

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

COMPANY PETITION NO.276 OF 2015

Fairmacs Shipping & Transport Services)
Pvt. Ltd.)....Petitioner

V/s.

Shahi Shipping Ltd.)....Respondent

Mr.Sunilkumar Neelambaran a/w Mr.Raunaq Mukherjee i/by
M/s.Mulla & Mulla & Craigie Blunt & Caroe for petitioner.
Ms.Suvarna Joshi for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 18.1.2018

P.C.:-

1 This petition is filed for winding up of the company Shahi Shipping Ltd. on the ground that the company is unable to discharge its debts and is commercially insolvent.

2 Petitioner and the company had referred certain disputes to arbitration before a tribunal of 3 former Judges of Hon'ble Supreme Court of India. The arbitral Tribunal gave a reasoned award and directed the company to pay sum of Rs.52,54,046.34/- to petitioner together with cost in the sum of Rs.30,00,000/-. The award also provided that petitioner would be entitled to interest @ 12% p.a. on the principal amount of Rs.52,54,046.34/-. So far as costs are concerned, it is the case of petitioner that they are entitled to interest

@ 18% p.a. on the amount as per section 31(7) (b) of the Arbitration & Conciliation Act 1996 from the date of award till payment.

3 The company had challenged the award and petition under Section 34 came to be dismissed. Company took the matter in appeal and when the appeal was dismissed, preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court of India which also came to be dismissed. The award therefore, has become final. Execution proceedings filed by petitioner to execute the award as decree of this court is pending.

4 In the meanwhile, petitioner filed this petition alleging that as on 28.1.2015 a sum of Rs.1,17,82,884.91/- together with further interest @ 12% p.a. on the principal amount and 18% p.a. on the cost of Rs.30,00,000/- was a debt that was unpaid and hence company was unable to discharge its debts and requires to be wound up. Petitioner is also claiming interest on interest as per the particulars of claim at Exh.B to the petition. The two figures at serial no.4 and serial no.5 are interest at 18% p.a. on Rs.30,00,000/- from 2.12.2011 i.e., the date of award till 27.1.2015 the date of the petition and petitioner is seeking "Further interest..... as also interest at 18% p.a. on the amount mentioned at serial nos.4 to 5 above as the Hon'ble

Court thinks fit". Therefore, it is quite clear that petitioner is seeking interest on interest.

5 Mr.Neelambaran appearing for petitioner of course, denies that petitioner is seeking interest on interest but that is what appears to be from the particulars of claim annexed to the petition. Even, if I go along with Mr.Neelambaran, then simple interest at 18% p.a. on Rs.30,00,000/- from 27.1.2015 till date approximately will be Rs.16,20,000/- plus Rs.1,17,00,000/- will be about Rs.1,33,20,000/-, say Rs.1,35,00,000/-.

6 Ms.Joshi appearing for respondent tenders an affidavit of one P.T.Gopalkrishnan Nair affirmed on 17.1.2018, un-affirmed copy whereof has been served upon petitioner on 16.1.2018 in which paragraph-4 contains table of payments made. It appears that by 1.7.2017 the company has paid Rs.1,12,60,609.34/-. Mr.Neelambaran does not dispute this figure. It is also stated in paragraph-5 that further to the order dated 13.12.2017 in Appeals bearing lodging Nos.78 of 2017 and 79 of 2017, company has deposited further sum of Rs.26,00,000/- which would make total deposit of Rs.1,38,60,609.34/-. On the face of it, it appears that the company has paid the entire amount due but I am not going into the

merits of that because it is the subject matter of appeals bearing lodging nos.78 of 2017 and 79 of 2017 pending in this court.

7 Mr.Neelambaran states that company has to pay further sum of Rs.9,00,000/- and odd for closure of accounts which is being disputed by Ms.Joshi, who says all amounts have been paid. Since disputed question of facts are involved, I am not able to gather myself to wind up a company when such disputed question of facts exist.

Petition stands dismissed.

8 Respondent company is directed to advertise the dismissal of the petition in 2 newspapers viz. 'Free Press Journal' (in English) and 'Navshakti' (in Marathi), both Mumbai edition and this notice to be given within a period of 2 weeks from today and compliance affidavit filed within one week thereafter.

(K.R.SHRIRAM,J)