court to prove its bona fides, Ms.Castellino, learned Counsel for the company offered to deposit 50% of the amount of the debt claimed on account of principal amount in the petition. If this amount is deposited within a reasonable period, the company can be safely said to have proved its bona fides and satisfied the Court that non-payment of the debt claimed in the petition is not a result of its inability to pay, but on account of the pending disputes.

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

(i) The Respondent shall deposit a sum of Rs.50 lakhs in this Court within a period of twelve weeks from today;

(ii) The Protnonotary & Senior Master shall invest the amount deposited in the Court in a fixed deposit of a Nationalised Bank initially for a period of one year and thereafter, renewable from time to time until further orders;

(iii) The Petitioners shall be entitled to make an application for disbursal of the amount after their dues are adjudicated upon in the proceedings pending before the Labour Commissioner or any other appropriate Labour / Industrial Court;

(iv) In the event the order of the Commissioner of Labour or Labour / Industrial Court going against the Petitioners or dues of the Petitioners as determined by the Competent Authority being less than the amount deposited in the Court, the Respondent shall be entitled to apply for refund of such appropriate amount;

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

(vi) In the event of the Respondent failing to deposit the amount of Rs.50 lakhs in terms of clause (i) above, the Company Petition shall stand revived and admitted without reference to this Court and shall be made returnable within six weeks from the date of default and advertised in two local newspapers, i.e. Free Press Journal (in English) and Maharashtra Times (in Marathi) and in the Maharashtra Government Gazette;

(vii) Upon such default, the Petitioners shall, within two weeks from the date of the default, deposit with the Prothonotary and Senior Master a sum of Rs.10,000/- (Rupees Ten Thousand) towards publication charges, failing which the Company Petition shall stand dismissed for want of prosecution;

(viii) The Company Petition is, accordingly, disposed of with no order as to costs.

(S.C. Gupte, J.)