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

COMPANY PETITION NO. 647 OF 2015

NSD Global Trade Private Limited	..Petitioner.
Vs	
Vijayanath Roof And Wall Cladding Systems Private Limited	..Respondent.

Ms. Dipti Panda with Kunal Parekh i/b Thakore Jariwala &
Associates for Petitioner.
Mr. S.M. Gorwadkar, Senior Counsel i/b Niranjan A. Mogre
for Respondent.

CORAM: A.S. GADKARI. J.

DATE: 05 JULY 2017.

P.C.:

1] By the present petition under Section 433(e) and 434 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent company namely Vijayanath Roof And Wall Cladding Systems Private Limited.

2] The petitioner is carrying on business of manufacturing, distribution, sales and services of variety of glass products used for diverse application is in the field of architecture and structural engineering. The

respondent-Company placed purchase order dated 10.10.2012 for execution of work. That the petitioner completed the said order and raised 18 invoices aggregating to Rs.1,61,25,121/-. That in discharge of its part of liability, the respondent made certain payments leaving behind outstanding amount of Rs.59,25,121/-. The petitioner entered into series of correspondence with the respondent-company. However, the respondent failed and neglected to pay the balance amount to the petitioner. The petitioner thereafter issued a statutory notice dated 25.2.2015. Despite receipt of the said notice, the respondent neither complied with nor replied it.

3] The petitioner therefore filed the present petition for winding up of the respondent-company on 29.4.2015. After acceptance of the petition, a notice was issued to the respondent and in pursuance thereof, the respondent caused its appearance and has filed reply. In its reply the respondent has categorically took a stand that the not a single bill/invoice was submitted at the site to the Respondent's Project Engineer nor was it certified by the Project Manager and that the petitioner never supplied such necessary bills with the respondent. The record indicates that in its rejoinder except a bare denial, no proof of any nature has been annexed to

it which will lead to any conclusion that the petitioner had at any point of time complied with condition no.7 of the said contract. The respondent has further taken a categorical stand that out of the claimed amount of Rs.1,61,25,121/-, the respondent has paid Rs.1,02,00,000/- to the petitioner on ad-hoc basis and balance amount was retained for want of compliance of the condition no.7 of the contract.

4] I have perused the petition, and reply filed by the respondent. It prima facie appears that the respondent is solvent enough to pay the dues of the petitioner and in fact has paid 2/3rd of the total amount to the petitioner. As far as the claim of the petitioner with regard to the balance amount of Rs.59,25,121/- is concerned, the petitioner disputes about the compliance of the terms of the contract in its true sense which according to me gives rise to disputed questions of facts and triable issues.

5] In view thereof, the petition is de hors of any merits and is accordingly dismissed with liberty to the petitioner to adopt appropriate proceedings for recovery of the balance amount, if so advised and provided it is within the period of limitation.

(A.S. GADKARI, J.)