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

COMPANY PETITION NO. 190 OF 2015

M/s Inter Globe Air Express

...Petitioner

VS

Stelmec Ltd.

...Respondent

.....

Mr Madhav Jamdar a/w Mr Rohan Surve for the Petitioner

None for the Respondent

.....

CORAM : B. P. COLABAWALLA J.

JULY 11, 2016

P.C. :

This Company Petition has been filed seeking to wind up the Respondent Company - Stelmec Ltd. on the ground that it is unable to pay its debts. It is the case of the Petitioner that the Respondent Company is indebted to the Petitioner in the sum of Rs.2,19,425/-.

2 The brief facts giving rise to the present controversy are that the Petitioner being engaged in the business of travel, and dealing with Air Ticket booking, Train Ticket booking, Rent on car etc., was introduced to the Respondent Company in November 2009. Subsequently, on 14 November 2009 the Respondent Company

agreed to engage the services of the Petitioner. Pursuant thereto, from the year 2010 the Respondent Company availed the services of the Petitioner of booking airline tickets etc. For the services that were availed of by the Respondent Company, the Petitioner raised their invoices for the same from time to time. As far as the claim in the present Petition is concerned, the particulars of claim (Exh J to the Petition) indicates that it is in relation to 39 invoices, a total of which comes to Rs.2,41,809/-. Thereafter, the Petitioner has received part payment of Rs.22,384/- leaving a balance amount of Rs.2,19,425/-. Since, this payment was not made, a statutory notice dated 1 February, 2013 under Sections 433 and 434 of the Companies Act, 1956, was served on the registered office of the Respondent Company. The record indicates that said notice has been duly received by the Respondent Company. Despite receipt of this notice, no reply was given and neither the requisitions contained therein were complied with. It is, in these circumstances that the present Company Petition is filed.

3 After acceptance of this Petition, the same was duly served on the Respondent Company as evidenced by the affidavit of service dated 11 March, 2015. Despite service of the Company Petition, none have appeared today and no affidavit in reply has been

filed controverting averments in the Company Petition.

4 Learned advocate appearing on behalf of the Petitioner has very fairly stated that even though the claim in the present petition is for Rs.2,19,425/-, Invoice Nos.650 and 651 in the sum of Rs.7,881/- and Rs.1100/- respectively, were barred by the Law of Limitation, and therefore, the Petitioner would not be in a position to make a claim with reference to these two Invoices. He further submitted that there is no dispute raised with reference to the remaining invoices aggregating to Rs.2,10,444/-. This amount has admittedly not been paid.

5 After perusal of papers and proceedings in the Company Petition as well as annexures thereto, I am satisfied that to the extent of Rs.2,10,444/- the Respondent Company is indebted to the Petitioner and which amount has not been tendered to the Petitioner till date. Furthermore, no affidavit in reply has been filed controverting the averments and allegations in the Company Petition.

6 In this view of the matter, the following order is passed:

- (i) The Respondent Company is directed to pay a sum of Rs.2,10,444/- to the Petitioner on or before 8 August, 2016. If the said amount is paid on or before the said date, this Company Petition shall stand dismissed;
- (ii) In the event the Respondent Company fails to make the aforesaid payment of Rs.2,10,444/- on or before 8 August, 2016, this Company Petition shall stand revived, admitted and made returnable on 27 September, 2016;
- (iii) In the event the Company Petition stands admitted, the Company Petition shall be advertised in two local newspapers viz. (i) **“Free Press Journal”** (in English) and (ii) **“Navshakti”** (in Marathi) as also in (iii) **“Maharashtra Government Gazette”**. Any delay in publication of the advertisement in the Maharashtra Government Gazette and any resultant inadequacy of notice shall not invalidate such advertisement or notice and shall not constitute non-compliance with this direction or with the Companies (Court) Rules, 1959;
- (iv) In such an event, the Petitioner shall, on or before 22

August, 2016 deposit a sum of Rs.10,000/- towards publication charges with the Prothonotary and Senior Master of this Court under intimation to the Company Registrar, failing which the Company Petition shall stand dismissed for non-prosecution without further reference to the Court. After the advertisements are issued, the balance, if any, shall be refunded to the Petitioner.

7 The Petitioner is directed to serve a copy of this order on the Respondent Company who shall act on an ordinary copy of this order duly authenticated by the Associate of this Court.

8 Liberty to apply.

(B. P. COLABAWALLA J.)