

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

COMPANY PETITION NO. 755 OF 2015

Farmasino Pharmaceuticals (Jiangsu)

Co. Ltd.

.. Petitioner

Vs.

Parth Chem Impex Pvt. Ltd.

.. Respondent

Ms. Krithika Anand i/b M/s. Dhruve Liladhar & Co. for petitioner.

Mr. Sharan Jagtiani i/b D.P. Desai for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 9TH OCTOBER 2017

P.C.

1 This petition is filed on the basis that respondent owes a sum of US\$ 1,150,003.87 to petitioner, that is a debt owed to petitioner, company is unable to pay its debt and hence the company should be wound up.

2 Petitioner is the manufacturer and distributor of various pharmaceuticals, intermediaries and chemicals. Petitioner sold, supplied and delivered to respondent various chemicals/intermediaries as per the 20 invoices raised by petitioner upon respondent. The 20 invoices are listed in paragraph 6(c) of the petition. The total value of the 20 invoices is US\$ 1,848,423.50. It is the case of petitioner that respondent thereafter paid US\$ 698,419.63 leaving an outstanding amount of US\$ 1,150,003.87. Respondent it is stated in the petition, vide a letter dated 3rd August 2012,

gave a schedule of payments it would have to make to petitioner and according to petitioner, respondent thereby acknowledged its liability. As no payments were received, on 5th May 2015, petitioner caused notice to be issued to respondent through their advocates. It is stated in the petition that no reply was received nor has respondent made any payment. Therefore, respondent is unable to pay its debt and is liable to be wound up.

3 During the hearing, the counsel for petitioner submitted that after the petition was filed, respondent through its advocate issued a letter dated 18th July 2015 denying liability.

4 Respondent has filed an affidavit in reply of one Ambrish Bhikhalal Doshi affirmed on 4th April 2017. Respondent has denied its liability and relied on various emails exchanged between the parties showing that it was petitioner's case that as on 12th September 2012, only a sum of US\$ 12,59,135.87 was payable by respondent to petitioner and even subsequent thereto respondent has paid almost US\$ 6,98,419.63. It is also stated in the affidavit in reply that the first two invoices which is relied upon by petitioner were not actually sale transactions and it was petitioner who had requested respondent to clear the goods and keep the same in a warehouse and sell it to the customers and pay the amount after deducting all the

expenses for clearing and selling the goods. It was also stated that a third party, who purchased the product has made part payment directly to petitioner. It is also stated that various expenses were incurred by respondent for clearing the goods covered in the first two invoices and that was approximately US\$ 80,000/- to 90,000/-, which amount is yet to be paid/adjusted by petitioner.

5 In paragraphs 2(f), (g), (h), (i), respondent has mentioned therein various payments made after 12th September 2012, the date when respondent confirmed that balance was only US\$ 12,59,135.87. In paragraph 2(i), respondent has mentioned about an adjustment of almost US\$ 3,00,000/- to be made by petitioner.

6 Petitioner has chosen not to file any rejoinder denying the averments in respondent's affidavit in reply. On 8th June 2017, time was given to file rejoinder. Matter was thereafter adjourned on ground of settlement. On 9th August 2017, the Court has observed that no further time would be granted on the ground of settlement and on the next date, if no settlement terms are filed, parties will go on with the matter. The Court also directed petitioner to file rejoinder, if any, on or before 20th August 2017. Though almost six weeks have passed since then, no rejoinder has been filed.

7 Respondent has stated in the affidavit in reply that substantial amounts have been paid to petitioner. Respondent has also annexed contemporaneous correspondence. Therefore, stand of respondent does not appear to be after thought. In view of these facts, respondent having raised various disputed questions of fact, the Court cannot come to a conclusion that there is a crystallized debt and respondent is unable to pay such a debt.

8 Petition dismissed.

(K.R. SHRIRAM, J.)