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

COMPANY PETITION NO.805 OF 2014

Movers International Pvt. Ltd.	...Petitioner
V/s.	
Environment Building Material India Pvt. Ltd.	...Respondent

Mr.Kalpesh Joshi i/b Kalpesh Joshi Associates for the Petitioner.

Mr.R.C. Mishra i/b Tripathi & Associates for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 6TH FEBRUARY, 2017.

P.C. :-

1. By this petition, the petitioner seeks winding up of the respondent under the provisions of section 433(e), 434 and 439 of the Companies Act, 1956 on the ground that the respondent is unable to pay its debts.

2. The petition is filed on the premise that the respondent had approached the petitioner for Custom Clearance and Freight Forwarding work for carriage of the respondent from Nagpur ICD to the consignee of the respondent at Jeddah and for the same entrusted the goods to the company at ICD Nagpur.

3. The petitioner raised various invoices upon the respondent i.e. from 24th April, 2012 to 29th April, 2012. It is the case of the

petitioner that all the goods were carted at ICD Nagpur and were cleared from the custom clearance and were forwarded for carriage on behalf of the respondent. It is the case of the petitioner that the role of the petitioner was only of custom clearance and not of despatch and transportation of the goods.

4. It is the case of the petitioner that two cheques issued by the respondent towards part payment when presented 21st April, 2012 were dishonoured with remarks "payment stopped by drawer". The petitioner thereafter issued notice under section 138 of the Negotiable Instruments Act. The respondent issued two cheques in lieu of the said sum of Rs.7,07,114/-, in the sum of Rs.4,81,082/- and Rs.4,81,244/- and additional cheque of Rs.5,00,000/-. It is the case of the petitioner that after payment of the said three cheques, the respondent is still liable to pay an amount of Rs.7,07,114/- to the petitioner with further interest thereon.

5. The petitioner issued a statutory notice on 17th October, 2012 to the respondent. The said statutory notice was replied by the respondent vide its reply dated 29th October, 2012. The claims made by the petitioner in the said notice were denied by the respondent on various grounds.

6. The petitioner thereafter filed this petition inter-alia praying for winding up of the respondent company.

7. Learned counsel appearing for the petitioner invited my attention to some of the correspondence and also the invoices and it is submitted that though the respondent had sent few e-mails to the petitioner alleging that the goods despatched by the petitioner were received in damaged condition by the consignee, the respondent subsequently made payment by three cheques in favour of the petitioner and thus the allegations of damaged goods, if any, were deemed to have been waived.

8. Learned counsel appearing for the respondent on the other hand invited my attention to some of the correspondence, including the e-mail received from the consignee of the respondent pointing out the fact that the goods despatched by the petitioner were found in damaged condition. The consignee of the respondent had also threatened the respondent of black listing for delivery of the said damaged goods. It is the case of the respondent that in view of such threats given by the consignee of the respondent, the respondent had to release the payments to the petitioner by these three cheques. Learned counsel for the respondent invited my attention to some of the allegations made in some of the e-mails received from the consignee which are on the record of this proceeding. He submits that the immediately thereafter the respondent asked the petitioner to stop supply of the goods to the consignee.

9. It is submitted that in view of such damaged goods, the consignee of the respondent has sent several debit notes claiming damages of much larger amount than what the petitioner has demanded from the respondent. He submits that the respondent has filed a civil suit in the Bombay City Civil Court inter-alia praying for recovery of substantial amount from the petitioner. That suit is pending. The petitioner has filed the written statement in the said suit.

10. A perusal of the record *prima-facie* indicates that though the respondent had made payment of two cheques in the sum of Rs.4,81,082/- and Rs.4,81,244/- and had made additional payment of Rs.5,00,000/-. It was made clear that full and final settlement amount will be settled only once the respondent would get details from Jeddah on deduction of his last schedule of consignment. The e-mails sent by the consignee of the respondent also clearly indicates that the goods received by the consignee of the respondent were found in damaged condition. In my view, there is substance in the submission made by the learned counsel for the respondent that those three cheques were issued by the respondent in view of the threats of black listing given by the consignee of the respondent.

11. In my view, the defence raised by the respondent in the affidavit in reply and also in the reply to the statutory notice is not moonshine and requires detail evidence. The petitioner has thus not

made a case of winding up of the respondent company.

12. I therefore, pass the following order :-

a). The Company Petition No.305 of 2014 is dismissed. It is however, made clear that the observations made by this Court in this order is only for the purpose of deciding this winding up petition. If any proceedings are filed for recovery of amount by the petitioner against the respondent, the same shall be decided by the Court or any other Forum on its own merits. No order as to costs.

(R.D. DHANUKA, J.)