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

COMPANY PETITION NO. 258 OF 2016

Steelfab Scaffoldings & Engineering Pvt.Ltd.	..Petitioner
Vs	
Deepcon (India) Co. Pvt.Ltd.	..Respondent.

Mr. J.A. Udaipuri i/b Udaipuri & Co., for Petitioner.
Mr. Sanjeev S. Hariakar for Respondent.

**CORAM: A.S. GADKARI, J.
DATE: 11 JULY 2017.**

P.C.:

1] By the present petition under Section 433(e), 434 read with 439 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent-Company namely Deepcon (India) Co. Pvt.Ltd.

2] The petitioner supplied scaffolding material to the respondent-Company and raised 11 hire delivery challans aggregating to Rs.4,34,376/-. The respondent made payment of Rs.3,30,500/- leaving behind outstanding amount of Rs.1,03,876/- to be paid to the petitioner. According to the petitioner, the petitioner had further supplied goods worth Rs.50,000/- to the respondent. As the respondent did not make payment of

balance. the petitioner issued a statutory notice dated 25.11.2015. The respondent replied the said notice by its letter dated 28.11.2015 and denied the liability.

3] The Petitioner therefore filed the present petition on 18.1.2016 for winding up of the respondent-Company. The petition is accepted on 23.8.2016 and in pursuance of the directions issued by the Company Registrar, the petitioner served a notice of acceptance to the respondent. After receipt of notice, the respondent caused its appearance and has also filed affidavit-in-reply dated 4.10.2016.

4] I have perused the petition and reply filed by the respondent to the statutory notice. In the reply, the respondent has categorically taken a stand that it has paid Rs.30,500/- towards full and final settlement against the petitioner's bill and there is no outstanding amount which is due and payable by the respondent to the petitioner.

5] During the course of arguments, the learned Counsel for the respondent, with a view to prove bonafide of the respondent, inter alia, that the respondent is commercially solvent, submitted that out of alleged amount claimed by the petitioner of Rs.1,53,876/-, the respondent is ready and willing to deposit Rs.50,000/- in the Registry of this Court by way of

demand draft within a period of two weeks from today. The said statement is accepted.

6] In view of the statement made by the learned Counsel for the respondent-Company, prima facie, it appears that the respondent is solvent enough to pay the debts of the petitioner. In view thereof, I am inclined to relegate petitioner to the remedy of suit in the Court of competent jurisdiction for recovery of the amount.

If the respondent-Company deposits the sum of Rs.50,000/- in the Registry of this Court within two weeks from today, the petition shall stand disposed off and in that event the petitioner is at liberty to file a suit for recovery of the claim amount in the Court of competent jurisdiction. The petitioner shall file such a suit within a period of six weeks thereafter. The amount so deposited by the respondent-company in the Registry of this Court shall be transferred to the Registry of the concerned Court where the suit is filed.

7] If the respondent-Company fails to deposit the aforestated amount within the said stipulated period in the Registry of this Court, the petition shall stand automatically admitted without further reference to this Court.

In such case, the petitioner is hereby directed to comply with following directions:

[i] The Petitioner is directed to advertise the extract of the petition in two local newspapers viz. 'Free Press Journal' (in English) and 'Nav Shakti' (in Marathi) and also in the 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.

[ii] The petitioner shall also deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within a period of three weeks from the date of this Order, with intimation to the Company Registrar, failing which the Petition shall stand dismissed for non-prosecution without further reference to the Court.

[iii] Notice under Rule 28 of the Companies (Court) Rules, 1959 shall stand waived by the respondent.

8] The petition is disposed off in the aforesaid terms.

(A.S. GADKARI, J.)