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

COMPANY PETITION NO.532 OF 2016

Mukand Limited ....Petitioner
Vs.
Global Wind Power Limited ....Respondent

Mr. Prakash Shah a/w. Mr. Durgaprasad Poojari i/b. PDS Legal for petitioner.
Mr. Mukat B. Bhardwaj for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 17th APRIL, 2018

P.C.:

1 Petitioner seeks to wind up respondent company - Global Wind Power Limited (the company) on the ground that it is just and equitable that the company be wound up. Not only petitioner is alleging that the company is commercially insolvent and unable to pay its debts, it also states that the company is not carrying on business at its registered office and therefore, it is just and equitable to wind up the company.

2 Petitioner has approached this Court with the case that the company had placed a purchase order dated 6th August, 2011 on petitioner for supply of seven numbers of Nacelle Main Frames for a total consideration of Rs.4,56,96,000/-. As per the purchase order, first frame was to be delivered before October 2011, three frames by November 2011 and three frames by December 2011. The company was to pay an advance of 10% of the order value against Advance Bank Guarantee, another 10% after 60 days from the date of purchase order and the balance after 30 days from the date of receipt of material.

3 Admittedly, the company did not give the advance of 10% and hence, petitioner also did not have to give a bank guarantee in exchange thereto. Admittedly, the company did not pay the 10% amount that was to be paid after 60 days from the date of purchase order. Therefore, petitioner addressed a communication dated 9th November, 2011 to the company bringing to their notice that petitioner is yet to receive advance and progress payment totaling to 20% of the purchase value. In reply, the company by an email dated 9th November, 2011, informed petitioner that due to certain unexpected delays in the expected inflows there has been a delay in releasing the payment and assured petitioner that the payment will be released shortly. Further discussions took place between petitioner and the company to rework the terms. Thereafter, the company issued a revised purchase order dated 30th July, 2012, whereby petitioner was to supply as against the original seven frames, only three frames. The payment terms was 100% Letter of Credit or 100% advance against proforma invoice.

4 Mr. Shah, counsel for petitioner submitted that petitioner manufactured the first frame and delivered the same by the due date and the company paid for the said frame. Mr. Shah further submitted that thereafter, petitioner kept ready the second frame and also procured materials to manufacture the third frame but the company did not take delivery of the second frame which was ready and did not make any advance payment for the third frame. It has to be noted that though the

payment terms indicated 100% Letter of Credit or 100% advance against proforma invoice, no such advance was paid or Letter of Credit opened.

5 It is petitioner's case that the company not having taken delivery of the second frame and paid the value thereof and not giving further instructions to petitioner to complete the third frame, petitioner has suffered a loss and that is a debt payable by the company.

6 In my view, having considered the petition and the submissions made by Mr. Shah and also the documents annexed to the petition, if one accepts petitioner's case, it is a pure claim for damages. When it is a claim for damages that will not be a debt as defined under the provisions of the Companies Act, 1956 and that is settled law.

7 So far as the company not carrying business from the registered office is concerned, certainly that is a subject matter for the Registrar of Companies to look into and that certainly cannot be “just and equitable” ground to wind up the company. Ofcourse, Mr. Bhardwaj, counsel for respondent states that even when the negotiations took place and the purchase order was placed, petitioner was aware of the address from which the company was carrying on its business.

8 In view of the above, I see no reason as to why an order to wind up the company has to be passed. Petition accordingly stands dismissed.

(K.R. SHRIRAM, J.)