

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL NO. 575 OF 2016****IN****COMPANY PETITION NO. 328 OF 2011****WITH****NOTICE OF MOTION NO. 2268 OF 2016**

Kanyalal R. Mirani

.. Appellant

V/s.

M/s. Trans-Fabpower India

Pvt. Ltd.

.. Respondent.

Mr. Sharan Jagtiani a/w. Mr. Kunal Vaishnav and Mr. Sandipan i/b
M/s. Ganesh & Co. for the Appellant.

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

DATE : 1 DECEMBER 2016.

P.C.

1] Heard learned counsel for the petitioner/appellant. The petitioner in the company petition is the appellant before us. Apparently, the winding up is sought for non-payment of amount under two purchase orders dated 26th November 2009 and 12th January 2010. After appearance of the respondent herein, they filed an affidavit-in-reply bringing on record the correct state of affairs. The main contention was with regard to non-disclosure of

correct facts before the Court or disclosure of incorrect facts, which compelled the Court to dismiss the company petition.

2] On perusal of the correspondence between the parties as referred to in the affidavit-in-reply from para 8 onwards, the learned Company Judge has indicated how the averments made in para 8 of the company petition and later the correspondence between the parties depicted the actual stand of the respondent which persuaded the Court to come to conclusion that the appellant/petitioner did not disclose the correct state of affairs. Rather disclosed facts, which on first look would indicate that they are altogether different from what it was. Paras 8,9,10 and 11 of the learned Company Judge's order is reproduced herein in order to appreciate the reasoning why the learned Company Judge felt that the petition ought to be dismissed. Paras 8,9,10 and 11 of the said order read thus:-

“8 Moreover, in the Petition originally filed and even after amendment, paragraph 8 reads as under :-

“8. Petitioner state that the company has accepted aforesaid goods without any demur as to quality and quantity thereof and have confirmed that the aforesaid materials were to its satisfaction.”

9 But the fact is that the Company had in fact raised serious objections on the quality and also the quantity and has never confirmed that the goods were to its satisfaction. Therefore, the averments in paragraph 8 of the Petition that the company accepted goods without any demur as to quality and quantity

thereof or confirmed that the materials were to its satisfaction is false to the knowledge of the petitioner.

10 Further paragraphs 11 and 12 of the Petition read as under :-

“11. The Director of the respondent company also represented that their huge payment has been blocked and as soon as released they would immediately released the due of the petitioner but after the great efforts director of company agreed to finalized the account of the petitioner and after finalizing the account as per the terms of purchased orders & invoices and against that the respondent company handed over/issued some cheques with the promised and assurance that same would be honoured upon presentation as part payment and had also promised that for balance would give another cheques after clearing of said cheques.

12. The petitioner state that as per the promise of the respondent company the petitioner deposited said cheques with their bank for realization. However, the same were returned disnatured with the remark “STOP PAYMENT BY DRAWER”.”

11 Against this Exh.I1 and I2 annexed to the affidavit-in-reply, read as under :-

“Date : 14th Nov 2009

To

M/s. R S Wire Industries

H4/ Cama Industrial Estate

Near Mehat House Goregaon (E)

MUMBAI : 400 063

Dear Sir,

We are enclosing herewith the Cheques as follows

as per our Purchase Order for M/s. R S Wire Industries and M/s. K Copper Products. We request you to please accept these cheques only as a security and dispatch the material as per the said Pos.

Ch.No.	Amount	In favour of
006469	2571512.00	R S Wire Industries
006470	2057209.00	R S Wire Industries
006399	2598010.00	R S Wire Industries
006398	2769320.00	K Copper Products
006468	2096772.00	K Copper Products

PS : Cheque should be deposited only after the confirmation from Mr R B Shinde.

Thanking you,

Yours faithfully,
For Transfab Power I Pvt. Ltd.

R.B. Shinde

Director.

“Date : 15/12/2009

To

M/s. R S Wire Industries

H4, Cama Industrial Estate

Anna Nagar, Off. Walbhat Road,

Goregaon East MUMBAI 63

Sub. Post Dated Cheques.

Kind Attn: Mr. K.Mirani

Dear Sir,

Please find enclosed PDC cheque of Rs.70,00,000/(Rs. Seventy Lakh Only) vide cheque no.006567 & Rs.40,00,000/(Rs. Forty Lakh Only) vide Cheque no.006568 & Rs.11,00,000/(Rs. Eleven Lakh only) vide cheque no.006569.

We are sending these post dated cheques for security purpose. Please don't deposit the

*cheques without our confirmation.
Kindly acknowledge the receipt of the same.
Thanking you,*

*Yours faithfully,
For Transfab Power India Pvt. Ltd.*

*Bharati Patil
Secretary. ”*

*Therefore, the averments made in the Petition,
once again are false to the knowledge of the
petitioner.”*

Since the appellant approaches the Court seeking discretionary reliefs, it was expected to bring on record the correct facts especially with regard to the categorical admission so far as the liability of the respondent is concerned. On the other hand, no doubt, such contentions were raised, but it showed that there was no admission of the dues or liabilities without any rider on the part of the respondent. Under these circumstances, we find no good ground warranting interference with the opinion of the learned Company Judge. Accordingly, the appeal is dismissed.

3] It is needless to say that if the appellant/petitioner approaches for recovery of money before any other forum, it has to be proceeded with strictly adhering to the statutory provisions and without reference to our opinion with regard to the intention of the appellant/petitioner at the time of filing the company petition.

4] In view of disposal of the main appeal, Notice of Motion No. 2268 of 2016 does not survive and the same is disposed of.

(CHIEF JUSTICE)

(M.S.SONAK, J.)