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

COMPANY PETITION NO.778 OF 2014

Amit Nanda s/o Sh.Phader Dass Nanda	...Petitioner
V/s.	
Himalaya Fibers Pvt. Ltd.	...Respondent

Mr.Dharma Raj with Mr.Madhur Rai i/b PRS Legal for the Petitioner.

None for the Respondent.

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

P.C. :-

1. Learned counsel appearing for the petitioner states that the respondent is served. The affidavit of service is already filed pursuant to an order passed by this Court on 4th February, 2016 admitting the company petition, the petitioner has already advertised the petition. The petitioner has filed affidavit of service dated 23th February, 2016.
2. The respondent filed the Company Application (Lodging) No.129 of 2016, *inter-alia* praying for re-call of the order dated 4th February, 2016 passed by this Court.
3. By an order dated 23rd March, 2016, the said company application is dismissed by this Court.

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

5. The respondent carries on business of transportation and had purchased diesel between 29th October, 2012 and 29th May, 2014 from the out let of the petitioner from time to time on credit. Out of the total value of the supplies of Rs.19,91,792/- the respondent made part payment leaving balance amount of Rs.5,92,148/-.The cheque for a sum of Rs.68,590/- dated 31st May, 2013 issued by the respondent towards further part payment was dishonoured with an endorsement "exceed arrangement". The petitioner thereafter issued a statutory notice dated 12th August, 2013. There was neither any payment nor any response to the said statutory notice.

6. Though the respondent was served with the papers and proceeding and notice of the company petition, none appeared for the respondent. This Court accordingly passed a detailed order on 4th January, 2016 and observed that the allegations made in the petition remained incontroverted. This Court was satisfied that the respondent is unable to pay its debts.

7. The respondent thereafter filed Company Application (Lodging) No.129 of 2016 and contended that the respondent company was before B.I.F.R. This Court has dealt with the said

submissions made by the respondent in the order dated 23rd March, 2016 and has dismissed the said company application filed by the respondent for recalling of the order dated 4th January, 2016.

8. Learned counsel for the petitioner states that to the knowledge of the petitioner, the respondent has not filed any application for continuation of the protection before the National Company Law Tribunal. The statement is accepted. No affidavit in reply has been filed by the respondent. There is no reply to the statutory notice. The respondent has made various part payment from time to time but failed to pay the balance amount of Rs.5,92,148/- with interest thereon. The cheque for the sum of Rs.68,590/- dated 31st May, 2013 issued by the respondent towards further part payment has been dishonoured.

9. Insofar as the contention raised by the respondent before this Court on 23rd March, 2016, that the proceedings were pending before B.I.F.R. is concerned, in my view the enactment of the Insolvency and Bankruptcy Code, 2016 such protection, if any, to the respondent before the B.I.F.R. has come to an end. The respondent has not made any application for continuation of the protection under the provisions of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal.

10. In the circumstances, I am of the view that the respondent

company is unable to pay its debts. For the reasons recorded by this Court in the order dated 4th January, 2016 and for the reasons recorded as aforesaid, I am of the view that the respondent company is unable to pay its debts and is commercially insolvent.

11. 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.

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

(R.D. DHANUKA, J.)