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

COMPANY PETITION NO.324 OF 2011

M/s. Steel Aids (India) ….Petitioner
Vs.
Renaissance Corporation Ltd. ….Respondent

Mr. Ajay Kumar a/w. Mr. Ravindra Khilare I/b. Mr. Munir Merchant for petitioner.
Mr. Nilesh Das for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 10th JULY 2018

P.C.:

1 At the outset, Mr. Kumar, counsel for petitioner seeks leave to amend the cause title of the petition to reflect the name of the Sole Proprietor – Ashok Anraj Jain.

2 Leave granted. Amendment to be carried out forthwith. Re-verification dispensed with.

3 This petition is for winding up of respondent company - Renaissance Corporation Ltd. (the company) under the provisions of the Companies Act, 1956 on the ground that the company is unable to discharge its debts and is commercially insolvent.

4 Petitioner's case is that petitioner had, between 30th November 2006 to 30th March 2007, supplied various quantities of stainless steel glass materials including G.I. pipes and raised invoices against each supply. The company was also making payments from time to time. At Exhibit C to the petition is a ledger account of petitioner with regard to the company. If one

sees the ledger account between 30th November 2006 and 21st December 2006 petitioner had made about 11 supplies and the company was making ad-hoc payments and not invoice to invoice basis. On 3rd January 2007 there was an outstanding amount of Rs.20,52,160/- and that amount was paid off by the company. From 8th January 2007 supplies continued upto 30th March 2007. In between, various credit notes were raised by petitioner. On 30th March 2007, three supplies were made by petitioner and as on 31st March 2007 there was an outstanding of Rs.33,80,085.00/-. No subsequent supply has been made but on 31st March 2007 various credit notes have been raised. Infact the ledger account shows between petitioner and the company there was a running account and as on 31st March 2007 against an amount of Rs.62,76,567/- invoiced, the company paid Rs.29,16,753.55/- leaving a closing balance of Rs.33,59,813.45/-. Thereafter, between 1st April 2007 and 25th May 2007, further supplies were made by petitioner to the company. The company also made five payments, two on 16th April 2007, two on 15th May 2007 and one on 19th June 2007. If one sees the payments made, those were not on invoice to invoice basis but were on ad-hoc basis which once again confirms that it was a running account between petitioner and the company. Thereafter, on 8th January 2009 the company made payment of sum of Rs.1,00,000/- and on 8th September 2009 paid another sum of Rs.50,000/-.

5 The petition has been lodged on 19th January 2011. Therefore, in my view, the petition is within limitation.

6 Mr. Das, counsel for respondent company raised two defences, viz., (i) limitation, which I have already answered and (ii) the goods supplied were defective. Mr. Das relied upon a letter dated 1st September 2009 from the company to petitioner alleging that the goods supplied were of sub standard quality and the goods are kept at the risk of petitioner and will be disposed if petitioner did not take steps to take away the goods.

7 From petitioner there is no communication being issued before the statutory notice dated 28th September 2010. Admittedly, the last of the supply was made some time in May 2007. The letter dated 1st September 2009 also finds a mention in the reply to the statutory notice. The reply is at Exhibit H to the petition.

8 Therefore, I cannot come to a conclusion that the defences raised by the company are bogus or afterthoughts or moonshine. Disputed questions of fact exist.

9 Petition dismissed.

(K.R. SHRIRAM, J.)