

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CP No. 275 of 2000 (O&M)

Date of decision : 30.10.2015

M/s Unilan Trelew S. A.

.... Petitioner

VS

M/s Nalanda Spinners Limited

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. K.V.S. Kang, Advocate, for the petitioner.

Mr. Piyush Kant Jain, Advocate, for the respondent.

Rajesh Bindal, J.

The present petition has been filed seeking winding up of the respondent company on the ground of inability to pay its debt.

Learned counsel for the petitioner submitted that the respondent company placed order for supply of Raw Wool Scoured- Carpet Grade. Vide sale indent dated 20.7.1996, the material was dispatched on 6.8.1996, along with a certificate from the laboratory regarding its quality as per the order placed. Vide communication dated 31.1.1997, the respondent company admitted its liability to pay the amount. As the amount was not paid, statutory notice was got served on 8.12.1997, which was replied to raising false pleas regarding quality of material supplied. The defence was not tenable, as the material supplied was duly tested in the laboratory and accompanied by the certificate therefor. He further submitted that earlier the petition remained pending in this Court, as the respondent company filed application before the Board for Industrial and Financial Reconstruction. However, now the matter has been disposed of. Reply to the petition was filed only thereafter. In reply, the stand sought to be taken is that the claim is time barred. The same is not legally sustainable as the last communication between the parties was, when the petitioner got the legal notice dated 8.12.1997 served upon the respondent company and the present petition was filed within three years thereafter.

On the other hand, learned counsel for the respondent submitted that admittedly the invoice is dated 6.8.1996. Further even if the pleadings of the petitioner are taken as such, the delivery of the material was taken on 2.5.1997. Vide bill of exchange dated 2.6.1997, ninety days were agreed for payment. Ninety days expired on 1.9.1997. The present petition was filed in this Court in December, 2000, which was clearly time barred. He further submitted that as per the clause in the sale indent any dispute was to be referred to Arbitration under International World Trade Organisation Arbitration Agreement. The petitioner having not availed of that remedy cannot be permitted to approach this Court directly as the debt is disputed, the quality of the material being inferior than ordered. Firstly, the petitioner company was to get the debt determined through Arbitration process. Further relying upon a judgment of Karnataka High Court in The Bank of New York Mellon, London Branch, London vs Cranes Software International Limited, Banglore ILR 2014 KAR 1895, learned counsel submitted that the petitioner being a foreign company registered in Argentina, could not invoke jurisdiction of this Court. The letter dated 31.1.1997, which is sought to be claimed by the petitioner as admission of debt was, in fact, written before the delivery of material seeking modification in the terms of payment. Otherwise as per the invoice, there were no time fixed for payment. The debt in the present case being disputed, the petition deserves to be dismissed.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, as is evident from the facts on record, 15,000 kgs of Raw Wool Scoured was purchased by the respondent company from the petitioner company. The sale indent is 20.7.1996. The invoice is dated 6.8.1996. The value of consigned material was \$ 81,676.40. After the material was dispatched, the terms of payment were modified from CAD (cash against documents) to DA 90 days from the date of revised payment instructions along with interest, which were admitted by the respondent company vide letter dated 31.1.1997. The bill of exchange was signed by the respondent company on 2.6.1997. As per letter dated 31.1.1997, the last date for payment was 90 days from 2.6.1997 i.e. 1.9.1997, however, the amount was not paid. The petitioner got served

statutory notice on 8.12.1997, which was replied to vide communication dated 22.12.1997 disputing the quality of the material supplied.

Learned counsel for the respondent has raised preliminary objection regarding the present petition being not maintainable as the debt is time barred besides raising the issues on merit. He claimed that even if the latest of the document is seen, leaving even behind the date of invoice, the payment was to be made within 90 days from 2.6.1997, the date of bill of exchange, which expired on 1.9.1997. The present petition having been filed in the month of December, 2000, was time barred as even the civil suit could not be filed for claiming the amount. The same being beyond the period of limitation. The contention was raised by learned counsel for the petitioner that limitation continues to run if there is correspondence between the parties. However, there is no merit in the argument raised. There is no communication from the side of the respondent company after 2.6.1997, the bill of exchange. From the petitioner side also there is no communication in between, except the legal notice dated 8.12.1997. A suit for recovery of amount can be filed within three years from the date, the debt became due.

As far as judgment of Karnataka High Court cited by learned counsel for the respondent is concerned, suffice to notice that there is a judgment of this Court taking a different view in The Bank of New York Mellon, London Branch vs JCT Limited 2015 (190) Comp Cas 396, otherwise also the facts in Cranes Software International Limited's case (supra), were different.

Considering the aforesaid factual matrix, in my opinion, the claim of the petitioner being time barred, the present petition seeking winding up of the respondent company on the ground of inability to pay the debt which otherwise is not legally enforceable, cannot be entertained. The petition is accordingly dismissed.

30.10.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)