

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

**APPEAL NO.302 OF 2017
IN
COMPANY PETITION NO.627 OF 2014**

M/s Microweb Enterprises Pvt. Ltd. ... **Appellant**
V/s.

M/s Mantra Exports Pvt. Ltd. ... **Respondent**

Mr.Anand Mishra i/by Mr.Ashok M. Saraogi for the Appellant.

**CORAM : A.S.OKA AND M.S.SONAK, JJ.
DATE : AUGUST 29, 2018.**

P.C. :

1. Heard learned counsel appearing for the appellant. By the impugned judgment and order dated 25th February 2016, the learned Single Judge has dismissed the Company Petition filed by the appellant for winding up of the respondent-company.

2. The case of the appellant was that the respondent-company was indebted to the appellant for a sum of Rs.17,28,431/-. According to the case of the appellant, the first part of the said amount was as regards material supplied by the appellant to the respondent-company which was worth Rs.3,51,483/-. From paragraph No.7 of the impugned order, it appears that during the

course of hearing before the learned Single Judge, a statement was made on behalf of the respondent that not only the said amount but the respondent-company was ready to pay total amount of Rs.4,00,000/-. The learned Single Judge recorded that the said offer was rejected by the petitioner. The second part of the debt was in the sum of Rs.13,76,948/-. The case of the appellant was that it had supplied material worth the said amount to a third party for which respondent-company had given a guarantee that the payment will be made by the third party. In the reply to the statutory notice, the respondent-company had denied the liability and especially the case that it gave a guarantee as alleged by the petitioner.

3. The learned Single Judge held that as there was no evidence whatsoever produced to show the existence of any such guarantee, there are triable issues involved and it cannot be said that defence of the respondent is spurious, misconceived or lacking bonafides. The learned counsel appearing for the appellant on a query made by this Court states that there is no written document of guarantee but there was an oral guarantee which is reflected from the documents on record. He invited our

attention to annexure-A to the Company Petition, which is a statement of account. He also invited our attention to chalan-cum-invoice and fabric purchase orders. Thus, the submission is that existence of contract of guarantee will have to be inferred on the basis of the said documents. In fact, the said submission supports the finding recorded by the learned Single Judge that there were triable issues involved. The finding recorded by the learned Single Judge in paragraph No.8 cannot be faulted with as he has specifically observed that there was no evidence produced by the appellant to show the existence of any such guarantee. Hence, there is no merit in the appeal and the same is dismissed.

4. The learned counsel for the appellant submitted that there are no consequences for the default provided in the impugned order. What is recorded in Paragraph No.10 is based on the concession by the respondent. After holding that there were triable issues, the learned Single Judge could not have passed an order directing that in default of the deposit, the company petition shall stand admitted.

(M.S.SONAK, J.)

(A.S.OKA, J.)