

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****COMPANY PETITION NO. 211 OF 2010****Donear Synthetics Pvt. Ltd.****..... Petitioner****VERSUS****Nirjay Securities Pvt. Ltd.****..... Respondent**

Mr.S.L.Shah, i/b. Shah Legal for the Petitioner.

Mr.Vivek Kantawala, a/w. Ms.Bhairavi Waravdekar for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 27th FEBRUARY, 2017****P.C.**

By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts. The petition is on board for hearing and final disposal.

2. Mr.Shah, learned counsel appearing for the petitioner invited my attention to some of the annexures to the company petition and more particularly the statement of bank account of the petitioner for the period 1st November 2006 to 30th November 2006 and 1st June 2008 to 30th June 2008 and would submit that the petitioner had granted loan of various amounts to the respondent. He submits that the respondent has made payment of interest for part of the period and has issued TDS certificate which is annexed at Ex.B to the petition.

3. Learned counsel appearing for the petitioner submits that the respondent did not pay the outstanding amount and thus the petitioner had issued a notice on 11th June, 2009. He also invited my attention to the correspondence exchanged between the parties. He submits that there was no response to the statutory notice

issued by the petitioner and thus the petitioner filed this petition for winding up which shall be allowed by this court.

4. Learned counsel appearing for the petitioner submits that there are various contradictions in the affidavit in reply filed before this court.

5. Mr.Kantawala, learned counsel appearing for the respondent on the other hand submits that the petitioner has already filed summary suit for recovery of the amount on the basis of the alleged transaction which are subject matter of this company petition. He submits that by an order dated 24th February,2016 passed by the City Civil Court in Summons for Judgment No.170 of 2015, the Civil Court has already granted a conditional leave in favour of the respondent on the ground that various triable issues are raised by the respondent in the said summary suit which are required to be tried. It is submitted by the learned counsel that in the said summary suit, the petitioner has already filed affidavit of evidence as far back as on 24th August,2016 and is not proceeding with the evidence.

6. Learned counsel for the petitioner in rejoinder invited my attention to the various *prima facie* observations made by this court while admitting this petition on 1st August,2013. He submits that no appeal is preferred by the respondent against the said order dated 1st August,2013.

7. It is not in dispute that in respect of the same transaction, the petitioner has already filed a summary suit (2708 of 2009) which is re-numbered as (104438 of 2009) upon transfer of the said suit to City Civil Court, Bombay. It is not in dispute that the City Civil Court has granted unconditional leave to the respondent to defend the said suit on the ground that various triable issues are raised by the

respondent in the said summary suit. The petitioner herein has already filed affidavit of evidence in the said summary suit before the City Civil Court and the matter is ready for trial.

8. In view of these facts, I do not propose to grant any relief in this company petition at this stage. It is however, made clear that the observations made by this court are only for the purpose of deciding this company petition and the learned trial judge shall not be influenced by the observations made by this court. The powers of the Company Court under the provisions of Companies Act, 1956 are discretionary while entertaining a petition for winding up. I do not propose to exercise that discretion in favour of the petitioner in view of the subsequent events. The company petition is accordingly dismissed. The parties are directed to proceed with the trial of the Summary Suit No. 104438 of 2009 expeditiously. Hearing of the summary suit is expedited. No order as to costs.

(R.D.DHANUKA, J.)