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

COMPANY PETITION NO.7 OF 2014

Shrem Halmark Alloys Pvt. Ltd.	...Petitioner
V/s.	
Hallmark Steel Pvt. Ltd.	...Respondent

Mr.Chetan Kapadia with Mr.Ishwar Nankani and Mrs.Gauri Memon
i/b M/s.Nankani & Associates for the Petitioner.

Mr.Abhineet N.P. i/b Pardiwala & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 13TH APRIL, 2017.

P.C. :-

1. By this petition, the petitioner seeks winding up of the respondent on the ground that the respondent is unable to pay its debts.
2. During the period 28th April, 2012 and 31st March, 2013, the petitioner supplied various materials to the respondent for an amount of Rs.3,61,23,856/-.The petitioner raised various invoices upon the respondent in respect of the said supply effected. In case of default, the respondent had agreed to pay interest at the rate of 24% p.a. to the petitioner in accordance with the provisions of the said invoices. Since the respondent company committed default, the

petitioner had issued various notices, calling upon the respondent to pay the said amount. The petitioner thereafter issued a statutory notice. There was no justification of the respondent in denying the claim in the statutory notice. There petitioner therefore filed this petition.

3. On 31st October, 2014, the company petition came to be admitted. On 29th January, 2015, the parties filed the consent terms in the company petition. The respondent however, committed defaults in making payment of various installments under the said consent terms. On 29th November, 2016, the company petition was revived and stood admitted. The petition was thus advertised in the newspapers on 19th December, 2016. Notice was also issued in the Government gazette during the period 22nd December, 2016 and 28th December, 2016.

4. Mr.Kapadia, learned counsel for the petitioner invited my attention to the annexures to the petition and also to the consent terms filed between the parties and would submit that since the respondent committed defaults in making payment under the consent terms, the petition came to be admitted.

5. It is submitted that on 24th January, 2017, the respondent had applied for time to file affidavit in reply. Though this Court has granted time till 31st January, 2017, the respondent has not filed any

affidavit in reply till date.

6. It is submitted that since the respondent has committed default and did not pay the amount agreed upon in the consent terms, the respondent is unable to pay its debts and is commercially insolvent and thus the respondent company deserves to be wound up.

7. Learned counsel appearing for the respondent on the other hand states that the respondent has already made a proposal for settlement to the petitioner. Though repeatedly called upon by this Court, the respondent is unable to produce any such proposal in writing alleged to have been made to the petitioner for settlement. Mr.Kapadia, learned counsel for the petitioner submits that no such proposal for settlement has been made by the respondent to the petitioner. Statement is accepted.

8. In spite of the opportunities granted by this Court to file affidavit in reply, no affidavit in reply has been filed. In that consent terms filed on 29th February, 2015, the respondent has admitted its liability and has admittedly committed defaults in making payment of the installments. The averments made in the company petition are deemed to have been admitted. As on the date of filing of the petition, the respondent had to pay to the petitioner a sum of Rs.3,77,82,535/- with further interest at the rate of 24% on the principal amount of

Rs.3,01,09,084/- for 1st June, 2013 till payment.

9. For the reasons recorded in the order dated 31st October, 2014, and for the reasons recorded as aforesaid, I am of the view that the respondent is unable to pay its debts and is commercially insolvent.

10. I therefore, pass the following order :-

a). The company petition is made absolute in terms of prayer clauses (a) and (b). No order as to costs.

11. The Official Liquidator to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)