IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

Company Petition No.353 of 2015

Lafarge India Private Limited
Represented by its Authorized Signatory
Ramaraj Balamurugan
Eqinox Business Park
Tower-3, East Wing, 4th Floor
Off Bandra Kurla Complex
LBS Marg, Kurla (West)
Mumbai-400 070. .. Petitioner

V.

M/S.Velohar Infrastructure Private Limited
No.1F, 7th Cross Street, Woodcreek County
Nandambakkam, Chennai-600 016. .. Respondent

Petition filed under Sections 433(e), 434(1)(a) and 439(1)(b) of the Companies Act, 1956, praying for (a) directing that the respondent company, M/S.Velohar Infrastructure Pvt. Ltd., be wound up under the provisions of the Companies Act, 1956; (b) directing that the Official Liquidator attached to his Court be appointed as the Liquidator of the assets, properties, income and business of the respondent company viz., M/S.Velohar Infrastructure Pvt. Ltd.

with all powers under the provisions of the Companies Act, 1956 including the power to take possession of all affairs, assets, management, books, papers and vouchers;

For Petitioner : Mr.Perumal for M/S.Rank Associates

For Respondent : Mr.S.Satish

Mr.Atchutha Ramaiah, Official Liquidator

ORDER

1.This is the company petition filed under Section 433 of Companies Act, 1956.

2.The petitioner claims via this petition a sum of Rs.23,27,468/- as on 31.05.2015 along with the interest.

2.1 The petitioner claims that he has supplied Ready Mix Concrete (RMC) to the respondent. The claim made in the petition is with regard to the value of the supplies made.

3.It is the case of the petitioner that despite several letters sent to the respondent, more particularly, letters dated 11.03.2014, 05.08.2014 and 28.10.2014, the respondent failed to make the payment.

3.1 The petitioner further avers that on 13.08.2014, the respondent confirmed that a sum of Rs.18,26,051/- as on 31.03.2014 was due and payable, as per its books.

4.As indicated above, the sum claimed as on 31.05.2015 is inclusive of interest calculated at the rate of 24% per annum, which has been qualified as Rs.5,01,416/-, albeit, till 31.05.2015.

5.Upon notice being issued in this petition, the respondent filed its reply. In the reply, the respondent has averred that the material supplied was of medium and/or poor quality, and therefore, the claim as made was not tenable.

5.1 It is the stand of the respondent that correspondence pre-dating the legal notice issued by the petitioner has been exchanged between the parties on aspect pertaining to the poor quality of the material supplied.

5.2 To be noted, the legal notice, which the petitioner issued under Section 434 of the Companies Act, 1956 (in short 'Act'), is dated 28.01.2015.

5.3 The respondent, in support of its stand, has, interalia, relied upon the Ultrasonic Pulse Test Report dated 22.07.2014 issued by an independent accredited entity, i.e., Falcon Industrial Testing Laboratory Private Limited.

5.4 Reliance is also placed on communication, which was exchanged by the respondent with the petitioner. These being: email dated 23.07.2014, email and letter of even date 02.08.2014, email dated 18.08.2014, and letter dated 03.09.2014.

5.5 As a matter of fact, the respondent, evidently, also issued a debit note dated 08.10.2014, to the petitioner, in the sum of Rs.8,74,600/- in respect of demolition and re-laying work carried out by it due to the faulty material supplied by the petitioner.

5.6 The respondent has, as a matter of fact, placed on record, yet another debit note dated 02.03.2015 vis-a-vis RCC demolition and re-laying work in the sum of Rs.10,01,000/-.

6. Based on the aforesaid, counsel for the respondent says that this petition is not maintainable and hence, ought to be rejected.

7.As against this, counsel for the petitioner relies upon the balance confirmation, which was evidently issued by the respondent on 13.08.2014, and the fact that the respondent has not disputed the receipt of RMC.

8.I have heard the learned counsel for the parties and perused the record.

8.1 What has clearly emerged is that which the petitioner did in fact make supplies of RMC, the respondent had raised issues with regard to its quality. The test report and communication exchanged on the issue pre-dated the legal notice issued by the petitioner.

8.2 As indicated above, the legal notice issued by the petitioner is dated 28.01.2015. The respondent, on its part, has, more or less, taken the same position in the reply filed in this Court.

8.3 Therefore, in my view, the matter would have to go the trial. It would have to be ascertained as to whether or not the RMC supplied by the petitioner was of the specified quality. The balance confirmation issued by the respondent would have perhaps, tilted the course events in favour of the petitioner but for the fact that there is material on record which pre-dates the date on which the said document was generated. The document confirming balance in the books of the petitioner cannot, thus, be looked at in isolation. Therefore, in my opinion, the appropriate forum will have to consider the material placed on record and then, come to the conclusion as to whether the stand taken by the respondent is sustainable.

9.Therefore, the petition filed under Section 433 of the Act, would not lie. It is, accordingly, dismissed leaving parties to bear their own costs.

30.06.2016

Index:Yes/No
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RAJIV SHAKDHER,J.

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