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

CONTEMPT PETITION NO. 1000 OF 2015

Prabhat Powertech Pvt. Ltd. .. Petitioner
Vs.
Henkel Adhesives Technologies Pvt. Ltd. .. Respondent

Mr. Roshan S. Tanna i/b MZD Legal Consultancy for the Petitioner.
Mr. Rashmin Khandekar a/w. Ms. Jinal Gogai i/b Negandhi Shah & Himayatullah for the Respondent.

CORAM : A. S. GADKARI, J.
DATE : 27th JUNE, 2017.

P. C. :

1. By the present petition under Sections 433(e) and 434 of the Companies Act, 1956, the petitioner has prayed for winding up of the respondent-company namely Henkel Adhesives Technologies Pvt. Ltd. on the ground that the respondent-company is unable to pay the debt of the petitioner.

2. The petitioner and the respondent entered into a contract for erecting and completing electrical and/or allied work for the plant of the respondent at Belapur, Navi Mumbai and the respondent issued a purchase order for a sum of Rs.76,85,069.04. That, the petitioner-company raised bills for the work completed by it. The last bill dated 23.07.2008 was raised by the petitioner for a sum of Rs.47,47,524/- being the principal amount. As the respondent-company failed and/or neglected

to pay the said amount, the petitioner filed Company Petition No. 333 of 2012 in this Court for winding up of the respondent-company. The said petition was withdrawn by the petitioner as the petitioner before instituting it did not serve upon the respondent a statutory notice as required by law. By an order dated 09.06.2014, the petitioner was granted liberty to withdraw the said petition and to file a fresh petition. That, the petitioner thereafter issued a statutory notice dated 09.04.2015. After receipt of the said notice, by its reply dated 14.05.2015 the respondent disputed the claim of the petitioner.

The petitioner thereafter filed the present petition on 06.05.2015 in this Court. The present petition is accepted on 29.09.2015 and in pursuance of the directions issued by the Company Registrar, the notice was served upon the respondent-company. After receipt of the said notice, the respondent appeared in the present petition and has filed a detailed reply dated 23.03.2016.

3. Heard the learned counsel for the respective parties and perused the record.

Learned counsel appearing for the respondent raised a preliminary objection about the maintainability of the petition on the ground of limitation. He submitted that, the present petition as filed is beyond the period of limitation i.e. limitation to file a substantive suit has already lapsed and with a view to overcome the said legal infirmity, the petitioner has filed the present petition as an afterthought. He, therefore, prayed that the present petition may be dismissed in limine.

Learned counsel appearing for the petitioner submitted that though the last bill drawn against the respondent was dated 23.07.2008, in view of the email sent by the respondent dated 30.08.2010 and the statement of account maintained by the petitioner-company, the petition filed earlier in 2012 and the present petition which is continuation of the earlier litigation is perfectly within the period of limitation.

4. The record indicates that the last bill/invoice raised by the petitioner against the respondent-was is dated 23.07.2008. Till the filing of the earlier petition in the year 2012 bearing Company Petition No.333 of 2012, the record is absolutely silent about any admission which leads to extension of limitation as contemplated under the provisions of Limitation Act, which ultimately facilitates the petitioner to take and adopt a plea that the claim of the petitioner is not beyond the period of limitation. It clearly appears from the record that the period of limitation for raising the monetary claim by the petitioner by way of filing civil suit came to an end on 22.07.2011 and the present petition filed belatedly is clearly hit by the law of limitation. The correspondence upon which the petitioner has relied upon i.e. the purported email sent by the respondent to the petitioner dated 30.08.2010 is concerned, a cursory perusal of the same would reveal that, as a matter of fact, the respondent has intimated the petitioner about the amount debited against the bills raised by the petitioner and there is no admission of any outstanding liability or dues by the

respondent in favour of the petitioner.

In view thereof, I find no reason to entertain the present petition. The petition is, accordingly, dismissed.

[A. S. GADKARI, J.]