

Nalawade

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

COMPANY PETITION NO.1221 OF 2015

Shri. Hari Earthmovers Pvt. Ltd. ..Petitioner.

vs.

M/s. Auto Graph Cars(I) Pvt. Ltd. ..Respondent.

Mr. Pawan K. Pandey i/by M/s. Clayderman & Co. for the petitioner.

Mr. S.B.Rao i/by G.S.Rao for the Respondent.

CORAM: A.S.GADKARI, J.

DATE : 04th August, 2017

P.C.

1. This is a petition under Sections-433(e), 434 read with 439 of the Companies Act, 1956 for winding up of the respondent company namely M/s. Auto Graph Cars (I) Pvt. Ltd.

Heard the learned counsel for the respective parties. Perused the petition and the documents annexed to the petition.

2. It is the case of the petitioner that the respondent company represented the petitioner to be the authorized dealer of Skoda Auto India Ltd. and upon such a representation, the petitioner booked a four wheeler vehicle with the respondent for an amount of Rs.17,56,000/-. The petitioner paid an amount of Rs.1,00,000/- to the respondent as booking amount and the balance amount of Rs.16,56,000/- was paid to the

respondent by availing loan facility from the HDFC Bank. As the respondent company was unable to deliver the vehicle to the petitioner, the respondent company refunded Rs.1,61,160/- and agreed to settle the bank loan amount with the HDFC Bank on behalf of the petitioner. That, the respondent refunded certain further amount to the petitioner leaving behind principal amount of Rs.5,19,040/-.The petitioner has also claimed interest at the rate of 21% p.a. on the delayed payment and as per the particulars of the claim annexed to the petitioner the petitioner has claimed an aggregate amount of Rs.15,30,125/-. As the respondent did not pay the amount to the petitioner, the petitioner after following due process of law has filed the present petition for winding up of the respondent company. After receipt of notice of acceptance, the respondent has caused its appearance and has also filed reply.

3. The record clearly indicates that in a proceeding initiated by the petitioner under Section 138 of the Negotiable Instruments Act the respondent has given a clear admission before the Trial Court that it had taken Rs.17,56,000 from the petitioner against the booking of a car and when the respondent was unable to make delivery of the said vehicle, he issued disputed cheques in favour of the petitioner. The Metropolitan Magistrate, Mumbai has recorded a finding to that effect in its order dated 21.3.2013.

4. During the course of arguments of the present

petition the learned counsel for the petitioner on instructions submitted that the respondent is solvent enough to pay the debts of the petitioner however, the respondent is disputing the rate of interest and the quantum of amount claimed by the petitioner in particulars of claim. He submitted that with a view to prove the bonafide that the respondent is solvent to pay the debts of the petitioner, the respondent will deposit the principal amount of Rs.5,19,040/- by way of demand draft in the registry of this Court within a period of two weeks from today. He submitted that as a matter of fact his client has also taken out a demand draft from Axis Bank in the name of Prothonotary and Sr. Master , High Court, Bombay and as soon as the order in the present petition is received the same will be deposited in the registry of this Court. The said statement is accepted.

5. In view of the above, I am inclined to relegate the petitioner to adopt the remedy of suit for recovery of the amount.

Hence, the following order.

a) The respondent is directed to deposit the said amount of Rs.5,19,040/- in the registry of this Court within a period of two weeks from today. If the respondent deposits the said amount within stipulated period the petitioner is permitted to file a suit within a period of six weeks from today before the Court of competent jurisdiction for recovery of the claim amount.

If such suit is filed within the aforestated

period, the Prothonotary and Senior Master is hereby directed to transfer the said amount in the registry of the concerned Court within a period of two weeks from the date of intimation of the said suit by the petitioner.

b) The Civil Judge before whom the said suit will be filed is hereby directed to issue appropriate orders in respect of the said amount.

c) In case the respondent fails to deposit the said amount in the stipulated period in the registry of this Court, the petition shall stand automatically admitted and making it returnable within six weeks thereafter and in that event the petitioner is directed to publish the advertisement in the two newspapers namely Navshakti (in Marathi) and Free Press (in English) as per the rules.

d) Petition is disposed off in the aforesaid terms..

(A.S.GADKARI, J.)