

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

COMPANY PETITION NO.14 OF 2017

M/s.Shree Hari Electricals)		
A proprietary concern)		
having its registered office at)		
113, Amar Wadi, 52/D Khatter Galli)		
C.P. Tank Road, Mumbai – 400 004.)	..	Petitioner
Vs.		
M/s.Royal Palms (I) Pvt Ltd.)		
A registered Company)		
having its registered address at)		
registered office at Survey No.169,)		
Near Unit No.26, Aarey Milk Colony)		
Goregaon (East), Mumbai.)	..	Respondent

Mr.Ashish Mehta a/w Ms.Shruti Khandelwal for the petitioner.
Mr.Nimay Dave a/w Mr.Roshan Pinto i/by M/s.Mulla & Mulla &
Craigie Blunt & Caroe for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 29th March 2017

Judgment :

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

2. The said company petition is opposed by the respondent on several grounds including the ground of limitation.

3. It is the case of the petitioner that the respondent-company is entitled to pay a sum of Rs.3,16,600.79 to the petitioner for the

transactions for the period from 4th March 2010 till 24th April 2010 with further interest @21% p.a. from the date of the petition till payment and/or realisation.

4. Mr.Mehta, learned counsel appearing for the petitioner invited my attention to the invoices annexed to the petition which are admittedly for the period from 4th March 2010 till 24th April 2010.

5. It is the case of the petitioner that the respondent did not make any payment under those invoices and thus the petitioner issued various reminders on 29th April 2011, 12th December 2011 and 4th December 2013. The respondent vide their advocate's letter dated 16th December 2013 denied their alleged liability and contended that all the dues of the petitioner had already been cleared and nothing was due and payable to the petitioner.

6. The petitioner thereafter issued a statutory notice dated 17th February 2014 calling upon the respondent to pay a sum of Rs.3,16,600.79. The petitioner issued another notice dated 21st July 2014 calling upon the respondent to pay the said amount. According to the petitioner, the respondent is liable to pay a sum of Rs.6,02,216.79.

7. In view of the issue of limitation raised by the respondent, this Court granted an opportunity to produce proof of part payment made by the respondent, if any, to the petitioner within three years from the due date. The learned counsel for the petitioner produced the original statement of bank accounts of the petitioner with the HDFC bank and

would submit that M/s.Imperial Palace Hotel had made a payment of Rs.27,985/- to the petitioner towards part payment on 29th September 2011 on behalf of the respondent. He submits that the respondent denied its liability for the first time by letter dated 16th December 2013 and thus the company petition lodged by the petitioner on 19th May 2015 is within time and not barred by law of limitation.

8. Mr.Dave, learned counsel appearing for the respondent, on the other hand, invited my attention to the averments made in paragraph 8 of the company petition and also the winding up notice dated 21st July 2014 in support of the submission that even according to the petitioner, the respondent was liable to pay a sum of Rs.3,16,600.79 which was due on 29th January 2011. He submits that the respondent did not make any part payment as canvassed by the learned counsel for the petitioner. He submits that even if the said amount of Rs.27,985/- which was paid by M/s.Imperial Palace Hotel is considered as part payment on behalf of the respondent, the fact remains that the petition is filed only in the month of May 2015 which was after expiry of the date of alleged part payment made by the respondent.

9. Mr.Mehta, learned counsel for the petition in rejoinder admits that except the said part payment of Rs.27,985/- made by M/s.Imperial Palace Hotel on behalf of the respondent on 29th September 2011, neither any further part payment is made by the respondent thereafter nor there is any acknowledgment of liability on behalf of the respondent so far.

10. A perusal of the record clearly indicates that it was the case of the petitioner itself that the respondent was liable to pay a sum of Rs.3,16,600.79 to the petitioner for the transactions for the period from 4th March 2010 till 24th April 2010. The only part payment sought to be relied upon across the bar is the alleged part payment of Rs.27,985/- on 29th September 2011 that also not made by the respondent but by M/s.Imperial Palace Hotel. A perusal of the winding up notice dated 21st July 2014 indicates that according to the petitioner, a sum of Rs.3,16,600.79 was due as on 29th January 2011. There is no reference of such alleged part payment made by the respondent or sister concern to the petitioner in the entire petition.

11. Be that as it may, in my view, even if the said payment of Rs.27,985/- on 29th September 2011 made by M/s.Imperial Palace Hotel is considered as part payment in favour of the petitioner, the fact remains that the petition is not filed within three years from the date of alleged part payment. Admittedly there is neither any other part payment made nor any acknowledgment of liability in favour of the petitioner by the respondent.

12. In so far as the submission of the learned counsel for the petitioner that the respondent denied its liability for the first time only on 16th December 2013 and thus the petition filed in the month of May 2015 is within the period of limitation is concerned, in my view, the correspondence exchanged between the parties does not extend the period of limitation unless in such correspondence, the respondent had admitted and acknowledged the liability. Admittedly there was no part payment

at least after 29th September 2011. Mere denial of the liability of the petitioner by the respondent by letter dated 16th December 2013 would not give fresh cause of action for the purpose of limitation. In my view, Mr.Dave, learned counsel for the respondent is right in his submission that the petition is barred by law of limitation. In my view, limitation once commences does not stop unless part payment is made before expiry of limitation period or unless liability is acknowledged before expiry of limitation period. In my view, the petition is ex facie barred by law of limitation and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.