IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 650 OF 2014

In the matter of Sections 433, 434 & 439 of the Companies Act, 1956; etc.

M/s. AMS Marine Services Pvt. Ltd. .. Petitioner
Vs.
M/s. Powermech Services Pvt. Ltd. .. Respondent

K.C. Prusty for petitioner.
Ms.Pooja Khandeparkar a/w. Ms.Sneha Patil i/b K.K. Associates for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 23RD FEBRUARY, 2016

P.C.

1 The petition is filed alleging that the respondent owes the petitioner a sum of Rs.22,05,740/- which includes the interest and as the company has failed and neglected to pay the amount despite receiving statutory notice, the company is commercially insolvent and requires to be wound up.

2 The petitioner, it is stated in the petition, is in the business of maintenance of marine equipment, ships and vessels, ship repairs and fabrication etc. The respondent approached the petitioner and requested the petitioner to carry out work of chemical cleaning and associated work on Board Indian Naval Ships, Naval Dockyard etc. At the request of the company, the petitioner engaged labourers, technicians, tools etc. and carried out the works. The petitioner claims to have raised 6 invoices, all

dated 2.09.2013 bearing Nos.26/2013 to 31/2013 for a total amount of Rs.14,23,925/-. It is also stated that the petitioner advanced and lent a sum of Rs.5,00,000/- to the respondent-company which amount also has not been returned by the company. The petitioner is claiming interest at 18% p.a. on these amounts. As the company failed and neglected to pay the amount, the petitioner issued a statutory notice dated 1st March 2014 through its advocates. The company replied to the statutory notice denying that the petitioner carried out any work on behalf of the company and that an amount of Rs.14,23,925/- was payable under that head.

As regards Rs.5,00,000/- claimed by the petitioner, the stand taken by the company was that the petitioner had issued a Work Order to the company for Rs.10,00,000/- and as per the terms and conditions of the work order, the company was to pay an advance of Rs.5,00,000/- which has been paid and the balance amount has not been paid.

As the company did not make the payment, this petition has been filed.

3 The factors to be kept in mind while hearing a company petition for winding up has been discussed in ***IBA Health (India) Private Limited Vs. Info-Drive Systems Sdn. Bhd.***[1] as held in paragraphs 22, 23 and 31 which

1 (2010) 10 SCC 553

read as under :-

> *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 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. In the instant case, the Company Court was very casual in its approach and did not make any endeavour to ascertain as to whether the company sought to be wound up for non-payment of debt has a defence which is substantial in nature and if not adjudicated in a proper forum, would cause serious prejudice to the company.*

4 Let us consider whether the defence raised by the company is *bona-fide* or not?

In the affidavit in reply to the petition also the stand of the company has been that all the invoices relied upon by the petitioner are false and fabricated. It is also stated that there was no oral or verbal agreement. It is also stated that there was no Work Completion Report either issued by the Indian Navy or of other party. The company has also highlighted the chronology of all the invoices inasmuch as all the invoices are dated 2.09.2013 for the work carried out on Indian Naval Vessels and for the work carried out at Khopoli. In the petition, the invoice which is at Exh.B-6 is the same as the invoice annexed at Exh.D-1 which does not even mention where the work was carried out, for which the labour charges are claimed.

5 As regards the amount of Rs.5,00,000/- being claimed by the petitioner, the company has also annexed a copy of the Work Order/Purchase Order issued by the petitioner on the company wherein the work to be carried out is mentioned, the amount to be paid is mentioned and also the payment terms. In the affidavit in reply, the company has also annexed a copy of the letter dated 28.02.2014, in which the company has called upon the petitioner to pay the balance amount of Rs.5,00,000/-.

6 In the affidavit in rejoinder, there are no specific denials. At the same time, it is necessary to note that there is a common Director between the petitioner and the company. It is agreed that the Director, who is a Director of the petitioner and also the respondent-company, has filed a petition in before the Company Law Board alleging against the company under Sections 397, 398 of the Companies Act, 1956 alleging oppression and mis-management. This petition appears to be the fall out of that petition. I am saying this because of what is stated in paragraph 6 of the affidavit, the last sentence of which reads as under :-

> *"6 …..................The petitioner company is only interested in ensuring that the respondent company does not harm interests of the petitioner company and should be wound up as it appears to have been mismanaged with mala-fide motives."*

7 It is settled position that the Company Court is not expected to hold a full trial of a matter. As disputed questions as to the liability are raised, which cannot be considered as spurious or *mala-fide*, this petition is not maintainable.

8 The petition stands dismissed.

(K.R. SHRIRAM, J.)