

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

COMPANY PETITION NO.159 OF 2013

DATED:25-8-2015

Between:

M/s. ARCOM MEDICAL DEVICES PVT. LTD.

A company registered under the Indian Companies Act, 1956

Rep. by its Managing Director Sri Sanjeev Kumar Gupta

Having its office at 3-6-140/A, # 402, City Centre

Himayathnagar

Hyderabad

... Petitioner

And

M/s. Yashoda Healthcare Services Pvt. Ltd.,

(Yashoda group of Hospitals)

A Company registered under the provisions of

Indian Companies Act, 1956,

Rep. by its Managing Director

Having its Registered Office at 16-10-29

Nalgonda X Road, Malakpet

Hyderabad

... Respondent

... Respondents

COUNSEL FOR THE PETITIONER: Mr. L. Ravichander, Senior
Counsel, for

Mr. Milind G. Gokhale

COUNSEL FOR THE RESPONDENT: Mr. K. Vivek Reddy

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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

2. The petitioner averred that it is in the business of supplying various specialized surgical and medical devices to various hospitals in Andhra Pradesh and in India and has been in the said business for the last twenty years. That the respondent is a private limited company incorporated in 1993 under the provisions of the Companies Act, 1956 (for short, 'the Act') and that the respondent is running various hospitals in the name and style of Yashoda Hospitals in and around the cities of Hyderabad and Secunderabad, more particularly at Malakpet, Secunderabad and Somajiguda, rendering medical services to the public in general. That during the tenure of its business and as per the request and requirement of the respondent, the petitioner used to supply cardiac stents and consumable products to various hospitals being run by the former. That whenever supplies are made and deliveries effected, they are always accompanied by invoices and proof of delivery in the name of the hospital concerned, i.e., Yashoda Hospital Malakpet, Yashoda Hospital Secunderabad and Yashoda Hospital Somajiguda. That after receipt of the material, the concerned hospital used to put inward stamp of the hospital by clearly mentioning that the material supplied by the petitioner is received by them. (The petitioner filed Annexure-P4 furnishing details of supply, the dates of supply and their value.)

3. That over a period of time the petitioner has supplied goods worth Rs.1,02,35,883/- with the following breakup:

S.No.	Hospital Name	Amount
1.	Yasodha Hospital Malakpet	32,38,519.00
2.	Yasodha Hospital Secunderabad	21,65,902.00
3.	Yasodha Hospital Somajiguda	48,31,462.00

That the amounts payable by the respondent are towards admitted supplies. It has failed to make payments despite various requests made by the petitioner. Therefore, the petitioner has caused demand notice dt.28.3.2013 issued to M/s. Yashoda Cardiac Institute Private Limited, which is also having its registered address at the same premises as that of the respondent company, wherein payment of outstanding dues is demanded within 21 days. That the said notice was also addressed to Dr. G. Surender Rao and Dr. G. Ravender Rao, who are officers of the said company as per the public documents available with the Registrar of Companies, Hyderabad and that after receiving the said notice, the said two persons have sent a combined reply dt.19.4.2013 denying the liability on purely technical ground that invoices were not raised against the said company. The petitioner was therefore constrained to send a statutory demand notice on 6.4.2013 under Section 434 of the Act demanding the respondent to pay a sum of Rs.1,02,35,883/- together with interest at the rate of 18% per annum within 21 days from the date of receipt of the said notice, failing which the petitioner shall initiate proceedings for winding up of the respondent. That after receipt of the statutory notice, the respondent has sent a reply dt.5.6.2013 wherein it has taken a stand that the petitioner, in collusion with the purchase department of the respondent, has raised invoices at double the price at which the same products were supplied to other hospitals and further claimed that the respondent is not answerable to the supplies made to the hospital at Somajiguda as said hospital is being managed by some other independent entity. That the respondent and its officers are

maintaining the hospital under the group name of Yashoda and it is an universally known fact that all the hospitals under the said group are being managed by the combined group of management and as such the stand of the respondent company that it is not answerable for the supplies made to Yashoda Hospital, Somajiguda, is absolutely illegal and unethical. That the entire amount claimed by the petitioner is a liquidated and admitted debt and that as the respondent is unable to pay the same, it is liable to be wound up.

4. On behalf of the respondent, its Administrator has filed a counter affidavit. While denying the claim of the petitioner that the amount claimed by it is an admitted debt, the deponent of the counter has stated that the respondent is running only two hospitals in the twin cities of Hyderabad and Secunderabad, which are located at Malakpet and Secunderabad. That the respondent does not manage or oversee the hospital under the name of Yashoda Hospitals at Somajida. That the hospital in Somajiguda is owned and operated by a partnership firm under the name and style of 'M/s. Yashoda Super Speciality Hospital', as evident from the registration of partnership firm filed as Annexure-1 and that therefore on that ground alone the winding up petition is not maintainable.

5. With regard to the merits, the counter affidavit averred that its authorized capital is Rs.18,50,00,000/- and its paid-up capital is Rs.18,29,76,400/- and that the balance sheet (Annexure-2) shows that the respondent is a solvent company and has the ability to discharge the claim of Rs.1,02,35,883/- as and when the same is established by due process of law in competent Court. The claim of the petitioner that it supplied cardiac stents to the respondent at its request is denied. That on the contrary, the petitioner voluntarily came forward and offered to supply cardiac stents at the lowest possible price in the market to the respondent and based on that understanding the petitioner started supplying cardiac stents to the respondent from the year 2008. That the respondent has nothing to do with the cardiac

stents and consumables supplied by the petitioner to the hospital at Somajiguda as it is not responsible for the operations of the said hospital, and that the petitioner agreed to supply cardiac stents to the respondent hospital at Malakpet and Secunderabad at lowest possible price, but it has failed to stand on this obligation. That the petitioner is guilty of suppression of facts as it has agreed to supply cardiac stents at the lowest possible price in the market, which is suppressed in this petition, that the amounts mentioned in the invoices prepared by the petitioner do not reflect the true and correct value of the stents, that the respondent raised this issue with the petitioner upon which its representative has agreed to revise the invoices so as to reflect the correct price and that if proper reconciliation is made it is the petitioner who is liable to pay to the respondent and not vice versa. That the internal enquiry conducted by the respondent shows that the petitioner had been colluding with certain officials of the respondent and presenting invoices for payment and that it was accordingly able to get several of its invoices from 2009 to 2011 cleared even though the said invoices were not in accordance with the petitioner's obligation to supply cardiac stents at the lowest price to the respondent. That immediately after the said fact came to the notice of the respondent, it has pointed out the same to the petitioner and that after negotiations the petitioner has agreed to revise the invoices submitted to the respondent after giving credit for the excess amount charged by it. That instead of giving credit to the respondent, the petitioner has issued a legal notice and filed this winding up petition.

6. The petitioner has filed a rejoinder wherein it has relied upon the official website of the Yashoda Group (filed as Annexure P-11) to show that it has established three hospitals at Secunderabad, Malakpet and Somajiguda,. The petitioner has denied the allegation that it has supplied cardiac stents at an inflated price to the respondent and asserted that after due negotiations with the respondent and after quoting its price the petitioner has supplied the material by raising

invoices which were duly accepted by the respondent and after utilization of the material supplied under the said invoices, the respondent cannot be permitted to raise a belated plea that the material was supplied at an inflated price.

7. A reply to the rejoinder has been filed by the Administrator of the respondent. Along with its reply the respondent has enclosed invoices of other similarly situated hospital, i.e, Care Hospitals, (Annexure-4) in respect of a purported similar product, i.e., Biomatrix Drug Eluting Stent, at a price of Rs.38,500/- and the petitioner has supplied the same product to the respondent at an average price of Rs.65,000/- per stent. That the Managing Director of the respondent has categorically stated in its e-mail pointing out significant price variation on 1.12.2012 and that in response to the said e-mail, the petitioner made a false representation that its prices to all its clients are almost similar to that charged the respondent. That the petitioner has made similar misrepresentation that the price quoted by it was on par with any other hospital in India. (The respondent filed these e-mail correspondences as Annexures 5 and 6). The respondent has also relied upon e-mail dt.19.2.2013 (Anexure-P.10) enclosed to the rejoinder affidavit filed by the petitioner wherein the Purchase Department of the respondent has categorically stated that the petitioner has been supplying the products at lowest price to hospitals in Hyderabad and other hospitals in the North. That the respondent had several rounds of negotiations with the petitioner whereby it has asked the petitioner to reconcile the accounts and show the products at the correct price for which the petitioner has not agreed and made unreasonable demands. That the e-mail correspondence between the petitioner and the respondent clearly demonstrates that the petitioner has agreed to revise its invoices after it was pointed out that the petitioner has supplied the material at a higher price comparable to the prices at which it has supplied to peer hospitals in Hyderabad. That the respondent has cleared some of the invoices such as that dt.4.6.2012, 5.6.2012 (three

numbers) and 25.6.2012 as evident from Annexure-7 (The ledger and the bank statement of the respondent). That since the petitioner has failed to supply the material at the lowest possible price as agreed by it, the respondent is bona fide disputing the claim of the petitioner and that therefore the company petition is liable to be dismissed.

8. Having regard to the respective pleadings of the parties, the following two issues arise for consideration.

- (i) Whether the company petition is maintainable against the respondent for the supplies made to Yashoda Hospital at Somajiguda? and
- (ii) Whether there is a bona fide dispute with regard to the debt claimed by the petitioner?

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Issue No.1

9. The fact that the Yashoda Super Speciality Hospital at Somajiguda to which cardiac stents have been supplied, is a partnership firm is evident from the registration certificate issued by the Registrar of Firms. As could be seen from the registration certificate, the firm has six partners, including Mr. G. Ravender Rao and Mr. G. Surender Rao. It is also not in dispute that all the three hospitals being run in the name of Yashoda Group at Somajiguda, Secunderabad and Malakpet are under common management. When the petitioner has caused statutory notice delivered on the respondent company claiming alleged arrears from all the three hospitals, a common reply notice was issued on behalf of the respondent wherein a stand was taken that the respondent is not answerable to the supplies made to the hospital at Somajiguda. While same stand was pursued in the counter affidavit, there is a marked shift in the said stand in the respondent's reply to rejoinder. The respondent has not disputed Annexure –P.11 website, the contents of which are extracted herein below.

“The journey of Yashoda Hospitals started way back in 1989 as a small clinic, where Dr. G. Surender Rao practiced pediatrics. With his international education and experience he became one of Hyderabad’s leading child specialists in a short span of time. Not satisfied with personal success he joined forces with his brother, Mr. Ravinder Rao, an experienced business leader, to start Yashoda Hospitals.

Yashoda Group has come a long way since then, from a small clinic in Hyderabad, to a 1,000-plus-bed facility, with three hospitals at Secunderabad, Malakpet and Somajiguda. With a nursing school and college attached to each hospital. It has more than 450 doctors, 1,500 nurses and a total of 4,000 staff comprising of paramedical and other support staff.”

Evidently realizing that it cannot go back on its claim that all the three hospitals are run by the Yashoda Group, in its reply to the rejoinder the respondent has tried to meet the claim of the petitioner on its own merits without reiterating its earlier plea that it is not liable for dues claimed against Yashoda Hospital, Somajiguda. At any rate, even if the dues claimed against Yashoda Hospital, Somajiguda are eschewed, still the company petition is maintainable qua the dues allegedly payable in respect of the other two hospitals being run at Secunderabad and Malakpet, which are admittedly under the management of the respondent company. Hence no conclusive finding on this issue is necessary. This issue is accordingly answered.

Issue No.2:

10. At the hearing Mr. L. Ravichander, learned Senior Counsel, appearing for the petitioner, has fairly admitted that that there is no record to show that the respondent has approached the petitioner for supply of cardiac stents. He has also admitted that the petitioner has not submitted any quotation to the respondent nor the latter has placed any order on the petitioner for supply of stents. It is also not in dispute that the parties are not agreed upon any particular price at which the stents were to be supplied by the respondent. However, the fact remains that over a period of time the petitioner supplied stents under invoices which were duly acknowledged by the staff of the respondent hospitals under the management of the respondent. While the

petitioner claimed price at Rs.65,000/- per unit, the respondent has averred that after certain point of time it has realised that there is a collusion between the petitioner and some of the staff members of the respondent resulting in receipt of material and part payments made at the price quoted by the petitioner, but thereafter on realisation of the fact that the petitioner has supplied stents at Rs.38,500/- per unit to other peer hospitals, the respondent has raised issue to the petitioner. Along with the reply to the rejoinder, the respondent has filed various vouchers and tax invoices as Annexure 4 (pages 9 to 21) showing that the petitioner has supplied Biomatrix Drug Eluting Stent at a price varying between Rs.37,000 and Rs.38,850/- per unit. Along with the reply to the rejoinder the respondent has also filed e-mail correspondence. Annexure-5 contains one of these correspondences, a perusal of which shows that on 1.12.2012 Sri G.S. Rao of the respondent has addressed a letter to Sri Sanjeev of the petitioner wherein it is stated that in a recent interaction with their peers it was found that the same stent which is being supplied to the respondent, is being supplied by the petitioner to other peer hospitals at a very competitive rate of Rs.25,000/-. In reply to the said letter, on the same day Sri Sanjeev wrote to the effect that the price charged on all his clients are almost similar to the price being charged on the respondent and that as the prices are negotiated in line with the current market dynamics and government policies, there cannot be any revision but still accepting the respondent's feelings, the petitioner has given a special discount of 5% on all old payments prior to September for one time settlement. He has further assured that he will stand guarantee for any difference in prices if the respondent can substantiate the same with proof. Through e-mail dt.17.8.2012 issued on behalf of the respondent, Dr. G.S. Rao has informed Mr. Sanjeev that as discussed, it is highly unacceptable that the cost of both these stents, which are being supplied to the respondent by the petitioner to the respondent, is very high compared with other FDA approved stents. Through another

e-mail dt.1.9.2012 Dr. G.S. Rao has informed Mr. Sanjeev that since other vendors have given competitive price, they discontinue with petitioner's products till fresh quotations are given by the latter. In a detailed e-mail sent by Mr. Sanjeev, on behalf of the petitioner, to Dr. G.S. Rao, on 3.9.2012 he has sought to justify the price charged for the stents supplied to the hospitals of the respondent and he has however offered a scheme of 1 stent for every 10 stents usage at Yashoda Hospital in respect of both category of stents. In another e-mail dt.11.9.2012 Mr. Sanjeev has informed Dr. G.S. Rao that the prices quoted to the respondent are at par with any other Corporate Hospitals in India like Apollo, Fortis, Care etc.

11. The facts noted above and the correspondence exchanged between the parties would show that without agreeing upon a specific price, the petitioner started supplies of stents and the respondent started receiving the same. However, from September 2012 the respondent started questioning the petitioner on price of stents by taking a specific stand that the petitioner was supplying stents to other peer hospitals at a lower price whereas it has charged the respondent a highly exorbitant price. Significantly the respondent has taken this stand much before the petitioner has caused service of notice on it. Thus, this is not a case where the respondent has raised its defence after the petitioner has initiated action against it for recovery of the alleged debt.

12. The law is well-settled that under Section 433(1)(e) read with Section 434 of the Act a company can be ordered to be wound up if it is unable to pay the debt, and that if there is a bona fide dispute with regard to the debt claimed, the company cannot be ordered to be wound up. The solvency of the company is relevant for judging whether the denial of debt is bona fide or the same is a cloak or moonshine to evade payment (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],
Pradeshiya 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]).

13. Though it is a fact that the respondent has received the stents from the petitioner and used the same, the former has come out with the defence that non-payment of the amounts claimed by the petitioner is on account of a bona fide dispute pertaining to the price. Having regard to the contemporaneous correspondence between the parties and their conduct, it cannot be said that there is no bona fide dispute and that the defence raised by the respondent is a cloak or moonshine to evade payment. In this context, it needs to be noted that after rejoinder was filed by the petitioner on 27.11.2013, it has filed O.S. No.61 of 2014 against M/s.Yashoda Super Speciality Hospital for recovery of the amount claimed in the present company petition. The respondent has filed a written statement in the said suit denying its liability. Issues were framed on 28.11.2014 by the Court in which the suit is filed. Thus, the alleged debt claimed by the petitioner is seriously contested by the defendant therein.

14. In the light of the above facts, this Court is of the opinion that bona fide dispute regarding price of stents supplied by the petitioner to the respondent exists between the petitioner on one side and the respondent on the other, and hence this is not a fit case for entertaining the company petition for ordering winding up of the respondent.

15. For the above mentioned reasons, the company petition is dismissed, however, leaving the petitioner free to pursue the suit filed by it.

25-8-2015

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[\[1\]](#) (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)