

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 794 OF 2014

M/s. AB and Co. Global Pvt. Ltd.	.. Petitioner
Vs.	
M/s. Brassco International Pvt. Ltd.	.. Respondent

Mr.A.G. Patil for petitioner.

Mr.Anil Agarwal for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 4TH JANUARY, 2016

P.C.

1 The petition is filed on the basis that there was a debt of Rs.39,64,714/- payable by the company to the petitioner which the company has not paid, hence is unable to discharge its debt, the company is commercially insolvent and therefore, it is a fit case to pass an order of winding up against the company.

2 The petitioner is in the business of trading in materials like copper, copper alloy, brass, ferrous and non-ferrous metal pipes etc. which the petitioner sells from the local markets as well as from abroad. The petitioner supplied to the respondent various pipes made of copper and brass from time to time between 15.12.2012 to 28.12.2012. The total value of the supply made, as could be seen from the ledger accounts annexed to the

petition, was Rs.3,18,17,882/-. As per the ledger account, the petitioner states that the balance of Rs.25,54,437/- is payable towards principal. In the petition, the petitioner is also claiming interest at 36% p.a. though there is no agreement to that effect or is there any averment in the petition as to how they are entitled to this 36% p.a. interest.

3 It is the case of the petitioner that when the respondent did not pay balance amount, the petitioner caused a notice to be issued under Section 433, 434 of the Companies Act, 1956 through their advocate on 14.10.2013. The company replied to this notice through their advocates' letter dated 17.10.2013, in which it is mentioned that between 20.12.2012 and 28.12.2012, the company paid a sum of Rs.2,81,23,974/- through four L/Cs. It is also mentioned that the company made payment through RTGS a further sum of Rs.20,75,000/-. It is also stated by the company that sometime in the 1st week of July 2013, the petitioner and the company met and they settled all claims of deficiency and defects in the quality and quantity of the goods supplied and agreed that the company may raise debit note in the sum of Rs.12,18,908/- leaving a balance of Rs.4,00,000/- as payable in full and final settlement. This amount of Rs.4,00,000/- has admittedly been paid by RTGS transfer dated 12.07.2013. Therefore, as against the total invoices of Rs.3,18,17,882/- only a sum of Rs.12,18,908/-

is payable. Of course, the petitioner, through its advocates' letter dated 6.09.2013 in rejoinder to the reply, has denied that any such meeting took place in the first week of July 2013 where it was agreed that the respondent-company may raise debit note for Rs.12,18,908/-.

Though the balance is only Rs.12,18,908/-, it is not clear as to why the company continues to claim Rs.25,54,437/-. The counsel for the respondent states that a cheque of Rs.45,00,000/- returned as mentioned in the ledger account has nothing to do with the transaction in question. In any case, the petitioner has not claimed in this petition that this amount of Rs.45,00,000/- is payable. The petitioner has restricted his case to the amount of Rs.25,54,437/-. Whether the party had met and discussed in the first week of July 2013 or not is a subject matter that requires trial. The transaction was during the period 15.12.2012 to 28.12.2012. The company has been making payment upto 29.06.2012 and the final payment, which according to the respondent, was Rs.4,00,000/- was made on 12.07.2013. Moreover, the debit note raised is before the final payment of Rs.4,00,000/- was made. The company has paid almost 96% of the total amount of Rs.3,18,17,882/- claimed under the invoices. The company has also responded to the statutory notice issued by the petitioner. The company has also filed affidavit in reply to the petition. From the defence raised in the affidavit in reply and the replies sent to the statutory notices, I cannot

conclude that the defence is not *bona-fide* or it is moonshine.

4 In the circumstances, the petition cannot be entertained and requires to be dismissed. The petition is hereby dismissed.

(K.R. SHRIRAM, J.)