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

COMPANY PETITION NO.883 OF 2014

Petronas Lubricants (India) Pvt. Ltd. ...Petitioner

V/s.

M/s.Icconol Petroleums Pvt. Ltd. ...Respondent

Mr.Omar Shaikh i/b Mr.Maruti Dhavale for the Petitioner.

Mr.Amrut Patil i/b Mr.Birendra Kumar for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 13TH APRIL, 2017.

P.C. :-

1. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.

2. It is the case of the petitioner that as per the business arrangement between the petitioner and the respondent, the petitioner has sold and supplied to the respondent the raw material under several invoices which were duly received by the respondent without any demur. The respondent utilized the said material for processing as per agreed terms and sold the same to the petitioner.

According to the petitioner, as on March, 2010, the respondent is liable to pay a sum of Rs.33,05,953/- together with interest. The company issued a cheque in the sum of Rs.30,00,000/- to the petitioner however, requested not to present the said cheque for encashment on the ground that the company shall arrange funds. The respondent by its letter dated 13th January, 2011 admitted that a sum of Rs.33,05,953/- were due and payable by the respondent to the petitioner. The respondent thereafter issued two cheques in the sum of Rs.2,00,000/- dated 30th April, 2011 and 30th May, 2011 to the petitioner. It is not in dispute that the cheque dated 30th April, 2011 was honoured, whereas the cheque dated 30th May, 2011 was dishonoured for want of sufficient funds. The respondent thereafter made payment of Rs.1,00,000/- on 30th November, 2011 to the petitioner.

3. Since the respondent did not pay balance amount, the petitioner issued a statutory notice on 7th March, 2014 calling upon the respondent to pay a sum of Rs.51,93,197/- with interest. The said notice was however, returned with remarks "left". The petitioner thus filed this petition *inter-alia* praying for winding up of the respondent.

4. The petition is opposed by the respondent by filing affidavit in reply. The petitioner has filed affidavit in rejoinder.

5. Mr. Shaikh, learned counsel for the petitioner invited my attention to various annexures to the petition and would submit that the affidavit in reply now filed by the respondent is contrary to the admitted facts on record. Two cheques out of three cheques issued by the respondent towards part payment were honoured. Though the payments made by the respondent by those two cheques were honoured, the respondent has now firstly alleged in the affidavit in reply that all the cheques were given as and by way of security to the petitioner. He submits that the stand now taken by the respondent in the affidavit in reply is contrary to the correspondence on record by which the respondent has admitted its liability.

6. Learned counsel for the respondent on the other hand submits that there was business transaction between the parties and not as alleged by the petitioner in the company petition. He submits that the cheques were issued by the respondent to be retained by the petitioner as and by way of security and were not to be encashed. Upon making enquiry by this Court, learned counsel for the respondent states that the respondent has not filed any proceedings against the petitioner for encashing two cheques out of three cheques on the ground that the same could not have been deposited as the same were given only as and by way of security. He however, submits that the petitioner has filed criminal proceedings against the

respondent before the Criminal Court, which are pending.

7. A perusal of the record indicates that the stand now taken by the respondent is contrary to the correspondence exchanged between the parties. Out of three cheques, two cheques are admittedly honoured. The third cheque is however, dishonoured. I am thus not inclined to accept the submission of the learned counsel for the respondent that the transactions were different than what is canvassed by the petitioner in the company petition or that the cheques issued by the respondent were towards the security and not towards the payment. The submission advanced by the learned counsel for the respondent across the bar are also contrary to the documents annexed to the petition. In my view, the defence raised by the respondent is totally moonshine and frivolous and cannot be accepted. The respondent having failed to pay the balance amount to the petitioner and has not shown *bonafides*, I am of the view that the respondent is unable to pay its debts.

8. For the reasons recorded by this Court in a detailed order dated 3rd March, 2015 and for the reasons recorded aforesaid, in my view the respondent is unable to pay its debts and is commercially insolvent.

9. I therefore, pass the following order :-

a). The company petition is made absolute in terms of prayer

clauses (a) and (b). No order as to costs.

The Official Liquidator to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)