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

COMPANY PETITION NO.627 OF 2014

M/s.Microweb Enterprises Pvt. Ltd. ….Petitioner
V/s.
M/s.Mantra Exports Pvt. Ltd. ....Respondent

Mr.Anand Mishra i/by Ashok M.Saraogi for the petitioner.
Mr.Geogy Jacob i/by Geogy Jacob & Associates for the respondent.

CORAM : K.R.SHRIRAM,J
DATE : 25.2.2016

P.C.:-

1 The petition is filed alleging that the company is indebted to the petitioner in the sum of Rs.17,28,431/- which the company has failed and neglected to pay despite receiving the statutory notice and hence the company is commercially insolvent and deserves to be wound up.

2 It is the case of the petitioner that the petitioner sold and supplied various materials to the respondents and according to the petitioner the respondents have received the said materials and not raised any objection as regards to the quality & quantity. It is also stated that the respondents issued a letter of guarantee. The claim of the petitioner is split into two parts. One is direct supply to the company and the other is supply made to another entity for whose payment the company stood as a guarantor.

3 As to the first part, it is alleged in the petition that the petitioner supplied various materials to the company worth Rs.3,51,483/- which is due and payable. As to the 2nd part, it is alleged that the petitioner supplied material worth Rs.13,76,948/- to another entity for which the company gave guarantee that the payment will be made by the other entity. The petitioner issued a statutory notice dated 5.11.2013. The company by its reply dated 3.12.2013 denied its liability. The company has also denied that it gave any guarantee for any payment to be made by the 3rd entity.

4 The factors to be considered while hearing the Company Petition for admission has been analyzed by the Apex Court in [1]***IBA Health (India) Private Limited vs. Info-Drive Systems Sdn. Bhd.,*** The paragraphs-20, 21, 22, 23, and 31 are relevant and read as under :-

> "20. The question that arises for consideration is that when there is a substantial dispute as to liability, can a creditor prefer an application for winding up for discharge of that liability? In such a situation, is there not a duty on the Company Court to examine whether the company has a genuine dispute to the claimed debt? A dispute would be substantial and genuine if it is bona fide and not spurious, speculative, illusory or misconceived. The Company Court, at that stage, is not expected to hold a full trial of the matter. It must decide whether the grounds appear to be substantial. The grounds of dispute, of course, must not consist of some ingenious mask invented to deprive a creditor of a just and honest entitlement and must not be a mere wrangle. It is settled law that if the creditor's debt is bona fide disputed on substantial grounds, the court should dismiss the petition and leave the creditor first to establish his claim in an action, lest there is danger of abuse of winding up procedure. The Company Court always retains the discretion, but a party to a dispute should not be allowed to use the threat of winding up petition as a means

1 (2010) 10 SCC 553

of forcing the company to pay a bona fide disputed debt.

21. In this connection, reference may be made to the judgment of this Court in Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami and another, in which this Court held that :

"It is well-settled that 'a winding up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the court..."

22. The abovementioned decision was later followed by this Court in Madhusudan Gordhandas Co. v. Madhu Woollen Industries Pvt. Ltd. 1971) 3 SCC 632. The principles laid down in the above mentioned judgment have again been reiterated by this Court in Mediquip Systems (P) Ltd. v. Proxima Medical Systems (GMBH) (2005) 7 SCC 42, wherein this Court held that the defence raised by the appellant-company was a substantial one and not mere moonshine and had to be finally adjudicated upon on the merits before the appropriate forum. The above mentioned judgments were later followed by this Court in Vijay Industries v. NATL Technologies Ltd.

23. The principles laid down in the above mentioned cases indicate that if the debt is bona fide disputed, there cannot be "neglect to pay" within the meaning of Section 433 (1) (a) of the Companies Act, 1956. If there is no neglect, the deeming provision does not come into play and the winding up on the ground that the company is unable to pay its debts is not substantiated and non-payment of the amount of such a bona fide disputed debt cannot be termed as "neglect to pay" so as to incur the liability under Section 433 (e) read with Section 434 (1) (a) of the Companies Act, 1956.

24 to 30............

31 Where the company has a bona fide dispute, the petitioner cannot be regarded as a creditor of the company for the purpose of winding up. "bona fide dispute" implies the existence of a substantial ground for the dispute raised. Where the Company Court is satisfied that a debt upon which a petition is founded is a hotly contested debt and also doubtful, the Company Court should not entertain such a petition. The Company Court is expected to go into the causes of refusal by the company to pay before coming to that conclusion. The Company Court is expected to ascertain that the company's refusal is supported by a reasonable cause or a bona fide dispute in which the dispute can only be adjudicated by a trialin a civil court."

5 Therefore, if the company raises a substantial dispute as to the liability on substantial ground, the petition should not be entertained. Let us therefore, examine whether the defence raised by the company is substantial or misconceived.

6 As regards the first part of Rs.3,51,483/- though in the reply to the statutory notice, the company has denied its liability, in the affidavit in reply in paragraph-7 it is stated as under :-

> *"The respondent is not responsible for any other order and/or delivery except for the fabric mentioned in the purchase order dated 14th September 2012".*

7 The counsel for the respondent in fairness stated that the company is ready and willing to pay this amount of Rs.3,51,483/-. The counsel for the petitioner however, rejected the offer. In fact the counsel for the company went a step further and stated that his client could also be generous to pay some more amount towards interest and was ready and willing to pay upto Rs.4,00,000/-. The petitioner however, rejected the offer.

8 As regards the 2nd part viz. guarantee given for payment by a 3rd party, there is no evidence whatsoever annexed to the petition. The company in its reply to the statutory notice has categorically denied that it ever stood guarantor for payment by the 3rd party. There is no evidence annexed to show that the company in fact guaranteed payment to the 3rd party. In the affidavit in reply also the company has denied. Therefore, these are triable issues and the company court at this stage, is not expected to hold a full trial of the matter.

9 In the circumstances, I cannot hold that the defence raised by the company is spurious, moonshine, mis-conceived or lacks bonafide.

10 At the same time, in view of the admission as regards the first part of the claim, the company is directed to deposit with the Prothonotary & Senior Master, High Court, Bombay, a sum of Rs.3,51,483/- to the credit of the petitioner. The amount to be deposited within two weeks from today. It will be open for the petitioner to withdraw this amount from the Prothonotary & Senior Master, High Court, Bombay.

11 The petition accordingly disposed.

(K.R.SHRIRAM,J)