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

COMPANY PETITION NO. 797 OF 2014

M/s. Eurostyles .. Petitioner
Vs.
M/s. Mantra Exports Pvt. Ltd. .. Respondent

Mr.Sushil Upadhyay i/b Ashok M. Saraogi for petitioner.

Mr.Geogy Jacob i/b Geogy Jacob & Associates for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 8TH FEBRUARY, 2016

P.C.

1 The petition is filed against the company on the basis that the company is unable to pay its debt and requires to be wound up. It is alleged in the petition that the petitioner is carrying on business of trading in readymade garments and as per the order and representations made by the company, the petitioner sold, supplied and delivered readymade garments to the respondent-company and raised various bills. It is also mentioned that as the respondent-company received the said materials and never raised any objection as regards to the quality, quantity and rates and also issued letter of guarantee, the company has to pay a sum of Rs.29,87,434.80 to the petitioner. The petitioner has not annexed any documents to the petition regarding the supply made, viz., purchase orders or invoices or delivery challans etc. The petitioner has annexed a copy of the statutory notice and

also reply received from the company. In the reply to the statutory notice, the company has taken the stand that no amount is payable to the petitioner inasmuch as the goods supplied were of inferior quality and the same was rejected by the buyers. It is also stated that right from the beginning, the company was warning the petitioner about the quality.

In the affidavit in reply, the respondent-company has annexed copy of the correspondence exchanged whereby the defects in the garments supplied by the petitioner has been mentioned. Therefore, right from the beginning and not as an after thought, the company has raised substantial disputes.

2 In ***IBA Health (India) Private Limited Vs. Info-Drive Systems Sdn. Bhd.***[1], paragraphs 20, 21, 22, 23, 31 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*

1 (2010) 10 SCC 553

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 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 (1965) 35 Company Cases 456 (SC), 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 above mentioned decision was later followed by this Court in Madhusudan Gordhandas and 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. (2009) 3 SCC 527.

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.*

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31 Where the company has a bona fide dispute, the petitioner cannot be regarded as a creditor of the company for the purposes 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 trial in a civil court.

3 The company has raised *bona fide* dispute about the existence of substantial grounds for the disputes. The debt upon which the petition is found is a hotly contested debt. The party to the dispute should not be

allowed to use the threat of winding up as a means of enforcing the company to pay a bona fide disputed debt. A Company Court cannot be reduced as a debt collecting agency. A company Court also is not expected to hold a full trial in the matter.

5 In the circumstances, as the company has raised substantial disputes which cannot dismissed as misconceived, this petition cannot be entertained. Petition is dismissed.

(K.R. SHRIRAM, J.)