



evidenced from pages 43 to 45 of the Petition. It is, in these circumstances, that the present Company Petition has been filed seeking to wind up the Respondent company. The Respondent company has filed its affidavit in reply and has resisted admission of the Petition principally on three grounds:-

(a) that the statutory notice issued by the Petitioner was never received by the Respondent company and hence the winding up petition is not maintainable;

(b) that in any event, the entire amount claimed by the Petitioner in the present Company Petition has been paid to the Petitioner by one Beejay Realtors Pvt. Ltd. for and on behalf of the Respondent company. Thus, there is no amount due and payable by the Respondent company to the Petitioner; and

(c) that the amount as claimed by the Petitioner is barred by the Law of Limitation.

3. After carefully perusing the papers and proceedings in the Company Petition and after hearing counsel at length, I am clearly of the view that none of the aforesaid defences have any substance.

4. As far as contention (a) is concerned regarding non-service of the statutory notice, the Petitioner has produced the acknowledgment by the postal authorities, which clearly indicates that the service of statutory notice was refused by the Respondent company. In the affidavit in reply, this is sought to be explained by alleging that the remark "Refused" is manipulated and fabricated. Apart from making this bald assertion, nothing has been brought to the notice of this Court that would even remotely indicate that the said remark/endorsement is fabricated or manipulated. This is more so, in view of the fact that the notice was served by Registered Post Acknowledgement Due (R.P.A.D.) through the Indian Postal Service. I, therefore, find no merit in this contention.

5. As far as contention (b) is concerned regarding payment being made to the Petitioner by one Beejay Realtors Pvt. Ltd. (for and on behalf of the Respondent company), I find that this argument is also wholly without any merit. This contention is averred by the Respondent company in paragraph 7 of its Affidavit-in-Reply without giving any details whatsoever in that regard. The Petitioner has filed an Affidavit-in-Rejoinder wherein this stand of the Respondent company is specifically refuted. It has been specifically stated that Beejay Realtors Pvt. Ltd. were separate customers of the Petitioner to whom the Petitioner used to supply material and for which payments were made by Beejay Realtors Pvt. Ltd. The Petitioner has specifically stated that the total material supplied and the services provided by the Petitioner to Beejay Realtors Pvt. Ltd., was amounting to Rs. 41.79 Lacs. To support this contention, the Petitioner has also annexed a list of invoices as well as copies thereof that were issued by the Petitioner to Beejay Realtors Pvt. Ltd. This being the factual position, and in the absence of any

details being furnished by the Respondent company about the alleged payment being made by Beejay Realtors Pvt. Ltd. (for and on behalf of the Respondent company) to the Petitioner, I am unable to accept this submission made on behalf of the Respondent company. Therefore this contention also will have to be rejected.

6. As far as contention (c) is concerned regarding the claim of Petitioner being barred by the law of limitation, the learned advocate for the Petitioner stated that even though the invoices in question are of December 2010, to repay the aforesaid invoices, the Petitioner had issued two cheques, being cheque No.2111 dated 10 June, 2011 drawn on Kotak Mahindra Bank for an amount of Rs.3,00,000/- and Cheque No.2112 dated 18 June, 2012 drawn on Kotak Mahindra Bank for an amount of Rs.3,18,617/-. These two cheques were issued in respect of the amount claimed in the Petition (of Rs.4,95,321/-) as well as towards advance payment for new supplies (amounting to Rs.1,23,296/-). He submitted that the present Petition has been filed on 14 March, 2014 which is within three years from the date of dishonour of said cheques. In these circumstances, the learned counsel submitted that the claim in the Petition is exfacie within time and not barred by the law of limitation.

7. I find considerable force in the argument of the Petitioner on this aspect. The Petitioner in the additional affidavit in support of the Petition dated 12 January, 2015 has specifically averred that these cheques were issued to pay the outstanding invoices amounting to Rs.4,95,321/-. These facts have not been controverted by the Respondent company and no explanation has been offered by the Respondent company as to for what purpose these cheques were issued to the Petitioner. This being the factual position, the case of the Petitioner in relation to these two cheques would have to be accepted. What naturally flows therefrom is that the claim of the Petitioner is within time and not barred by the law of limitation.

8. Looking to the totality of the case, I find that the defences raised by the Respondent company are not bonafide. However, since the amount involved is only a sum of Rs.4,95,321/-, to give one last opportunity to the Respondent company, I pass the following order:-

XXXXXXXXXXXXX

3           After the admission, respondent has not filed any further affidavit. Petitioner has filed an affidavit of one Ved Prakash Mishra affirmed on 25<sup>th</sup> April, 2017 confirming advertising the petition in Free Press Journal and Navshakti on 13<sup>th</sup> April, 2017 and also in the Maharashtra Government

Gazette for the period 23<sup>rd</sup> -29<sup>th</sup> March, 2017 at serial no.M-16378. Notice under Rule 28 of the Companies (Court) Rules, 1959 has been waived at the time of admission.

4           After the petition was admitted, petition came up on board on few occasions and nobody appeared for the company. Even today there is nobody present though the appearance of Ms. Kranti S. Anand, advocate, through whom the company was represented at the time of admission, is still shown in the cause list.

5           I have considered the petition, affidavit in reply, rejoinder and the documents annexed with the pleadings. I am in agreement with the observations made by the Learned Single Judge while admitting the petition. The defences raised by the company are not bonafide. Even though the company was given an opportunity to pay the amount of Rs.4,95,321/- on or before 17<sup>th</sup> May, 2016, Ms. Surve, counsel for petitioner states that the company has not made this payment. I accept the statement made by Ms. Surve.

6           In the circumstances, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

*(a) the company namely Big Venture India Pvt. Ltd. be wound up by and under the orders and directions of this Hon'ble Court and under the provisions of the Companies Act, 1956;*

*(b) this Hon'ble Court be pleased to appoint Official Liquidator of this Hon'ble Court or some other fit and proper person as it deems fit as Liquidator of the company namely Big Venture India Pvt. Ltd. with all powers and authorities under the Companies Act, 1956.*

7            Official Liquidator to take steps immediately upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

8            Company petition accordingly stands disposed.

**(K.R. SHRIRAM, J.)**