

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

COMPANY PETITION NO.540 OF 2015

Mohan Motors)....Petitioner
V/s.

Antony Waste Handling Cell Private Ltd.)....Respondent

Mr.Laxman P.Kanal for petitioner.

Mr.Vishesh Kalra a/w Mr.Abhijeet G.Tulsankar i/by Vidhi Partners for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 28.11.2017

P.C.:-

1 This petition is filed on the basis that respondent-company Antony waste Handling Cell Private Ltd. is unable to pay its debts, commercially insolvent and therefore, requires to be wound up.

2 It is the case of petitioner that as per the request and orders of respondent, petitioner had from time to time, supplied various auto spare parts to the company and the same was received by the company without raising any dispute and objection. It is the case of petitioner that since September-2010 to January-2012, respondent failed and neglected to pay the amount of 261 delivery receipts and invoices as mentioned in paragraph-7 of the petition. The petition itself has been lodged only on 23.1.2015. From the list given by

petitioner the last of the invoice is dated 14.1.2012. Therefore, prima facie, it appears that the claim could be barred by limitation.

3 Counsel appearing for petitioner stated that respondent has in paragraph-6 of the affidavit-in-reply admitted that they have paid by way of cheque dated 9.1.2012 as part payment and therefore, 3 years' period would get extended. In paragraph-6 of the affidavit-in- reply it is stated that the payment relates to only one invoice i.e., S-3 851 dated 18.7.2011. By no stretch of imagination can it be accepted that respondent has acknowledged their liability. Moreover, it is also respondents' case that the petition does not correctly indicate the true facts because only with relation to 95 invoices, respondent has paid lesser amount than the invoice raised but petitioner has accepted those amounts as full and final settlement. In support of this statement of respondent, counsel for respondent also pointed out that the first communication received from petitioner is dated 3.9.2014 which is the statutory notice. If according to petitioner there were large sums of amounts still unpaid against so-called 251 invoices, last of which is dated 14.1.2012, petitioner would have atleast sent a demand letter or atleast shown some correspondence to that effect.

4 In the circumstances, it is quite obvious that disputed

questions of fact also arise and in such a situation this court is not inclined to exercise its discretion to admit the petition.

5 Petition stands dismissed with no order as to costs.

(K.R.SHRIRAM,J)