

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

APPEAL NO.55 of 2017
IN
COMPANY PETITION NO.334 OF 2014

Hindustan Dorr and Oliver Limited

...Appellant
(Ori. Respondent)

vs.

M/s. Welspun Projects Ltd. (Formerly
known as MSK Projects (India) Limited

...Respondent
(Ori. Petitioner)

Ms. Shilpa Kapil, for the Appellant.

Mr. Shubhabratra Chakraborti a/w. mr. Durgesh Khanapurkar, for
the Respondent.

**CORAM : SHANTANU S. KEMKAR &
NITIN M. JAMDAR, JJ.**

DATE : JULY 24, 2017

P.C.:

. Feeling aggrieved by the order dated 13th October, 2015
passed by the learned single Judge of this Court in Company
Petition No. 334 of 2014 whereby admitting Company Petition and
directing the Respondent-Petitioner to advertise the Petition, the
Appellant (original Respondent) has filed this intra Court Appeal.

2. According to the learned counsel for the Appellant the
learned single Judge has failed to consider that the particulars of

the claim filed by the Respondent to the Company Petition was totally contrary to the particulars of the claim filed by the Respondent in the rejoinder. It is also the case of the Appellant that the Respondent did not produce the invoices totaling the figure as claimed in the Company Petition showing it to be the outstanding amount. It is also the case of the Appellant that the learned single Judge has committed error in relying the settlement arrived at between the parties on 24th July, 2013.

3. We have heard the submissions made by the learned counsel for the Appellant and perused the impugned order.

4. In the Company Petition, the debt alleged is the sum of Rs. 4.12 Crores as on 26th July, 2014. The said deemed amount arrived out of the work carried out by the Respondent in pursuance to the two civil work orders placed with the Appellant. The learned single Judge after going through the Company Petition, its reply, the rejoinder as also the documents found that the Appellant and the Respondent arrived at for settlement in the meeting held between them on 24th July, 2013. The Appellant herein agreed to make payment of Rs. 3.10 crores as per the

payment schedule. However, none of the installments as fixed in the meeting held on 24th July, 2013 was paid. The letters addressed by the Respondent-Company Petitioner was not even addressed by the Appellant calling for payment for settlement amount. The learned single Judge has also taken note of the fact that the settlement was arrived at for Rs. 3.10 crores & there was absolutely no defence of the Appellant as far as the settlement of amount of Rs. 3.10 crores.

5. We find no infirmity in the findings recorded by the learned single Judge that the settlement was arrived at for Rs. 3.10 crores and therefore in the absence of any defence for non payment of the agreed amount holding that since there is no dispute about the settlement amount of Rs. 3.10 crores, the Company (Appellant herein) will have to pay this amount to secure the same to the satisfaction of the Petitioner (Respondent herein) to avoid deeming provision of Section 434 of inability on the part of Respondent to pay its debt. It is also noticed that after the impugned order was passed, the Appellant made a statement before the learned single Judge that Appellant wish to settle the dispute with the Petitioner of which the Petition is pending, however no amount was paid.

6. Keeping in view the aforesaid, in our considered view, there is no error in the impugned order passed by the learned single Judge admitting the Company Petition and ordering to advertise the Petition warranting interference in this Appeal.

7. As a result, the Appeal fails and is hereby dismissed.

(NITIN M. JAMDAR, J.)

(SHANTANU S. KEMKAR, J.)