

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

COMPANY PETITION No.169 of 2015

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Dated: 14.07.2015

Between:

Aanuj Infraprojects Private Limited
Rep. by its Managing Director Aanuj Banka

.. Petitioner

and

M/s. Arasmeta Captive Power Company Limited,
Rep. by its Managing Director.

.. Respondent

Counsel for the Petitioner: Mr. B. Tasara for
Mr. Avinash Desai

Counsel for the Respondent: None appeared.

The Court made the following:

ORDER:

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

I have heard the learned counsel for the petitioner and perused

the record.

The respondent has invited tenders for execution of Phase-II Civil Work Construction of Plant Building and Non-Plant Building at Gopalnagar District, Janjgir-Champa, Chattisgarh in July, 2009. The petitioner, who applied for the work, was issued a Work Order on 26.08.2009. Another Work Order was issued on 26.03.2010. Subsequently amendments were brought out to the Work Orders on 11.05.2010 and 15.12.2011. The petitioner averred that it has completed the execution of work and submitted bills and that against a total sum of Rs.7,23,74,027/-representing the value of work executed by it, the respondent paid only a sum of Rs.6,75,50,234/- leaving a balance of Rs.48,23,793/-. The petitioner further averred that the respondent has unilaterally withheld the said sum of Rs.48,23,793/- towards liquidated damages for non-completion of the work within the prescribed milestones under the contract. The petitioner caused a statutory notice on the respondent on 19.02.2015, to which the respondent has replied on 19.03.2015.

In its reply notice, the respondent has stated that the petitioner has not completed the contract work even as on 12.01.2012 resulting in huge delay of almost 289 days and that certain works are yet to be completed. It has relied upon Clause 6 of the Work Order, which envisaged completion of work within the stipulated time i.e., 28.01.2010, and Clause 7, which envisaged that if the petitioner fails to complete the work within the stipulated time, it is liable to pay liquidated damages @ 1% of the indicative contract price per week for such delay beyond the respective completion dates subject to maximum of 10% of the contract price. The respondent further stated that the indicative contract price in the work order I is Rs.4,25,14,144/-, that after considering all the variations, the actual contract work value was arrived at Rs.3,17,42,904/-, that the bills for the works done by the petitioner were valued at Rs.3,17,42,904/- and that as against the

Work Order-I, the respondent has paid Rs.2,56,00,113/- leaving a balance of Rs.61,42,791/- to be adjusted against the claim. As regards Work Order-II, it was stated that the bills for the work done by the petitioner was valued at Rs.7,23,74,027/-, as against which the respondent has paid Rs.6,75,50,234/- and a penalty of Rs.50,00,000/- was adjusted in the Financial Year 2010-11 against bill Nos.7, 8 and 9 dated 08.12.2010, 18.12.2010 and 11.02.2011 respectively and that the petitioner itself is liable to pay the respondent a sum of Rs.1,76,207/-.

A Company Petition for winding up of a Company is maintainable if it is unable to pay the debt. In a catena of decisions, the Courts held that for the purpose of Section 433 read with 434 of the Companies Act, 1956 (for short 'the Act'), a debt must be either an admitted or undisputed. The Courts further held that if there is a bona fide dispute regarding the alleged debt, the Company Court would not entertain a petition for winding up, for a petition for winding up is not meant for recovery of money, for which the aggrieved party has common law remedies like a civil suit or arbitration. The Courts further held that denial of debt shall not be cloak or moonshine and that such denial must be bona fide. (See *M/s. Madhusudan Gordhandas & Co. v. Madhu Woollen Industries Pvt. Ltd.*^[1], *Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami and another*^[2], *Pradeshia Industrial & Investment Corporation of U.P. v. North India Petrochemicals Ltd.*^[3], *Mediquip Systems (P) Ltd. v. Proxima Medical System GmbH*^[4], *Vijay Industries v. NATL Technologies Ltd.*^[5], *IBA Health (India) Pvt. Ltd. v. Info-Drive Systems SDN.BHD*^[6], *Krishna Kilaru and another v. Maytas Properties Ltd.*^[7] and *M/s.India Bulls Housing Finance Ltd. v. M/s.South Asian Agro Industries Ltd.*^[8])

The respondent has taken the stand that the balance amounts

withheld by it is towards the liquidated damages for the admittedly delayed execution of the work. It is not in dispute that Clause 7 of the Work Order stipulated liquidated damages at a particular percentage of the contract value.

The question whether the withholding of liquidated damages by the respondent is proper or not, needs to be adjudicated by a competent Forum. When there is a serious dispute about the petitioner's entitlement for receipt of the balance amount, in my opinion the denial of debt by the respondent cannot be said to be either cloak or moonshine to evade payment. Unless the competent Court of law adjudicates the claim of the petitioner, the amount claimed by the latter cannot be considered as the debt falling within the provision of Section 433 read with 434 of the Act.

Applying the settled legal position as discussed above to the case on hand, I am of the opinion that the dispute raised by the petitioner in this Company Petition cannot be entertained for the purpose of ordering winding up of the respondent. The petitioner is relegated to the common law remedies for recovery of the amounts claimed by it from the respondent.

The Company Petition is accordingly dismissed.

As a sequel to dismissal of the Company Petition, Company Application Nos.1038 & 1039 of 2015 are disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

14.07.2015.
v v

[\[1\]](#) (1971) 3 SCC 632

- [\[2\]](#) 1965 (35) Comp. Cases 456 (SC)
- [\[3\]](#) (1994) 3 SCC 348
- [\[4\]](#) (2005) 7 SCC 42
- [\[5\]](#) (2009) 3 SCC 527
- [\[6\]](#) (2010) 10 SCC 553
- [\[7\]](#) (2013) 176 Comp. Cases 483 (AP)
- [\[8\]](#) (2014) 187 Comp. Cases 205 (AP)