THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Company Petition No.258 of 2014

Dated 11th August, 2015

Between:

M/s.Strata Geosystems (India) Private Limited

…**Petitioner**

And

M/s.Madhucon Projects Limited

…**Respondent**

Counsel for the petitioner: Ms.Varalakshmi Tadepalli

Counsel for the respondent: Sri K.V.L.Jayasimha

The Court made the following:

ORDER:

This company petition is filed for an order to wind up the respondent-company for non-payment of debt due to the petitioner.

The petitioner averred that it is incorporated under the provisions of the Companies Act, 1956 (for short 'the Act') and engaged in the business of manufacture and sale of Geosynthetic solutions for use in reinforced soil walls, slope protection and stabilisation, erosion control, foundation improvement for structures etc. That the respondent is also incorporated under the provisions of the Act and *inter alia* engaged in the business of execution of infrastructure projects on Turnkey, BOT and Annuity Bases and especially in construction of National Highways, Expressways, Fly Overs, Bridges, Irrigation Projects, Dams, Canals etc.

That the respondent has issued letter of intent, dated 07.11.2008, to the petitioner for providing (a) the designs of

Reinforced Soil Structures; (b) Stratagrid Geogrid, permanent casting accessories and ancillary fixtures; and (c) supervision during the casting of panels & erection. That the petitioner entered into (a) Articles of Piece Rate Contract; (b) Piece Rate Contract Agreement (PRCA) for the services valued at Rs.3,60,00,000/- and (c) Confidentiality Agreement of Piece Rate Contract, with the respondent on 13.11.2008.

The petitioner further pleaded that the time stipulation for execution of the contract works got extended resulting in amendments to the PRCA. That the value of the work done between 2008 and 2010 amounts to Rs.6,05,08,912/- including taxes, out of which, the respondent has paid an amount of Rs.5,15,58,667/- including taxes towards part payment by way of Letters of Credit issued by ICICI Bank, Hyderabad.

That as the respondent failed to pay the balance amount, the petitioner has initiated arbitration proceedings and the same are pending. The petitioner has also got statutory notice issued for payment of outstanding amount of Rs.89,50,239/-. The respondent has sent a reply notice, wherein it has denied the claim made by the petitioner while stating that it has already paid an amount of Rs.5.15 lakh.

At the hearing, Ms.Varalakshmi Tadepalli, learned counsel for the petitioner, has strenuously submitted that while the respondent is liable to pay Rs.89,50,239/- even according to the joint certification of the parties, the respondent in all is liable to pay a sum of Rs.5,61,51,306/-, against which it paid Rs.5,15,00,000/- and that it is liable to pay the balance of Rs.46,51,306/-.

However, it is the pleaded case of the respondent that as per the joint certification, an amount of Rs.45,17,921/- is payable towards VAT and that subject to the petitioner showing proof of payment of VAT, the respondent has no objection for payment of this amount.

The learned counsel for the petitioner, however, disputed the stand of the respondent that the admitted balance amount of Rs.45,17,921/- is towards VAT.

In a petition for winding up of a company for non-payment of debt, the burden heavily lies on the creditor to show that the amount claimed is either admitted debt or denial of debt by the respondent-company is not *bona fide* and the same is a cloak or moonshine. While the petitioner claims Rs.89,50,239/-, the respondent has admitted to the extent of Rs.45,17,921/- allegedly payable towards VAT.

As on today, the crystallised amount payable to the petitioner is Rs.5,61,51,306/-. Admittedly, arbitration proceedings in respect of the entire debt claimed by the petitioner are pending. Therefore, unless the dispute with regard to the quantification is adjudicated by the competent Court/Arbitral Tribunal, it is neither appropriate nor desirable to delve into the disputed issues relating to the precise liability of the respondent. As the petitioner himself has filed the joint certification, it is not permissible to it to dispute the entry made therein which shows that a sum of Rs.45,17,921/- is due towards VAT.

The learned counsel for the respondent has submitted during one of the hearings that if the petitioner files proof of payment of the VAT, his client has no objection for reimbursing the said amount to it. Despite the said statement, the petitioner has not filed any proof so far. As the respondent has withheld a sum of Rs.45,17,921/-, in the absence of proof of payment of VAT by the petitioner and the balance amount claimed by the petitioner is *bona fide* dispute with respect to which arbitration proceedings are initiated at the instance of the petitioner and the same are pending, I am of the opinion that this is not a case which warrants admission of the company petition.

For the above-mentioned reasons, the company petition is dismissed.

C.V.NAGARJUNA REDDY, J

11th August, 2015
VGB