

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

APPEAL NO. 131 OF 2017  
IN  
COMPANY PETITION NO. 281 OF 2015  
WITH  
NOTICE OF MOTION LODGING NO.29 OF 2017

|                                          |                            |
|------------------------------------------|----------------------------|
| Vision Millennium Exports Pvt. Ltd.      | ]                          |
| incorporate under the Companies Act 1956 | ]                          |
| having its Registered Office at          | ]                          |
| J.N.1, 65-85, Sector No.9, Vashi,        | ]..... Appellant/Applicant |
| Navi Mumbai, 400 703                     | ] (Original Respondent)    |

Versus

|                                          |                         |
|------------------------------------------|-------------------------|
| M/s. Stride Multitrade Pvt. Ltd.         | ]                       |
| incorporate under the Companies Act 1956 | ]                       |
| having its registered office at          | ]                       |
| Office No.33, Shrinaman Plaza            | ]                       |
| Behind Shoppers' Stop                    | ]..... Respondent       |
| Kandivali (W), Mumbai 400067             | ] (Original Petitioner) |

ALONG WITH  
APPEAL NO.135 OF 2017  
IN  
COMPANY PETITION NO.760 OF 2015  
WITH  
NOTICE OF MOTION LODGING NO.21 OF 2017

|                                          |                            |
|------------------------------------------|----------------------------|
| Vision Millennium Exports Pvt. Ltd.      | ]                          |
| incorporate under the Companies Act 1956 | ]                          |
| having its Registered Office at          | ]                          |
| J.N.1, 65-85, Sector No.9, Vashi,        | ]..... Appellant/Applicant |
| Navi Mumbai, 400 703                     | ] (Original Respondent)    |

Versus

|                                          |   |
|------------------------------------------|---|
| M/s. Addax Trading Pvt. Ltd.             | ] |
| incorporate under the Companies Act 1956 | ] |
| having its registered office at          | ] |
| G-9, Shop No.12, Jesal Park Building     | ] |
| Jesal Park Cooperative Hsg. Soc.         | ] |

Bhayender (E),  
Thane, 401 105

]..... Respondent.  
] (Original Petitioner)

ALONG WITH  
APPEAL (LODGING) NO.84 OF 2017  
IN  
COMPANY PETITION NO.586 OF 2014  
WITH  
NOTICE OF MOTION LODGING NO.539 OF 2017

Vision Millennium Exports Pvt. Ltd. ]  
a Company incorporated under the ]  
Provisions of Companies Act, 1956 ]  
having its Registered Office at J.N. 1, ]  
65-B5, Sector No.9, Vashi, ]..... Appellant/Applicant  
Navi Mumbai, 400 703 ] (Original Respondent)

Versus

M/s. Nova Trading Pvt. Ltd. a, Company ]  
incorporated under the provisions of the ]  
Companies Act 1956 having its ]  
Registered Office at Office No.36, ]  
Shrinaman Plaza, Shrinaman Plaza ]  
Behind Shoppers' Stop Kandivili (W) ]..... Respondent  
Mumbai 400 067 ] (Original Petitioner)

ALONG WITH  
APPEAL NO.128 OF 2017  
IN  
COMPANY PETITION NO.757 OF 2015  
WITH  
NOTICE OF MOTION LODGING NO.25 OF 2017

Vision Millennium Exports Pvt. Ltd. ]  
incorporate under the Companies Act 1956 ]  
having its registered office at ]  
J.N. 1, 65-B5, Sector No.9, Vashi ]..... Appellant/Applicant  
Navi Mumbai 400703. ] (Original Respondent)

Versus

M/s. Imperial Mark Trade (India) Pvt. Ltd. ]  
incorporate under the Companies Act 1956 ]

|                                 |                         |
|---------------------------------|-------------------------|
| having its registered office at | ]                       |
| Office No.36, Shrinaman Plaza   | ]                       |
| Behind Shoppers' Stop           | ]..... Respondent       |
| Kandivali (W), Mumbai 400067    | ] (Original Petitioner) |

ALONG WITH  
APPEAL NO.129 OF 2017  
IN  
COMPANY PETITION NO.756 OF 2015  
WITH  
NOTICE OF MOTION LODGING NO.23 OF 2017

|                                          |                            |
|------------------------------------------|----------------------------|
| Vision Millennium Exports Pvt. Ltd.      | ]                          |
| incorporate under the Companies Act 1956 | ]                          |
| having its registered office at          | ]                          |
| J.N. 1, 65-B5, Sector No.9, Vashi        | ]..... Appellant/Applicant |
| Navi Mumbai 400703.                      | ] (Original Respondent)    |

Versus

|                                          |                         |
|------------------------------------------|-------------------------|
| M/s. Utility Impex Pvt. Ltd.             | ]                       |
| incorporate under the Companies Act 1956 | ]                       |
| having its registered office at          | ]                       |
| G-9, Shop No.12, Jesal Park Building     | ]                       |
| Jesal Park Cooperative Hsg. Soc.         | ]..... Respondent       |
| Bhayender (E), Thane 401105              | ] (Original Petitioner) |

ALONG WITH  
APPEAL NO. 130 OF 2017  
IN  
COMPANY PETITION NO.759 OF 2015  
WITH  
NOTICE OF MOTION LODGING NO. 27 OF 2017

|                                          |                            |
|------------------------------------------|----------------------------|
| Vision Millennium Exports Pvt. Ltd.      | ]                          |
| incorporate under the Companies Act 1956 | ]                          |
| having its registered office at          | ]                          |
| J.N. 1, 65-B5, Sector No.9, Vashi        | ]..... Appellant/Applicant |
| Navi Mumbai 400703.                      | ] (Original Respondent)    |

Versus

|                                          |   |
|------------------------------------------|---|
| Vishal Victory Oiltech Pvt. Ltd.         | ] |
| incorporate under the Companies Act 1956 | ] |

|                                 |                         |
|---------------------------------|-------------------------|
| having its registered office at | ]                       |
| 505, Center Point Apartment     | ]                       |
| 28/2 Shakespear Sarani          | ]..... Respondent       |
| Kolkata 700017                  | ] (Original Petitioner) |

ALONG WITH  
APPEAL NO.132 OF 2017  
IN  
COMPANY PETITION NO.566 OF 2014  
WITH  
NOTICE OF MOTION LODGING NO.24 OF 2017

|                                          |                            |
|------------------------------------------|----------------------------|
| Vision Millennium Exports Pvt. Ltd.      | ]                          |
| incorporate under the Companies Act 1956 | ]                          |
| having its registered office at          | ]                          |
| J.N. 1, 65-B5, Sector No.9, Vashi        | ]..... Appellant/Applicant |
| Navi Mumbai 400703.                      | ] (Original Respondent)    |

Versus

|                                          |                         |
|------------------------------------------|-------------------------|
| M/s. Frame Impex Pvt. Ltd.               | ]                       |
| incorporate under the Companies Act 1956 | ]                       |
| having its registered office at          | ]                       |
| G-9, Shop No.12,                         | ]                       |
| Jesal Park Building                      | ]                       |
| Jesal Park Cooperative Hsg. Soc.         | ]..... Respondent       |
| Bhayender (E), Thane 401105              | ] (Original Petitioner) |

ALONG WITH  
APPEAL NO.133 OF 2017  
IN  
COMPANY PETITION NO. 16 OF 2014  
WITH  
NOTICE OF MOTION LODGING NO. 30 OF 2017

|                                          |                            |
|------------------------------------------|----------------------------|
| Vision Millennium Exports Pvt. Ltd.      | ]                          |
| incorporate under the Companies Act 1956 | ]                          |
| having its registered office at          | ]                          |
| J.N. 1, 65-B5, Sector No.9, Vashi        | ]..... Appellant/Applicant |
| Navi Mumbai 400703.                      | ] (Original Respondent)    |

Versus

|                           |   |
|---------------------------|---|
| Arcadia Trading Pvt. Ltd. | ] |
|---------------------------|---|

incorporate under the Companies Act 1956 ]  
having its registered office at ]  
Office No.33, Shrinaman Plaza ]  
Behind Shoppers' Stop ]..... Respondent  
Kandivali (W), Mumbai 400067 ] (Original Petitioner)

**ALONG WITH  
APPEAL NO. 134 OF 2017  
IN  
COMPANY PETITION NO. 758 OF 2015  
WITH  
NOTICE OF MOTION LODGING NO. 33 OF 2017**

Vision Millennium Exports Pvt. Ltd. ]  
incorporate under the Companies Act 1956 ]  
having its registered office at ]  
J.N. 1, 65-B5, Sector No.9, Vashi ]..... Appellant/Applicant  
Navi Mumbai 400703. ] (Original Respondent)

**Versus**

Sear Trading Pvt. Ltd. ]  
incorporate under the Companies Act 1956 ]  
having its registered office at ]  
Office No.7-B-3, Giriraj Building ]  
Ground floor, Iron Market, Carnac Bunder ]..... Respondent  
Kandivali (W), Mumbai 400009 ] (Original Petitioner)

**Mr.Yusuf Iqbal Yusuf a/w Mr.Neville Majra, Ms. Shaista Pathan, Mrs.Anvee Mehta, Mr.Feroj Qureshi i/by Mr. Akhileshwar Sharma for the Appellant.  
Mr. Sharan Jagtiani a/w Mr. Sunny Shah i/by Mr. Hemant Sethi for the Respondents.**

**CORAM : R. M. SAVANT &  
SARANG V KOTWAL, JJ.  
Reserved on : 13<sup>th</sup> November 2017  
Pronounced on :- 08<sup>th</sup> December 2017**

**JUDGMENT : [PER R M SAVANT, J]**

1 All the above Appeals are admitted and with the consent of the learned counsel for the parties are heard forthwith.

2           The above Appeals challenge the order dated 17/18<sup>th</sup> October 2016 passed by a learned Single Judge of this Court (A.K.Menon,J.) by which order the Company Petitions filed by the Respondents herein came to be disposed of in terms of the directions issued in the said order which directions inter-alia contained the direction to deposit the amounts claimed in the statutory notices issued by each of the Respondents in the above Appeals. The said directions are reproduced herein under for the sake of ready reference :-

“(i) The respondents shall deposit amount of advances by them in each of these petitions in this Court within a period of 12 weeks from today. The amounts to be deposited in each of the Petition is specified in the Orders passed in those petitions.

(ii) Accordingly in each of these petitions the petitioners will deposit the principal sums claimed in the statutory notices. In Company Petition No. 281 of 2015 the Respondent shall deposit with the Prothonotary and Senior Master a sum of Rs.51,00,00,000/- on or before 16th January, 2017.

(iii) In the event deposit is made and if a suit is filed by the Petitioner, the amounts so deposited will be transferred to the suit account to be invested in a Nationalised Bank initially for a period of one year and further periods of one year each.

(iv) If the deposit is not so made, the petition shall stand admitted, returnable within six weeks from the date of default and be advertised in two local newspapers i.e. Free Press Journal (in English) and Navshakti (in Marathi) and in the Maharashtra Government Gazette.

(v) The Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards publication charges, within two weeks from the date of default, with intimation to the

Company Registrar failing which the Petition shall stand dismissed for non prosecution.

(vi) All the petitions are disposed of in the above terms.

(vii) There will be no orders as to costs.”

3            Since the above Appeals involve common questions of fact and law, they are heard together.

4            By consent of the learned counsel for the parties, Appeal No.131 of 2017 (Vision Millennium Exports Pvt. Ltd. v/s. M/s. Stride Multitrade Pvt. Ltd.) is treated as the lead matter as the facts in the Company Petition No.281 of 2015 filed by M/s. Stride Multitrade Pvt. Ltd. are referred to in the impugned order.

5            The facts giving rise to the filing of the above Appeals can in a nutshell be stated thus :-

The Appellant and the Respondents in each of the Appeals are all bodies Corporate engaged in the business inter-alia of high quality edible oils, soyabean meal and other agricultural commodities. The facts in all the above Company Petitions are identical, save and except the dates of the Sales Confirmation Notes, Contracts, quantity of the product, delivery schedule and the rates.

The parties would be referred to as per their nomenclature in the Trial Court i.e. before the learned Single Judge, the Appellant would be referred to as the Respondent whereas the Respondent would be referred to as the Petitioner.

The case of the Petitioner as appearing in the Company Petition is that the Petitioner under the five contracts for purchase of Soyabean Meal had paid a sum of Rs.51,00,00,000/- to the Respondent as advance against the total purchase price of Rs.101,34,00,000/-. The said amount of Rs.51,00,00,000/- was transferred to the account of the Respondent by RTGS on various dates as mentioned in paragraph 9 of the Company Petition. The Petitioner in respect of the said payment has placed reliance on the bankers certificate annexed at Exhibit D to the Petition confirming that six remittances totalling to Rs.51,00,00,000/- have been made to the Respondents. The receipt of the advance in the instant Company Petition of Rs.51,00,00,000/- as also the advances from the other Petitioners in the other companion Company Petitions is not in dispute.

The details of the Soyabean Meal contracts entered into between the Petitioner and the Respondent are tabulated herein under :-



| Sr.No. | Contract No.            | Contract Date | Quantity (in MT) | Contract Value (in Crore) | Delivery Period |
|--------|-------------------------|---------------|------------------|---------------------------|-----------------|
| 1      | VMEPL/SBM/018/1<br>1-12 | 15.09.2011    | 10700            | 20.01                     | within 6 months |
| 2      | VMEPL/SBM/027/1<br>1-12 | 23.11.2011    | 11500            | 19.78                     | within 6 months |
| 3      | VMEPL/SBM/037/1<br>1-12 | 31.12.2011    | 14000            | 25.48                     | within 6 months |
| 4      | VMEPL/SBM/011/1<br>2-13 | 28.04.2012    | 8500             | 24.14                     | within 6 months |
| 5      | VMEPL/SBM/014/1<br>2-13 | 24/07/2012    | 2650             | 11.93                     | within 6 months |

(The contracts entered into between the other Petitioners and the Respondent are identical except the contract value, quantity of the product, delivery schedule and the rate.)

The amounts paid as advance by the Petitioner in the instant Company Petition and the other Petitioners in the companion Company Petitions are reproduced herein under :-

| Sr. No. | Company Petition No. | Amount       |
|---------|----------------------|--------------|
| 1       | 16 of 2014           | 10,71,53,459 |
| 2       | 566 of 2014          | 15,00,00,000 |
| 3       | 586 of 2014          | 24,78,02,506 |
| 4       | 281 of 2015          | 51,00,00,000 |
| 5       | 756 of 2015          | 19,73,47,685 |
| 6       | 757 of 2015          | 32,00,00,000 |
| 7       | 758 of 2015          | 9,00,00,000  |

|   |             |              |
|---|-------------|--------------|
| 8 | 759 of 2015 | 10,76,68,029 |
| 9 | 760 of 2015 | 7,96,86,951  |

It is the case of the Petitioner that the Respondent failed to deliver the Soyabean Meal within six months period from the date of the respective contracts and consequent upon such failure, the Petitioner had approached the Respondent to refund the advances paid which was not given heed to by the Respondent. The Petitioner persuaded the matter for refund, however, the Respondent declined to refund the said sum. It was the case of the Petitioner in the Petition that the receipt of the amount was not disputed by the Respondent, however, the Respondent did not deliver the Soyabean Meal to the Petitioners in each of the above Petitions.

It appears that the Respondent vide letter dated 15/06/2016 addressed to the Petitioner complained of the fact that the Petitioner had placed a Sales Contract dated 17/09/2011 for supply by the Respondent to the Petitioner of 5500 Metric Tonnes (MT) of Guar Seeds against an advance of 90% of the value to be calculated with reference to the price of Guar Seeds prevailing as on 27/04/2012 being the agreed "settlement date". It was further mentioned in the said letter that the Petitioner had made certain advance payments in installments but this fell short of the requisite amount for supply of the 5500 MT of Guar Seeds. It was the case of the Respondent that at the request of the Petitioner, the Respondent reduced the advance by 30% of

such price and the Petitioner agreed to pay further amounts against which the Respondent would supply Guar Seeds. It was the case of the Respondent that the amounts already paid were to be adjusted in the last lot of Guar Seeds to be supplied. It was the case of the Respondent that though the Petitioner did not make further payments, the Respondent continued to purchase the Guar Seeds on behalf of the Petitioner and contended that it was in a position to supply the seeds provided the Petitioner made payments of the amount due. It was the case of the Respondent that it notified the Petitioner that if the balance amounts were not paid within a period of 15 days the amounts already paid would stand forfeited and the Respondent would claim damages.

The said letter was replied to by the Petitioner by letter dated 11/07/2013. The Petitioner denied the contentions of the Respondent and denied that there was any contract for supply of Guar Seeds. According to the Petitioner it had never agreed to purchase the Guar Seeds and such a contract was never signed by it. The Petitioner reiterated its case of having agreed to the purchase of Soyabean Meal for which it had paid the sum of Rs.51,00,00,000/-. The Petitioner contested the forfeiture of the advances and reserved its rights to recover the damages.

In response the Respondent vide its rejoinder dated 31/07/2013 denied the contentions of the Petitioner and reiterated the contents of its letter

dated 15/06/2013.

Finally by a statutory notice dated 07/09/2013, the Petitioner set out the factual background called upon the Respondent to pay a sum of Rs.51,00,00,000/- along with interest @ 18% p.a. within three weeks.

The Respondent replied to the said statutory notice by its letter dated 05/10/2013. The demand contained in the statutory notice was denied and the Respondent's advocate reiterated the claim contained in the letter dated 15/06/2013. The Respondent further contended that though the Petitioner had agreed to purchase the Guar Seeds, the Petitioner failed to make balance payment and had since come up with a fabricated case seeking supply of Soyabean Meal and finally contended that a total sum of Rs.105,62,90,000/- would be payable by the Petitioner on taking delivery of the entire quantity of Guar Seeds. It was further contended that the last date for taking delivery of the Guar Seeds was 26/07/2012 i.e. the 90<sup>th</sup> day from the settlement date. It was contended that the Petitioner's failure to make balance payment and take delivery has resulted in a loss of Rs.1,04,780/- per MT to the Respondent. The difference accordingly was worked out at Rs.57,62,90,000/- and after adjusting the amount of Rs.51,00,00,000/- the balance remaining to be paid by the Petitioner to the Respondent was Rs.6,62,90,000/-. The Respondent accordingly called upon the Petitioner to pay the said amount.

6           It is in the background of the said statutory notice/notices that the above Company Petition along with the companion Company Petitions came to be filed by the Petitioners. In the said Company Petition the Appellant herein i.e. the original Respondent filed the affidavit of one Mr.Manish Bothra – Director of the Respondent opposing the above Company Petition inter-alia on various grounds. In the said reply affidavit the defence taken is that there was never any contract for purchase of Soyabean Meal and that the contracts entered into were in respect of purchase of Guar Seeds. It was alleged that the e-mails produced by the Petitioners were false and fabricated. It was contended that since the Respondent went on purchasing Guar Seeds and since the Petitioner did not make the balance payment on account of which the Respondent had suffered financial loss, it was therefore, denied there was any debt due to the Petitioner. A reference was also made in the said affidavit to the investigation conducted by the Director General, Competition Commission of India (for short “the DG CCI”) in Case No.76 of 2012 pertaining to the sharp rise in the price of Guar Seeds during the period October 2011 and March 2012. In the said reply affidavit it is stated that various observations were made by the DG CCI during the course of investigation into the operation of Ruchi Group [to which the Petitioner and the other Petitioners belong]. It was further stated in the said affidavit that the investigation reveals that the funds received by the Respondent Company from the 9 Petitioners were for

purchase of Guar Seeds. A reference has been made to paragraph 5.12.15 of the investigation report. It was therefore the case of the Respondent that the funds received pertain to the supply of Guar Seeds and not for Soyabean Meal extract. The factum of supply of Guar Seeds during the period 2011-2012 and its acceptance against the advance without any objection/reservation was stated. A reference is made to the four Petitioners in Company Petition Nos.586 of 2014, 756 of 2015, 759 of 2015 and 760 of 2015 against whom it is the case of the Respondent that against the advances paid, certain quantities of Guar Seeds were supplied and that is how the balance amounts are shown against each of the said Petitioners. The discrepancy between various contracts dates supply dates as also the discrepancy in the numbers of the contracts was stated so as to highlight the case of the Respondent that there were no such contracts for supply of Soyabean Meal. The Respondent accordingly sought dismissal of the above Company Petition as also the companion Company Petitions.

7           An affidavit in rejoinder was filed on behalf of the Petitioner wherein the Petitioner reiterated its stand in the Company Petition.

8           The learned Single Judge as indicated above has by the impugned order dated 17<sup>th</sup>/18<sup>th</sup> October 2016 has disposed of the Company Petition as also the companion Company Petitions by issuing directions which are

contained in the operative part amongst which as indicated above is the direction for the Respondent to deposit the advances paid by the Petitioner and the other Petitioners in the companion Company Petitions to the Respondent in this Court within 12 weeks. A further direction came to be issued that in the event the deposit is made and a suit is filed by the Petitioner and other Petitioners, the amounts so deposited will be transferred to the suit account to be invested in a Nationalized Bank initially for a period of one year and further periods of one year each if necessary. It was clarified that if the deposit is not made, the Petition shall stand admitted, returnable within six weeks from the date of default and be advertised in two local newspapers i.e. Free Press Journal (in English) and Navshakti (in Marathi) and in the Maharashtra Government Gazette.

The gist of the reasoning of the learned Single Judge as can be culled out from the impugned order is that though there is merit in the contention raised on behalf of the Respondent that the circumstances mentioned by the Respondent in its affidavit in reply indicating that the transaction is not a genuine transaction, according to the learned Single Judge what has been lost sight of is the fact that the said contracts have originated from the Respondent. The learned Single Judge further held that the contention that these are all fabricated and designed to reflect data matching the credit balances is farfetched. The learned Single Judge has further

observed that the denial of the contracts' authenticity appears to be a feeble attempt to avoid liability and the consequences that follow. The learned Single Judge has observed that the signatures of Mr. Bothra – the deponent of the affidavit in reply which are on the contracts have not been denied. Having regard to the dispute raised by the Respondent as regards the authenticity of the e-mails the learned Single Judge was of the view that the denial appearing is bare and bereft of particulars. The learned Single Judge has observed that though on the one hand the Respondent has alleged that the contracts are fabricated and data is created to match the credit balances, but on the other hand denies having sent any e-mail as annexed by the Petitioner. The learned Single Judge has taken into consideration the fact that after the affidavit in reply was filed on behalf of the Respondent, inspection of the e-mail(s) forwarding the said five contracts was taken. The copies of the said e-mails have been annexed at Exhibit-G1 and G2. The learned Single Judge has observed that apart from stating that the contracts are fabricated and that they had not sent any mail, there is no attempt on the part of the Respondent to dispute the signature or the rubber stamp appearing on the e-mails. The learned Single Judge has observed that the e-mails have originated from one Mr. Sujit/Betul Oils Ltd. whose e-mail address has been referred to by the learned Single Judge. However, according to the learned Single Judge the fact remains that the deponent has not contended that the Respondent has not communicated through M/s. Betul Oils Ltd. (the group to which the Appellant



belongs) The learned Single Judge has further observed that the signatures on the attachments of the e-mails have not been disputed nor has the Respondent disputed the fact that the rubber stamp appearing on these attachments. The learned Single Judge has also adverted to the fact that the Chartered Accountants of the Company were directed to remain present along with the Director of the Respondent Company. Accordingly Mr. D Narsimhan the Director of the Respondent Company and Mr. P Bhargava of the Chartered Accountants of the Respondent Company appeared before the Court and stated that the amounts paid by the Petitioners in the said Company Petitions were shown as advances received in their account as on that date i.e. on 26/02/2015. The learned Single Judge therefore held that if the amounts paid by the Petitioners were appropriated by the Respondent towards the price of Guar Seeds ordered by the Petitioners, the amounts would not have been shown as advance as on 26/02/2015. The learned Single Judge has also observed that the Respondent has not filed any proceedings against any of the Petitioners to recover the loss alleged to have been caused on account of they being allegedly induced to purchase large quantities of Guar Seeds at the instance of the Petitioners. The learned Single Judge having regard to all the aforesaid facts prima facie found that the defence set up by the Respondent does not appear to be bonafide. The learned Single Judge has observed that having regard to the fact that the Respondent has received the amount paid over by the Petitioners coupled with the fact that the Respondent has not relied

upon any evidence of having purchased any quantities of Guar Seeds pursuant to the alleged repeated orders to purchase the Guar Seeds, the defence of the Respondent was not a plausible one. The learned Single Judge therefore as indicated above deemed it appropriate to direct the Respondent to deposit in this Court the amount claimed by way of the statutory notices by the Petitioners in the above Company Petition as also the Petitioners in other companion Company Petitions. As indicated above it is the said order dated 17<sup>th</sup>/18<sup>th</sup> October 2016 which is taken exception to by way of the above Appeals.

9            Heard the learned counsel for the parties.

10           ***SUBMISSIONS ON BEHALF OF THE APPELLANT/ORIGINAL  
RESPONDENT BY THE LEARNED COUNSEL MR. YUSUF IQBAL  
YUSUF :***

A]           That the learned Single Judge erred in shifting the burden on the Respondent i.e. the Appellant herein when the Petitioner has not discharged its burden;

B]           That the learned Single Judge erred in directing the Respondent to make the deposit as directed by the impugned order when the Respondent has a bonafide defence to the Company Petition as filed;

- C] That the learned Single Judge failed to appreciate that though the Petitioners claim to have entered into 5 contracts for supply of Soyabean Meal, the originals of the said contracts have not been produced by the Petitioners and therefore their case ought not to have been accepted;
- D] That the learned Single Judge erred in proceeding on the basis that the signatures of Mr. Bothra and the rubber stamp of Mr. Bothra were not disputed and in the said process losing sight of the discrepancy in the e-mails on which reliance has been placed by the Petitioner.
- E] That the learned Single Judge erred in not accepting the case of the Respondent that the funds received from the Petitioners were for purchase of Guar Seeds which the Respondent was purchasing through the broker Edelweiss Trading & Holdings Pvt. Ltd. and the Petitioners failed to make payment due to sharp fall in price of Guar Seeds between the settlement Date and the delivery Date.
- F] That the learned Single Judge has failed to take into consideration the report of the Director General of Competition Commission of

India (DG CCI) in Case No.76 of 2012 wherein a finding has been recorded that the amounts advanced by the Petitioners to the Respondent towards the purchase of Guar Seeds.

G] That the learned Single Judge failed to take into consideration the very pertinent aspect viz that the Respondent had supplied Guar Seeds to 4 of the group companies of the Petitioners viz. M/s. Vishal Victory Oiltech Pvt. Ltd; M/s. Addax Trading Pvt. Ltd; M/s. Utility Impex Pvt. Ltd. and M/s. Nova Trading Pvt. Ltd. which fact has been accepted by the said entities in their respective Petitions, hence the case of the Respondent was a plausible one.

H] That the learned Single Judge failed to take note of the fact that it was the Respondent who was the first to initiate correspondence vide its letter dated 15/06/2013 whereas the Petitioner had not entered into the correspondence almost for a period of one year though it was the case of the Petitioner that it had not been supplied the Soyabean Meal under the said 5 contracts;

I] That the learned Single Judge failed to appreciate that the Petitioners could not have continued to enter into new contracts for purchase of Soyabean Meal and paid advance despite

consistent default in earlier contracts for purchase of Soyabean Meal.

J] That the learned Single Judge failed to appreciate that since the Petitioners have not signed the contracts for purchase of Soyabean Meal, it could not be said that the said contracts were completed and therefore the reliance placed on the said contracts was misfounded.

K] That even though the Respondent may have neglected to pay the debt, it being commercially solvent, a Petition for winding up is not maintainable.

**11 SUBMISSIONS ON BEHALF OF THE RESPONDENT/ORIGINAL PETITIONERS BY THE LEARNED COUNSEL MR. SHARAN JAGTIANI :**

i] That the Petitioners produced the Soyabean Meal contracts as signed by the Respondent with the rubber stamp of the Respondent appearing on the same. The Petitioners have also produced evidence of payment of Rs.51,00,00,000/- as advance to the Respondent. That being done so, the onus therefore shifted upon the Respondent to show that the defence raised is in good

faith and is one of substance and it is likely to succeed;

- ii] That though the defence of the Respondent was that the amount was advanced for purchase of Guar Seeds which fact was denied by the Petitioner, the Respondent has failed to produce the most basic document i.e. the Guar Seeds Contracts along with any of its pleadings before the learned Single Judge.
- iii] That the Respondent also failed to produce the alleged Guar Seeds contract even in the Review Petition No.(L) 1 of 2017 filed in Company Petition No.586 of 2014 or along with the instant Appeal. The said Guar Seeds contracts have been sought to be produced for the first time by way of additional evidence by filing Notice of Motion (L) No.1548 of 2017 in the instant Appeal;
- iv] That the Respondent has failed to produce nor has made any reference in any of the pleadings of any e-mail/letter/correspondence through which the Respondent sent the alleged Guar Seeds contracts to the Petitioners or vice versa.
- v] That the Respondent has not produced even a single document showing the purchase of Guar Seeds on behalf of the Respondent

through the broker Edelweiss Trading & Holdings Pvt. Ltd.

- vi] That the Respondent has accepted the said Soyabean Meal contracts by conduct inasmuch as the Petitioners have made payment of 50% of the contracted amount as advance and therefore the contract can be said to be concluded by conduct.
- vii] That no proof of any loss suffered by the Respondent has been produced;
- viii] That the Director of the Respondent Mr. D Narsimhan and the representative from the Chartered Accountants of the Respondent Mr. P Bhargava have admitted before this Court that the amounts paid by the Petitioner are shown as advances received in the account of the Respondent;
- ix] That the case of the Respondent that the Petitioner failed to make balance payment on account of sharp fall in price of Guar Seeds cannot be accepted in the teeth of the fact that the Petitioners would not have made payment of Rs.6,00,00,000/- on 26/07/2011 i.e. the day prior to the delivery date.

- x] That the reliance placed on the findings contained in the preliminary report of the DG CCI is misplaced.
- xi] That having regard to the nature of the inquiry by the DG CCI, the same is a preliminary fact finding inquiry and not in itself a quasi-judicial order. At that stage there is no opportunity given to the concerned parties to make submission, but only statements are recorded and materials considered. Hence the said preliminary fact finding statements in that report have no evidentiary value and is not determinative of the issues that arise inter se parties before a Court.
- xii] That as regards evidentiary value of the said report, reliance is placed on the judgment of the Apex Court reported in (2008) 12 SCC 73 in the matter of Raymond Woollen Mills Ltd. v/s. Director General (Investigation and Registration) & Anr. to contend that the said report does not have any evidentiary value.
- xiii] That the report of DG CCI is solely based on the bank statement of the parties. The DG CCI did not have the benefit of material facts necessary to determine the inter se disputes between the parties as also the admissions made by the Director Mr. D Narsimhan and the



representative of the Chartered Accountants Mr. P Bhargava before this Court that the amounts paid by the Petitioners are shown as advances received in the account of the Respondent which has been recorded in the orders dated 23/02/2015 and 27/02/2015.

xiv] That the e-mail dated 14/02/2012 has been wrongly construed by the Respondent, as Mr. Rajkumar Goyal of the Petitioners has clearly stated that the advances given below for Soyabean Meal can be adjusted through some other product i.e. guar seeds which Betul seems to be holding. Hence on a bare reading of the e-mail it talks about a proposal to the Respondent i.e. the Appellant herein that the advances can be adjusted with Guar Seeds.

xv] That the supply of the Guar Seeds to the sister concerns of the Petitioners is of no avail. The said supply has to be considered in the context of the fact that as per the alleged Guar Seeds contracts between the Respondent and M/s. Vishal Victory Oiltech Pvt. Ltd; M/s. Addax Trading Pvt. Ltd; M/s. Utility Impex Pvt. Ltd. and M/s. Nova Trading Pvt. Ltd. are dated 14/01/2012 whilst the Guar Seeds are alleged to be supplied even prior to the contract date i.e. on 28/11/2011 and it is only in case of the alleged Guar Seeds contract between the Respondent and M/s. Nova Trading Pvt. Ltd.

that the contract date is prior to the delivery date.

- xvi] That the reliance placed on the order of the Hon'ble Madhya Pradesh High Court is misplaced as the contract in issue before the Hon'ble Madhya Pradesh High Court was different. In the said case Betul Oils Ltd who was the Respondent therein had produced a contract for purchase of Guar Seeds bearing a signature of M/s. Nova Trading Pvt. Ltd. whereas the present Respondent has failed to produce any such contract.
- xvii] That though it is the case of the Respondent that the Soyabean Meal contracts were received by Respondent from the Petitioners by e-mails, there is not a whisper as to how the Respondent sent the alleged Guar Seeds contract to the Petitioners or vice versa.
- xviii] No correspondence was entered into by the Petitioner with the Respondent in view of the fact that the talks between the Petitioners and the Respondent were in person and that the Respondent kept on giving false assurances to the Petitioners.
- xix] Assuming that the case of the Respondent of the contract being for purchase of Guar Seeds is believed to be true, the delivery date

mentioned therein being 27/07/2012, the Respondent also did not address any correspondence for almost a year before addressing the said letter dated 15/06/2013.

xx] That it is well settled that the commercial solvency does not constitute a stand alone ground to avoid winding up. In the event the company refused to pay on no genuine and substantial grounds, there is a presumption that the company is unable to pay its debts and thus the company ought to be wound up. Reliance is placed on the judgment of the Apex Court reported in (1971) 3 SCC 632 in the matter of M/s. Madhusudan Gordhandas & Co. v/s. Madhu Woollen Industries Pvt. Ltd. and, (2010) 10 SCC 553 in the matter of IBA Health (I) Pvt. Ltd. v/s. Infor-Drive Systems SDN, BHD,

xxi] The view taken by the learned Single Judge is a possible view in the facts and circumstances of the case and therefore the impugned order need not be interfered with by this Court in its Appellate jurisdiction. Reliance is sought to be placed on the judgment of the Apex Court reported in 1990 (Supp) SCC 727 in the matter of Wander Ltd. and another v/s. Antox India P. Ltd.

xxii] Having regard to all the aforesaid facts, the order passed by the learned Single Judge of this Court need not be interfered with as the Respondent i.e. the Appellant herein has not raised any substantial or genuine ground to avoid payment or defences raised by the Respondent i.e. the Appellant herein are not bonafide.

**CONSIDERATION :-**

12 Having heard the learned counsel for the parties, we have considered the rival contentions. The question which arises for consideration is whether the order passed by the learned Single Judge of this Court directing the Respondent i.e. the Appellant herein to make deposit of the amounts contained in the statutory notice and in the event a suit is filed by the Petitioners i.e. the Respondents herein the said amount to be transferred to the account of the said suit, is required to be interfered with. The cause for issuing the said direction as can be seen from the impugned order is that the defence raised by the Respondent was not found to be genuine, bonafide and plausible one by the learned Single Judge and therefore the learned Single Judge deemed it appropriate to put the Respondent to terms. It is required to be noted that the only defence taken by the Respondent in the reply to the statutory notice and in the affidavit in reply to the above Company Petitions is the defence that there were never any contracts for purchase of Soyabean Meal

but the contracts were for purchase of Guar Seeds. Though the said defence was taken by the Respondent, significantly the Respondent has not produced the alleged Guar Seeds contracts before the learned Single Judge or in the Review Petition filed against the order passed in the Company Petition being No.586 of 2014 filed by the Petitioner M/s. Nova Trading Pvt. Ltd. or even in the instant Appeal and an attempt has now been made to bring on record the said Guar Seeds contracts by way of an application filed under Order XLI Rule 27 of the Code of Civil Procedure being Notice of Motion (L) No.1548 of 2017 which is filed in the instant Appeal. Hence the defence which was sought to be taken by the Respondent admittedly has not been buttressed by producing any cogent material in that regard.

In so far as the Petitioners i.e. the Respondents herein are concerned, they have produced e-mails which according to them have been received from the Respondent comprising 5 contracts for purchase of Soyabean Meal. The Petitioner has also produced the bank statements evidencing the payment of advances of Rs.51,00,00,000/- to the Respondent by RTGS. Hence the Petitioner has discharged the burden which was initially lying on it. However, on the burden shifting to the Respondent, the Respondent has not discharged the said burden by producing material which was the fulcrum of its defence.

13           The Appellant herein i.e. the original Respondent has filed an Application to produce additional evidence being Notice of Motion (L) No.1548 of 2017. The additional evidence which is sought to be produced inter-alia contain the alleged Guar Seeds contracts. Hence it is for the first time at the Appellate stage that the Guar Seeds contracts are sought to be produced. By an order passed today the said Notice of Motion (L) No.1548 of 2017 has been dismissed for the reasons stated in the said order.

14           In so far as the 5 Soyabean Meal contracts which have been received by e-mail by the Petitioner is concerned, each contract bears the signature and rubber stamp of the Respondent. Each contract identifies the quantity, rate, payment terms, delivery date. The Petitioner has given inspection of the e-mails to the Respondent. In so far as the said contracts are concerned, in the affidavit in reply though the authenticity of the e-mail is sought to be disputed the denial is bare and bereft of particulars. The same can be seen by the averments made in paragraph 20 which are reproduced herein under :-

“The Respondent states that the alleged contracts annexed by the Petitioners are also fabricated. The date are created to match the existing position of credit balance with the Respondent Company. The Respondent denies having sent any mail as annexed by the Petitioner. The following error is patent in the contracts.”

Hence a reading of the said paragraph indicates that though the Respondent

has alleged that the contracts are fabricated and the dates are created to mach the existing position of credit balance, on the other hand the Respondent has denied of having sent any e-mail as annexed by the Petitioner to the Company Petition. Significantly the Respondent has not disputed the signatures on the contracts nor has disputed the authenticity of the rubber stamp affixed over the signature in the Sales Confirmation Note.

15           In so far as the alleged Guar Seeds contracts are concerned, the Respondent has not mentioned in any pleadings as to how the said Guar Seeds contracts were sent to the Petitioners. There is no reference to any e-mail/letter/correspondence by which the said Guar Seeds contracts were sent to the Petitioners.

16           Another aspect which dents the case of the Respondent in so far as the said defence is concerned is that its Director Mr. D Narsimhan and the representative of the Chartered Accountants of the Respondent Mr. P Bhargava have admitted before this Court that the amounts paid by the Petitioners are shown as advance received in the account of the Respondent which fact has been recorded in the order dated 23/02/2015 and 27/02/2015 passed in one of the connected Company Petition being No.16 of 2014. The case of the Respondent that the Petitioners failed to make payment on account of sharp fall in price of Guar Seeds between the settlement date and the delivery date

also appears to be unacceptable in view of the fact that the Petitioners made payment of Rs.6,00,00,000/- on 26/07/2011 a day prior to the delivery date.

17           In so far as e-mail dated 15/02/2012 addressed by Mr. Rajkumar Goyal to the Respondent is concerned, it is required to be noted that the said e-mail is dated 14/02/2012 whereas the alleged Guar Seeds contracts are also dated prior in point of time. A reading of the said e-mail indicates that the said e-mail is in the nature of the proposal to the Respondent that the advances can be adjusted against the Gaur Seeds. The alleged Guar Seeds contracts are all prior in point of time to the e-mail. Hence there would be no question of Mr. Rajkumar Goyal making a proposal for purchase of Guar Seeds to be adjusted with the advances provided by the Petitioner. The said e-mail therefore does not in any manner support the case of the Respondent that the amount advanced by the Petitioner was towards the purchase of Guar Seeds. The factum of supply of Guar Seeds to 5 entities which are sister concerns of the Petitioner also does not further case of the Respondent in so far as contracts being for purchase Guar Seeds and not for purchase of Soyabean Meal is concerned. The contracts relating to Guar Seeds, according to the Respondent are dated 14/01/2012 whilst the Guar Seeds are alleged to have been supplied even prior to the contract date i.e. 28/11/2011. It is only in respect of the alleged Guar Seeds contract between the Respondent and M/s. Nova Trading Pvt. Ltd. (one of the Respondents in the companion Appeals) that the contract



date is prior to the delivery date. Hence the aforesaid fact also does not support the case of the Respondent that the contracts were in respect of purchase of Guar Seeds and not for purchase of Soyabean Meal.

18           Now coming to the report of the DG CCI on which much reliance was sought to be placed on behalf of the Respondent in support of its case that the contracts were in respect of supply of Guar Seeds and not for Soyabean Meal. The said report has been submitted by the DG CCI after undertaking an inquiry under Section 26 of the Competition Act 2002. The statutory scheme comprising the said Act indicates that the investigation carried out by the DG CCI is a preliminary fact finding inquiry and is not by way of quasi-judicial proceeding. In the said fact finding inquiry there is no opportunity given to the concerned parties to make submissions but only statements are recorded and material considered. In so far as the instant report of the DG CCI is concerned, reading of paragraphs 5.12.10, 5.12.11 and 5.12.14 indicate that the DG CCI's finding is solely based on the bank statements of the parties. The DG CCI did not have the benefit of the material facts which are necessary to determine the inter se disputes between the parties. In so far as the instant case is concerned, the DG CCI did not have access to the Soyabean Meal contracts bearing the signature and rubber stamp of the Respondent i.e. the Appellant herein, the e-mail through which the Respondent forwarded the Soyabean Meal contracts to the Petitioners, admissions of Mr. D Narsimhan the Director of the Respondent

and, Mr. P Bhargava the representative of the Chartered Accountants of the Respondent wherein they have stated that the amount paid by the Petitioner was shown as advance in the account of the Respondent. The DG CCI cannot be said to be conducting any inquiry as regards the inter se disputes between the Petitioner and the Respondent but was only conducting the inquiry into whether there was any monopolistic activities being carried out in the sale of Guar Seeds.

19 In our view, though the learned Single Judge has not expressed any opinion one way or the other as regards the efficacy of any of the findings recorded by the DG CCI, no evidentiary value could be attached to the said report of the DG CCI. Reliance placed on the judgment of **Raymond Woollen Mills Ltd.'s** case (supra) seems to be apposite. In the said case the Apex Court was concerned with the investigation report under the provisions of Section 11 of the Monopolies Restrictive Trade Practices Act, 1969 which provisions can be said to be almost paramateria to Section 26 of the present Competition Act, 2002. The Apex Court held that any reference to the contents of the said report which have not been put in evidence and subjected to cross examination cannot be looked into. Paragraph 36 of the said report is material and is reproduced herein under :-

36. The learned senior counsel for the respondents referred to the "preliminary investigation report" submitted by the Director General (I&R). The preliminary investigation report cannot be taken into

consideration as it is not produced in evidence. It is only a report submitted in terms of Section 11 of the MRTTP Act for initiating the enquiry. Only those facts contained therein, which are proved on record by evidence, can be looked into. The preliminary investigation report, as such, is not evidence on record. As such, any reference to the contents thereof, which have not been put in evidence and subjected to cross examination, cannot be looked into. This is without prejudice to the contention that there is nothing stated in the preliminary investigation report, which in any way establishes that any competition was affected within the meaning of Section 2(o) of the Act and that competition was affected to any "material degree" in the relevant trade or industry, as contemplated under Clause (h) of Section 38(1) of the Act.

In our view, therefore the findings of the DG CCI as contained in its report do not further the case of the Respondent i.e. the Appellant herein.

20           In so far as the discrepancies in the Soyabean Meal contracts alleged by the Respondent are concerned, it is required to be noted that the Soyabean Meal contracts bear the signature and rubber stamp of the Respondent. As indicated above the Respondent has not denied the authenticity of the signature and its rubber stamp on the Soyabean Meal contracts. Since the Soyabean Meal contracts have originated from the Respondent, the discrepancies if any cannot lie at the door of the Petitioner and it is for the Respondent therefore to explain such discrepancies. Hence the case of the Respondent that the Soyabean Meal contracts are fabricated and that the Respondent did not send any e-mail does not seem to be bonafide and

is devoid of merits as rightly held by the learned Single Judge. In our view, merely because the Petitioner did not enter into correspondence though breach was committed by the Respondent would not dent the case of the Petitioner in so far as their claim based on Soyabean Meal contracts is concerned. Since the parties had a running business relationship, it may be possible that the parties were trying to work out and in the said process time might have elapsed. In the said context it is required to be noted that even in respect of the Guar Seed contracts the delivery date as per the said contracts was 27/07/2012. The Respondent did not address any correspondence for almost a year before addressing the letter dated 15/06/2013. Hence the aforesaid fact suggests that the parties being in continuous business relationship did not desire to precipitate the matter and were trying to resolve the same.

21           The contention as urged on behalf of the Respondent that the e-mails do not contain the signature made on behalf of the Petitioner and therefore the said fact impinges upon whether there were any contracts for purchase of Soyabean Meal. In our view, the said contention misses the point that the said contract was acted upon inasmuch as the Petitioner had made payment of the advance which constituted 50% of the contracted amount i.e. the sum of Rs.51,00,00,000/- and hence in terms of Section 8 of the Contract Act the same constitutes an acceptance.

22           In so far as the order passed by the Madhya Pradesh High Court is concerned, it seems that the parties and the contracts in issue before the Madhya Pradesh High Court were different. In the said case it appears that the Respondent therein Betul Oils Ltd had produced the contract for purchase of Guar Seeds bearing the signature of M/s. Nova Trading Pvt. Ltd.; whereas in the instant case the Respondent has failed to produce any such Guar Seeds contracts. Further before the Madhya Pradesh High Court there was no admissions as are in the present case by the Director Mr. D Narsimhan and the representative of the Chartered Accountants Mr. P Bhargava. In so far as the said order passed by the Madhya Pradesh High Court is concerned, it is required to be noted that the Review Petition being No.1 of 2017 filed in Company Petition No.586 of 2014 came to be filed by the Respondent on the said very ground i.e. placing reliance on the order passed by the Madhya Pradesh High Court dismissing the Company Petition. The said Review Petition came to be dismissed by the learned Single Judge by the order dated 24/02/2017. In our view, therefore, the order passed by the Madhya Pradesh High Court does not in any manner aid the Respondent to deny that it owes any debt to the Petitioner in the Company Petition.

23           In so far as the contention that urged on behalf of the Respondent that the Respondent is commercial solvent and therefore the order of the nature passed by the learned Single Judge was not required to be passed. In

the said context, reference could be made to the judgment of the Apex Court in *M/s. Madhusudan Gordhandas & Co.*'s case (supra) and *IBA Health (I) Pvt. Ltd.*'s case (supra) .

In *Madhusudan Gordhandas & Co.*'s case (supra), the Apex Court held that mere ability to pay but choosing not to pay cannot be a defence in a Petition for winding up. Paragraph 21 of the said report is material and is reproduced herein under :-

“21 Where the debt is undisputed the court will not act upon a defence that the company has the ability to pay the debt but the company chooses not to pay that particular debt (See Re. A Company 94 S.J. 369). Where however there is no doubt that the company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the court will make a winding up order without requiring the creditor to quantify the debt precisely (See Re. Tweeds Garages Ltd. 1962 Ch.406. (3) The principles on which the court acts are first that the defence of the company is in good faith and one of substance, secondly, the defence is likely to succeed in point of law and thirdly the company adduces prima facie proof of the facts on which the defence depends.”

In *IBA Health (I) Pvt. Ltd.*'s case (supra) the Apex Court has held that solvency of a company might not constitute a stand alone ground for setting aside a notice under Section 434(1)(a), meaning thereby, if a debt is undisputedly owing, then it has to be paid. Paragraph 24 of the said report is material and reproduced herein under :-

“24 Appellant company raised a contention that it is

commercially solvent and, in such a situation, the question may arise that the factum of commercial solvency, as such, would be sufficient to reject the petition for winding up, unless substantial grounds for its rejection are made out. A determination of examination of the company's insolvency may be a useful aid in deciding whether the refusal to pay is a result of the bona fide dispute as to liability or whether it reflects an inability to pay, in such a situation, solvency is relevant not as a separate ground. If there is no dispute as to the company's liability, the solvency of the company might not constitute a stand alone ground for setting aside a notice under Section 434(1)(a), meaning thereby, if a debt is undisputedly owing, then it has to be paid. If the company refuses to pay on no genuine and substantial grounds, it should not be able to avoid the statutory demand. The law should be allowed to proceed and if demand is not met and an application for liquidation is filed under Section 439 in reliance of the presumption under Section 434(1)(a) that the company is unable to pay its debts, the law should take its own course and the company of course will have an opportunity on the liquidation application to rebut that presumption.

Apart from the aforesaid legal position, it is sought to be pointed out on behalf of the Petitioners that the net worth of the Respondent as per its last balance sheet is much lesser than outstanding debts of the Petitioners. It is further sought to be pointed out that the amount lying in the bank account of the Respondent is also not sufficient to pay off the outstanding debts.

24           Now lastly coming to the issue as to whether this Court should interfere with the impugned order passed by the learned Single Judge. In the said context it is necessary to make a reference to the judgment of the Apex

Court in *Wonder Ltd's* case. (supra). Paragraph 14 of the said report is material and is reproduced herein under :-

“14 The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles *Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph (1960) 3 SCR 713 : AIR 1960 SC 1156 : (SCR 721)*

..... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* [1942 AC 130]

.... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle. “



Hence going by the test laid down by the Apex Court in *Wander Ltd.'s* case (supra), the view taken by the learned Single Judge being a possible view taken in the facts and circumstances of the instant case, the same does not merit any interference in the Appellate Jurisdiction.

25           In our view, the Respondent i.e. the Appellant herein has not raised any substantial or genuine grounds to avoid the payment and the defences raised on behalf of the Respondent are therefore not bonafide. In our view, the learned Single Judge has in the facts and circumstances rightly issued the directions which are contained in the operative part of the impugned order.

26           For the reasons afore-stated the above Appeal No.131 of 2017 as also the companion Appeals being Nos.135 of 2017, 128 of 2017, 129 of 2017, 130 of 2017, 132 of 2017, 133 of 2017, 134 of 2017 and Appeal (Lodging) No.84 of 2017 to stand dismissed. In view of the dismissal of the Appeals, the Notices of Motion for stay do not survive and to accordingly stand disposed of.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]

*After pronouncement of judgment :-*  
*08<sup>th</sup> December 2017*

At the time of pronouncement of the judgment, the learned counsel appearing on behalf of the Appellant herein seeks continuation of the

ad-interim order dated 17/04/2017 which is in operation till date in the above Appeal and the companion Appeals for some time so as to enable the Appellant to approach the Apex Court.

The said request is opposed to by the learned counsel appearing on behalf of the Respondent/Respondents herein.

In the facts of the present case, the said ad-interim order is continued for a period of six weeks from date i.e. till 19/01/2018.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]