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

COMPANY PETITION NO. 734 OF 2015

Santec Fabricators India Pvt. Ltd. .. Petitioner
Vs.
M/s. RNA Corp Pvt. Ltd. .. Respondent

Mr. Jitin Palakkal i/b Charvy Hatkanagalekar for the Petitioner.
Mr. Rohan Rajadhyaksha a/w. Ms. Chaitrika Patki i/b Vidhi Partners for the Respondent.

CORAM : A. S. GADKARI, J.
DATE : 10th JULY, 2017.

P. C. :

1. This petition under Sections 433(e), 434 read with Section 439 of the Companies Act, 1956 is filed for winding up of respondent-company, namely, M/s. RNA Corp Pvt. Ltd.

2. It is the case of the petitioner that, the respondent-company executed in all nine work orders in favour of the petitioner for carrying out the work, namely, GRC work, HVAC work, Plumbing work, Electrical work, Civil and Interior works, Glass Facade work, Aluminum Window works, Fabrication work, Toddler Area works and General works, within a period starting from 09.09.2011 to 29.12.2012. It is the further case of the petitioner that it carried out the total work to the tune of Rs.6,58,94,004/-. That, the respondent-company has also accepted an amount of Rs.32,94,700/- towards retention money. That, the petitioner carried out

the work as per the specification of the work orders within stipulated period and submitted work-sheet to the petitioner for the same. That, somewhere in the month of September, 2013 the respondent-company directed the petitioner to stop the further work. It is the specific case of the petitioner that out of said amount Rs. 6,58,94,004/- the respondent-company has paid a sum of Rs.4,36,32,417/- to the petitioner, leaving behind balance amount of Rs.1,89,66,887/-. As the respondent did not make the payment of balance amount, the petitioner issued a statutory notice dated 08.12.2014. The respondent-company received the said notice, however, neither complied with or replied it.

3. The petitioner, therefore, filed the present petition on 15.04.2015. The petition is accepted on 21.07.2015 and in pursuance of the directions issued by the Company Registrar, the notice of acceptance is served upon the respondent. After service of notice, the respondent has caused its appearance and has filed affidavit-in-reply dated 27.09.2016.

4. Heard the learned counsel for the respective parties and perused the entire record. As stated hereinabove it is the specific case of the petitioner that out of the total amount of Rs.6,58,94,004/-, the respondent has paid an amount of Rs.4,36,32,417/- to the petitioner, leaving a balance outstanding of Rs.1,89,66,887/-. Thus, it clearly appears that the respondent-company was and is solvent enough to pay the dues of the petitioner.

It is to be noted here that the respondent-company has taken a

categorical stand in its reply that the petitioner failed to adhere to the terms and conditions of the work orders and executed inferior quality work including substantial defects therein. It is the case of the respondent that there is a specific clause in the work orders dealing with unacceptable quality of work and also postulates that the respondent is entitled for deduction from the payment of the petitioner, if the petitioner fails to carry out rectification of work within one week of the defects being pointed to it and the respondent is entitled to withheld the bills/payment until the rectification is carried out. The respondent has relied upon communications dated 31.01.2014 and 06.04.2013 wherein the respondent has specifically and categorically intimated the petitioner about the defects and inferior quality of the work carried out by it. The record indicates that the respondent has also sent photographs of the said defects to the petitioner. It further clearly appears that as the respondent failed and/or neglected to rectify the said defects within the stipulated period, the respondent did not release further payment in favour of the petitioner.

5. After perusing the record, it clearly appears to me that the dispute raised by the respondent is genuine and bonafide and not spurious, speculative, illusory or misconceived. It further clearly appears that the defence as has been raised by the respondent gives rise to substantial disputed question of facts leading to triable issues. As stated earlier, it clearly appears to me that the respondent-company is solvent

enough to make the payment of the petitioner.

6. In view of the above, the present petition is devoid of any merit and is, accordingly, dismissed in limine.

[A. S. GADKARI, J.]