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

COMPANY PETITION NO. 859 OF 2015

M/S Hardwin Construction Pvt. Ltd.

..Petitioner.

Vs

M/s Bilfinger Neo Structo Pvt.Ltd (formerly known
as M/s Neo Structo Construction Ltd.

.Respondent.

Mr. B.S. Mahajani for Petitioner.

Mr. Sagar Ghogre with Vishal Maheshwari and Bnkim Gangar
i/b Khaitan Legal Associates for Respondent.

CORAM: A.S. GADKARI, J.

DATE: 29 JUNE 2017.

P.C.:

1] The present petition is filed under Sections 433(e), 434 and 439 of the Companies Act, 1956 for winding up of the respondent-Company namely M/s Bilfinger Neo Structo Pvt.Ltd (formerly known as M/s Neo Structo Construction Ltd., on the ground that the said Company is unable to pay the debt of the petitioner.

2] The present petition is filed on 12.6.2015. In the particulars of claim annexed to the petition, the petitioner has claimed principal amount

of Rs.15,23,617/- (Fifteen Lakhs Twenty Three Thousand Six Hundred Seventeen) along with interest @ 18% per annum on the said amount amounting to Rs.8,81,256/-.

3] The respondent has filed an affidavit-in-reply dated 18.11.2015 and has annexed statement pertaining to the total payment made by the respondent to the petitioner through RTGS transfer. It clearly appears from the same that after filing of the present petition from 20.6.2015 to 19.9.2015 the respondent has in fact made payment of Rs.15,23,617/- to the petitioner.

4] Thus, it is clear from the record that the respondent-company is not commercially insolvent and was and is able to pay the debts of the petitioner-company. In view thereof, according to me the prayer made in the present petition for winding up of the respondent-Company cannot be entertained. However, as far as the alleged claim of the interest amount is concerned, the petitioner is at liberty to adopt appropriate legal proceedings and/or remedies as may permissible in law, if so advised.

5] The petition is dismissed with aforesaid liberty.

(A.S. GADKARI, J.)