

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 84 OF 2016
IN
COMPANY PETITION NO. 864 OF 2014

Premier Road Carriers Limited .. Appellant
V/s
Siemens Limited .. Respondent

Mr. Paritosh Jaiswal with Mr. Nikunj Mehta and Ms. Mansi Patel i/b Udwadia & Co. for the appellant.
Dr. Birendra Saraf, Senior Advocate with Mr. Shyam Kapadia, Mr. Gaurav Shah and Mr. Aditya Mehta i/b Neghandhi Shah & Himayatullah for the respondent.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 21st DECEMBER 2016

P.C.:

The appellant is before us aggrieved by the order dated 8th December 2015 whereby the Company Petition filed at his instance was dismissed with certain observations apart from imposing the costs of Rs.1,00,000/-.

2. Claiming a sum of Rs.4,69,42,986/- as outstanding dues payable for the services provided by the appellant Company, the Company Petition came to be filed contending that it is an admitted claim without any serious and legal disputes. The appellant

Company was assisting the respondent in transporting the equipment of the respondent from place to place. The total claim relating to 770 invoices were not paid. The appellants even submitted that the amounts under 67 invoices are time barred. As usual, the appellants proceeded to mention that in spite of repeated requests and demand, no payment came and finally a statutory notice was issued to the respondent Company which was of no avail to the appellant Company. According to the appellants, the email correspondence between the parties reflected the outstanding amount wherein the respondent Company acknowledged the said outstanding.

3. In response to this claim in the Company Petition seeking winding up, the respondent Company came up with a strong objection and the conduct of the appellant Company in not disclosing arbitration proceedings already initiated by the respondent Company claiming a sum of Rs.5,55,62,526.30 which includes interest at 18% from 19th December 2010 until payment and/or realization. The subject matter of arbitration was one of the consignments, which carried the respondent's equipment by the appellant Company on 19th December 2010, met with an accident and the cargo carried by the appellant Company had goods of the respondent worth about Rs.5,55,62,526/-. They also made it clear that the insurance claim of the respondent Company was rejected since the vehicle belonging to the appellant Company, which carried the goods of the respondent Company, was overloaded than the

permissible load and that seems to be one of the reasons for the accident. When the respondent Company did not realise the amount from the insurance company, they had no other option but to seek redressal by initiating arbitration proceedings before the Arbitrator.

4. We are not concerned whether the arbitration proceedings were initiated properly or not. We are not concerned with the fact whether there was a bona fide claim made by the appellant Company in the Company Petition where they had to disclose that there is an admitted outstanding dues payable by the respondent Company. The very contention of the respondent Company was that they had arbitration claim of Rs.5,55,62,526/- and the Company Petition is filed for much less than the amount claimed in the arbitration proceedings. What we notice from the proceedings is that 11 months prior to initiation of the Company Petition, arbitration proceedings had already commenced in which the appellant-petitioner had already taken participation. During pendency of the Company Petition for winding up of the respondent Company, an award came to be passed in favour of the respondent Company.

5. Learned Judge, after hearing both the parties, apart from referring to other contentions raised by the respondent Company with regard to defects found in the statutory notice, proceeded to analyse the material placed on record whether the appellant Company has come to the Court with clean hands disclosing true

facts that existed so far as the claims between the parties in the light of pendency of arbitration proceedings.

6. It is also specific defence of the respondent Company that as a counter-blast to the arbitration proceedings, the appellants have come up with the Company Petition. If a claim was pending against the appellant Company in the form of damages, it was very well within the authority of the appellant Company to seek adjustment of their dues if they are liable to pay in the arbitration proceedings. We do not know whether such counter-claim was raised by them. However, the appellant Company seems to have initiated independent arbitration proceedings which also seem to have been initiated after filing the Company Petition. As on the date of disposal of the Company Petition by the Company Judge, an award was already passed in favour of the respondent Company. The learned Judge, after referring to relevant paragraphs from the judgments reported in *Federal Chemical Works Ltd., 1964 Company Cases Vol. 34 Pg.963*, *C.A. Galiakotwala & Co. Pvt. Ltd., 1984 Company Cases Vol. 55 Pg.746* and *Jubilant Organosys Ltd. vs. DCM Shriram Industries Ltd., (2004) 114 DLT 52*, proceeded to opine that apart from the appellant Company not coming to the Court with clean hands, by concealing the bona fide disputes pertaining to the claim, had come up with the Company Petition but the same cannot be entertained since the claim between the parties is otherwise hotly disputed or contested. Since the appellant Company concealed the fact of pendency of arbitration proceedings and an award already came to

be passed in respect of the claim of the respondent Company towards damages on account of accident, as stated above, and on account of conduct of the appellant Company in not disclosing the bona fide disputes with regard to the claim, the learned Judge was justified in opining that the Company Petition was only an ingenious mask invented to deprive the bona fide creditor. These observations, according to us were rightly made by the Company Court. Further, the learned Judge opined that the contentions brought on record by the appellant Company cannot be accepted for the reasons stated and dismissed the Company Petition imposing costs of Rs.1,00,000/-.

7. According to the appellants, the entire claim of the respondent Company was in respect of damages on account of an accident and it has nothing to do with the claim made by them under various invoices. The fact remains that there was claim and counter-claim between the parties, therefore one cannot come to a conclusion that there was no resistance or bona fide dispute with regard to the claim made by the appellant Company so far as the respondent Company is concerned. In that view of the matter, it was not a straight forward claim where the respondent could not have raised any dispute, therefore there was a bona fide dispute with regard to the claim. Whether the claim of the appellant Company was bona fide or not was the subject matter of discussion. In filing the Company Petition whether conduct of the appellant Company was bona fide or not was the subject matter which ultimately went

against the appellants. Therefore, if the appellant Company is entitled to recover any of the amounts claimed in the Company Petition before any other forum, including by way of set off, the observations made in the impugned order shall not come in the way of considering such claim. If any of the claims have become time barred in view of pendency of the Company Petition, it is open to the appellants to take protection of Section 14 of the Limitation Act, which shall be disposed of in accordance with the procedure contemplated.

8. Since we have protected the interests of the appellant Company, so far as their claims are concerned, we are of the opinion that there should not be any concession so far as the costs are concerned. However, we appreciate the stand of the learned Senior Counsel Dr. Birendra Saraf for the respondent Company that they are not interested to get enriched with the costs and the same could be diverted for a better purpose like charity. The amount of costs of Rs.1,00,000/- shall be paid to the Maharashtra Legal Services Authority within two weeks from today, which shall be used for the purpose of benefit of women and children.

9. With the above observations, the appeal is disposed of.

(M.S. SONAK, J.)

CHIEF JUSTICE